



Conflict and Crisis Management in Challenges to New Participatory Process

- Focusing on the Seoul Citizens' Human Rights Charter -

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Abstract

This study focuses on the conflict and crisis in a participatory process of making the Seoul Citizens' Human Rights Charter. A new form of governmental decision-making process emphasizes interaction and partnership between public and private sectors. Citizens acquire autonomy in civil society and enhance civil rights through participatory governance. Regarding conflict and crisis in a participatory process, this study shows three things as follow. First, conflict and crisis are considered as a democratic process which manages social conflicts among various groups. Second, the emotional consensus among citizens for the enactment of the Charter needs sufficient time and governmental efforts. Third, as for the crisis of democratic procedures, not only institutional conflict management but also sufficient time is of great importance.

Key words: conflict and crisis in a participatory process, Seoul Citizens' Human Rights Charter, democratic decision making, democratic procedures

1. Introduction

Participation guarantees democratic decision making and justifies government decisions while causing unnecessarily serious social conflicts that is difficult to mediate. In August 2014, Seoul City organized the Citizen's Committee consisting of 180 citizens to legislate Seoul Citizen's Human Rights Charter (hereafter the Charter) of the citizens' own making. The Charter legislated by the citizens' direct participation in Seoul city policy making

decision drew keen attention in actualization of 'participatory democracy'. However, Seoul City concluded to totally abolish the Charter made by the citizens' 'direct participation' for the reason that 50 articles in the Charter were not unanimously consented in discussion of the Charter for 4 months. Serious conflict in the process of the Charter legislation was involved with 'sexual orientation and gender identity' in the Article 4, prohibition on gender discrimination of the Charter. Issue on direct indication of 'sexual minority (Lesbian, Gay,

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Bisexual, and Transgender/Transsexual, hereafter LGBT's sexual orientation and gender identity in human rights has caused controversy. Conflict on LGBT issues between the members of Citizen's Committee has been known to the outside and the conservatism and religion organizations that deny LGBT disagreed with legislation of the Charter itself. Consequently, Seoul City declared total abolition of the Charter consented via voting by the Committee, even before proper enforcement.

II. Theory

This case shows social conflicts on LGBT in policy making process in South Korea for the first time and simultaneously limit of citizens' participation in governance that is related to government's authority exercising (Tarschys, 2001). Citizen participation is a device that can mitigate democratic flaws and individualism (Tocqueville, 1835). Arnstein (1969) describes the type of resident involvement in eight steps. The degree of participation is presented from the lowest to the highest level in order of manipulation, therapy, informing, consultation, placation, partnership, delegated power, and citizen control. The three types of participation were categorized as type of non-participation: therapy and manipulation, as type of degrees of tokenism: placation, consultation, informing, and as type of degrees of citizen power: civil control, delegated power, partnership. Actual participation means that citizens can exercise their influence and active participation in the policy process, while formal participation means passive participation. Manipulation is mobilized to support the policy, and in the case of treatment, it implies participation in various

forms of social therapy. In the case of informing, it means receiving unilateral information or benefits, and consultation is the process of converging opinions and ideas of residents. Placation is the type in which bureaucrats have the right to make decisions but can participate in the planning stage. Partnership is a process that can be negotiated through public-private partnership system, and delegated power is participation in cases where certain decision-making power is transferred. In the case of citizen control, it is the stage of participation that enables general management, control and monitoring of the policy process from policy formulation to management and negotiation authority.

In the case of establishing the Citizens' Human Rights Charter, the preparatory committees of Seoul and Seoul provided an overall framework for the Human Rights Charter. However, this is a planning step in the enactment process that creates an environment for citizen participation because it was a guideline for citizen participants who lacked sufficient expertise in the human rights charter. All steps from the direction of the enactment process, the draft, and the final draft were made by the participation of the Citizens' Committee and the Expert Committee. During the process of enactment, the expert committee continuously provided guidelines in the process through professionalism, and the citizen committee became the subject of discussion through free discussion within the guideline framework. In this case, the type of resident participation is seen as a high level of resident participation that corresponds to delegated power rather than partnership in substantive participation. However, regarding the participation, it can be concluded that

the citizen participant who opposed to the declaration of annulment in relation to the matter that the city of Seoul declared to disagree without reaching consensus can be conclusively manipulated for policy support as a result of non-participation type. In other words, the process of enacting the Constitution of Seoul Citizen Personnel can be discussed as a case of showing two types of participation before and after the final consensus.

III. Literature Review

Governance includes law, regulation, judicial judgment, public management method in public sectors and increasingly means participatory decision making method as a new form of government administration flexible compared to bureaucracy or contradistinguished from bottom-up division making method (John, 2009; Lynn & Hill, 2004; Mathur & Skelche, 2007). Traditional form of government administration is mainly involved with public sectors, while governance derived from four emerging models of future government by Peters(1996) as a new form of government administration focuses on interaction and partnership between public and private sectors. For four models, the delegate, market and participatory models except the flexible model categorize government administration as governmental governance, market governance and civil society governance. Governmental governance highlights efficient government organization while market governance and civil society governance take an account of change in government administration as a significant variable. It is noteworthy that market governance emphasizes enjoying rights

given to beneficiaries or consumers or stakeholders of public service(Steffek, 2010). Meanwhile, civil society governance highlights participatory sovereign power that governance participants have the merit of obtaining civil society autonomy and enhancing civil rights. However, it also has disadvantage of vague responsibility in political decision making(Steffek, 2010). It is associated with a gap between political leader's behavioral responsibilities for limited control and decision (Peters & Pierre, 1998). The case of Seoul Citizen Human Rights Charter well-demonstrates such operation and limit of civil society governance. Starting as 'our human rights charter' made by citizens' direct participation, it left unexpected, serious conflicts between citizens who had different opinions on LGBT, in absence of responsible and proper leadership. This study examined issues arose from the process of the Charter legislation and resulting conflicts, at the viewpoint of citizen participation and government responsibility.

IV. Case Study Background and Context

1. Background of Seoul Citizen Human Rights Charter Legislation

Seoul Citizen Human Rights Charter legislation started in 2014 is traced from the Seoul Mayor Election period in 2010. In 19 Oct 2010, Park Won Sun, one of the Seoul Mayor candidates, announced 'Declaration of Seoul Citizen Human Rights'. Such declaration by the candidate Park later elected as a Mayor became a basis for 'Seoul City Framework Ordinance on Human Rights' in 2012 after his inauguration. The Declaration that used to have normative meaning perceived by the candidate Park

at that time was actualized as a legislative achievement after his inauguration. The Declaration consisted of main contents about the range of prohibition on discrimination, criteria and range of human rights and human rights city aimed by Seoul City, as well as, 10 articles associated with disclosure of information, education, occupation, environment, healthcare, etc. It was to announce declaratory willing of the candidate at most, in which Seoul citizens who did not show big interest. However, the Declaration has become a political standard with actual leverage over entire Seoul City government after his inauguration and a background for ‘Seoul City Framework Ordinance on Human Rights’ in 2012. According to the Article 12 of the Framework Ordinance, the Mayor specified that he would legislate and declare human rights charter, i.e., subsequent legislation of Seoul Citizen Human Rights Charter. However, the Framework Ordinance did not specify the method and process of legislation of the Charter, but indirectly, that he would guarantee citizens’ participation in establishing human rights policy, as a part of his responsibilities as the Mayor.

2. Organization of Citizen's Committee

Seoul City organized the Human Rights Committee in which civilians and public officials participate together in November 27th 2012, based on Seoul City Framework Ordinance on Human

Rights. The Human Rights Committee consisting of total 15 members including 13 civilian experts in human rights of the disabled, women and immigrants, 1 city councilor, 1 Seoul City public official, etc. was the first governance system by public-private sectors for human rights policy. The members of Committee played their role in reviewing and counseling human rights-related policies including draft plan and developing policy agenda.

The Seoul City Framework Ordinance on Human Rights, as a legislative measure for human rights responsibility of Seoul City as one of the local governments as well as a legal basis for legislation of the Charter, carries legal binding force under the sub-system of Constitution and National Human Rights Commission Act. On the other hand, although the Declaration was one of the election pledges of the candidate with no legal force and not political influence, later it has become a basis for legislation of Seoul City Framework Ordinance on Human Rights and the Charter. Similar to the Declaration, the Charter with no legal force would have had administrative leverage by acting as a discipline of value and norm pursued by Seoul City as the human rights city, if legislated(Moon & Hong, 2016). Legal systems of The Seoul City Framework Ordinance on Human Rights and the Charter are <Table 1> below.

Table 1. Comparison between Seoul City Framework Ordinance on Human Rights and Seoul Citizen Human Rights Charter

Legal force	Yes		▶Constitution Article 10 – Inviolable and Fundamental Human Rights ▶National Human Rights Commission Act Seoul City Framework Ordinance on Human Rights
	NA	Political influence	Yes
			NA

V. Challenges to Participatory Democracy:

Conflict, Crisis

1. Participation

Launched by Seoul city in February 2014 the Preparatory Committee for Human Rights Charter Legislation consisting of professors, jurists and representatives of civic groups proceeded with overall discussion on legislative direction of the Charter, way of the citizens' participation during the process of legislation, and structure and system of the Charter. Although the Charter was in the name of actualization of participatory democracy, overall framework and participation method involved with the Charter were defined in the guideline for the Charter by the Preparatory Committee prior to public participation. The citizens' full-out participation began from the Citizen's Committee launched in August. The Citizen's Committee consisted of total 180 members including 150 citizens and 30 experts, by open recruitment conducted by Seoul City via internet or direct application. To ensure representativeness of Seoul citizen, it was organized with the selected by lot from the applicants who were over age 14 and whose workplace or school was located in Seoul, in consideration of regional, age and gender representativeness. Entire process of selecting the members of Citizen's Committee was disclosed to the public via online and transparency of the process was secured by gathering opinions on a temporary basis via the Seoul City homepage. According to Moon & Hong(2016), significance of the Charter legislation can be found in general citizens' direct participation, not previous expert-centered participation. Anyone could take

part and consistent discussion was insured for agreement in terms of format, while concern and protection of social and LGBT were highlighted in terms of content. More specifically in terms of content, it was an attempt to include value and norm of human rights that Seoul citizens must enjoy in livelihood areas such as safety, welfare, residence, education, environment, culture, public transport, etc. Although the Charter did not have legal force, it reflected importance of human rights throughout administration of Seoul City in the future, as a guideline for Seoul human rights policies.

In this process, Seoul City highlighted citizens' participation. The term, participation used to be quite prevailed in political circles of Western society in the 1960s(Pateman, 1970). Participation here meant simple participation in specific political events, which has changed to the concept of right as civil society-centered participation based on equal footing network flexible and functional in modern times(Steffek, 2010).

Main participants in the process of the Charter legislation are classified by type of participation as 1) citizens and experts belonged to the Citizen's Committee, who participated in the process of legislation in person; 2) civil societies that did not participate in the process of legislation in person but indirectly presented their opinion, pros or cons about legislation; and 3) Seoul City government that actively conducted and supervised the process of legislation from start to end. Seoul City directed and proceeded with the process of the Charter legislation that used to be one of the election pledges of the Mayor Park. The expert and citizen members of Citizen's Committee were delegated

from policy making authority according to the policy of Seoul City that highlighted citizens' autonomous participation in the process of the Charter legislation. They played an importance role in commenting on setting direction, drafting and final plan of the Charter as well as reviewing and voting for/against main agendas.

2. Conflict and Consensus

Claiming to advocate participation, the Citizen's Committee was held 6 times unprecedentedly compared to previous policy procedures conducted during legislative process to bring about an agreement. In addition discussion meeting was held 9 times over issues on women, elderly, North Korean defectors, children and adolescence, disabled, sexual minority, immigrants, foreigners, etc. Various human rights lectures, discussions by region and internal meetings were held. In the meantime, serious and minor conflicts had consistently occurred over procedures and contents of consensus, specific expression to be included in the Charter, etc. Consequently, the most serious impediment to reach the final consensus was an issue on prohibition of discrimination against LGBT. Specifically, the conflict was focused on 'LGBT' issues that were directly indicated in the Chapter 1, Article 4, 'Sexual Orientation and Sexual Identity' part among the list of grounds of discrimination subject to prohibition and in the Chapter 3, Article 15, 'Citizens Exposed to Risk of Violation' to be considered in particular. Article 4 defined that "Seoul citizens shall have their own right not to be discriminated against based on sex, religion, disability, age, social status, region of origin, country of origin, ethnicity, physical

conditions including appearance, marriage status, pregnancy, childbirth, family type and status, race, skin color, conscience and thought, political opinion, former criminal record of which penalty has become invalid, sexual orientation and sexual identity, academic background, medical history, etc., which are prohibited by Constitution and laws". Article 15 concerns protection of LGBT, by defining "Seoul citizens shall have their own right to be safely protected from physical, emotional and social violence and Seoul City government shall arrange the system and environment to prevent and eradicate violence from home, school, workplace, facility for caring for many persons and local community. Seoul City government shall specifically consider the citizens who might be easily exposed to violence, including women, children, elderly, vulnerable, disabled, sexual minority, immigrants, etc. Seoul City government shall support victims and their family and the family of assailants".

Although the draft the Charter contained various cases of human rights, specifically the 'right not to be discriminated against based on sexual orientation and sexual identity' had deeply affected the society. Since the fact that LGBT was stated in the draft was known to the public, an intense opposition has begun. Conservative civil organizations and religious leaders announced objection statement and protests by which occupied downtown streets and public hearings. Consensus about the Charter seemed to be reached within the Committee even just in terms of form, as an agenda to state sexual orientation and sexual identity as the grounds of discrimination subject to prohibition were voted on and passed after some members of Citizen's Committee

attended and walked out of the meeting in November 28th 2014. In fact, the Citizen's Committee confirmed the Charter consisting of 50 articles via various 'consensus' processes over 4 months.

However, there was no regulatory procedural justification to assure it as 'consensus'. In other words, 77 among 110 participants voted on non-consensus agendas without any pre-defined regulation, resulting that consensus about each article of the Charter was determined with 60 pros and 17 cons. Consequently, the meeting on the Charter was finalized by discussions and conflicts arose from 6 meetings of Committee consisting of civilian members. The schedule to reach consensus is provided in <Table 2> below in detail.

3. Abolition

In administration of contemporary democracy, encouraging citizens' active participation is an important role of leader to maintain enthusiasm of the citizens towards their community(Violi, 2002). In this respect, the procedures and system to encourage civil participation arranged by the Seoul Mayor could be interpreted as positive in terms of inducing citizens to actively participate in public discussion process. However, paradoxically the Charter was abolished at the expected date of declaration by the leader who used to encourage civil participation. Official reason for abolishing the Charter was because the Citizen's Committee taking lead of legislation 'failed to consensus'. At the last 6th meeting of Citizens' Committee, 45 among 50

Table 2. Major Events during Policymaking Process

Time	Contents
Oct 19 th 2010	The candidate for Mayor of Seoul, Part announced 'Declaration of Seoul Citizen Rights' as one of his election pledges.
Sep 28 th 2012	Seoul City Framework Ordinance on Human Rights was legislated.
Nov 27 th 2012	Seoul City Human Rights Committee was launched.
May 30 th 2013	Seoul City Human Rights Committee consulted legislation of 'Human Rights Charter' with Seoul City government.
Aug 6 th 2014	Citizen's Committee was launched for legislation of Seoul Citizen Human Rights Charter.
Aug 13 th 2014	The 1st General Meeting of Citizen's Committee - List of total 515 human rights to be included in the Charter was completed.
Sep 2 nd 2014	The 2nd General Meeting of Citizen's Committee
Sep 16 th 2014	The 1st Human Rights Lecture for Civilian Members of the Committee
Sep 22 th 2014	The 2nd Human Rights Lecture for Civilian Members of the Committee
Sep 25 th 2014	The conservative organizations posted advertisement to criticize Human Rights Charter on 7 newspapers.
Sep 26 th 2014	The 3rd General Meeting of Citizen's Committee - 6 sub-committees were organized.
Sep 30 th 2014	The Mayor Park had an interview with <San Francisco Examiner> during his visit to US.
Sep 30 th 2014	Panel discussion in Gangnam, Seoul.
Oct 2 nd 2014	224 civil organizations had press interview for 'dissent from articles about legalization of homosexuality'.
Oct 12 th 2014	The Mayor Park disclosed his interview with <San Francisco Examiner>.
Oct 15 th 2014	Conservative and religious organizations announced the statement to criticize the Mayor Park.
Oct 17 th 2014	Panel discussion in Gangbuk, Seoul.
Oct 25 th 2014	The 4th General Meeting of Citizen's Committee - Draft was completed by each sub-committee.
Dec 1 st 2014	Seoul Human Rights Concert was held.
Nov 13 th 2014	The 5th General Meeting of Citizen's Committee - Non-consensus agendas were classified.
Nov 20 th 2014	Public hearing - crippled as homophobic organizations broke into.
Nov 28 th 2014	The 6th General Meeting of Citizen's Committee - Finalized Human Rights Charter was determined by voting.

articles of the Charter were agreed by unanimous consent while 5 articles including articles about prohibition on discrimination against LGBT which were remained as non-consensus were voted on and determined by the Committee to be passed as a mere formality by majority vote. However, as failed to reach unanimous consent, it was announced in press interview held by Seoul City government that the entire the Charter was to be abolished. Declaration of abolition by Seoul City government at the date of vote annulled not only non-consensus articles but also all the discussions and debates in legislative process at once. It was quite different situation from the democratic procedures to recruit the members of Citizen's Committee at the early stage of legislation. 4-month discussions were concluded as the Charter was abolished for the reason of non-consensus, provided that no procedure for unanimous consent was arranged in advance. Such unilateral abolition by Seoul City government caused strong reaction by the civil and expert members who participated in legislation process. Furthermore, on December 1st, the next day to abolition by Seoul City government, the Seoul Mayor apologized in his interview with representatives of homophobic organizations that the part of the Charter caused quite a stir in the society(Moon & Hong, 2016). Such change in stance of Seoul City resulted in strong reaction followed not only from expert members who participated in legislation process but also LGBT advocacy organizations. The LGBT advocacy organizations insisted that Seoul City officially denied human rights of sexual minorities by abolishing the Charter took over the lobby of Seoul City Hall and went into sit-in demonstration in December 6th. Nevertheless, Seoul City determined

abolition of the Charter for the reason that more time and social discussion are required to reach consensus. Abolition of the Charter was concluded as not only the result of non-consensus but also retrogression against democratic procedure and civil participation that Seoul City used to take most important in legislation of the Charter.

VI. Who are blamed?

Seoul City emphasized importance of civil participation in legislation of the Charter that was one of the election pledges suggested by the Mayor Park. It had played a leading role in preparatory phase as selecting expert members and in discussion phases as appointing civil members. However, ironically, Seoul City abolished the final decision by the civil members at the last phase of legislation. In other words, Seoul City denied the decision by civil members who were organized by them.

The serious social conflict over the Charter started from the Mayor Park's interview with the American press, *the San Francisco Examiner* during his visit to US, which was related to human rights of sexual minorities. They are not legally accepted yet, but I believe the Korean Constitution allows it”(Engardio, 2014). As his interview was known to South Korea, he was strongly blamed by the religious and homophobic organizations; after all, he insisted that his interview was misinformed and corrected his word as that he did not personally consent to homosexuality. Since then, Seoul City did not make any position clear until public hearings became to be crippled by physical confrontations between the homophobic and the LGBT advocacy organizations. The in-charge officer at Seoul City

simply mentioned that "civil members are supposed to drive legislation of the Charter and the Seoul City government just arranges the place for it" and added about the homophobic organizations that "preventing them from participating can be problematic, so they should be dealt with carefully"(Beminor, 2014). After all, 77 among total 110 members participated in the last, 6th meeting of Citizen's Committee to vote on non-consensus matters. Although each articles of the Charter were a majority decision with 60 pros and 17 cons, Seoul City determined to abolish the Charter for the reason that it was 'not unanimously consented'.

On the other hand, Seoul City assigned experts such as lawyers and professionals as the preparatory members at the preparatory phase of legislation of the Charter, who would take lead of organization and operation of Citizen's Committee. The role of preparatory members was to provide non-expert, general citizens with basic data required for legislation of the Charter and deliver human rights-related expertise to them. The preparatory members continued their activity as the expert members upon the Citizen's Committee was launched(Moon & Hong, 2016).

From the early stage of discussion on legislation of the Charter, opinions of the Citizen's Committee's expert members on how to stipulate the article about prohibition of discrimination against LGBT were split. The first option was to list 19 grounds of discrimination subject to prohibition, including those based on sexual orientation, age, gender, etc. one by one, while the second option was to stipulate comprehensively as 'any Seoul citizen shall have the right not to be discriminated' instead of listing each ground of

discrimination subject to prohibition. The expert members, pros for such comprehensive stipulation, insisted to legislate the Charter first and thereafter to raise the citizens' awareness of human rights and include rights of LGBT in the Charter. Meanwhile, the expert members, pros for listing of individual grounds of discrimination subject to prohibition, objected such comprehensive stipulation as it would become rather regression of human rights policy, based on the fact that the National Human Rights Commission Act, a super ordinate law of the Charter, already specified individual grounds of discrimination subject to prohibition.

As discussions went furiously, the 'Citizen's Coalition of Objection to Homosexuality Legalization Articles of the Seoul Citizen Human Rights Charter' consisting of 244 conservative and religious organizations put advertisement of such objection in major newspapers and staged protest against the article related to prohibition of discrimination against LGBT to interrupt regional discussions and public hearings. In this process, more expert members increasingly presented different opinions on the article related to prohibition of discrimination against LGBT. Some expert members agreed with anti-Human Rights Charter civil organizations objected to specify the term 'sexual orientation' as the ground of discrimination subject to prohibition in the charter while insisting that 'Constitution already lists various basic human rights and even defines that the non-listed rights shall be respected, so further subdividing human rights could degrade other types of non-listed human rights'(Moon & Hong, 2016).

The issue that was taken most seriously by the Citizen's Committee officially launched in August

6th, in terms of listing human rights in the Charter, during total 6 times of meeting, was about protection of sexual minorities' human rights. In the internet bulletin board set up by the Committee, some members insisted exclusion of sexual minorities' human rights from the Charter by reason that rights of sexual minorities is hardly accepted in the society and homosexuality is the cause of AIDS, which was bit not-scientific(Moon & Hong, 2016). The civil members against protection of LGBT' rights raised a question why sexual minorities should be ensured for their safety separately and began to officially present objection since the 3rd meeting. They even casted doubt upon their role that they might have served as a foil to the Mayor Park's pro-homosexuality norm, not as a true meaning of participant in legislation of the Charter.

In contrast, the civil members, pros for protection of LGBT's rights, insisted that LGBT had to be respected as one of the human rights and individual's sexual orientation was not the subject to be evaluated by others. They emphasized that social safety net was needed to protect human rights of LGBT, for example, protection from violent behavior by homophobic organizations. They mentioned that Seoul City failed in its duty to actively protect human rights of LGBT as it passively responded to the protests by the hate groups at public hearing and negligence on taking action against obvious aversive behaviors was equal to justifying discrimination and hatred as well as depriving citizen rights from LGBT(Moon & Hong, 2016). Such difference in viewpoint to human rights of LGBT between the civil members was not narrowed down to the end.

Conflicts over the issues on stipulation of LGBT's rights in the Charter were more furious between the civil organizations than that between the members of the Committee. NGOs were divided into two groups, the 'Citizen's Coalition of Objection to Homosexuality Legalization Articles of the Seoul Citizen Human Rights Charter' and the 'Rainbow Action for Prohibition of Discrimination against Sexual Minority'. Total 244 conservative organizations were participated in the 'Citizens Coalition of Objection to Homosexuality Legalization Articles of the Seoul Citizen Human Rights Charter', including the National Mothers Gathering for True Education, Parent Association for the Love of Country, Teacher Association for Correct Education, Professor Association for Correct Education, Seoul Voter Union, People's Alliance for Healthy Society, Parent Union for Protection of Next Generation, People's Alliance for Desirable Gender Culture, Citizen's Coalition for Adolescent Health, Patriotism Alliance, etc. The reasons for objection were as below. Firstly, parents and education organizations argued that homosexuality could be easily transmitted to adolescents through the Charter advocating LGBT(Co Dot, 2014). Secondly, homosexuality publicly spread by protection of sexual minorities' rights might be abusable in other forms of abnormal sexuality such as incest, paedophilia and bestiality (Yang, 2014). Thirdly, dominantly it was suggested by conservative and Christian organizations that potential legalization of homosexual marriage did not fit tradition and culture of Korean society. There were other various reasons for objection suggested; for example, it was not fair to request securing safety of sexual minorities at the same level to that of women and children who were majority compared to LGBT; and

there was no need to cause social conflict and confusion by accepting the minorities' biased opinion on homosexuality issue that had not reached to social consensus.

In October the 'Citizen's Coalition of Objection to Homosexuality Legalization Articles of the Seoul Citizen Human Rights Charter' officially stated that the article regarding LGBT had not to be included in the Charter and then criticized Seoul City for advocating homosexuality. Approximately 200 members of anti-homosexuality organizations broke into chants of "Abolish the Charter!" at the public hearing hosted by the Citizen's Committee in November 20th and interrupt processing of the hearing, resulting in cancelation of the hearing (Beminor, 2014). The Citizen's Coalition of Objection to Homosexuality Legalization Articles of the Seoul Citizen Human Rights Charter held large-scale protest in front of the Seoul City Hall in November 28th(Moon & Hong, 2016).

On the other hand, the organizations that agreed with legislation of the Charter included organizations advocating sexual minorities, human rights, women and labors and liberal religious organizations. Total 19 organizations including the Solidarity of University Queer Societies in Korea, Solidarity for LGBT Human Rights of Korea, Sexual Politics Committee of Labor Party, Sexual Minority Committee of Justice Party, etc. organized the 'Rainbow Action for Prohibition of Discrimination Against Sexual Minority' and total 136 organizations including the People's Solidarity for Participatory Democracy, Korean Women Workers Association, Korean Confederation of Trade Unions, Korean Government Employees' Union, Catholic Human Rights Community, etc. demanded declaration of

legislation of the Charter. The reasons for assent were as below. First, they argued that the sexual minorities were all human being as same to the heterosexuals and had right as a citizen not to be discriminated(Civil Society Organizations Network in Korea, 2014). Second, they argued that the Human Rights Charter was a re-confirmation of universal human rights principles, suggesting that failure of sexual minorities' human rights implied potential violation of other human rights(Civil Society Organizations Network in Korea, 2014). In addition, they blamed Seoul City government for abolishing the Charter for the reason that the Charter was not unanimously agreed. They argued that totalitarianism was not democracy and abolition of civil agreement by Seoul City government was obvious undermining of democracy(Community of Human Rights and Law for Persons Do Learn Do Run, 2014).

At the early stage of legislation of the Charter, the organizations advocating sexual minorities recommended for sexual minorities to participate in the Citizen's Committee as a member in order to include the article for prohibition of discrimination against LGBT in the Charter. During discussion on legislation of the Charter, those organizations demonstrated in favor of sexual minorities' rights and physically collided with the members of organizations objecting legislation(Beminor, 2014). When Seoul City abolished the Charter, they took over the lobby of the City Hall to criticize abolition as violence towards LGBT's rights.

VII. Conclusion: Various Implications

The most significant implication of legislation of the Charter was that for the first time in South

Korea, general citizens participated in policy making process in person and actively stated their own view. Although it was considered as positive attempt of civil participation at the early phase, legislation was failed after all. The biggest reason for failure of legislation was failure to reach consensus. The reasons for failure of consensus despite several times of meeting and public hearing by civil participation were as below. Firstly, insufficient period of legislation led to lack of careful consultation among the participants. Lack of sufficient time to reconcile different opinions via diverse discussions created conditions for neglecting the opinion of the minority. Secondly, institutional strategy to determine agreement was incomplete. It would be easier to draw final consent if the participants make decision in person in advance on procedures to determine which was the most reasonable among universal consent and majority consent.

Another reason for failure was the position of Seoul City in terms of adjusting social conflicts or postponing making-decision. Reconciling conflicts arose from diverse human rights-related opinions of citizens and drawing final consent were the important duties of Seoul City. At start of legislation of the Charter, Seoul City should have established an alternative in case of failure to reach unanimous agreement within the Committee. Given that there was no pre-defined instruction for final determination, the Citizen's Committee internally agreed to follow majority rule and pushed the final plan stipulating prohibition of discrimination against LGBT under the situation that some civil members who objected to prohibition of discrimination against LGBT walked out of the final meeting. Seoul City would

have accept the final plan put though by majority rule by the Committee if it acknowledged the final plan of the Charter made through civil participation, as a result of deliberative democracy that secures autonomy and enhance citizenship. Another fault made by Seoul City was giving-up on its role in reconciliation. Given increasing conflicts within the Committee, the Mayor stated his view in favor of sexual minorities at the interview with foreign media while not even officially attending discussion on legislation, which implied disappearance of policy actor who could reconcile and mediate between conflicts. Pro-minority statement of the Mayor at the interview provided the cons against the article of LGBT's human rights with the reason to insist loss of objectivity and fairness in legislation of the Charter. After all, resistance of the cons was expanded and degenerated into violent confrontation, resulting in cancelation of public hearing since the interview.

On the other hand, the Charter might be thought differently. Even if the Charter was not legislated at the government level from the beginning, human rights of LGBT had been already protected implicitly by the Seoul City Framework Ordinance on Human Rights that was based on the super ordinate law, National Human Rights Commission Act. However, the issue of LGBT arose during legislation of the Charter expanded social conflict and ultimately the press interview by the Mayor caused unification of anti-LGBT organizations. In relation of the key of furious conflict, stipulation of LGBT's rights, whether or not such debate was necessary in legislation of the Charter could be considered. As in fact the National Human Rights Commission Act included an article of protection of LGBT, it cannot be said that human rights of

sexual minorities was not legally protected before legislation of the Charter. Of course LGBT's rights are not fully secured in South Korea. However, LGBT became to be main issue than any other important issues dealt with in the Charter that had no legal force.

Civil society-centered governance might promote autonomy of civil society and enhance citizenship with direct participation of citizens in administration. However, aggregated conflict by faction and unspecified where the responsibilities lie should be overcome during policy-making process in civil society. The issue of where the responsibilities lie in particular is associated with relieving violation of basic human rights via the outcome drawn by civil participation (Navdeep & Skelcher, 2007). The case of legislation of Seoul Citizen Human Rights Charter is out of legal binding. Questioning by the human rights organizations that whether or not abolition of the Charter by the Seoul Mayor was violation of fundamental of human rights was answer by the Constitutional Court in 2015 as that the behavior itself was not subject to exercise of public power to infringe the fundamental human rights. As the Charter itself was a political plan, its legal characteristics were determined by the Court to have no direct effect on rights, duties and legal status of the citizens. Accordingly, declaration of abolition of the Charter, one of the non-binding administrative plans, was not exercise of public power to influence legal status of individual. According to the determination by the Constitutional Court, unilateral declaration of abolition by the Seoul Mayor did not infringe the fundamental human rights of anyone; therefore, it was determined that there was no legal victim.

However, responsibilities of participants in the process of legislation would be weighed more due to potential infringement of fundamental human rights resulted from the legislated ordinance if the citizens participate in legislation of ordinance with legal force. In case that the citizens participate in legislation of ordinance with legal force, the range of responsibilities following participation first needs to be stipulated in terms of not only simple participation but also following results. In other words, both the government and participating citizens in partnership would be publicly answerable for public acts resulted from legislation of ordinance with legal force by civil participation.

Acknowledgement

This work was supported by Hankuk University of Foreign Studies under 2019 Grant.

This paper was cited and amended from “Ingwon Jeongchaeng Sarye Yeongu: Seoulsimin Ingwonheonjang Jejeongeseoui Siminwiwonhoe Chamyeoui Hangye [Case Study of Human Rights Policy: Limit of Citizen's Committee in legislation of Seoul Citizen Human Rights Charter]” in the Korea Institute of Public Administration Research Studies, Hyoyuljeogin Saryegyoyugeul Wihan Gonggongbumun Jeongchaeksarye [Public Sector Policy Cases for Efficient Education] (2016)' and approved for use per Korea Institute of Public Administration Study data management Rules. (downloaded March 28th 2018).

Disclosure Statement

No potential conflict of interest was reported by the author.

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Received: Jan. 10, 2019 / Revised: Feb. 11, 2019 / Accepted: Feb. 18, 2019

새로운 참여적 과정에 대한 도전, 그리고 갈등과 위기관리

– 서울 시민 현장 사례를 중심으로 –

국문초록 본 연구는 서울시민 인권 현장을 제정하는 참여적 의사결정 과정 도입에서의 갈등과 위기에 초점을 두고 있다. 새로운 형태의 정부 의사결정은 공공 부문과 민간 부분 간의 상호작용과 파트너십을 강조한다. 시민은 참여를 통해서 시민사회의 자율성과, 시민의 권리를 향상시키게 된다. 참여적 과정에서의 갈등과 위기와 관련해서, 논문은 다음과 같은 세 가지를 보여준다. 첫째, 갈등과 위기는 그 자체로서 민주적 결정과정이다. 민주적 결정은 다양한 집단 간의 사회적 갈등을 관리하는 민주적 과정에 기초해서 결정된다. 둘째, 시민 현장 제정에 필요한 시민들의 정서적 합의는 충분한 시간이 필요하며 정부의 노력 또한 필요하다. 셋째, 민주적 절차의 위기에 있어서 제도와 갈등 관리뿐만 아니라 충분한 시간도 매우 중요하다는 것을 확인하였다.

주제어 : 갈등과 위기, 참여적 의사결정 과정, 서울시민현장, 민주적 의사결정, 민주적 절차

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