Designing Special Electoral Mechanisms for Group Representation

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Abstract

The purpose of this paper is a detailed and systematic analysis of currently utilized electoral mechanisms that produce descriptive representation of various minority groups in parliaments around the world. The current literature on the topic has been concerned more with simplifying the existing variability than with in-depth comparison of cases. In order to remedy this gap in our knowledge, the first part of the thesis delivers a survey of twenty two countries where minorities are represented in the legislature through the working of an alternative set of electoral rules established explicitly for that purpose. The cases are found to be extremely heterogeneous with unique aspects in almost every country. The presentation of cases is followed by an analysis which tries to identify the general patterns that the cases fall into, with the ultimate goal of providing institutional designers with a clear set of available options for designing group representation mechanisms.

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1. Introduction

In many countries around the world provisions guaranteeing proper representation of minorities are enshrined in constitutions, often including special provisions that go beyond simple protection and into the area of affirmative action. Protection of minority rights through representation in parliaments has been set as a valuable goal by scholars and international organizations. It was inscribed in multiple international treaties such as the Framework Convention for the Protection of National Minorities and supported by relevant bodies created with the purpose of improving democracy, the most prominent example of which is the Venice Commission.

In this paper I will explore those political systems where minority groups were through law molded or confirmed as political constituencies of their own kind. A special concern will be paid to those countries where group relations are not the primary driving force of the political struggle (as is the case in power-sharing systems), but there still exists a more or less obvious need for representation of minorities to be fostered. One of the possibilities in such cases is establishment of special electoral mechanisms that would ensure that groups who are in a significant minority are nevertheless represented in the country's decision-making processes. The main question that I try to answer in this thesis is: which electoral mechanisms are available for this particular purpose?

My inquiry begins with a survey of the existing literature on the topic of group representation, through which the need for improvement is established and the starting points identified for the analysis that follows. In the third Chapter the relevant cases are identified and examined in turn, so as to prepare the necessary ingredients for analysis. Finally, the main part of the thesis

consists of comparative analysis in an attempt to systematize the information accumulated in the second part and subsequently to materialize lessons for lawmakers and their advisors about the electoral mechanisms that best fulfill the goals set forth by advocates of group representation.

2. State of the field

In the existing literature, the issue of representation of variously defined groups (such as ethnic, lingual, racial or religious groups) is usually approached from one of two angles. The first can be summarized under the label of representation theory, while the second is a combination of consociational theory and empirical study of electoral systems. I will briefly present both before proceeding to analyze the existing body of work that focuses more closely on the topic of special group representation mechanisms.

2.1. Representation theory, consociationalism and group representation

Representation theory was effectively established by the seminal work of Hannah Pitkin in 1967 and has been preoccupied with questions such as what representation really means, who is a proper representative and who has the right to be represented. It is related to and at some points intertwined with feminist and multiculturalist political theory, but is not identical with either one. A visible fruit of this link was the emergence of arguments for descriptive representation – a mode of representation which requires that representatives mirror the important social characteristics of the represented. First, at the beginning of the nineteen nineties, in her famous critique of liberal egalitarianism, Iris Young has repeatedly called for establishment of "real participatory structures in which actual people, with their geographical, ethnic, gender, and occupational differences, assert their perspectives on social issues within institutions that encourage the representation of their distinct voices" (Young 1990, 116). Her argument was prevalently theoretical with no concrete institutional solutions, but others have

built on it. For instance, Anne Philips (1995) has argued for the "politics of presence" through the means of such mechanisms as quotas for women, while Will Kymlicka (1995) has defended "collective rights" of ethnic groups.

The notion that groups should be treated separately within the electoral arena has not been accepted without critical reflection, however. Authors have generally been very careful in their support for "special" or "separate" mechanisms for group representation, even when they have in principle argued for inclusiveness (see Meier 2000). One example is Kymlicka's reluctance to discard the liberal critique stating that variation in electoral rules produces unjustly differentiated treatment for individuals (Kymlicka 1995, 150; for precise formulation of the critique see: Ward 1991). Another is Jane Mansbridge's warning against establishing "essential identities" which exclude and therefore almost inevitably antagonize and discriminate against each other (Mansbridge 1999, 637-639). In other cases, indecisiveness has been a consequence of theoretician's reluctance to wander far enough into the institutionalist territory. Melissa Williams has tried to remedy the latter problem by examining a more thorough list of institutional mechanisms, including reserved seats, race conscious districting and consociational arrangements (Williams 1998, 203-238). Her analysis is limited, however, as she concentrates on the most obvious examples and does not appreciate the full spectrum of available options, only citing particularly well known examples from countries such as New Zealand or Canada.

Nevertheless, the type of enquiry Williams has initiated is a more than welcome contribution to a necessary, but as of yet still underdeveloped dialogue between the various approaches to the issue of group representation. Although Williams understood "consociational arrangements" as a mechanism different from that of reserved seats, the study of both institutional forms has been an integral part of a specific approach to group politics championed by Arend Lijphart. He had first systematically analyzed the "non-PR methods"

for group representation, including non-geographic ethnic districts, optional ethnic districts, predetermined ethnically mixed slates, and special exemptions for ethnic minorities (Lijphart 2003 [1986], 126). The term "non-PR methods" did not survive in the newer literature, but the authors today still mostly build on this and other Lijphart's work when trying to systematize the ways in which special mechanisms can be introduced into electoral systems.

Lijphart's ideas about power-sharing and amelioration of ethnic conflict have been dominating the debate about design of electoral systems in divided societies, but their influence has also spilled over to debates about institutional design in general, including societies where ethnic or religious divisions are not at the heart of the political game, but where significant minorities need to be accommodated and reassured of their status as part of the society. Just like in representation theory, skeptic voices about political systems built upon explicit group politicization have been heard. The best known among them is probably the voice of Donald Horowitz who has argued that instead of institutionalizing ethnic differences, political systems in divided societies should strive to disperse the conflict, create incentives for coalition-making and give higher weight to interest-politics (Horowitz 1985, 597-600). He also argued elsewhere that the consociationlists put too much trust into the elites and underestimate the complexity of electoral politics (Horowitz, 2002).

Benjamin Reilly has evaluated Horowitz's alternative proposition (the "centripetalist" model) as deserving of more attention than it has gotten, but also as having limited utility that depends on features of a particular case (Reilly 2001, 192). Reilly's conclusion is all the more true in those cases where a group in need of special attention or protection makes up a comparatively small part of a society. In those cases, the precision of group representation mechanisms typical of consociational regimes seems more applicable than the Horowitzian insistence on non-specific treatment. I will therefore in the course of my analysis leave aside considerations about appropriateness of special mechanisms in general, and will focus on

specific instances where a decision has already been made that such a mechanism should be used.

The study of group representation in the "less divided" countries that I am focusing on has been somewhat lacking both in amount and in rigor when compared to the interest directed at deeply divided societies. Studies focusing on ethnic minorities and minority representation often take into account only the basic structure of the relevant institutions, such as the type of electoral system. For example, Pippa Norris (2004, 209-229) analyzed the support for political institutions in twelve countries with significant minorities, but had herself recognized a limitation in her findings stemming from the fact that some of these countries implement special group representation measures which she has not accounted for. Even when existence of special mechanisms is fully acknowledged, it is usually not fully explored. Bochsler (2011) and Bernauer and Bochsler (2011) have studied the determinants of ethnic party success in post-communist countries. They recognize the importance of possible special features of the electoral system, but generalize them under terms such as "quotas and non-territorial districts" (Bochsler 2011, 221) or simply admit that the effect of electoral rules might be underestimated due to the diversity of their effects (Bernaur and Bochsler 2011, 746). Similarly, working with a wider scope of cases, Didier Ruedin (2009) had explored among other things the influence of special mechanisms on ethnic minority representation in parliaments. His operationalization of the special measure variable also includes no intra-category variation. Ruedin finds that on average this variable has little effect, but also notes that the conclusion is highly dependent on case-to-case differences concerning the way the special mechanism is implemented in terms of group inclusiveness and varying levels of proportionality (Ruedin 2009, 348).

Part of the reason for the lack of specificity in these studies probably lies in the lack of systematic data on group representation mechanisms, as case studies focusing on one or

several cases generally being the norm in the field (e.g. Alionescu 2004; Bird 2005; Geddis 2006), with Daniel Bochsler's (2006) area study being an important exemption. This has been changing, however, and a few scholars have recently surveyed a larger number of countries. The primary example is Andrew Reynolds' rather comprehensive survey of minority representation mechanisms conducted in 2006 for Minority Rights Group International (MRGI). Reynolds identifies six wide categories of special provisions: reserved communal seats, electoral system modifications, power-sharing settlements, over-representation of ethnically defined regions, race-conscious districting and colonial regimes providing for minority representation - the latter being only a historical, no longer existent category (Reynolds, 2006). It seems though, that his categorization is based on multiple criterions, some of which are overlapping. For example, the result of Lebanese Christian-Muslim settlement is classified as an instance of electoral system modification. Similarly, the ethno-linguistic distribution of seats in the Senate of Belgium is considered an example of reserved communal seats. Yet, both these cases are routinely given as examples of power-sharing regimes in the literature on consociational theory (Lijphart 1977; 2008; Hudson 1976; Russell and Shehadi 2005) and their categorizations therefore remains ambiguous indicating the need for further examination.

More recently, a report concerning the same topic has been produced by Oleh Protsyk based on data from a survey of national legislatures conducted by Inter-Parliamentary Union and United Nations Development Program in 2009 as part of "Promoting Inclusive Parliaments" project (IPU 2009). One part of the survey consisted of a questionnaire which was sent to parliaments worldwide asking directly about minority representatives and means of their election. By analyzing the resulting data, Protsyk (2010) has identified five general categories of special electoral measures: reserved seats, exemptions from electoral thresholds, quotas, minority-sensitive demarcation of constituency boundaries and appointments. This

categorization is certainly more straightforward and clear-cut then that of Reynolds, but it also carries less information. Additionally, due to the self-administered nature of the survey the data contained some important ambiguities. Many parliaments provided an affirmative answer when asked about the existence of special measures, but failed to support that claim with any further information. Protsyk contends some of those positive answers should be taken as declarations of support for such measures, rather than indicating their actual existence. For these reasons, it is necessary that the survey-type data like the kind produced by IPU and UNDP's project be supplemented with direct expert analysis.

2.2. Purpose and plan for the study

One indicator of interest for the kind of research proposed here is that Reynolds' and Protsyk's work has been produced at request of organizations whose primary mission is improvement of democracy, representation and protection of minorities. European Centre for Minority Issues has also been involved in similar projects (ECMI 2011), just like the Venice Commission which has produced a series of valuable reports on the status of electoral legislation concerning minority representation in European countries (Venice Commission 2000; 2004; 2008). This thriving activity that surrounds minority representation today only confirms the need for even more and more in-depth study of this topic. Of course, parliamentary representation is but one aspect of minority representation; however, it is an aspect that is absolutely indispensable for a better understanding of the issue.

To address that need, this paper will take up where Reynolds and Protsyk have left off, and will delve deeper into the workings of particular cases with the eventual goal of integrating the pieces into a bigger picture. The goal is to improve our knowledge of possibilities for group representation by identifying more precisely the detailed modes of implementation for

the different mechanisms and their associated trade-offs, thereby addressing the need for systematization that seems to appear in both academic and policy-making circles.

A simple small-N comparative method will be used, inspired by a strand of electoral system literature exemplified by voluminous collections like the ones compiled and analyzed by Shugart and Wattenberg (2001) or Gallagher and Mitchell (2005). These authors have succeeded in producing valuable results by taking a comprehensive, rather than reductive approach to electoral systems and embracing the full spectrum of exiting variations that tend to get lost in less in-depth studies. I attempt to do the same here, on a smaller scale. I take the categories produced by previous works (such as that of Reynolds) as indicators, rather than complete descriptions of the actual electoral mechanisms at work. Consequently, I approach each case as a separate entity, looking at the details specific to a particular design, only to finally emerge back to a higher level of generality and try to make sense of the variety at the lower level.

3. An empirical survey: group representation around the world

Group representation can take various forms, including power-sharing, legislative and executive reservations, appointments etc. The goal of this section will therefore be to distil those cases that will be most conductive for producing a contribution to the already substantial literature.

Hierarchically, the most important distinction should be made between those systems where balancing of group power is the primary feature, and those where group politics are not in the center of the political game. This differentiation is most explicit with Mona Lena Krook and Diana Z. O'Brien who identify two main modes of group reservations: power-sharing arrangements and protection clauses - where the former are understood to affect the entire political system, whereas the latter mean "allocating seats to groups which constitute a relatively small contingent within the population" (Krook and O'Brien 2010, 262). In the context of this study I will primarily be interested in the latter category. Power-sharing systems will be excluded since these are the cases that have already been the subject of vast amount of literature, and also because there is a fundamental qualitative difference between systems that are explicitly grounded in group politics, and those where propositions for group representation are made on the basis of justice and desire to protect the underprivileged, rather than on the basis of survival of the system itself.

I will therefore be looking at countries who have implemented in their electoral systems a "special mechanism" – a clause in the electoral law which allows minority candidates (or parties) to compete for seats in the legislature according to a different or a separate set of rules

than the candidates from the majority population. Practices that go around the existing rules rather than modify them are not considered as "special mechanisms". I think here first and foremost of race conscious districting typical for the United States. Although this is obviously a case of fostered minority representation, in terms of electoral system it is just make-do patchwork.

Having these criteria in mind, a cross-comparison of several available datasets was conducted. These included the IPU PARLINE database, the "Election Guide" of the International Foundation for Electoral Systems (IFES), data from the Venice Commission reports (2000; 2004) and information from the literature reviewed in the previous chapter. Only lower houses of parliaments were taken into consideration. The process produced a list of 22 countries where measures have been implemented into the electoral system with explicit purpose of providing protection and representation for particular minority groups. The countries are as follows: Afghanistan, Colombia, Croatia, Germany, India, Iraq, Jordan, Kosovo, Mauritius, Montenegro, New Zealand, Niger, Pakistan, the Philippines, Poland, Romania, Samoa, Serbia, Singapore, Slovenia, Taiwan, and Venezuela.

Countries that were considered for inclusion, but were ultimately rejected include Cyprus where reserved seats for the Turkish community remain vacant due to the ongoing Greeko-Turkish conflict (IPU 2012). In Belgium, Bosnia-Herzegovina and Ethiopia reservations exist only in the upper houses of their respective parliaments. Some countries like Angola, Croatia or Colombia reserve seats for representatives of their citizens living abroad. Although these are empirically interesting cases, they nevertheless represent a separate issue in terms of definition of the eligible voters and means through which they are allowed to vote. The main challenge of creating a separate mechanism for representation of a group living within the country is absent in the case of diaspora voters, since there is a clear and physical criterion which differentiates persons present in the country and those who reside abroad. Finally,

Lebanon was excluded as a case of a system-wide arrangement, rather than a special arrangement targeted at a particular group.

Provisions regarding representation of women were considered only in situations when they were related or combined with reservations for minority groups. Conclusions of Mala Htun's illuminating text titled "Is Gender like Ethnicity?" (2004) were followed in this regard. Htun accentuates the difference between political mobilization of women and ethnic minorities. She concludes that two groups differ fundamentally insofar as women represent a "crosscutting" group, meaning they are about evenly spread on all sides of the main political cleavages, whereas ethnic minorities typically manifest features of a "coinciding" group – one whose political affiliations coincide with the dominant political cleavages governing a country's party system (Htun 2004, 411). Furthermore, the question of women representation has already been thoroughly explored by other authors (Ballington and Karam 2005; Krook 2009; Krook and Mackay 2011), while more light needs to be shed on the cases of ethnic, religious and similar reservations.

This Chapter will proceed by presenting all of the 22 selected cases. A case by case approach was chosen because it allows for analysis of details that cannot be efficiently conveyed through condensed presentation of data as it exists in the currently available sources. Multiple primary sources and case studies and reports were used to create complete pictures of what group representation mechanisms look like in each country, with strong accent of variations between cases. An overview table of the findings and a summary of the main points is available at the end of the chapter.

3.1. Afghanistan

Under the patronage of international forces and as part of the country's transition from an authoritarian regime to a democracy, more attention has been given in recent years to proper representation of unprivileged groups in the Afghan society. The electoral law currently governing the elections to the lower house of the Afghan parliament (the Wolesi Jirga) provides reservations for two such groups: women and Kuchis, the latter being nomadic Pashtun people native to Afghanistan and Pakistan.

In elections to Wolesi Jirga, single non-transferable vote is used to elect 239 members in 34 multi-member districts corresponding to the 34 provinces of Afghanistan. On top of that 10 Kuchi representatives are elected in a nationwide district, also utilizing the SNTV system (Electoral Law, Art. 9 and 19). No special requirement is necessary for a voter to vote in the special district. A requirement for candidature is set, commanding prospective candidates to submit 1000 signatures of Kuchi people together with their nomination. To facilitate the voting of Kuchis, the Electoral Commission is obligated under law to provide special voting facilities for the nomadic people (Electoral Law, Art. 14).

An interesting peculiarity of the Afghan system arises with respect to the distribution of 68 seats reserved for women. The seats are to be allocated to the best faring female candidates in each of the constituencies, including three seats out of the ten reserved for Kuchis. The Afghan electoral system therefore features a doubly imposed reservation where ten seats are reserved for a socio-ethnic group[1] and further seats out of these ten are reserved for female candidates (IPU 2012).

[1] The adjective "ethnic" should be understood in a very lose sense in this instance. Strictly speaking, the Kuchi people are a sub-group of the Pashtun ethnic group, but they have over time acquired elements of both social and ethnic distinction (MRGI 2012).

3.2. Colombia

Under Article 176 of Colombian Constitution of 1991 a possibility was provided for creation of special electoral districts to elect up to five deputies to the country's Chamber of Representatives in order to represent "ethnic groups and political minorities and Colombians residing abroad". This provision was amended in 2003 so that the vague expression is substituted for exact enumeration of the groups concerned and seats reserved for each: two representatives are to be elected by Afro-Colombians, one by indigenous Indians, and one by Colombians living abroad. Prior to the 2003 changes to the Constitution an additional seat was reserved for a member elected by "other minorities" (Jaramillo and Franco-Cuervo 2005, 303). The current four reserved seats are filled using a simple plurality rule in a nationwide district, while the rest of 161 members of the House are elected through proportional representation in 33 uneven multi-member districts.

3.3. Croatia

The current electoral system for elections of representative to Croatian parliament features ten territorial constituencies, each returning 14 representatives by means of a proportional formula with a 5% legal threshold of representation. In addition, the electoral system features two additional electoral districts: the eleventh electoral district for Croatian citizens who do not reside on the territory of Republic of Croatia and the special twelfth nationwide electoral district with reserved seats for national minorities.

A total of eight seats are awarded in the special district, but with further reservations for various minority groups: three seats are reserved for Serbs, one seat for Hungarians, one for Italians, one for Czechs and Slovaks together, one for Albanians, Bosniaks, Montenegrins,

Macedonians and Slovenes together, and one for Austrians, Bulgarians, Germans, Poles, Roma, Romanians, Rusyns (Ruthenians), Russians, Turks, Ukrainians, Vlachs and Jews together. Simple plurality rule is used to determine the winners separately for each of the minorities and minority groups as listed above, including the three Serb representatives. For all intents and purposes the special electoral district therefore in fact represents six nationwide districts – five single member districts and one three-member district.

In 2010 amendments to the Croatian Electoral Law called for double voting rights to be introduced for members of the Serb national minority, an option that was explicitly allowed for in the Constitution but was not activated under Electoral Law. The new provision would allow Serbian parties to run for secure reserved seats while simultaneously running a list in the general part of the elections and having a chance of winning seats on both accounts by virtue of Serb voters casting two votes. The Independent Serbian Democratic Party (SDSS) which has since 2000 won every seat reserved for Serbs and which was a pivotal member of the governing coalition in 2010, has already introduced the practice of running their list in one of the general election districts where Serbian population is the largest, but has never managed to win a seat due to the 5% threshold. It has come very close to crossing the required threshold on two occasions, however, and in the event that double voting rights were instituted it would almost certainly win at least one additional seat on top of the three reserved ones.

However, before the provisions of the new Electoral Law could be put to test in elections of late 2011, the Constitutional Court of Croatia has declared them in breach of the Constitution due to unequal treatment of the Serb minority *vis-à-vis* other ethnic minorities who were not

granted the same double voting rights[2]. The Court ordered that the old provisions be reinstated until the parliament modifies the Law in accordance with the Constitution. The above described model of minority representation was therefore used again in 2011 elections. A new center-left government was installed, this time without direct involvement of SDSS and a new electoral law has as of yet not been enacted, although it has been announced that it is in the making.

3.4. Germany

A single case of a country where a special measure exists but was never put to action is Germany. The lower house of parliament, the Bundestag, is elected through a mixed member proportional electoral system combining single member districts with a proportional tier where seats are allotted to parties which surpass a 5% threshold at the national level or manage to win three SMD seats. However, Article 6 of the Federal Electoral Law exempts parties representing national minorities from the legal thresholds, allowing them to win seats in the proportional tier only based on their actual proportion of votes. Further articles (20 and 27) of the same law also exempt minority parties from requirements regarding submission of signatures with candidate and list nominations.

According to a report submitted to the Venice Commission by the German government, the exemption clause has never played a role in the elections on the federal level. However, since provisions of the federal law have been mimicked in electoral laws of the German federal Lander, minorities such as the Danish and Sorbian communities have won seats in land

[2] In other words, the Court did not question the constitutionality of double voting rights themselves, but rather ruled that if double voting rights are to be introduced, they must be introduced for members of all ethnic minorities. For a different version of an objection to dual voting rights see Slovenia below.

parliaments – seats that they would not have won had they not been exempted from the legal threshold. According to the same report, the German law recognizes only certain "traditional" minorities as eligible for benefits of the threshold exemption. Apart from the Danes and the Sorbs, these minorities also include Frisians, Sinti and Roma (Venice Commission 2004, 10-11). The practical significance of the later clause is that immigrant communities of which there is substantial population in Germany cannot make claims to representation through the special mechanism.

3.5. India

The world's most populous democracy - India - employs what has been termed a "remarkable system of reservation" (Heath, Glouharova and Heath 2005, 138) designed to boost the representation of disadvantaged or "depressed" groups in the Indian rigid social system. The reservations were first established in 1935 by the Government of India Act as temporary measures, but have been preserved ever since in India's constitutional and electoral law, albeit with multiple changes to the system taking place over time. Today, a total of 120 out of 543 elected representatives in the lower house (the Lok Sabha) of India's bicameral legislature are designated for Scheduled Tribes (the *adivasi* – the non Hindu tribes) and Scheduled Castes (the *dalit*).

What makes India a special case in terms of minority reservations is the fact that the reserved seats are in other aspects not very much unlike any other seat. A simple first-past-the-post system with territorial single member districts is used for elections to the Lok Sabha and it is in fact some of those districts that get reserved for Scheduled Tribes and Castes. From reserved districts (determined by the state delimitation commissions) only members of particular disadvantaged group can be elected into the parliament as district representatives.

However, the representatives are not elected exclusively by the members of their caste or tribe, but rather by the whole population of the reserved district. Members of Scheduled Castes typically make up less than one quarter of a reserved district's population, while for Scheduled Tribes, who are more geographically concentrated, the population share is usually around one half (Heath, Glouharova and Heath 2005).

3.6. Iraq

Council of Representatives of Iraq is elected according to the Election Law as amended in 2010 which prescribes that out of the 325 seats in the Council of Representatives (the lower chamber of a bicameral parliament) a total of 8 seats are reserved for minorities: 5 for Christians, 1 for Yzidi, 1 for Shabeans and 1 for Shabak.

According to the detailed rules produced by Independent High Electoral Commission (IHEC) based on the Electoral Law, the allocation of seats proceeds as follows: 310 non-minority seats are allocated to parties competing in 18 multi-member districts corresponding to the country's 18 governorates. A legal threshold is applied in each of the districts and is equal to the ratio of valid votes cast and seats available in the particular district. Seats are distributed proportionally at the level of each district to lists surpassing the threshold, and subsequently awarded to the best faring candidates on the winning lists (open lists with one preference vote are used). Reserved seats for Christians are allocated in the same way, except the threshold and the quota are calculated based only on the votes cast for Christian lists in the entire country. In addition to that, each of the 5 seats reserved for Christians is linked to a particular governorate (one seat each for Baghdad, Ninewa, Kirkuk, Dahuk and Erbil) and is part of a particular governorate's overall quota of legislative seats. For this reason all of the winners for Christian seats must be registered in different governorates. If this is not the case with the best

ranked candidates of the winning lists then allocation is adjusted by awarding seats to candidates with less preferential votes, or even to other lists, until the pre-determined geographical apportionment of the reserved seats is satisfied.

For the other three groups (Yzidi, Shabeans and Shabak) winners are determined based on the simple plurality rule in separate single member constituencies. These seats are also linked to particular governorates, but voters can vote for them throughout the country. Finally, after the 318 seats have been awarded as described, the remainder of 7 "compensatory" seats are allocated to parties based on the proportion of seats they have already won (IHEC 2010; UNAMI 2010).

Compared to other cases of reserved seats, Iraq's system is interesting in so far as the seats are won nationally by lists of candidates, but are eventually allocated locally – into particular governorates. This is an important innovation for situations when within confines of a proportional electoral system more than one seat needs to be allocated to a geographically dispersed minority, but with some degree of geographical representation also taken into account. The drawback is, of course, the fact that parties may actually lose seats if their candidates are not registered in the right districts.

3.7. Jordan

Even though elections in the Hashemite Kingdom of Jordan lack some of the basic features of democratic competition, they nevertheless feature such provisions as reserved seats for ethnic and religious minorities as well as for women (Dietrich 2001; Sweiss 2005). The reservations are built into the electoral system for the lower house of the parliament – the Majlis al-Nuwaa, with nine seats reserved for Christians, nine for Bedouins and three for Circassians and

Chechens together. The latest changes to the electoral law in 2010 did not change the provisions regarding ethnic and religious reservations, although the size of the lower chamber was increased from 110 to 120 seats.

Seats are not reserved in the same way for all of the three groups, however. The nomad Bedouin tribes elect their representatives in three districts, each encompassing one of the three Bedouin-inhabited areas (north, centre and south). Christians and Circassians/Chechens, on the other hand, vote within the same multi-member districts as the general population. In both Bedouin and general constituencies representatives are elected by single non-transferable vote, with minority candidates being prioritized for election in those districts where there are reserved seats (Sweiss 2005).

3.8. Kosovo

The structure of the Assembly of the Republic of Kosovo is laid down in the Article 64 of 2008 Kosovo Constitution. Of the 120 seats in the Assembly, 20 are reserved for minority ethnic groups according to the following distribution: 10 seats are reserved for representatives of the Serb community, three seats are awarded to the Bosniak community, two seats to the Turkish community, one seat to the Gorani community and one seat is reserved for each Roma, Ashkali and Egyptian community. Finally, one additional seat is awarded to either Roma, Ashkali or Egyptians, depending on the electoral performance of their respective parties.

The details of the electoral rules for distribution of seats are prescribed in the Law on General Elections in the Republic of Kosovo. Both minority and Albanian parties compete in a single nationwide electoral district with all lists being printed on the same ballot paper. The first one

hundred seats are awarded to all parties based on a 5% legal threshold and a proportional formula (the Saint-Lague method). Only then are the twenty additional seats awarded to the parties representing the minority communities, irrespective of any seats that these parties might have already won in the allocation of the first hundred seats. The same proportional formula is used, but without the legal threshold. In order to be eligible to win seats under the special provision, competitors need to indicate their communal affiliation when applying for certification by the Central Election Commission (in which some positions are also reserved for minorities) prior to the elections. Voters are not required to register as members of minorities as all the lists are printed on a single ballot and available to any voter anywhere in the country.

3.9. Mauritius

The island Republic of Mauritius is a social highly heterogeneous former British colony that features an electoral system whose obvious roots are in the Westminster model, but with a proportional twist of a very particular nature. The country's rather majoritarian electoral system features 20 three-seat districts and one two-seat district with representatives elected by single non-transferable vote. However, according to the First Schedule of the Constitution of Mauritius (Art. 3 to 5), following the allocation of the directly elected seats, a maximum of eight additional parliamentary seats are to be allotted with the explicit purpose of ensuring "fair and adequate representation of each community" – the four Mauritian communities being Hindus, Muslims, Sino-Mauritians and the General Population (mostly made up of French-speaking European and African descended persons).

Every candidate submitting an official nomination for a seat in the parliament must indicate to which of the four Mauritian communities he or she belongs (Constitution, First Schedule Art.

3.4). This information is then made public and is subject to revision by the Supreme Court should an elector object to a candidate's declared communal membership. Once the election results are in, the additional seats are awarded on a "best loser" and communitarian principles to candidates who must be members of a political party.

The allocation itself is performed by Electoral Supervisory Commission after each election so that the first four seats are granted to those unelected candidates belonging to communities whose ratio of population[3] and seats is the least favorable, and who have, although defeated, won the highest percentage of votes in their district. The calculation determining the most underrepresented community is repeated after each awarded seat.

The next four seats are allocated based on a somewhat modified set of rules. First the "most successful party" is determined – this is the party which had won a plurality of the 62 directly contested seats. If during the allocation of the first four seats some seats had gone to parties other than the most successful one, then the most successful party is entitled to a number of seats equal to the number that went to their rivals. These seats will be awarded to candidates of the most successful party that belong to the most under-represented community if there are such candidates. If not, then the seats will simply go to the best loser running under the banner of the most successful party.

Finally, in case there are any seats still left unallocated, these will be reserved for parties that have so far not received any of the additional seats, so that the best fairing candidate of such party who belongs to the currently most under-represented community is elected. A party may

[3] In 1982 the unitarist anti-communal government elected with a landslide 100% victory removed the census category of "communities" from the legal system of Mauritius. Census data was therefore no longer collected about voters' communal affiliation, but the compensatory mechanism was not removed from the electoral system due to protest from some of the community-based organizations. Instead, the Constitution was amended to explicitly state that census data from 1972 will be used in calculation of the worst standing community. However, this decision has not resulted in a strong distortion of the compensatory effects, as the population shares of the Mauritian communities have proved to be quite stable over time (Mathur 1997, 61, 75).

only receive one seat in this way. In the event that some of the eight seats remain undistributed, then most successful parties that have not received any of the additional seats are prioritized for further allocation, but they can only receive seats if one of their candidates belongs to the currently most underrepresented community (First Schedule of the Constitution of Mauritius, Art. 5). Finally, if still not all of the eight seats are filled, further seats will be awarded to candidates of the second most successful party, the third most successful party and so forth, again, provided the candidate belongs to the most underrepresented community. It is possible that some of the seats remain unfilled if there are no candidates left fulfilling both the party- and community-based criteria.

There are two important points to recognize in this arrangement. First, under these provisions none of the four Mauritian communities is considered as endangered *a priori*. Rather, any community which at some point becomes underrepresented will benefit from the attribution of additional seats. The second point, which is sorely missing from the existing accounts which make mention of the case of Mauritius (Reynolds 2006; Htun 2004), is that not all of the 8 seats are necessarily reserved for the under-represented communities. The provision governing the distribution of the second round of compensatory seats makes sure they are allocated in a way that *could* increase the proportionality of community representation, but not necessarily so. In truth, the primary function of the second four-seat allocation is to maintain the balance of power created by the popular vote. By prescribing that some additional seats must go to the strongest party even if that does not bolster balanced communal representation, the designers of the Mauritian constitution have made it almost impossible that the allocation of the compensatory seats to "best losers" results in legislative majority being transferred from one party to another. This was a compromise solution between ethnically based anti-independence parties and majoritarian-oriented pro-independence parties at the time preceding Mauritius' independence from the British Crown

(Krennerich 1999, 605-606). The final product is a unique example of an electoral system which boosts proportionality of communities, while remaining highly majoritarian in terms of seat shares for parties.

3.10. Montenegro

The electoral system used for parliamentary elections in Montenegro is a proportional representation system with a nationwide constituency and a 3% threshold. Although ethnic composition of the Republic of Montenegro is rather heterogeneous (including populous Serbian and Bosniak minorities as well as a smaller Croat minority), special electoral mechanisms exist only for the representation of the Albanian minority, while the other ethnicities are represented by their respective parties elected in the regular part of the elections. The same features (PR in at-large district and 3% threshold) are used in the special five-seat constituency (increased from 4 in 2006) for the Albanian minority, but with voting rights available only to persons registered as residents in one of the localities designated prior to each elections by an act of Assembly of Montenegro (Electoral Law, Art 12, 118). In comparative perspective, this makes Montenegro a rare case (next to Iraq) of reserved seats being allocated in a multi-member district with proportional representation.

3.11. New Zealand

Special provisions guaranteeing Maori representation in the parliament of New Zealand are probably among the most known and most cited such examples in the world. However, the current version of the Maori reservations represent only the latest incarnation of a tradition that began in 1867 when the Maori Representation Act introduced four Maori seats into the

New Zealand Parliament - a number that was at the time grossly at odds with the much higher proportion of Maori people living in New Zealand (Banducci, Donovan and Karp 2004, 536; Geddis 2006, 352-353). During the following 150 years many changes to those provisions would gradually result in amelioration of the political inequalities between the European settlers and the indigenous population. This trend was reflected in the positions of the New Zealand Royal Commission on the Electoral System whose 1986 report would be the basis of the country's now famous mixed electoral system enacted in 1993. "Effective Maori representation" was one of the key criteria used by the Commission in drafting its recommendations (The Royal Commission 1986, 11).

Interestingly, the Commission did not recommend the special Maori districts. Instead, its recommendation was based on the idea that MMP would be enough to secure Maori representation through the proportional tier. Consistent with the Commission's draft, the 1993 mixed electoral system features two tiers: the first with single member districts and plurality rule, and the second with a nationwide district and proportional allocation of seats. The size of the parliament is fixed at 120 in principle but overhang seats are possible. The distribution of seats between the SMD and the proportional tier is changeable (see below). Voters have two votes, one to cast for a candidate in their district and one to cast for a party list (Vowels 2005). Departure from the Commission's recommendations is the fact that there are two electoral rolls: the general roll and the Maori roll. Registration on the latter is optional, provided a person can demonstrate any degree of Maori origin. Voters enrolled on the Maori roll gain the option of casting their first (candidate) vote in one of the special Maori single member districts, while they cast their second vote in the nationwide district just like the voters on the general roll. The number and boundaries of Maori districts are determined based on the same population quota as for the general electorate districts, with the relevant Maori population figure being the number of voters registered on the Maori roll. This recalculation is performed

prior to every election and following a four month Maori Electoral Option period during which voters are given the opportunity to switch between the Maori and the general rolls (Electoral Act 1993). Since 1993 the number of voters registered on the Maori rolls has increased and so the number of Maori seats has also grown from five in 1996 to the current count of seven (Geddis 2006, 356; IPU 2012).

The unique appeal of the New Zealand system consists in its ability to seamlessly integrate the reserved seats for Maori voters. Unlike in some other cases, no unevenness of votes is induced, nor is the principle of geographical representation surrendered.

3.12. Niger

After a period of political and social turmoil, Niger has adopted a new Constitution and a new Electoral Law in 2010. Just as in the previous incarnations of Niger's electoral system, a provision was enshrined in these laws which allowed for creation of special minority electoral districts next to the eight multi-member regional districts for general elections to the unicameral National Assembly of Niger.

For the 2011 elections eight such special districts were created with one seat each and representatives elected by plurality (IPU 2012). Although the law remains unspecific as to the precise assignment of the "special districts", their effective purpose is to provide representation for the Tuareg ethnic group which makes up between 9 and 10 percent of the country's population and has for long been in conflict with the central government due to the group's feelings of marginalization (Basedau 1999, 678).

3.13. Pakistan

The Islamic Republic of Pakistan belongs to the category of countries reserving seats on religious basis. As per the Constitution of Pakistan (Art. 51), 10 seats are reserved for non-Muslim minorities in the lower house of the Parliament. Since 2002, however, the voting for and allocation of these seats is no longer separate from the allocation of other seats to the National Assembly. Rather, the seats for non-Muslims, as well as 60 seats for women, are allocated to parties in accordance to the proportion of seats they have already won by contesting elections in 272 single-member districts (Election Commission of Pakistan, 2008). Prior to 2002, non-Muslim representatives have been elected by plurality in two four-seat districts (one for Christians and one for Hindus), and two single member districts (one for Ahmadis and one for Sikhs, Buddhist, Parsi and other non-Muslims taken together) (Zingel 2001, 670). The change in the electoral law has introduced serious doubts about the democratic nature of this aspect of the new electoral rules as it approaches effective disenfranchisement of the non-Muslim population. In the last elections of 2008, the representatives elected to fill the reserved minority seats came from the four most successful parties, including MPs from the conservative Pakistan Muslim League of Nawaz Sharif.

3.14. The Philippines

In March 1995 the previously entirely majoritarian Philippine electoral system has been amended with provisions for election of minority group representatives through a proportionally based electoral mechanism. The new provision was enacted pursuant to the thus far dormant provision of the 1987 Philippine Constitution, but due to the odd, imprecise and conflicting rules introduced, this mechanism will arguably become one of the most contested such provisions in the world.

The new 1995 "Party-List System Act" defined the rules for election of 20% of representatives to the lower House of Congress (The House of Representatives) from the ranks of "Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties" through a party-list proportional system (COMELEC 1995). The Constitution itself enumerates the intended beneficiaries of this provision: "labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector" (Art. 6, Sec. 5).

In the three legislative mandates between 1987 and 1995, the proposed representatives of the marginalized groups were appointed by the president, sometimes with no particular regard as to what their backgrounds or political stances were with regards to the groups they were to represent (Wurfel 1997, 21). The Act of 1995 should therefore be viewed as an attempt to activate a dormant legal provision in hopes of increasing the perceived deficient quality of democracy in the Philippines (Teehankee 2002, 180). Its failure to do so has been evident from the very beginning, however. In his 1997 detailed analysis of the Act, David Wurfel identified two major defects in the final version of the Act: the redundant categorization of participants into national parties, regional parties, sectoral parties and coalitions, and the failure to implement the prohibition of participation by major parties (the five largest ones) which was in any case made only temporary (Wurfel 1997, 22-23). The two defects effectively defeated the purpose of the Act since without being able to differentiate between the organizations representing the marginalized groups and sectors from the national parties and without being able to go around that problem by barring the largest parties from the competition, the proportional part of the elections would cease to be a mechanism for representation of minorities and simply became a second tier in a two-tier electoral system.

Nevertheless, the Party-List System Act was implemented in the 1998 elections and immediately new issues have arisen with regards to the calculation of the seats to be awarded

in the proportional section of the elections. Section 11 of the Act stipulates that parties winning at least 2% of the nationwide vote for the party-lists (as the voters were given two votes – one for the lists and one for candidates in single member districts) would be awarded one seat immediately and further seats in accordance to the proportion of the garnered votes, but provided that no list shall win more than 3 seats. The proportionality clause has been interpreted by the Commission on Elections (COMELEC) as meaning that an additional seat will be awarded for every additional 2% of the votes won (Hartmann, Hassall and Santos 2001, 196). This decision strengthened the possibility that not all of the 20% of seats constitutionally reserved for parties in the proportional section of the elections would be filled – a possibility which was opened by the combination of the 2% threshold with the 3 seat cap. Indeed, in 1998 only 13 out of maximum 52 seats were distributed (IPU 2012). The idea of representing the marginalized groups of the Philippine society has therefore failed both in the procedural aspect of the legislation and in the practical aspect of the elections.

The failure was mirrored in suits filed to the Supreme Court of the Philippines by several parties against the COMELEC in 2000, and again in 2007. Both times the parties have sued on the grounds that the proportionality principle has not been upheld. In 2000, the Supreme Court ruled that the applied rules for allocation of seats were inconsistent with the 2% percent threshold and the principle of proportionality. It has ordered a modification in the rules so that the seats subsequently be calculated by awarding between 1 and 3 seats to the strongest party, 1 seat to any party crossing the 2% threshold, and finally awarding additional seats to parties depending on the ratio between the votes they have won and the votes the strongest party has won within the proportional tier (Supreme Court of the Philippines 2000).

The Supreme Court's decision in the other case, filed against COMELEC by Barangay Association for National Advancement and Transparency (BANAT) in 2007 was much more radical. In 2009 the Court ruled the 2% threshold unconstitutional as it prevented the

appropriate number of seats (20%) to be filled proportionally in accordance with the Constitution (Supreme Court of the Philippines, 2009). The results of the 2007 elections were therefore recalculated and additional deputies were elected into the House of Representatives mid-term and according to a new formula prescribed by the Court which was also to be used in the subsequent elections.

As unfortunate as it is, the incredible disarray surrounding the Philippine provision for representation of minority groups provides valuable lessons for lawmakers and institutional designers in other countries. First, the long and extremely heterogeneous list of constitutionally recognized marginalized groups made it almost impossible to discern the legitimate contenders for election under the special rules. As a consequence, the Supreme Court has repeatedly been forced to deal with cases regarding who can, and who cannot become a representative of a marginalized groups and which groups are to be considered marginalized. No definite criteria have arise as a result of the suits.

Second, the failure of the Philippine lawmakers to harmonize and appropriately specify the details of the electoral and constitutional rules underscores the importance of cross-country learning and appropriate amount of academic input when electoral system design is in question. Confusion and ignorance on part of Congress and COMELEC members and staff is cited by Wurfel (1997, 24-25) as one of the prime reasons for poor performance of the 1995 Party-List System Act.

3.15. Poland

The 460 representatives to the Polish Sejm are elected in 41 multi-member districts with magnitudes between 7 and 19, with thresholds are applied for vote aggregates nationwide.

However, much like for Germany's Bundestag, the legal thresholds (5% for parties, 8% for coalitions) are abolished for lists of national minorities. Unlike in Germany, the exemption from the threshold has been a relevant provision in Poland, facilitating the parliamentary representation of the German minority. The capacity of the German list to win seats has, however, reduced over time with its candidates winning only one seat in the two latest elections (in 2007 and 2011) after having two seats between 1997 and 2005, four seats in 1993 and seven seats in 1991. Other minorities in Poland, of which Ukrainians, Belarusians and Armenians are numerically the most significant ones, have so far not fielded minority lists in elections to the parliament.

3.16. Romania

Ever since the first democratic elections following the collapse of the Romanian communist regime in 1989, the electoral system for elections to the Romanian Parliament's lower house - Chamber of Deputies, has included a special measure fostering minority representation (Birch *et al*. 2002, Alionescu 2004). Even though Romania has seen both a number of minor changes to the electoral law as well as a large overhaul from proportional to mixed system in 2002, the provisions governing election of minority representatives have remained virtually unchanged (Protsyk and Matichescu 2010).

Under the previous electoral system (in effect from 1990 to 2002) all non-minority deputies were elected using a proportional formula in 42 regional constituencies, while in the reformed post-2004 mixed member proportional system all seats are first contested in single member districts with an absolute majority requirement, before the unallocated seats together with the

votes of all candidates are polled at the national level for proportional distribution to parties and coalitions surpassing the required threshold[4] (Birch *et al*. 2002; IFES 2012). In both systems parties representing ethnic minorities compete together with all other parties, but in case they fail to win seats through the described electoral procedure, a special measure is activated mandating that one seat in the Chamber of Representatives will be granted to a minority party which surpasses a minimum threshold of 10% of the average number of votes needed for election of one deputy (i.e. the average vote cost of a seat) (Alionescu 2004). The special threshold was originally set at 5% of the average seat cost, but was raised to the current 10% in 2004 (Protsyk and Matichescu 2010, 34). Additionally, the law prescribes that only one party "referring in its name to the same ethnic group" may gain representation through the special mechanism (Birch *et al*. 2002, 94).

There are no predefined minority groups which may benefit from the special rules. Instead, any party may make a representative claim in the name of whichever minority it proposes to represent. Disputes arising about whether a particular party claiming to run under an ethnic label indeed represents that particular minority or whether such a minority exists at all are submitted to and resolved by the Parliament confirming or invalidating the election of individual representatives through a voting procedure (Alionecu 2004, 68). Also, since all parties are printed on the same ballot paper, any voter may vote for any ethnic party regardless of their own ethnic background (Alionescu 2004; Protsyk and Matichescu 2010).

The minimal requirements for winning a seat and a loose definition of the potential beneficiaries of the special measure, have lead to a stark increase in number of minority representatives elected into the Chamber of Representatives through the special mechanism.

[4] A varied threshold is applied so that parties running alone need to obtain 5% of the vote nationwide, coalitions of two parties need 8%, three parties need 9%, and four or more parties need 10%. Alternatively any party or coalition takes part in the proportional allocation if it has won six single member constituencies.

The number of minority seats currently stands at 18, including representatives of minorities which account for less than 0.001 percent of the population in Romania.

3.17. Samoa

The society of Pacific nation of Samoa is arranged according to a system of family relations and land ownerships, with tribal chiefs or *matai* still playing a key role in the country's politics by being the only persons eligible to become parliamentary representatives. The electorate is divided into two sections: native Samoans and "Individuals voters", the latter being persons of non-Samoan (mostly European) decent. While Samoans are registered on voter rolls in territorial districts based on their relationship to *matais* or, if that is not applicable, based on their residence (Samoa Electoral Act, Art.16), non-Samoans or individual voters are registered and vote on a nationwide electoral roll. To be eligible to register as individual voters, persons must be either of non-Samoan heritage or married to such person (Samoa Electoral Act, Art.19).

Elections are conducted in 49 districts (one or two seats each) with one of the two-seat districts being reserved for individual voters (So'o 2001, 783). Simple plurality rule is used to determine the winning candidates in all districts. Until 2010 candidates in the non-Samoan district exceptionally did not need to hold the title of *matai*, but 2010 changes to the Electoral Act (Art. 5) have prescribed that the requirement shall henceforth be applicable to all candidates in all districts.

3.18. Serbia

The National Assembly of the Republic of Serbia consists of 250 members elected from a single nationwide district based on a proportional formula and with a legal threshold of 5%.

Under Article 81 of the amended law, parties of ethnic minorities are, however, exempted from this requirement. The Republic Electoral Commission is in charge of certifying that a party or coalition is indeed legitimately running for elections with the goal of representing one of the ethnic minorities in Serbia.

Since the introduction of the current law in 2004, representatives of Hungarian, Bosniak, Roma and Albanian minorities have been elected to the parliament through activation of the exemption clause. After each election, however, changes have occurred with respect to the number of seats won by parties representing particular minorities. In 2007 three seats were won by Alliance of Vojvodina Hungarians, two seats by Coalition list for Sandzak (representing the Bosniak minority), one seat by the Albanian Coalition of Presevo Valley and one seat each by Roma Union of Serbia and Roma Party. The next elections were held already in 2008, following a premature dissolution of the Assembly. This time around, the Hungarian list won four seats, the Bosniak list won again two seats and Albanian list won one seat. The two Roma parties again ran separately but neither won enough votes to be granted a seat even without the threshold being applied. Other minority lists that did not garner enough votes to cross the effective threshold of representation included those representing Montenegrins, Bunjevci, Gorani and Vlach minorities, as well as another Hungarian party (IPU 2012).

3.19. Singapore

Singapore represents a unique case both in the design of minority-representation mechanisms and in the strength of the criticisms that have been voiced against those provisions due to large perceived benefits that they incur for the ruling party (the People's Action Party – PAP). The country's electoral system features a number of so called "Group Representation Constituencies" or GRCs wherein voters elect from 3 to 6 representatives utilizing a block

vote – all the representatives from one GRC are elected as a bloc or a team from the list that has won the most individual votes. The Constitution of Singapore (Art. 39A) stipulates that at least one of the candidates on each list competing in a GRC must be a member of one of the minority communities (either Malay or "Indian and other"). The same article of the Constitution also prescribes that the designation of the districts for each of the communities is performed through the act of the President.

Since their introduction in 1988, the number of GRCs has risen steadily, with number of MPs elected from GRCs soon surpassing the number of those elected from single member districts. Currently 15 of Singapore's electoral constituencies are designated as GRCs (electing a total of 75 MPs, at least 15 of whom must belong to minorities), while only 12 are single seat districts. Nine GRCs have been designated for representation of the Malay community, while six GRCs have been reserved for representation of Indian or other minority communities (Singapore Elections Department 2012).

Rather than being necessary tools for minority representation, the existence of GRCs has long been interpreted by the opposition as a form of electoral manipulation designed to strengthen the position of Singapore's long dominant People's Action Party by allowing their more popular candidates to carry the campaign in GRCs, thereby winning multiple seats. History of elections in Singapore, their argument goes, has shown that minority candidates have been able to win in single member districts even though due to the policy housing quotas no district has for long had a non-Chinese majority, the latter being an argument put forward by the ruling party leaders in favor of GRCs (Lay Hwee 2002, 206). Apart from criticisms for electoral engineering, concerns have also been voiced about the inherent racism contained in the minority-related electoral rules, while support for the legislation by the minority groups themselves has been only partial (Mutalib 2002, 665). There is no sign, though, that the electoral law might be significantly changed as PAP continues its dominance in the political

life of Singapore, winning overwhelming majorities in every parliamentary election including the last one in 2011 when it won 81 out 87 seats with 60% of the vote. That such an outcome is being made possible by an arrangement that is in a large part presented as a minority representation mechanism serves to warn against hastened conclusions about desirability of such provisions.

3.20. Slovenia

With only about two million inhabitants Slovenia is home to a great variety of ethnic groups. The minority ethnic groups are commonly divided into two categories: autochthonous or historical communities and "new" or immigrant minorities (Komac 2002). The differentiation stems from the provision of the Slovenian Constitution which provides for special treatment of the minorities belonging to the first category, namely Hungarians, Italians and Roma (Constitution of Slovenia, Art 64-65). Other ethnic groups, especially those from the territory of former Yugoslavia (Albanians, Bosniaks, Croats, Macedonians, Montenegrins and Serbs[5]) are considered as immigrants and are therefore given no special recognition by the Constitution or the electoral laws. The same undifferentiated treatment is also applied for some other smaller non-immigrant groups, such as Germans or Austrians (Komac 2002, 13).

For two of the three autochthonous communities - Hungarians and Italians, the Constitution mandates that they "shall be directly represented […] in the National Assembly" (Art. 64) by one deputy each (Art. 80). These two deputies are elected in nationwide districts by voters registered on communal rolls which are administered by self-governing bodies of the two

[5] All of which constitute a substantial number of persons living in Slovenia, comparable to or far surpassing the size of the three autochthonous communities (Statistical Office of the Republic of Slovenia, 2002).

minorities. The voters registered on the communal roles exercise their voting rights by casting two votes: one for election of 88 representatives in the general elections and one for the election of the representatives of their community (Komac 2002, 22-23). The elections for the general electorate are held in 8 constituencies of 11 seats each, with distribution performed according to the proportional formula. However, representatives for the two national minorities are elected using Borda count – voters assign numerical preferences to candidates which are then totaled and the candidate with the highest score is elected (IFES 2012). Additionally, the Constitution (Art. 64) stipulates that legislation concerning "the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities", thereby giving the minority representatives veto powers over any changes in their own status.

The double voting rights of minority members have been questioned on grounds of political equality. Some right wing politicians have suggested that this makes minority members citizens of higher importance than others. The question has been brought before Slovenian Constitutional Court which has ruled that the dual voting provision is not in breach of the Constitution (Komac 2002, 24).

3.21. Taiwan

The aboriginal people of the island of Taiwan make up about 2% of the country's population (about half a million individuals) and are the oldest group to inhabit the island. The group itself is highly heterogeneous, with thirteen officially recognized tribes (MRGI 2012) classified by law (Status Act for Indigenous Peoples) as aborigines of the lowlands and those of the highlands. The aboriginal population has for the first time been represented in Taiwan's lower chamber of parliament (The Legislative Yuan) after the 1991 constitutional amendment

has reserved for them six seats (out of the 161 total). These representatives were to be elected in two multi-member nationwide districts using the single non-transferable vote system. The number of reserved seats was raised to eight in 1997, when the chamber's size was increased to 225 members (Rinza 2001, 530-531). Finally, in 2004 the size of The Legislative Yuan (now the sole chamber of a unicameral Taiwanese parliament) was reduced to 113 members, six of which are to be elected by the indigenous population in two districts: one for the highland tribes and one for the lowland tribes. SNTV continues to be used in those districts even though the rest of the MPs are elected through a parallel system with two votes – one for candidates in single member districts (three-member districts in the case of aboriginal population) and one for party-lists in a nationwide district with 5% legal threshold (The Legislative Yuan 2012). The voting rights in the aboriginal districts are acquired through having the status of belonging to one of the indigenous communities. The status is based on family and marital ties as checked against census records kept by the local administration (Status Act for Indigenous Peoples, Sec. 2).

The most criticized feature of the Taiwanese system has been the perceived artificial and simplified distinction between the lowlands and highlands aborigines which ignores the real tribal cleavages within the groups. Concerns have been raised this may mean that the three largest tribes are more likely to be represented, while others remain marginalized[6].

[6] Taipei Economic and Cultural Representative Office in the U.S. *Experts urge reshuffle of Taiwan aboriginal legislative seats*. Press Release: 7 March 2012 http://www.roc-taiwan.org/us/ct.asp?xItem =259762&ctNode=2300&mp=12

3.22. Venezuela

Special representatives of indigenous peoples in Venezuela were first appointed for the 1999 Venezuelan National Constituent Assembly. The three representatives were chosen by organizations of indigenous peoples and have joined the 128 elected representatives in the Assembly (Molina and Thibaut 2005, 551). The subsequent 1999 Venezuelan Constitution included a range of provisions aimed at protecting the native peoples, including a guarantee of "native representation in the National Assembly" (Art. 125). The provision was implemented into the electoral law by reserving three parliamentary seats for indigenous communities. As of 2009, the National Assembly of Venezuela therefore consists of 165 representatives: 110 elected in constituencies with magnitude between one and three and using a majoritarian formula, 52 elected proportionally, but in small two- and four-member districts, and 3 representatives of indigenous communities (IPU 2012).

The details of the mode of election for the indigenous representatives are defined in the electoral law (*Ley Orgánica de Procesos Electorales*) under Articles 174 through 182. The three representatives are to be elected by simple plurality in three territorially defined single member districts: the West, the East and the South. To become a candidate for a representative of indigenous communities, one must fulfill four requirements: having exercised a position of traditional authority in their community, having established a record of participating in the social struggle for recognition of their cultural identity, having taken actions to benefit indigenous peoples and communities and being a member of a legally constituted organization of indigenous peoples that has been in operation for at least three years. In order to be eligible for voting in the special districts, the voters need to register as members of the indigenous communities in the official electoral register (Art. 178).

3.23. Overview

Upon examining the 22 cases and looking at the summary of the data in Table 1 (on next page), it seems clear that there are virtually no two implementations of special group representation mechanisms that are completely alike one another. This should not be surprising given the known complexity and diversity of the contemporary electoral systems (see for instance: Blaise and Masicotte 1996). The real task at hand will therefore be to identify the similarities and dissimilarities in the present cases that will allow me to summarize the available options in a useful way and without sacrificing precious information. The Chapter that follows offers one rather uncommon and hopefully innovative way of performing such a task, while the fifth Chapter concentrates on particular aspects of special measures, including the choice of beneficiary groups and allocation of seats to those groups.

Table 1: Overview of special electoral mechanisms for group representation

	Beneficiary groups	Number of seats	Electoral district type	Rule
Africa				
Mauritius	Under-represented communities	Up to 8	Nationwide	Seats are awarded to "best losers" to balance out communal representation
Niger	Tuareg	8	SMDs (overlapping)	Plurality
Asia and the Pacific				
Afghanistan	Kuchis	10	Single separate nationwide	SNTV; 3 out of 10 seats reserved for women
India	Scheduled Castes Scheduled Tribes	79 41	Designated SMDs	Plurality
New Zealand	Maori	7	SMDs (overlapping)	Plurality
Pakistan	Non-Muslims	10	Proportional distribution to parties in accordance to their seat-share in general elections	
Philippines	Marginalized and underrepresented sectors	20% (52)*	Single nationwide district	Proportional formula; 3 seats cap per party
Samoa	Non-Samoans	2	Single nationwide	SNTV
Singapore	Malays Indians and others	9 6	In 15 multi-member districts one place on a list elected by bloc vote is reserved for either group	
Taiwan	Highland aborigines Lowland aborigines	3 3	Two three-member districts	SNTV
The Middle East				
Iraq	Christians Yzidi Sabeans Shabak	5 1 1 1	One nationwide five-member district for Christians and one nationwide SMD for each of the other groups	Proportional formula with open lists in the Christian district and plurality in the other three
Jordan	Bedouins Christians Circassians and Chechens	9 9 3	Three three-member districts for Bedouins; others elected in non-exclusive multi-member districts	SNTV (with priority election for minorities in mixed districts)

Table 1 (continued): Overview of special electoral mechanisms for group representation

	Beneficiary groups	Number of seats	Electoral district type	Rule
Europe				
Croatia	Serbs Hungarians Italians Czechs and Slovaks Roma and others Albanians, Bosniaks and others	3 1 1 1 1 1	Six separate nationwide districts	Plurality
Germany	National minorities	0*	Nationwide district together with the majority group	Exemption from 5% legal threshold
Kosovo	Serbs Bosniaks Turks Gorani Roma Ashkali Egyptians	10 3 2 1 1 or 2 1 or 2 1 or 2	Single nationwide district together with the majority group	Proportional formula with reservations
Montenegro	Albanians	5	Separate nationwide district	Proportional formula and 3% district-level threshold
Poland	National minorities	1*	41 multi-member districts with magnitude between 7 and 19	Exemption from 5% legal threshold applied for vote totals nationwide
Romania	National minorities	18*	Single nationwide district together with the majority group	Threshold of 10% average seat cost; one seat per minority
Serbia	National minorities	7*	Single nationwide district together with the majority group	Exemption from 5% legal threshold
Slovenia	Hungarians Italians	1 1	Separate nationwide districts	Borda count; dual voting rights
Latin America				
Colombia	Afro-Colombians Indigenous peoples	2 1	Separate nationwide district for each group	FPTP
Venezuela	Indigenous communities	3	SMDs (overlapping)	Plurality

Notes: For countries where the number of reserved seats is not fixed, the value in the "Number of seats" column represents the number of seats won by minority parties in the latest election, except for Serbia where numbers from the 2008 elections are used.

Sources: see Chapter 3 for individual country sources; also see Appendix A.

4. Implementing the special measures

When he had first taken up studying special electoral provisions fostering group representation, Lijphart thought of them as substitutions or supplements for proportional representation. This was a plausible stance looking at the limited pool of six countries he had studied, but with the advent of more widespread use of special electoral measures it can no longer be said that special mechanisms are more characteristic of one type of electoral system than another. As evident from the presentation of my 22 cases, special measures can be found in virtually all major types of electoral systems. In this Chapter, I look at the ways these measures were introduced into the various institutional contexts of different countries. I find that a variety of combinations is possible, but also that some cases are more alike one another - forming recognizable modes of implementation.

My analysis is driven by a basic idea that introducing a special measure in fact constitutes introducing a second set of electoral rules for minority candidates and/or voters, next to the set of rules that is used to elect representatives of the general population. Table 2 therefore conveys information about rules used in both sections of electoral systems for countries in my sample. The third column of the table, captioned “Ballot”, indicates the differences that the two sets of rules produce when perceived from the perspective of a minority voter. The “Type” of ballot indicates if the minority voter in a given country is faced with the same type of political competitors on his ballot as is a member of the general population to whom the minority voter would be equivalent if there were no special rules in place. If the two voters are faced with the same type of competitors than the table reads “=”, while “X” indicates the opposite situation. The two types include candidates and lists of candidates. Of course, the type of competitors on the ballot is directly related to the type of electoral rules which are being used and this is exactly the link that I intend to exploit in further examination. I will do

Table 2: Modes of implementation for special measures

	Rule for general elections	Rule for election of minority representatives	Ballot		Mode
			Type	Content	
Germany	MMP	MMP (with threshold exemption)	=	=	Integrated
Kosovo	PR	PR	=	=	Integrated
India	FPTP	FPTP	=	=	Integrated
Iraq	PR	PR; FPTP	=	=	Integrated
Jordan	SNTV	SNTV with priority quota for minorities in mixed districts	=	= / X	Integrated
Montenegro	PR	PR	=	=	Integrated
Singapore	Bloc vote	Quota on bloc slates	=	=	Integrated
Philippines	FPTP	PR	=	=	Integrated*
Poland	PR	PR (with threshold exemption)	=	=	Integrated
Romania	MMP / PR (see text)	PR (with lowered threshold)	=	=	Integrated
Serbia	PR	PR (with threshold exemption)	=	=	Integrated
New Zealand	MMP	FPTP	=	= / X	Parallel (same rules)
Taiwan	Mixed parallel	SNTV	=	= / X	Parallel (same rules)
Venezuela	Mixed parallel	FPTP	=	= / X	Parallel (same rules)
Samoa	SNTV	SNTV	=	X	Parallel (same rules)
Slovenia	PR	Borda count; dual voting rights	= / X	= / X	Parallel (dual voting)
Niger	PR	FPTP	X	X	Parallel (different rules)
Colombia	PR	FPTP	X	X	Parallel (different rules)
Croatia	PR	FPTP	X	X	Parallel (different rules)
Mauritius	SNTV	Proportional; based on predefined community shares	=	=	Post-election modification
Pakistan	FPTP	Proportional; based on seat-shares won by parties in direct elections	=	=	Post-election modification

this by linking the information about the type of competitors under the special rules with the actual content of the ballot.

The column captioned "Content" again indicates if the minority voter and a general population voter are faced with different ballots or not, except in this case it is not the "type" of competitors that is relevant, but rather the actual competitors listed on the ballot.

Presenting the cases in this way reveals several ways in which special electoral mechanisms may be built "into", or "next to" the electoral rules for the general population. The types are labeled under the last column of Table 2, under the heading "Mode" – standing for mode of implementation.

In the first set of cases, designated as employing the "integrated" mode of implementation minority voters face exactly the same ballots as any other voters, but votes cast for minority candidates of lists are the ones that get counted or treated differently. For instance, votes cast for Albanian lists in Montenegro will have a threshold applied to them which was calculated only on the basis of Albanian votes. Similarly, voters in Singapore will all be faced with the same choices and is the rules of candidacy that are governed by special rules. One somewhat different case in this category is Jordan, where Christian and Circassian voters will face exactly the same ballots as their majority counterparts, but Bedouin voters will face different ballots since they vote in geographically separate districts. The latter detail I consider to be unimportant in this context as it is merely a practicality, while the main reason why Jordan was selected for this study in the first place is the priority that minority candidates have for elections through SNTV.

The second contingent of cases is made up of those countries where minority voters and voters belonging to the general population face substantively different choices, either in terms of the content of the ballot papers or in terms of both content and type of competitors on the

ballot. In the first bloc of countries (Afghanistan, New Zealand, Samoa, Taiwan and Venezuela) are examples of separated electoral competition where the same rules apply for elections of both minority and non-minority representatives. Two of those – Afghanistan and Samoa – are cases where two layers of districts (one of which is nationwide, where minority representatives are elected) have been superimposed in geographical terms over each other so that there is no link between the two, meaning that a European descended Samoan will vote in a different district and for different candidates than his Samoa-born neighbor. The other three cases are instances of two-tiered systems where all voters cast one vote in a proportional segment of the elections and face the same choices as they do that, but they also cast a second vote for a candidate – at which point minority voters are faced with a different choice-set than non-minority voters. Hence, both "=" and "X" are marked in the "Content" column for these three cases – the "=" signifies the same choice in the proportional tier, while "X" signifies different choice in the plurality tier.

A third significant group of cases is made up of countries where minority voters not only face differing options when entering the polling booth, but their votes are also counted according to different rules – hence a difference in "Type" of ballot that they will encounter. These systems, used in Niger, Colombia and Croatia, are most similar to what are normally termed "parallel" or "segmented" electoral systems – that is systems where voters cast two votes in two tiers that are logically separate. The difference, of course, is that in these countries voters do not have two votes, but rather there are two types of voters: minority and non-minority.

Occupying the middle ground between the latest two options is Slovenia where dual voting right enables minority voters to vote with absolutely the same options and the same rules as non-minority voters, but also to cast an additional vote on a separate ballot with different candidates and different rules of competition. Hence, both "X" and "=" are marked in both of the relevant fields for Slovenia.

Finally, the last two cases in Table 2 are Mauritius and Pakistan, whose systems are similar to those of the first category insofar as all voters are faced with exactly the same options, but in this case the minority representatives are not elected based on the votes cast by minority voters, but are rather introduced into the parliament as a by-product or supplement of the regular electoral process. These representatives are in that respect similar to appointed representatives in some countries that were not included in this survey.

The purpose of this Chapter was to identify the ways that lawmakers could take if they wish to introduce some type of special measure into the electoral system of their country. Four main modes of implementation were identified: integration – where all voters face similar options, but some votes are counted according to varying rules; parallel systems with differing content on ballots of minority and non-minority voters, but otherwise the same rules of competition; parallel systems where both the content of the ballots and the rules governing the election of minority and non-minority candidates differ; and finally post-election modifications which allocated seats in accordance to the results of elections, but without immediate link to votes cast by the minority voters. A stand-alone case is Slovenia, where dual voting rights have put minority voters in a unique position of voting in two electoral systems at the same time with their voting counting twice.

5. Selecting the groups and allocating seats

As I have indicated in the closing lines of Chapter 3, a necessary part of analysis of the special group representation mechanisms involves asking questions about the appropriateness of the selection of groups to whom the electoral benefits will be available. It also means that we should look at the effectiveness with which special mechanisms have benefited particular groups. In Will Kymlicka's words, what we need to define is *which* groups should be represented, and *how many* seats they should be awarded (Kymlicka 1995, 144-146). This section is dedicated to identifying the individual and comparative performance of the special mechanisms in these aspects.

5.1. Selecting the beneficiary groups: self-determination or pre-determination

The question of which groups should benefit from special mechanisms describes what might be termed the "inclusiveness dimension" of the problem. However, defining groups which have a "right" to representation has long been marked as a task that is nearly impossible to completely vindicate on normative grounds. In the context of consociational theory, Arend Lijphart (1995) has tried to address this issue by distinguishing between pre-determination and self-determination of groups. The latter term is not used here in the typical sense of "national self-determination" – a principle that secessionist movements might invoke. Rather, what Lijphart denotes as "self-determination" of social groups is an institutional design principle which "allows these groups to manifest themselves instead of deciding in advance on the identity of the groups" (Lijphart 1995, 275).

The same differentiation is applicable in the context of special mechanisms: legislators may choose to enumerate (pre-define) the groups that are entitled to special treatment, or they could choose to enact special measures addressed at an abstract set of groups, such as "national minorities". It should be noted immediately, however, that it is not possible to enact a special measure from which benefits would be available to any group. It would by the virtue of that fact immediately seize to be "special" in any meaningful way. We shall see in the progress of this Chapter that this has not always been entirely clear to legislators in some countries.

For Lijphart the latter point was not an issue, as he was not interested in creating a special measure, but a basis for a consociational system in which relevant groups may freely emerge. Of the solutions he suggests, only one can be described as an electoral mechanism: "a relatively pure form of PR" (Lijphart 1995, 281). In this model, voters self-identify as part of a group by voting for a political party which claims to be the group's political representative. All features of group representation are therefore decided through a single process – the elections.

But as elegant as Lijphart's proposition is, it also conflates into one what are actually four processes that together lead to election of group representatives: selection of individuals (voters) belonging to a group (1), selection of beneficiary groups themselves (2), allocation of seats to these groups (3), and allocation of seats to particular parties and/or candidates (4). Of these, only the fourth function is necessarily decided in elections[7]. The question of individual identification has not been fully explored in my presentation of cases, but it has been elsewhere. Petra Meier (2009) has dealt with this issue in the context of essentialization problems posed by group representation measures. She has concluded that lack of opportunity

[7] Necessity exists only by definition since I am not examining the cases of appointed group representatives.

for self-identification on the individual level is not a very oft occurrence, limited to cases such as Jordan or Lebanon. I will therefore turn my attention to the second and third functions, using Lijphart's pure PR as an orientation beacon.

5.2. Which groups should be represented?

Contrary to Lijphart's advice against pre-determination, my empirical survey in Chapter 3 indicates that in most cases the groups to whom parliamentary representation should be secured are labeled explicitly. This has been the case in 17 out of 22 cases. On the other hand, in 5 countries (Germany, the Philippines, Poland, Romania and Serbia) the law does not label the groups which may be eligible to incur benefits from the special measures. This is the situation only at the first glance, however, as further examination of particular cases reveals much more diversity.

Let me first take into consideration the smaller of the two groups of countries. Their special measures seem close to a self-determination mechanism as imagined by Lijphart. However, this is only limitedly so because the category of national or ethnic minorities is legally defined in most of these countries to include some groups, and exclude others. In the German case for instance, the term "national minority" includes the Danish, Sorbian, Frisian, and Sinti/Roma minorities, but not immigrant communities such as the large Turkish population in Germany (Venice Commission 2004, 10-11). In Poland, the 2005 Act on National and Ethnic Minorities and on the Regional Languages stipulates in Article 1 that only communities residing in Poland for over one hundred years shall be considered national or ethnic minorities. The law proceeds to enumerate a total of 13 such groups (Art. 2-3) which are by

extension eligible to benefit from the abolished threshold specified in the electoral law. A less finite definition is used in Serbian[8] Law on Protection and Freedoms of National Minorities which does not enumerate ethnic minorities, but does contain a similar historical clause requiring "a long term and firm bond" with the territory of Serbia (Art. 2). The self-determination aspect of group representation is therefore present in these countries but only for groups who belong to a certain pre-defined set.

In contrast, Romania and the Philippines impose much less stringent criteria on groups wanting to compete under special rules. In Romania, a party must simply declare in its name and program that it is running for some conceivable national minority (Birch *et al*. 2002, 94). The post-electoral revision is performed by the Parliament in case of formal objections, but this has proved to be an ineffective mechanism governed by the majority's interest to co-opt additional loyal parliamentarians (Alionsecu 2002, 68-70). Protsyk and Matichescu (2010, 29) note that as a consequence, the special provision has not only enabled minority representation, but also played "a key role in constructing some of these groups in the first place". Similarly, in the Philippines the vague wording of the constitutional provision mandating a special mechanism for representation of underprivileged sectors and groups has resulted in the Electoral Commission and Supreme Court having to repeatedly determine the legitimate competitors – with a rather permissive, albeit unstable policy being in place thus far.

An important thing to note here is that the existence of these final instances of revision – the Parliament in the Romanian case, and the Supreme Court in the Philippines – define the modifications in the electoral systems of these countries as "special measures". If there was no such review the measures would, despite the formal wording of the laws, become open for everyone and would effectively seize to be "special". The Philippines are a borderline case in

[8] Inherited from the Federal Republic of Yugoslavia and unmodified since

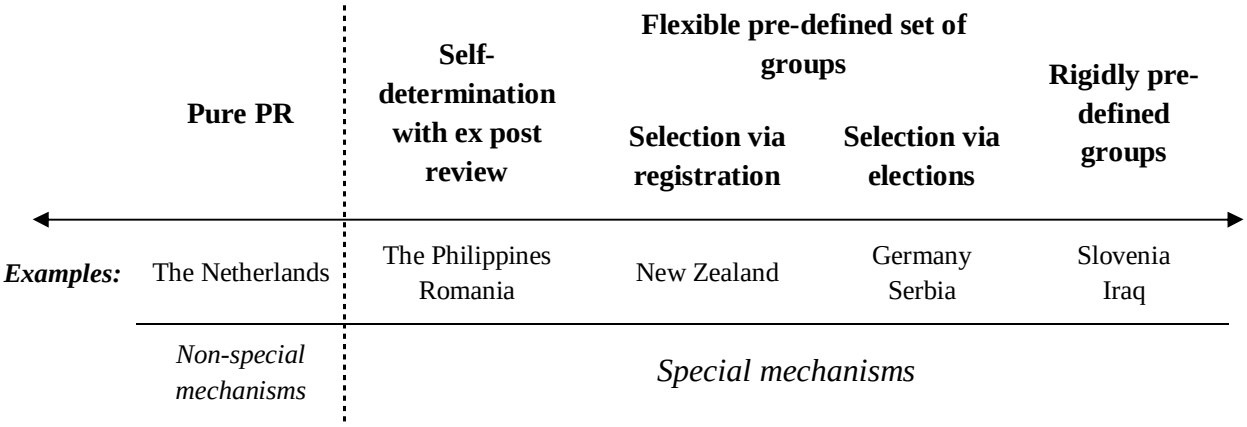
this respect, as there are virtually an infinite number of groups that may make a claim to be underprivileged in some way and therefore warranted special treatment under Philippine electoral law.

Turning to the larger set of countries where groups entitled to benefit from the special measures were enumerated explicitly, one case stands out as deserving special attention – New Zealand. Although that country's reserved seats mechanism very much resembles that of countries where seats are granted on a completely non-flexible basis, the situation is slightly more complicated. It is true that only Maori are selected by the law as a group which can receive reserved seats, but the law also provides for an option that this group can "de-select" itself, much like minorities in Germany, Poland or Serbia can "de-select" themselves by not fielding minority lists in elections. The difference is that in New Zealand this act is separated from the act of voting and connected to registration on Maori electoral roll. As Geddis observes, the pre-election Maori Electoral Option registration periods *de facto* constitute a periodical referendum among Maori population about the desirability of reserved seats. If Maori decided to no longer self-determine as a separate political entity by registering on the separate roll, the Maori seats would "naturally" cease to exist under the existing legislation (Geddis 2006, 255).

New Zealand is a lone case, but its lesson is important because it shows that elections are not the only mechanism which may be used as a vehicle for self-determination of groups. Even though separate electoral rolls for minority voters are kept in other countries as well (e.g. Croatia, Slovenia, or Venezuela), failure of minority voters to register on communal rolls would not have quite the same effect as in New Zealand. The seat for Italian representative in the Slovenian parliament would always be filled, even if, hypothetically, as little as one voter had registered on the Italian roll. Therefore, status of Italians as a beneficiary group in Slovenia is entirely pre-defined, whereas status of Maori in New Zealand is not.

Figure 1 summarizes the findings of this section by presenting the options available to institutional designers when it comes to defining the relevant beneficiary groups for special mechanisms. Lijphart's pure PR is used as a standard representing pure self-determination under which existence of group representation is determined solely by an aggregate of individual decisions. Options for special mechanisms are then ordered from the least rigid to completely pre-defined. It is possible to argue, as I have, that the Philippine arrangement is more permissive than Romanian, but this is simply a matter of practical details. As far as the general design principle goes, both cases are determined by *ex post* review as the final selection mechanism.

Figure 1: Options for defining beneficiary groups for special mechanisms



Related to selection of groups, a final note needs to be made about artificial inflation of inclusiveness that has been observed in a few cases. A particularly illustrative example is that of Croatia where smaller minorities have been grouped together into constituencies represented by one parliament member each. Putting aside for a moment the suspicious purposefulness of enumerating in the electoral law such ethnic groups as Vlachs or Bulgarians whose population in Croatia does not exceed a thousand individuals, there is another reason why this type of practice can result in serious representational shortcomings in cases when

two or more substantially large minorities are grouped together. In the case of Croatia this is primarily the case with Albanians and Bosniaks who formally elect one representative together, but in actuality are in a competing relationship with regards to obtaining the one seat that was reserved for them. This has become very obvious in the last elections when the Bosniak candidate narrowly defeated the Albanian candidate. This type of group selection should therefore be examined with caution. Researchers need to pay close attention to which groups are actually awarded seats in countries that award single seats to multiple minorities. This being said, I turn in the final section of this Chapter to the question of seat allocation to groups.

5.3. How many seats should a group be entitled to?

First off, a clear statement needs to be made about exactly what kind of allocation I am referring to in this section. The question I am dealing with is: how many seats should a group be entitled to through a special mechanism? This is a separate issue from the questions about which parties or candidates should receive the seats. The two questions are sometimes answered simultaneously, but there is no necessity for that link.

Glancing over the 22 cases in this study, even a casual observer could easily distinguish two kinds of arrangements. On one hand, some countries have through law or constitution allocated a precise number of seats to particular groups. On the other hand, there are countries where seat allocation is not fixed, but dependent on some other criterion, such as electoral performance. However, a more in-depth look again reveals more variation then is immediately obvious. Four countries stand out for their unique allocation rules: Mauritius, New Zealand, the Philippines and Romania. New Zealand's method of calculating the number

of reserved Maori seats I have already addressed in detail, and I therefore proceed by examining the other three cases in turn.

As described in detail in Chapter 3, the Mauritian electoral system contains a special provision designed to create balanced communal representation in the country's parliament. The allocation of compensatory seats was originally based on periodically gathered census data, but this practice has been abandoned in 1982 in the name of a nation-building project which was at the time already well underway. Indeed, the country is now widely considered as a success-story, an example of a heterogeneous, yet well integrated society (Christopher 1992; Mathur 1997). Here, however, I am interested more in the previous arrangement than its abandonment. As it happens, Mauritius is the only country identified in this survey which has, at least at some point, explicitly used periodical census data to determine the allocation of seats reserved for underrepresented groups. It is quite possible that census data has had a role in deriving the number of reserved seats in countries where that number is fixed, but nowhere has it been codified as in pre-1982 Mauritius.

The other two cases of interest, the Philippines and Romania, represent variations in the category of countries where the number of seats initially seems flexible. Both countries nominally allot group seats on the basis of proportional representation, but simultaneously impose caps on the number of seats that can be allocated to a single group. The one-seat cap has effectively turned Romania into a case of non-flexible allocation, while in the Philippines the limiting provision of a 3-seat maximum still allows for some variation, but nevertheless limits the proportionality of the mechanism.

All in all, the methods of seat allocation show less systematic features than the methods of group selection. The preferred option among surveyed countries seems to be a fixed number of reserved seats, but variations are possible either in the form of census-based allocation or in

the form of cap limits on otherwise proportional mechanisms. Completely flexible allocation is comparatively rare and limited to countries which use threshold exemptions for minority parties. With the design options explained, in final section of this Chapter, I briefly address the question of appropriateness of group representation in numerical terms – have the special mechanisms resulted in the level of representation that corresponds to the size of the group's population?

5.4. Appropriateness of seat allocation in the surveyed cases

What probably matters more than the absolute number of seats allocated to a group is the appropriateness of that allocation in comparison with the group's size. The issue can be approached from two angles: we might look at the weight of the minority votes in the national legislature, or we may look at the relationship between the population share and the seat share of a given minority.

In Table 3 data relating to the two described measures is presented for 20 out of the 22 cases considered in this study. Germany was omitted from the table as its special mechanism has never actually been activated in the elections for Bundestag. In addition, the Philippines were left out due to unavailability of data about the population breakdown according to the numerous social groups for which the special measure in Philippines is intended.

In terms of weight of minority votes in the legislatures, the picture is not one-sided. Reservations of five seats or less are prevalent, but in some countries such as Kosovo or India reservations are substantial. At the same time, India is one of the rare countries where reservations have been made almost entirely in proportion with regards to the population of

Table 3: Appropriateness of seat allocation through the special measures

	Beneficiary groups	Pop. (%)	Chamber Size	Seat #	Seat %	Diff.	Ratio
Afghanistan	Kuchis	5	249	10	4	- 1	0.8
Colombia	Afro-Colombians Indigenous peoples	10.5 3.4	165	2 1	1.2 0.6	- 9.3 - 2.8	0.11 0.18
Croatia	Serbs Hungarians Italians Czechs and Slovaks Roma and others Albanians, Bosniaks and others	4.54 0.37 0.44 0.35 1.32 0.41	151	3 1 1 1 1 1	2 0.7 0.7 0.7 0.7 0.7	- 2.54 +0.33 +0.28 +0.35 - 0.62 +0.29	0.44 1.89 1.59 2 0.53 1.71
India	Scheduled Castes Scheduled Tribes	16.2 8.2	545	79 41	14.5 7.5	- 1.7 - 0.7	0.9 0.91
Iraq	Christians Yzidi Sabeans Shabak	3 1.93 0.02 0.64	325	5 1 1 1	1.5 0.3 0.3 0.3	- 1.5 - 1.63 +0.28 - 0.34	0.5 0.16 15 0.47
Jordan	Bedouins Christians Circassians and Chechens	4.18 6 1	120	9 9 3	7.5 7.5 2.5	+3.32 +1.5 +1.5	1.79 1.25 2.5
Kosovo	Serbs Others	7 5	120	10 10	8.3 8.3	+1.3 +3.3	1.19 1.66
Mauritius	Hindus Muslims “General Population” Sino-Mauritians	50.3 16.1 30.7 2.9	69	36(0) 11(2) 21(5) 1(0)	52.2 15.9 30.4 1.45	+1.9 -0.2 -0.3 -1.45	1.04 0.99 0.99 0.5
Montenegro	Albanians	5.3	81	5	6	+0.7	1.13
New Zealand	Maori	15.3	121	7	6*	- 1.4	0.39
Niger	Tuareg	9.3	113	8	7	- 2.3	0.75
Pakistan	Non-Muslims	5	342	10	3	- 2	0.6
Poland	Germans	0.4	460	1	0.2	- 0.2	0.5

Table 3 (continued): Appropriateness of seat allocation through the special measures

	Beneficiary groups	Pop. (%)	Chamber Size	Seat #	Seat %	Diff.	A-ratio
Romania	Albanians	0.002	334	1	0.3	+0.298	150
	Armenians	0.008		1	0.3	+0.292	37.5
	Bulgarians	0.03		1	0.3	+0.27	10
	Croatians	0.03		1	0.3	+0.27	10
	Germans	0.27		1	0.3	+0.03	1.11
	Greeks	0.02		1	0.3	+0.28	15
	Italians	0.01		1	0.3	+0.29	30
	Lipovan Russians	0.16		1	0.3	+0.14	1.87
	Jews	0.02		1	0.3	+0.28	15
	Macedonians	0.003		1	0.3	+0.297	100
	Poles	0.01		1	0.3	+0.29	30
	Roma	2.46		1	0.3	- 2.16	0.12
	Ruthenians	0.001		1	0.3	+0.299	300
	Serbs	0.1		1	0.3	+0.2	3
	Czechs / Slovaks	0.09		1	0.3	+0.21	3.33
	Tatars	0.11		1	0.3	+0.19	2.73
	Turks	0.14		1	0.3	+0.16	2.14
	Ukrainians	0.28		1	0.3	+0.02	1.07
Samoa	Non-Samoans	7.4	49	2	4	- 3.4	0.54
Serbia	Albanians	0.82	250	1	0.4	- 0.42	0.49
	Bosniaks	1.82		2	0.8	- 1.02	0.44
	Hungarians	3.91		4	1.6	- 2.31	0.41
Singapore	Malays	13.9	97	9	9	- 4.9	0.65
	Indians and others	9.3		6	6	- 3.3	0.65
Slovenia	Hungarians	0.11	90	1	1.1	+0.99	10
	Italians	0.32		1	1.1	+0.78	2.91
Taiwan	Highland aborigines Lowland aborigines	2	113	6	5.2	+3.2	2.6
Venezuela	Indigenous communities	1.5	165	3	1.8	+0.03	1.2

Notes: For all countries seat figures are for the latest elections; except for Serbia where seats refer to 2008 elections. Legislature size for Singapore without appointed members. For New Zealand only reserved seats are counted. Additional Maori seats were won through regular electoral competition (see text). Where no detailed population data was available groups were conflated (see Kosovo, Taiwan). For Mauritius, the numbers in brackets refer to seats allocated through the special measure.

Sources: Population figures from CIA World Factbook (2012); MRGI (2012); except for Afghanistan, Croatia, India, Kosovo, New Zealand; Serbia, Slovenia, Poland – see Appendix A; for Colombia: Bushnell and Hudson (2012); for Jordan: Sweiss (2005); for Romania Protsyk and Matichescu (2010); for Venezuela: Van Cott (2003).

the relevant minority. Looking at the last column of Table 3 which represents the ratio between the population and seat percentage assigned to each group, we see that there are amazing differences both between and within cases. Given what was already told about the high inclusiveness of Romanian special measure, it is not surprising that this is the country where we find the highest number of overrepresented groups as well as the most overrepresented group – the presence of one representative of Ruthenians in Romania is 300 times as strong in the Romanian parliament than the presence of Ruthenian population in the country.

The overall picture shows that overrepresentation is slightly more common among the included groups. 33 out of a total of 60 groups for which the data is shown in Table 3 are overrepresented. However, this is mostly due to the skewness produced by deviant case of Romania. If it is excluded, the ratio falls down to 16 overrepresented minorities out of 42. The most grossly underrepresented group are Afro-Colombians with 10 times as less parliamentary representatives when compared to their share of the population. The other Colombian minority group – Amerindians – also suffers from strong underrepresentation under the existing measure, just like the Yzidi group in Iraq. Another interesting case of an underrepresented group are the Romanian Roma for whom the one seat limit imposed on national minority lists under special rules of the Romanian electoral system, has meant that benefiting from the special mechanism will always mean remaining somewhat underrepresented.

Of course argument can be made that any of these groups might never have acquired any parliamentary representation whatsoever if there were no special measures in place. This is almost invariably true – that is in fact the strongest argument that can be used for introduction of special rules. However, it is neither an explanation, nor a justification for the minimal standards that were employed by institutional designers in the aforementioned countries.

A question remains, however, if overrepresentation is something we should always strive for. The case of Romania commands caution with regards to the desirability of special mechanisms that show so little capacity for selection. Yet, about half a year ago Hungary adopted a new electoral law which creates a special mechanism for minority representation whose resemblance to the Romanian solution can hardly be a coincidence. Under the new law, national minority lists will be able to win a seat in the national legislature if they manage to obtain a quarter of a Hare quota calculated on a nationwide basis (Renwick 2011). That a measure which was so heavily criticized could be transferred across systems only confirms the need to make the knowledge about these provisions more readily available to lawmakers.

6. Conclusion

The aim of this thesis was to add to our knowledge about electoral systems through analysis of a particular set of countries where special measures are implemented with a specific goal of providing particular groups in the society with parliamentary representation. The value of this type of inquiry stems from the importance that theoreticians and practitioners have assigned to descriptive representation – that is representation of groups, such as ethnic, religious or lingual minorities – by specially designated representatives. Exploring the parliamentary aspect of descriptive representation in no way exhausts the relevant approaches to the phenomenon or ideal of descriptive representation, but it appears as the most logical place for a starting point.

The contributions of this paper in the light of its defined goals were threefold: first, a detailed and comprehensive survey of empirical cases of special electoral measures was conducted, adding depth to the existing similar collections (e.g. Reynolds 2006; Protsyk 2010). Second a systematization of the acquired information was provided, with exact options for institutional designers delineated in a clear and coherent way. Systematization was performed along several axes including the mode of integration of special measures into the electoral system; the choice of groups which may benefit from the special arrangements and ways to allocate seats to groups. Additionally, a short analysis of appropriateness of the existing allocation across cases has been performed, showing that underrepresentation is surprisingly common under special measures.

Ground not covered by this paper and open for exploration in further studies includes the study of competitive forces and party dynamics at work when special measures are enacted. How the political game is played under special rules and with reduced policy space is an

important question, answer to which might change some of the political scientist's minds when it comes to desirability or undesirability of special measures. Another alley not fully explored here is the question of interests that surround the enactment and preservation of special measures. Individual cases, such as that of Singapore or Romania, have shown that the special measures can become captured by the interests of the current elite, thereby defeating not only their purpose of protecting the minority groups, but also jeopardizing democracy at the level of the system. The debate about how useful or how dangerous special measures can be is therefore still open, with my work here being just an offering of tools useful to any future inquirers.

7. Appendix A

This section lists online sources on legislation, election results and population that were used in creation of this thesis.[9] For easier navigation, the sources are listed on per county basis. Sources used for more than one country are listed under "General Sources".

General sources

For electoral rules and results:

Carr, Adam. 2012 "Adam Carr's Psephos Election Archive." Accessed: 25 May. www.psephos.adam-carr.net.

International Foundation for Electoral Systems (IFES). 2012. "IFES Election Guide." Accessed: 25 May 2012. http://electionguide.org/country.php?ID=195.

Inter-Parliamentary Union (IPU). 2012. "PARLINE database" Accessed: 25 May. http://www.ipu.org/parline-e/parlinesearch.asp.

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Venice Commission (European Commission for Democracy through Law). 2000. "Electoral Law and National Minorities." Accessed: 25 May 2012. http://www.venice.coe.int/docs/2005/CDL-AD%282005%29009-e.asp.

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Venice Commission (European Commission for Democracy through Law). 2008. “Report on Dual Voting for Persons Belonging to National Minorities.” Accessed: 25 May 2012. http://www.venice.coe.int/docs/2008/CDL-AD%282008%29013-e.asp.

For population data:

Central Intelligence Agency (CIA). 2012. “The World Factbook”. Accessed: 25 May. https://www.cia.gov/library/publications/the-world-factbook/index.html.

Minority Rights Group International (MRGI). 2012. “World Directory of Minorities and Indigenous Peoples.” Accessed: 25 May. http://www.minorityrights.org/directory.

By Country

Afghanistan

Independent Election Commission of Afghanistan. 2010. “Electoral Law” [*Unofficial Translation by UNAMA and IFES*] Accessed: 25 May 2012. http://www.iec.org.af/pdf/legal framework/law/electorallaw_eng.pdf?phpMyAdmin=84dcac90c9ded2016426264a0e469bc0.

World Food Programme (WFP). 2012. "WFP Food Security Atlas for Afghanistan: Population and Demography". Accessed: 25 May. http://foodsecurityatlas.org/afg/country/socioeconomic-profile/introduction.

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India

Government of India. 2001. "Census Data 2001: Scheduled Castes & Scheduled Tribes Population". http://www.censusindia.gov.in/Census_Data_2001/India_at_Glance/scst.aspx.

Government of India, Ministry of Law and Justice. 2011. "Constitution of India updated up to 97th Amendment Act". Accessed: 25 May 2012. http://indiacode.nic.in/coiweb/welcome.html.

Iraq

Independent High Electoral Commission (IHEC). 2010. "Regulation No. (21) For 2010 Council of Representatives Elections: Seat Allocation." Accessed: 25 May 2012. www.ihec-iq.com/en/files/18.pdf.

United Nations Assistant Mission for Iraq (UNAMI). 2010. “Factsheet: Electoral system and seat allocation.” Accessed: 25 May 2012. http://unami.unmissions.org/LinkClick.aspx?fileticket=c2EuDB1Uy3M%3d&tabid=4317&language=en-US.

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Official Gazette of the Republic of Kosovo. 2008. “Law No. 03/L-073 on General Elections in the Republic of Kosovo”. www.gazetazyrtare.com/e-gov/ahtisari/073-Eng.swf.

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Republic of Mauritius Electoral Commissioner’s Office. 2012. “Laws and Regulations”. Accessed: 25 May. http://www.gov.mu/portal/site/eco/menuitem.3c8fbbc803ea270b9459d9a365d521ca.

Republic of Mauritius Electoral Commissioner’s Office. 2012. “National Assembly Election Results”. Accessed: 25 May. http://www.gov.mu/portal/site/eco/menuitem.37ba32a3c4783128d6c8662948a521ca/?content_id=630b9dbfa1158010VgnVCM100000ca6a12acRCRD

Montenegro

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). 2009. “Montenegro Early Parliamentary Elections 2009, Final Report” Accessed: 25 May. http://www.osce.org/odihr/elections/montenegro/37521.

The Official Gazette of Montenegro. “Zakon o izboru odbornika i poslanika” [*The Law on Election of Councilors and Representatives*]. Issues: 4/98,17/98, 14/00, 9/01, 41/02, 46/02 and 48/06.

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Pakistan

Constitution of the Islamic Republic of Pakistan [*amended*]. 2011. [Unofficial Version] Accessed: 25 May 2012. http://www.pakistani.org.

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Republic of the Philippines Commission on Elections (COMELEC). 1986. “Constitution of the Republic of Philippines”. Accessed: 25 May 2012. http://www.comelec.gov.ph/laws/constitution/toc.html.

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