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Enhancing the Parliament Capacity to Hold Government Accountable in Kurdistan Region

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ENHANCING THE PARLIAMENT CAPACITY TO HOLD GOVERNMENT ACCOUNTABLE

IN KURDISTAN REGION

Zardasht Khalid Mohammed

Submitted to the faculty of Indiana University Maurer School of Law

in partial fulfillment of the requirements

for the degree

Master of Laws – Thesis

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Acceptance of Thesis

Accepted by the faculty, Indiana University Maurer School of Law, in partial fulfillment of the requirements for the degree of Master of Laws – Thesis.

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Dedication

I would like to dedicate this thesis to my lovely wife, Gulan. Without her encouraging and support, it was almost impossible for me to complete this thesis.

I would like also to dedicate this thesis to my little angle, Madius, who endows me with sense of fatherhood.

Acknowledgement

First and foremost, I would like to express my sincere gratitude to Prof. David C. Williams for his immense teaching and instructions on constitutional design. I am deeply grateful for his excellent supervising in course of writing this thesis. His teaching and advice on constitutional design will be flammable torch which illuminates my future academic path.

I would like also to express my deepest appreciation to Prof. Susan H. Williams for her teaching on constitutional design. Her instruction and observation has changed my method of thinking about socio-politic problems and how to address them through constitutional means. Besides, I would like to take this opportunity to express my genuine thankfulness to Prof. Daniel O. Conkle for his extensive teaching and counselling on US Constitutional Law. I am deeply indebts for his tremendous valuable times which he dedicated to me.

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Abstract

The current structures and draft structures grant the party leaders and the Executive undue power over the Parliament in two ways. First, by virtue of constitutional design, the Executive and the party leader's hegemony reduce the Parliament's capacity to act as a check on the Executive. Second, there are contextual factors correlated with political will in using available accountability mechanisms which locate beyond the design factors and they have nexus with effectiveness of the Parliament. In the other words, the contextual factor such as electoral system, party discipline, and party formations impact on the *will* of the parliament in holding the executive accountable. Moreover, despite the existence of some mechanisms to hold the government accountable, political accountability is eroding.

Abbreviation List

DCKR	Draft Constitution of Kurdistan Region
IHECI	Independent High Electoral Commission of Iraq
IKF	Iraqi Kurdistan Front
KDP	Kurdistan Democratic Party
KIG	Kurdistan Islamic Group
KIU	Kurdistan Islamic Union
KNA	Kurdistan National Assembly
KNAL	Kurdistan National Assembly Law
KR	Kurdistan Region
KRG	Kurdistan Regional Government
KRSC	Kurdistan Region Security Council
LKRSC	Law of Kurdistan Region Security Council
PR-STV	Proportional Representation- Single Transferable Vote
PUK	Patriotic Union of Kurdistan
TAL	Transitional Administrative Law

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Introduction:

The main argument of this thesis is that Parliament's powers to hold government accountable are reduced by design defects in both the draft constitution and the current structures; that the parliament's political will is mitigated by contextual factors; and that the PR-STV and "Constrained Parliamentary" models could effectively respond to mitigate defects in order to allow the Parliament to actively check the executive.

This thesis is divided into three main chapters. The first chapter provides the general background for the Kurdistan region, including historical chronologies of the creation of the Kurdistan region's territory, the institutionalizing political process, and the draft constitution. The second chapter discusses the accountability concept and its relation to the form of government and role of the parliament (legislative body). It also elaborates the design defects under both draft constitution and current government structures in relation to political accountability concept and its mechanisms. Further, it addresses contextual factors that contribute for further exacerbating the power of parliament in holding government into account.

The third chapter propose a new constitutional design that could respond to the accountability crises of the Kurdistan region. In this new design, the issues of the party formations, monopoly of poltical power, party leaders are reduced by PR-STV because PR-STV can allow various forms of incentives for party leaders and MPs that could empower the political will of parliament in exercising its available tools of accoutablity. In addtion, the constrained parlimantarism is helpful desgin in oversghting the executive's because it incentivies the poltical actors to discusse the political descions in the parliament's main chamber in context of KR.

Chapter I:

This chapter provides the background about the formations of Kurdistan region and its emerging territories, its institutionalizing political processes, its emerging political opposition, and the drafting of the Kurdish constitution. This chapter provides insight into Kurdistan's current constitutional environment. Also, it elucidates the behavior of political actors in directing government institutions and clarifies how the parliamentary majority has been used for illegitimate ends through different historical phases.

1.1 The Emergence of the Kurdistan region's territory as sovereign legal entity:

This section briefly analyzes the emergence of the Kurdistan region as a recognized region inside Iraq through different historical stages. This section chronologically addresses each historical stage of the Kurdistan region inside Iraq when there are revolutionary movements demanding the autonomous region or the self-governing territory to include the governorate of Kirkuk, Khanaqin, Sulimanyah, Duhok, and Erbil. Hence, this section does not deal with the broader definition of the Greater Kurdistan, which claimed full independence during 1918-1943. Also, this section does not discuss all revolutionary movements after 1943, but only those revolutions that were able to compel the Iraqi government to generate legal guarantees with respect to the Kurdish territory.

During the Iraqi monarchy, Kurdish dissent enabled large-scale control of the Kurdish territories in 1944.[1] The uprising obliged the Prime Minister to negotiate with the Kurdish leadership. The Kurdish leadership demanded the autonomous region including Kirkuk,

[1] SUZAN IBRAHIM HAJI AMEN, AL-TAJREBA DEMOQRTIA FI KURDISTAN AL-IRAQ [*THE EXPERIENCE OF DEMOCRACY IN IRAQI KURDISTAN*], 26(2011) (AR.).

Khanaqin, Sulimanyah, Duhok, and Erbil.[2] This uprising is considered a clear intent of the Kurds to establish autonomous territory within Iraq borders. The Kurdish leaderships also demanded the power-sharing administrations with the Iraqi government by having a Kurdish deputy for each minister, recognition of the Kurdish language as an official language of Iraq, and launching economic reform in the Kurds' area. All these conditions were part of the cease-fire agreement.[3] After these negotiations, the Iraqi government concluded the cease-fire agreement with the Kurdish leadership. They agreed that all areas, which are controlled by the Kurdish forces, shall be managed under Kurdish administration. They also agreed to allow Kurds to have autonomy in the field of the education and culture.[4] Further, all weapons and military hardware, which were seized by Kurds, were to remain in Kurds' possession.[5] In 1945, the Iraqi government nevertheless began seizing political activists and initiated military campaigns towards the Kurdish leadership's headquarter. Thus, these actions ignited hostilities between Kurdish forces and Iraqi army.[6] The Iraqi government, by virtue of its actions, revoked the cease-fire agreement and its promises.[7]

In 1970, the Kurdish leadership reached a peace agreement with the Iraqi government and its representing Ba'ath party.[8] This peace agreement, titled the "March 11 Manifesto" of 1970, [9] established the self-governing areas for the Kurds in the north of Iraq.[10] Both the central government and the Kurdish leadership agreed that the boundaries of the self-governing areas

[2] *Id* at 27.
[3] *Id.*
[4] *Id*.
[5] *Id.*
[6] *Id* at 27-28.
[7] *Id.*
[8] Peter Malanczuk, *The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War,* 2 EUR. J. INT'L L. 114, 116-117(1991).
[9] Sherko Kirmanj, *Kurdistan Region: A Country Profile*, 9 JOURNAL OF INTERNATIONAL STUDIES 145, 147(2013).
[10] Malanczuk, *supra* note 8, at 116.

should be based on the result of the census.[11] However, the central government, soon after ratifying the peace agreement, initiated Arabization campaign against the Kurdish areas by banishing the Kurdish settlers and substituting them with Arab settlers.[12]

On March 11, 1974, the Iraqi central government, which was represented by the revolutionary command council and controlled by the Ba'ath party, [13] unilaterally transformed this peace agreement into two legal documents. The Ba'ath party implemented this transformation in primarily two ways. First, the revolutionary command council amended the interim Constitution of 1970 by stipulating that the majority Kurdish-populated areas "shall enjoy autonomy in accordance with what is defined by the law." [14] Second, it enacted the autonomy law of 1974 on the same day.[15] The validity of these substantive and procedural changes to the Kurdish autonomy law were questionable.

In term of the substance, the autonomy law insisted on self-governing areas for the Kurds, but the autonomy law authorized a very limited independence for the councils of the Kurdish self-governing areas. [16] For instance, the autonomy law enabled the Kurds to elect a legislative council in the Kurdish- populated areas,[17] but the President of Iraq had the

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[11] Kirmanj, *supra* note 9, at 147.
[12] *Id.*
[13] *See* Article 37, Al-Doustour al-Iraqi al-Mouakkat [The Interim Iraqi Constitution] of 1970 (" The Revolutionary Command Council is the supreme institution in the State, which on 17 July 1968, assumed the responsibility to realize the public will of the people, by removing the authority from the reactionary, individual, and corruptive regime, and returning it to the people.").
[14] *See* Resolution Amendment 247, Al-Doustour al-Iraqi al-Mouakkat [The Interim Iraqi Constitution] of 1970.("In accordance with the provisions of paragraph B, Article 63 of the Interim Constitution, The Revolutionary Command Council have decided, in the Name of the People, in its session convened on 11 March, 1974, to amend the Interim Constitution promulgated on 16 July, 1970 as follows :-
Article 1: The following paragraph shall be added to Article 8, section C: The region, whose majority of population is from Kurds, shall enjoy Autonomy in accordance with what is defined by the Law.").
[15] *Id.*
[16] Natasha Carver, *Is Iraq/Kurdistan a State such that it can be Said to Operate State Systems and thereby Offer Protection to its 'Citizens'?*, 14 INTERNATIONAL JOURNAL OF REFUGEE LAW 57, 66(2002).
[17] Article 10, Law of Autonomy No.33 of 1974 (Iraq) ("The Legislative Council is the legislative body elected in the Region; its formation, organization and procedure shall be defined by a Law.").

discretionary power to appoint a president of the Executive Council—who would be empowered to enforce the ordinance of the Legislative Council.[18] Additionally, the President of Iraq could dissolve the executive council of the Kurdish self-governing areas.[19] Further, the Legislative Local Council was confined to issuing ordinances and was prohibited from passing any statute.[20] In addition to the Legislative Council's limited capacity, its ordinances could be reviewed by the judicial branch of the central government.[21] The president of Iraq had the right to dissolve the Legislative Council, which was elected by Kurdish voters, if the legislative council dissented to the judicial review by the central government.[22] The content of this law furnished intentional legal gaps, creating a political structure in favor of the Ba'ath regime. As a result, the final decisions of those councils and their competencies were ultimately controlled by the central government.

In procedural terms, the autonomy law did not afford public participation for the Kurdish voters because the Iraqi government unilaterally enacted law without affording Kurdish review or discussion of those laws. However, the Ba'ath regime did permit Kurdish leadership to either accept the law or to refuse it within fifteen days of each law's promulgation.[23]

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[18] Article 13, Section C, Law of Autonomy No.33 of 1974(Iraq) ("The President of the Republic entrusts one of the members of the Legislative Council to preside over and formulate the Executive Council.").
[19] Article 13, Section F, Law of Autonomy No.33 of 1974(Iraq) (" The President of the Republic is entitled to release the President of the Executive Council from his post, and in this case the Council shall be deemed as dissolved.").
[20] Article 12, Section A, Law of Autonomy No.33 of 1974(Iraq) (" Adopt legislative resolutions necessary for developing the Region and promoting its social, cultural, reconstructional and economic utilities of the local nature within the limits of the general policy of the State.").
[21] Article 12, Section B, Law of Autonomy No.33 of 1974(Iraq) ("The Minister of Justice, or the Minister of State, is entitled to discredit the re- solutions of the Autonomy's Bodies before the Observation Body cited in the previous paragraph, for their contradiction to the Constitution or laws or regulations within thirty days as from the date of notifying the Minister of State.").
[22] Article 20, Section A, Law of Autonomy No.33 of 1974(Iraq) ("The President of the Republic is entitled to dissolve the Legislative Council …. [I]n case of its non-abiding by the decisions of the Observation Body stipulated in Article (19) of this Law.").
[23] Sarah E Whitesell, *The Kurdish Crisis: An International Incident Study*, 21 DENV. J. INT'L L. & POL'Y 455,460 (1992).

Moreover, the outcome of the autonomy law revealed that Iraqi government tried to buy time to consolidate its power over the Kurdish revolution. The Iraqi government's actions were considered more of a tactical policy that did not truly recognize the Kurdish autonomy inside Iraq.[24] For instance, in drawing boundaries of the Kurdistan self-governing areas, the Iraqi government deprived the Kurds from their oil-rich territories including Khanaqin and Kirkuk in addition to some strategic areas such as Akra and Sinjar.[25] As a result of all these deprivations, the Kurdish leadership refused the autonomy law of 1974.[26] The peace agreement was revoked, and the revolution started again.[27]

Since February of 1991, the Kurdish territories have received international protection mandates. During the Gulf war, President George H.W Bush exhorted the Iraqi people to overthrow their oppressors and to rebel against Saddam Hussein's regime. The United States, however, did not intervene in Baghdad by sending troops to topple Hussein's regime.[28] At the same time, the Shiite population began an uprising in the south of Iraq and the Kurds revolted in north of Iraq. Hence, Hussein's regime seized the opportunity that US did not send troops and rearranged its army and suppressed both Shiites in the south and Kurds in the north. In suppressing the north, the Iraqi army committed atrocities, pushing Kurds to flee to the borders of Iran and Turkey. Turkey did not allow Kurd refugees to enter its border, but Iran allowed Kurds to settle in refugee camps inside Iran's territories. [29]

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[24] Ofra Bengio, *Autonomy in Kurdistan in historical Perspective*, *In* THE FUTURE OF KURDISTAN IN IRAQ 173, 175 (Brendan O'Leary et al.,eds., 2006).
[25] Alexander Dawoody, *The Kurdish quest for autonomy and Iraq's statehood*, 41 JOURNAL OF ASIAN AND AFRICAN STUDIES 483, 487(2006); see aslo Kirmanj, *supra* note 9, at 147.
[26] Whitesell, *supra* note 23, at 461.
[27] *Id* at 461-462.
[28] Philip S. Hadji, *The Case for Kurdish Statehood in Iraq*, 41 CASE W. RES. J. INT'L L. 513, 519(2009).
[29] *Id* at 519-520.

Hussein's atrocities against the Kurds pushed the UN Security Council to demand stopping repression of Kurds and other civilians in resolution 688, which stated, "a massive flow of refugees towards and across international frontiers . . . threaten[s] international peace and security."[30] The language of the resolution demanded the international community to act in stopping the repression of Kurds in the north and Shiites in the south.[31] In responding to resolution 688, the United States, with its allies (Britain and France), imposed a no-fly zone over the north from 36th parallel to north Iraq and 32nd parallel to south Iraq.[32]

Furhter, the no-fly zone was legally justified through the resolution 686 and 687 because they addressed the issue of ceasing fire by stipulating that Iraqi government should " [c]ease hostile or provocative actions by its forces against all Member States, including missile attacks and flights of combat aircraft."[33] Implicitly, the language of cease-fire agreement of Resolution 686 held that as long as the US and its allies flew over the Iraq airspace, the Iraqi combat aircraft could not enter the area between the 36th and 32nd paralells. Also, the Resolution permitted the U.S. and its allies to fly over the zones to protect civilians and ensure that the Iraqi government was acting within its provision to stop hostility.[34]After the U.S. and its allies instituted the no-fly zone for the Kurds, the Iraqi government withdrew from most Kurdish areas in the north of Iraq.[35] Henceforth, the Iraqi government unilaterally defined the Kurdistan region boundaries by its withdrawing, and began demarcating the boundaries with its military checkpoints to include

[30] Timothy P Mcilmail, *No – Fly Zones : The Imposition and Enforcement of Air Exclusion Regimes Over Bosnia and Iraq*, 17 LOY. L.A. INT'L & COMP. L. REV. 35, 40-50 (1994).
[31] *Id*.
[32] *Id* at 52.
[33] *Id* at 53.
[34] *Id*.
[35] IMAD M MIRZA, DEMOCRATIZATION IN SOUTHERN KURDISTAN: AN ANALYTICAL STUDY OF THE PROSPECTS FOR DEMOCRACY 18 (2007).

three governorates (Sulimanyah, Duhok, and Erbil) as it was defined in the autonomy law of 1970.[36]

After the invasion of Iraq, Kurds actively participated in the process of rebuilding Iraq. They were able to transform the Kurdistan region boundaries from the de-facto territory, which is unilaterally demarcated by Iraqi regime, to be fully recognized legal territory through (Transitional Administrative Law).[37] TAL explicitly recognized the Kurdistan region borders, stating "[t]he Kurdistan Regional Government is recognized as the official government of the territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Erbil, Sulimanyah, Kirkuk, Diyala and Nineveh. TAL also stated, "[t]he term 'Kurdistan Regional Government' shall refer to the Kurdistan National Assembly, the Kurdistan Council of Ministers, and the regional judicial authority in the Kurdistan region."[38] Furthermore, TAL recognized the demographic changing of these areas by Hussein's Regime.[39] Consequently, TAL provided a mechanism for resolving these disputed areas, which ultimately could be the parts of

[36] CHARLES G MACDONALD & CAROLE A O'LEARY, KURDISH IDENTITY: HUMAN RIGHTS AND POLITICAL STATUS, 150 (2007)
[37] Kenneth Katzman, *Kurds in Post-Saddam Iraq*, 2-3 (DIANE Publishing. 2010).
[38] *See* Article 53, Section A, Transitional Administrative law (2004).
[39] *See* Article 58, Section A, Transitional Administrative law (2004) ("The Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustice caused by the previous regime's practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality. To remedy this injustice, the Iraqi Transitional Government shall take the following steps [.]").

the legal boundaries of Kurdistan region.[40] Today, the Kirkuk and Khanaqin remain disputed territories between the Iraq government and the Kurdistan region.[41]

Moreover, the Kurdistan region, in the permanent Iraqi constitution of 2005, is acknowledged as a legal and federal region within Iraq border. The Iraqi Constitution stated, "[t]his Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region." Further, the 2005 Constitution recognized all current boundaries and territories of the Kurdistan region. Nonetheless, Kurdistan's territories remain in dispute. The permanent Constitution of Iraq, by Article 140, preserved recognition of Kirkuk and other disputed areas as demographic changed territories by implicating article 58 of TAL.[42] Additionally, Article 140 provides mechanisms for resolving these territories by stipulating normalization, census, and eventually referendum in these disputed areas.[43] The Constitution called for these mechanisms to be implemented by December 31, 2007.[44]

In addition, the dilemma of these disputed areas has reflected on the draft of the Kurdistan region constitution. The Kurdistan region border even has been identified as two kinds

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[40] *See* Article 58, Section B, Transitional Administrative law (2004) ("The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.").

[41] *See* Article 58, Section C, Transitional Administrative law (2004) ("The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories.").

[42] Article 140, Doustour Joumhouriat al-Iraq [The Constitution of the Republic of Iraq] of 2005. ("First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law. Second: The- responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely 'normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens', by a date not to exceed the 31st of December 2007.").

[43] *Id.*

[44] Kirmanj, *supra* note 9, at 152.

of border. One is the recognized territories under framework of Iraqi Constitution. This kind of border can be called the "territorial borders." The territorial borders are described in the drafted Kurdish Constitution as "[t]he Iraqi Kurdistan Region is a geographical historical entity consisting of Dohuk governorate with its existing administrative borders, Kirkuk, Sulaymaniyah, Erbil, and districts of 'Aqrah, Shaikhan, Sinjar, Talkaif, Qaraqush, and townships of Zamar, Ba'asheeqa, and Aski Kalak from Nineveh province, districts of Khanaqin and Mandali from Diyala province with its administrative border before 1968."[45] Further, the Iraqi Constitution does not specify the "territorial borders" of the Kurdistan region. This lack of specification implicitly grants the Kurdistan regional government authority to determine its territorial border according to KRG's demarcation.

The second kind of Kurdistan region's border is called "political border." The meaning of the political border implicates the disputed areas of article 140 of Iraqi constitution. The DCKR stated "[t]he political borders of the Region shall be determined by the implementation of Article 140 of the Federal Constitution."[46] The main purpose behind the idea of the political borders is that if the Kurdistan region confines itself to actually recognized borders under the Iraqi constitution, this confining may imply that the Kurdistan region concedes the disputed areas to the federal government of Iraq because these areas are not be mentioned as Kurdistan region borders. For this reason, DCKR intends to preserve its prerogative by creating the political borders ideas.

[45] Article 2, Section 1, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009.
[46] Article 2, Section 2, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009.

1.2 Emerging governmental institutions

This section focuses on the process of rebuilding government institutions. After the Iraqi government had withdrawn its institutions from the No-fly zone, which later was recognized as the Kurdistan region, in October1991, [47] Kurdistan faced an administration vacuum.[48] The size of this vacuum negatively impacted the economic infrastructure of the Kurdistan region. For instance, withdrawing of Iraqi government institutions caused 300,000 civil servants to be out of work.[49] Among the Kurdish region's population, unemployment was between 70%-90%.[50] In addition, the Iraqi regime also set the economic blockade on the Kurdistan region despite the fact that Iraq itself was under UN trade sanctions. The Kurds lost the 75% of their supplies that came from the other parts of Iraq.[51] The sanction policy was aimed at creating chaos and starvation in the Kurdistan region.[52] Hence, this chaos and starvation could induce the Kurdish leadership to demand the Iraqi government to take control of the no-fly zone and ultimately to provide relief to the Kurds. [53]

However, he Kurdish political parties reorganized themselves in one front, which was called the Iraqi Kurdistan Front (IKF).[54] The Kurdish political parties were aware of the administration vacuum and began self-governing to deliver basic needs for the citizens. Hence, the IKF, with advice from a committee of Judges and lawyers, drafted and ratified the first law,

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[47] Kirmanj, *supra* note 9, at 148.
[48] *Id.*
[49] *Id* at 154.
[50] *Id.*
[51] HANS EIVIND DALSBØ, A CULTURE FOR DEMOCRACY? EMERGENT CIVIL SOCIETY AND CULTURE IN SOUTHERN KURDISTAN 39 (2007).
[52] *Id.*
[53] Mirza, *supra* note 35, at 18.
[54] Michael M Gunter, *The KDP-PUK conflict in northern Iraq*, 50 THE MIDDLE EAST JOURNAL 224, 226 (1996) (IKF was established in 1988. The main purpose of IKF was to overthrow the Ba'ath regime in the power and to seek for creating democratic regime in the Iraq and to establish the Iraqi Kurdistan as federal state in inside Iraq).

which established the first Kurdistan National Assembly (KNA).[55] Henceforth, all other branches of governments were created by the KNA. Indeed, the Kurdish region has no constitution. Instead, the IKF through seven political leaders enacted the first law to establish the Kurdistan National Assembly, [56] which, in 2009, was later renamed as the Kurdistan Parliament.[57] Also, the Kurdistan region voters have not voted for the Kurdistan National Assembly Law, but instead the Kurdish voters have participated to vote for the political parties in the election process.

Despite of the aforementioned facts, the Kurdistan National Assembly Law (KNAL) is the fundamental law that organizes political and governmental structures because KNAL, to some degree, furnishes the self-government system in the No-fly zone; and regulates the governmental vacuum. [58] The KNAL regulated the National Assembly's first election in May 1992.[59] Even though the Kurdistan region did not have a formal census, IKF considered the percentage of turnout was 90% of the 1.1 million eligible voters.[60]

The KNAL stipulated that the political parties and independent candidates must pass the 7% threshold to enter the national assembly. [61] Due to the threshold, numerous small parties and independent candidates failed to gain seats in the National Assembly. The result of the threshold was that the PUK won 44.93 % of the votes and KDP won 47.51 % votes.[62] The result between

[55] DENISE NATALI, KURDISH QUASI-STATE: DEVELOPMENT AND DEPENDENCY IN POST-GULF WAR IRAQ 33 (2010).
[56] *See* Dalsbø, *supra* note 51, at 40 (There are some arguments that point out to the fact that Kurdish leaderships did not want to show their steps as part of creating independent countries. Therefore, they chose to have national assembly law instead of the constitutions in 1991.).
[57] Article 1, Section 1, Fourth Amendment of the National Assembly (Law No.1 of 1992) No.4 of 2009.
[58] Natali, *supra* note 55, at 33.
[59] Michael M Gunter, *supra* note 54, at 226.
[60] Dalsbø, *supra* note 51, at 40.
[61] *Id.*
[62] *Id.*

KDP and PUK was very close, but none of them formed the required majority.[63] The KDP gained 51 seats, and PUK gained 49 seats. The election process had many issues with the validity of votes and counting.

The PUK urged KDP to accept a shared government, threatening resolution by violence otherwise., The PUK and KDP agreed to share the government, the national assembly, and the judicial branch based on 50-50 split—half of governmental power to KDP and the other half for PUK. For instance, if the Minster was PUK, the Deputy of Minster had to be KDP and so forth. This "50-50" sharing was reflected even in the primary government levels such us schools, hospitals, checkpoints, and police departments. [64]Also, it is reflected in the law of the council of minister. The law of the council of minister provides that if the ministers of one political party, which formed the government with the other political party, resigned from the council, the council of ministers would be considered dissolved.[65]

The first Iraqi Kurdistan government, which is called Kurdistan regional government (KRG)[66], formed based on power-sharing in July 1992.[67] Power-sharing agreement, to some degree, was a responsive solution for filling the governmental vacuum of Kurdistan region and for keeping unity of Kurdistan from old enmities of PUK and KDP. Nevertheless, the power of Kurdistan region's institution was undermined by those officials who carried order from KDP

[63] Mirza, *supra* note 35, at 19.
[64] Natali, *supra* note 55, at 32-33.
[65] *See* Article 11, Section 2, Law of The Council of Ministers No.3 of 1992 (Kurdistan Region-Iraq).
[66] GARETH R. V. STANSFIELD, IRAQI KURDISTAN: POLITICAL DEVELOPMENT AND EMERGENT DEMOCRACY 125 (2003) (The Kurdish lawyers, who had been in diaspora, played important role in advising the Kurdish leadership for adapting the ruling structure for the region. They advised the political party's leadership about technical detail about how the new national assembly should function, and how the cabinet of minster should be formed).
[67] Michael M Gunter, *supra* note 54, at 226.

and PUK's politburo. For instance, Barzani and Talabani did not hold any governmental position inside KRG, but they were substantial descion-maker to direct the agenda of the government.[68]

The power-sharing process created the partisanship government from a basic level of government to a higher level of government.[69] The KRG was constrained to propose the policy or implanting program to PUK and KDP's politburo. After approving by politburos, the KRG could move forward to exercise its executive powers. Technically, the politburo played role of both National Assembly and Council of Minister because the actual and efficient political deliberation and discussion were taken place in politburos instead of the National Assembly or Council of Ministries. KRG was a rubber stamp to fulfill the politburos' orders. [70] Similarly, dividing the council of ministries between PUK and KDP caused the creation of mutual veto between the ministers and their deputies.[71] In this way, the power of the minister was equal to the power of his or her deputy. Consequently, executing governmental duties required approval by both of them.[72] Mutual veto generated heavy burdens of executing governmental tasks and its efficiency.[73]

At the beginning of 1992, leadership was the major dispute between PUK and KDP because both Talabani and Barzani highly contested to be the highest power in the hierarchy of the executive. In order to be supreme leader and to have power over both the national assembly and council of ministries, PUK and KDP passed the law to determine the supreme leader of

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[68] *Id* at 231.
[69] Gareth RV Stansfield, *Governing Kurdistan: The Strengths of Division, In* THE FUTURE OF KURDISTAN IN IRAQ 195, 201(Brendan O'Leary et al.,eds., 2006).
[70] *Id.*
[71] *Id.*
[72] *See* Article 11, Section 2, Law of the Council of Ministers No.3 of 1992 (Kurdistan Region-Iraq) (This law stipulate that if the council of ministers formed by two major political party, drawing the all minister of one of them would consider the government as dissolved).
[73] *Id.*

national liberation movement in August 4, 1992.[74] In the Theory, the supreme leader's fixed-mandate shifted the system from a parliamentary system to a semi-presidential system because the president possessed the fixed-mandate with having substantial power, and the survival of government depended on the parliament confidence.[75] The supreme leader had both powers of foreign affairs and defense intermingled with prime minister's powers, and the broad legislative powers intermingled with the national assembly powers.[76] Consequently, the supreme leader would represent the Kurdistan region at internal and international levels, exercising commander in chief power, and having veto power on enactments of the national assembly.[77] Also, the Prime Minister was accountable to the supreme leader in fulfilling its duties.[78] Notably, in the law of electing supreme leader of liberation movement did not include any impeachment provision or any safeguard against supreme leader's power. Implicitly, the law immunized the supreme leader from any checks by National Assembly or council of ministers. The election of the supreme leader was conducted at the same time of the National Assembly election. Neither Barzani nor Talabani was able to secure the majority of the voters.[79] The supreme leader position was empty

[74] *See* The Law of Electing the Supreme Leader of the National Liberation Movement No.2 of 1992 (Kurdistan-Iraq).
[75] *See* Robert Elgie, *Semi-Presidentialism: An Increasingly Common Constitutional Choice, In* SEMI-PRESIDENTIALISM AND DEMOCRACY 1, 2-3(Robert Elgie, et al., eds., 2011).
[76] Article 10, The Law of Electing the Supreme Leader of the National Liberation Movement No.2 of 1992 (Kurdistan-Iraq) (The powers of the supreme leader intermingled with the national assembly was stated as following: "1- calling the National Assembly to convene for regular session or extraordinary sessions. 2- Ratifying of agreements which enacted by the National Assembly. 3- Issuing laws and regulations which enacted by the National Assembly. 4- Proposing bills to the National assembly. 5-Calling for a new election of the National Assembly according to law within a period of fifteen days from the date of expiration of the term of National Assembly or when the national assembly dissolves itself. 6-Issuing decrees that have the force of law during the vacation of the National Assembly or in state of emergency, but these decrees shall be present to National Assembly to decide whether approve it or invalidate it.")
[77] *See* Article 10, The Law of Electing the Supreme Leader of the National Liberation Movement No. 2 of 1992 (Kurdistan-Iraq).
[78] Article 11, The Law of Electing the Supreme Leader of the National Liberation Movement No. 2 of 1992 (Kurdistan-Iraq).
[79] GARETH R. V. STANSFIELD, *supra* note 66, at 130.

until 1999, when Talabani unilaterally declared himself as the supreme leader of liberation movements.[80]

Arguably, the KRG's structures lacked any checks and balances because the governmental power was highly concentrated in the politburos since the decision-making process was totally outside of the government bodies.[81] Even the politburo does not have any accountability for his members because the structures of these two political parties based on the Stalinist political structure characterized by intense hierarchy systems.[82] The KRG functioned depending on the will of PUK and KDP. Hence, there were potentialities of the conflict of interest between the politburos, which remained authoritative during two consecutive cabinets.

1.3 Civil War and the Period of Two Administration

By the end of 1993, the relation between PUK and KDP had deteriorated due to their differences related to revenue sharing and balance of powers in the region. Moreover, the PUK and KDP had significant problems co-managing government resources because these political parties created their own revenue resources. These revenues were not deposited into the government treasury. For instance, KDP gained 85 percent of its revenue from Kurdish-Turkish border through tariff and taxation, which reached 750 million annually. Likewise, PUK reestablished Sulimanyah cigarette factory, which produced from 12,000 to 144,000 packs a day between 1991 to 1997.[83] Even some officials of KRG transferred treasury money to the personal accounts of politburos.[84] These corrupt means of revenue collection created "accusation[s] and

[80] HUSSEIN TAHIRI, THE STRUCTURE OF KURDISH SOCIETY AND THE STRUGGLE FOR A KURDISH STATE 184 (2007).
[81] Mirza, *supra* note 35, at 19.
[82] *See* GARETH R. V. STANSFIELD, *supra* note 66, at 104-105 figs. 5.1 & 5.2, 107-112 fig. 5.3.
[83] Kawa Jabary & Anil Hira, *The Kurdish Mirage: A Success Story in Doubt*, 20 MIDDLE EAST POLICY 99,101-102 (2013).
[84] HUSSEIN TAHIRI, *supra* note 80, at 178.

counter-accusation[s]" between both PUK and KDP.[85] Each of them blamed the other side for corruption by using public money for the personal benefit.[86] Meanwhile, PUK and KDP had worked to reinforce their territorial base by creating obstacles for the other.

The small parties, which could not pass the 7 percent threshold, joined the KDP and some others joined the PUK.[87] The Kurdistan Unity Party with three smaller parties concluded an agreement with KDP to become part of KDP political structures. [88] This new formation of KDP could change the balance of power inside the government. The KDP claimed that the 50-50 power sharing agreement should be rejected because KDP had more supporters than PUK. KDP's claim was the first signal to PUK that PUK could not be an equal partner to KDP for purposes of power-sharing. This new coalition threatened the future of PUK and its stake in the elections of 1995.[89]

All these factors ignited the civil war in April 1994. At the outset, PUK was able to control both Sulimanyah and Erbil. However, the KDP was able to reverse this situation. In 1996, KDP, with the Iraqi army defeated PUK in Erbil. KDP controlled Dhok and Erbil, which become the territory for KDP. It formed its cabinet of ministries because KDP, with five seats of minorities, was able to fulfill the majority of Kurdistan National Assembly. The PUK and its allies controlled Sulimanyah, which become the territory for the other cabinet of ministries under PUK's leadership. As result, the executive power was divided for two cabinets of ministries, one in Erbil and the other one in Sulimanyah, but the judicial branch, especially the Court of

[85] *Id* at 179.
[86] *Id* at 178-179.
[87] Mirza, *supra* note 35, at19.
[88] Michael M Gunter, *supra* note 54, at 232.
[89] *Id.*

Cassation, remained unified until 1999.[90] Both the PUK and the KDP claimed to be the legitimate and official government of Kurdistan region.[91] The civil war continued from 1994 to 1998.[92]

After series of agreements, both Barzani and Talabani concluded a peace agreement to furnish peace in the Kurdistan region on September 17, 1998. The Washington agreement, to some degree, provided stability in the region.[93] The Washington agreement stipulated that PUK and KDP agreed to create a provisional government followed by the general election for KNA in order to establish a unified government.[94] The agreement further stipulated that KDP should share its revenue with PUK.[95] Finally, the agreement stipulated that both PUK and KDP should cooperate with Turkey to stop the activity of PKK.[96]Nevertheless, KDP argued that the PUK was helping PKK implicitly by allowing PKK to use PUK's territory against KDP.[97] Likewise, PUK argued that KDP was creating a pretext to undermine the Washington agreement because KDP was not willing to share its revenue. The contesting for leadership was unresolved. Divisions between the PUK and the KDP continued to run deep. In August 1999, the PUK unilaterally declared Talabani as Supreme leader of Kurdish liberation movement. Additionally, PUK

[90] Mirza, *supra* note 35, at 20.
[91] Matthew Packard, *Earning Independence In Iraqi Kurdistan*, 27 TEMP. INT'L & COMP. L.J. 177, 183-182(2013).
[92] *See* HUSSEIN TAHIRI, *supra* note 80, at 180-181 (Meanwhile, neighboring counties had played the significant role in polarization of KDP and PUK. Clearly, Iraq, Iran, Turkey, and Syria intervened in internal affairs of the KRG. Neighboring countries were seeking to create balancing between PUK and KDP by the extension of "intra-Kurdish fighting" because they thought that if the Kurdistan region were successful in the elections and transition of power, this might lead to independent state of the Kurdistan. Explicitly, the president of turkey declared that turkey would not allow independent Kurdistan beside its border).
[93] DENISE NATALI, *supra* note 55, at 53.
[94] LOKMAN I MEHO, THE KURDISH QUESTION IN US FOREIGN POLICY: A DOCUMENTARY SOURCEBOOK 9 (2004).
[95] Alan Makovsky, *Kurdish Agreement Signals New U.S. Commitment*, THE WASHINGTON INSTITUTE (September 29, 1998), http://www.washingtoninstitute.org/policy-analysis/view/kurdish-agreement-signals-new-u.s.-commitment.
[96] ANUSH ARAKELYAN, EMERGING PARADIGMS OF KURDISH NATIONHOOD IN THE MIDDLE EAST 44 (2013)
[97] HUSSEIN TAHIRI, *supra* note 80, at 184.

created a second Court of Cassation in Sulimanyah to review the judgment of the lower court.[98] KDP formed its fourth cabinet of the government, including eighteen ministers and five ministers of the region, without allowing PUK to participate. From 1994 to 2000, PUK and KDP had concluded dozens of agreements, but these agreements were not implemented.[99]

1.4 Unification of government and emerging of the presidency position.

After 11 September 2001, the political scene began changing as both PUK and KDP had anticipated the Saddam Hussein would be removed.[100] They intended to capitalize on the Peshmerga forces by showing that they would be essential allies to the US during the invasion of Iraq analogous to the Northern Alliance of Afghanistan. PUK and KDP struggled to not be marginalized after the invasion of Iraq. Especially, KDP had more predicaments post-Saddam Hussein because KDP was controlling the oil route between Turkey and Baghdad. The regime change impacted the revenue that KDP got from the Oil's route.[101]Post Saddam, both the KDP and PUK demanded a federal system for the Kurdistan region. To some degree, KDP wanted more powerful federal region for post-Saddam area to maintain its economic interest in the region.[102]The PUK, on the other hand, sought a softer version of federalism for the Kurdistan region.[103]

Arguably, KDP and PUK noticed that the divided government would reduce their bargaining power with the Iraqi government in the post-Saddam Hussein era. By the end of 2002, PUK's legislators agreed to participate in KNA session. This participation could be

[98] *Id.*
[99] *Id* at 186.
[100] Gareth RV Stansfield, *The Kurdish Dilemma: The Golden Era Threatened*, 43 THE ADELPHI PAPERS 131, 135-136(2003).
[101] *Id* at 136.
[102] *Id* at 138.
[103] *Id*.

considered as the first step for unification of the government by activating the KNA as the one legislature for the whole Kurdistan region.[104] Furthermore, after the invasion of Iraq by United States and its Allies, the political scene in Iraq was changing rapidly.

December 1, 2004, Talabani and Barzani concluded a power-sharing agreement for dividing the leadership by dividing the Iraqi government and KRG's position. According to this agreement, KDP supports Talabani to be either the president or the prime minister of Iraq. Likewise, PUK supports Barzani to be president of Kurdistan by creating the position of president inside the Kurdistan region.[105] Additionally, the agreement stipulated that PUK's member should hold the speaker of the National Assembly; KDP's member should hold the prime minister of Kurdistan region; further, all political parties participate in National election and regional election in one list because as the preamble of the agreement stated that PUK and KDP's unification was to protect Kurdish cause inside the federal government of Iraq. [106] Additionally, the agreement stipulated that the voting for Talabani and Barzani must be corresponding obligation.[107]

On January 30, 2005 general elections were held at three deferent levels. At the federal and regional level, both KDP and PUK participated as one list. At the governorate level, PUK and KDP participate as one list Kirkuk, Mosul, and Diyala's governorates, [108] but PUK and KDP participated separately in Sulimanyah, Duhok, and Erbil's governorates.[109] The result of the election was very close 2005.

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[104] Mirza, *supra* note 35, at 20.
[105] Nawshirwan Mustafa, *Prosay Pekhenani Sarkoyati Harem[the creation process of the presidency in Kurdistan region]*,2 (2013).
[106] *Id.*
[107] *Id.*
[108] These three governorates are a part of disputable area according to Article 140 of Iraqi Constitution.
[109] Mustafa, *supra* note 105, at 6.

After the election, KDP proposed one package, which was the implementation of a power-sharing agreement with PUK. This package was quid pro quo to vote for Talabani to be president of Iraq. In return, the KDP requested the following positions be held by KDP members: the president of the Kurdistan region, the prime minister of Kurdistan region, the head of security forces of Erbil, the minister of finance of KRG, the minister of Peshmerga of KRG, the deputy of Iraqi prime minister, and the minister of foreign affairs of Iraq.[110] In offering this package, the KDP sought to consolidate its power in the KRG instead of focusing on the federal government.[111]

The president position of KRG was a controversial issue between KDP and PUK. KDP is considered the architect of the presidency law of the region, which was presented to PUK's politburo on April 18 of 2005.[112] Consequently, PUK proposed that the President should be elected inside parliament consistent with the power-sharing agreement to Talabani position in Baghdad. Talabani was elected inside parliament. Thus, PUK wanted to elect Barzani inside the parliament as well. Further, PUK wanted to make consistency between the Talabani mandate in Baghdad and Barzani mandate in Kurdistan region. Thus, PUK insisted on electing Barzani inside parliament, not through the popular vote, to create a flexible mandate. PUK, further, proposed that the power of the president should be equal and horizontal to the parliament, judiciary and the council of minister.[113] However, KDP refused to accept the modified version of the presidency law from PUK's politburos.[114] Still, KDP insisted that the president should be directly elected by the people, with a fixed term with the potential for two additional terms. The

[110] Mustafa, *supra* note 105, at 9.
[111] Kenneth Katzman, *supra* note 37, at 3.
[112] Mustafa, *supra* note 105, at 15.
[113] *Id* at 21.
[114] *Id* at 16.

president of Kurdistan region should possess the power of the commander in chief and head of the National Security Council. [115]

Moreover, the KDP argued that the PUK revoked the agreement because KDP had voted for Talabani to be interim president of Iraq on April 4, 2005, but the PUK did not fulfill the agreement by supporting Barzani to be president of Kurdistan region.[116] Eventually, Barzani and Talabani reached an agreement on the KDP's conditions.[117] Their agreement was that for the first term, Barzani should be elected by parliament. After that, their agreement provided the president would be elected by a direct vote of the people including to all the powers that KDP claimed.[118] Consequently, Barzani was elected for his first term through parliament. On June 4, 2005 parliament convened its meeting and in the June 14, 2006 Barzani has been elected as president of the Kurdistan region. At that time, the Kurdistan region system had shifted to a hybrid parliamentary which has some elements of semi-presidentialism, even though on the law of KNA it stated that the system of Kurdistan region is a parliamentary system.[119]、

The ministries of Peshmerga, Internal, and finance had remained separate and run by double minister of both PUK and KDP. The unification agreement of 2006 was not different, in most respects, from the 1992 power-sharing agreement because both provided that if the prime minister is KDP the deputy prime minister must be PUK. Also, the agreement allowed prime minister to 2 years in that position. It means that the prime minister of KDP has two years as prime minister, after which he should resign, and PUK's Prime ministers should be elected by

[115] *Id.*
[116] Mustafa, *supra* note 105, at 19.
[117] *Id* at 49.
[118] *Id* at 49-50.
[119] *Id* at 54.

the parliament with having KDP's deputy prime minister.[120] Practically, this mechanism of sharing power highly implicates on the entire region by creating two zones of administration. KDP and PUK have created "parallel administration."[121] PUK has gained full authority over Sulimanyah. KDP has extended its power over Erbil and Dohuk. These two zones were administrated through power-sharing agreements.[122] There were two Peshmerga ministries, two internal ministries, and two financial ministries. This double ministry continued until April 4, 2009.[123]

After 2009, parallel administration was reshaped in a different form: if the prime minister was KDP, the power of the prime minister was confined to direct the Erbil and Duhouk's affairs, and his deputy limited to direct Sulaimaniyah's affairs.[124] This division of power was also true to other ministers and their deputies.[125] The budget of the region was divided based on these two zones, not based of the fiscal system of unified government. For example, forty three percent of the Kurdistan region budget was designated to Sulimanyah. Likewise, fifty seven percent was designated to Erbil and Duhouk.[126] This splitting budget for two coffers continued until December 21, 2010.[127]

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[120] Yusuf Muhammad Sadiq, *Democracy Process and Problems in Iraqi Kurdistan*, ORSAM REPORT NO. 151, 13 (2013).
[121] MARIE STAHLSCHMIDT & EIGIL JOHANNISSON, GORRAN- JEMMY FOR PLURALISM IN IRAQI KURDISTAN 5(2012).
[122] *See* Kurdistan Parliament, Protokolakan [Protocols] No.64, at 456-457, 72&84 (2011).
[123] *See* letter from Qubad Talabany, KRG. Representative in US, to Martin S. Indyk, Director. Saban Center for Middle East Policy(June 8, 2009), http://www.brookings.edu/~/media/Research/Files/Papers/2009/6/kurdistan%20khalil/06_kurdistan_khalil_rebuttal.PDF
[124] *See* Kurdistan Parliament, Protokolakan [Protocols] No.64, at 148 (2011).
[125] *Id.*
[126] Yusuf Muhammad Sadiq, *supra* note 120, at13-14.
[127] *Id*

1.5 Emerging the political oppositions

Although real political opposition appeared after the 2009 election, [128] the wave of dissatisfaction and protesting began in 2005.[129] The political opposition at the beginning appeared as civil society and public demonstration as lack of service and criticizing the corruption that was widespread throughout the region.[130] Most of these demonstrations occurred in PUK's zone. These demonstrations also appeared in firmly controlled KDP's zone where the dissent journalist was killed. These actions triggered considerable protesting and criticizing of KDP and PUK's forces by acting unaccountably without respecting human rights.[131] These forces have engaged in torture and detaining the people without charges.[132] Sometimes, some Kurdish authority accused the protestors as foreigner agents or vandals as it happened in Halabja demonstration.[133]

Nonetheless, demonstrations and dissatisfaction were not capable of changing the polity which was dominantly controlled by PUK and KDP because of two reasons: First, PUK and KDP have prevented the people to participate in these demonstrations and dissatisfaction movements.[134] Second, there was not active political opposition to direct these demonstrations to specific goals.[135] Particularly, KIU (Kurdistan Islamic Union) and KIG (Kurdistan Islamic

[128] MARIE STAHLSCHMIDT & EIGIL JOHANNISSON, *supra* note 121, at 6.
[129] Nicole F Watts, *The Role of Symbolic Capital in Protest: State-Society Relations and the Destruction of the Halabja Martyrs Monument in the Kurdistan Region of Iraq,* 32 COMPARATIVE STUDIES OF SOUTH ASIA, AFRICA AND THE MIDDLE EAST 70, 80(2012).
[130] *Id.*
[131] *Id* at 71.
[132] *Id.*
[133] *Id* at 82.
[134] MARIE STAHLSCHMIDT & EIGIL JOHANNISSON, *supra* note 121, at 5.
[135] *See, Id* at 38.

Group) were very vulnerable to direct these demonstration and dissatisfaction moments because their activity was controlled and limited by PUK and KDP.[136]

The Goran movement, contrary to KIU and KIG, capitalized on these dissatisfaction movements by directing them in the 2009 election.[137] This directing was the beginning of the formation of the political opposition. The Goran movement was the reform wing inside PUK. It separated from the PUK due to its difference over renewing the party structures and its agenda.[138] The Goran movement announces itself as a social movement promoting social justice and rule of law for the region.[139] It criticized both PUK and KDP with nepotism and corruption in many different fields including public services, public procurements, construction projects, distributing public land, and abuse of the administrative power.[140]

In 2009 election, the Goran movement skillfully managed to direct public frustration in creating real political opposition party inside parliament.[141] The landscape of polity had shifted from bipartite powers to tripartite powers.[142] In this election, twenty-four lists contested for 111 seats, although only eleven lists were able to secure seats in the parliament.[143] The turnout was very high, with 78.6% participation according to Independent High Electoral Commission.[144] The PUK and KDP participated as one list, winning 57 % of the balloted votes. The Goran

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[136] *Id* at 6.
[137] *See*, *Id* at 38.
[138] Mohammed M.A Ahmed, *Kurdish Spring, Iraqi Kurdistan, in* THE KURDISH SPRING: GEOPOLITICAL CHANGES AND THE KURDS 96 (Mohammed M. A. Ahmed & Michael M. Gunter eds., 2013).
[139] *Id*; *See also* MARIE STAHLSCHMIDT & EIGIL JOHANNISSON, *supra* note 121, at 40; *See also* Editorial, *Change in Kurdistan: An interview with Nawshirwan Mustafa, Leader of the Movement for Change, Kurdish Opposition Party*(Wednesday, 16 Jun, 2010), http://www.majalla.com/eng/2010/06/article5567026.
[140] Mohammed M.A Ahmed, *supra* note 138, at 97.
[141] MARIE STAHLSCHMIDT & EIGIL JOHANNISSON, *supra* note 121, at 43.
[142] Andrea Plebani, *Iraq Towards 2014 Elections: A Socio-Political Perspective,* ISPI ANALYSIS NO. 196, 13(2013).
[143] Kurdistan Parliament, Mezhui Halbzhardni Khwli Seyam [*history of the Thirds Election of Parliament*] (last visited Jun.18, 2015) (Kr), *available at* http://www.perlemanikurdistan.com/Default.aspx?page=page&c=Parliament-History2009.
[144] Sam Dagher, *High Turnout in Iraqi Kurds' Elections*, THE NEW YORK TIMES (July 25, 2009), http://www.nytimes.com/2009/07/26/world/middleeast/26kurds.html?_r=0.

movement secured 24% of the balloted votes, and the Islamic parties with some other secular parties gained 12% of the balloted votes.[145] Also, the difference in this election from the 2005 election that the president of Kurdistan region was elected by the direct ballot.[146] Barzani was able to gain 69.60% of the voters among 12 candidates.[147]

Even though the PUK and KDP were capable of securing their strategic agreement and forming the government by gaining 57% of voters, [148] the political opposition's parties had a tremendous impact on the public through their media channel.[149] Predominantly, Goran media were flashing out the corruptions and nepotisms which the government was conducting for the benefit of PUK and KDP.[150] Besides the influences of the media, the Goran with two others, the Islamic Party - Kurdistan Islamic Union (KIU) and Kurdistan Islamic Group (KIG), formed the political opposition coalition.[151] In the beginning, the relation among the Goran, KIU, and KIG was not robust as appeared after February 17 of 2011.

The influence of the political opposition has appeared more robust since February 17 of 2011 and following incidents. At that date, the people of Sulimanyah, inspired by the Arab spring incidents, to show their solidarity with Egypt and Tunisia demonstrations, [152] gathered in Sara, the downtown of Sulimanyah city. After ending peaceful demonstration in Sara, dispersed

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[145] David Romano, *Central State Weakness and Kurdish Opportunities*, *in* THE KURDISH SPRING: GEOPOLITICAL CHANGES AND THE KURDS 67 (Mohammed M. A. Ahmed & Michael M. Gunter eds., 2013).
[146] James Danly, *The 2009 Kurdish Elections*, INSTITUTE FOR THE STUDY OF WAR, 7 (2009) *available at* http://www.understandingwar.org/sites/default/files/KurdishElections.pdf.
[147] Kurdistan Parliament, *supra* note 143.
[148] David Romano, *supra* note 145, at 67.
[149] Reporters without Borders, *Between Freedom and Abuses: The Media Paradox in Iraqi Kurdistan*, 9 (2010) *available at* http://en.rsf.org/img/pdf/rsf_rapport_kurdistan_irakien_nov_2010_gb.pdf.
[150] MARIE STAHLSCHMIDT & EIGIL JOHANNISSON, *supra* note 121, at 41-42; *See also* Mohammed M.A Ahmed, *supra* note 138, at 108; *See also* Ben Smith, *The Kurds: New Perspectives*, COMMONS BRIEFING PAPERS SN06708, 9 (2013), *available at* http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06708.
[151] BETH K. DOUGHERTY & EDMUND A. GHAREEB, HISTORICAL DICTIONARY OF IRAQ 250 (2013); *See also* Nicole F. Watts, *Democracy and Self-Determination in Kurdistan Region of Iraq*, *In* CONFLICT, DEMOCRATIZATION, AND THE KURDS IN THE MIDDLE EAST: TURKEY, IRAN, IRAQ, AND SYRIA 160 (David Romano & Mehmet Gurses eds., 2014).
[152] Mohammed M.A Ahmed, *supra* note 138, at 96.

demonstrators rallied to Salm Street. They passed by the fourth branch of KDP, and a tension occurred there that led these dispersed demonstrators to throw stones towards the fourth branch of KDP.[153] KDP's guards reacted and opened fire on the demonstrators. As a result of this incident, two protestors were killed, and forty-three were injured in half an hour.[154]

This incident exacerbated relation between Goran and KDP because KDP pointed the finger to Goran supporters and vice versa.[155] The Goran branch was either burned or plundered in Erbil city, Dohuk city, Soran district, Bnaslaw district, and the Shaqlawa district during the plundering and burning process.[156] The NRT TV, an independent media channel, was burned by unknown militia due to the fact NRT was vigorously covering the protestors' activities.[157] KDP moved its special forces, Zervani forces, with the pretext of protecting the fourth branch of KDP. Even moving Zervani forces was without the permission of the parliament and the president. [158] After February 17 of 2011, thousands of demonstrator flooded on the street protesting KDP and PUK of corruption and nepotism. The KDP's student association shutdown Salahaddin University for one month by sending students to home in order to prevent the demonstration in Erbil.[159] The mainstream of protesting was about the economic monopolization, freedom of the speech, and freedom of the press.[160] This monopolization has reduced the opportunity of those

[153] Liz Sly & Ali Qeis, *Two Iraqi Protesters Killed Amid Unrest In Normally Peaceful Kurdistan*, WASHINGTON POST FOREIGN SERVICE (February 17, 2011), http://www.washingtonpost.com/wp-dyn/content/article/2011/02/17/AR2011021703950.html; *See also* Kurdistan Parliament, Protokolakan [Protocols] No.64, at 449 (2011).
[154] Kurdistan Parliament, Protokolakan [Protocols] No.64, at 45 (2011).
[155] Kurdistan Parliament, Protokolakan [Protocols] No.64, at 82 (2011); *See also* BETH K. DOUGHERTY & EDMUND A. GHAREEB, HISTORICAL DICTIONARY OF IRAQ 250 (2013)
[156] Kurdistan Parliament, Protokolakan [Protocols] No.64, at 15&84 (2011).
[157] Id at 15; *See also* Alice Hlidkova, *Media Under Fire in Iraqi Kurdistan*, DOHA CENTER FOR MEDIA FREEDOM (Wed, 27/04/2011), http://www.dc4mf.org/en/content/media-under-fire-iraqi-kurdistan.
[158] *Id* at 45.
[159] Kurdistan Parliament, Protokolakan [Protocols] No.64, at 432 (2011).
[160] *See* Aylin Ünver Noi, *The Arab Spring, Its Effects on The Kurds, And The Approaches of Turkey, Iran, Syria, And Iraq On The Kurdish Issue*, RUBIN CENTER RESEARCH IN INTERNATIONAL AFFAIRS,(July 1, 2012),

people who do not have support from the KDP and PUK. Overall, 10 demonstrators were killed and 250 others were injured in these demonstrations.[161]

By bringing the demonstrators demand to the parliament, the political opposition bloc gradually represented peoples' dissatisfaction movements. They become a voice of the demonstrators in the parliament. Particularly, when the Parliament of Kurdistan was convened for an emergency session to discuss the recent incidents and demonstrator's demands, KIU, KIG, and the Goran movement, in that session, almost requested the same demand, which was reflecting of demonstrators demands and fundamental reform in the polity, respecting rule of law, and emphasizing on the government accountability to the parliament and the people.[162] Moreover, the Goran movement proposed the motion of dissolving the parliament and governmental cabinet. In its place, the interim government should be established to unify and nationalize Peshmerga, security forces (Asaysh, and Counter-Terror forces) because these forces had been divided between PUK and KDP since 2005 despite the unification of the government.[163] In addition, Goran demanded pre-dated election and the returning of the draft constitution of the Kurdistan region, which was approved and set forth to referendum by the parliament in 2009, to the parliament to be modified by consensus of all political powers.[164]

Additionally, in that emergency session, the Parliament responded to demonstrators and protestors by approving Resolution No.1 of 2011. This resolution includes two track solutions: first, the immediate solution to the current crises including criminal investigation on killing demonstrators, banning military and militant moving from one city to another, providing remedy

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http://www.gloria-center.org/2012/07/the-arab-spring-its-effects-on-the-kurds-and-the-approaches-of-turkey-iran-syria-and-iraq-on-the-kurdish-issue/

[161] Human Rights Watch, *Iraqi Kurdistan: Free Speech Under Attack* (February 10, 2013), http://www.hrw.org/news/2013/02/09/iraqi-kurdistan-free-speech-under-attack.

[162] Kurdistan Parliament, Protokolakan [Protocols] No.64, at 15-20 (2011).

[163] *Id* at 16.

[164] *Id.*

for those who were injured or harmed in property, prohibiting peshmerga to interfere with internal political issues, and interrogation of the prime minister, minister of peshmerga and minister of internal for power abuses by government officials and others measures.[165]

Second, the long-run solution was conceptualized in article 16 by stating all those laws and statutes that have national and strategic aspect of the public interest should be enacted in the Parliament with consensus of all political factions.[166] This provision was a reflection of demonstrators' demanded that the draft constitution should be reviewed in the light of the modern principle of democracy, and the president of Kurdistan region should be elected inside parliament instead of direct popular voting. [167] Explicitly, this provision was designed for reconciliation of the opposition bloc (Goran, KIU, and KIG) and the government bloc (PUK and KDP) over the draft constitution.

Nonetheless, the demonstrators in Sulimanyah were suppressed cruelly on April 18 of 2011.[168] Further, these aforementioned provisions of the resolution were only some immediate solutions implemented by the government. The long-run solutions were not implemented, including returning the draft constitution to the parliament.[169] Despite these facts, Nechervan Barzani, KDP's nominee to be prime minister after Barham Salah,[170] tried to pull the political opposition bloc to participate in the government cabinet.[171] The Goran movement refused to take part in the government cabinet because the promises of PUK and KDP to reform in the political

[165] *Id.*
[166] *Id at* 120.
[167] *Id* at156.
[168] David Romano, *supra* note 145, at 66.
[169] *See* Kurdistan Parliament, Protokolakan [Protocols] No.64, at 304 & 239 (2011).
[170] Mohammed M.A Ahmed, *supra* note 138, at 100.
[171] *Id* at 102.

system were not being implemented especially the long-run solution including the draft constitution reconciliation.[172]

Extending the term of Barzani by the parliament provided new venues for political opposition to criticize the KDP and PUK and to direct the public's dissatisfactions.[173] Before the 2013 election for the Kurdistan parliament and the presidency of Kurdistan region, the KDP demanded that PUK extend Barzani's presidential term for a third term because Barzani already had served both of his two terms (2005 to 2009 and 2009 to 2013). Legally, it is impossible to reelect himself for the third term.[174] The KDP wanted to set the draft constitution to a referendum because the article 64 of the draft will allows Barzani to reelect himself ,[175] or to reinterpret or amend the law of presidency No. 1 of 2005.[176] However, the PUK and KDP brought the draft of law that allows Barzani to remain on the presidency seat from August, 20, 2013 to August, 20 ,2015 until the consensus would be concluded on the draft constitution among the political factions of the parliament.[177]

The political opposition parties considered extending the term of Barzani as the coup d'état on the people's right to vote and legitimacy of the political system because, according to

[172]*See* Mohammed M.A Ahmed, *supra* note 138, at 102-103 (The influence of the political opposition affected the strategic agreement between KDP and PUK. Talabani understood that the position of PUK in Sulimanyah was getting weak especially after suppressing the demonstration in April 18 of 2011. On the September 24 of 2012, both Talabani and Mustafa agreed on the revising the draft constitution and forming committee to facilitate their cooperation in the future. This meeting between PUK and Goran movement would be actually consider as beginning of exacerbating the relation between KDP and PUK.); *See also* Kurdistan Parliament, Protokolakan [Protocols] No.64, 203-208 & 192-272 (2011).

[173]*See* Raman Omar, Oppozision: Ta Esta Basi Xospishandan Nakrawa [*Political Opposition Party: Up to Now, There Is No Any Plan for Initiating Demonstration*], AWENA NEWSPAPER, July. 2, 2013, at 2.

[174] Article 3, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).

[175] Article 64, Rashnusi Doustouri Haremi Kurdistan [*The Draft Constitution of Kurdistan Region*] of 2009 ("The President of the Kurdistan Region shall be elected for a term of four years, beginning on the date on which he takes the constitutional oath. He may only be reelected once for a second term.")

[176] *See* Kamaran Mhammed, Dastur la Newan Ashub u Kherda[*The Constitution between Chaos and Prosperity*], AWENA NEWSPAPER, May.14, 2013, at 6; *See also* Kamal Gezllay, Kamal Karkuki: Nardni Tebini bo Parlamani Kurdistan Ba Manay Garanaway Prozhay Dastur Nayat[*Kamal Kirkuki: Sending Comments to Kurdistan Parliament About the Constitution Does Not Mean That The Darft Constitution Has Been Returned*], AWENA NEWSPAPER, June.18, 2013, at 4.

[177]*See* Article 1, The Law of Extending the President Mandate No.19 of 2013 (Kurdistan Region-Iraq).

current law of the presidency, the president should be elected by direct popular vote and its allowed only for two terms.[178] The Goran movements' critique affected the PUK voters in 2013 election because, to some degree, Goran and PUK have the same grassroots mostly in Sulimanyah governorate.[179] Extending Barzani' presidency's term by PUK was one factor that affected PUK's grassroots to vote for Goran movement.[180] The Goran movement has got 24 seats, and it lost one seat comparing to the previous election.[181] The KIU gained 10 seats and increased 4 seats comparing to the previous election. KIG secured 6 seats increased 2 seats comparing to the previous election. KDP have increased to 38 seats from 30 seats.[182] PUK gained 18 seats decrease 11 seats. Despite the allegation of forgery in the electoral process, [183] the political opposition parties have kept their influences in 2013 elections.

1.6 The consensus government

The 2013 election has altered the political landscape in the Kurdistan region. Notably, when the Goran movements placed itself as second political player after KDP.[184] However, this shifting was different from other forming government because KDP was no longer capable of forming the government with PUK due to the fact PUK considerably lost its seats.[185] PUK could

[178] Soran Kamaran, Parlemantarik, Drezh Krdnaway Mawy Sarokatyi Pechawanya Dastur w Yasaya[*A Member Of Parliment; Extending the Barzani's Mandate Is Against the Constitution And Law*] AWENA NEWSPAPER, July. 9, 2013, at 7; *See also* Article 3&2, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).
[179] Hemen Mamand, Saadi Pera: La Hawler Saxtakari Zoor Krawa[*Saadi Pera: In Abril There Were Votes Forgery*], AWENA NEWSPAPER, October.1, 2013, at 4.
[180] National Democratic Institution, *Iraq Election Watch: KRG Parliamentary Elections*, 1 (2013), *available at* https://www.ndi.org/files/NDI-Iraq-Election-Watch-Ed7.pdf
[181] Kurdistan Parliament, *supra* note 143.
[182] *See* Salah Nasrawi, *Kurdistan Deadlocked Over Government*, AL-AHRAM WEEKLY (16 January, 2014), http://weekly.ahram.org.eg/News/5158/19/Kurdistan-deadlocked-over-government.aspx.
[183] Hemen Mamand, *supra* note 179, at 4.
[184] Mohamed Zangeneh, *Kurdistan Region close to forming government—local media,* ASHARQ AL-AWSAT (Thursday, 27 Mar, 2014), http://www.aawsat.net/2014/03/article55330516.
[185] *See* Salah Nasrawi, *supra* note 182.

no longer bargain as it was the case in 2009 and 2005.[186]KDP's nominated candidate to form a government was Nechirvan Barzani.[187] KDP from the beginning of the negotiating on government wanted the consensus government by bringing the opposition bloc to get their share from the government cabinet. The vigorous contest was among the Goran and PUK. Goran argued that it was entitled to receive government portfolios based on being second powers. The PUK argued that it had the right to receive the government portfolios based on historical prerogative.[188]

All political powers try to adapt to the new reality that the election's result brought.[189] Of course, the impact of this new reality reflected on the forming government that took eight months and 28 days to obtain the vote of confidence by the Parliament.[190] KIU, KIG, and Groan movement has participated in government cabinet with the condition of implementing the fundamental reform in the political system including revising the constitution, changing the system to parliamentary, and tackling the issue of corruption and nepotism.[191] The PUK has joined the government reluctantly; this reluctancy could associated with the fact that the government could be formed without the participation of PUK. On the June 18 of 2014 the consensus government has been established by participating all political powers.[192]

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[186]Alison Pargeter, *Iraqi Kurds Pull Together in Time of Trouble*, AL JAZEERA CENTER FOR STUDIES (Wednesday 23 July 2014), http://studies.aljazeera.net/en/reports/2014/07/2014723135044457571.htm.
[187] *See* Article 1, Resolution No.6 of 2014 (Kurdistan Region-Iraq).
[188] Alison Pargeter, *supra* note 186.
[189] *See* Salah Nasrawi, *supra* note 182.
[190] See Preamble &Article 1, Resolution No.12 of 2014 (Kurdistan Region-Iraq) (The election was held on September 21 of 2013 and the consensus government was formed on June 18 of 2014.).
[191] *See* Salah Nasrawi, *supra* note 182.
[192] Article 1, Resolution No.12 of 2014 (Kurdistan Region-Iraq).

This new cabinet has started with two big difficulties. The Kurdistan region's budget was held by the federal Iraqi government, [193] and ISIS has controlled several Kurdish towns of Kurdistan region. These difficulties could postpone the reform packages of political opposition for a while.[194] Apparently in this new composition, the parliament has less experienced the political tension inside the parliament comparing to the previous parliament. Partially this could be related to the nature of the consensus government because all the draft of laws before forwarded to discussion, all heads of factions agrees on them. Then, they will pass it to parliament for debate and discussion.[195] Nevertheless, the political tension over the reform in the polity and the constitution could emerge while the Barzani's presidency is getting to elapse.[196] This consensus government might not resist the accumulated constitutional problems that might appear in the future.[197]

1.7 The draft constitution of Kurdistan region

In the course of history, the draft constitution has been utilized mainly to enhance the Kurdistan region's authority against the Iraq government and it has been used as consolidation the power of PUK and KDP against internal players of KRG. The draft constitution has been utilized for enhancing and consolidating the powers of the Kurdish cause in Iraq since 1974.[198] It was first initiated by as the proposal for Iraqi central government in 1974 -part of the peace

[193] Kamal Chomani, *The Challenges Facing Gorran to Change*, THE KURDISH POLICY FOUNDATION (September 5, 2014), http://kurdishpolicy.com/2014/09/05/the-challenges-facing-gorran-to-change/.
[194] Alison Pargeter, *supra* note 186.
[195] *See* Aso Saraway, Lam Khwlay Perelemanda Kas Tapell ley Nadat [*In This Parliament Term, No One Would Play Dram*], AWENA NEWSPAPER, September.30, 2014, at 9.
[196] Soran Omer, Op-ed, Ba Nagaynawa 30 Huzayraniki tr [*Let's Do Not Reach Another August 30th*], AWENA NEWSPAPER, January. 6, 2015, at 5.
[197] *Id.*
[198] *See* Lezhnay Pedachwnawy Dastur, Raporti Lezhnai Pedachwnaway Prozha Dasturi Harem [*The Drafting Committee Report on The Draft Constitution of Kurdistan Region*], 24 (2006), *available at* http://www.gulan-media.com/heftename/h605/dastur-%20anjumani%20nishtmani.doc.

agreement.[199] In that time, the draft was titled as the Basic Law of the Federal State of Kurdistan.[200] The Iraqi central government, however, drafted and ratified the autonomy law instead of the Kurdish draft.[201]

In addition to the draft of 1974, the Kurdistan region has four more drafts. The second draft was proposed to the Kurdistan national assembly by thirty-three members of KDP and PUK in 1992.[202] However, it was not approved and remained as the draft.[203] The third draft of the constitution including 84 articles was adopted by the National Assembly of Kurdistan region (the parliament of Kurdistan region) through the resolution 26 of 2002.[204] This resolution further obligated all political parties to bind by this draft as the final draft of the constitution.[205] This draft was written by the committee were consisted of 11 members among judges, university professors, and lawyers. This committee in their drafting process depended on the draft of 1974.[206]

In 2005, the Iraqi federal constitution was adopted by the people of Iraq. The new Iraqi constitution has required the revising of the draft constitution of Kurdistan region in the light of Iraqi federal constitution. [207] The Kurdistan parliament enacted the resolution no 4 of 2005.[208] This resolution stipulated revising the draft of 2002, and the forming the drafting committee to

[199] *Id.*
[200] *Id at 24.*
[201] Id at 24-25;
[202] DENISE NATALI, *supra* note 55, at 33 n.7.
[203] *See* GARETH R. V. STANSFIELD, *supra* note 66, at 229 n.36.
[204] Resolution No. 26 of 2002, *Al-Waqā'i Kurdistan* [Kurdistan Official Gazette] 38 of December. 12, 2002, at 1 (Kurdistan Region-Iraq).
[205] Article 3, Resolution No. 26 of 2002, *Al-Waqā'i Kurdistan* [Kurdistan Official Gazette] 38 of Decmber.12, 2002, at 1 (Kurdistan Region-Iraq).
[206] *See* Lezhnay Pedachwnawy Dastur, *supra* note 198.
[207] *Id* at 24.
[208] Resolution No.4 of 2005, *al-Waqā'I Kurdistan* [Kurdistan Official Gazette] 61 of July.16, 2005, at 10 (Kurdistan Region-Iraq).

revise it.[209] The drafting committee was created by resolution No 5 of 2005.[210] This committee mainly was directed by PUK and KDP' members of the parliament.[211] This committee started on September 6, 2005 to August 22 of 2006.[212] They produced the draft of 2006 which consists of 160 articles.[213] Also, it can be considered as a fourth draft.

The approving the draft of 2006 and referendum on it were neglected until the end of 2009. [214] While the Goran was emerging as the political opposition, [215] both PUK and KDP were aware that Goran would be an influential political player in the parliament, and it would create obstacles to their agenda.[216] The parliament extended the legal term of itself by the majority despite the fact that legally the parliament term was served for four years,[217] and its term had ended since it functioned four years from the date of its first convention.[218] The extension was with the pretext that the parliament did not approve the public budget.[219] The parliament term, for this reason, should be extended in order to approve the public budget.[220] This extending was part of the political game to use the draft constitution as a powerful tool to consolidate KDP and PUK powers against the other political players apparently since 2009.[221]

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[209] Article 1&2, Resolution No.4 of 2005, *Al-Waqā'i Kurdistan* [Kurdistan Official Gazette] 61 of July.16, 2005, at 10 (Kurdistan Region-Iraq).
[210] Resolution No.5 of 2005, *Al-Waqā'i Kurdistan* [Kurdistan Official Gazette] 61 of July. 16, 2005, at 11 (Kurdistan Region-Iraq).
[211] Lezhnay Pedachwnawy Dastur, *supra* note 198, at 25.
[212] *Id* at 33,
[213] *Id* at 24.
[214] *See* Editorial, Parlamni Mawa Basrchw Dastur Hal Daprukenyt [*The Expired Parliament Approves the Draft Constitution in a Rush Way*], June.14, 2009, at 1.
[215] *See* Reben Fatah, Parti u Yakti Prozhay Dastur wak Propaganda Bakar Dahenen[*PUK and KDP use the draft constitution as a part of propaganda campaign*], ROZHENAMA NEWSPAPER, June.14, 2009, at 3.
[216] *Id.*
[217] Falah Najem & Ibrahim Ali, Yakgrtu W Komal Pashiman Dabnawa [*KIU and KIG Retreated From Their Position*], ROZHENAMA NEWSPAPER, June. 24, 2009, at 2.
[218] *See* Resolution No.6 of 2009, *Al-Waqā'i Kurdistan* [Kurdistan Official Gazette] 100 of June. 1, 2009, at 29 (Kurdistan Region-Iraq).
[219] *See* Reben Fatah, *supra* note 215.
[220] *Id.*
[221] *Id.*

On June 22, 2009, forty members of the parliament boycotted the parliament's session as protesting the drafting process and setting the date of the referendum on it. Mohammed Hakim, member of KIG's politburo and member of the parliament, stated, "PUK and KDP will vote for the draft whether we are with it or not." Also he added, "Barzani explicitly told us that the election day of the parliament and referendum on the draft will be the same date."[222] In the one session of the extended term of the parliament, PUK and KDP brought another draft constitution, which was different from 2006 draft, and it includes 122 articles. [223]Theoretically, this draft could be considered as a 2009 draft. Kurdistan Parliament approved the draft of 2009 by a majority of its members during extend period of the parliament.[224] This approving process, nevertheless, has several legal procedural defects. For instance, any statutes or laws must be scheduled before in the parliament's agenda in order to establish notice to the members of the parliament. Otherwise, any statute without a scheduled timetable is considered as void according to article 54 section 2 and 3 of the parliament by-law. Further, any statute before approving must have two readings. The first reading should provide the brief introduction of the bill in the parliament sessions after that it must be sent to specialized committees to study it.[225] Second reading is after period when the specialized committee have concluded the opinion about the bill and they formatted it as legal provisions.[226] Then, the Member of Parliament has prerogative to discuss all of its content. After discussion, the bills will be ready for voting article by article.[227]

In addition, there were many claims around the committee of the drafting and the parliament's actions related to the draft. There were allegations that the draft committee changed

[222] Falah Najem & Ibrahim Ali, *supra* note 217.
[223] *See generally* Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009, *available at* http://www.perlemanikurdistan.com/files/sitecontents/100809083313.pdf.
[224] *See* Editorial, *supra* note 214, at 1.
[225] Article 72, Section 2, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).
[226] Article 70, Section 2-4, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).
[227] Article 72, Section 3, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).

some part of the draft without knowledge of the other members.[228] The Goran movement and some civil activists argued that the parliament itself after June 4, 2009 had lost it legitimacy.[229] It is not allowed to Parliament to extend its term in order to approve the draft constitution during this critical time. Some civil activist argued that it is not legitimate to vote on the draft constitution because the people did not have enough time to read its content and acknowledge its implications.[230] To more illustrate, the draft of 2006 was published and the draft of 2009 was not published at that time.[231]

This draft was approved by the statute, which is also set July 25, 2009 as the date of the referendum on it. [232] The statute stipulated that the draft constitution must be considered enforceable if the majority of the voters approved it.[233] The independent high electoral commission of Iraq (IHECI), however, refused to conduct a referendum due to logistics and procedures.[234] The after receiving the IHECI's respond, Kurdistan parliament enacted another statute to determine the issue of the referendum date. It provides another procedure that the date of the referendum must be set by coordination of parliament presidium and the council of ministers.[235]

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[228]Editorial, *supra* note 224, at 1 (The speaker of the parliament introduced the draft constitution and referendum's draft law to be approved in the same session. He gave all members of the Parliament 45 minutes to discuss a content of the draft even before no one had seen them except the drafting committee.)

[229] Editorial, Shapoli Narazayakn Dzhi Pasnadkrdiny Dasturi Haremen [*Dissatisfaction Movements Against Approving the Draft Constitution*], ROZHNAMA NEWSPAPER, June.21, 2009, at 2.

[230] *Id.*

[231] Hawre Tofiq, Baraw halmati Na bo Dastur Pala [*Toward a Campaign of not to Have the Rushed Constitution*], ROZHENAMA NEWSPAPER, June. 24, 2009, at 9.

[232] Article 1, Section 2, First Amendment (of Law No.16 of 2008) Law No.9 of 2009 (Kurdistan Region-Iraq).

[233] Article 4, First Amendment (of Law No.16 of 2008) Law No.9 of 2009 (Kurdistan Region-Iraq).

[234] Radio Free Europe, *Kurdish Parliament Postpones Referendum on Constitution*(July 10, 2009),http://www.rferl.org/content/Kurdish_Parliament_Postpones_Referendum_On_Constitution/1774043.html; *See also* Joost Hiltermann, *Elections in Iraqi Kurdistan: Results and Implications*(1 Jan 2010), http://www.crisisgroup.org/en/Regions%20Countries/Middle%20East%20-%20North%20Africa/Iraq%20Iran%20and%20the%20Gulf/Iraq/op-eds/elections-in-iraqi-kurdistan-results-and-implications.aspx

[235] Article1, Section 2, Second Amendment (of Law No.16 of 2008) Law No.10 of 2009 (Kurdistan Region-Iraq).

However, the issue of the draft constitution was not put in the referendum. After 2011, the demonstration of February directed the draft constitution. The resolution 1 of 2011 implicitly furnished another venue to the draft that should be approved based on the consensus of all political factions.[236] In 2013, Barzani presidency's coming to the end, the debate over the referendum on the draft constitution came back again because the article 64 of the draft of constitution allows Barzani to reelect himself to third and fourth term.[237] Abdulrazaq Sharif, media director of PUK's politburo, stated that KDP offered PUK three options. These options are revoking the strategic agreement between KDP and PUK, returning Kurdistan regional government for PUK's zone and KDP's zone, and extending Barzani presidency term.[238] The PUK chose the third option and with KDP passed the statute that is extending Barzani's term for two years. While extending presidency term, the political parties should seek on getting consensus on the draft.[239]

After 2013 election, all political factions have participated in the forming government.[240] Sixty one members of parliament proposed the draft of the statute that determine the process of creating a new committee to revise the draft constitution of 2009. The draft statute was approved in April 13 of 2015.[241] Approving of the revised draft of the constitution should be based on the consensus of all political parties. This new committee was formed and consisted of 21 members to finish revising the draft in the three months. The distribution of 21 seats to political parties

[236] Article 16, Resolution No.1 of 2007 (Kurdistan Region-Iraq).
[237] Article 64, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009 (The President of the Kurdistan Region shall be elected for a term of four years, beginning on the date on which he takes the constitutional oath. He may only be reelected once for a second term).
[238] Editorial, Marja Wlayati Brzani La dw Sal Tenapryt? [*Is There any Requirement That Barzani Presidency's Term do Not Exceed Two Years Extension*?], AWENA NEWSPAPER, July.2, 2013, at 3.
[239] Article 2, The Law of Extending the President Mandate No.19 of 2013 (Kurdistan Region-Iraq).
[240] *See* Official Website of Kurdistan Region Government(Last visited June.22, 2015), http://dfr.gov.krd/p/p.aspx?p=88&l=12&s=030400&r=403
[241] *See* the Law of Preparing The Draft Constitution of Kurdistan Region No.4 of 2015.

was based on the Sainte-Laguë method. Thus, KDP received 7 seats. Initially, PUK received 3 seats, but Goran gave up one of its seats for PUK. Thus, PUK's seats became 4 seats. Goran received 4 seats after abounding one of its seats to PUK. KIU received 2 seats. KIG received 1 seat.[242] Turkmen and Syric minorities received 2 seats. The small political parties which have one seat in the parliament, they received 1 seat in the committee.[243]

The overall revised draft of the constitution should be approved by the vote of two-third of members of the parliament. The draft also should be approved by the majority of voters in general referendum. Nevertheless, the committee of revising draft should decide on each article by consensus. Currently, this draft has logged at this stage. Also. There is the likelihood of escalating political tension when the Kurdistan region is getting close to August 20 of 2015 because the extended Presidency term comes to end. The scenarios of the draft will be an open question.

[242] N. M. Mohammad ,*Committee Of Constitution Preparation Project: We Are Independent And Not Related To Anything Or Anyone,* THE KURDISH GLOBE (01 June 2015, 03:49 GMT), http://www.kurdishglobe.net/article/2E127A5FCD182739BFE6DCB0CEC07F4B/Committee-of-constitution-preparation-project-we-are-independent-and-not-related-to-anything-or-anyone-.html

[243] Editorial, *Parliament Agree On Kurdistan Draft Constitution Committee*, WAAR MEDIA(2015/05/04 - 4:46 PM), http://waarmedia.com/english/parliament-agree-on-kurdistan-draft-constitution-committee/

Chapter II:

Introduction:

This chapter begins by elaborating the concept of political accountability. It addresses the mechanism of accountability and its relations with a form of government. Then, this mechanism is applied to the form of government in KR under existing structures and draft structures in relation to the answerability and enforcement phase of political accountability. It addresses the design defects inherent in the existing system (a form of government, Kurdistan region Security Council, the sovereignty of parliament) and its impact on political accountability. It elaborates on the contextual factors that have an impact on the political will of the Parliament in exerting its powers including mass party, party discipline, electoral system.

2.1. Political Accountability

The concept of political accountability is a debatable notion in terms of definition and its content.[244] Political accountability, moreover, streams from the theory of "delegated powers" or the ownerships of authority. This theory has been endorsed in liberal democracies that the people are sovereigns, and the government gains the legitimacy by having a delegation of authority from the people. Ultimate ownership of authority lay in the people, and the government should exercise governmental powers with the name and will of the people. In this context, the people are principal, and the government is an agent to act on behalf of the principal (people).

[244] RICHARD MULGAN, HOLDING POWER TO ACCOUNT: ACCOUNTABILITY IN MODERN DEMOCRACIES 5 (2004); *See also* Józef Niżnik, *Theoretical and Empirical Dimensions of Accountability*, *in* POLITICAL ACCOUNTABILITY: CONCEPTUAL, THEORETICAL AND EMPIRICAL DIMENSIONS 7, 11 (Józef Niżnik & Natalya Ryabinska eds., 2007) (Niżnik contends that the political accountability and its contents could involve "Norms and procedures" of institutions, "social-psychological factors," "public awareness" including activity of "civil society," influence of the media.).

Therefore, the government is accountable for its actions due to the delegated powers relation between the government and the people.[245]

Despite different definitions of political accountability, there are many common themes. Erkkilä explains political accountability as "[t]hose who govern have to answer for their actions to a wider public either directly, when politically elected or appointed, or indirectly as subordinates of politically elected bodies. If they fail to do so, they can be substituted in democratic elections. This constant threat forces the ruling government to respond to the demands of a constituency, who can thus hold their government to account"[246] Likewise, Mulgan contends that political accountability requires "the account-holder to investigate and scrutinize the actions of the agent by seeking information and explanations and the right to impose remedies and sanctions. Conversely, for the accountor, the agent, accountability implies the duty to inform and explain to the account-holder and to accept remedies and sanctions."[247]

Moreover, Schedler conceptualizes political accountability as two phases that are the common traits among abovementioned definitions. First, the "answerability" phase where the agent is responsible for responding to the questions and inquiries of the principal and the principal has the right to pursue and obtain information from the agent in conjunction with

[245] *See* RICHARD MULGAN, HOLDING POWER TO ACCOUNT: ACCOUNTABILITY IN MODERN DEMOCRACIES 12-13 (2004) (Although the delegated powers concept is substantial to hold the government accountable, it implies narrow scope of political accountability which implicates the accountability of the government to citizens only. Consequently, it may exclude the accountability of the government to "temporary residents or transient foreigners." Hence, The theory of "affected rights" in conjunction with the theory of "delegated powers" expands the government accountability by asserting that government possess "coercive powers" and its powers impacts the "interest and rights" of those persons who lives under the auspices of the government. Accordingly, the government should be held accountable by virtue of its powers); *See also* Tero Erkkilä, *Governance and Accountability-A Shift in Conceptualisation,* 31 PUBLIC ADMINISTRATION QUARTERLY 1, 10(2007)

[246] Tero Erkkilä, *Governance and Accountability-A Shift in Conceptualisation*, 31 *Public Administration Quarterly1,* 10(2007)

[247] RICHARD MULGAN, HOLDING POWER TO ACCOUNT: ACCOUNTABILITY IN MODERN DEMOCRACIES 10 (2004).

agent's justifications. [248] Second, the "enforcement" phase purely implies a carrot and stick approach. [249] If the answers and justifications of the agent do not convince the principal, the principal has the right to impose an appropriate punishment to discourage the agents from inappropriate behavior.[250] Further, neointuitionalists not only highlight the significance of questionings and inquiries about the agent's actions but they also emphasize the sanction approach which incentivizes the agent to act appropriately.[251] The role of sanctions (enforcement) is fundamental to hold an agent accountable because revealing misconducts of the agent without punishment is perceived as "window dressing" and doesn't confine the behavior of the agent. [252]

However, the rigidity of the sanction (enforcement phase) and its degree vary in the political context.[253] The sanction could be "public exposure" or discharge from public office.[254] Sometimes if the violation of the agents is extreme, sanctions may include a trial.[255] The degrees of sanctions are characterized in the following three examples. The motion of censure, which is exercised by the legislative branch and mainly common in a presidential system, exposes the government officials to the public's criticism. It has implications on their reputations.[256] It can be found in Argentina, Burundi, Paraguay, Uruguay, and Namibia.[257] The motion of no-confidence and interpellation, which are mainly widespread in a parliamentary system and semi-presidential

[248] Andreas Schedler, *Conceptualizing Accountability*, *in* THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 13, 17 (Larry Diamond & Marc F. Plattner eds., 1999).
[249]*See Id* at 14-15.
[250]*Id* at 15.
[251]*Id* at 16.
[252]*Id.*
[253]*Id.*
[254]*Id.*
[255]*Id.*
[256] *See* RICCARDO PELIZZO & FREDERICK STAPENHURST, GOVERNMENT ACCOUNTABILITY AND LEGISLATIVE OVERSIGHT 10-11(2014) (It should be noted that, in some presidential systems, the motion of censure may lead to impeachment process as it can be observed in Liberia.).
[257] *Id* at 34 tbl.3.1.

system, could be categorized as dismissal from the public office.[258] It can be carried out against a prime minister or ministers.[259] The impeachment is a punishment for president or other public officials for violation of a constitution.[260] For instance, in the United States, impeaching a President involves conviction from house and trial in the Senate by the Judiciary.[261]

The accountability concept has been classified for many typologies in a political context.[262] However, this analysis deals with a dominant understanding of accountability that divided the accountability by horizontal and vertical accountability.[263] Horizontal accountability occurs among the symmetric government branches or government agencies that hold each other accountable. The "checks and balance" mechanisms among the government branches is a formula of horizontal accountability which take place among symmetric actors.[264] Examples of symmetric players are the "executive, legislative and judiciary."[265] Moreover, there are independent agencies in modern democracies which plays a significant role in scrutinizing the action of other branches of government such as ombudsman and general auditing."[266] The effectiveness of horizontal accountability depends on cooperation among intrastate institutions in checking each other's and having de jure and de facto autonomies.[267] Conversely, the vertical accountability implies asymmetric relationships among the actors. In other words, this relationship bears unbalanced authority between the accouter (agent) and account-holder

[258] *Id* at 12.
[259] *Id* at 11&13.
[260] PELIZZO & STAPENHURST, *supra* note 256, at 12; *See also* Akhil Reed Amar, *A Symposium on the Impeachment of William Jefferson Clinton: Reflections on the Process, the Results, and the Future*, 28 HOFSTRA L. REV. 291, 292-293(1999).
[261] PELIZZO & STAPENHURST, *supra* note 256, at 12.
[262] *Id* at 3-5.
[263] *Id* at 3.
[264] Andreas Schedler, *supra* note 248, at 23.
[265] *Id.*
[266] PELIZZO & STAPENHURST, *supra* note 256, at 3.
[267] Guillermo O'Donnell, *Horizontal Accountability in New Democracies*, *in* THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 29, 41 (Larry Diamond & Marc F. Plattner eds., 1999).

(principal).[268] The idea of vertical accountability requires the public to restrain the government official. The electoral accountability of politicians towards citizens is the form of vertical accountability.[269]

Vertical accountability and horizontal accountability are useful criteria to determine the trait of democracy and its features because accountability concept reflects in "procedural ….definition of democracies."[270] "[C]hecks and balance," which is apparatus of horizontal accountability, is invented to protect the democracies from self-interested politicians and preserving democracies from its perils.[271] The election process, which is an apparatus of vertical accountability, is created to avoid system transformation from democracy to oligarchy.[272] Moreover, in those countries which have a "competitive authoritarian regime" or "electoral autocracies" incumbent regimes tend to reduce vertical and horizontal accountability by eliminating those institutions that "check political actors", or by patronizing voters, or by committing "electoral fraud", or by extending the term of an incumbent president. In those regimes, increasing corruption and abuse of human rights are highly correlated with decreasing horizontal and vertical accountability.[273]

2.2 The choice of the system and its relations with accountability mechanisms:

The choice of the system, whether it is a parliamentary system, semi-presidential, or presidential system, has a correlation with means and mechanism of accountability in both

[268] Andreas Schedler, *supra* note 248, at 23; *See* also MULGAN, *supra* note 247, at 11-15.
[269] Andreas Schedler, *supra* note 248, at 23; *See* also PELIZZO & STAPENHURST, *supra* note 256, at 3.
[270] Philippe C. Schmitter, *The Limit of Horizontal Accountability*, *in* THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 59, 59 (Larry Diamond & Marc F. Plattner eds., 1999).
[271] Richard L.Sklar, *Democracy and Constitutionalism: Comments on O'Donnell*, *in* THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 53, 53-54 (Larry Diamond & Marc F. Plattner ed., 1999).
[272] *Id*
[273] *See* David Landau, *Abusive Constitutionalism*, 47 U.C. DAVIS L. REV. 189, 199-201(2013).

phases of accountability-answerability and enforcement.[274] For instance, the legislatures, for promoting answerability, possess a range of apparatus including legislature committees, questioning processes, the ability to scrutinize government appointment.[275] Moreover, for promoting the enforcement phase of accountability, the legislatures possess various apparatus including "notion of confidence, motion of censure, impeachment, and election/selections of cabinet ministers".[276]

Implementing the apparatus above are associated with the type and the form of government.[277] In order to erase the confusion over the forms of government and its relation with accountability mechanisms, one can find it useful to apply these mechanisms on the "pure form" of parliamentarism, presidentialism, and semi-presidentialism.[278] Hence, to define each of these forms of government, it is necessary to analyze in term of conventional trends because not all forms of government are alike.[279] For instance, the parliamentary system, which is widespread in Commonwealth countries, is different from those in southern Europe.[280] Likewise, a presidential system that is popular in Latin American countries is unlike presidential formula of United States. [281] It is also true that semi-presidentialism in France is dissimilar from those common in Eastern Europe.[282]

In United Kingdom's parliamentary system, the executive's existence depends on the confidence of the legislature. Through the motion of confidence, the legislature ensures the

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[274] PELIZZO & STAPENHURST, *supra* note 256, at 9-10.
[275] *Id.*
[276] *Id* at 10.
[277] *Id.*
[278] Mark Freeman, *Constitutional Frameworks And Fragile Democracies: Choosing Between Parliamentarianism, Presidentialism And Semi-Presidentialism*, 12 PACE INT'L L. REV. 253, 261-263 (2000).
[279] *Id.*
[280] Mark Freeman, *supra* note 278; *See* also PIPPA NORRIS, DRIVING DEMOCRACY: DO POWER-SHARING INSTITUTIONS WORK? 35 (2008).
[281] Mark Freeman, *supra* note 278.
[282] *Id.*

accountability of executives towards legislators and voters.[283] The system possesses the fusion of powers in which the executive branch- prime ministers and ministers- is part of the legislative body.[284] The prime minister and ministers are members of the parliament.[285] They are representing their constituencies- vertical accountability to voters via elections- and they are also accountable to the legislative body- horizontal accountability to legislative via a motion of confidence.[286] The head of state is the ceremonial position. Further, opposition political parties exert questioning and interpellations to force the cabinet ministers to justify their actions on a "regular basis" (usually daily).[287]Moreover, the parliamentary committee is another venue that political opposition supervises the government actions.[288] For example, the committee of public accounts is always directed and chaired by political oppositions.[289] It appears the committee oversight is not active, but it is related to the political parties' formations and party discipline under UK parliamentary system.[290]

The separation of powers is the main characteristic of United State's the presidential system. Both legislatures and president are elected separately, and they have fixed terms. The president's survival does not require the confidence of the legislatures. The members of the executive branch are not a part of the legislative body.[291] The daily questioning process as exists in the parliamentary system does not exist in the presidential system. Further, the upper house (Senate) scrutinizes the members of the president's cabinet when the president proposes them to

[283] PELIZZO & STAPENHURST, *supra* note 256, at 10.
[284] *Id.*
[285] *Id.*
[286] *Id* at 10-11.
[287] *Id* at 11.
[288] *Id.*
[289] PELIZZO & STAPENHURST, *supra* note 256, at 11; *See* also David Fontana, *Government in Opposition*, 119 YALE L.J. 548, 572-573 (2009).
[290] PELIZZO & STAPENHURST, *supra* note 256, at 11.
[291] *Id* at 12.

be confirmed by the upper house.[292] The committee's investigations tend to be strong under United States'. Removing the President from the office is possible only through the impeachment procedure.

In France's semi-presidential system, both the features of parliamentary and presidential are harmonized mutually.[293] Semi-presidentialism is the system that the president is elected by direct vote, and the government's existence depends on the confidence of the legislatures.[294] It is also characterized by the separation of powers. In this system, the president is hardly accountable to the legislatures and the only way to remove the president is through the impeachment procedure.[295] The prime minister is a head of the government and accountable to the parliament similar to the way that exists in parliamentary systems. The prime minister and its minister can be removed in the office collectively by a vote of no-confidence.[296]

At the enforcement phase of accountability under all these system, the impeachment and vote of no-confidence create distinctive ex-post accountability of the executive towards legislatures generally. The vote of no-confidence can be ignited by a "policy controversy" or "legal transgression" between the government and parliament because under parliamentarism, it is presumed that the government is the agent of the parliament.[297] The vote of no-confidence is a core element of the parliamentary democracy.[298] The vote of no-confidence is not only directly

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[292] *Id.*
[293] *See* also MATTHEW SOBERG SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS150-156(1992) (Semi-presidential systems are not alike because the legislative powers and non-legislative powers of elected president under semi presidentialism are vary.).
[294] *See* Robert Elgie, *supra* note 75; *See* also PIPPA NORRIS, DRIVING DEMOCRACY: DO POWER-SHARING INSTITUTIONS WORK? 145-146 (2008).
[295] PELIZZO & STAPENHURST, *supra* note 256, at12.
[296] *See* JOSÉ ANTONIO CHEIBUB, PRESIDENTIALISM, PARLIAMENTARISM, AND DEMOCRACY 37 (2007).
[297] Kaare Strøm, *Delegation and Accountability in Parliamentary Democracies*, 37 EUROPEAN JOURNAL OF POLITICAL RESEARCH 261, 274(2000).
[298] Kaare Strøm, *supra* note 297, at 265; *See* also Juan J. Linz , *The Perils of Presidentialism*, 1 JOURNAL OF DEMOCRACY 51, 52(1990).

applicable to the prime minister but also triggers the collective removal of the government cabinet.[299] The collective accountability of the cabinet rises from the fact that the decision-making in the government is collective. Thus, they share the collective responsibility.[300] The government is the agent of the parliament, and the parliament is the agent of the voters. Thus, the parliament should realize the voters' demands through governments.[301]

However, the impeachment cannot be initiated based on "policy differences" because, under presidentialism and semi-presidentialism, the president is not accountable for policy implementing of legislatures.[302] The president is not the agent of the legislative body.[303] The president is politically and directly responsible to the voters, not the legislatures.[304] The president is not answerable to the legislature on a daily basis.[305] Impeachment is confined to crimes or constitutional violations such as high crimes or treason.[306] In other words, the impeachment is limited to "legal transgressions" of the president. The president's impeachment does not lead to the collective removal of the cabinet, but rather it is a legal process directed at the president individually.[307] The legislature in the presidential or semi-presidential systems tries the president not as the principal but as a "sanctioning actor".[308] The "sanctions actors" does not rely on the

[299] MATTHEW SOBERG SHUGART & JOHN M. CAREY, *supra* note 293, at 4&6.
[300] PIPPA NORRIS, DRIVING DEMOCRACY: DO POWER-SHARING INSTITUTIONS WORK? 144 (2008).
[301] Kaare Strøm, *supra* note 297, at 274.
[302] PIPPA NORRIS, *supra* note 300, at 144-145.
[303] MARGIT TAVITS, PRESIDENTS WITH PRIME MINISTERS: DO DIRECT ELECTIONS MATTER? 34(2008).
[304] Murray Clark Havens & Dixie Mercer McNeil, *Presidents, Impeachment, and Political Accountability*, 8 PRESIDENTIAL STUDIES QUARTERLY 5, 6-8 (1978).
[305] PIPPA NORRIS, *supra* note 300.
[306] *See* François Frison-Roche, *Semi-Presidentialism In A Post-Communist Context , in* SEMI-PRESIDENTIALISM OUTSIDE EUROPE: A COMPARATIVE STUDY 60 (Robert Elgie & Sophia Moestrup eds., 2007); *See also* Eugene Huskey, *Eurasian Semi-Presidentialism: The Development Of Kyrgyzstan's Model Of Government, In* SEMI-PRESIDENTIALISM OUTSIDE EUROPE: A COMPARATIVE STUDY 169 (Robert Elgie & Sophia Moestrup eds., 2007); *See also* Murray Clark Havens & Dixie Mercer McNeil, *supra* note 304.
[307] CHEIBUB, *supra* note 296 at 64.
[308] Scott Mainwaring, *Introduction: Democratic Accountability in Latin America*, *In* DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA 20 (Scott Mainwaring & Christopher Welna eds., 2003).

principle-agent relations in their actions.[309] For instance, when the judiciary sanctions the executive members, the judiciary is not a principal of the executive.[310]

It is reasonable for the president to have different policies from the legislature and not be accountable to the legislatures' policies because the voter support for the presidency is based on a national election,[311] While the elections for the legislature could be based on the national level or local level. The preference of voters for the legislatures is not necessarily congruent with the president's policies because the functions of these two bodies are different. Voters may choose sets of policies for particulars party policies for the presidency while they choose another party's policies for the legislature.[312] In other words, the "dual legitimacy" of the president and legislatures could bring different policies.[313] When policies of the legislatures are different from the president's policies, this difference may lead to the deadlock that cannot be resolved by the impeachment.[314]

2.3 The form of government in Kurdistan region

In KR, government institutions have evolved over time. The National Assembly emerged as the first institutions (see chapter one). All other institutions are created by the national assembly (Kurdistan Parliament).[315] The constitutional system is substantially affected by political fluctuations of civil war, two administration periods and strategic agreements.[316] The compromising on the form of government and craving the institution for particular persons or

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[309] *Id.*
[310] *Id.*
[311] Juan J. Linz, *The Perils of Presidentialism*, 1 JOURNAL OF DEMOCRACY 51, 61(1990).
[312] Juan J. Linz, *supra* note 311, at 63; *See also* CHEIBUB, *supra* note 296, at 8-9.
[313] MATTHEW SOBERG SHUGART & JOHN M. CAREY, *supra* note 293, at 32-33.
[314] Juan J. Linz, *supra* note 311, at 63; CHEIBUB, *supra* note 296 at 14.
[315] *See* GARETH R. V. STANSFIELD, *supra* note 66, at 124-125.
[316] *See* Aziz Sheikhani, *Southern Kurdistan, Towards The Past Or Future?* THE KURDISTAN TRIBUNE (May 24, 2013), http://kurdistantribune.com/2013/southern-kurdistan-towards-past-or-future/

particular political party produces many anomalies in the checks and balance procedure-horizontal accountability.[317] Sometimes, the institutions have been created to preserves the status-quo of a dual administrative system among the PUK and KDP.[318]

The upshot of these negotiations result in producing serious flaws in the accountability mechanisms and have established institutions outside of the parliament oversight, such as Kurdistan Region Security Council. It creates a system that is difficult to identify as parliamentary, presidential or semi-presidential under existing definitions. The system could be perceived as some hybrid formula of parliamentary. Nevertheless, under the draft constitution, one can rationally conclude that the system is presidential, not semi- presidential.

In KR, the major political institutions are the Presidency of Kurdistan Region that is directed by the president and vice president.[319] The president is elected by popular vote,[320] and appoints the vice president.[321] The president can serve for four years from the date of elections.[322] Under existing structures despite the fact that the president is popularly elected, he or she can be removed from office by a *no-confidence vote*.[323] Nonetheless, under the draft, the president can be removed only through *impeachment*.[324] The council of ministers which is headed by the prime minister consists of 21 ministers.[325] The council of ministers receives the

[317] *See* Michael Rubin, *Kurdistan's '$265 million' National Security Council: Nepotism not good governance,* THE KURDISTAN TRIBUNE(July 12, 2012), http://kurdistantribune.com/2012/kurdistans-265-million-dollar-national-security-council-nepotism-not-good-governance/.
[318] *See* Andrew Lee Butters, *Trouble in Kurdistan*, TIME (Friday, Mar. 17, 2006),http://content.time.com/time/world/article/0,8599,1174457,00.html.
[319] Article 1, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).
[320] Article 3, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).
[321] Article 1, Section 2, First amendment of Presidency (Law No.1 of 2005) No. 2 of 2006 (Kurdistan Region-Iraq)
[322] Article 2, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).
[323] Article 13, Section 3, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).
[324] Article 95, Section 6 & Article 63, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009.
[325] *See* Official Website of Kurdistan Regional Government, http://cabinet.gov.krd/p/page.aspx?l=12&s=030000&r=315&p=228&h=1

confidence of parliament by a majority of the quorum.[326] The council of ministers can be voted out by a two-thirds vote of the parliament with the agreement of the President to enact a decree. Without this consent, the Parliament cannot vote the council of ministers out.[327] The parliament consists of 111 members who are elected using a proportional representation system with a relatively closed-list.[328] The parliament is headed by the presidium that consists of three persons: a speaker, deputy of the speaker and a secretary of the parliament. [329]

To understand implications of constitutional structures which increase the executive branch and party leader's ability in mitigating the role of the parliament, one has to look at the existing constitutional structures and draft structures in designing the accountability mechanism. In addition, the draft constitution espouses the existing structures with some slight modifications in three areas "the enforcement level of political accountability, the form of government, and the sovereignty of the Parliament ". Nevertheless, the other areas of the answerability phase of political accountability are quite identical to existing structures. Therefore, there is a need to first address the current structures. After discussion of the current constitutional arrangement, the draft constitutions will also be addressed briefly. Further, this section addresses the enforcement phase and answerability phase of political accountability in the current arrangement and the draft constitutions.

[326] Article 50, Section 2, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009.
[327] Article 10, Section 13, Presidency Law No 1 of 2005(Kurdistan Region-Iraq); *See also* Article 65, Section16, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009.
[328] Article 1, Kurdistan National Assembly Law No.1 of 1992 (Kurdistan Region-Iraq). *See also* Chapter 2 & Chapter 3 of Independent High Electoral Commission Regulation No.10 of 2009.
[329] Article 20, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).

2.3.1 Form of government under existing arrangement and draft constitution

Some researchers define the current arrangement of the Kurdish region as semi-presidentialism. [330]Nevertheless, the problematic point of their analysis is that they focus only on the electing process of the president and the parliament which are done from a separate electorate.[331] Likewise, they analyze the broad power of the president with direct elections and the separate election of the parliament.[332] Separate electorate for president and parliament is not sufficient criteria to determine the nature of the system because there are countries where, despite having presidents that are elected "direct[ly] or quasi-direct[ly],"are considered as parliamentary, such as Iceland, and Austria.[333] This analysis argues that the Kurdistan region current arrangement is a *hybrid parliamentary* system which has some elements of semi-presidentialism.

Further, Elgie defines the semi-presidential as "the situation where a popularly elected, fixed-term president exists alongside a prime minister and cabinet who are responsible to a parliament". [334] He argues that if the system loses the fixed-term condition of a president or the responsibility a government to parliament, this system cannot be considered as semi-presidential.[335] Additionally, Elgie claims that in the system that "the president would appear to

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[330] *See* Ayelet Banai, *From Presence To Action: Political Representation And Democracy In Iraqi Kurdistan*, 48 REPRESENTATION 267, 273-274 (2012); *See also* Serhat Erkmen, *Key Factors For Understanding Political Dynamics In Northern Iraq: A Study Of Change In The Region*, 8 Rev. Int'l L. & Pol 83,85 (2012); *See also* Akiko Yoshioka, *The Shifting Balance Of Power In Iraqi Kurdistan: The Struggle For Democracy With Uninstitutionalized Governance*, 9 INTERNATIONAL JOURNAL OF CONTEMPORARY IRAQI STUDIES 21, 25 (2015).
[331]*See* Serhat Erkmen, *Key Factors For Understanding Political Dynamics In Northern Iraq: A Study Of Change In The Region,* 8 Rev. Int'l L. & Pol 83,85 (2012); *See also* Ayelet Banai, *From Presence To Action: Political Representation And Democracy In Iraqi Kurdistan*, 48 REPRESENTATION 267, 273-274 (2012).
[332] Akiko Yoshioka, *The Shifting Balance Of Power In Iraqi Kurdistan: The Struggle For Democracy With Uninstitutionalized Governance*, 9 INTERNATIONAL JOURNAL OF CONTEMPORARY IRAQI STUDIES 21, 25 (2015).
[333] Robert Elgie, *The Classification Of Democratic Regime Types: Conceptual Ambiguity And Contestable Assumptions*, 33 EUROPEAN JOURNAL OF POLITICAL RESEARCH 219, 221-222 (1998).

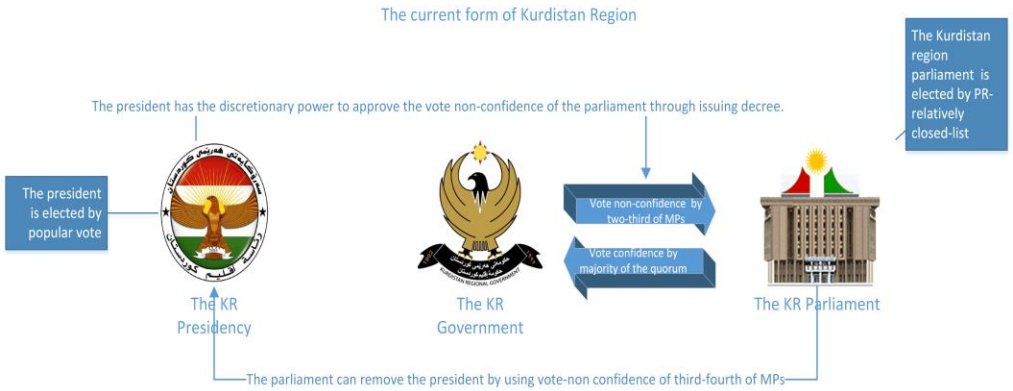
[335] Robert Elgie, *supra* note 75, at 2-3.

be responsible to the legislatures… [t]his would violate the fixed-term president requirement and would mean that the country should not be classed as semi-presidential".[336] In KR, although the president is elected by direct vote, the Parliament has the capacity to remove the President by vote non-confidence. In the other words, the survival of President in office depends on the confidence of three-fourths of the MPs. It means that the president could be removed over policy controversies between the parliament and president. Therefore, it lost the first conditions of the fixed-term president. [337] Consequently, KR's system cannot be characterized as semi-presidential or presidential system.

Elgie also contends that the responsibility of the government (council of minister and minister) means that the government needs the legislatures' confidence to survive. Also, he excludes the condition that the legislature can pass a vote of confidence, but it cannot exercise the vote of non-confidence against the government as he called "one-shot game."[338] In Kurdistan region, although the parliament has the power to pass a vote of no-confidence by two-thirds of the members of the parliament, the President has discretionary powers over implementation of the no-confidence vote.[339] It means that even if the parliament passes the vote of non-confidence

[336] *Id* at 4.
[337] *See* Scott Mainwaring, *Presidentialism, Multipartism, and Democracy: The Difficult Combination*, 26 COMPARATIVE POLITICAL STUDIES 198, 203 (1993).
[338] Robert Elgie, *supra* note 75, at 4.
[339] Article 10, Section 13, Presidency Law No.1 of 2005(Kurdistan Region-Iraq) (This section stated that "when the parliament pass vote non-confidence against the prime minister and minister, the president approve their resignations through decree."); *E.g,* If one compares the language KR's vote non-confidence with France constitution, which directly does not contain any explicit language in term prerogative power over vote non-confidence. Nevertheless, Charles de Gaulle read article 8 of France constitution as he argued that this his reserve power to accept or to refuse the prime minister resignation after vote non-confidence. He was able to retain his Prime Minister, Georges Pompidou, for 8 months out of the parliament's confidence. Also, the government of the prime minister was not care-taker government. The second precedent after the de Gaulle's interpretation does not exit. Nevertheless, the constitutional scholars argue this was a violation of constitution. *See* article 8, section 1 of France constitution. ("The President of the Republic appoints the Prime Minister. He terminates that appointment when the latter tenders the resignation of the Government."); *See also* Article 53, Section 1of France constitution. ("If the National Assembly adopts a motion of censure, or rejects the Government's program or a general policy statement by the latter, the Prime Minister must tender the Government's resignation to the President of the

to remove the government, the president has the implicit power to refuse by not issuing the presidential decree to implement the will of the Parliament.[340] For instance in South Korea, the Parliament can recommend the dismissal of the government, but the president retains the discretionary power whether to accept or to refuse the parliament recommendation.[341]



Moreover, if one attempts to measure KR's form of government with different classifications, he or she finds the Cheibub classification useful with regard to the hybrid constitutional system. Cheibub outlines presidentialism, parliamentarism, and semi-presidentialism based on checks and balance mechanisms by examining the interactions between "the government, the assembly, and (where they exist) elected presidents."[342] The departure point is that "whether the government can be removed by the assembly in the course of its constitutional term in office" by "the vote of confidence" or "failed vote of confidence" or

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Republic."); *See* ANDREW KNAPP, VINCENT WRIGHT, THE GOVERNMENT AND POLITICS OF FRANCE 60 (2006). In KR, the language of Presidency Law and draft constitution contain many of these discretionary powers via decree, which is not the regulatory decree based on the statutes, but the decrees are substantial part of finalizing the process of vote non-confidence. These decrees are actually empowers the president directly to have discretionary power. For instance, the executing capital punishment and pardon cannot be enforced without president's decree because they are two prerogative power of president under current structure of Kurdistan region.

[340] *See* MARGIT TAVITS, *supra* note 303, at 13 (The direct election of president in Kurdistan Region allows president to have more politically active in term of using his constitutional powers because the direct elections allows the president different legitimacy from parliament legitimacy and there are likely to have different behaviors would not please government or parliament. Then, if the draft constitution of KR permit drastic interpretation and vague clauses. The result would be catastrophic for democracy.).

[341] Robert Elgie, *supra* note 75, at 5.

[342] CHEIBUB, *supra* note 296, at 34.

dismissal powers by the elected president.[343] If a legislature does not have the authority to remove the government collectively, [344] the system can be identified as a presidential system. If the legislature exclusively has the power to remove the government collectively, it is the parliamentary system. Moreover, the system that empower the legislature to remove the government collectively without removing the elected president while having "considerable powers" is semi-presidential system.[345]

According to Cheibub classifications, although the Israeli prime ministers was elected by a direct vote from 1991 to 2001, the prime minister and his or her cabinet could be removed through a no-confidence vote by the parliament. Thus, the Israeli form of government is classified as parliamentary. In Switzerland and Bolivia, [346] the government collectively is elected by the legislatures, but the government preserves a fixed mandate, and the existence of government does not depend on the legislature. Therefore, the legislature are disempowered to remove the government. Cheibub classifies these two countries as presidential systems.[347] Further, Cheibub argues that the rigidity of using the vote of confidence does not impact the classification's general lines.[348] For instance, "the 1996 Ukrainian constitution" stipulated that the legislature can exercise the vote of no-confidence "only once in each of the two annual

[343] *Id* at 34.
[344] *Id* at 37.
[345] Semi-persenenilaism also have the different form in which allows concurrent powers to the legislature and the elected president to remove the government collectively. Moreover, the elected president could directly dismiss the government collectively or partially, or sometimes the president has power of dissolving the legislatures that indirectly makes the government to lose the parliament confidence. In this case, the new election should be held to assembly in order to form the new government. *See* CHEIBUB, *supra* note 296, at 38.
[346] Shugart and Carry define these two countries as Independent-assembly system. Nevertheless, Cheibub defines them as presidential according to his classification. *See* MATTHEW SOBERG SHUGART & JOHN M. CAREY, *supra* note 293, at 84; *See* CHEIBUB, *supra* note 296, at 35-36.
[347] CHEIBUB, *supra* note 296, at 36.
[348] *Id*.

legislative sessions."[349] Likewise, the Russian constitution stipulated that the Duma must pass a vote of no-confidence "twice within three months" before the legislatures and government can be dismissed by the president.[350]

Returning to Kurdistan Region form of government, using both the Cheibub and Elgie definitions, the Kurdish system is a *hybrid parliamentary* which has some elements of semi-presidentialism. Both government and president can be removed in the leeway because if the president refuses a no-confidence vote against the government, the Parliament can remove the President by a no-confidence vote.[351] Once the president is removed from office, the speaker of the Parliament can exercise the power of the president during 60 days while preparations for a new election are made.[352] The speaker can exercise all the powers of the President in issuing decrees during that 60 days.[353] In other words, although the government is not exclusively responsible to parliament in a narrow sense, both president and government are politically accountable to parliament in a broad sense. It means both of them could be altered, and this opportunity for alteration, which parliament has, cannot be found under presidentialism or semi-presidentialism.[354] Althought the President is not politically accountable in parliamentary systems due to his or her marginlized role and counter-signature of prime minister, some

[349] *Id.*
[350] *Id* at 37.
[351] Cheibub argues the rigidity on vote non-confidence should not affect the general lines of his definition. Thus, according of Cheibub argument, using vote non-confidence by third-fourth in Kurdistan region should not be construed as to affect the parliamentary model. *See* CHEIBUB, *supra* note 296, at 37.
[352] Presidency Law No. 1 of 2005
[353] Article 15, Presidency Law No.1 of 2005 (Kurdistan Region-Iraq).
[354] *See* CHEIBUB, *supra* note 296, at 37.

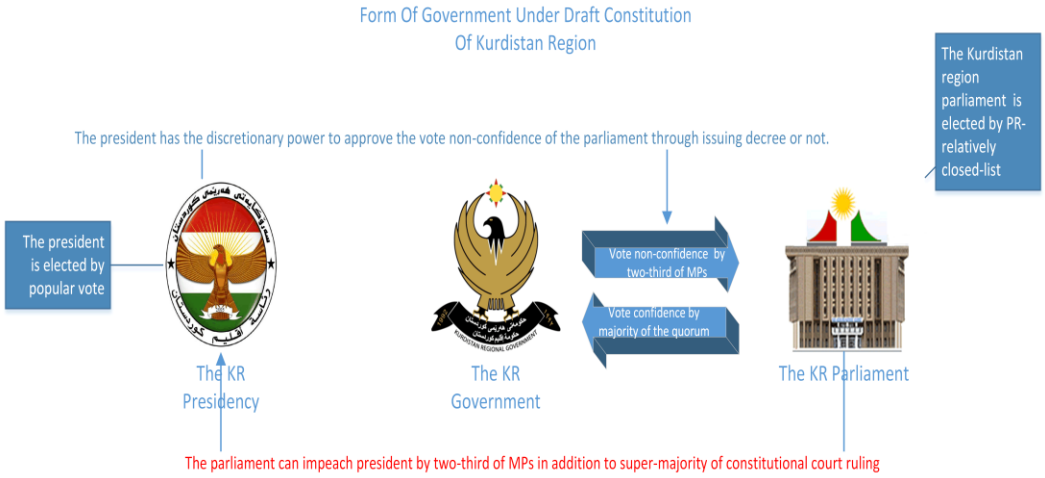
parliamentary countries allow for the political accountability of presidents such as exist in Latvia, Isreal, Iceland, Austria, Lithuania.[355]

Nevertheless, the KR form of government retains some elements of semi-presidential systems such as the dual executive and shared powers between the president and prime minister.[356] The president exerts veto overs the parliament's legislating process (which can be overridden by simple majority), the power of conducting foreign affairs, and national defense-because the president is commander in chief.[357] The president possesses broad powers of appointing judges, the general attorney, the chancellor of the Kurdistan Region Security Council (KRSC),[358] and affirming and issuing the decree for the governors…etc.[359]

Concerning the form of government under the draft constitution, although article 1 of the draft constitution states that the KR is a parliamentary system, this analysis argues that the draft constitution embraced the presidential system. Under the draft, the president possesses the fixed-mandate, and the only way to remove the president is impeachment which is different from existing structures of KR.[360] The parliament can only hold a no-confidence vote for the government, it cannot, however, utilize it against the government without the president's approval.[361] If one applies the Elige analysis to the KR form of government under the draft

[355] *See* KRZYSZTOF PROKOP, EVOLUTION OF CONSTITUTIONALISM IN THE SELECTED STATES OF CENTRAL AND EASTERN EUROPE 106 (2010).
[356] *See* Article 3 & Article 13 of Presidency Law No.1 of 2005 (Kurdistan Region-Iraq); *See also* MATTHEW SOBERG SHUGART & JOHN M. CAREY, *supra* note 293, at 23-26.
[357] Article 13, Section 1, Presidency Law no 1 of 2005 (Kurdistan Region-Iraq).
[358] Article 10, Presidency Law No 1 of 2005 (Kurdistan Region-Iraq). *See also* Article 4 section 1, Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq).
[359] Article 18, section 3, Kurdistan Region Law of the governorates No 3 of 2009 (Kurdistan Region-Iraq).
[360] *See* article 53, Section 4, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009
[361] *See* article 65, Section 15, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009 ("Release a decree accepting the resignation of the government or of a Minster after has passed a motion of a no-confidence in either or them.").

constitution, the president acquires the fixed-term, but the survival of government does not depend on the parliament. Therefore, the government no-confidence vote is a "one-shot game" as in the example of South Korea where the parliament after passing no-confidence to the government,[362] cannot enforce the vote no-confidence without the president's approval.[363] Also according to the Cheibub classification, the KR form of government under draft is presidential since the parliament can not remove the government.



2.3.2 Enforcement phase and answerability phase of accountability under existing structures and draft constitutions

Under existing structures, the mechanism of accountability in both phases of answerability and enforcement is different to the president and the government. The mechanisms of accountability against a president do not have the answerability phase although no-confidence

[362] Robert Elgie, *supra* note 75, at 4.
[363] *Cf., e.g.,* Robert Elgie elaborates the Uzbekistan constitution which contain same discretionary power of the president over vote non-confidence. Concerning Uzbekistan, He states that "The vote of non-confidence in the PM [Prime Minister] shall be deemed adopted if it receives a vote of at least two-thirds of the lower chamber and the upper house of the Uzbek parliament, respectively. In this case the president decides on the release of the PM from office. The entire composition of the Cabinet of Ministers resigns together with the PM." Thus, he argues this feature excludes the Uzbekistan from semi-presidential, and it becomes more close to presidential. *See* Robert Elgie, 'Difficult' cases – Uzbekistan, (Last visited June.26,2015), *available at* http://www.semipresidentialism.com/?cat=72.

votes require daily questioning because the vote implies that the president should act as the agent of the parliament. Yet, the parliament does not have the committee to oversee the president's actions in order to make sure to what extent the president's actions are consistent with the will of parliament. Further, the Parliament by law did not have the power to allow a member of the parliament to hold an inquiry on the president's actions. Presumably, the parliament has only the three-fourths majority no-confidence vote as a tool of enforcement. Because of the super majority required to trigger this tool, it is effectively impossible to use.

The enforcement phase against the government and ministers is even more problematic because voting out the government would entail escalating enforcement processes. For instance, if the parliament votes out the government by two-thirds and the president does not approve, the parliament would have to vote the president out by three-fourths. It means that this back and forth in the procedures tend to incentivize the prime ministers act in a way to ensure the president supports him or her. Under draft constitution, voting out the prime minister could be blocked by the president. Presumably, changing the president is difficult in both theoretical framework of impeachment subject-matter jurisdiction and the process in the draft.[364] Even if the parliament impeaches the president by two-thirds, the trial of the president would be in constitutional court. The verdict against a president should be passed by supermajority of the constitutional court.[365]

[364] Article 62, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009 (" If the President of the Region, or the Vice President, is impeached by a vote of a majority of two-thirds of the Members of Parliament on account of perjury of the constitutional oath, serious violation of the Constitution, or high treason, and is then found guilty by the Region's Constitutional Court, he shall be removed from his position.").
[365] *See* Article 95, Section 6, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009 ("Try the President or Vice President of the Kurdistan Region after they have been impeached by the Parliament in accordance with Article 62 of this Constitution. The conviction of the President or the Vice President requires the agreement of at least five of the Court's members.").

In KR, the legal clauses of answerability with respect to the questioning process and committee oversight offer the government and ministers more leeway to not provide information or be accountable to the parliament. For instance, the questioning process is divided by two categories the written questions and oral questions. If the prime minister or ministers do not respond to the questions, the member of the parliament can trigger an interrogations process, but the prime ministers and ministers must consent to interrogations and to appear in the main chambers.[366] Thus, if the prime minister and ministers do not appear in the interrogation sessions, legislators are powerless to pass a motion for a no-confidence vote. Additionally, the interrogation of the prime minister focuses on political questions. Consequently, the judiciary cannot interfere to force the prime ministers and ministers to be present in the main chamber.

In KR, although the committees are gatekeepers of the main chamber in creating policies and providing oversite of the ministers in respect to their jurisdictions, these committees tend not functions when the same majority controls the government ministers, parliament presidium, and the chairman of these committees.[367] Consequently, when that majority has strong party discipline, these committees tend to do no oversight on government actions or their senior leaders in the executive. Generally, chairing these committees is very important to the political opposition, but in KR, the same majority that forms the government and constitute the presidium can deprive opposition from chairing important committees such as the legal committee,[368]

[366] Article 69 & 70, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).
[367] *See* official website of Kurdistan Parliament (Last visited, June.26, 2015), http://www.perlemanikurdistan.com/Default.aspx?page=committees&c=Committees-Permanant2009
[368] *E.g.*, the legal committee is very crucial because it formalize and drafts polices of all others committees. Without legal committee's screening, it is not possible for any polices to reach main chamber.

finance affairs committee,[369] Consequently, depriving these committees form political opposition creates an inactive parliament.

2.4 Undermining the political accountability of both the council of ministers and parliament by Kurdistan Region's Security Council under draft constitutions and existing structures:

Under the draft constitution and existing structure, [370] the Kurdistan Region's Security Council possesses overlapping jurisdictions with both legislating role of parliament and executive role of the council of ministers.[371] The Kurdistan Region's Security Council (KRSC) is the executive and legislative body which has the broad's capacity of creating law, regulations, and executing laws under supervision of the president.[372] It has far more flexible jurisdiction over information security, economics security, foods security, energy security and organized crimes…etc. This council is a protector of the constitution and laws of the regions.[373] The President supervises this council, and it is headed by the chancellor.[374] Moreover, the president is able to add any members of the government including ministers and prime ministers to order them under the council formations.[375] The permanent members of this council are the director of the security agency, the director of general department of the military secret services, the

[369] *E.g.*, the committee of finance directly oversight the spending process of a finance minister.
[370] *E.g.*, Article 109, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009 ("A Council called 'The Council of the Region's Security' shall be formed. This Council shall be linked to the President of the Region. The powers and duties of this Council shall be regulated by the law."); *See also* Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq)
[371] *See* Article 3, Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq).
[372] *See* Article 5, Section 2, Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq); *See also* article 2, section 1&2 Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq).
[373] *See* article 3, Section 2, Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq).
[374] *See* Article 2, Section 1& 2, Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq).
[375] *See* Article 4, Section 2, Law of Security Council of Kurdistan Region No.4 of 2011(Kurdistan Region-Iraq).

directors of the intelligence agency (*Dazgay Zanyari* which is secrete services of PUK) and protection agency (*Azhanci Parastin* which is secret services of KDP).[376]

Furthermore, the Law of Kurdistan Region Security Council (LKRSC) No.4 of 2011 empowers both president and KRSC to exercise broad discretionary powers over determining the content of above-mentioned jurisdictions and terminologies. LKRSC does not define these jurisdictions precisely, and it does not specify to what extent it may be applied. For instance, protecting the constitution and laws of regions under LKRSC may entail interventions in parliament's duties or against its ministers. In an extreme case, KRSC may use its broad discretion to subvert the political system under pretext of protecting the constitution such as a similar National Security Council did under pretext of protecting constitution and secular system in Turkey.[377] Likewise, the "economic security" could entail corporate regulations, tax regulations, rules on oil income, and commerce. As long as these terminologies are not defined, LKRSC could involve very broad implications.[378]

KRSC can undercut the agency of the parliament and its political accountability to voters-vertical accountability- because KRSC can substitute the parliament in creating laws and

[376]On the duty of National security and its neutrality, Kamal Chomani stated that "[w]e do not have national security, but two family securities." *See* Kamal Chomani & Jake Hess, *Pro-Democracy Demonstrations In Northern Iraq/South Kurdistan*, OPEN DEMOCRACY (2 March 2011), https://www.opendemocracy.net/kamal-chomani-jake-hess/pro-democracy-demonstrations-in-northern-iraqsouth-kurdistan;
See article 2, Law of Security Council of Kurdistan Region No.4 of 2011; *See also* DENNIS P. CHAPMAN, SECURITY FORCES OF THE KURDISTAN REGIONAL GOVERNMENT, 204-206(2009).

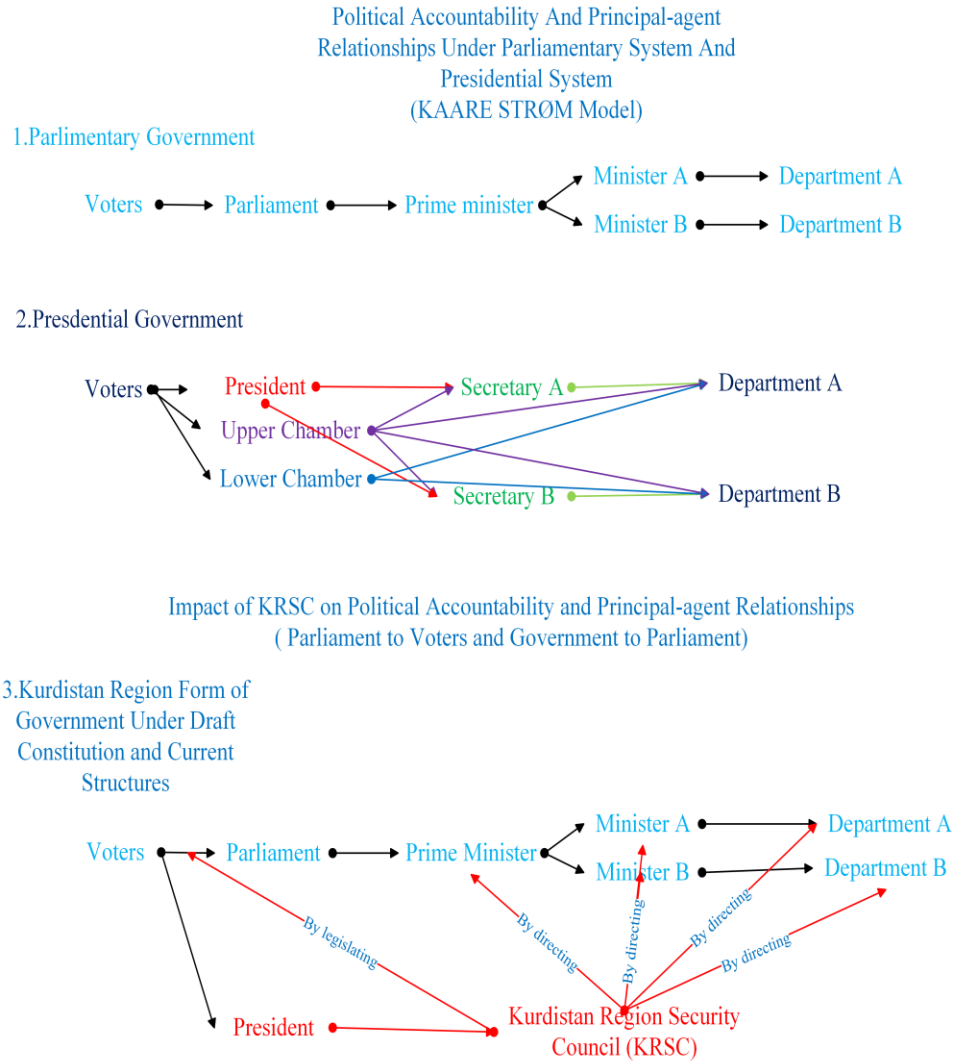
[377] In Turkey, National Security Council often was utilized to undermine political process under pretext of protecting political and constitutional orders of Turkey. *See* Ümit Cizre & Menderes Çınar ,*Turkey 2002: Kemalism, Islamism, And Politics In The Light Of The February 28 Process*, 102 The South Atlantic Quarterly 309,(2003)
and: *See also* ERGUN ÖZBUDUN ,THE CONSTITUTIONAL SYSTEM OF TURKEY: 1876 TO THE PRESENT,15-17(2011); *See also* Ümit Cizre, *Demythologyzing the National Security Concept: The Case of Turkey*, 57 MIDDLE EAST JOURNAL 213, 215(2003)

[378] *E.g.*, the first chapter of the Law of Kurdistan Region Security Council No.4 of 2011 does not include any definitions for these terminologies. Usually, any statute, which passed by the parliament, defines legal terminologies in order to eliminate drastic interpretations.

policies in above-mentioned jurisdictions.[379] Additionally, KRSC is a parallel executive that can carry out the government duties (council of minister and ministers' duties) without having to be accountable or answerable to the parliament -undercutting the horizontal accountability between executive and parliament. It directly undermines the principal-agent relation and political accountability between the parliament and executive (council of ministers) under parliamentary formula.[380] KRSC can perform the executive duties of government without being the agent of the parliament, and the parliament cannot provide oversight of it.[381] Furthermore, the president can utilize the KRSC council to abrogate the power of the council of ministers and its agency which is, to some degree, answerable to the majority of the parliament in KR.

The KRSC is not compatible with the presidential formula in terms of principal-agent relations and political accountability.[382] Under presidentialism, it is true that the president is not the agent of the legislature, but the secretaries and civil servants under the president are subject to oversight of multiple competing principals, namely the lower house and upper house.[383] Besides, under the presidential formula, the bureaucrats under the president are not immunized from judicial review (sanctioning actors),[384] but the KRSC is immunized from the court's review because legal processing against KRSC requires the president's consent to waive immunity.[385]

[379] *See* Article 3, Law of Security Council of Kurdistan Region No.4 of 2011.
[380] *See* Keith Dowding & Patrick Dumont, *Agency Rent Adverse Selection And Moral Hazard*, *In* THE SELECTION OF MINISTERS AROUND THE WORLD 1, 1-3(Keith Dowding et al., eds.,2014).
[381] The parliament by-law does not contains any legal provisions to allow sending questions or inquiries about the duties of KRSC.
[382] *See* Kaare Strøm, *supra* note 297, at 267-269.
[383] *Id.*
[384] *Id.*
[385] *Accord*, Article 16, Section 1, Presidency Law No.1 of 2005(Kurdistan Region-Iraq); *Accord*, Article 16, Section 1, Council of Consultations Law No.14 of 2008 (Kurdistan region) (The president's actions are immunized from judicial review. Also, the ordinary court including civil and criminal court cannot proceed legal actions in terms of criminal accountability.).



This graph is created based on Kaare Strøm Model for political accountability and chain of delegations between principal and agent under presidential and parliamentary government.[386]

2.5 Manipulating the sovereignty of parliament to reduce political accountability of government and executive

In KR, the legal system is not entrench. Due to a lack of constitution, parliament can change any laws or any institution as it wishes by simple majority of MPs[387] This includes the

[386] *See* Kaare Strøm, *supra* note 297, fig 1, at 269.

bill of rights and constitutional court (judicial review to scrutinize the parliament's action) under existing structures. This flexibility allows the majority more powers without restraints. Unfortunately, this majority uses its influence to reduce accountability of government.[388] Thus, under existing structures, the Parliament has been pressured and manipulated to reduce its control over the executive from 1992-2013.[389] As a result, any political deal with the support of the majority can be transformed to law without any restrictions. In other words, any political deal despite its content if approved by parliament becomes a "de facto constitution" due to lack of written constitution.[390] This flexibility only exists under current structures, but it does not stop being an issue under the draft constitution. This is because once the draft is ratified-in general referendum, the supremacy of constitution is prevailing principle over sovereignty of parliament.[391] Consequently, the draft constitution would constitutionalize the defects of political accountabilities that were mentioned before.[392]

The sovereignty of the parliament (supremacy of parliament) is related with the first moment of creating the Kurdistan national assembly (the parliament). As has been clarified in the first chapter, the seven political leaders signed the first laws which are the Kurdistan National Assembly law (KNAL). Then, all the others institutions- council of ministers, the presidency-

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[387] *See* Article 75, Section 1, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).
[388] *See* Kamal Chomani, *Kurdish Region no Longer Possesses a Legal President*, WORLD BULLETIN (12:42, 02 July 2013 Tuesday), http://www.worldbulletin.net/news/112280/kurdish-region-no-longer-possesses-a-legal-president
[389] On manipulating power of the parliament and political deal, Mariwan Wrya and Aras Fatah stated in their opinion that "Kurdish politics is a dark politics and what's present in this darkness is conspiracies and underground agreements for secretly distributing power, not debates and open dialogues. This is a kind of blind conflict over power and only directs hate and social disasters." *See* Kamal Chomani, *Kurdish region no longer possesses a legal president*, WORLD BULLETIN (12:42, 02 July 2013 Tuesday), http://www.worldbulletin.net/news/112280/kurdish-region-no-longer-possesses-a-legal-president
[390] GARETH R. V. STANSFIELD, *supra* note 66, at 129.
[391] *See* Article 3, Section 1, Rashnusi Doustouri Haremi Kurdistan [The Draft Constitution of Kurdistan Region] of 2009
[392] *See* Michael Skold, *The Reform Act's Supreme Court: A Missed Opportunity for Judicial Review in the United Kingdom?*, 39 CONN. L. REV. 2149, 2179-2180(2007); *See also* Lord Irvine of Lairg, *Sovereignty in Comparative Perspective: Constitutionalism in Britain and America*, 76 N.Y.U.L. REV. 1, 5-6(2001).

were created and designed by a simple majority of the parliament.[393] The first law (KNAL) has been amended by the simple majority of the parliament several times by same usual procedures of any other laws.[394] All statutes of the parliaments are not entrenched and can be amended by simple majority. Each parliament's term possesses the same amount of powers of its preceders.[395] These features can appropriately characterized as parliament sovereignty or legislative supremacy allowing the legislature to "make or unmake any laws" by the simple majority of its members.[396]

Under existing structures, the mechanism of political accountability does not have an entrenched nature to create, guarantee and preserve the right of political opposition or minority groups of society's rights. As the parliament does not have sufficient autonomy or political will, the party leader's control of the parliament and the country's flexible legal structures, in context of KR, create a real threat that the power of the executive will be expanded and the mechanisms of accountability will be eroded. The quality of political parties affects the quality of democracy in KR due to the sovereignty of parliament and flexible structure. Often, this power of Parliament is manipulated to political ends. For instance, the extension of presidential term limits

[393] *See* those laws which have been enacted since1992 (last visited June.28, 2015), *available at* http://www.perlemanikurdistan.com/Default.aspx?page=byyear&c=LDD-Yasa.
[394] Weill explains three fundamental condition of parliamentary sovereignty which all of these condition exist in Kurdistan Region legal system: "(1) that parliament may enact any statute except one that restricts its successors; (2) that constitutional law is on par with regular law and may be enacted or amended like any other statute; and (3) that no judicial review power over primary legislation is granted to the courts." *See* Rivka Weill, *Reconciling Parliamentary Sovereignty And Judicial Review: On The Theoretical And Historical Origins Of The Israeli Legislative Override Power*, 39 HASTINGS CONST. L.Q. 457, 457(2012). *See also* Joshua Segev, *Who Needs a Constitution? In Defense of the Non-Decision Constitution-Making Tactic in Israel*, 70 ALB. L. REV. 409,425-426(2007).
[395] *See* Article 75, Section 1, Parliament By-law No.1 of 1992 (Kurdistan Region-Iraq).
[396] *See* Lori Ringhand, *Fig Leaves, Fairy Tales, and Constitutional Foundations: Debating Judicial Review in Britain*, 43 COLUM. J. TRANSNAT'L L 865, at 876 & 872-874(2005); *See also* Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism*, 49 AM. J. COMP. L. 707,711-716(2011).

was made by the parliament.[397] The Parliament amended the article that include term limit implicitly by extending it for two years.[398] It is also true for the KRSC, by parliament's decree some legislating powers were shifted to this council.[399] Since the written constitution, bill of rights and constitutional court do not yet exist, the tamed majority of parliament can be a real threat to accountability mechanisms in KR.

2.6 The political will of the parliament in exerting its powers:

Although many design defects are explained, the inactivity of the parliament and its marginalized role in political arena needs more substantial understanding. In KR, the horizontal accountability does not function, and the parliament cannot check the executives.[400] The reasons of ineffectiveness of the parliament relate to de facto autonomy of the Kurdistan parliament.[401] The Kurdistan parliament often is labeled as a rubber stamp parliament which legitimatizes the political decisions that have been made outside of its chamber.[402] The actual political deliberations and decision-making process are outside of the parliament and located in backdoor

[397] Dana Asaad, *The Democracy That Tastes Like Dictatorship*, NIQASH (18.07.2013), http://www.niqash.org/en/articles/politics/3254/.
[398] *See* Article 1, The Law of Extending the President Mandate No.19 of 2013 (Kurdistan Region-Iraq).
[399] *See* Article 5, Section 2, Law of Security Council of Kurdistan Region No.4 of 2011; *See also* Article 2, Section 1&2 Law of Security Council of Kurdistan Region No.4 of 2011.
[400] Editorial, *Kurdistan Region Needs Checks and Balances and Separation of Powers: Statement of the Kurdistan Forum Association*, THE KURDISTAN TRIBUNE (October 5, 2013), http://kurdistantribune.com/2013/kurdistan-region-needs-checks-balances-separation-of-powers; *See* also *Kurdistan Democratic Party (KDP)*, GLOBAL SECURITY (last visited Jun. 4, 2015), http://www.globalsecurity.org/military/world/para/kdp.htm.
[401] *See* Guillermo O'Donnell, *supra* note 267; *See also* Liz Sly, *In Iraq, Kurdistan Election Campaign Heats Up*, LOS ANGELES TIMES(July 24, 2009), http://articles.latimes.com/2009/jul/24/world/fg-iraq-kurds24
[402] *See* Kamal Chomani, *President Barzani's Quest For Hegemony: Insisting On A Presidential System As An Example*, THE KURDISTAN TRIBUNE (January 28, 2013), http://kurdistantribune.com/2013/president-barzanis-quest-for-hegemony-insisting-on-presidential-system-as-example/; *See also* Ben Lando, *Iraq's Kurds: Time to Prove Their Democracy*, TIME (Friday, July 24, 2009), http://content.time.com/time/world/article/0,8599,1912471,00.html; *See also* Heath Druzin, *In Iraq's Kurdistan, Tension Before The Vote*, STARS AND STRIPES (July 23, 2009), http://www.stripes.com/news/in-iraq-s-kurdistan-tension-before-the-vote-1.93525.

meetings.[403] On the contrary, the political accountability requires "open discussion and debate about matters of public interest."[404] The political accountability is the process of dialog among political parties in the public sphere.[405] The explaining and justifying of the agent to principal are dialogical process which cannot be observed in KR between executive (government and president) and parliament.[406]

The de facto autonomy or the political will of the parliament, which is undermined by the political party leaders, is the missing element of horizontal accountability.[407] The political party leaders have ample capacity to influence government functions and parliament decision-making without holding public positions (Ministers, MPs, chief whips, and head of factions).[408] The party leaders' hegemony is supported by many factors including but not limited to, client-patron relationship,[409] mass party structures, the party discipline, the electoral design. Relatively speaking, these factors disincentives the party leaderships from participating in the government and incentivizes instead them to direct their members through parliament or government structures. Also, these factors allow party leaders to have ample room to place the responsibility fir government wrongdoing on other's shoulders while the major decision have been dictated by them. It is worthy to observe these factors are interrelated not isolated from each other. To

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[403] *See* David Ghanim, IRAQ'S DYSFUNCTIONAL DEMOCRACY 121(2011); *See also* Ranj Alaaldin, *Can Democracy Survive In Kurdistan?,* THE GUARDIAN (Sunday 9 August 2009 12.00 EDT), http://www.theguardian.com/commentisfree/2009/aug/09/democracy-kurdistan-internal-dissent-elections; *See also Constitutional crisis in Iraqi Kurdistan,* MIDDLE EAST INSTITUTE (last visited Jun. 4, 2015), http://www.mei.edu/content/constitutional-crisis-iraqi-kurdistan.

[404] Richard Mulgan, *'Accountability': An Ever-Expanding Concept?*, 78 PUBLIC ADMINISTRATION 555, 569 (2000).

[405] *Id* at 570.

[406] *Id* at 569.

[407] *See* Nicole F. Watts, *Redefining the Kurdish nation,* THE WASHINGTON POST (February 27,2015), http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/02/27/redefining-the-kurdish-nation/

[408] *See* Serhat Erkmen, *Key Factors For Understanding Political Dynamics In Northern Iraq: A Study Of Change In The Region,* 8 Rev. Int'l L. & Pol 83, 86 (2012).

[409] *See* Tobias Bock, *'Linkages Between Politics and Society in Iraqi Kurdistan: Assessing the Region's Civil Society,* 8-9 (2006), *available at* http://www.atlantic community.org/app/webroot/files/articlepdf/Tobias%20Bock%20-%20Assessing%20the%20Civil%20Society%20in%20Iraqi%20Kurdistan.pdf.

correlate these aforementioned factors with the parliament weakness is central to decision-making and to hold government accountable, the following analysis talks about the interconnectivity of these factors.

Concerning the client-patron relationships, the parties' leaders exert considerable powers by patronizing both parliament and government in KR. Patronizing the executive and parliament informally and indirectly have eroded the horizontal accountability (checks and balance).[410] The common trend is that ministers and MPs are chosen among close association, relatives, and family members of the party leadership.[411] Consequently, the parliament tends to not interrogate the government. For instance, since 1992, the parliament has not voted out any government cabinet or dismissed the ministers despite all the corruptions and wrongdoings in governmental positions.[412] Additionally, the method of forming government and the cabinet which does not require elections for ministers or prime ministers enables the leadership to bypass voters to mechanically fill the executive's positions. On that point in KR, Sardar Aziz argues;

> Party leaders never run for seats in parliament. Although the governing system in the KRG is nominally parliamentarian, neither the ministers nor the prime minister are members of parliament. Therefore, the Kurdish political elite is not composed of current MP's, mostly due to the insignificant role played by parliament within the governing system in the KRG.[413]

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[410] *See* HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, HC 564 - UK GOVERNMENT POLICY ON THE KURDISTAN REGION OF IRAQ 26 (2014); *See also* DIANE E. KING, KURDISTAN ON THE GLOBAL STAGE: KINSHIP, LAND, AND COMMUNITY IN IRAQ 213 (2013); *See also* TAIABUR RAHMAN, PARLIAMENTARY CONTROL AND GOVERNMENT ACCOUNTABILITY IN SOUTH ASIA: A COMPARATIVE ANALYSIS OF BANGLADESH, INDIA AND SRI LANKA 17-18 (2007); *See also* Herbert Kitschelt & Steven I. Wilkinson, *Citizen–Politician Linkages: An Introduction*, *IN* PATRONS, CLIENTS AND POLICIES: PATTERNS OF DEMOCRATIC ACCOUNTABILITY AND POLITICAL COMPETITION, 7-8&23 (Herbert Kitschelt, et al, eds., 2007).
[411] Serhat Erkmen, *supra* note 408, at 86-87.
[412] *See* Kamal Chomani, *Iraqi Kurdistan's Historic Election,* FOREIGN POLICY (September 28, 2013), http://foreignpolicy.com/2013/09/28/iraqi-kurdistans-historic-election/.
[413] Sardar Aziz, *The Kurdistan Regional Government Elections: A Critical Evaluation*, 16 INSIGHT TURKEY 67, 69 (2014).

Moreover, proportional representation's relatively closed-list, to some extent, endows the leaders of political party to fill the parliament's seats with their patronage networks.[414]

Generally speaking, the patronage network around the party leaders receives advantages from implementing policies from ministers and governmental positions.[415] To some extent and relatively speaking, the key decision-making positions in the executive attracts some of these leaders to participate in government to feed these patronage networks which are sustained by favoring the members of their network from policies implementations.[416] For instance, Massoud Barzani is the president of KDP and president of KRG. Nechirvan Barzani is the prime minister of KRG and nephew of president Barzani. Nechirvan Barzani also is the deputy of president Barzani in KDP.[417] Masrour Barzani, son of president Barzani, is chancellor of KRSC- members of KRD leaderships committee and politburo…etc.[418]

Correspondingly, it could be argued that inadequacy of accountability mechanisms to hold these potions responsible is an attractive part of these key executive positions because the presidential candidate is elected by a majority popular vote.[419] Removing the president from office, nevertheless, requires three-fourths of MPs by vote of no-confidence, and even under the

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[414] *See* Herbert Kitschelt & Steven I. Wilkinson, *Citizen–Politician Linkages: An Introduction*, *IN* PATRONS, CLIENTS AND POLICIES: PATTERNS OF DEMOCRATIC ACCOUNTABILITY AND POLITICAL COMPETITION, 42 (Herbert Kitschelt, et al, eds., 2007).
[415] Heyrsh Abdulrhman, *How to End Corruption in Kurdistan* (May 10, 2012), http://www.kurdishaspect.com/doc051012HA.html; *See also* Kanchan Chandra, *Counting Heads: A Theory of Voter and Elite: Behavior in Patronage Democracies*, *In* PATRONS, CLIENTS AND POLICIES: PATTERNS OF DEMOCRATIC ACCOUNTABILITY AND POLITICAL COMPETITION, 86-87 (Herbert Kitschelt, et al, eds., 2007).
[416] *See* Heyrsh Abdulrhman, *supra* note 415.
[417] Karl Vick, *Massoud -Barzani: The Opportunist, When ISIS Threw the Middle East Jigsaw Puzzle Into the Air, the Kurdish Leader Reached for a Piece*, TIME (Dec. 10, 2014), http://time.com/time-person-of-the-year-runner-up-massoud-barzani/.
[418] *See* Official Website of Kurdistan Democratic Party (last visited June. 28, 2015), http://www.kdp.info/p/p.aspx?p=2&l=12&s=010100&r=345; http://www.kdp.info/p/p.aspx?p=3&l=12&s=010200&r=346.
[419] *See* Doğu Ergil, *Leadership Prospects in Iraqi Kurdistan*, TODAY'S ZAMAN (May 26, 2015, Tuesday), http://www.todayszaman.com/columnist/dogu-ergil/leadership-prospects-in-iraqi-kurdistan_381778.html.

draft constitution impeachment requires a two-third vote and a super majority of the constitutional court. The prime minister receives a vote of confidence by a majority of the members of the parliament and vote of non-confidence requires two-thirds with the potential for a presidential veto through decree power. The chancellor of KRSC is not accountable to the council of ministers, parliament, or the courts because the chancellor is only accountable to the president under current structures and draft constitution.

Thus, MP's cannot exercise the horizontal accountability because of undue influence of this patronized process in KR. Even if the MPs of a particular party dissent from their leadership in the executive, they cannot vote them out due to the high threshold of enforcement phase of political accountability which is not congruent with political reality. For example, between 2005-2013, presumably, the PUK and KDP formed a government by majority. If PUK or KDP wants to vote the government out, the voting out requires the KDP's MPs and PUK's MPs plus a third partner including Goran and KIU in order to reach the two-third majority. In the other words, once two political parties create a coalition agreement in KR, they no longer have ultimate power on their coalitions agreement due to third partner consent. Therefore, it cloud be argued that the Prime minister or government generally have a tendency to not take parliament into considerations because of patronizing of MPs and the high threshold on enforcement of political accountability.

Concerning mass party in KR, Max Weber rationalizes the fear of mass party that leads to the "bureaucratization" of a political party.[420] Ultimately, it would render "political accountability" and "representations".[421] Hence, Johan Stuart Mill argues that the mass party

[420] LARRY RAY & MICHAEL REED, ORGANIZING MODERNITY: NEW WEBERIAN PERSPECTIVES ON WORK, ORGANIZATION AND SOCIETY 137 (2002).
[421] *Id.*

would take autonomy from the MPs. Eventually, it creates the parliament that cannot check the executive.[422] Unfortunately, the mass party in Kurdistan region is predominate theme nowadays. In addition to patronage process, the mass party endows the party leaderships to direct the parliament without being involved in public positions and without direct accountability in KR.

In a mass party, the party leadership possesses the extra-parliamentary organizations to direct its ministers and members of the parliament. Based on the Katz and Mair's analysis for the political parties, the KR political parties are mass parties in respect to their formation and internal organization.[423] By scrutinizing the interactions between the political party on the ground (the members of the party), the political party in central office (politburos and leadership committee), and the political party in the public office (ministers and MPs),[424] one can observe the strength of the party leadership in ruling parliament and government without direct involvement in KR. The mass party is defined as party that has a congress or conference in which the members of the party delegate power to a central office as their agent to hold the party members in the public office responsible towards the members of the party on the ground.[425]

The mass party has been a common model in Iraq since mid-twentieth century due to the impact of the socialist movement on the Middle East generally.[426] The mass party was a common

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[422] Nick Loenen, *A Case for Changing the Voting System and a Consideration of Alternative Systems*, *in* FIXING CANADIAN DEMOCRACY 55 (Gordon Gibson ed., 2003).
[423] *See* Jamal Khusravi, *Kurdistan Democratic party*, in POLITICAL PARTIES: SELECTED ENTRIES FROM ENCYCLOPAEDIA OF THE WORLD OF ISLAM 181, 182-184 (Gholamali Haddad Adel et al., eds.,2012); *See also* Richard S. Katz & Peter Mair, *The Ascendancy of the Party in Public Office: Party Organizational Change in Twentieth-Century Democracies, IN* POLITICAL PARTIES: OLD CONCEPTS AND NEW CHALLENGES, 113 (Richard Gunther et al., eds., 2007).
[424] *See* Ruud Koole, *Cadre, Catch-All or Cartel? A Comment on the Notion of the Cartel Party*, 2 PARTY POLITICS 507, 509-511(1996).
[425] *See* Article 9 &10, KDP By-law, *available at* http://www.kdp.se/kdpprogram.pdf; *See also* Article 14-21, PUK By-law, *available at* http://www.pukpb.org/en/peyrrewi.
[426] *See* Editorial, *A History Of The Iraqi Communist Party Interview With Univ of East Anglia's Johan Franzén* (Tuesday, July 15, 2014), http://musingsoniraq.blogspot.com/2014/07/a-history-of-iraqi-communist-party.html.

model to deal with the revolutionary movements because it has the capacity to deal with vast territories.[427] In addition to ideological and political impact of Soviet Union on Kurdistan generally,[428] the hierarchy in mass parties and chain of command needed were compatible elements with organizing military units into political parties, [429] and helped organize partisan activities and insurgency activities against the Iraqi regime. Generally, the main Kurdish political parties did not emerge inside parliament or government institutions, but rather they emerged as a consequence of Iraqi regime atrocities and repression or some of them emerge outside of government institution.

Hence, the mass party model organized itself between party member in the central office and party members on the ground. Some Kurdish political parties have acquired public office since 1991-emerging autonomy in KR- such as KDP and PUK…Etc. Moreover, there are some significant political parties that emerged after 1991 such as KIU and Goran movement. It should be observed that KIU is founded in 1996 and did not participate in the government during the two administrations period until 2005.[430] In 1996-2005, KIU organized itself only between the party members on the ground and the party members in central office. It did not have members in

[427] In KR, It is worthy to reference that the mass parties formulated itself based on unions, cells, and group memberships in a shape of the pyramid if the Iraqi regime captured some of these cells during 1942 to 1991, it did not lead to reveal all networks of their members who were conducting political and insurgent activities against Iraqi regime.
[428] *See* Omar Sindi, *What has befallen to Red Kurdistan*?, EKURD DAILY (3.12.2013), http://www.ekurd.net/mismas/articles/misc2013/12/state7537.htm; *See generally* Martin van Bruinessen, *The Impact of the Dissolution of the Soviet Union on the Kurds*, PAPER PRESENTED AT THE INTERNATIONAL CONFERENCE ON ISLAM AND ETHNICITY IN CENTRAL ASIA, 8 (1999); *See also* MARTIN SICKER, THE MIDDLE EAST IN THE TWENTIETH CENTURY, 160-163(2001).
[429] ANIKA GAUJA, THE POLITICS OF PARTY POLICY: FROM MEMBERS TO LEGISLATORS 36-37 (2013).
[430] *See* Rodi Hevian, *The Main Kurdish Political Parties In Iran, Iraq, Syria, And Turkey: A Research Guide*, RUBIN CENTER (August 19, 2013), http://www.rubincenter.org/2013/08/the-main-kurdish-political-parties-in-iran-iraq-syria-and-turkey-a-research-guide/.

the public office until 2005. It is also true for KIG.[431] Goran movement was founded in 2009 , and most of their leadership was comprised of PUK members in the politburo and committee leaderships. Nevertheless, it is a mass party due to the fact that members on the ground vote for upper levels of the party ranks.[432] Also, the central office is regulating the interaction between the party member in public office and party members on the ground. The decision-making processes of Goran rests in its central office (Jevati Geshti).[433]

Generally, the degree of independency of MPs vis-à-vis the party leadership control varies from one political party to another, but the common feature is that these MPs do not have the power to make major decision such us revoking the coalition agreement or voting out government-exerting the enforcement phase of political accountability. There is a margin in which MPs possess some level of independency, but this margin is not sufficient to restrain the executive. This marginalizes the role of MPs and affects the reputation of the Parliament towards public and voters.[434]

In KR, the parliament exercises its power on the margin of the parties leaderships' hegemony. Often, the executive members including (president, prime ministers and ministers) hold meetings with party leaders outside of parliament in closed-door sessions. After approving the major political decisions or reaching consensus, major political decisions obtain legal formats via the parliament. The dialogical process of political accountability does not take place between

[431] Momen Zellmi, *Kurdish Islamic Parties: Coalition List or Independent Lists?,* THE KURDISTAN TRIBUNE (June 4, 2013), http://kurdistantribune.com/2013/kurdish-islamic-parties-coalition-list-or-independent-lists/.
[432] *See* Official Website of Goran Movement (last visited june.28, 2015), *available at* http://www.gorran.net/En/Gorran_En.swf.
[433] *Id.*
[434] *See* Kamal Chomani, *Change changed*, THE KURDISTAN TRIBUNE (January 28, 2012), http://kurdistantribune.com/2012/change-changed/; *See also* Salah Aziz, *Democracy and the Future of Iraq*, *In* IRAQ, DEMOCRACY AND THE FUTURE OF THE MUSLIM WORLD 50, 55-56 ('Alī Pāyā et al., eds.,2011).

prime minister and members of parliament.[435] Generally, the public does not have detailed information about these meetings and decisions unless the content of these meeting is smuggled to the media. The executive actions with party leaders suggest that the actual decision makers are party leaders and not parliament.[436] Thus, The controlling institution is the central office (Politburos and leaderships' committee) which gives strength to the executive not the parliament because the survival of the executive are related with the extra-parliamentary decision–makers(the central offices) that can exercise the enforcement phase of accountability.

There are many examples to support the above argument, two come especially to mind. First, there was discussions about the law of presidency in 2005, many members of the parliament stated that this law was decided by strategic agreement and the legislators' duties are to formalize this agreement in legalist procedures to make this law better.[437] A more recent example is the discussion surrounding extending the presidency and the draft of constitution. The president of Kurdistan region requested the parliament presidium discuss the draft with the party leaderships to take their positions.[438] Ironically, this process backfired in term of political accountability and principal and agent relationships because the MPs receives support from voters to represent their interests in the parliament. The party leaders should discuss their issues inside parliament in transparent atmosphere. But in KR the Kurdistan parliament presidium is allowed to discuss the draft with the party leaders outside of the main chamber. The implicit meaning is that these MPs' statements inside parliament do not represent the actual political will

[435] *See* Salah Aziz, *Democracy and the Future of Iraq*, In IRAQ, DEMOCRACY AND THE FUTURE OF THE MUSLIM WORLD 50, 55-56 ('Alī Pāyā et al., eds.,2011).
[436] *See* Kamal Chomani, *The Crisis of Leadership: Qubad Talabani as an Example*, THE KURDISTAN TRIBUNE (March 25, 2015), http://kurdistantribune.com/2015/the-crisis-of-leadership-qubad-talabani-as-an-example/.
[437] *See* Kurdistan Parliament, Protokolakan [Protocols] No.35, at 55-58 (2005).
[438] Editorial, *Iraqi Kurdistan News in brief – April 11, 2015*, EKURD DAILY (April 10, 2015), http://ekurd.net/iraqi-kurdistan-news-in-brief-april-11-2015-2015-04-11.

of their party. These examples indicate the trend that the true power to decide on the nation's fate resides with the parties' leadership not the elected representatives of the people.

In KR, the central offices (politburos and committee leaderships) are dominated or monopolized by strong personalities, insular groups, or families.[439] The transition between the members of the party on the ground and central office reaches deadlock when the members on the ground no longer have capacity to alter the central office.[440] It means even MPs inside their political party are disempowered to replace the members of central office.[441] The central office with a firm hand holds the democratic cycle inside the political party. For instance, KDP from its foundations was ruled by Mustafa Barzani. After his death, Massoud Barzani, Son of Mustafa Barzani, became president of KDP until today. The Barzan tribe has dominated KDP's leaderships.[442] This is true for the PUK as well. Since its creations the party was led by Jalal Talabani until his illness which has caused disagreement among the party wings on whom to nominate for his positions as general secretary. Today, Talabani's family dominates the PUK's leadership despite the political tensions with other wings. In KIG, Ali Bapir has been the leader of KIG since its foundation. In respect to Goran, Nawshirwan Mustafa is the general organizer of Goran movement from inception until now.[443] The only political party which transitioned from the founder was in KIU. In the general conference, Salahaddin Bahadin was replaced by the Mohammed Faraj in a peaceful manner.[444]

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[439] Kamal Chomani, *The Leadership Crises in Kurdish Political Parties*, THE KURDISTAN TRIBUNE (April 27, 2013), http://kurdistantribune.com/2013/leadership-crises-kurdish-political-parties/.
[440] *Id.*
[441] *Id.*
[442] *Id.*
[443] *Id.*
[444] Editorial, *KIU Elects New Leader at Successful Conference*, THE KURDISTAN TRIBUNE (May 5, 2012), http://kurdistantribune.com/2012/kiu-elects-new-leader-at-successful-conference/.

Concerning Electoral design and party discipline, the electoral design and party discipline serves to increase or decrease the political accountability of the executive (council of minister and ministers) towards the parliament.[445] The electoral system's design also creates a barrier for the members of legislature to oversee government and create an active, independant parliament.[446] In systems where the electoral design is PR-closed-list,[447] the political party tends to have strong discipline over their members in the parliament.[448] Then, the strong party discipline tends to have negative affects on the parliament's ability to enforce accountability over government.[449] Also, some scholars argue that one national constituency and closed-list PR encourage the patronage process.[450]

In addition, the electoral system and party discipline through nomination of candidates are related because the electoral system affects the way that the party leadership chooses the candidates.[451] Moreover, the electoral system allocates the decision-making process inside political party in regards to choosing candidates.[452] If the nomination of the candidates is for the national level and the electoral system is PR-closed-list, the party leaderships have more control

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[445] *See* Malcolm Aldons, *Responsible, Representative and Accountable Government*, 60 AUSTRALIAN JOURNAL OF PUBLIC ADMINISTRATION 34, 34(2002); *See also* Marina Caparini, *Controlling and Overseeing Intelligence Services in Democratic States*, *In* DEMOCRATIC CONTROL OF INTELLIGENCE SERVICES: CONTAINING ROGUE ELEPHANTS 3, 14 (Marina Caparini & Hans Born eds., 2007).
[446] *See* Lia Nijzink & Jessica Piombo, *The Institutions Of Representative Democracy*, CSSR WORKING PAPER NO. 85, 8-12 (2004).
[447] *See* Susan Rose-Ackerman, *Political Corruption and Democracy*, 14 CONN. J. INT'L L. 363, 374 (1999).
[448] *See* JOHN K. JOHNSON, THE ROLE OF PARLIAMENT IN GOVERNMENT 8-10 (2005).
[449] *See* Mark Shephard, *Administrative Review and Oversight: The Experience of Westminster*, *In* TRENDS IN PARLIAMENTARY OVERSIGHT 40, 40 -41(Riccardo Pelizzo et al., eds., 2004); *See also* Lia Nijzink & Jessica Piombo, *supra* note 446, at 4-5.
[450] *See* Jana Kunicova & Susan Rose-Ackerman, *Electoral Rules as Constraints on Corruption: The Risks Of Closed-List Proportional Representation*, 2 & 5-7 (2002), *available at* http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.24.5821&rep=rep1&type=pdf.
[451] Shaun Bowler et al., *Party Cohesion, Party Disciplines, and Parliaments, In* PARTY DISCIPLINE AND PARLIAMENTARY GOVERNMENT, 7-8 (Shaun Bowler et al., eds., 1999).
[452] *Id.*

over choosing the candidate.[453] The outcome of this design is that the leaderships can enforce more discipline by reducing the dissenting voice to their leaderships through filling nominations.[454] The increasing discipline overs the members of the parliament tends to disincentives the members of the parliament from utilizing the enforcement phase of accountability such as a no-confidence vote.[455]

In contrast, when the electoral design enhances more local participation associated with local constituencies, the local grassroots of the party tend to have more control over candidates nomination rather than party leaderships.[456] When the candidate has the local support and electoral design based on constituencies, the system tends to create the opportunity to the candidate to support local demands over party leaderships.[457] It reduces the party discipline of the leadership overs the members of the parliaments. It creates incentives to dissent against the leadership's policy and can lead to the executive ultimately being voted out of government.[458] It also allows the candidate to legitimatize his or her position by having popular support at the local base in the face of party leadership.[459]

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[453] *Id* at 12.
[454] *Id* at 7-8.
[455] *See* RICCARDO PELIZZO & FREDERICK STAPENHURST, PARLIAMENTARY OVERSIGHT TOOLS: A COMPARATIVE ANALYSIS 95-96 (2013); *See also* Muhammad Mustafizur Rahaman, *Party discipline and Democratic Reform in Japan*, CANADIAN PARLIAMENTARY REVIEW 17, 19 (2006).
[456] *See* Shaun Bowler et al., *supra* note 451.
[457] *See* TORILL MONSTAD, THE NEW SOUTH AFRICAN PARLIAMENT: AN EVALUATION OF PARLIAMENT'S OVERSIGHT FUNCTION OF THE EXECUTIVE 21-22 (1999); *See also* Bjørn Erik Rasch, *Electoral Systems, Parliamentary Committees, and Party Discipline: The Norwegian Storting in a Comparative Perspective*, in *In* PARTY DISCIPLINE AND PARLIAMENTARY GOVERNMENT, 126 (Shaun Bowler et al., eds.,1999).
[458] In parliamentary system, where less disciplined political parties exist, the backbench dissenters may vote out a prime minister. Thus, voting out the prime minister would change leaderships inside political parties through vote non-confidence. *See* MICHAEL FOLEY, JOHN MAJOR, TONY BLAIR AND A CONFLICT OF LEADERSHIP: COLLISION COURSE 71-72 (2002); *See also* CHRISTOPHER J. KAM, PARTY DISCIPLINE AND PARLIAMENTARY POLITICS 7-11(2009).
[459] Paul F. Whiteley & Patrick Seyd, *Discipline In the British Conservative Party: The Attitudes of Party Activists Towards The Role Of Their Member of Parliament, In* PARTY DISCIPLINE AND PARLIAMENTARY GOVERNMENT, 54 (Shaun Bowler et al., eds., 1999).

Before discussing political accountability in relation to party discipline, it is useful to distinguish the party cohesion and party discipline are often muddled by researchers. As Hazan argues "discipline starts where cohesion falters."[460] Party discipline means that the party's leadership possesses "ways and means" to restrain and direct legislators, and legislators have obedience to follow the leadership directions contrary to their preferences.[461] Conversely, Party cohesiveness means that the legislators of the particular faction work to achieve similar objectives based on their will and preferences.[462] Thus, the cohesiveness is related with legislators' preference over certain policies.[463]

Moreover, when the political party enjoys strong discipline in the parliament, the members of the parliament refrain themselves from parliamentary investigations and no-confidence votes against their senior leaders in the executive.[464] Particularly when criticizing the party leaders in the executive may cause the members of the parliament to be expelled from the party line.[465] Likewise, it may deprive the members of the parliament from futures career advancements or reelection opportunity.[466] In KR, not only are MPs subject to disciplinary procedures of their party, but even ordinary members of the party can be subject to disciplinary punishment if he or she tries to criticize his or her leaderships.[467]

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[460] Reuven Y. Hazan, *Does Cohesion Equal Discipline? Towards a Conceptual Delineation,* 9 THE JOURNAL OF LEGISLATIVE STUDIES1, 3(2003).
[461] Shaun Bowler et al., *supra* note 451, at 4.
[462] JOHN M. CAREY, LEGISLATIVE VOTING AND ACCOUNTABILITY 126 (2009).
[463] Bjørn Erik Rasch, *Electoral Systems, Parliamentary Committees, and Party Discipline: The Norwegian Storting in a Comparative Perspective*, in *In* PARTY DISCIPLINE AND PARLIAMENTARY GOVERNMENT, 122 (Shaun Bowler et al.,eds.,1999).
[464] *See* TORILL MONSTAD, THE NEW SOUTH AFRICAN PARLIAMENT: AN EVALUATION OF PARLIAMENT'S OVERSIGHT FUNCTION OF THE EXECUTIVE 61(1999).
[465] *See Id* at 26-27; *See also* Scott W. Desposato, *The Impact of Electoral Rules on Legislative Parties: Lessons from the Brazilian Senate and Chamber of Deputies*, 68 JOURNAL OF POLITICS 1018, 1028(2006).
[466] Reuven Y. Hazan, *supra* note 460, at 5.
[467] *Cf.*, Interview, *PUK deputy leader: We Will Punish Party Members if They Speak Out Against PUK Leadership*, KURDISH ASPECT (September 24, 2007), http://www.kurdishaspect.com/doc092407KM.html;

The problem of electoral design in Kurdistan region allows strong party discipline which benefits the party leaders because the electoral system is relatively closed-list proportional representation and all Kurdistan region is considered as one constituency for all parliamentary seats.[468] The parliament of Kurdistan region consists of 111 seats. A hundred general seats, which are built on PR-relatively closed list, are allocated for the entire region, and 11 reserved seats are for the ethnic minorities and has been divided into three categories. The Turkmen have five reserved seats based on PR-relatively closed list system. Chaldean, Syriac and Assyrian have five reserved seats based on PR-relatively closed list. Armenian have one reserved seat based on majority.

Further, relatively closed list is defined as a system in which electors vote for the list is sufficient to consider the voting ticket as valid.[469] The elector's preference only changes the orders of the candidates who received the seats. In the other words, the each political party receives the seats based on the list votes. Then, the distributions of the seats among candidates of each party are based on the voter's preferences. Presumably, if one political party receives three seats but no one votes for their candidates, these three seats are distributed based on the orders of the list. If the two candidates receive the same preference numbers of voters, the seat is allocated to the one who has priority in the list order.

Strong party discipline, a centralized electoral system, a patronage network, and a lack of "intra-party democracy" under KR's mass parties, erode mechanics of political

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See also J. Scott Carpenter & Ahmed Ali, *Iraqi Kurds Go to the Polls: Is Change Possible?*, THE WASHINGTON INSTITUTE (July 23, 2009), http://www.washingtoninstitute.org/policy-analysis/view/iraqi-kurds-go-to-the-polls-is-change-possible

[468] *See* Michael Knights, *'Managed Democracy' Gives Way in Iraqi Kurdistan*, THE WASHINGTON INSTITUTE (August 3, 2009), http://www.washingtoninstitute.org/policy-analysis/view/managed-democracy-gives-way-in-iraqi-kurdistan.

[469] Kris Deschouwer & Theo Jans, *Electoral Systems And Their Effects In Divided Societies*, *In* INSTITUTIONAL DEVELOPMENT IN DIVIDED SOCIETIES 161, 170 (Bertus De Villiers et al., eds., 1998).

accountability to restrain executive actions or to hold government accountable.[470] Ultimately it reverses the relationships between the executive as agent to a principal and the parliament as principal to the agent. The available tools to exercise the political accountability against executive tends to not functions and the executive tends to accumulate powers and to act unaccountably in the absence of active parliament oversight. The members of the parliament are reluctant in exercising the accountability mechanism without approval of the central office. They are more inclined to fulfill the central office's preferences rather than the voter's.[471] In policy-making, MPs forward central office's preferences over those of their voters.

In KR, the central office almost always exercises the final words in choosing the candidates.[472] For a candidate to be nominated it needs to be approved by central office. Further, due to the patronage network that party leaders have built around themselves, these candidacies tend to create more loyalty and accountability of both executive and parliament to party leaders generally rather towards voters and public. It is safe to assume the party leaders tend to participate in those governmental positions since there are few mechanism to uphold accountable while having substantial powers, or the party leaders do not participate in government in order to not be accountable at all because they possess substantial powers outside of governmental institutions via the mass party's discipline powers and patronage network. Thus, as long as the true decision-making is outside of parliament and accumulated in extra-parliamentary structure. The parliament cannot have an effective role inside governmental structures.

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[470] *See* Ergun Özbudun, *Turkey: How Far from Consolidation?*, 7 JOURNAL OF DEMOCRACY 123, 134-135 (1996).
[471] *E.g.*, during the presidency crises, the MP's of PUK preferred to do no extend the Barzani's presidency. They argued that this process is undemocratic because it is against the elections and peaceful transitions of powers via elections. Nevertheless, the leadership calls all MP's to instruct them to vote for Barzani's extending presidency's term. The same issues for KIU and KIG's MPs, they preferred to do not vote to the Draft of constitution in 2009. After meeting with their top leaderships, they agreed to vote for it.
[472] *See* Michael Knights, *supra* note 468.

Chapter III

Introduction:

Empowering the Kurdistan parliament requires a design that can at least mitigate those problems which are discussed under the design defects analysis and contextual factors analysis. The constitutional design is always about the "trade-off" among diverse factors.[473] The strategy of this redesigning approach focuses on the incentives that design factors and contextual factors produce (see chapter two). Moreover, proposed design changes should be correspond to the aforementioned issues of political accountability including the answerability phase and the enforcement phase. In addition, they should account for contextual factors like the political will of parliament, the mass party system, the party discipline, the patronage networks, and the electoral system.

Moreover, this analysis proposes a design that can incentivize the party leaders to exercises their prerogative inside the parliament not through recruiting their patronage network to be ministers or members of the parliament. To bring back political deliberations and transparency, the design seeks to disempower the party leaderships in nomination processes, reducing the party discipline, reducing their capacity to tenuously control the parliament and executive, reducing their capacity over their grassroots in order to encourage the party leadership to take a more active role in public office as head of factions in the parliament or as prime minister and ministers. The analysis further argues that decreasing the influence of organizational powers of political parties and their discipline allows the members of the

[473]See Jon Elster, *Clearing and Strengthening the Channels of Constitution Making*, *IN* COMPARATIVE CONSTITUTIONAL DESIGN 15, 17 (Tom Ginsburg eds., 2012).

parliament to utilize the answerability and enforcement phase of political accountability more actively.

Further, to overcome the serious flaws of accountability in KR, this analysis claims the electoral system and form of government could be helpful tools to address the issues mentioned above. For the electoral design, the single transferable vote could have a vital impact in minimizing the party discipline and changing the formations of political parties. For the form of government, the constrained parliamentarism model is useful for reducing many issues surrounding executive accountability. In addition, these two responses will change the many various incentives. Finally, there are others considerations that must be dealt with such as the Kurdistan Region Security Council, and the sovereignty of the parliament.

3.1 Electoral design concerning the party discipline, mass party, and the leadership's control

To empower the MP's with independence and to allow the KR's MPs to express their will and to be able to exercise the available tools of the answerability and enforcement phase of political accountability in the parliament, it is important to reduce the party discipline, the control of leadership and executive hegemony over the parliament.[474] From a contextual factors analysis, enhancing the parliament capacity of government oversight requires the electoral system that can reduce party discipline, to allow formidable autonomy for MPs, and incentivises them to represent voters demands over their leadership's. One has to analyze how the electoral system can impact on the party discipline and incentivise the MPs.

[474] *See* Rustum Mahmoud, Arab Center for Research and Policies Studies, *The Outlooks for the Opposition in Iraqi's Kurdistan Region,* 5 (2011), *available at* http://english.dohainstitute.org/file/get/71f049bc-8449-493b-9359-1132781ca06e.pdf

The electoral system creates different forms of incentives for the member of the parliament and the party leaderships. Based on the MPs incentives and party discipline, the electoral system could be classified for the three types which are "party-centered systems", "intermediate systems", and "candidate-centered systems".[475] In the *party-centered system,* the electoral choice does not allow voters to have personal preferences over electing the candidate inside a list. The party leadership have high discipline over their MPs.[476] Also, it discourages the members of parliament from seeking personal votes beyond the party line.[477] In addition, the party leaderships possesses the high level of sanctioning and discipline over their MPs. For instance, the closed-list proportional representatiativs are determined by party leaderships and voters only have one vote for the list, not to the candidates.

Some scholars argued that in closed-list PR the influential principal of the MPs are the party leaderships not the voters due to the intense centralized process of allocating powers to the party leaders. [478] Likewise, relatively closed-list is considered as a party-centered system.[479] Consequently, this design incentivizes highly regulated, centralized process in which the candidate is approved and nominated to parliament by leadership.[480] Under this party-centered system, the candidates are encouraged to appeal to leaderships more than the voters and

[475] Paul Mitchell, *Voters and their representatives: Electoral Institutions and Delegation in Parliamentary Democracies,* 37 EUROPEAN JOURNAL OF POLITICAL RESEARCH 335, 342-343(2000).
[476] *See* DAVID COLETTO, A MATTER OF QUALITY? CANDIDATES IN CANADIAN GENERAL ELECTIONS 16 (2010).
[477] Paul Mitchell, *supra* note 475.
[478] See R.Kent Weaver, *Electoral rules and Party system in Federations*, *In* FEDERALISM AND TERRITORIAL CLEAVAGES 227, 230-231(Ugo M. Amoretti et al., eds., 2004).
[479] See Ulrich Sieberer, *Party Unity in Parliamentary Democracies: A Comparative Analysis,* 12 JOURNAL OF LEGISLATIVE STUDIES 150, 163(2006).
[480] Paul Mitchell, *supra* note 475, at 341.

grassroots of the party.[481] The party leadership has the power to disqualify the member of parliament from pursuing reelection.

The *intermediate system is* defined as the electoral system that permits both "individual and party appeals and sanctions." In the others words, both the grassroots of the party and the party leaderships can bar a member of the parliament from reelections. For instance, "single member simple plurality, alternative vote, and double-ballot" are examples of the intermediate system. These systems are based on "single member's district" (SMD) constituencies. The candidate may utilizes the "party label" to collect votes or it may appeal to constituency to be more beholden to the constituency's than the leadership.[482] However, if one compares second intermediate systems with "candidate-centered systems", he or she can observe that the third categories is more likely to induce intra-party competition even amongst candidates from a political party.[483]

The *candidate-centered systems* include both *"*genuinely preferential (open) list and single transferable vote (STV) systems." It is worthy to clarify that the genuinely preferential open list should not have "pre-ordained list" or "default order". [484] Shugrat defines the open list as lists that "provided by parties are unranked and preference votes alone determine the order of election from a party's list."[485] Yet, political party leaders can screen and disqualify those whom do not desire to be reelected because in the open-list initially is provided by political party,[486] but the voter's preference count solely to choose the candidate. To some extent, open-list decrees

[481] *See* CEES VAN DER EIJK & MARK FRANKLIN, ELECTIONS AND VOTERS 121-122 (2009).
[482] Paul Mitchell, *supra* note 475, at 342.
[483] *Id* at 342-343.
[484] *Id* at 342.
[485] Matthew Søberg Shugart, *Comparative Electoral Systems Research: The Maturation of a Field and New Challenges Ahead, In* THE POLITICS OF ELECTORAL SYSTEMS 25, 42 (Michael Gallagher et al., eds., 2005).
[486] *See* Thomas D. Lancaster, *Legislature, In* POLITICAL AND CIVIC LEADERSHIP: A REFERENCE HANDBOOK 418, 421-423 (Richard A. Couto ed., 2010).

party discipline because under the open-list the candidates have two principals: the party leaderships and the voters.[487] Also, it escalates intra-party rivalries which decrease party discipline.[488]

However, comparing the PR open-list to STV, STV allows the candidates to be elected based on voter's preferences solely by ranking the candidates on the ballot despite the party's label.[489] STV further reduces the discipline power of party leaders because it retains intra-party competitions, and it encourages the voters to scrutinize the candidates in close distance because the voters tend to vote based on the quality of candidates rather than party line.[490] STV encourages the candidate to differentiate themselves from other candidates.[491] The electors have a tendency to vote for the candidates that appeal to him most not only to the party label.[492] Hence, the candidate not only has to appeal to the grassroots of his or her party to cultivate votes but also to seek for the votes beyond their members or party lines.[493] Consequently, the candidates are more prone to create the "personal followers" on the local level.[494]

In order to reduce the political parties' discipline in KR, one should decentralize the candidate's selections method and to build local constituencies for the MPs based on the STV due to aforementioned qualities that exist under PR-STV.[495] Inducing strong relationships

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[487] Michael Gallagher & Paul Mitchell, *Introduction to Electoral Systems*, *In* THE POLITICS OF ELECTORAL SYSTEMS 3, 10-11(Michael Gallagher et al., eds., 2005).
[488] Paul Mitchell, *supra* note 475.
[489] R. Kent Weaver, *supra* note 478.
[490] JOHN CURTICE ET AL, REVOLUTION OR EVOLUTION? THE 2007 SCOTTISH ELECTIONS 187-188 (2009); *See also* AMY LANG, A NEW TOOL FOR DEMOCRACY?: CITIZEN DELIBERATION IN THE BRITISH COLUMBIA CITIZEN'S ASSEMBLY ON ELECTORAL REFORM 106-108 (2007).
[491] DAVID COLETTO, *supra* note 476, at 16-17.
[492] JOHN CURTICE ET AL, *supra* note 490.
[493] Paul Mitchell, *supra* note 475, at 344.
[494] *See* CEES VAN DER EIJK & MARK FRANKLIN, *supra* note 481.
[495] Tapio Raunio, *Finland: One Hundred Years of Quietude*, *In* THE POLITICS OF ELECTORAL SYSTEMS 473, 484-486 (Michael Gallagher et al., eds., 2005).

between the MPs and the local branch of the political party in the local district is a significant factor to decrease the party discipline over the MPs.[496] Also, it grows the accountability of the members of the MPs towards its voters rather than party leaderships.[497] To further implement a decentralized design of candidate selection in KR, stipulating period of residency requirement on the candidates would increase the incentives for candidates to be more accountable to their own constituencies rather than followers of the party leadership.[498] One should avoid creating large-sized constituencies and centralized methods of candidate selection in KR because these have a tendency to strengthen the party leadership and to further weaken the will of the Parliament.[499]

The nomination of candidates for public office is not only an important factor for reducing party discipline and leadership's followers, but it also plays a fundamental role in reshaping the formation political parties.[500] Katz argues "Candidate selection is one of the central defining functions of a political party in a democracy."[501] Candidate's selection within "intraparty politics" could substantially have an impact on the ability of the candidates either by constraining or empowering the potentiality of the candidates.[502] Additionally, Kats discuses that "whichever extra-parliamentary face were in control in the mass party, selection (and potential deselection) of candidates would be one of the devices through which control not only of the parliamentary party, but of its leadership and cabinet members as well, would be

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[496] *See* CEES VAN DER EIJK & MARK FRANKLIN, *supra* note 481; *See also* NORTON PHILIP & DAVID MICHAEL WOOD, BACK FROM WESTMINSTER: BRITISH MEMBERS OF PARLIAMENT AND THEIR CONSTITUENTS 26-30 (1993).
[497] *See* Patrick Dumont & Frédéric Varone, *Delegation And Accountability In Parliamentary Democracies:Smallness, Proximity. Short Cuts*, *In* DELEGATION IN CONTEMPORARY DEMOCRACIES 52, 53-55 (Fabrizio Gilardi et al., eds., 2006).
[498] *See* Joel D. Barkan, *Legislatures on the Rise?*, 9 JOURNAL OF DEMOCRACY 124,125-126 (2008); *See also* Tapio Raunio, *supra* note 495, at 485-488.
[499] Michael Gallagher, *Conclusion*, *In* THE POLITICS OF ELECTORAL SYSTEMS 535, 554 tbl. 26.5 (Michael Gallagher et al., eds., 2005).
[500] Richard S. Katz, *The Problem Of Candidate Selection And Models Of Party Democracy*, 7 PARTY POLITICS 277, 278(2001).
[501] *Id* at 278.
[502] *Id* at 280

maintained."[503] Under the mass party, candidate selection method allows central office (an extra-parliamentary structure) to have considerable impact to influence over elections due to the hierarchical structures of the mass party at expense of local branches of the party or different political interest groups.[504]

In KR, to reduce the party discipline, to decrease the power of the party leadership to remotely control parliament through mass party structures and PR-relatively closed-list, the Kurdistan region draft constitution should adopt PR-STV with small local constituencies which enables the local branch of a political party or local constituencies to nominate their candidates to the parliament.[505] PR-STV permits the independent candidates to acquire seats.[506] PR-STV reduces the powers of the leaderships to recruit their patronage network on the local constituencies because under PR-STV close evaluations of the candidates by the voters at local level minimizes the impact of patronage network which is close to leaderships rather than grassroots of political party.[507] Moreover, recruiting the patronage network would not be as mechanical under PR-STV as it is under PR– relatively closed-list. Further, the members of the parliament have incentive to be reelected and because the support from constituents matters, they must build personal support at local level. With regard to the mass party structures and the powers of the leaderships, John Stuart Mill noted that STV allows MPs to have high independency from party discipline and party leaderships under Mass party.[508]

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[503] *Id* at 284.
[504] *Id* at 284.
[505] See DAVID COLETTO, *supra* note 476.
[506] Campbell Sharman et al., *Trading Party Preferences: The Australian Experience of Preferential Voting*, 22 ELECTORAL STUDIES 543, 553 (2002).
[507] Rustum Mahmoud, *supra* note 474, at 6.
[508] Nick Loenen, *supra* note 442, at 55.

In KR, redesign of the general seats of parliament should be based on the PR-STV with local constituencies. Under PR-STV, it is worth noting that the proportionality of seats depends on the quota and the numbers of seats per constituencies.[509] Due to the lack of census in KR,[510] this analysis refrains itself from specifically allocating the levels of the seats according to each governorates and per constituencies. Typically, PR-STV has more proportional and inclusive outcomes when the number of the seats per constituencies is "five or more" seats.[511] Nevertheless, the constituencies should not be too large to undermine the localness and adversely impact the link between MPs' and voters. Concerning the women's quota, a thirty percent women's quota under PR-relatively closed-list should be transformed to thirty percent reserved seats of each constituency. For instance, if one constituencies has ten general seats, three of these seats should be allocated and reserved to women candidates. Concerning the 11 seats for the ethnic minorities, this analysis does not address these seats because it requires a more substantial understanding of party discipline and party formations under ethnic minorities political parties.

Concerning electoral design for disputable areas of article 140 (see chapter one), the allocation of seats without census may overrepresent the seats numbers than populations of disputable area in Kurdistan Parliament or vice versa. Nevertheless, the STV formula with a compulsory ranking vote could minimize the ethnic tension among Kurds, Arabs, and Turkmen because STV incentives these different ethnic to negotiate on the second preference in

[509] Nicolaus Tideman, *The Single Transferable Vote*, 9 THE JOURNAL OF ECONOMIC PERSPECTIVES 27, 30 (1995).
[510] *See* Mustafa Habib, *Counting Iraqis: Why There May Never Be A Census Again*, NIQASH (20.06.2013), http://www.niqash.org/en/articles/politics/3238/; *See also* Fereydun Hilmi, *The Kurdish Elections Need a Population Census*, BET-NAHREN (May 20, 2001), http://www.atour.com/news/assyria/20010705a.html; *See also* Mustafa al-Kadhimi, *Iraqi Political Will Lacking for New Electoral Law*, AL-MONITOR (June 25, 2013), http://www.al-monitor.com/pulse/originals/2013/06/electoral-law-iraq-dispute.html#.
[511] Andrew Petter, *The Failing Of First-Past-The-Post, in* FIXING CANADIAN DEMOCRACY 69, 70 (Gordon Gibson ed., 2003).

ranking,[512] or "even the fifth or sixth preference." [513] It also drives them to do election campaigning in different ethnic communities.[514] For instance, in order to win votes, the Arab candidates would seek support from Kurdish communities and vice versa. Also, it is important to stipulate in the draft a mechanism for adding extra seats from general seats of KR for disputed areas once they have been resolved through article 140. The suitable mechanism is to allow two-thirds of parliament to decide on the addition of extra seats for disputable areas using a "preclearance process" overseen by the constitutional court of KR under draft because the power-sharing can be achieved among Kurdish political party by two-third of MPs and the preclearance could ensure the integrity of adding extra seats and prevent gerrymandering of constituencies.[515]

3.2 The form of government and constrained parliamentarism model

The form of government as discussed above, is a fundamental element in determining the capacity of the parliament to provide oversight of the government because the framework of accountability within the form of government if it is designed inadequately, allows the flaws and wrongdoing of executives to go without punishment.[516] It also increases the probability those misbehaviors could be repeated in the future.[517] The legislative body in the parliamentary system is more influential in holding the government accountable because, in the parliamentary

[512] Benjamin Reilly, *Electoral Systems For Divided Societies*, 13 JOURNAL OF DEMOCRACY 156,158-159 (2002).
[513] Paul Mitchell, *supra* note 475, at 344.
[514] *See* Benjamin Reilly, *supra* note 512, at 159.
[515] *See* Katharine Inglis Butler, *Redistricting In A Post-Shaw Era: A Small Treatise Accompanied By Districting Guidelines For Legislators, Litigants, And Courts*, 36 U. RICH. L. REV. 137, 171-174 (2002); *See also* Jeffrey G. Hamilton, *Deeper Into The Political Thicket: Racial And Political Gerrymandering And The Supreme Court*, 43 EMORY L.J. 1519, 1556-1557 (1994).
[516] Daniel Kaufmann et al., *Corruption: A Key Challenge for Development, In* THE ROLE OF PARLIAMENT IN CURBING CORRUPTION, 17-20 (Rick Stapenhurst et al., eds., 2006).

[517] *Id.*

system, the executive branch is the agent of the parliament.[518] The parliament can hold government based on both political accountability and legal transgression of the executive.[519] One of the major important aspects of the parliamentary system is that it possesses the "immediate" oversight on government's actions. Moreover, the parliament enjoys high capacity to dismiss politician from offices.[520] Also, the parliamentary system is more equipped to deal with executive's abuses of powers and wrongdoings.[521]

"[C]onstrained parliamentarism" is a suitable design for KR because it means that the parliament is not able to change the law or to amend the law as it wishes but instead is constrained by "a written constitution, a bill of rights, and a supreme court."[522] These qualities correspond with the issues of flexibility and majoritarian rule because a written constitution prevents party leaders from manipulating the autonomy of the parliament for political ends. Introducing the bill of rights and Supreme Court enables political and ethnic minorities to protect themselves from the majority. Under this model, the head of state should possess ceremonial powers. All actions of the President must be signed by the Prime Minister to ensure the prime minister is held politically accountable for the actions of President before the parliament.[523] Likewise, the president's actions must be based on the advice of prime minister so that the president through the prime minister is responsive to the Parliament.[524] Therefore, the ceremonial power of the President, under constrained parliamentarism, permits the president to have only

[518] Daniel Lederman et al, *On the Political Nature of Corruption*, *In* THE ROLE OF PARLIAMENT IN CURBING CORRUPTION, 29-30 (Rick Stapenhurst et al., eds., 2006).
[519] *Id.*
[520] *Id* at 29.
[521] Sahr Kpundeh & Phyllis Dininio, *Political Will*, *In* THE ROLE OF PARLIAMENT IN CURBING CORRUPTION, 41 (Rick Stapenhurst et al., eds., 2006).
[522] Bruce Ackerman, *The New Separation Of Powers*, 113 HARV. L. REV. 633, 635 (2000).
[523] *See* KRZYSZTOF PROKOP, *supra* note 355.
[524] *Id.*

accountability on "legal transgression" or "constitutional accountability" not be politically accountable to Parliament although there are not currently any legal restriction to politically hold the president accountable.[525]

To reduce the impact of the patronizing network on the ministers and MPs, the members of the executive should be elected the same as members of the parliament and by the same rules of election of the PR-STV with local constituencies. The prime minister and minister should be MPs at the same time under same chamber because the ministers and prime ministers are encouraged to attend parliament session in order to pass their government agenda or to vote for their policies. This will increases political deliberation, questioning, and interrogations between government members and parliament members and promotes answerability phase of political accountability. In term of incentives, prime minister or ministers could be removed from office either by losing elections to their constituencies or dismissing from office by vote no-confidence. Seemingly, these risks incentivize the prime minister and ministers to act according to the will of its voters and the public generally.[526]

At the enforcement phase of political accountability, the executive historically is more powerful than parliament in KR. Currently under both the draft and current structure, removing government is by two-thirds vote of MPs. Due to two administrations period and power of politburo in KR, the executives inherently are more powerful than parliament. It means executives- outside of government institutions and constitutional power- can accumulate substantial powers through the mass party and patronizing process.

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[525] *Id.*
[526] *See* Susan Rose-Ackerman, *Political Corruption and Democracy*, 14 CONN. J. INT'L L. 363,263-264 (1999); *See also* Daniel Lederman et al, *supra* note 518, at 29.

Furthermore, parliament seats based on proportional elections always creates coalition government. No one political party can receive the majority of seats. Thus, it does not create two strong parties to hold each other accountable- one in opposition and another one in the government. In the other words, proportionality electoral systems create many political parties that cannot have a quick response to prime ministers because most of their actions need many negotiations and other time-consuming processes. Even if one believes that majority electoral system is suitable for Kurdistan region, the inclusiveness and diversity in Kurdistan region will be undercut by a majority electoral system. The trade-off should be by lowering the two-thirds no-confidence vote threshold to a majority of MPs. Thus, one can preserve inclusiveness and diversity of Kurdistan region in addition to increasing the availability of the enforcement phase for enforcing political accountability.

Concerning committee design, party discipline, and majoritarian impact on the committees of parliament, it is important to reduce the party discipline, patronage process, and majority impact on the committee's oversight and formalizing policies.In KR, the presidium of parliament exerts discretionary powers on deciding on the chairmen of committees. Since the same majority, an incumbent party, controls the government by virtue of its size, it inhabits chairmen of the committees and Presidium of parliament. Because these committees lack of separation of purposes- a Madisonian dilemma under federalist no. 10-,[527] or lack incentive to check the government, the curial committees tend to not scrutinize the incumbent party's actions. There are different designs to mitigate issues mentioned above. Allocating chairmanships of financial affairs to political oppositions or a minority political party tends to create active

[527] *See* Royce Carroll & Matthew Soberg Shugart, *Neo-Madisonian Theory and Latin American Institutions*, *In* REGIMES AND DEMOCRACY IN LATIN AMERICA, 2 (Gerardo Munck, ed., 2007).

oversight of parliament over government spending. This formula exists in the Commonwealth Westminster model. Legal committees and other committees should be chair based on a rotation among the political parties in the parliament. In Brazil, all committees are chaired based on rotation among political parties including political oppositions to reduce the impact of incumbent party on the parliament checks.[528]

Concerning the Kurdistan Region Security Council (KRSC), the solutions of this parallel executive should be eliminated as it undermines both political accountability of the parliament and government. The KRSC should be an advisory board to "advise and assist" the head of the executive.[529] In a presidential system, the president is also head of the executive. Therefore, the National Security Council is under supervisions of the president to formulate policies for president. Hence, it should not have any legislating powers that undermine parliament accountability to voters. Under the parliamentary formula, the National Security Council is advisory board for the prime minister. For instance, National Security Councils in United Kingdom, Israel, India and Japan are under the supervision of the prime minister who is responsible to Parliament.[530]

3.3 Overall conclusion

In KR, the unaccountability of the executive and the powerlessness of the parliament to check the executive are discussed under two track of problems. First, the design defects including, a form of government, the sovereignty of parliament, the impact of Kurdistan Region

[528] G. SHABBIR CHEEMA, BUILDING DEMOCRATIC INSTITUTIONS: GOVERNANCE REFORM IN DEVELOPING COUNTRIES 88-89 (2005).
[529] *See* The Official Website of White House (last visited june.28, 2015), https://www.whitehouse.gov/administration/eop/nsc/.
[530] *See* SUZI NAVOT, CONSTITUTIONAL LAW OF ISRAEL 304 (2007); *See also* JASWANT SINGH, NATIONAL SECURITY: AN OUTLINE OF OUR CONCERNS 92-93(1996); *See also* ANDREW OROS & YUKI TATSUMI, GLOBAL SECURITY WATCH—JAPAN 35-36 (2010).

Security Council, inadequacy in the mechanism of political accountability at enforcement and answerability level. Second contextual factors including, impact of mass party, strong party discipline, electoral design, patronizing the parliament, lack of intra-party democracy cedes still more power to the executive leaders and those political leaders whom are outside of executive and parliament.

The design defect is mitigated by "constrained-parliamentarism" by stipulating bill of right, written constitution, Supreme Court. Additionally, selecting the executive body to MPs enhances the interaction between parliament and executive. Also, it provides incentives for executives to appear in parliament to collect vote and pass government's policies. It increases debate and political deliberations between executive and parliament which is a missing element in KR. By stipulating rotation or fixed-chairmanships of parliament committees for political oppositions, the parliament can exert more active checks on executive in oversighting and scrutinizing government policies. The parliament can have more influence over the KRSC because it would be attached with head of the executive who is prime minister.

The PR-STV with local constituencies further reduces the power of those leaders inside executive or outside of executive to inhabit the parliament seats. By lowering both the no-confidence vote threshold and party discipline, the parliament can possess more autonomy to vote out government. This strengthens the enforcement phase of political accountability. The patronizing members of parliament and mass party structures would be reduced because they are accountable to their local constituency. The MPs are more prone to fulfill the voter's demands rather the leadership in order to preserve their seats in parliament. Moreover, the minister and prime minister, to ensure their positions, have to participate in elections and face electors rather than being mechanically appointed as they are under the current structures and draft constitution.

Thus, it increases interaction between the executive and voters- which increases vertical accountability.

By weakening the extra-parliamentary structures of political parties through PR-STV, the leadership's apparatus at their hand would be weakened. The parliament structures would be the center of political deliberations. Intra-party democracy would be increased due to the pressures of local consistencies. Cohesiveness tends to be the way of functions in the parliamentary factions. The leaderships encouraged to use more parliamentary techniques to promote the unity. Likewise, the leadership is encouraged to attract approval from their members in order to be build loyalty and cohesiveness. The members of the parliament are encouraged to raise critical issues over their leaderships in the executive-horizontal accountability. Also, the newcomers and independent candidates would be encouraged to be elected thus helping to protect minority rights and undermining large party hegemony.

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