**ANGLIA RUSKIN UNIVERSITY**

**FACULTY OF ARTS, LAW AND SOCIAL SCIENCES**

**THE GOVERNING SYSTEM IN IRAQI KURDISTAN: PROSPECTS AND CHALLENGES OF DEMOCRATIC TRANSITION**

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**A thesis in partial fulfilment of the requirements of**

**Anglia Ruskin University**

**for the degree of Doctor of Philosophy**

**Submitted: September 2018**

**ACKNOWLEDGMENTS**

I would like to express my special appreciation and thanks to my supervisor, Dr Andrew Gilbert for his support and encouragement during many stages in the course of this research project. Additional thanks must go to Dr Alexander Murray who gave me insightful comments on the final draft of the thesis. I would also like to thank Professor Robert Home for his helpful suggestions and productive discussions at the early stage of the thesis. l am indebted to Emeritus Professor Mary Joannou and to Andy Salmon, Acting Dean of the Faculty of Arts and Letters, for their understanding and support when this was needed.

Last but not least, I would like to thank Areen and Nma, my lovely son and sweet daughter, for being patient and inspiring. They made me feel strong to walk this challenging journey and to them this work is dedicated.

**ANGLIA RUSKIN UNIVERSITY**

**ABSTRACT**

**FACULTY OF ARTS, LAW AND SOCIAL SCIENCES**

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**SEPTEMBER 2018**

Focussing on the period 2009 to 2018, this thesis provides an up-to-date overview of the Kurdistan Region, examining the governing system and addressing the interrelation between the failure of democratisation and the Kurdish de facto state. The failure of state-building overlaps with the failure of democratic transition, which in turn, generated situations of authoritarianism: from closed to electoral alternating between competitive and hegemonic regimes echoed by a duopoly party governance. Accordingly, because of its concern to whether democracy is emerging in the Kurdistan Region, this thesis mainly adopts a minimalist concept of democracy. To understand the Kurdistan Region’s complex status, the resources of more than one theory and methodology are employed here to look at democratisation and constitutionalism, in a combination of institutional and comparative analysis.

The methods and targeted timespan (2009-2018) of this thesis, differentiate it from previous works. It is situated within constitutional law and governing system theories, addressing the political engineering of government, elections, civil-military relations, legislative control to identify how institutions of representation serve institutions of dominance. It also tackles the structure of and power within the Kurdistan Parliament in order to examine the potential for accountability; the espoused semi-presidentialism; the parties' status to address the present of non-constitutional government. In summary, it examines how democratic transition struggles, and authoritarianism becomes successful in the Kurdistan Region.

For this purpose, the thesis is divided into seven chapters. Chapter one tackles the research background and methods. Chapter two explores the theoretical and conceptual framework. Chapter three discusses theoretical conceptions of electoral authoritarianism against experience in the Kurdistan Region. Chapter four argues how the adopted electoral system of full proportional representation alongside unfair grounds for political contestation has maintained pseudo pluralism within the continuing dominance of the duopoly party system. In terms of legislative control, chapter five discusses the impact of the ruling parties on the Kurdistan Parliament's legislative and oversight functions. Also, in terms of a democratic civil-military relationship, chapter six discusses how the party system is suffering from non-to-low levels of institutionalisation, as the ruling parties maintain party-affiliated armed forces and utilise the constant threat of the military option alongside the political process, to sustain authoritarian rule. Finally, chapter seven demonstrates the linkage between the adopted president-parliamentarism and authoritarian outcomes.

The prolonged crisis of the position of Regional President is perilous, with suspended elections and the consequent extension to the terms of political institutions. This, with the ongoing existence of party-affiliated armed forces, produces multifaceted authoritarianism, potentially unfolds to closed authoritarianism.

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**ABBREVIATIONS**

AME – Arab Middle East

DPG – Duopoly Party Governance

ICG – Iraqi Central Government

IFC – Iraqi Federal Constitution

IFG – Iraqi Federal Government

IFSC – Iraqi Federal Supreme Court

IHEC – Independent High Electoral Commission

IHERC – Independent High Electoral and Referendum Commission

IKF – Iraqi Kurdistan Front

KCP – Kurdistan Communist Party

KDP – Kurdistan Democratic Party

KIG – Kurdistan Islamic Group

KIU – Kurdistan Islamic Union

KLM – Kurdish Liberation Movement

KP – Kurdistan Parliament

KPP – Kurdistan Parliament Presidium

KR – Kurdistan Region of Iraq

KRG – Kurdistan Regional Government

KRP – Kurdistan Region Presidency

MC – Movement for Change

PMF – Popular Mobilisation Forces

PUK – Patriotic Union of Kurdistan

RP – Regional President

RTT – Round Table Talks

SA – Strategic Agreement

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**INTRODUCTION**

The Kurdistan Region of Iraq (KR) consists of four governorates of Erbil, Sulaimani, Duhok and Halabja. However, the boundaries are indistinct, as the KR’s duopoly party governance (DPG); the constant rule of the two dominant parties of the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), has leverage beyond such administrative limits. This reflects the Iraqi state’s ethno-sectarian struggle, structure and government, and its enigmatic federalism with only one federal region, the KR since 2005.

The KDP and PUK, as dominant political forces for almost three decades, started ruling the KR together from 1991 until 1994 according to the strict fifty-fifty scheme resulting in an equal sharing of power. Then, the civil war erupted leading to split the government. The Washington Agreement of 1998 failed to bring about a unified Kurdistan Regional Government (KRG) until the collapse of the Ba’ath regime in 2003, as the KDP and PUK leaders had signed the agreement of reunifying the KRG in 2006.[[1]](#footnote-1) It embodied the joint governance, whereby the structure of the KRG and the budget were equally distributed between the KDP and PUK. The split administrations were seemingly re-unified; a united, but reciprocally ruled government was instituted.

The KR has a complex constitutional status. Politically, it is having a semi-multiparty system, which has developed with a parliamentary opposition since 2009, as the parties co-exist with their authoritarian rivals. The two ruling parties preserve party-affiliated forces, through which they have deepened their joint governance, though each has leverage in their own administration zone. Legally, the KR’s status is even more controversial, passing through different legal-historical stages following the uprising of 1991, though it somehow keeps its state-like entity, albeit as a failed and unrecognised quasi-state.

From 1992 to 2005, the KR had a de facto status receiving international support under United Nations resolutions. While since 2005, it has been recognised as a federal region by the Iraqi Federal Constitution (IFC). From 2014 onwards, due to its combat with the Islamic State (IS), the KR leadership asked to become an independent state. This stage of admiration for the Kurds was followed by the referendum held on 25 September 2017. This failed however, due to weak local legitimacy and consensus, the antagonism between the KRG and the Iraqi Federal Government (IFG), the neighbouring countries’, and international communities’ lack of support and even regular warnings. This failure in state-building overlaps with the failure of democracy that resulted from an incomplete transition at the beginning of each stage in the aforementioned contexts. When transition is struggling, authoritarianism persists behind the scene, which is defined here as electoral authoritarianism that situated between closed authoritarianism and electoral democracy.[[2]](#footnote-2) Such a regime aims to utilise those institutions that are part of the support for the functioning of democracy, but for their authoritarian purposes; institutions of representation serve institutions of domination.[[3]](#footnote-3)

Electoral authoritarianism simultaneously contains challenges and prospects for democratic transition in the KR. Such a regime is basically emerged in the KR since 2005, as almost regular elections for both the legislature and executive branches of government started then. While during the period of 1992-2005, specifically from 1994 as the two administrative zones emerged caused by civil war, the KR experienced in each administration a closed authoritarianism; no parliamentary and presidential elections were held except municipal ones in both administrations at the beginning of 2000s.

The first Kurdish self-governance period provided the ruling parties with the authority to generate the KR institutions through holding elections and enacting public laws that were regularly amended by the ruling parties’ ongoing legislative majority; neither constitution nor constitutionalism. Due to weak democratic traditions, the Kurdish self-governance faced many challenges to bringing about a democratic government. Instead, it delivered the DPG, where each ruling party preserves highly affiliated military forces through controlling the KR’s revenue, which itself demonstrates the low-to-non-institutionalisation in the KR.

Since the emergence of the parliamentary opposition in 2009, which sought constitutionalism, parliamentarism and democratic control of military, as well as the impact of regular elections this offered, perhaps, a prospect for a democratic government. However, due to the ongoing availability of military option for internal use by the ruling parties alongside the prevailing ‘political engineering’,[[4]](#footnote-4) the KR governing system has become hegemonic authoritarianism rather than delivering competitive one.

**Challenges to Democratic Transition in Kurdistan Region: Historical Background**

Many scholars trace the beginning of the KR and its political struggle to the First World War. Historically, since the establishment of the Iraqi state in 1920s, the Kurds have faced decades-long struggle for existence with the domination of ethnic-sectarian and successive authoritarian regimes. Iraqi Kurds have been geographically and politically disregarded, whether they were commonly viewed as victims of ongoing repression or as proxies to overturn Iraqi regimes.[[5]](#footnote-5) Within these conditions, the Kurdish political parties emerged to fulfil their duties to challenge injustice, oppression and the terrible abuse of human rights. It was in 1988 when the Ba’ath’s cruelty reached a point where they buried Kurdish civilians alive in many mass graves, actions executed under the code name ‘Anfal Operations’.[[6]](#footnote-6) The political forces have played different roles within the Kurdish Liberation Movement (KLM) inspired to build an independent state in the future. They could be considered, before the uprising of 1991 and even later, but to different degrees, as militia-style organisations that have performed their national, political and military duties according to their bylaws.[[7]](#footnote-7)

Historically, the KLM was dominated by charismatic figures. Mustafa Barzani was the first powerful leader of the KDP, which founded on 16 August 1946, until his death in 1979.[[8]](#footnote-8) Although Barzani depended on tribal power arrangements, nonetheless he somehow organised the party with charismatic authority and accomplished a level of discipline, especially in the military, among the Iraqi Kurds.[[9]](#footnote-9) Since 1975, many parties had emerged, remarkably the PUK was founded on 1 June 1975. Nevertheless, since the late 1970s, the Iraqi Kurds mainly regrouped under the KDP, led by Masoud Barzani and the PUK, led by Jalal Talabani, who died on 3 October 2017.[[10]](#footnote-10)

In recent history, the Kurds in northern Iraq experienced the first self-governance since the uprising of March 1991, as the Iraqi Kurdistan Front (IKF) controlled the KR. The IKF was founded in the late 1980s as a political coalition composed of different armed political forces, including the KDP and PUK, supposedly representing diverse classes of the Kurdish society. The IKF was established as a de facto authority and had insurgency-communitarian legacy, without being permitted or allowed by Iraqi laws, even though it was aiming to overthrow the Iraqi Ba'ath regime. Nevertheless, it emerged after many rounds of infighting among Kurdish political forces. The IKF governed the KR through local committees from the uprising of 1991 until the establishment of the KRG in June 1992.[[11]](#footnote-11)

In 1992, the Kurdistan Parliament (KP) issued a Federal Declaration to regulate the relationship between the KRG and the then Iraqi Central Government (ICG). Hence, the Kurdish right to self-determination was initiated. This marked the beginning of the transitional period with two parallel trends. Firstly, state-building and national liberation from the reign of Arab nationalism. Secondly, democratisation and liberation from the military, one-party authoritarian inheritance of the Ba'ath Party's governance, which was similar to the leading role of the Communist Party as the dominant organ of state power in the ex-communist parts of Europe. In this context, the first period of rule by the Kurdish parties emerged. This has become the turning point in the political and institutional evolution of the KR.[[12]](#footnote-12)

Enduring external support in the form of the UN Security Council resolution No.688, that formed the Operation Provide Comfort, a safe haven and no-fly zone, provided the KR with semi-legitimacy. However, internal sovereignty necessary to sustain the Kurdish de facto state in control of a defined territory, receiving popular support and providing government, sought recognition from the Iraqi state for its proclaimed sovereignty, but failed to receive it. To achieve internal legitimacy, the IKF then organised the first parliamentary election in May 1992. Following which, the first manifestation of the KRG appeared to fill the authority vacuum caused by the ICG military and administration withdrawal. Accordingly, the first parliament and government emerged, in which the two ruling parties of the KDP and PUK emerged victorious.[[13]](#footnote-13)

Despite widespread cronyism, corruption and authoritarianism embodied by the DPG, the ruling parties then ‘made order out of chaos and filled the administrative void’.[[14]](#footnote-14) Accordingly, ‘the Iraqi Kurds have enjoyed de facto autonomy ever since’.[[15]](#footnote-15) This left the parties, specifically the ruling ones, to be viewed, as they claim regularly, as founding fathers of the KR. Consequently, beyond arranging somehow regular elections, the ruling parties have been justifying the prevalence of political engineering by reference to insurgency-communitarian legacy, which is mostly rooted in communist-style politburos and lifelong party leaders. Therefore, when the KR institutions were founded in 1992, it was, and still is, a party-controlled governance, in which party members have been prioritised.[[16]](#footnote-16)

The first election results reflected the existing social and geographical divisions. Due to fears of being marginalised if either decided to become an opposition, the two ruling parties declared their right to govern. This eventually led to the adoption of a strict fifty-fifty power-sharing scheme, in which parliamentary seats, executive positions as well as lower offices were shared equally resulted in ‘the steady erosion of the elected bodies’.[[17]](#footnote-17) Although both the KDP and PUK’s leaders then remained outside the KRG, they acted as arbiters of the governing system through their politburos.[[18]](#footnote-18) This left the centre of decision-making outside the formal institutions and built instead the DPG, in which the ruling parties are unlikely to be constrained by formal rules; therefore, there is no constitutionalism in this configuration.

The features of the DPG are also based on the prevalent legal rules that faced constant amendments following partisan interests and embodying the will of the ruling parties, either alone or combined through their majority in the KP. This has established, as David Landau explained, abusive constitutionalism.[[19]](#footnote-19) This is similar to most electoral authoritarian regimes, in which formal institutions are highly unstable and the constitutional rules function less as constraints on the ruling elites than as tools for manipulation by the elite, which is the core of political engineering by authoritarian incumbents.[[20]](#footnote-20)

The ruling parties oscillate between democratic rhetoric and the supporting sub-identities of tribal, local and party patronage sub-loyalties, instead of national identity, to remain in power.[[21]](#footnote-21) Electoral authoritarianism, which often has sultanistic components, as a highly arbitrary personal rule,[[22]](#footnote-22) proliferated the familial rule in the KR. In this context, Masoud Barzani; the son of Mustafa Barzani, is the second leader of the KDP since it was established in 1946 and he seems to be the party leader while he lives.[[23]](#footnote-23) Meanwhile, all other family members; sons, cousins, nephews hold high governmental and party offices in the KR. Also, Jalal Talabani was the first Secretary-General of the PUK until he died recently. However, when he had a stroke and could perform no political activity, he kept his leadership either. Even after he passed away, the PUK has not selected a new Secretary-General yet. Although facing many challenges, Talabani’s family is the dominant wing within the PUK and tries to institutionalise familial rule as in the KDP where Barzanis are dominant.[[24]](#footnote-24) It seems that familial rule has proliferated and there are fears that it might spread within opposition parties, specifically within the Movement for Change (MC), established in 2009, after it lost its charismatic leader Nawshirwan Mustafa on 19 May 2017.[[25]](#footnote-25) Such sultanistic features leave a very narrow path, or even no room, for democratic transition and sustain the existing situations of electoral authoritarianism.

Furthermore, such a governing regime needs to maintain military options alongside the political process. That is why the ruling parties, after almost three-decades of governance, preserve their paramilitary structure. This has resulted in the armed forces being used to solve political contestations and as coercive devices for political oppression against oppositions. This situation, as expected, caused the outbreak of the civil war in 1994, the emergence of the two administrations of the KDP and PUK since 1996 and the political oppression afterwards.[[26]](#footnote-26)

By keeping the paramilitary structure, they have delivered the DPG in the KR.[[27]](#footnote-27) The DPG was challenged by Kurdish society in the form of protests. As many demonstrations were held, specifically under the PUK controlled zone, by different groups in society directly and indirectly targeting the party-controlled governance. While, since 2009 the DPG has faced an organised resistance by an anti-corruption party; the MC, as the first effective parliamentary opposition and as a collection of all critical voices in Kurdish society,[[28]](#footnote-28) which has often been working on institutional redesign overturning the prevalent political engineering to deliver constitutionalism, parliamentarism, social equality and democratic control of military.[[29]](#footnote-29) It is worth mentioning that such organised resistance originated basically from the social awareness raised by critical intellectuals through independent media outlets and comprehensively by the split in the political elite within the PUK.

Although the ruling parties have often been in conflict, and occasionally devastating armed conflicts have happened between them, they govern the KR together. Since the uprising of 1991 onwards, the KDP and PUK, either jointly or separately in their administrative zones, govern the KR. The relationship between them has, in one way or another, often been strained. Their cooperation and antagonism have formed the features of the KR governing regime.[[30]](#footnote-30)

Apart from the DPG, which made the transition struggling, the security and political situations in the KR have been affected occasionally by instability. On the one side, concerning the trend towards democratisation, such instability is brought about by electoral authoritarianism; as political contestations convert to regime conflicts per se. This often happens during general elections, as the entire region passes through a sensitive and turbulent stage that could lead to an unpredictable outcome. Particularly, if the election result is not in favour of the ruling parties' interests.[[31]](#footnote-31) Under electoral authoritarianism, this has structured a paradox within the governing regime, in which elections are deprived of their political and constitutional functions; namely, the embodiment of popular sovereignty and peaceful alternation of power to deliver a representative and accountable government.[[32]](#footnote-32)

**The Origin of Duopoly Party Governance in Kurdistan Region**

The KR’s ruling incumbents have embraced the rhetoric of democracy, but in their actions, they have embraced autocracy. The ruling parties, particularly their dominant elites, wings and families have controlled social, security, political and economic life as well as dominance over the KR’s governing bodies. In that way, the KDP and PUK have somehow replicated Ba’ath Party’s mechanisms of political control.[[33]](#footnote-33)

There is a mysterious mixture of the ruling parties, economy and military in the KR. Since the early stages of the Kurdish governance during the 1990s, the ruling parties had started entirely controlling the KR resources via military. All sources of the KRG budget; external humanitarian and military aids, border revenues with Turkey and Iran, the KR’s share of the federal budget, revenues either from exporting oil or selling its derivatives inside the KR have all been issues for conflict between the KDP and PUK.[[34]](#footnote-34) However, instead of causing disagreements, the various sources of income should have encouraged the KRG to succeed in establishing an efficient economy and a functioning bureaucracy. Conversely, it will potentially make the existing antagonism among political and social polarisations far worse, eventually leading to instability.[[35]](#footnote-35)

The political economy of institutionalising the DPG in the KR depends on economic control, clientelism and political patronage, which are used to enhance the region’s dominant elites, designate segments of society and circumscribe oppositions. Most importantly, the war, and ironically the elections as well, are the major sources of party-based services to the ruling parties’ loyal clients. Since 2003, the elections have raised the profile of the KDP and PUK and their affiliated people to a high level. Both parties were competing in providing better services to their party affiliates in order to retain their backing, which created clientelistic networks. The idea beyond such clientelism is that people are seeking a fair reward from the ruling parties for sacrifices in war or supports in elections. In turn, the parties are asking the casualties and those receiving privileges from partisan services to show further support when it is necessary, particularly during elections.[[36]](#footnote-36)

The overthrown of the Ba’ath regime in 2003 marked a breakthrough in the region’s history. From 2003 to 2013, the KRG experienced economic prosperity. Such development was based on the KR’s 17 per cent of the federal budget, oil revenues and foreign investments. This was facilitated by business-friendly laws and maintained relative stability and a secure environment. Despite the end of the two sanctions regimes—one imposed by the United Nations against Iraq and the other forced by ICG against the KR, it obviously signalled the gradual start of the formally unified KRG. While in practice two administrative zones of the KDP and PUK still exist.[[37]](#footnote-37)

The KR has distinguishing features of a rentier economy,[[38]](#footnote-38) by which its revenue derived from ‘foreign capital acquired through the export of non-labour-intensive raw materials rather than from the productive activities of its own working class’.[[39]](#footnote-39) Accordingly, a rentier state-like entity emerged and endured, even after the collapse of the Ba’ath regime in 2003.[[40]](#footnote-40) Whereby, the oil revenues sustain the ruling parties’ governance, in which the government can afford its budget without being reliant on tax revenues.[[41]](#footnote-41) The coverup of information by the privileged and the lack of checks and balances within government institutions led to an absence of transparency. Consequently, oil incomes were used as an economic means to politically control society.[[42]](#footnote-42)

Since 2003, as the KR resources increased, the ruling parties’ paramilitary structure sustained as they would afford the expansion of the coercive devices, including the Peshmerga forces. By which all other aspects of the Kurdish society overwhelmingly dominated, including media outlets. Both the KDP and PUK have continuously manipulated the public budget for their own interest and for that of their clients. This has been stated continually in the local, regional and international media, even after the unification of the KRG, as the public budget was unfairly distributed between the ruling parties.[[43]](#footnote-43)

Since the collapse of the Ba’ath regime in 2003, the KRG’s 17 per cent share from federal budget was regularly multiplied by ten times by 2012. It has its own regional incomes from taxation and customs revenue generated by investment, transit and external trade.[[44]](#footnote-44) From August 2006 to March 2014, approximately US$38 billion was invested in the KRG. More than two-thirds of this budget was devoted to the construction and housing sectors, reflecting a desire to make quick and huge profits, while agriculture and industry were ignored.[[45]](#footnote-45)

Crony capitalism continues in the KR, where the KRG sells state land, while reserving the most valuable properties- either in the city centre or in resort areas—for the ruling family members of the KDP and PUK.[[46]](#footnote-46) There is a durable linkage between the ruling parties and main businesses in the KR. For instance, the Korek Telecom is linked to the KDP. Another telecom company Asiacell as well has strong connection to the PUK, however, both companies denied that.[[47]](#footnote-47)

All levels of the KRG offices were affected by the strict fifty-fifty power-sharing scheme, as the entire society was politicised and fragmented. There are very heavy restrictions on independent associations, and most are affected by political affiliation as political control runs deep. Both the KDP and PUK have delegates from not only universities, but also in high schools. In some cases, such student delegates act as political commissars. They collect information and send reports about ‘both classroom and private discussions, which KDP and PUK intelligence then collate to assemble blacklists that follow those who have questioned party prerogatives for the rest of their lives’.[[48]](#footnote-48)

Practically, the ruling parties act as mini cabinets; state inside state or in other words, the ‘deep government’.[[49]](#footnote-49) Having organisations like; student’s and women’s unions,[[50]](#footnote-50) trades’, farmers’ and workers’ unions, teachers’ and university lecturers’ associations, groups of companies,[[51]](#footnote-51) and military and security apparatus within their party structures, illustrates the claim that the ruling parties have superiority over the formal governing institutions.[[52]](#footnote-52)

There are three types of media outlets in the KR: party media, shadow media and independent one. The vast majority belongs to the ruling parties, either formal partisan or shadow outlets. The KDP and PUK utilise public budget to fund many partisan and shadow media outlets, estimated to be more than 400 channels. While a few of independent media outlets and those belong to the oppositions are deprived of such financial support. The partisan and shadow media outlets are dominant, covering most of the media space in the KR.[[53]](#footnote-53) The ruling parties restricted journalistic freedom via unusual orders and suppression following criticism related to corruption, familial rule or high-ranking politicians. The ruling parties’ influence on media outlets is clear, as the private media has often been facing legal prosecutions and harassment from security forces.

In this sense, electoral authoritarian regimes, like authoritarian ones, as far as they enjoy resource advantages and legal impunity, can engage in massive forms of patronage distribution.[[54]](#footnote-54) Compatible with the theory, by providing public jobs and benefits for targeted people, the DPG, as a survival strategy, has generated clientelism and political patronage scheme. Through which, the KDP and PUK aim to reward their loyal clients and control dissents[[55]](#footnote-55). Over time, all administrative procedures have come to be linked with nepotism and not merit. This implies most of the public sector is grounded in party-based affiliation.[[56]](#footnote-56) Consequently, the ruling parties’ leverage over government has determined the way the KRG and KP is functioning as a controlled partisan instrument rather than as commanding and representative executive and legislature. If there had not been a civil war, lack of transparency and widespread corruption, the KR could still have been managed better. Institutionalised corruption has hindered economic developments in the KR, which could have been enjoyed relative demo­cracy.[[57]](#footnote-57)

**Prospects for Democratic Transition****: Conditional Offer for Democracy**

Despite major difficulties, parliamentary elections in the KR have increasingly led to the emergence of a parliamentary opposition since 2009. From the perspective of democracy, ‘the presence of legal opposition parties, which may compete for power and win some seats in parliament,….constitute important foundations for future democratic development’.[[58]](#footnote-58) Growing parliamentary opposition in the KR raised expectations to at least divert a ‘managed democracy’ into a more democratic arrangement.[[59]](#footnote-59) However, the ruling parties paralysed this anticipation and continued to deliver the previous agenda to sustain their governance. This has prevailed, even though the parliamentary election of 21 September 2013 affirmed that the situation ought to be changed to establish a democratic government, because the election results increased the number of opposition seats in the KP from 35 to 41 compared to the previous election. Consequently, this produced a change in the political equation, as one of the opposition parties has stepped up to second place; the MC then after the KDP.[[60]](#footnote-60) However, the ruling parties have secured overwhelming majority.

This evolution led to the formation of a broad-based government. The KRG was formed according to the parties’ electoral returns, though considering the Strategic Agreement (SA) of 2004 signed by the KDP and PUK leaders to allocate all higher offices at both federal and regional levels.[[61]](#footnote-61) To some extent and optimistically, a new stage of institutional development was developing in the KR. Such a situation could have been suitable to set up a constitution making process to redesign the KR institutions using the Round Table Talks (RTT) among the political parties. However, such institutional engineering would then be, and still is, held to ransom by the need to conduct legal reforms, specifically addressing the democratic control of the military.[[62]](#footnote-62)

Furthermore, this all has been suspended due to a coup held by KDP affiliated forces on 12 October 2015. Earlier, a deadlock occurred between the KP and the then Regional President (RP) Barzani concerning the prolonged issue of extending the presidential term. The military intervention was preceded by this institutional impasse which eventually sustained authoritarian rule.

Since its foundation, the KR passed through periods of turmoil whenever any kind of democratic transition began. In other words, the incomplete transition resulted in the failure of democracy and has been precarious even for the survival of the KR. On 29 October 2017, the RP, Masoud Barzani decided to step down under international pressure resulted from a failed referendum, having held the position illegally for at least two years following the coup of October 2015. His resignation, however, may regenerate the prospects for democracy initiating a new phase of transition.[[63]](#footnote-63) Nevertheless, this will depend on democratic control of party-affiliated coercive apparatuses, as ‘democracy can be independently invented and reinvented whenever the appropriate conditions exist’.[[64]](#footnote-64) So, without certain conditions to support an opportunity to move towards democratic government, the transition will face a constant struggle. Unless the DPG with its party-affiliated military is diminished, a democratic government will not emerge in the KR.

**Scope of the thesis**

Most constitutional documents in the Arab world and generally in the Middle East have been ‘promulgated less by the nation assembled than by existing regimes seeking tools to enable them to face domestic and international challenges’.[[65]](#footnote-65) The constitutional texts remain as useless papers written to hide the reality of authoritarian regimes. Consequently, comparative constitutional law has ignored the Arab Middle East (AME) countries on the basis that constitutionalism and the rule of law signify little under authoritarianism; formal constrains are weightless in the face of informal practices of authoritarian governance.[[66]](#footnote-66)

Constitutions are Potemkin documents that did almost nothing to constrain political power.[[67]](#footnote-67) The constitutions embodied non-constitutional incentives, serving the rulers in the Arab world; to organise and enhance the exercise of public authority, to declare the national sovereignty of newly independent states, and to indicate the basic commitments needed by governing institutions to serve the dominant ideology.[[68]](#footnote-68) This is also termed as abusive constitutionalism, which ‘involves the use of the mechanisms of constitutional change — constitutional amendment and constitutional replacement — to undermine democracy’.[[69]](#footnote-69)

The collapse of some AME authoritarian regimes after the Arab Spring raised subjects of interest in constitutional studies among scholars leading to complex constitutional debates over the structure of executive and executive-legislative relations, electoral designs and political party legislation, regionalisation and federalism, democratic control and oversight of armed forces; civil-military relations, judicial review and bills of rights, and the constitutional status of Islam.[[70]](#footnote-70) This is all based on the credo that institutions matter. Even under authoritarian regimes, formal representative institutions are matter of being instruments of authoritarian rule, as they serve autocrats to ease existential challenges, either physical or political, for the governance and survival facing their practise of power.[[71]](#footnote-71)

The thesis deals with a genetic question concerning whether democracy comes into being in the KR. As far as the constitutional theory is concerned, the most related measures to this thesis, as a constitutional study, to assess the possibility of maintaining democratic transition are; firstly, free and fair elections, according to which contested election held and winners exercise the monopoly of legitimate force via representative and authoritative government.[[72]](#footnote-72) Secondly, the rule of law, hence government agencies must be ‘held accountable to and become habituated to the rule of law’.[[73]](#footnote-73) Thirdly, a useable bureaucracy where a democratically elected government has the authority to command and to regulate.[[74]](#footnote-74) For this, the new democratic government needs politically impartial institutions.

Accordingly, the thesis assesses the performance of the political institutions in the KR by focusing on them since 2009 to identify the character of the governing system. Such appraisal will clarify whether institutions in the KR are capable of processing democratisation, or they are instituted to serve the DPG under electoral authoritarianism where basically resulted from transitional struggling. It also examines the liability of the political institutions, including political parties’ status, to comply with the related legal rules.

Within the constitutional comparisons, the research also includes analysis of the KR form of government. Since the third wave of democratisation, the debate about forms of government became more urgent; addressing which institutions are vital to successful democracies. The thesis addresses how semi-presidentialism is adopted and caused institutional crisis in the KR. it also deals with the connection between semi-presidentialism and authoritarian outcomes in the KR showing how the Kurdistan Region Presidency (KRP) is adapted and the RP is even essentially excused from any vertical accountability, which is the least mechanism to hold the president to account in regimes with elected president.

Designating those criteria is related to the field of this thesis, which does not disregard the other important criteria related to the capacity of KR’s institutions to deliver democratic government. For instance, the existence of an effective civil society and rationalised economy. However, the thesis does not cover both in depth. It, therefore, aims only to analyse some legal and institutional aspects of them. Through which it addresses; firstly, media outlets distribution in the framework of unfair ground for political contestation. Secondly, the performance of the KRG agents when dealing with protests. Thirdly, the authority of KP concerning political party financial support. To achieve this, the thesis will focus mainly on constitutional, electoral and party laws.

**Literature Review**

Within the discipline of constitutional law, there is at present no monograph or doctoral thesis which provides an up-to-date overview and critical account of the KR governance, addressing the interaction between the KR’s de facto status, its governing system and democratisation, and taking the reader up to the present. This thesis closely examines the KR governing system, by which it addresses the interrelation between the Kurdish de facto state and the success of authoritarianism. In this regard, the minimum democratic concept is used to examine whether the KR is likely to become a democracy or not.

Against that background, most monographs on the Kurds in English can be classified under international relations, politics, and history, mainly relating to the social structure of greater Kurdistan, and the Kurdish struggles with regimes in those countries where Kurds are divided among. For instance, Michael Gunter’s *The Kurds of Iraq: Tragedy and Hope* (1993) provides an account of the KLM in Iraq, concentrating on the mass uprising after the First Gulf War in 1991 and the negotiations between the ICG and the IKF. It describes the mission for the peace building process, the international safe haven, and the first cabinet of the KRG. It deals with Turkish policy and its influence on the Kurdish issue in Iraq until 1993. His book, *The Kurds Ascending: The Evolving Solution to the Kurdish Problem in Iraq and Turkey* (2008), as far as the KR is concerned, explores the condition of Iraq after 1991 and the changes following the war against Saddam Hussein, the foundation of the KRG, and the peace and stability in the KR until 2008.

Gareth Stansfield’s *Iraqi Kurdistan: Political Development and Emergent Democracy* (2003) deals with the impact of political parties on governmental structure and policymaking from 1992-2002, addressing the consensus government in the KR. The hypothesis of the book is that the ‘current divided political and administrative system is a direct manifestation of the historical development and characteristics of the political system of Iraqi Kurdistan’.[[75]](#footnote-75) The book examines the structure of the two ruling parties; the KDP and PUK. However, it has some gaps. For example, there are no details on identifying the model of the governing system, whether it is parliamentary, presidential, or semi-presidential. In addition, although the interventions of the ruling parties in public institutions is mentioned, how that intervention influenced the public authority's constitutional function has not been analysed. There is no analysis of the civil-military relations and its impact on democratisation in the book.

Among other scholars, Denise Natali has published research, articles and books about the Kurdish issue. Her book, *The Kurds and the State: Evolving National Identity in Iraq, Turkey, and Iran (2005)*, explores how Kurdish nationalism developed in Turkey, Iran, and Iraq, where most of the Kurdish population is located. It examines the transitions in each of these countries, and explains ‘why Kurdayetî, or Kurdish national identity, becomes ethicized and the similarities and variations in its manifestation across space and time’.[[76]](#footnote-76) In her other book, *The Kurdish Quasi-State: Development and Dependency in Post-Gulf War Iraq (2010)*, she explores how the KR was transformed from an isolated outpost for the Iraqi army into an internationally known quasi-state. She defines quasi-states as ‘political entities that have internal, but not external sovereignty and seek some form of autonomy or independence. They are part of a failed state or an outcome of unfair post-imperial boundary markers’.[[77]](#footnote-77) The book shows the KR’s development after 1991, concentrating on how the various foreign aid programmes influenced the development of the KRG and its recognition as a legitimate political entity in the framework of the IFG. It analyses the social, economic, and political changes happening in the region from 2003, after the overthrow of the Saddam Hussein regime, until 2010 when the book was published.

[Kerim Yildiz](http://www.barnesandnoble.com/c/kerim-yildiz) has published some books on the Kurds, as well. One of them *Kurds in Iraq: The Past, Present and Future (2007)* gives an overview of the KLM in Iraq throughout the 20th century and discusses human rights violations, expulsion, the Anfal Operation, using chemical weapons against Kurds, and the international responses. It explores the political, economic and humanitarian issues in Iraq after the mass uprising of 1991 and after the collapse of Saddam Hussein’s regime in 2003. The Kurdish claim to self-determination, the disputes over Kirkuk, and the land question are also addressed. Another book by him is *The Future of Kurdistan: The Iraqi Dilemma (2011)*. This book explores the conditions under which the USA military prepared to withdraw from Iraq. While all other parts of Iraq were suffering from a lack of security, the KR was a peaceful area. But there were other challenges that the KRG faced, such as the disputes over Kirkuk and the other disputed areas, the management of oil and gas, and the neighbouring countries’ operations on the KR’s borders. It explores the role of the Kurds in shaping the future of Iraq and the region.

Although the above-mentioned monographs, as examples of relevant studies, have made major contributions to the study of Kurdish politics and society, the methods and targeted timespan (2009-2018) of this thesis, differentiate it from them. They belong to political science theories, while this thesis belongs to constitutional law and governing system theories, addressing the political engineering of governing system, elections, civil-military relations, legislative control and their effects on democratic failure in the KR. This thesis assesses the quality of the KR institutions by focusing on their development since 2009 in order to identify the KR regime-type. This appraisal will clarify whether the KR institutions can progress to democratic government, or whether they are instituted to serve the DPG. It also examines whether the KR institutions, including political parties, are subject to relevant legislation. The thesis explains how the KR’s transitional struggles induced electoral authoritarianism. This thesis is the first to do this and is an attempt to remedy a gap in the existing scholarship.

**Thesis Structure**

To address the research questions, this thesis mainly aims to describe and examine various aspects of the KR’s institutions, looking at relevant legislations and their implementation. It might not be manageable to mention, analyse and evaluate every single law, act, decree or verdict during the targeted period of the study (2009-2018). Instead, this thesis has targeted some cases to examine in detail, those which are relevant and highly controversial. For instance, the 17 February events of 2011, the coup of October 2015, and the issue of the presidential term limit.

For this purpose, the thesis is structured into seven chapters. Chapter one tackles the research questions and methods. To recognise the KR’s complex status, the resources of more than one theory and methodology need to be employed to provide an inclusive view of whether democracy can emerge in the KR, or not. It looks at democratisation and constitutionalism in a mixed institutional and comparative analysis. In other words, they are applied to understand how the transition to democracy is struggling, whereas authoritarianism is persisting in the KR.

Chapter two explores the theoretical and conceptual frameworks. Generally, it defines the concept of democratisation; analysing the likelihood of a reversal to authoritarianism, as internal and external upheavals might alter the process. It then demonstrates the constitutional engineering that has been taking place in parallel to the transitional phase. Furthermore, it elaborates how statelessness affects the democratisation in the KR. It has, as an unrecognised quasi-state, failed in both state-building and democratisation, where the ruling parties somehow have repeated the pattern of pre-transitional governance.

Chapter three discusses theoretical conceptions of electoral authoritarianism against experience in the KR. This involves the analysis of how the institutional design and the manipulative practices of elections have sustained authoritarian rule, though it has seen the growth of opposition representation. Here the preconditions for clientelism and political patronage in the KR are also explained. It then addresses issues of electoral fraud, political oppression and partisan electoral administration that have subverted the rule of law and the democratic functions of elections.

Chapter four argues how the adopted electoral system of full proportional representation (PR) alongside partisan financial support for political parties has maintained semi-pluralism within the continuing DPG. This will be examined by considering examples of electoral authoritarianism in AME contexts. To achieve this, the chapter considers the legislations passed within the third and fourth KP terms. Wherever relevant, the historical background will be highlighted with some reference to the Iraqi constitutional framework.

In terms of legislative control, chapter five moves on to discuss the ruling parties’ impact on the KP's legislative and oversight functions. More precisely, it aims to evaluate the position and performance of the Kurdistan Parliament Presidium (KPP), addressing the use of its legislative and oversight roles in favour of the ruling parties’ interests by using illegal procedures in law making. Then, it demonstrates how the ruling parties’ political engineering is deliberately designed to deliver dysfunctional oversight devices depriving the KP to hold the KRG to account. The chapter also discusses when the KP became an arena for political contestation and conflicts due to the emergence of parliamentary opposition, how it was closed and then was illegally reopened to sustain authoritarian rule.

Chapter six clarifies the important role of the political party in contemporary democracies. It then explains the constitutional regulation of parties in both the established and emerging democracies to argue that if democracy is measured in institutional terms, the key institution to improve in order to deepen democracy, is the political party. It also demonstrates how the civil-military relationship is regulated in the KR and examines how the ruling parties’ relationship with the military inhibits the formation of a unified national army. In terms of a democratic civil-military relationship, the chapter discusses how the party system is suffering from non-to low levels of institutionalisation, as the ruling parties preserve party-affiliated forces and utilise the constant threat of the military option alongside the political process, to sustain authoritarian rule.

The KR adopted semi-presidentialism following the Presidency Act in 2005, which amended Law No. 1 of 1992 that adopted parliamentary system at that time. Accordingly, chapter seven explains the concept of semi-presidentialism and its pros and cons. It also discusses the relationship between semi-presidentialism and the survival of democracy. Through which it then addresses semi-presidential sub-types; president-parliamentarism and premier-presidentialism, to explain why a president-parliamentary system is expected to be linked with a poorer democratic performance. This chapter, then, demonstrates the linkage between the adopted president-parliamentarism and authoritarian outcomes in the KR. The origin of the KRP will also be considered here to show why such a system has been adopted and how it is characterised, as basically the RP is exempted from vertical accountability; the minimal mechanism to hold the president to account in systems with a popularly elected and fixed-term president.

**CHAPTER** **ONE**

**Research Question and Methodology**

**1.1 Introduction**

Most scholars concerned with contemporary democratic government have focused on how democracy can be maintained and strengthened in countries where democracy already exists. While for scholars reviewing emerging democracies, the essential issue is the generic question of how a democratic government emerges in the first place. This thesis deals with that generic question and is concerned with whether and in what form, democracy comes into being in the KR.

All transitions do not lead to democratisation. Some fail to establish a democratic government and eventually an authoritarian reversal happens. Within reverse waves, there are some cases that become stuck between authoritarianism and democracy, in which it is complex to prescribe democratic government.[[78]](#footnote-78) This raises questions concerning whether the original aim was democratisation. Instead, with the perception that democratisation somehow needs more time than expected, there is a regime that works within failed transitions; known here as an electoral authoritarianism, in which institutions of representation serve institutions of domination.

This chapter explains the research questions and methods. To understand the KR’s complex political and legal condition, the resources of more than one theory and methodology are used; democratisation and constitutionalism in a mixed institutional and comparative perspective are employed to address the challenges and prospects for the emergence of democracy under electoral authoritarianism in the KR, which is the problem addressed in the thesis.

**1.2 Research Question**

Democratic transition is struggling in the KR, as it has often been at a crossroad on route to either democracy or authoritarianism. The endurance of the DPG raises initial questions about whether what happens there is a democratic transition or somehow a kind of liberalisation under electoral authoritarianism. However, it is understood that some transitions fail when authoritarianism persists. The reverse waves away from democratisation in the KR have shown that the ruling parties are reluctant to deliver democratisation and even have retreated from earlier liberalisation.

In this context, there is a deep divergence in Kurdish society concerning the nature of the KR governing system, as basically there are two perspectives. Despite their differences, both demonstrate the complexity of the relationship between the two ruling parties and the government. The first argues that such a relationship is a kind of interference; the ruling parties have been interfering in the government affairs, deriving from historical circumstances from which this perspective looks for justification. It primarily aims to preserve the status quo by the justification that the KR governance is experiencing democratic transition concurrently with the state-building process. This apparently considers democratisation as a 'complex, long-term, dynamic, and open-ended process',[[79]](#footnote-79) which, as they claim, needs enough time to organise such institutional development. Moreover, they assert that the KR has the challenge of threats from neighbouring countries. The ruling elite, academia and the patronage media of both the KDP and PUK adopt this explanation.[[80]](#footnote-80) In this respect, the former leader of the PUK, Jalal Talabani, published a plan to separate the political parties from government. However, it has not been espoused either by the KP to enact relevant legislation, or even by the PUK as a programme.[[81]](#footnote-81)

The second perspective emphasises that the KDP and PUK have controlled the governing institutions decisively. There is no separation between parties and the public authorities. Consequently, there are no lines between the armed forces, the market and the ruling parties, all of which embody authoritarianism. Some analysis has considered the governing institutions as the ruling parties' organs. In other words, the KRG is viewed as a part of the ruling parties' organisational structure, which is mainly in the service of the ruling families of both the KDP and PUK. This structures Sultanism; a highly arbitrary personal rule in the KR.[[82]](#footnote-82) Some have even argued that the KR political system is a kind of fascism,[[83]](#footnote-83) in which limited coercion is its core element.[[84]](#footnote-84) The opposition parties and some of the intellectual and academic circles take this perspective, while calling for change in the KR’s governance.

Against this background, an evaluation of the quality of the KR institutions will demonstrate the nature of the KR governing system and its path to either democracy or authoritarianism. Because the gap between democratic form and quality in the world is primarily an institutional gap.[[85]](#footnote-85) In the literature on the third wave of democratisation, the root concept of democracy is ‘anchored in a procedural minimum definition’.[[86]](#footnote-86) Accordingly, due to its concern as to whether democracy is emerging in the KR, this thesis mainly adopts a minimalist concept of democracy. A concept that tends to be procedural and institutional, corresponding to the Robert Dahl’s definition of polyarchy, in which contestation that encourages accountability, participation and inclusiveness, enhancing representation, are its critical bases.[[87]](#footnote-87) It is a minimal conception in that it ‘deliberately focused on the smallest possible number of attributes that still were seen as producing a viable standard for democracy’.[[88]](#footnote-88)

Dahl considers the democratic process to be ‘the most reliable means for protecting and advancing the good and interests of all the persons subject to collective decisions’.[[89]](#footnote-89) This implies that democracy is a political system, which gains legitimacy if ‘its most powerful collective decision makers are selected through fair, honest and periodic elections in which candidates freely compete for votes’ with universal suffrage,[[90]](#footnote-90) and ‘the absence of massive fraud, combined with effective guarantees of civil liberties’.[[91]](#footnote-91) Accordingly, the essential institution of representative government is the democratic election; the quality of the election also indicates the government’s vertical accountability.[[92]](#footnote-92) From this perspective, the analysis of democracy entails an understanding of the ‘democratic qualities of elections, specifically for legislative and executive offices, as actualised or effectively enforced political rights’.[[93]](#footnote-93)

Democratic theory is primarily normative in character, prescribing governmental conditions and evaluating whether governments are becoming more or less democratic.[[94]](#footnote-94) This perception leads to identifying an expanded minimum procedural conception, anchored in a set of normative principles for democratic government, such as universal participation, political equality, majority rule with guarantees to civil and political rights, and government responsiveness resulting from an accountable, representative, authoritative and constrained government ‘to govern vis-à-vis the military and other powerful, non-elected actors’.[[95]](#footnote-95)

Accountability and representation are complementary devices for democratic legitimacy. In this sense, the democratic government is expected to be held accountable, either directly to the people who put politicians in power or indirectly through mechanisms of ‘checks and balances’. Accountability is vital for representative democracy;[[96]](#footnote-96)either vertical (electoral) accountability or horizontal (inter-branch) accountability, which are mutually strengthening. Through both of these, the responsiveness of democratic government can be maintained.[[97]](#footnote-97) A country is said to be institutionalising democracy when certain institutions ensure the accountability of the officeholders to the electorate. Representatives are often accused of acting in selective and self-interested ways; however, representation can be enhanced to be more effective[[98]](#footnote-98) by establishing constitutional limits, which ensure the public interest is promoted.[[99]](#footnote-99)

Against that background, this thesis identifies the quality of KR governance, or the phase that it is approaching, as alternating between electoral and hegemonic authoritarianism. For this purpose, it considers the features of public elections; civil-military relationships; the structure of and power within the KP in order to examine its potential for accountability; the espoused semi-presidentialism; the parties' status and how the government is constrained to be held accountable to the rule of law in the KR. The law should be above the rulers, as they are subject to it.[[100]](#footnote-100) Liberties and pluralism ‘can be secured only through the rule of law, in which legal rules are applied fairly, consistently, and predictably across equivalent cases, irrespective of the class, status, or power of those subject to the rulers’.[[101]](#footnote-101) It thus is a functional legal principle that maintains the ‘supremacy of regular as opposed to arbitrary power’.[[102]](#footnote-102) Only under the true rule of law do, ‘all citizens have political and legal equality, and the state and its agents are themselves subject to the law’.[[103]](#footnote-103)

In this sense, the thesis addresses some main questions; namely, how do elections in the KR discredit democracy and embody electoral authoritarianism? How does the KP fail to hold the KRG to account and preserve the rule of law? How do the ruling parties’ institutional positions, their relations with the governing institutions, specifically the armed forces, sustain authoritarian rule? How does semi-presidentialism serve authoritarian rule in the KR? How does the adopted president-parliamentary regime reflect authoritarian persistence?

**1.3** **Research Methodology**

Research within the field of law takes many forms, but these can be identified as three major types of research. The first one is doctrinal research, which provides ‘a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments’.[[104]](#footnote-104) The second one is reform-oriented research, which ‘intensively evaluates the adequacy of existing rules and which recommends changes to any rules found wanting’.[[105]](#footnote-105) The last one is theoretical research, which ‘fosters a more complete understanding of the conceptual bases of legal principles and of the combined effects of a range of rules and procedures influencing a particular area of activity’.[[106]](#footnote-106) Mostly, this thesis falls into the first and the third categories of research. In this context, the thesis tackles the research questions using two methodologies: the institutional approach in the context of constitutionalism and the governing system, alongside the conceptual comparative law method.

**1.3.1 The Institutional Method: Conceptual Framework**

Institutions are essential entities for the classification of modern governance, as they typically exercise authority and assemble institutional resources in political struggles and governing relationships. Institutions are also important to define and constrain government. Most of the key players in modern governance are formal organisations where the institutions of law and bureaucracy are key elements in modern democracies.[[107]](#footnote-107)

In contemporary analysis, an institution is an essentially contested notion that is noticeable in its return to the fore in the social sciences. To examine the concept of institution, scholars tend either to provide a narrow meaning or to overextend it. For example, in Neil MacCormick’s insight, law is ‘institutional normative order’,[[108]](#footnote-108) which consists of institutions shaped through the implementation (institutionalisation) of legal rules. Accordingly, an institution is considered as a specific legal device, such as a contract, marriage, will and statute, which serve as a structure for co-ordination and as a substance of reciprocal expectations and regulation of conduct. MacCormick describes the normative order in the sense of institutional facts that underpin mutual understanding in collective life, whereby ‘each [person] acts on the understanding…that each of the others is oriented towards more or less the same opinion concerning what everyone ought to do’.[[109]](#footnote-109)

Conversely, other scholars define institution with a wider meaning, closer to the definition of Émile Durkheim, who defines institutions as ‘all the beliefs and all the modes of conduct instituted by the collectivity’,[[110]](#footnote-110) which have ‘a reality outside the individuals who, at every moment of time, conform to it’.[[111]](#footnote-111) On the one hand, institutions are considered to be particular devices belonging to a specific field of society; on the other, they are believed to be the basic construction of society, independent of its actual members.

Concerning the term; institution, there are two conceptions. The first is organisation, while the second is established law, custom, rule, norm, practice or routine. An institution is to be viewed as a process or set of processes rather than as a thing within institutional and organisational settings, and it can be considered a key player in determining and constraining the behaviour of individuals. The difference between institutions and organisations is that institutions are broader in scope and have more diffuse sets of institutional arrangements. Logically, however, there is not a sharp distinction between institutions and organisations, as the latter can be envisaged as rooted within and formed by a broader institutional framework.[[112]](#footnote-112) From Douglass North’s perspective, both institutions and organisations provide a structure for human interaction enabling stability and continuity.[[113]](#footnote-113) Institutions, as North considered, are rules of the game in society or, more formally, they are constraints that form human interaction. While organisations are a ‘response to the institutional structure of societies’.[[114]](#footnote-114) Accordingly, they induce the alteration of the broader institutional framework. In this context, institutions can be defined as ‘the formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units in [society]’.[[115]](#footnote-115) Also, Stephen Bell defines institutions as ‘anything from formal organisational arrangements to forms of patterned behaviour operating through roles, rules and (partially) scripted behaviour’.[[116]](#footnote-116)

**1.3.2 Institutionalism: Old and New**

Against that background, after a brief insight into institutions, institutionalism is the study of the roots, effects and structures of institutions, consequently examining their capability for reform and change.[[117]](#footnote-117) This approach provides a sophisticated analysis considering both institutions and their performance; constitutions as text and constitutionalism as practice.[[118]](#footnote-118) Moreover, this method’s perceptions into ‘the behaviour of individuals, organizations and societies can deepen and enrich existing treatments of related subjects in the legal realm’.[[119]](#footnote-119)

There are two types of institutionalism. Firstly, the old institutional approach, which is not limited to a formal-legal analysis that considers ‘the historical evolution of formal legal institutions and the ideas embedded in them’.[[120]](#footnote-120) Typically, however, the old institutionalism was inclined to focus on the formal institutions of government and the constitutions which shaped those structures. It is, as Harry Eckstein describes, ‘the study of public laws that concern formal governmental organizations’.[[121]](#footnote-121) It is therefore the science of the state. In other words, the old institutional approach concerns the constitutional structure of the state, which is formulated in either written or unwritten constitutional rules regulating the processes and organisations of authority.[[122]](#footnote-122)

In this sense, Guy Peters explained five features of old institutionalism. Firstly, it is basically concerned with law as the indispensable component of government. Accordingly, law outlines the framework of the public sector itself and constitutes a major way in which government can affect the behaviour of its citizens. Therefore, to be concerned with political institutions, scholars are obliged to be concerned with law. Secondly, the structure is signified, which determines behaviour. This structuralist approach left little or no room for the effect of individuals, excluding perhaps those exceptional individuals who had influence within the processes of government. Consequently, the method focused on the key, formal institutional features of political systems defined by constitutional laws. Thirdly, the old institutionalists often were conducting a sort of comparison; their emphasis on the formal legal analysis of the key institutions required comparing their own governing system with others to show variations. Fourthly, the old institutionalists also tended to have a markedly historical foundation for their analysis, which was concerned with how contemporary political systems were rooted in their historical development, socio-economic and cultural values. Finally, they tended to provide analysis with a robust normative element; alongside delivering descriptive statements, the old institutionalists were concerned with the issue of good governance and the effectiveness of democratic government.[[123]](#footnote-123)

While the new institutional approach, also concerned with political institutions, was itself a response to behaviourism which was in turn a reaction against the old institutionalism.[[124]](#footnote-124) The new institutionalism reiterates some features of the old institutionalism under the influence of both behavioural and rational choice analysis, where they have fundamentally transformed the discipline of research in social science.[[125]](#footnote-125)

The new institutionalism can be considered as a set of concepts, or as Andrew Gamble calls it, an ‘organizing perspective’,[[126]](#footnote-126) arguing that the organisation of political life creates a distinctive outcome for a political system. To clarify, with the many ambiguities of new institutionalism, it should not be considered as a ‘unified body of thought’.[[127]](#footnote-127) Similarly, James March and Johan Olsen concluded that the new institutionalism is ‘neither a theory nor a coherent critique of one’,[[128]](#footnote-128) but it is an ‘empirically based prejudice’[[129]](#footnote-129) asserting the value of the existing understanding of social phenomena. It is a jumble of ideas and traditions that can easily fit with other different approaches. Therefore, it can be considered as a combination of old institutionalism with various non-institutional methods in social science.[[130]](#footnote-130)

Despite having such a mixture of methodologies, institutional research emphasizes formal-legal institutional arrangements, including constitution, public law, and the formal institutional structure of the state. Also, it has its own research direction and methodological scheme, which has been characterised as historical, comparative, textuary, descriptive and using inductive logic and method.[[131]](#footnote-131) As a result, institutional research, whether from an old or new institutionalist perspective, focuses on describing and charting the formal-legal institutions and administrative arrangements of the modern state.[[132]](#footnote-132) However, political institutions are perceived by the new institutionalism as both the formal organisational structure and the informal conventions.[[133]](#footnote-133)

From a contemporary perspective, the old institutionalism showed little interest in theory building, because its key activity was concerned with description, not focused on explanation or theory building. In this sense, these studies were often constructed by trying to evaluate how well certain institutions were constrained by democratic norms or the principles of accountable government. The institutional approach therefore ‘employs the tools of the lawyer and the historian to explain the constraints on both political behaviour and democratic effectiveness’.[[134]](#footnote-134) When old institutionalists consider an explanation in their studies of whether political behaviour is supposedly more or less charted by the formal rules or procedures of the institutional framework, we find that the old institutionalism overlaps with the new institutionalism.[[135]](#footnote-135)

Moreover, the new institutionalism is composed of diverse elements and probably incompatible academic traditions embodied in various theoretical approaches interpreting institutional phenomena. Despite their divergence, all strands of institutionalism share a common critique of the individual as an atomistic actor to be accounted for in social life. The focus on behaviour of individuals, as a key element of the behavioural approach, is replaced by institutionally situated actors. Consequently, a further common feature of all strands of institutionalism is that the institution itself is seen to play an essential role in shaping behaviour, by creating stability over time to deliver broadly expected behaviour by institutionally situated actors, as well as the stable performance of institutions. However, the focus of new institutionalists is not only on the effects of institutions upon individuals, but with the interaction between institutions and individuals.[[136]](#footnote-136)

Furthermore, new institutionalism emphasizes an interdependence between relatively autonomous social and political institutions instead of the dependence of the institution on society. In other words, it highlights the reciprocal relationship between political institutions and their socio-economic environment. The bureaucracy, legislature and court, or their sub-offices, are grounds for competing social forces, but they are also a set of standard operating procedures and structures that define and defend divergent interests. Thus, they are political actors, which can be claimed to be privileged as they have institutional coherence and autonomy. The prerogative of coherence is essential in order to treat institutions as decision makers, deciding on their choices by considering some collective interest or intention, such as preferences, goals, purposes, alternatives and expectations. The coherence of institutions varies however, but it is occasionally important to view institutions as having a collective character and acting coherently. The autonomy of institutions is acknowledged as establishing that political institutions are more than simple mirrors of social forces or individuals.[[137]](#footnote-137)

Without denying the importance of both the social context of governance and the motives of individual actors, the approach underlines further the independent character of political institutions. Therefore, the state, or any other political institution, is not only affected by society but also affects it. Accordingly, democracy depends not only on economic and social conditions but also on the design of political institutions. So, any problem with democracy, subsequently identifies the need for institutional redesign.[[138]](#footnote-138)

**1.3.3 Applying the Institutional Method**

Making collective action the centre of institutional analysis identifies its core aim to be the understanding of political phenomena. This method has often been applied in academic literature to address the question of the durability of democracy during the 1980s and 1990s waves of democratic transition. Hence, these transitions made democracy the most common form of government or the directing idea of institutional design in over fifty countries in the world after the collapse of the Soviet Union and the democratisation in Central and Eastern Europe, Africa, Latin America, and Asia.[[139]](#footnote-139) At that time, the debate about the institutional design of emerging democracies became more urgent, addressing various Institutional choices resulting in proposals for different scenarios for the establishment of successful democracies. Democratic transition thus exemplifies ‘the institutionalisation of political organisations and procedures’,[[140]](#footnote-140) which contributes to deepening democracy via institution building.[[141]](#footnote-141) In this context, institutionalisation is the process by which democratic institutions are rooted as ‘a regular and respected way of organizing political life’.[[142]](#footnote-142) Institutions, therefore, were essential to the argument concerning how to advocate the appropriate way to form successful democracies; which institutions were ostensibly supporting or hindering the democratisation process and those that distinguish democratic government from nondemocratic one. [[143]](#footnote-143)

Beyond applying the method to understand the structure and function of democratic institutions and the reasons behind their development, it can also be used to understand how and why these institutions collapse or to address their weak performance. Because basically institutions ‘decay and dissolve as well as grow and mature’.[[144]](#footnote-144) As one of the expected scenarios from a transitional stage is the return to authoritarian rule via fragile institutions or being trapped between authoritarianism and democracy and thereby producing institutional uncertainty. Larry Diamond has linked problems of quality and stability of recently emerged democracies to institutional weakness, as;

To a considerable degree, the gap between democratic form and substance in the world is an institutional gap. No political system in the world operates strictly according to its formal institutional prescriptions, but what distinguishes most of the democracies in Latin America, Asia, Africa, and the post-communist states are political institutions too weak to ensure the representation of diverse interests, constitutional supremacy, the rule of law, and the constraint of executive authority.[[145]](#footnote-145)

This is grounded on the principle that institutions matter. Even under authoritarian regimes, formal representative institutions are matter of being serving authoritarian incumbents to ease existential challenges, either physical or political, for the governance and survival facing their authority.[[146]](#footnote-146)

Both formal and informal institutions are essentials for democracy, as they diminish uncertainty and generate constraints within which individuals make rational choices.[[147]](#footnote-147) From this perspective, there is an agreement in the academic literature to focus on both formal and informal institutions, practices and relationships; any kind of constraint that human beings create to mould behaviour. This might include formal constraints; like rules, or informal constraints, like conventions, norms or codes of behaviour.[[148]](#footnote-148) In MacCormick’s definition of law, the normative order addresses how people follow common norms of conduct. In such a process, the incumbents, as authoritative norm-givers, regulate and institutionalise order by rules. In this sense, as MacCormick acknowledges, the institutionalisation of rules and their implementation potentially provoke disagreements over interpretation and an uncertainty concerning the extent to which the formal rules accurately explain conduct in collective life. However, as he outlines, the civility that permits the functioning of law, politics and the economy ‘depends, it seems, on some measure of respect for the rule of law internally to states and among them’.[[149]](#footnote-149) This respect is a component of custom whereby all formal normative order ‘rests on a foundation of custom, that is, on informal normative order’.[[150]](#footnote-150) Some scholars even considered informal practices to be more effective than formal rules. As Margaret Levi argues, most of the key institutional frameworks include a normative system of informal and adopted rules.[[151]](#footnote-151)

Against that background, the thesis considers the interaction between formal and informal institutions; harmonising, substitutive, competing and accommodating to institutions in the KR. Through this it aims to identify how the lack of effectiveness of formal institutions has resulted in the informal institutions prevailing and which are mostly out-competing and substituting for the formal ones, though some complementarity exists in the KR. Accordingly, it addresses how the weakness of formal institutions has precipitated institutional uncertainty, in which informal rules are enforced by the ruling parties and powerful leaders, through deliberately designed loopholes in the laws.

The research aims to apply the institutional approach rooted in studies of formal organisations and to explore how institutions arise and develop or weaken and decay. Also, how new, either formal or informal, institutions potentially can replace or enhance older ones in the KR. The capability of institutions in the KR is considered here, to examine how they serve authoritarianism. This could serve to identify the weakness of the KR institutions in constraining the ruling parties. The applied institutional method intends not only to describe the formal organisational structure of KR mechanically, but to address precisely the potential for institutionalisation by following relevant criteria:

Firstly, in respect of what kind of institutions they are and what kind of institutions they should be, this approach looks at the extent of institutionalisation of formal rules among the political institutions in the KR and their incumbents, analysing whether they show respect for formal rules as prescribed by constitutional laws. This is to evaluate to what extent the KR institutions are abiding by the legal rules and norms entrenched in them and to find out whether they are burdened by hidden ambiguities; the role of the rule of law and a constrained government. Specifically, it indicates how the KP ruling parties have managed to avoid restrictions on the limits of the RP term through both institutional channels and non-constitutional means.

Secondly, to address why particular institutions are chosen or formulated, rational choice Institutionalism is applied, which assumes that institutions are constructed by individuals as central actors that are involved in shaping and changing the institutional contexts to serve their purposes as they desire to maximize their benefits on the basis of rational calculation.[[152]](#footnote-152) This approach considers that the emergence of institutions is based on the fact that they are created rather than appear spontaneously. Therefore, institutional design in the KR is a matter of choice by the ruling parties. They created all the governing institutions and changed their features as far as they could agree on how to provide for their interests via the constant DPG. In other words, the thesis tries to prove that the KR institutions are designed to serve the ruling parties’ tendency to authoritarianism; as they are more a product than a cause of the authoritarian regime.

**1.3.4 Comparative Law Approach**

The comparative law method is used for a variety of scholarly or practical purposes. It also can be used ‘as a means of advancing a domestic agenda’.[[153]](#footnote-153) Alan Watson insisted considering comparative law as an ‘academic discipline in its own right’.[[154]](#footnote-154) Comparative law is ‘the critical method of legal science’.[[155]](#footnote-155) In addition, as Otto Kahn-freund defines, it is ‘the common name for a variety of methods of looking at law, and especially of looking at one’s own law’.[[156]](#footnote-156) To Henry Maine, the key function of comparative jurisprudence is ‘to facilitate legislation and the practical improvement of the law’.[[157]](#footnote-157)

Comparative law serves a wide variety of purposes, which are practical and academic, and are closely related. In this respect, Peter De Cruz, Esin Örücü and W. J. Kamba have identified precisely its functions. It can be used in academic studies, facilitate legislation and law reform, judicial process, international law, understanding legal rules, contributing to the unification and harmonisation of law, and offering solutions to problems of domestic law.[[158]](#footnote-158) Similarly, Konrad Zweigert and Hein Kӧtz agreed that 'legislators all over the world have found that on many matters good laws cannot be produced without the assistance of comparative law'.[[159]](#footnote-159)

Since there is no identifiable method, there is no one identifiable aim of this method. As Watson has concluded, there is no a commonly established way of conducting comparative study appropriate to all scholars. Similarly, Watson explains that ‘at least there is no single system, no set of criteria which would be useful for all purposes, or acceptable to all scholars’.[[160]](#footnote-160) In other words, the existence of a variety of aims means that a comparative scholar ‘enjoys considerable freedom in deciding which of these purposes to pursue in any particular study’.[[161]](#footnote-161) This thesis mostly falls into the first and fifth fields; academic studies and understanding legal rules. Through understanding the legality of permitted and forbidden actions in the KR, the method provides encouragement for critical thinking in assessing domestic law.[[162]](#footnote-162)

**1.3.5 Applying the Comparative Law Approach**

In general, comparative law methodology can be either functional or conceptual. This thesis mainly depends on the conceptual approach. But even in conceptual comparisons, alongside historical review, actor and functional analysis can be used also as an explanatory tool.[[163]](#footnote-163)

The functional method is adopted from social sciences. The method as presented by Zweigert and Kötz was envisioned to be a predominant method in comparative legal studies, from which all other comparative law methods would follow.[[164]](#footnote-164) They emphasized that the ‘proposition rests on what every comparatist learns, namely that the legal system of every society faces the same problems essentially, and solves these problems by quite different means though very often with similar results’.[[165]](#footnote-165) And: ‘the question to which any comparative study is devoted must be posed in purely functional terms; the problem must be stated without any reference to the concepts of one’s own legal system’.[[166]](#footnote-166) Consequently, the solution to social problems is often similar.

Additionally, functionalism can help as an evaluative standard. ‘Functionalist comparative law then becomes a ‘better-law comparison’—the better of several laws is that which fulfils its function better than the others’.[[167]](#footnote-167) However, it often disregards significant diversity within the legal systems under comparison, which may be related to their institutional dimensions, cultural diversity and historical backgrounds.[[168]](#footnote-168)

Conversely, conceptual comparison aims to establish an approach of conceptualization, which uses a variety of concepts in different legal systems. Conceptual comparisons often pass through two phases. The first phase includes interpretation of ‘certain elements of legal reality in logically precise, abstract, and unambiguous models’.[[169]](#footnote-169) The main purpose of this phase is ‘to establish a standard for comparability in the form of a concept’.[[170]](#footnote-170) While in the second phase; systematic comparison, ‘real-world institutions and rules can be matched and assessed against these concepts’.[[171]](#footnote-171)

The premises of conceptual comparisons are three: Firstly, law, as the object of comparison, is a normative system that consists of principles, rules, and institutions. Secondly, the method recognises that comparison is impure and thus comparatists cannot avoid ‘the preconceptions of their own legal culture and education’.[[172]](#footnote-172) Thirdly, it assumes that it is likely to formulate a neutral reference system in the form of concepts; abstract models which serve as neutral analytical tools resulting from real-existing law.

One of the virtues of a conceptual comparison that is used here, is its significant role in ‘purely domestic contexts’;[[173]](#footnote-173) one country studies, in which ‘it is possible to apply foreign concepts to one's own legal system’.[[174]](#footnote-174) Consequently, ‘the ability to compare, evaluate, and improve comparisons is also important within national legal systems’.[[175]](#footnote-175) In this context, the case-oriented comparison aims to investigate ‘a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident’.[[176]](#footnote-176) This is known also as ‘extroverted case studies with generic concepts’,[[177]](#footnote-177) in whichthestudy of a single country ‘employs concepts that make it possible to derive generalizations that can be tested elsewhere’.[[178]](#footnote-178) The approach, as Peters clarified, aims to explore in depth, a single case through ‘the existing theory in mind, with the expectation of elaborating or expanding that body of theory with the resulting data’.[[179]](#footnote-179) Similarly, for John Gerring, it is ‘an intensive study of a single unit with an aim to generalize across a larger set of units’.[[180]](#footnote-180) This method is classified under the comparative methodology for comparing developments in different periods. This is often referred to when confirming analysis based on a country's history with the focus derived from the research question in use. The study of a single case is thus viewed as a pre-theoretical exercise, hopefully, producing a statement about the phenomenon to add to the general theoretical framework.

Another virtue of applying this method is that it supports the study of legal transplants in various ways, particularly considering that conceptualization has predictive value by envisaging legal transplants and legal change. The method addresses the ways and reasons behind changes in legal systems and demonstrates the obstacles to change by imitation.[[181]](#footnote-181) Suggesting that a foreign legal institution might function valuably either as a guide or a model to follow, or as solution to avoid. Denis Tallon has observed that ‘assuredly, to resort to a foreign model is not an innovation... Its aim is not to find a foreign institution which could be easily copied, but to acquire ideas from a careful survey of similar foreign institutions and to make a reasonable transportation of those which may be retained, according to local conditions’.[[182]](#footnote-182) Legal models might be either transitional ideas or texts, and thus potentially contribute to the re-conception of a local legal system. Wherever legal transplants are frequent, ‘transplanted and domestic institutions often co-exist and compete with each other in the same legal system’.[[183]](#footnote-183) The conceptual method might provide an appropriate standard to analyse such situations since it ‘does not require *comparanda* from different legal systems to be operational’.[[184]](#footnote-184)

Against that theoretical background, it is significant to highlight that before the foundation of the KR, there was no history of self-governance and specifically no democratic traditions. The KR started its first self-governing experience in 1991, through the IKF as an apolitical and military council, which established the KP and KRG through decrees, and afterwards by laws from a party-controlled assembly instead of a constitution written by a constituent assembly; ‘a body of elected representatives, defining or redefining the nation’.[[185]](#footnote-185) Iraq also was not a democratic state to inherent democratic institutions from. Thereby, essentially most institutional conceptions were imported from different countries, such as the features of a parliamentary system in the early stages and semi-presidentialism afterwards. This is affirmed in the explanatory memorandum presented by the Draft Law Committee in 1992, which explained the basic principles espoused then in the Law No. 1 of 1992, which function as constitutional law and stated that ‘the committee started working and adopted the doctrine of the constitutional law as a basic source. This is in addition to embracing the comparative laws and the general principles of the parliamentary system in the developed democratic countries’.[[186]](#footnote-186)

This necessitates a return to the theoretical background of such institutions in the form of concepts, to look at the legal reality of these institutions in the KR so that they can be matched and evaluated against these backgrounds. In this respect, this thesis uses theories of constitutionalism in Western democracies and theories of democratic transition and electoral authoritarianism as normative analytical tools addressing the constitutional basis of the KR’s governance.

**CHAPTER TWO**

**Theoretical Background**

**2.1 Introduction**

This chapter signifies the theoretical and conceptual frameworks. It clarifies the distinction between democratisation and liberalisation. It defines the key concepts of democratic transition and consolidation. The chapter explains the possibility of an authoritarian reversal when the process faces challenges and then, when the democratic transition is struggling, authoritarianism persists. It also demonstrates the constitutional engineering that parallels the transitional path. This chapter then addresses the interaction between democratisation and statehood to clarify that both can proceed in tandem. Moreover, it elaborates how the KR, as an unrecognised quasi-state, failed in both state-building and democratisation and how the ruling parties, through the DPG, delivered electoral authoritarianism instead.

**2.2 Democratic Transition: Conceptual Framework**

Democratic transition is the passage from one political system to another, introducing changes in the social, legal and economic reality, and upon the existing political institutions, aiming to establish a democratic government. It is ‘the interval between one political regime and another’.[[187]](#footnote-187) Such a process brings up conflicts between political parties; new and old, ruling and opposition. Concurrently, it provides an opportunity to compromise and negotiate on a set of consensuses.

Democratisation is different from liberalisation. The latter reflects ‘a mix of policy and social changes, such as less censorship of the media, greater freedom to organize autonomous group activities, the introduction of legal safeguards for individuals…, release of political prisoners, return of political exiles, and, most importantly, toleration of political opposition’,[[188]](#footnote-188) and definitely not excluding it from political competition. While democratisation is a wider and more precisely, a political concept that also involves liberalisation and needs open contestation over the right to win control of the government. Therefore, democratisation concerns the creation of a democratic government via free, popular and competitive elections, that can survive and stay stable while facing democratic challenges by loyal democratic rivals. On the other hand, there can be liberalisation without democratisation.[[189]](#footnote-189)

There is an obvious distinction between two phases of democratisation; the primary transition stage and the consolidation of democracy. Although in practice they might sometimes overlap, theoretically they are distinct features of democratisation. The purpose behind this division is clarify the potential of the initial transition for success and become institutionalised, or to fail, stall and then regress to authoritarian rule. Transition starts with the collapse of the previous authoritarian rule and ends with the formation of relatively stable democratic political institutions. While consolidation takes more time than transition and refers to a complex situation involving a greater number of actors to achieve considerable behavioural, attitudinal and constitutional supports for the democratic institutions and the rules of the game which they establish.[[190]](#footnote-190)

Guillermo O'Donnell revealed the importance of the second stage in the creation of these decisive institutions, as he stated that ‘the crucial element determining the success of the second transition is the building of a set of institutions that become important decisional points in the flow of political power’.[[191]](#footnote-191) In this sense, democratic consolidation is a gradual and delicate process of establishing and institutionalising democratic procedures during which the incumbents comply with the rule of law through exercising a power granted by a democratically-enacted constitution. Basically, consolidation is the process by which democracy is rooted or entrenched.[[192]](#footnote-192)

Similarly, Alfred Stepan and Juan Linz envisioned the process of democratisation within two essential stages. They set forth two important criteria to measure the completion of the democratic transition. Firstly, the institutional embodiment of free, fair and authoritative elections to make the democratically elected government a de jure and a de facto sovereign authority without sharing power with other de jure bodies. Secondly, make a commitment to craft an agreement for a democratic government. These are the two-main conditions from which a consolidated democracy could be established, in which democracy has been founded when its institutions, rules and incentives become the only game in town.[[193]](#footnote-193) By overlapping behavioural, attitudinal and constitutional features of consolidation, they assumed that democracy must become routinised and deeply internalised in social, institutional and political designs to attain success. As they proposed, the survival and breakdown of democracy depend on institutional crafting.[[194]](#footnote-194) This has various forms and is at different levels, including the legal system and political institutions.[[195]](#footnote-195)

Democratic transition thus prescribes a relatively stable configuration of political institutions in a democratic regime, which can be consolidated in the sense that ‘all politically significant groups regard its key political institutions as the only legitimate framework for political contestation, and adhere to democratic rules of the game’.[[196]](#footnote-196) The essence of the consolidation process is envisaged as ‘the new regime becomes institutionalized; its framework of open and competitive political expression becomes internalized’.[[197]](#footnote-197) That is why the submission of public authorities to the rule of law is simultaneously one of the most important and difficult tasks for emerging democracies.

The basis of democratic transition paradigm can be summarised in five assumptions. The first, which is the most important one, is that any country moving away from dictatorial rule can be considered a country in transition towards democracy. The second assumption is that democratisation tends to unfold in a set sequence of stages where consolidation follows the transitional stage. The third one is concerned with the core idea of democratisation, the belief in the decisive significance of elections that have been considered as equivalent to democracy. All that seems to be necessary for democratisation according to the fourth assumption, is a decision by a country’s political elites to move towards democracy and then their ability and willingness to proscribe the contrary actions of remaining antidemocratic forces. Accordingly, such an assumption underplays the underlying conditions in transitional countries and would not consider political, institutional, economic, ethnic, and sociocultural structures as major factors in the onset or the outcome of the transition process. The Fifth assumption deals with democratisation in a coherent functioning state addressing the redesign of state institutions such as the creation of new electoral institutions and parliamentary reform.[[198]](#footnote-198)

In sum, democratic transition identifies political changes moving from a nondemocratic to a democratic regime. The first does not allow free elections and constitutional liberties, as they have been constrained and curtailed in their values and functions. While the democratic transition is supposed to embody the real political participation of citizens in forming a democratic and sovereign government. The success of the democratic transition requires the fulfilment of the following criteria 1) a government comes to power as the direct result of a free and popular vote; 2) the government has full authority to generate new policies based on electoral legitimacy; and 3) the executive, legislative and judicial power generated by the new democratic system does not have to share power with other bodies de jure.[[199]](#footnote-199)

**2.2.1 Pathways and Possibilities**

Democratic transition is characterised by the uncertainty that it could perhaps produce a variety of scenarios:

Transitions are delimited, on the one side, by the launching of the process of dissolution of an authoritarian regime and, on the other, by the installation of some form of democracy, the return to some form of authoritarian rule, or the emergence of a revolutionary alternative. It is characteristic of the transition that during it the rules of the political game are not defined.[[200]](#footnote-200)

Characteristically, the transition unfolds along different paths. It might lead to a consensus among the ruling and opposition parties in which they are expected to agree on a new democratic constitution or amend the prevailing constitutional rules.[[201]](#footnote-201) Some aspects of this expectation are related to institutional engineering, which can take different forms depending on the pre-transitional contexts. The features of the former nondemocratic regime influence the transitional paths and the consolidation tasks when facing challenges from the existing structure. It is plausible that in an authoritarian regime[[202]](#footnote-202) that is in a final stage, the democratisation process will be related to establishing a political society by creating the authority and legitimacy of democratic institutions. Conversely, in the pre-transition context of totalitarian and sub-types of communist countries, democratisation will concurrently entail crafting a well-institutionalised political and economic society with a basis of every democratic institution and value.[[203]](#footnote-203)

While in the framework of both authoritarian and sultanistic[[204]](#footnote-204) regimes, the legal expectation will be to diminish the scope of tyranny, which is connected to the individuality of leadership, personification of power, weak differentiation between institutions and the rulers, and the diverse patterns of patriarchy and presidency.[[205]](#footnote-205) Moreover, in sultanistic regimes, due to neither accepting pluralism in terms of opposition parties nor mostly even allowing elections, the paths to democratisation and the tasks involved, essentially start from a very low base addressing political institutions, constitutionalism and the rule of law, construction of civil and economic society, impartiality and professional norms for bureaucracy.[[206]](#footnote-206)

Moreover, in the context of a totalitarian regime,[[207]](#footnote-207) legal expectation addresses the separation between political party and state institutions. In other words, the separation between governing institutions and a ruling party. As the main distinctive feature of totalitarian regimes is that they retain a tendency for the elimination of the boundary between state and society and the emergence of an overwhelming ‘politicization of society by political organizations, generally by the party and its affiliates’.[[208]](#footnote-208) Therefore, the logic of constitutional engineering in parallel with democratic transitions is based on an equitable foundation established during the transition and the contraction of subsequent uncertainty. In this sense, the agreement on minimum rules and a constitutionalising transformation as part of the transition task, can be processed. This is characterised by the understanding and acceptance of political rules in the framework of constitutional government.

Currently, within authoritarian regimes, electoral authoritarianism signifies a typical political regime in transitional countries, where democratisation faces difficulties from powerful incumbents. It combines, as Andreas Schedler elucidated, formal democratic institutions with authoritarian practices, as they subvert, systematically and profoundly, the minimum norms for democracy. Multiparty elections, which facilitate repeated victories for incumbents, are instruments of authoritarianism rather than instruments of democracy.[[209]](#footnote-209) Respectively, electoral authoritarianism is based on two criteria: ‘(a) the formal-institutional criterion of multiparty elections at the national level, and (b) the practical subversion of electoral institutions through authoritarian manipulation’.[[210]](#footnote-210) Accordingly, it ‘resides in a conceptual space between non-electoral authoritarianism and actual democracy’.[[211]](#footnote-211) However, among the pre-transitional contexts, electoral authoritarian regimes are particularly ‘the ones with greatest potential to develop into democracies’ because of the repeated elections.[[212]](#footnote-212)

When the ruling parties, elites or military rulers are strong enough to maintain their interests in the on-going process of institutional design, the transition is incomplete and becomes a prolonged issue. The transition thus takes longer than expected, it might fail and allow an opportunity for the existing authority to hinder the experience and resist it, because it has such a highly organised structure that it can overcome the situation.[[213]](#footnote-213) This condition affects the movements for change and frustrates opposition, which would make them retreat and offer concessions. Thus, the popular enthusiasm that is associated with the early days of transition will be lost.[[214]](#footnote-214) In other words, ‘new democracies may regress to authoritarian rule, or they may stall in a feeble, uncertain situation. This situation may endure without opening avenues for institutionalised forms of democracy’.[[215]](#footnote-215) For that reason, to accomplish a democratic transition at that point, there should be no impediments that obstruct the way of transition. The barriers referred to here are the ruling parties' structure and interest, and the prevailing institutions that are politically engineered to prevent access to democratic government.

**2.2.2 Parallel Constitutional Engineering**

The waves of democratisation correspond closely to the process of constitution writing, as new constitutions are generally linked to major social crises such as revolutions, defeat in wars, regime collapse, the foundation of a new state, or liberation from colonial rule.[[216]](#footnote-216) Accordingly, the political situation that surrounds the constitution-making process is often one in which prevailing institutions are either eroded; completely collapsed or are critically tainted by association with the previous regime. The normal condition in which constitution-making emerges is not where things are going well, but alternatively where some deep crisis requires the making of a new constitution.[[217]](#footnote-217)

The parallel constitutional process for the initial democratic period is a legal process to issue new rules or to amend the existing constitutional laws in order to establish democratic institutions.[[218]](#footnote-218) However, the constitutional process occurs within a complex and challenging moment of the political regime, which is the moment of converting from one regime to another. This simultaneously implies providing the forthcoming government with legitimacy by issuing new legal regulations in concurrence with the existing legal rules that legitimise the current authority. In this difficult situation for the government, there will be some parties in favour of the prevailing legal rules, while others will prefer to change them.[[219]](#footnote-219) The ‘interests of the current political elites strongly affect the potential for and direction of reform. Balancing their specific short-term interests on the one hand and long-term national interests on the other is a major challenge confronting constitutional reform processes’,[[220]](#footnote-220) which function to constitute democratic government.

In most liberal democracies ‘that are and have to be constitutional democracies’,[[221]](#footnote-221) constitutions aspire to ‘regulate the allocation of power, functions and duties among the various agencies and officers of government, and to define the relationships between these and the public’.[[222]](#footnote-222) As Charles McIlwain puts it; ‘a constitution is not the act of government but of a people constituting a government’.[[223]](#footnote-223) Accordingly, a constitution ‘embodies a higher form of law antecedent to government’[[224]](#footnote-224) to build the rule of law and popular sovereignty, whereby it organises the ‘institutional framework, particularly how the organs of the state are intended to interrelate with each other and the ways in which power is to be divided between them’.[[225]](#footnote-225) Constitutions thus serve to empower democracy by establishing the institutional structures of the state: the structure of public authorities and the distribution of power between them.

Constitution is often considered as being premised on the liberal model of constrained government, as a device for securing individual liberties and the rights of vulnerable minority groups by identifying a private sphere that requires protection from state intervention. In this context, Charles McIlwain’s most-quoted words illustrate the dichotomization; ‘constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law’,[[226]](#footnote-226) whereby ‘all constitutional government is by definition limited government’.[[227]](#footnote-227)

Within this conception, constitutional law is deemed to be a method of restraining potentially overwhelming majorities from overriding personal liberties or the interests of minority groups. Accordingly, it establishes the constitutional state that is ‘a state of justice ... in which the state acts predictably, in accordance with the laws, and the courts enforce restrictions on popularly elected governments when they violate the laws or the constitutional rules’.[[228]](#footnote-228) In terms of the main idea behind writing constitutions and in terms of modern good governance, both functions of the constitution are historically important, as they act as checks on political power and as its foundations. In this context, the constitutional regulation of political parties provides an indication of their status within the process of constitutional engineering of a democratic government, and their relationship with its citizens.[[229]](#footnote-229)

In general, during the past half-century, revolutionary governments and newly independent states, specifically in the AME world, have often written their constitution drawing on a collective self-definition, in which they often embody ideological principles. Meanwhile, these kind of constitutions ‘have failed to provide for genuine accountability’[[230]](#footnote-230) of existing governments. The existing regimes have issued such Potemkin documents ‘to obscure the unrestrained nature of their authority’.[[231]](#footnote-231) Accordingly, ‘constitutions are written not to limit authority…but to mask it’.[[232]](#footnote-232) This is resulting from their belonging to a non-constitutional world with non-constitutional motives behind writing the constitutions.[[233]](#footnote-233)

Against that background, the constant DPG in the KR has induced non-constitutional phenomena, notably the control by political parties of the governing institutions. This in turn has led to a lack of separation between the state and party organs. This was the predominant feature of the former Iraqi Ba'ath regime after 1968. Through ongoing struggles with such authoritarian regime, the Kurdish parties gained their insurgency-communitarian legitimacy in political reality. In other words, the ruling parties have presented a slightly different regime-model from the Iraqi Ba'ath since 1991, though the Iraqi Kurds suffered much under Ba’ath regime.[[234]](#footnote-234) The KR leaders have basically been giving out the rhetoric of democracy, while in practice they have acted like an autocrat. ‘Political control runs deep. In the case of a victim learning from his tormentor’, the ruling parties ‘have effectively replicated Ba’ath Party mechanisms of control’.[[235]](#footnote-235)

Basically, the KR failed to deliver a democratic transition either before or after 2009. The broad-based government (2014-2015) ended with the coup of October 2015. The critical alternative to the current situation in the KR, would be a constitution-making process as a key element to establish democratic government, where there is neither constitution nor constitutionalism. Instead, there is some legislation with a constitutional function which is regulated and regularly amended by the ruling parties. This is known here as abusive constitutionalism; embodying the ruling parties’ interests as a product of electoral authoritarian rule. The KR’s constitutional law is like the constitutional texts in the AME countries, and more generally in the Middle East, which have mostly been written, less by the national constituent assemblies than by prevailing regimes looking for devices with which to manage domestic and international challenges.[[236]](#footnote-236) This contrasts with democratic principles of writing a constitution by the people instead of by government. Alternatively, in respect of the challenges societies face when reinventing themselves, as Nathan Brown suggests that ‘they must use existing institutions in order to make new ones’.[[237]](#footnote-237)

**2.3 Incomplete Democratic Transition: Authoritarianism with Adjectives**

As the number of electoral regimes increased that resisted easy classification, the word democracy has been linked with numerous adjectives to increase analytic differentiation and to avoid conceptual stretching.[[238]](#footnote-238) The incomplete phases of transition over the last two decades, require other theories rather than only the transition paradigm that potentially encourages a false impression when analysing the KR’s situation.[[239]](#footnote-239)

To understand some ambiguous cases resulting from failure in the process of democratisation that have stuck somewhere between authoritarianism and democracy, the democratic transition paradigm ought to be supported by literatures on new forms of authoritarian regimes. In this regard, Thomas Carothers claims the end of the democratic transition paradigm, as ‘of the nearly 100 countries considered as transitional in recent years….probably fewer than 20 are clearly en route to becoming successful, well-functioning democracies’.[[240]](#footnote-240) Most of those countries, as he explained, failed to achieve relatively well-functioning democracy or to be advancing their progress.[[241]](#footnote-241) Eventually, some of them fall between outright dictatorship and well-established liberal democracy.[[242]](#footnote-242)

While several terms have been used frequently to describe the new variety of hybrid regimes, the most common term to be used is electoral authoritarianism.[[243]](#footnote-243) This category of transitional countries is trapped somewhere on the supposed route to democratisation, generally at the beginning of the consolidation stage. Most of such transitional countries, as political grey zones, are neither authoritarian nor obviously heading towards democracy.[[244]](#footnote-244) Many transitional processes, even if they had an initial start accomplished by free and fair elections; such as in parts of sub-Saharan Africa and the former Soviet Union, have ended up with new forms of authoritarianism behind electoral façades; electoral authoritarianism.[[245]](#footnote-245)

Despite massive diversity within such hybrid regimes where there are potentially further subtypes, there are two broad political syndromes that the countries share. Firstly, some countries can be described as having feckless pluralism. Notwithstanding having positive features of political freedom; regular elections and alternation of power among different political groupings, democracy remains trifling and uneasy. The feckless pluralism prescribes a political participation that covers little beyond voting, however broad the participation at election time. Political elites from all the major parties or groupings are seen as broadly corrupt, self-interested, fraudulent and not serious about working for public life. The alternation of power seems only to give the country’s problems back and forth from one unfortunate group to the other. The public is seriously disillusioned by government, though it might still adhere to a belief in the ideal of democracy, it is very disappointed about the political life of the country. Generally, government is widely understood as a stale, corrupt, elite-dominated sphere that brings little good to the country and commands equally little admiration.[[246]](#footnote-246)

In spite of the variation among feckless-pluralist countries concerning the character of parties that alternate political power, the political alliance and parties with charismatic features endure. Nonetheless, they share a common status that the entire cast of political elites, though plural and competitive, are deeply divided from the electorate, rendering political life an eventually hollow, futile exercise.[[247]](#footnote-247) Consequently, despite democratic transitions undertaken with diverse parties, they suffer from an inheritance of profoundly poorly performing state institutions.[[248]](#footnote-248)

Secondly, most hybrid regimes share a common political syndrome of dominant-power governance. Despite having limited, but real, political contestation and basic democratic institutions, countries with this syndrome are also characterised by a ‘political grouping whether it is a movement, a party, an extended family, or a single leader’[[249]](#footnote-249) that controls the governing system in such a way that there seems to be ‘little prospect of alternation of power in the foreseeable future’.[[250]](#footnote-250)

Dominant-power systems with a different range of freedom and political openness are widespread in three regions where some could be seen as dictatorships with limited political freedom and others are more open, though with limits. Firstly, democratisation in sub-Saharan Africa in the early 1990s has led to make many dominant-power regimes there, such as Cameroon, Burkina Faso, Equatorial Guinea, Tanzania, Gabon, Kenya, Zambia, Congo, and Mauritania. Some of them were authoritarian one-party regimes, either liberalised or collapsed and eventually dominant-power governance emerged allowing very limited spheres of political openness. Secondly, in the former Soviet Union, countries like Armenia, Azerbaijan, Georgia, Kyrgyzstan, and Kazakhstan have developed this syndrome.[[251]](#footnote-251) Thirdly, the liberalisation movements in the Middle East arising in the mid-1980s turned the countries of Morocco, Jordan, Algeria, Egypt, Iran, and Yemen from of the authoritarian camp into examples of the dominant-power system.[[252]](#footnote-252)

Unlike feckless-pluralist countries, dominant-power countries suffer from a key political problem caused by the indistinct line between the state and the ruling party or ruling political forces. The state’s essential resources of money, jobs, public information, and coercive apparatuses are placed in such a way that they are serving party-controlled government. In both patterns of countries, therefore, the state tends to be weak and poorly performing and lacking progressive movement. However, in dominant-power countries, the problem is often related to a rotten bureaucracy maintained by a stagnant, de facto ruling party rather than the unsystematic and unstable nature of state organisation that is typical in feckless-pluralist countries.[[253]](#footnote-253)

Moreover, elections under feckless-pluralism are relatively free and fair, while the typical pattern in dominant-power countries is one of uncertain but not absolutely fraudulent elections. Accordingly, the ruling groups attempt to hold a good-enough electoral display in order to gain approval from the international community. However, they will focus quietly on electoral fraud to guarantee their victory.[[254]](#footnote-254)

Some hybrid regimes have moved away from authoritarian rule, but their political route is so far unclear. Many other countries have ended up as examples of either feckless-pluralism or dominant-power governance. As there are no permanent political formations, countries can be shifting their ground, either from one to the other, or out of either moving towards liberal democracy or dictatorship.[[255]](#footnote-255)

In this context, Schedler presents an analytical framework and empirical data that helps to understand the distinctive dynamics of such regime-types. Some of the transitional countries are former authoritarian countries that have attempted some political liberalisation and can be labelled as electoral authoritarian regimes, as dictatorship is not what it was once. Military and single-party regimes have been withering away. Most dictators nowadays organise multiparty elections. The key issue, which authoritarian incumbents have consistently been coping with, is uncertainty as ‘a *parameter* of choice as well as an *object* of choice’[[256]](#footnote-256) by both adapting to it and transforming it. These regimes are facing two structural problems of institutional and informational uncertainties that are linked together and mutually strengthen each other where they affect both the authoritarian rulers and their opponents. The institutional uncertainty ‘originates in either actual or potential challenges’[[257]](#footnote-257) to the authoritarian rule, while the informational uncertainty is concerned with the ‘impossibility of generating secure knowledge on these challenges’.[[258]](#footnote-258) The existing level of uncertainty designates the quality of the institutions; a situation of full uncertainty produces an institutional void; high uncertainty prescribes a weak institution and on the other hand, low uncertainty constitutes strong institutions.[[259]](#footnote-259)

**2.4 Kurdistan Region: Situations of Electoral Authoritarianism**

Although neither Carothers nor Schedler have directly included the KR in their studies, their arguments can be applied to the KR’s transitional experience. However, Schedler has classified Iraq and many other AME countries as electoral authoritarianism,[[260]](#footnote-260) or in Larbi Sadiki’s definition ‘Arab electoralism’, which the KR shares many attributes with them; such as the limited effects of contestation; elections that often provide incumbents with victory, and the state’s monopoly of the use of coercive apparatuses which is not subject to legal oversight.[[261]](#footnote-261)

In the KR, the power of the ruling parties is not secure and now and then faces turmoil. Such institutional uncertainty is regarded as an essential element for controlling conflict under authoritarian regimes. Even elections as the primarily competition between the ruling political forces and the oppositions, carry political uncertainty, which underpin the struggle over institutional uncertainties.

The multi-party system or specifically the presence of more than one party competing for political power through regular, free and fair elections is one of the imperative constitutional bases for the completion of democratisation. The distinctive feature of electoral authoritarianism, which makes it different from other nondemocratic regime types, is that ‘they tolerate legal alternative parties, which constitute at least somewhat real and independent opposition to the ruling party’.[[262]](#footnote-262) A sort of semi-pluralism exists alongside the DPG in the KR.[[263]](#footnote-263) Accordingly, the dominant feature of the Kurdish self-governance has been the superiority of the ruling parties over the institutions for more than two decades; either they have been combined in an electoral or governmental alliance or separately each has managed institutions in their own administration zones.[[264]](#footnote-264) This style of government is conceptualized here as the DPG, where the ruling parties, not the institutions, have dominance over the state institutions; the civic and public utilities, military, security and economic establishments and noteworthy here is that the regulation of political parties is not subject to the rule of law and popular sovereignty. Consequently, this situation has formed an authoritarian rule, which applied a strict fifty-fifty power-sharing system over governing institutions in the entire upper and lower levels of government, it has been applied even in universities and schools.[[265]](#footnote-265)

More precisely, ‘Kurdish officials have talked convincingly in public about their commitment to democracy and political opening; however, they have permitted the political parties to control the market and institutions, allowed farmlands to remain idle, and assured their own patronage systems’.[[266]](#footnote-266) Managerial positions in state institutions, in both the upper and lower positions, have been devoted to the ruling parties' cadres.[[267]](#footnote-267)

Those are the pre-conditions for authoritarian elections. That is why for such governance, in which the ruling parties are firmly rooted, elections do not function with their democratic aim of the alternation rule. Such regimes ‘have legal opposition parties… but fail to meet one of its crucial requirements: a sufficiently fair arena of contestation to allow the ruling party to be turned out of power’.[[268]](#footnote-268)

These hybrid regimes are more likely to be involved in armed conflicts with other countries, tend towards political instability, revolutions and civil wars.[[269]](#footnote-269) This can even lead to the potential disintegration of the state. Perhaps this will happen in countries like Syria, Yemen and Libya after the Arab Spring. Accordingly, as Edward Mansfield and Jack Snyder argued, such hybrid regimes might be as despotic and scornful of human rights as any dictatorship, as:

[A]n incomplete democratic transition increases the risk of international and civil war in countries that lack the institutional capacity to sustain democratic politics. The combination of increasing mass political participation and weak political institutions creates the motive and the opportunity for both rising and declining elites to play the nationalist card in an attempt to rally popular support against domestic and foreign rivals.[[270]](#footnote-270)

As a consequence of non-institutionalised governance, as long as the ruling parties preserve party-affiliated armed forces, signifying the devaluation of the election as an instrument of democracy, there is a likelihood of instability and civil war in the KR. Accordingly, the KR will be disqualified from having a democratic government.[[271]](#footnote-271) Although the barriers will last into the foreseeable future, perhaps the inclusiveness of any proposed constitutional reforms will help the KR to pass through the transitional stage and deliver a democratic government.

**2.5 Statelessness: The Structural Challenge for Democratisation**

There is a relationship between the state and democracy where the latter is defined as a form of government of a modern state. In this regard, Linz and Stepan indicated that a sovereign state is a precondition for democracy. Without statehood, there can be no secure democracy.[[272]](#footnote-272) Conversely, as Whitehead argued, there can be some overlapping variant counterparts, when democratisation and nation-building are regarded as long-term, complex, open-ended and potentially reversible processes. They can evolve in tandem. Democratisation can begin when state-building is in progress and not be completed, or democratisation can start before state-building has begun. However, a theoretical assumption that democratisation can be completed even before the nation-building has started, lacks any empirical example.[[273]](#footnote-273)

Modern democracies are immensely varied on the issue of statehood, whereby some have no such problem while in others democracy is impossible unless the statehood issue is solved. The relevant work on democratic transition does not provide sufficient theoretical analysis on the problem of statehood, such as the examples of Hong Kong, Taiwan, Catalan and The Basque Country, because most of the literature has focused on democratisation in countries where such a problem is not salient issue.[[274]](#footnote-274)

Additionally, a democratic political sub-unit is either not allowed or, even if it exists, the democratic institutions will be subverted by the central nondemocratic government, as it will be a persistent temptation when the citizens of the larger part of the country have no access to such freedoms. In a nondemocratic system such as the colonial rule of the British Empire, the colonies may have been privileged with some important democratic developments. They even had representative governments, but in a sense of political democracy and reserved powers were held by Westminster; until they were recognised by the United Kingdom as an independent state, the colonies would not be considered as democracies. Democracy requires statehood.[[275]](#footnote-275) However, in a democratic federal system a ‘national majority cannot prevail over a minority that happens to constitute a majority in one of the local units that is constitutionally privileged’.[[276]](#footnote-276) Federalism therefore grants a division of power between the two levels of government; central and regional, mainly through ‘strong bicameralism, a rigid constitution, and strong judicial review’.[[277]](#footnote-277) Consequently, regional governments can deliver democracy as political rights are constitutionally granted and as long as there are no federal obstacles facing regional democratisation.[[278]](#footnote-278) More specifically, when the federal constitution is democratically written and ratified by popular vote. In Iraq, for instance, the KR actively participated in the entire constitutional process and their residents voted for the constitution.

Despite being recognised as a federal region according to the IFC, the KR has an ambiguous status in terms of the political configuration of state sovereignty. The state is defined as a ‘human community that claims the monopoly of the legitimate use of physical force within a given territory’.[[279]](#footnote-279) The use of force is regarded as legitimate as long as it is either permitted or prescribed by the state. This monopoly of force is essential for the modern state as its ‘character of compulsory jurisdiction and of continuous organization’.[[280]](#footnote-280) Neither the KRG nor the IFG has the monopoly of force due to existing paramilitary political forces (this will be explained in chapter six).

As generally defined, and according to Max Weber’s definition, a state consists of a territory, population, and government. This is often for some purposes sufficient. Nevertheless, it is insufficient for a state that needs to play a full and active role in international relations. Accordingly, the recognition from other states is a key element that provides a state with a notional legal personality in the international community. There are many states, in a sense of governed territorial entities, such as cantons or regions within federal states, which cannot take part in international relations, because they lack the relevant legal standing that enables them to enter international society and to be dealt with as equal sovereign entities.[[281]](#footnote-281) What is material in this regard for a state is sovereignty, which is considered as the essential principle for the international system that structures international society. Sovereign statehood is constitutional independence from other states, which means that the state's constitution is not part of a higher constitutional arrangement.[[282]](#footnote-282)

Sovereignty demonstrates the indispensable conception of political independence, which consequently institutes an escape from rule by foreigners and remains as a ‘legal barrier to foreign interference in the jurisdiction of states’.[[283]](#footnote-283) Sovereignty is essentially a legal order, which primarily entails rules to regulate the activities of a state. In this regard, there is a difference between the ‘two logically different but frequently confused kinds of rules: constitutive (civil) and instrumental (organizational)’.[[284]](#footnote-284) Constitutive rules, which define the sovereignty game, include ‘legal equality of states, mutual recognition, non-intervention, making and honouring treaties, diplomacy conducted in accordance with accepted practices, and other civil international relations’.[[285]](#footnote-285) The UN Charter exemplifies the principle of equal sovereignty and its consequence as the doctrine of non-intervention. While instrumental rules are maxims attained by experience which contribute to successful operation; they include foreign policy, similar stratagems and the state organisations which correspond to them and all could be employed by statesmen following their interests.[[286]](#footnote-286)

Modern nation-states which make up the international system, have dual sovereignty; internally via their own citizens, where governments have control of their budgets to provide basic services to their residents, and externally through being recognised by other states as the only representative of the nation in international community.[[287]](#footnote-287) In this sense, there are two types of territorial-political entities, which can be considered as exceptions from a typical contemporary nation-state. Firstly, those states that lack internal sovereignty, are referred to here as quasi or failed states.[[288]](#footnote-288) Despite being internationally recognised nonetheless they have stopped operating as state, their public authorities fail to provide the basic services and protect their citizens. Secondly, those kinds of territorial-political entities that seceded from parent states, but the latter deny the secession and loss of territory, are called here, de facto states. The international community does not recognise the seceded entities that have the features of statehood whether they are officially declared to be independent or not. Such secessionist states lack external sovereignty.[[289]](#footnote-289)

The difference between the two categories refers to the international recognition of the entity, as Scott Pegg explains that the quasi-state is internationally legitimate no matter if it is internally ineffective. Conversely, the de facto state is internationally unrecognised; illegitimate, no matter whether it is internally effective.[[290]](#footnote-290)

Despite failing to establish internal legitimacy, quasi-states through their international recognition as equal sovereign states can survive by depending on legal protection from intervention that de facto states are deprived of.[[291]](#footnote-291) Therefore, quasi-states tend to have a weak economy and fragile state institutions, which consequently are more inclined to rely on external support rather than on internal institutional structure. Their authorities are often dependant on the ‘revenues not from the taxation of their own population but from international donors and through the exploitation of the country’s exportable natural resources’.[[292]](#footnote-292) In such a situation, the political elites do not support the alternation of power via democratic competition, they struggle with each other to control the state’s institutions and revenues to present themselves abroad as the representatives of this failed political entity. Consequently, the resources are not invested to support the state or to make progress in the conditions of their citizens.[[293]](#footnote-293)

Since their existence is not recognised by the international community, the de facto states, however, can somehow be sustained by internal support from their citizens through propaganda and identity building. They channel an excessive part of their insufficient resources into the military and often build a patronage system via a vast network of clientelism, which may produce a corrupt governance. This process refers to the nation-building process; a soft pattern of state consolidation, depending on developing a common national identity through symbols, propaganda, and the invention of traditions and national customs.[[294]](#footnote-294)

In this context, successful nation-building depends on successful state-building which concerns the state’s capacity to deliver, as they claim and are expected by their residents as well, to provide basic services to their inhabitants. Some de facto states could succeed in the process of nation-building, but they have failed in the process of state-building. Nevertheless, some scholars agree that de facto states are robust and state-like entities.[[295]](#footnote-295) While others contend this view, and describe them as failed states, whereby they have ‘the institutional fixtures of statehood, but they are not able to provide for its substance’.[[296]](#footnote-296) In this sense, Charles Fairbanks describes such states as ‘the weakest of the weak’.[[297]](#footnote-297)

Moreover, as Pål Kolstø believes, only a few of the de facto states could process successful state-building that would sustain them from collapsing. Consequently, as he stated, ‘most quasi-states,[[298]](#footnote-298) then, lack not only international recognition but also strong state structures, and yet they exist’.[[299]](#footnote-299) He, therefore, identified five factors that provide de facto states with the capability to sustain and survive in the absence of state structures. Firstly, the symbolic nation-building that these states promote, which is postulated on a common involvement in conflicts with the parent state, the presence of a common enemy and the relatively homogenous inhabitants within the pro-independence entity. Secondly, the militarisation of society; the armed forces are the central instrument to deter the parent state. Accordingly, military leaders are influential political and economic figures in a society where they often have an acute interest in keeping their high positions to preserve their privileges. This is one of the characteristics of the KR, which made the ruling parties to preserve party-affiliated forces. Thirdly, the weakness of the parent state; for example, Iraq is a typically weak state that is incapable of either retaking the separatist entity, the KR, or reabsorbing the non-aligned Kurdish population into its domain. Fourthly, de facto states often obtain vital support from an external patron. Finally, lack of involvement on the part of the international community, which through international organisations play significant roles in negotiations and peacekeeping missions in the conflicts with their parent states. In most instances, while the international organisation’s role is obviously serving peace, nonetheless the negotiated settlements to these conflicts are circumscribed to deny the de facto states’ entry into the international community as sovereign entities. It seems reasonable to assume that the international communities’ involvement in such issues has unintentionally contributed to the protracted status quo of the de facto states and frustrated their aspirations to graduate into independent states.[[300]](#footnote-300)

**2.5.1** **Kurdistan Region: A De Facto Statehood**

The KRG has territorial control, but has not obtained international recognition, although it has demonstrated an aspiration for full, de jure independence.[[301]](#footnote-301) The de facto state often represents itself as a democratic state. This constitutes a ‘part of their strategy for gaining recognition, [where they] are also claiming that they embody democratic values’.[[302]](#footnote-302) Accordingly, their strategy is to portray themselves as a democratic state to appeal for international recognition. The aspiration for international recognition, therefore, ‘remains a defining characteristic of unrecognized states and a central part of the narrative employed by political elites’.[[303]](#footnote-303)

In this context, it seems that the Iraqi Kurds might have the trappings of statehood, the formal declaration of independence is still awaited.[[304]](#footnote-304) Accordingly, Pål Kolstø considered that the KR, despite the uncertainty, operates as a relatively well-functioning case of an unrecognised quasi-state.[[305]](#footnote-305) Whatever description is chosen, it would demonstrate the ambiguous status of the KR. Even with being recognised by the IFC as a federal region within Iraq, the KR can be considered as a de facto state that is affected and consequently sustained by the factors regarded by Kolstø as critical, which therefore constitute a blending of both quasi and de facto state. Such factors, however, constitute structural challenges in the KR causing incomplete phases of democratic transition. Also, the KR is inclined to hegemonic authoritarianism through the DPG[[306]](#footnote-306) with sultanistic features, due to familial dominance within the ruling parties, as they hold high governmental positions in the KR, using institutions to advance their personal-familial policies over the citizens’ interests.[[307]](#footnote-307)

Notably, the KR somehow portrays itself as having all the necessary features of statehood, even a democratic state, which constitutes the international notional personality,[[308]](#footnote-308) except recognition. Since 1991, the Kurdish self-governance has been built and sustained by external patronage, international support, militarisation, nation-building processes and a weak federal government, while being a legitimate political entity with rights and revenues provided by the IFC.[[309]](#footnote-309) Article 110 of the IFC specifically outlines that the IFG has exclusive authority in formulating foreign policy and diplomatic representation. However, the KRG has been engaging in international relations without recognition and beyond the scope of federalism. This has created a KR’s foreign policy where it has adopted diplomatic relations independently of the IFG.[[310]](#footnote-310)

Moreover, the KRG through a kind of paradiplomacy has conducted international relations promoting its own interests, at the time when the IS controlled almost a third of Iraqi territories. This critical development started in June 2014 with the IS combat in Northern Iraq. This led to the collapse of the Iraqi Army, which resulted in the KRG, as indispensable regional leverage, as is to be expected, being viewed as not to be neglected further.[[311]](#footnote-311) Subsequently, there was the KRG’s energy sector development, its de facto control over disputed areas and the creation of influential groups lobbying for Kurdish interests abroad.[[312]](#footnote-312) The KR, therefore, in the sense of paradiplomacy relations and as a commercial negotiator, has been increasingly engaging in international relations without an understanding that it is not recognised as an equal sovereign entity in the international system.

The 'recognition-through-democratization-and-state building' formula,[[313]](#footnote-313) at least helped the KR to survive despite having no further independence. The developments driven by the IS combat and the KRG’s further territorial control did not help the KR to obtain statehood status. Conversely, its status quo persists due to the quality of the international support and the external patronage interests. On the one side, they have provided semi-legitimacy; internal sovereignty and relative stability that is necessary to sustain the Kurdish de facto state. On the other side, the ongoing international support is aimed at maintaining federalism and limiting the leverage of the KR by encouraging a united federal state of Iraq.[[314]](#footnote-314)

The KR has reserved some features generally associated with the nation-state, though it remains unrecognised as a sovereign entity. Since 2003, especially after receiving its status as a federal region within a weak Iraqi state, the KRG has moved towards the path of further autonomy from Iraq and to what many analysts and the Kurds themselves, consider a desired end, as an independent state.[[315]](#footnote-315)

The political elites in de facto states use various strategies to proclaim internal legitimacy and through which to attract international recognition. In the past, an independent referendum would often be used as a basis for such a claim and directly linked to self-determination. While recently, the creation of democratic institutions, specifically via a system of multiparty representation, is believed to be attractive to gain international recognition.[[316]](#footnote-316) Conversely, in the KR, the incumbents’ strategies somehow move back and forth, as after years of democratic failure, the KR ruling parties held the independent referendum in 2017. Despite major challenges, internal conflicts and split administrations, from the uprising of 1991 to the collapse of the Ba’ath regime of Iraq in 2003, the KR has tried to become an independent state. Although the independence was supported via an informal referendum in 2005, the KR political leadership then decided to support federalism in Iraq. However, the KR has preserved its state-like entity that has constituted its fragile institutions based on quasi-constitutional laws; partisan bilateral agreements that have put through effective laws. If it does not succeed in establishing an independent state, the KR will be presented with a future scenario which is decisively challenging and seeking a kind of confederation with the Iraqi state,[[317]](#footnote-317) as ‘the Kurds’ aspiration is to secure as much autonomy as possible from Iraq’.[[318]](#footnote-318) Eventually, despite miscalculating the consequences of the lack of internal legitimacy and political consensus on both the Iraqi and local levels, the referendum was held on 25 September 2017. The international community’s frequent warnings and the neighbouring countries existing disagreement[[319]](#footnote-319) did not affect the KRG leadership’s decision to go for independence through a referendum.[[320]](#footnote-320)

Since that time the KRG leadership has been fixed in their belief that statehood is vital to the survival of the KR, rather than just being a fundamental right of self-determination and to strengthen national legitimacy, democracy and prosperity.[[321]](#footnote-321) Non-recognition should provide incentives for initiating democratic statehood, but the KR has failed in either familiar ways to prove that there exists a democratic state. At first it tried through proclaiming democratic institutions, which failed, and then via the independent referendum which failed as well.

Moreover, the KR’s referendum on independence has made an already difficult dilemma for the Kurds, far worse. Instead of enhancing the Kurds’ political leverage and independence, it has squandered international goodwill towards them, provoked a greater antagonism from the IFG and neighbouring countries, and deepened the economic crisis and political divisions as well. It has precipitated also, loss of control over historically important territories and resources, like the oil-rich province of Kirkuk. Meanwhile, the KRG finds itself hemmed in politically and economically; it underestimates the condition of the Kurds being geographically surrounded by their enemies, a unique situation worldwide for a nation with a large population but without statehood.[[322]](#footnote-322)

Furthermore, the independence referendum was only an extra manifestation, but not the source, of the KRG’s prevailing crisis caused by the failure of the DPG. Although the KRG has offered to halt (freeze) implementing the referendum results in response to the political outcome and to forestall any further advances of Iraqi forces into Kurdish-controlled territories. In turn, the IFG has demanded on several occasions, the full cancellation of the referendum and its results, despite no further steps being undertaken by the KRG leadership.[[323]](#footnote-323) Then, the entire process was turned over when the Iraqi Federal Supreme Court (IFSC) ruled the referendum and its consequences unconstitutional and it was abolished on 20 November 2017.[[324]](#footnote-324)

**2.5.2 International and Regional Dimensions: Hazardous Roadmap to Democracy**

Emergent democracies in Latin America, Africa, Asia, and the post-communist Europe share some characteristics of democracy. Nevertheless, they vary intensely both from each other and from the developed democracies. Many of them are hybrid regimes; either electoral democracy or electoral authoritarianism.[[325]](#footnote-325) It can be considered that democratic transition is unique in every country and accordingly, there are different modes of democratisation. For instance, Chile's transition in 1980s represents reform from below; the impetus for change came from outside the incumbent elite.[[326]](#footnote-326) Whereas Brazil in 1970s, through the RTT, exemplifies reform through transaction; incumbent elites in Brazil were powerful enough to force the opposition to advance its agenda through negotiations.[[327]](#footnote-327) While Argentina characterises reform through rupture; a multiparty coalition from oppositions was founded for competitive elections to take place, in order to resist the already weak military rule resulting from the defeat in The Falklands War with Britain in 1982.[[328]](#footnote-328)

In post-communist Eastern Europe, Hungary, Poland, Bulgaria[[329]](#footnote-329) and Czechoslovakia[[330]](#footnote-330) (including East Germany), democratic transition was negotiated through the RTT between the Communist Party (together with other various pseudo-independent organisations) and a more or less well-organised opposition.[[331]](#footnote-331)

There can be hardliners and reformers within the regime, and moderates and radicals within the opposition. Transition happened when the reformers and moderates reached an agreement and designed the constitutional changes in two ways. Firstly, through the electoral laws, which shaped the structure of the constituent assembly. Secondly, via the constitutional amendments agreed in the RTT to deliver constitutionalism in the future.[[332]](#footnote-332) Both oppositions and the Communist Party used a four-actor model of strategies.[[333]](#footnote-333) In this regard, many statements were announced giving genuine and pseudo-warnings, which are either genuine threats, or only threats in disguise that were connected to the demonstrations held by the opposition and asking the Soviets to come by the Communist Party.[[334]](#footnote-334)

In spite of massive differences related to sovereignty, international and regional factors, the situation in post-communist Eastern Europe provides an understanding into the circumstances in the KR in terms of democratisation and the pre-transitional context of the relationship between party and state.

The emergence of constitutional democracies in Eastern Europe were affected by two fundamental causes. Firstly, Mikhail Gorbachev's triple policy reform of glasnost, perestroika and non-interference during the 1980s had a decisive influence.[[335]](#footnote-335) Secondly, Soviet non-intervention and the effects of the RTT in Poland, encouraged existing expectations for the transitions throughout the region that followed[[336]](#footnote-336) as communism had rapidly fallen there.[[337]](#footnote-337) The new states in Eastern Europe therefore came to exist, when it became obvious that the Soviet Army was not going to support the doubtful legitimacy of communist regimes in the region.[[338]](#footnote-338)

The post-communist countries in Eastern Europe have sought international recognition for their evolution towards pluralism, the rule of law, and the recognition of human rights through admission to the Council of Europe. Free elections and new constitutions for those new states have paved the way to be admitted into the community of democratic states.[[339]](#footnote-339) Meanwhile, to coincide with the European Council's request, the European Community (EC) and its member states on 16 December 1991 adopted the ‘Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union’. which stipulated five requirements for the recognition of a new state. Three of them were concerned with the state's own organisation to deliver democratic institutions. Firstly, the state agents must show ‘respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights’.[[340]](#footnote-340) Secondly, they must provide ‘guarantees for the rights of ethnic and national groups as well as minorities in accordance with the commitments subscribed to in the framework of the CSCE’.[[341]](#footnote-341) Thirdly, ‘respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement’.[[342]](#footnote-342)

The EU’s role was typical in its long-term commitment to democratic membership conditionality. Democracy was introduced as a condition for membership in the EC and was used to exclude Greece, Portugal, Spain, and Turkey[[343]](#footnote-343) from membership in the 1960s. Democratic conditionality was further developed by the 1997 Treaty of Amsterdam. This provided for suspension of existing membership of those states that violate the EU’s values of liberty, democracy, respect for human rights and the rule of law.[[344]](#footnote-344)

Within the international context, the consent, as a broad heading which concerns various factors, processes and motivations; these requirements can be considered as an interaction between the new post-communist states and the EU to generate new democratic norms and expectations. Such interaction aims to protect democracy within a state which desires to join the EU.[[345]](#footnote-345) The EU’s synthesis of association and leverage permitted it to apply ‘democratic conditionality consistently, thoroughly, and effectively’.[[346]](#footnote-346)

The post-communist countries in Eastern Europe enjoy international and regional support to become and stay democratic. While the KR rather lacks such international support for democratisation, even regionally it is surrounded by its enemies (historical rivals) that make it a unique case to be analysed. The KR’s aspiration for full, de jure independence, which negatively affected its internal interests in favour of non-institutionalisation, has often faced hazardous geopolitical conditions that, at least for foreseeable future, make the case for Kurdish statehood nearly impossible. Because the surrounding countries of Iran, Turkey, Syria have the ongoing issue of Kurdish populations within their borders. This has created a regional strategy against any Kurdish aspiration for independence; historically, they have acted to try to dismantle the KR’s attempts for independence. The Kurds have passed through bloody struggles with all previous regimes in these countries, whereas in Iraq they ended up with federalism. However, alongside this antagonism against Kurdish statehood, the surrounding states also are not in support of democratisation in the whole region as long as they are not in favour of democratic values and are far from having internal democratic government themselves.

Notwithstanding, the KR has been enjoying relatively good international assistance in terms of security and military supports, financial and humanitarian aids, and providing specific funds for building some infrastructures at different stages since 1991.[[347]](#footnote-347) However, the Kurds are divided among countries either with no reference to democratic government or democracy is paralyzed within them. Even the IFG, though federalism exists, is struggling with upholding democratic values due to sectarian governance and electoral authoritarianism. Accordingly, alongside internal institutional fragility, the KR also lacks a regional and international context that encourages the process of democratisation.

Although international actors affect the quality of democracy in various ways, generally they play a secondary role alongside the imperative character of domestic processes, which stand as a central concern within the democratic transition literature.[[348]](#footnote-348) Because, except defeated countries in wars that follow an imposed regime-type by foreigners, it is clear that ‘regime change tends to be a domestic affair; democratization is a domestic affair *par excellence*’.[[349]](#footnote-349) Domestic factors play a key role in democratic transitions.[[350]](#footnote-350)

Despite having an international dimension, democratisation is principally considered in academic literature as a product of internal processes. In this sense, Samuel Huntington explained that the snowballing impact of the collapse of the Soviet Union was bound to deliver the third wave of democratisation in Eastern Europe. In addition, it encouraged democratic opposition groups and frightened the one-party authoritarian rulers in Africa, Asia and Middle East, where the then international context and the rising expectations of the people resulted in movements for liberalisation in the region.[[351]](#footnote-351)

In Eastern Europe, with the end of Soviet control; a major obstacle of democratisation was removed, and the democratisation movements spread rapidly. Despite the fact that there was no comparable external obstacle to democratisation, for example, the Soviet Union in Eastern Europe, in the Middle East, Africa and Asia, the rulers chose authoritarianism even before December 1989. Accordingly, unless reasonable internal conditions exist in a country, an external snowballing impact alone is unlikely to bring about democratisation. The worldwide democratic revolution might generate an encouraging external context for democratisation, but it cannot create the necessary conditions for democratisation within a specific country.[[352]](#footnote-352) Especially, notwithstanding the absence of a major power as an obstacle to democratisation, there is already no international and regional organisation that supports democratisation in those countries in The Middle East, Africa and Asia compared to Eastern Europe where the supporting organisations of the EU and NATO exist. Nevertheless, democratisation remains possible if new political forces in these countries are wanting it to arise. The snowballing impact, therefore, would have made a tangible difference, if it led the ruling parties in authoritarian countries to have an interest or desire in and moreover, to believe in the necessity for democratisation.[[353]](#footnote-353)

In this context, the KR political parties are key players that can take advantage of favourable international contexts and opportunities to deliver democratic transition. Otherwise, the KR will be an unlikely candidate for democratisation. The process of democratisation in the KR essentially depends on the ruling parties’ interest in and preference for a democratic government, which has not yet materialised.

In sum, the KRG leadership have only focused on attaining external sovereignty and the militarisation of society; strengthening the KR’s party-affiliated forces. As a result, they have disregarded building durable democratic institutions and encouraging the welfare of its citizens.[[354]](#footnote-354) Meanwhile, they have promoted a narrative about the KR being a secular democracy with a prosperous economy and unified military forces, to attract international recognition. However, the KR has long been ‘economically unstable, institutionally weak and politically divided’,[[355]](#footnote-355) all have promoted a fragile stability. Consequently, in the absence of a strong institutional structure, the KR’s status quo will persist, which implies the endurance of the economic and political dilemmas that undermine sustainable democratic institutions, at least for the foreseeable future. Moreover, this precipitates a predicament for authority often associated with the deficient internal legitimacy of failed states. The essential dynamics of the protracted state of ambiguity have critically weakened the KR’s chances for longstanding sustainability as an independent entity, which consequently implies that establishing a democratic government will remain precarious. Therefore, without building a democratic government by changing the DPG, unifying and institutionalising military forces, even if the KR can attain sovereign statehood, it will be one of the failed states that have transformed from a de facto state; like Syria, which due to a bloody authoritarian regime is on the road to collapse and division.[[356]](#footnote-356) In this regard, as Kolstø described, ‘there are strong reasons to believe that, if any of the unrecognized quasi-states of today’s world should succeed in achieving international recognition, most of them will end up not as ‘normal’ or fully-fledged states but instead transmute into recognized [failed states]’.[[357]](#footnote-357)

Kurdish statelessness structures the basic challenge for the democratisation process where the presence of oversized, party-affiliated armed forces is the core issue for building a democratic government (this will be analysed in detail in chapter six).

**CHAPTER THREE**

**Electoral Authoritarianism: Election Without Democracy in Kurdistan Region**

**3.1 Introduction**

The purpose of an election is to achieve a democratic government. However, it cannot be assumed that all elections conducted in the world will achieve democratic aims. This is due to the deliberate use of manipulative methods by the existing rulers in contemporary electoral authoritarian regimes. In terms of institutional requirements, researchers have defined a normative concept of what constitutes a democratic election. This aims to use criteria by which it is possible to distinguish between free, fair and competitive elections and nondemocratic ones. The achievement of this goal represents a fundamental rule for the distinction between democratic and nondemocratic regimes.

From a democratic perspective, the application of the concept from legal studies aims to determine a set of essential standards for elections. The importance of this concept derives from its application in assessing elections in countries undergoing democratisation. The performance of political institutions during the election can be evaluated to find out the scale of challenges facing the process.

In the last two decades of the twentieth century, the world saw waves of democratisation. Consequently, most countries held various kinds of elections, but only some of them witnessed elections that could be described as democratic ones. Rulers in nondemocratic regimes have developed many methods to manipulate the electoral process to achieve their aims rather than those required for democratic elections; namely to obtain popular legitimacy and alleviate the demands for reform. Nondemocratic elections under electoral authoritarianism give the appearance of showing respect for human rights to avoid international pressure and embarrassment.[[358]](#footnote-358)

Generally, in most AME countries, with which the KR shares most of its institutional and political features, elections have not led to democratic transition, except in the case of Tunisia. As the revolutions were alternatively carried out by the people, for instance, in the Arab Spring. If democracy can be achieved through elections and the peaceful alternation of power, the people would have ruled out revolutions. Potentially, all the chaos and instability in the region, such as the situations in Syria, Libya, Yemen and Iraq would not have happened. The institutional trajectory therefore in the AME countries has tended towards conflicts rather than liberalisation, as the model of power distributions often served the authoritarian incumbents, at the expense of an emboldened opposition.[[359]](#footnote-359)

This chapter discusses the relationship between elections and incomplete phases of democratisation in the KR by applying democratic standards to elections held since 2009. It tests theoretical conceptions of electoral authoritarianism against the experience in the KR. This involves the analysis of how the design of institutions and the manipulative practices of elections maintained the ruling parties the constant governance, despite representation by the opposition. The institutional design this chapter examines is electoral administration. Additionally, the chapter tackles the issues of electoral fraud and political oppression that subverted the democratic functions of elections in the KR. Here the preconditions, in terms of a patronage system that produced a clientelistic network in the KR, are also explained. It starts with clarifying the meaning of free and fair elections, depending on theoretical literature to tackle the question of whether an election can change a nondemocratic system to a democratic one in the KR, or whether an election needs some values, such as liberties or rights to support it so it achieves its democratic function, delivering authoritative and representative government.

**3.2 Election and Democracy: Conceptual Framework**

Democratic government is contingent on elections. It processes the peaceful alternation of power in the community, whereby it empowers citizens to exercise their political rights, either as voters or candidates. Accordingly, elections maintain popular sovereignty in contemporary democracies. The question of ‘who governs?’ can be institutionalised by political representation based on legitimacy through free and fair elections. The election therefore embodies citizens’ rights, popular sovereignty, and institutions empowered legitimately through competitive election.[[360]](#footnote-360)

A common misconception is to qualify a country as a democracy, where elections are held regularly. As elections have historically been prescribed as an ‘instrument of authoritarian control as well as a means of democratic governance’.[[361]](#footnote-361) Elections are an essential, but not a sufficient condition for modern democracy, which make the distinction between liberal and electoral democracies. The latter depends on the minimum democratic conditions for the electoral process but fails to institutionalise other key dimensions of democratic constitutionalism, such as; the rule of law, political accountability, bureaucratic integrity, and public deliberation. Whereas the distinction between electoral democracy and electoral authoritarianism derives from the common assertion that democracy needs elections, but not just any kind of elections.[[362]](#footnote-362)

During the post–cold war era, electoral authoritarianism has spread at the expense of non-electoral autocracies and became the model form of nondemocratic government in the emerging democracies. It is broadly recognised that the third wave of democratisation has not produced a rise in the number of democracies. An equal side-effect of this electoral tsunami is the spread of formally designated democratic electoral institutions into authoritarian settings, in which the authoritarian incumbents are rooted and prospects for voting have proliferated.[[363]](#footnote-363) Notably, electoral authoritarian regimes reside in a conceptual space between non-electoral closed authoritarianism and electoral democracy.[[364]](#footnote-364) In view of that, to establish a well-functioning democracy and consolidate a democratic transition, democratic elections must be held. Identifying electoral authoritarianism requires more deliberation on the actual quality of elections rather than observing mere procedures. Additionally, this helps in defining the blurred boundaries of such regimes as a zone of institutional vagueness and uncertainty.[[365]](#footnote-365)

Elections are the critical instrument of representative democracy that should be helped and supported by a set of institutions embodying democratic values. Accordingly, elections should simultaneously be the cause and the consequence, in parallel with the other indispensable institutions in delivering democratic transition.[[366]](#footnote-366) Therefore, elections are not enough to create representative democracy on their own; however, they are a necessary minimal condition. Most scholars are agreed on some minimum evaluative criteria for elections to ensure democratic legitimacy. In the existing literature, some researchers have tried to develop specific definitions for democratic elections. Elections should be ‘free of violence, intimidation, bribery, vote rigging, irregularities, systematic fraud, and deliberate partisan manipulation’.[[367]](#footnote-367) Hence, ‘contests should provide an unrestricted choice of competing parties and candidates, without repression of opposition parties or undue bias in the distribution of campaign resources and media access’.[[368]](#footnote-368) In addition, they should practice ‘fair, honest, efficient, and transparent procedures from voter registration to the final vote tally’.[[369]](#footnote-369)

Robert Dahl has indicated ‘free and fair elections’ within the institutional prerequisites of democracy, stressing that there should be some other set of liberties as important preconditions that support conducting free and fair elections. In his argument, elections, as basic criteria for democracy, should offer citizens a periodic opportunity to select and change rulers. Dahl has offered seven institutions as criteria that should be present for democratic government to exist, as follows:

1. Control over government decisions about policy is constitutionally vested in elected officials.
2. Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
3. Practically all adults have the right to vote in the election of officials.
4. Practically all adults have the right to run for elective offices in the government, though age limits may be higher for holding office than for the suffrage.
5. Citizens have a right to express themselves without the danger of severe punishment on political matters broadly defined…
6. Citizens have a right to seek out alternative sources of information.
7. …Citizens also have a right to form relatively independent associations or organizations, including independent political parties and interest groups.[[370]](#footnote-370)

Philippe Schmitter and Terry Karl have added two other conditions, as follows:

1. Elected officials must be able to exercise their constitutional powers without being subjected to overriding by informal opposition from unelected officials.
2. The polity must be self-governing: the elected officials should make binding decisions independently of constraints imposed by actors from outside their territorial domain.[[371]](#footnote-371)

Democratic elections therefore are based on two main criteria. The first is ‘free elections’ which means the need to respect fundamental freedoms and rights guaranteed by legal rules concerning the voters’ opportunity to participate in the elections without any kind of restrictions or coercion that ‘implies the absence of choice, either formally or in reality: For example, either, all options but one is disallowed, or certain choices would have negative consequences for one’s own or one’s family’s safety, welfare, or dignity’.[[372]](#footnote-372) Freedom should be given priority as it is the precondition of both democracy and elections as a means to that end. The second is ‘fair election’ that indicates the impartiality of electoral management in sense of unbiased application of legal rules and secured equal opportunities for exercising political rights. The opposite of fairness is the ‘unequal treatment of equals, whereby some people (or groups) are given unreasonable advantages’.[[373]](#footnote-373) In this sense, fairness encompasses both ‘*regularity* (the unbiased application of rules) and *reasonableness* (the not-too unequal distribution of relevant resources among competitors)’.[[374]](#footnote-374)

The perception of ‘free and fair elections’ should be clearly translated into specific criteria to evaluate all the components of the electoral process. However, because it can be said there are no examples of a democracy that has distributed relevant political resources equally among political contestants, the assessment of the fairness of the electoral process in all stages (before, on and after the polling day) is imperative to understand how the legal rules are applied in practice, rather than whether individuals or groups have ideal opportunities.[[375]](#footnote-375)

The concept of ‘free and fair elections’ is common in most studies of electoral institutions in emerging democracies. The phrase represents what Giovani Sartori termed ‘conceptual stretching or straining’ addressing conceptual dispersal as long as ‘the wider the world under investigation, the more we need conceptual tools that are able to travel’.[[376]](#footnote-376) Accordingly, one of the conceptual stretching explanations is that a ‘returning effect’ of the developing countries; ‘a feedback on the Western categories of the diffuse polities of the Third World’.[[377]](#footnote-377)

Among all the strategies of institution building, civic society and independent media used by international agencies to promote democracy, efforts to establish competitive, free, and fair elections have attracted the most consideration. Free and fair elections offer regular opportunities for the public to select representatives and to hold governments to account. Electoral arrangements constitute basic democratic structures delivering other steps of democratisation.[[378]](#footnote-378)

Enlightened from Dahl’s preconditions of democracy, Schedler also designated some conditions, as the chain of democratic choice, by which regular elections have to accomplish to function for effective democratic choice. Accordingly, democratic elections have to accomplish each element on the list. Undermining even one element of such democratic values would not lead to partial democracy but establish electoral authoritarianism.[[379]](#footnote-379)

In this sense, Juan Linz has described elections held under the totalitarian and authoritarian regimes before the recent waves of democratisation in Europe as non-competitive elections. Such regimes ‘maintained on paper a liberal democratic constitutional framework and consequently held elections with more or less regularity’[[380]](#footnote-380) and simultaneously, ‘they made sure that the government party or coalition would win a safe majority’.[[381]](#footnote-381) They also, if necessary, used methods of ‘electoral coercion and corruption, including false counting of the ballot to assure the results’.[[382]](#footnote-382)

In this context, the key question the authoritarian regimes face is what factors are significant in a licensed semi-competitive party system that can support its alteration into a competitive political system and consequently, would affect the privileged institutional position of the ruling party? On the other hand, if these systems applied more restrictions on the creation of a semi-competitive party system by not allowing oppositions to participate in the electoral process, they would have found themselves in crisis and internationally isolated. Given such a situation, they held semi-competitive elections instead with licensed and controlled political parties to give an appearance of democracy to their people, postpone real democratisation, avoid military coup and gain false international legitimacy.[[383]](#footnote-383)

Authoritarian elections are obviously not a new phenomenon. Scholars have indicated characteristics of authoritarianism as prescribing limited pluralism, which differentiate it from totalitarian, sultanistic and democratic regimes. In the 1960s and 1970s, the early studies of single-party regimes in developing countries often addressed the role of limited, non-competitive and unfree elections as instruments to sustain elite cohesion and enable elite recruitment to stabilize the authoritarian rule. Within the context of transitions from authoritarian rule, liberalisation has been considered a basis for further democratisation. In this regard, and in a limited sense, elections were often reinstated either locally or only arranged for legislatures. Theoretically, it is often expected that authoritarian elections lay the basis for further steps toward democratic reform.[[384]](#footnote-384)

The concept of electoral authoritarianism deviates from a typical concept of authoritarianism as it claims that ‘many of the new electoral regimes are neither democratic nor democratizing but plainly authoritarian’.[[385]](#footnote-385) Electoral authoritarianism places its emphasis on the nondemocratic access to power via holding regular elections, while typical authoritarian rulers place their emphasis on the nondemocratic exercise of power, however both issues interact.[[386]](#footnote-386) Consequently, elections under electoral authoritarianism ‘play the game of multiparty elections by holding regular elections for the chief executive and a national legislative assembly. Yet they violate the liberal-democratic principles of freedom and fairness so profoundly and systematically as to render elections as instruments of authoritarian rule rather than instruments of democracy’.[[387]](#footnote-387) In other words, electoral authoritarian regimes hold elections, tolerate pluralism and interparty competitions, however, simultaneously in practice, they violate minimal democratic standards so severely and systematically that they cannot be classified as democracies. Merely, they are examples of authoritarian rule.[[388]](#footnote-388)

Despite developing studies, the key question remains; what is the effect of elections on the durability of authoritarian regimes? Most scholars agree that under authoritarianism the formal democratic institutions are not merely a façade.[[389]](#footnote-389) Scholars have different perspectives on the outcomes of elections under authoritarianism. From regular, inclusive and competitive elections under authoritarianism two scenarios can be anticipated. Firstly, concentrating on the internal dynamics of electoral authoritarianism, elections produce a stabilising mechanism via a menu of manipulation by sustaining the ruling parties or the autocrat. Secondly, as far as democratisation is concerned, authoritarian elections potentially open an access to democratic government.[[390]](#footnote-390)

In summary, democracy cannot be established until the transitional stage has been completed by conducting competitive, free and fair elections as a minimal precondition for building a democratic government. Otherwise, elections are functioning as a means of concealing and replicating the harsh realities of authoritarian governance.

**3.3 Elections in the Kurdistan Region: Pre-Conditions and the Menu of Manipulation**

Electoral authoritarianism forms the ‘institutions of liberal democracy on paper, yet subvert them in practice through severe, widespread, and systematic manipulation’.[[391]](#footnote-391) The formal institutional facts of elections are easy to ascertain. While many ‘survival strategies’,[[392]](#footnote-392) tricks and practices of electoral manipulation and patterns of popular preferences are much less available to public inspection; they are shadows in a dark black box, accessed with difficulty. This authoritarian electioneering induces a methodological problem for evaluating the electoral process. Ironically, such complications arising from manipulative practices, even constitute difficulties in identifying electoral authoritarian regimes and in differentiating them from electoral democracies. Consequently, the challenge of defining rational, normative and empirical inceptions is often a ‘matter of context-sensitive judgment rather than precise measurement’.[[393]](#footnote-393)

Typical methodological guidance indicates that measurement decisions depend on observations rather than judgments.[[394]](#footnote-394) However, even attempts to ‘assess the degree of repression, intimidation, or fraud for each election…cannot be made in a reliable way’.[[395]](#footnote-395) Problematic cases often provoke controversy. Although unclear zones still exist in the world, reasonable distinctions can be outlined between electoral democracies and electoral authoritarianism.[[396]](#footnote-396)

Respectively, there are two approaches to overcome this methodological problem. Firstly, as far as the democratic norms are concerned, notwithstanding that the official figures cannot be taken as patterns of voter preferences, they can however be dealt with as proxies for electoral manipulation. For example, the competitiveness of opposition parties; the weakness of opposition parties demonstrates the strength of authoritarian manipulation. Additionally, as democracy maintains the prospect of a peaceful alternation in power, without the experience of alternation, it can be considered that a ruling party will be reluctant to abdicate the office peacefully in the case of electoral defeat. In this sense, Adam Przeworski’s concept of the alternation rule originated from his definition of democracy as ‘a system in which parties lose elections’.[[397]](#footnote-397) In other words, as long as regimes hold multiparty elections, in which the ruling party has not ever lost an election, while opposition parties lose elections, such regimes cannot be considered democratic, but they count as authoritarian instead.[[398]](#footnote-398)

Secondly and alternatively, as scholars try to find wide-ranging information, they seek to gather accessible indications and evidence, either around electoral manipulation or popular preferences or both, from a variety of sources in order to expand the scope of vision about a case study. In this regard, the annual data on political and civil liberties provided by Freedom House will help to deal with aspects of the methodological challenges. The data provides a comprehensive and defendable evaluation of the overall authoritarian quality and the effectiveness of the electoral processes under scrutiny.[[399]](#footnote-399) Moreover, there are some authoritarian regimes that have expressed themselves explicitly by denying oppositions the opportunity to form a government or devaluing the potential of elections as a means of political alternation. For example, Zimbabwe’s President Robert Mugabe on the eve of the 2000 legislative elections shouted to his followers against the chief opposition party: ‘the [Movement for Democratic Change] will never form the government of this country, never ever, not in my lifetime or even after I die’.[[400]](#footnote-400) These public speeches or interviews of the ruling elites are explicit evidence of the ruling parties’ unwillingness to relinquish power even when they are defeated.

Drawing on the institutional prerequisites prescribed by Dahl and the chain of democratic choice designated by Schedler, this section will be examining electoral authoritarianism in the KR. By rendering evidence from general and provincial elections held in the KR since 2009, the research will address issues relevant to understanding the interaction between formal institutions and the course of authoritarian control, its background and concomitants. It is important to inspect how the development of electoral designs, processes and mechanisms have functioned for the KR electoral authoritarianism. Such evaluative method also questions whether elections in the KR signal democratising effects. Through international and local news and reports from international observers to find some survival strategies, irregularities and intimidations in some selected cases in the electoral process, this section evaluates the quality of the elections in the KR. This identifies also how the ruling parties via manipulative tools degrade the democratic value of electoral participation and contestation.

Before applying democratic standards, the alternation rule and addressing electoral intimidations and irregularities in elections, there are some pre-electoral conditions in the KR, such as DPG and clientelism, that can be considered as essential supporting background for electoral authoritarianism there.

**3.3.1 Duopoly Party Governance: An Alternative for Democracy**

After the uprising of 1991, the IKF leaders had issued two Acts to fill the governmental vacuum caused by the ICG administration withdrawal, shortly after the stalemate of negotiations between the IKF and the ICG. First, Law No. 1 of the KP election, which had been ratified by the elected National Assembly[[401]](#footnote-401) on 15 September 1992. Second, Law No. 2 of electing the leader of the KLM in 1992, which had been rescinded and substituted by Law No. 1 of the KRP in 2005. These laws have constitutional function and could have been regarded as a de facto constitution. The Draft Law Committee confirmed the constitutional and democratic functions of Law No. 1, as stating that ‘finally, we hope that we would have been successful in establishing the legal basis for a democratic life in Iraqi Kurdistan. We hope this modest effort would be the basis for further legislations that will be issued for the public interest’.[[402]](#footnote-402) Therefore, an interim administration was established by the IKF, then the KRG was founded on 4 June 1992 after the first election on 19 May 1992.[[403]](#footnote-403) The international and insurgency legitimacy had apparently and temporarily transformed to a democratic one.

The KDP and PUK have been dominant political parties for almost three decades and started ruling the region together from 1991 until 1994 according to a strict fifty-fifty power-sharing scheme. However, such arrangement has not eradicated or even softened the disputes and mistrust between them since late 1970s. Despite sharing power, within just two years, partisan conflicts ignited over revenue, then evolved into civil war in 1994. Since then, notwithstanding the formal unification of the KRG, the KR has been divided politically and geographically between the KDP and PUK’s administrations until the collapse of the Ba’ath regime in 2003.[[404]](#footnote-404) Thereafter, based upon bilateral agreements; the two ruling parties governed the KR together, as both the KDP and PUK leaders had signed an agreement to reunify the KRG in 2006.[[405]](#footnote-405) On the one hand, they formed an electoral and governmental coalition. On the other, the basis of the DPG rooted in the KR. Hence, the split administrations were seemingly re-unified; a formally united, but reciprocally ruled governance was instituted.[[406]](#footnote-406)

The KRG and KP have acted more as controlled organisations rather than as commanding and representative executive and legislature. The KRG and KP are practically directed by officials, who also act as functionaries for the ruling parties’ leaders. In practice, political parties should stand back from every decision made by parliament or government, but in the KR, in certain circumstances, the distinction between government offices and party ones is hardly clarified.[[407]](#footnote-407) For instance, Masoud Barzani, when nominated on 12 June 2005 as the RP by the KP, built the Regional Presidency Office near his home and his Party Presidency Office in a tourist and mountainous area on *Sari Rash*; nearly 25 miles north-east of the regional capital city Erbil but located approximately 4.5 miles away from his party-political bureau. Also, in this area, Barzani’s family members and ministers have built palatial houses on public land, transforming a public resort on Sari Rash into a personal and familial compound.[[408]](#footnote-408)

The multi-party system or specifically the presence of more than one party competing for political power through regular, free and fair elections is one of the imperative constitutional bases of modern democracy. To some extent, a kind of multiparty arrangement exists in the KR, as the party system can be described as semi-pluralistic, however, with a predominance of a prolonged DPG. The KRG’s Ministry of Interior revealed that 29 political parties are licensed and further 21 applications awaiting formal authorisations.[[409]](#footnote-409) Despite such pseudo pluralism, the KDP and PUK, alongside proliferated familial rule of Barzanis and Talabanis, preserve tight control over all sites of the KR’s political power.[[410]](#footnote-410)

The ruling parties have been organising somewhat periodic elections seeking to find a façade of democratic legitimacy and hoping to satisfy external and internal actors, which constituted an authoritarian situation at the first place and hegemonic authoritarianism then, as the DPG entrenched whilst electoral authoritarianism started maintaining overwhelming majority for the ruling parties in the last four parliamentary elections since 2005.[[411]](#footnote-411) This has rooted in a kind of hegemonic party system. Through which the alternation of power does not occur, even is not envisaged either, and only harmless oppositions allowed to run for elections against authoritarian rivals, as ‘timid anticipations of change are fraught with fears of chaos and repression’.[[412]](#footnote-412) This has basically resulted from the ruling parties’ role via the IKF by generating the KR and its organisations for the first time as new political and institutional phenomena, which was also supported by the international community.[[413]](#footnote-413)

Such hegemony is not ‘just a matter of achieving longevity in power, but of creating beliefs of inevitability’.[[414]](#footnote-414) As the KDP and PUK have often considered themselves as founding fathers of the KR in their rhetoric. As a survival strategy, this partisan approach sketches such images to create a prevailing attitude in Kurdish society, delivering insurgency-communitarian legitimacy, thereby maintaining a social debt towards the ruling parties in justifying their governance. Kurds might criticise the ruling parties’ cronyism, corruption and authoritarianism but they could find the KR to fill the administrative void. In consequence, this narrative says that Iraqi Kurds have had privileged self-government ever since.[[415]](#footnote-415)

In summary, the decision-making process is informally directed by the politburos and leaderships of the ruling parties. They regularly interfere in the administration of the KRG. Noticeably, the ruling parties adopt an undeniably governing role due to the weakness of KR agents. Despite the political and institutional uncertainties, the DPG is the dominant feature of the KR governance. In this regard, however, such governance has temporarily prevented civil war in the KR. Nevertheless, it has rather institutionalised the KDP’s and PUK’s manipulation of society, and consequentially delivered hegemonic authoritarianism.

**3.3.2 Clientelism: Party Patronage and Affiliation-Based Privileges**

Emerging democracies face many challenges in democratic transition, as political institutions need reforms. In transitioning countries, reforms have often tended to concentrate on formal institutions, rules and procedures. In this regard, political institutions have to be responsive and accountable to citizens, who effectively develop economic investment and prosperity. Such trends in reforms are significant as well-constructed institutions channel people towards legitimate and trustworthy activities. However, formal rules about how ‘political institutions are supposed to work are often poor guides to what actually happens’.[[416]](#footnote-416) Therefore, in many transitioning countries, particularly when ‘informal rules are widely shared and deeply rooted’[[417]](#footnote-417) there is noncompliance with the formal institutions, then clientelism and particularism are key contributors to undermining the rule of law, fostering corruption, distorting the delivery of public services and subverting economic growth.[[418]](#footnote-418)

Among the preconditions for democracy, the rule of law is regarded as one of the key dimensions of a fully and firmly founded democracy in transitional countries. But where there are some damaging informal institutions, such as; clientelism, corruption and elite agreements, these undermine all aspects of the rule of law, particularly, the system of checks and balances and independent judiciary.[[419]](#footnote-419) Such informal institutions are considered to negatively affect the quality of democracy in several ways. They deactivate devices of control against the abuse of power, limit transparency, undermine state effectiveness and legitimacy, disrupt political and social inclusion, decrease accountability, deceive or narrow interest representation, disorganise competition and give rise to the disproportionate allocation of resources.[[420]](#footnote-420) Empirically, clientelistic links can be both difficult to notice and to eliminate, because they are deep-rooted, rarely authorised or openly acknowledged, and take a variety of forms according to their cultural contexts.[[421]](#footnote-421)

Clientelism refers to a complex chain of personal ties between political elites and their individual followers,[[422]](#footnote-422) which is a phenomenon associated with electoral autocracies. The clientelistic bonds are instituted more on mutual factual benefits, resting on a rational economic calculation rather than on blind or spontaneous personal loyalty. The political patrons thus provide resources, such as money or a job for their clients in return, they will give their support and cooperation, such as; votes or a presence at demonstrations.[[423]](#footnote-423) Particularism refers to the incompatibility of the deeply entrenched and unwritten understandings, reflecting underlying socio-cultural norms and routines, with the formal institutions of democracy. This indicates the social, legal and normative distinction between public and private sphere. In other words, it infers the notion of blurred boundaries between the public and private sphere. Accordingly, particularism implies particularistic motivations of individual roles in political and administrative institutions instead of the supposed universal attitude towards the public good.[[424]](#footnote-424)

Corruption in the KR is not an allegation arising from the opposition or news from a biased media report but is a reality, even confirmed by the KRG’s highest incumbents. At the end of 2015, in one of the Council of Ministers’ meetings, attended by chairs of the KP factions, the KP committees of Finance and Natural Resources and high KRG officials, the prime minister Nechirvan Barzani revealed that ‘in my name and Qubad Talabani, too, I say, we, [the KDP and the PUK], have implemented the worst kind of governance in the past 23 years of KRG’s establishment which cannot be excused anymore, let’s fix it’.[[425]](#footnote-425)

During the domestic conflict, financial incentives were used to mobilise people involved in the civil war, whereas in the post-conflict era people have been seeking their rewards. The most advantageous time for people to access the partisan distribution of income, is during elections, as the ruling parties need their votes and to absorb the people’s antagonism resulting from inequality and to reinforce their electoral legitimacy for their dominance in government.[[426]](#footnote-426) To stimulate party loyalty and affiliation, the ruling parties make monthly or occasional payments to active party members, particularly those who promote and defend the party anyway. Anyone who aims to secure his or her interests is obliged to cooperate with the KDP and PUK, as they control all civil and military employment.[[427]](#footnote-427) This partisan management of the economy has led historically to vote buying via substantial use of nepotism and favouritism.[[428]](#footnote-428)

The other channel of clientelism is partisan dominance of public service recruitment and retirement. The legacy of discrimination and nepotism in recruitment has a long tradition in the KR and was inherited from the Iraqi regime.[[429]](#footnote-429) Partisan employment in both the public and private sectors, even in companies and NGOs, belongs to the ruling parties.[[430]](#footnote-430) This is strongly controlled by the KDP and PUK in their administrative zones. Partisan domination of government and society has limited the extent to which an independent, non-partisan affiliated public service could emerge; a functioning bureaucracy governed only by professional norms. More exactly, the loyalty of public servants, either civil or military, to the ruling parties and elites remained critical. Holding managerial positions in the public sector, in both upper and lower positions, are reserved for the ruling parties’ cadres. Partisan control of the economy, the market, government offices and the military apparatus has led to a deep politicisation of society by each ruling party in its administrative zone. Therefore, for citizens to gain privileges they become party members, specifically supporting and showing loyalty to one of the ruling parties.[[431]](#footnote-431) Accordingly, almost all households in the region are receiving a payment from a real government job or a sham one, known as a ghost employee.[[432]](#footnote-432) These can be found mostly in the security and military forces or being amongst those retired from either civil or military services. There is no precise data available but perhaps 100,000 civil servants receive two salaries, others are ghost employees, while others have illegal pensions.[[433]](#footnote-433)

It is widely perceived that the KRG’s institutionalised corruption obstructed the implementation of an impartial social security system, which reflects the ruling parties’ policy rather than social welfare. The ruling parties have consistently attempted to monopolise and institutionalise clientelistic networks. In this sense, the KDP and PUK have divided the population based on their partisan loyalty.[[434]](#footnote-434) This tradition has been continuously transferred and renewed in the political economy of the KR by what is called clientelistic control of poor and opportunistic voters, which tends to increase whenever electoral competition and participation is conducted in contexts of socio-economic inequality.[[435]](#footnote-435)

The ruling parties have continuously manipulated the public budget for their own interest and for that of their clients. For instance, despite the appalling financial situation that people suffered in the KR due to the economic and political crisis there, the prime minister has spent US$2 million illegally to fund the PUK’s partisan activities. Following pressures from various media outlets and civil society, the PUK’s Public Finance and Administration Bureau (PFAB) released a statement confirming that the PUK Politburo’s Executive Board (PEB) has recently received US$2 million from the prime minister following a request from the PFAB. Additionally, this is not the first time that the PEB has provided the PFAB with the cash it needs. Accordingly, upon the request of the PFAB, the KRG has covered the needs of the PUK tens of times to facilitate works, funding its bodies and cadres' salaries.[[436]](#footnote-436)

This sort of KRG’s partisan funding embodies clientelism alienating any political accountability. Meanwhile, the public servants receive only nearly one-third of their salaries from two to three months. This partisan funding has three dangerous dimensions. Firstly, the mixture of the KRG and the ruling parties in the way the government uses public funds for party activities without any restrictions or institutional norms, giving priority to the ruling parties’ affairs over public interests. Secondly, there are no legal restrictions on the KRG’s behaviour when dealing with issues related to the ruling parties’ interests. In other words, the KRG is dominated by partisan governance, which is the only informal regulatory structure for their rule, given the formally written but futile laws. Thirdly, the KRG is responsible to the ruling parties but not representing the electorate; incumbents are only delegates of the electorates representing the KDP and PUK. Such a system creates deficient legislature, executive and judiciary as the KRG is not accountable to, or representing the will of, the people.

In summary, the clientelism and party patronage model of the KRG’s administration are considered to be manipulative institutional challenges to conducting democratic elections. They make the KR’s electoral and political party laws futile where often hardly or unfairly implemented. Moreover, the ruling parties have involved directly in undermining elections by constantly and deliberately finding new tricks for electoral fraud, intimidation and manipulative strategies. Such mixture of political and economy has hindered the emergence of democracy, whereby maintained authoritarianism.

**3.4 Electoral Fraud: Old Dogs Often Find New Tricks**

Democratic election is undertaken under certain procedures with uncertain electoral outcomes. While under electoral authoritarianism, there are uncertain procedures, but the outcome is almost certain. Electoral tricks are used by ruling parties or autocrats against those who they consider to be making threats to their authoritarian rule. They might be applied against regime elites, opposition parties or citizens that change the nature of electoral contests[[437]](#footnote-437) and make the distinction between authoritarianism from a hegemonic to a competitive electoral one. As Schedler stated, ‘some are shams that nobody can take seriously; others are occasions of struggle that nobody can ignore’.[[438]](#footnote-438) With electoral authoritarianism, democratisation requires a change in the quality and conduct of elections rather than just the outcome. Meanwhile, the improvement in the quality of elections implies greater equilibrium for political contestation; an absence of enormous amount of voter fraud in counting the ballots making the electoral results represent the public will. However, some electoral authoritarian regimes have seen changes in rulers, even experienced victory for opposition parties, yet display no further advances in the quality of electoral contestation.[[439]](#footnote-439) In this sense, ‘the government changed but the regime did not’.[[440]](#footnote-440)

Authoritarian incumbents practice manipulative strategies, which violate the normative standards of democratic elections, including electoral frauds. The related legal rules and procedures proscribe electoral fraud or prescribe new ways to tackle fraudulent elections, but there will still be opportunities for the incumbents to find loopholes in reality and implement their authoritarian tendency. Therefore, ‘the limits to authoritarian imagination are not logical, but empirical. Authoritarian rulers, like successful enterprises, survive by innovation’[[441]](#footnote-441) in menus of electoral manipulation.

It is broadly perceived that electoral fraud compromises the impartiality of the electoral administration. Accordingly, it implies unfair elections by disproportionately affecting electoral administration and distorts citizen preferences; ‘denying voting rights to some while strengthening the voice of others’.[[442]](#footnote-442) This phenomenon has a distinct character under electoral authoritarianism, where deliberate electoral manipulation and organised fraud by obstinate authoritarian rulers reluctant to peacefully alternate power have often blocked, disrupted or curtailed transitions to democracy. Meanwhile, it fundamentally touches the purpose of electoral governance, which is perceived as broad set of institutional frameworks that involve rule making, rule application and rule adjudication providing practical certainty to secure the functional uncertainty of democratic elections.[[443]](#footnote-443)

Electoral fraud is a chain of vote rigging that distorts the voting process in any of its various steps from the registration of voters to the announcement of the results. Electoral fraud is defined here as ‘the manipulation of electoral administration for partisan advantage at any stage of the electoral process (before, during, and after election day)’.[[444]](#footnote-444) Such deceptions designate institutional bias and ‘partisan interference with the organization of elections that is either widespread and systematic or, if less intense, serious enough to affect outcomes’.[[445]](#footnote-445)

These multiple steps contain different actions. It might be forging voter identity cards, deleting or duplicating names in the voting record, expelling voters from polling stations and decreasing or increasing the vote totals of specific parties and candidates. Noticeably, in electoral authoritarian regimes, ruling parties have broadly implemented electoral fraud to circumscribe the uncertainty of transitional elections. It has been therefore a common practice to control electoral outcomes. This explains why at least in 43 cases of 81 protested elections in the world during 1990s, opposition parties claimed that they had suffered from electoral fraud.[[446]](#footnote-446)

In the KR, the ruling parties have often applied electoral fraud in different forms to control electoral results and secure victory. It is expected that there are some kinds of electoral fraud that have been implemented constantly by the KDP and PUK, and others innovated when the old tricks become familiar. From using erasable ink and unfair distribution of polling stations in 1992 to making a fraudulent electoral roll, they have made innovations to control electoral outcomes. Such issue exists in all regional elections since 1992.[[447]](#footnote-447)

Although voter registration is not a necessary condition for democratic elections, it works to achieve two main goals. Registration provides a mechanism to consider disputes that may arise regarding the right to vote on a regular basis and before the polling day. This is of great importance in cases where someone does not have the right to vote casts a vote in an election, or when someone tries to exercise the right twice. On the other hand, it helps the electoral administration to identify and regulate constituencies according to population. In this sense, voter registration transparency and neutrality become functional in conducting democratic elections fairly.

Currently, even the most solid electoral autocracies normally grant universal suffrage to their citizens, which is also secured by electoral law in the KR.[[448]](#footnote-448) But, in practice there is an ongoing issue, as a fraudulent electoral roll has often been organised. If the ruling parties can manipulate the outcomes of elections by either formally or informally controlling the composition of the electorate, the legal promise of universal suffrage is in practice transformed into exclusive suffrage. In electoral authoritarianism, such strategic disenfranchisement creates an illegitimate form of multiple votes, which is commonly practiced in rural Malaysia.[[449]](#footnote-449)

In the KR, it is broadly argued that there are thousands of illegal extra names on the roll, with many duplicated names, fake and deceased voters. Moreover, it has often contained names of Kurds, from neighbouring countries or the disputed areas inside Iraq, who are not eligible to vote in the KR elections.[[450]](#footnote-450)

The issue of a fraudulent electoral roll was raised on the eve of the preparations for the fourth KP election (2013-2018), where a parliamentary committee was formed to investigate the case. During the investigation, the committee concluded that there were more than 400,000 persons who were not eligible to vote. The parliamentary investigation was ineffective because it just released the information, which was not translated into actions on the ground. Accordingly, all regional elections were held with a very fraudulent register. Such a decisive fraud would affect election outcomes.[[451]](#footnote-451)

There is a broad argument across the political spectrum and also on the media about such a protracted issue for the next regional elections. As estimated by the opposition parties, among eligible voters, there are 400,000-600,000 false names on the electoral roll. Moreover, according to an estimate in research conducted by an NGO; the Pay Institute for Education and Development - led by a former MP from the PUK –indicates that there might be as many as 900,000 false names registered on the electoral roll. If the former turnout for a seat in the fourth KP election is considered, such a massive number of false names is equivalent to around 30 seats in the next parliamentary election.[[452]](#footnote-452) Alongside clientelism and political patronage networks in the KR, such appalling inaccuracy in the electoral roll is an opportunity for ghost voters simply leading to the manipulation of elections by the ruling parties.

It is not only the opposition parties who have problems with the electoral roll. The spokesperson of the KR Independent High Electoral and Referendum Commission (IHERC), Shirwan Zarar Nabi told the Niqash that they are also concerned with the numbers, and they are working on correcting the register. By contrast, another official from the IHERC, Karwan Jalal, despite his confirmation that there are many questionable names on the electoral roll, showed no concern about such a challenge. He justified this by saying that, the problem has been overstated and they can easily clean up the register. However, the deputy head of the IHERC, Sleman Mustafa, confirmed that electoral fraud can still be committed during elections in the KR. Because, as he fears, the IHERC has yet not been able to clean up the register from fake names.[[453]](#footnote-453) Accordingly, the IHERC itself, despite conflicting attitudes, recognises that there are nearly 400,000 suspicious names in the electoral roll, equivalent to around 20 seats in the next parliamentary term. Furthermore, international observers noticed that there were as many as 90,000 names of deceased persons and 95,000 duplicated names on the electoral roll for the last KP and local elections held in 2013 and 2014.[[454]](#footnote-454) Unless forthcoming steps taken by IHERC or other related regional and federal institutions, such a fraudulent register will produce large scale and decisive fraud that is highly likely to affect the results of the next regional elections. However, the IHERC has announced that it will clean the voter registration records by removing 6,000 duplicate names and 23,000 refugees among the IDPs and to work on more than 96,000 voters whose names are similar mostly from Peshmerga and police forces. Additionally, IFG’s Independent High Electoral Commission’s (IHEC) is aiming to reduce voter fraud by implementing a new biometric identification system for the electoral roll.[[455]](#footnote-455) These steps are not sufficient, as the numbers they announced are too small compared to the inaccuracies shown in the roll. Additionally, such a prolonged issue devalues the elections in the KR as it encourages the mistrust already prevailing among the parties as well as faith in electoral governance that should maintain impartiality.

Lack of an official inclusive census in Iraq since 1987 (the 1997 official census did not include the KR) has contributed to this critical issue. In each decade from 1957 onwards, the ICG has conducted an official census. Basically, there are no reliable numbers for Iraq’s population and demographic landscape, including the KR. Currently, the enduring challenges of violence, internal exodus, emigration, lack of government capacity, and the politicisation of identity, specifically in disputed areas, make the collection of reliable data almost impossible. According to IFC, conducting an official census is certainly entitled within the absolute powers of the IFG.[[456]](#footnote-456) Although the Iraqi parliament passed Law No. 40 of the Population and Housing Census in 2008, its implementation has repeatedly and then indefinitely been delayed. This is due to fears that it would be conducted unfairly or fuel further sectarian conflicts over disputed territories in the north, specifically over Khanaqin district in Diyala governorate, Kirkuk and Nineveh governorates. Therefore, prospects for conducting a new and comprehensive census in Iraq are not good, in the near future as the IFSC determined that Article 140 of the constitution required a special census separate from any national one. Besides, such a census raises political concerns regarding issues of the status of the KRG and its shares of the federal budget that fuels an ongoing constitutional crisis between the IFG and the KRG.[[457]](#footnote-457)

Moreover, insufficient and contradictory information about population was released by the KRG’s Ministry of Planning. The KR total population, based on earlier statistics, was estimated by the Ministry of Planning figures to be around 5.3 million in 2012, whereas its estimation of population according to ration card figures at 4.5 million.[[458]](#footnote-458)

Alternatively, in the absence of an official census, the electoral rolls for all national and regional elections are organised in accordance with the ration cards that are prepared by the federal Ministry of Trade; these are cards that all Iraqis are provided with since 1997 to ensure food supplies following the international embargo imposed on the Iraqi regime after the FGW. All families are entitled to food rations, which are determined by the number and age of family members. As a result, households must register with the food distribution centre in their areas of residency. These lists have been used as a basis for the electoral roll. This allows citizens to check the availability of their names on the register during selected periods at voter registration centres run by the IHEC or IHERC and request to be added if their names are not on the lists.[[459]](#footnote-459) However, the federal application of biometric identification scheme for the next election in May 2018 will perhaps be implemented in the forthcoming regional elections in September 2018.[[460]](#footnote-460)

These electoral regulations, which are adopted by the electoral commission in the KR, depend on inaccurate data and then cannot identify the real number of the population and the eligible voters of each constituency. Thus, it can be easily manipulated. Whether the cause is seen to be the lack of KRG capacity or the deliberate disposition of the ruling parties, there are some inaccuracies in the electoral roll that can easily be solved. For example, the names of deceased persons, can simply be removed from the register. When any person dies, hospitals and health departments are required to issue a death certificate. This is similar to birth certificates that confirm recently born children. It is easy for the regional Ministry of Health to identify to the IHERC the date of death so that names can be erased from the register.

In an extensive report to the UN, EU parliament, Swedish government and parliament, and also sent to the IFG and KRG, the Swedish Green Party observers, besides considering some positive aspects, noticed some prevalent irregularities and deficiencies during the process of the fourth KP election held on 21 September 2013. The UNPO also has revealed a report observing elections of both the Iraqi parliament and councils held on 30 April 2014.

Some of the electoral fraud and irregularities committed during the polling day, were as follows:

1. Vote buying; as the observers either noticed or heard the ruling parties promised voters money, recruitment in the public or private sector, a piece of land, car and even guns.[[461]](#footnote-461)
2. Depriving voters from their rights to vote. They noticed that a voter came to vote in a polling station, but somebody else had already voted for him. Consequently, the voter was deprived of the right to cast his/her vote.
3. The observers heard that the ruling parties were making fake identity cards with false addresses for their clients facilitating multiple votes; further casting of votes on behalf of either fake, deceased, or duplicated names existed on the register.
4. As most of the then IHEC employees are party-affiliated, their management serviced the partisan agenda. For instance, in some polling stations they did not allow a parties’ representative to monitor the process, and then they were denied the form to appeal or obstructed in appealing to reduce electoral complaints.
5. Observers noticed that there were some cases related to the duplicate casting of votes when somebody voted instead of the eligible voter. Most of such voting was conducted by partisan security forces, party-affiliates and IDPs. This double voting happened particularly on the Special Election Day on 28 April 2014 and for the shadow minority parties. The electoral regulations had allowed illiterate voters to be helped by somebody else.[[462]](#footnote-462)

In addition, there are some other irregularities that related to the process of recounting the votes and announcing electoral results, as follows:

1. In some areas parties’ representatives have not been allowed by electoral managers to monitor the process of transferring the ballot boxes from the polling stations to central centres in which the process of counting the votes and announcing electoral results are managed. In a central centre in Sulaimani governorate, the parties’ representatives either have not been allowed to monitor the counting process or allowed but only as far as 10 meters from the ballot boxes for a couple of days after the polling day. Though such restrictions were removed after three days. These restrictions and practices, which provoke more anxiety and incredulity than they engender trust in electoral management, amongst the participants for the entire electoral process.
2. During the process of recounting the votes, the observers noticed changes in the overall number of votes in the ballot boxes that affected the opposition’s votes in favour of the ruling parties. Where the changes increased votes of the ruling parties, they concurrently decreased votes of the opposition parties. Therefore, the ruling parties committed very traditional irregularities to demonstrate their claims of leverage and victory.[[463]](#footnote-463)

Whatever the reasons behind the ineffectiveness of the KRG’s agents, the fraudulent register causes mistrust among the electoral participants over the entire voting process and offers opportunities for the ruling parties to persuade their followers to cast their votes on behalf of the fake names. As it has been detected by international observers.[[464]](#footnote-464)

Electoral fraud can be a ‘very complicated, shadowy, and slippery affair’[[465]](#footnote-465) that makes domestic and international observers extremely frustrated, because it involves ‘clandestine efforts to shape election results … no one who stuffs the ballot box wants to leave a trail of incriminating evidence’.[[466]](#footnote-466) But sometimes even their obvious actions have not been recognised. For example, in the last elections held on 30 April 2014, the KDP joined the opposition’s claims expressed in a statement over huge electoral fraud committed in Green Zone dominated by the PUK. While the PUK itself did the same over the fraud committed under the Yellow Zone dominated by the KDP. Besides, the region’s ruling elites are as clear as some authoritarian incumbents, like the Zimbabwe’s ruling autocrat, where in their public speeches or interviews they explicitly state that they commit electoral fraud. For instance, in a live interview with Rudaw TV broadcasting channel, the spokesperson of the PUK answering a question stated that ‘we may do fraud, we do fraud but never threaten voters. Electoral Fraud, as everybody knows, is very explicit in Iraq and Kurdistan’.[[467]](#footnote-467)

**3.5 Partisan Electoral Commission: Undermining the Rule of Law**

In electoral authoritarianism, the contestations for the people vote moves on the rules of the game, accordingly democratisation faces challenges between opposition parties and electoral autocrats over critical issues concerning electoral governance. This describes the complex mission of organising electoral contestation directed more by political and institutional contradictions than bureaucratic routineness. It encompasses pursuing and reconciling three interdependent but conflicting requirements: administrative effectiveness, political impartiality and public accountability.[[468]](#footnote-468)

The process of electoral governance is shaped by various contextual issues. perhaps the most obvious determining factor is the prevailing relationship between incumbents and opposition parties. However, the formal institutions might decisively contain the unconstrained exercise of power by ruling parties. Respectively, among various institutional designs for organising elections, there are six institutional choices for the electoral administration. First, centralisation: which concerns whether the national government have to organise both the national and subnational elections, or local authorities are entitled to manage the local elections. Second, bureaucratisation: that is related to whether to assign the organisation of elections to the ministry of interior or to a permanent electoral body.[[469]](#footnote-469) Third, specialisation: it relates to either having a single commission entrusted to organise all electoral issues; registration of voters, electoral management and judicial functions to settle electoral disputes. Or the administrative and dispute settlement assigned to separate bodies. Fourth, delegation: that refers to a situation where the ruling party is not trusted to manage fair elections. As a result, to establish structures of mutual restraint, the top of the independent electoral commission either includes the parties’ representatives or has experts as independent and impartial delegates selected by political parties.[[470]](#footnote-470) Fifth, regulation: which relates to whether election officials are granted inclusive margins of jurisdiction or strongly restrained via comprehensive formal rules.[[471]](#footnote-471) Sixth, independence: this concern whether to keep electoral commission dependent on the government departments or whether it should be granted real autonomy.[[472]](#footnote-472)

In most western democracies, the ministry of interior as a central state body is often assigned to organise national elections, due to a consistent tradition of bureaucratic impartiality and the relatively high level of administrative capability. Moreover, in most advanced democracies, people learn electoral outcomes from TVs, not from vote counts, because they take for granted that the process will be honest and believe that the media outlets and judiciary would prevent serious electoral frauds. That is why even the literature on electoral systems in western democracies fails to address or to mention electoral administration, except its constitutional basis.[[473]](#footnote-473) Yet, to maintain political accountability, the ministry is regularly performing such missions under the scrutiny of either a judicial or a multiparty commission. However, in most transitional democracies, the absence of a reliable and usable state bureaucracy that is only governed by professional norms to maintain democratic aims is incompatible with the central state management of elections. In other words, when authoritarian rulers control electoral administration, they perpetually enjoy, or are viewed as having, the capacity and disposition to control electoral procedures that lead to abusing power and undermining trust.[[474]](#footnote-474) When the democratisation faces challenges of electoral control, the legitimacy of the government that concurrently functions as an arbitrator in political contestation is also questionable.[[475]](#footnote-475) The establishment of an independent electoral body ensuring electoral integrity and giving both horizontal and vertical accountability, has become a collective demand for all democratising parties in the world.[[476]](#footnote-476) That is why most emerging democracies have often been inclined to establish an independent commission due to lack of administrative competence, arising from their historical political traditions.[[477]](#footnote-477) Therefore, electoral establishments increasingly tend to be permanent commissions that are independent from the executive. They are somewhat party-based bodies that mostly run by civil servants; composed of either judges or legal professionals, parties’ delegates and individuals who represent other segments of society. Such commissions are typically nominated by a parliamentary committee and approved by parliaments.[[478]](#footnote-478)

Until recently the IHEC[[479]](#footnote-479) as a federal body has managed all local, regional and national elections held in the KR. In 2014, the IHERC was established instead, which organises all local, regional and national elections and referendums.[[480]](#footnote-480) This is a federalised dual structure of the electoral administration like in Switzerland, United States and Mexico.[[481]](#footnote-481)

The KP via a special committee is authorised to nominate, and by an absolute majority of MPs, to confirm the IHERC Board of Commissioners (BOC); a nine-member body composed of eight commissioners and a Chief Electoral Officer- at least two of them have to be legal professionals and others should hold university degrees.[[482]](#footnote-482) Basically, the BOC in turn is completely independent of the executive, supervised and is accountable to the KP, and serves for five years, chaired by a commissioner selected by the BOC. The BOC also elects a rapporteur, spokesperson, deputy chair and chief of the electoral office. The staff members of the IHERC work in accordance with the civil service code. The BOC represents also women and minorities, and all BOC staff should be politically neutral from the day of being elected as commissioners by the KP.[[483]](#footnote-483)

One of the options for transitional countries, in which the incumbents cannot be relied on to run fair elections, is to constitute a power-sharing system for a presumptively impartial electoral administration. Accordingly, instead of nominating delegates from both opposition and ruling parties, they can agree to select individuals with a reputation for independence and impartiality. Countries like Canada, Australia since 1984, Mexico since 1994, are classified as having this delegative electoral administration design.[[484]](#footnote-484) The IHERC commissioners were nominated by the major political parties based on a partisan quota under the rule of a consensus government during the KP’s fourth term. Moreover, the candidates were party members until they were elected by the KP as commissioners, presumably they are supposed to be neutral since then.

Perhaps the political neutrality of the electoral administration is the most prominent standard of fair elections. It is crucial to keep impartiality in all stages, starting from the registration of voters and candidates, the management of the election day, until the end of the process of vote counting and the announcement of results. The neutrality deals with character, competence and structure of the electoral administration, which determine whether elections are sources of peaceful alternation or a cause for instability.[[485]](#footnote-485) As far as its function is concerned, the electoral administration is working on elections in the context of the prevailing legal system, and respect for the principle of the rule of law. Therefore, one of the most essential tasks to be addressed is to ensure that the conduct towards all voters and candidates follows the law and is without any discrimination based on language, race, ethnic, social or economic status, religion, gender, or political viewpoints. The administration can maintain citizens' confidence through commitment to political neutrality.[[486]](#footnote-486) This dimension requires neutrality for any actions that may be understood as partisan commitment by giving priority to the interests of the existing government, or the interests of a class or a political party.

As it stated in the Swedish Green Party report, most of the negative points refer to elections in the KR before 2014 linked to the KR office of the IHEC then. Since its establishment according to the regional act, the current IHERC has only managed the independent referendum held on 25 September 2017. However, the referendum lacks any legal framework and political consensus either locally or internationally.

Concerning the impartiality of the IHERC, the most crucial issue was the legal deficiency in terms of its legitimacy and the competences of the KRP that initiated the procedures of the referendum. It is obvious that those who were the *primary* dynamo beyond the process of referendum, is the KDP and its president, the latter acted illegally as the RP supported by his allies from the PUK, KIU and some other political parties who are mostly known as political shops or regime-friendly oppositions.[[487]](#footnote-487)

To decide on such an important issue without any legal basis or political consensus jeopardised the status of the KR. Specifically, the RP Barzani had more than one problem. Legally, the most serious ones are the monopoly of authority and paralysis of legitimate institutions after holding the coup in 2015. He monopolised the KRP, which is the highest executive office, when he decided to preserve acting illegally for further two more years as a de facto president until his resignation after the failed referendum. This is why Barzani’s position no longer had any legal and political weight to enable him to make such a crucial decision. However, the referendum was a consultative one and not binding, but jeopardising the rule of law and the already politically and economically fragile status of the KR even more.[[488]](#footnote-488)

Basically, the authority which should decide on the critical issues that determine the destiny of the Iraqi Kurds is the KP.[[489]](#footnote-489) This authority is determined by Law No. 1 in 1992 which has a constitutional function that should have been above the rulers.[[490]](#footnote-490) In political and legal theory, the narrow conception of the rule of law considers that the ‘government shall be ruled by the law and subject to it’, which is often expressed by the phrase ‘government by law and not by men’.[[491]](#footnote-491) While due to the weakness of the rule of law in the KR, it appeared that the ruling elites are above the law instead of being subject to it.[[492]](#footnote-492) Moreover, despite the absence of an effective law by the KP, the IHERC decided to manage the referendum as determined illegally by the High Council of Referendum, which embodied the will of the political parties gathering in the KRP headed by the de facto president Barzani. The IHERC is legally obliged to manage all elections and referendums in the region[[493]](#footnote-493) and announce the polling days ‘according to the effective laws’.[[494]](#footnote-494) Therefore, holding a referendum based on an illegal decision made by an illegitimate council established by a de facto president, when his extended term and his illegally preserved power, is an explicit infringement of the rule of law. Consequently, in contrast to the prescribed neutrality regulated by legal rules, the IHERC delivered partisan commitment to serve the ruling parties’ interests to hold the referendum, aiming to deal with the effects of the presidential and parliamentary crisis by legitimating the existing institutional predicament.

It is reasonable that the IHERC cannot decide on the constitutionality of the RP’s position and actions. However, it can obviously declare that there were no effective laws prescribing this kind of referendum. By contrast, there is an explicit legal rule providing the KP with the authority to decide on such critical issues. Besides, the law regulating the IHERC’s law is lacking institutional measures to safeguard political neutrality, which the IHERC failed to maintain it in its first test.

In transitional regimes, when the situation is so politicised that even a procedural problem could be interpreted among rivals as politically motivated action, the ‘intersection between political suspicion and technical incapacity’[[495]](#footnote-495) might encourage high profile political disputes with a potential of derailing the entire electoral process. With such a high level of political distrust among opposition and ruling parties, like in the KR, a reasonable choice for the ruling and opposition parties is to reach agreement on the appointment of multiparty representatives for the IHERC. In such a system, political parties either appoint their own representatives, as in Honduras, or party representatives would be appointed based on a formal party quota by a majority in the legislature as in El Salvador until 1993.[[496]](#footnote-496) This electoral design induces power-sharing system with a multiparty figure, in which opposition delegates are powerful veto holders, together with members of the ruling party.[[497]](#footnote-497) While according to the IHERC’s multiparty scheme, the decisions are taken according to majority rule where the opposition delegates are not veto players.[[498]](#footnote-498) An essential power if existed, it would have prevented the IHERC from serving the ruling parties’ agenda in holding the illegal referendum, paralysing the legal and proposed parliamentary election that ought to be held then instead, because the MC and KIG parties were consistently asking for the suspension of the referendum.

Basically, deciding whether the presidential decrees or other activities from another institution are legal and constitutional or not should be classified by a constitutional court, which the KR lacks. While even in extreme authoritarian cases of manipulation, like Egypt under Mubarak rule, deceitfully or not, which ‘exemplified the repressive rigor of comprehensive strategies of control’,[[499]](#footnote-499) the Supreme Constitutional Court (SCC) could evolve into sites of struggle and resistance with the authoritarian regime in Egypt to some degree. Accordingly, the SCC’s rulings of unconstitutionality in many cases resulted in changing the electoral systems for most elections, dissolution of the legislature, freedom of opinion, equality before the law and allowing banned opposition activists to participate in elections.[[500]](#footnote-500) Respectively the SCC in different situations ruled some articles in election law unconstitutional and as a result the law was amended.[[501]](#footnote-501) Consequently, the PR list system was completely abandoned and the two seats member districts for the election of People’s Assembly was adopted in favour of the independent candidates according to the SCC’s order in 1990.[[502]](#footnote-502) Moreover, as a result of the regime’s unwillingness to conduct free and fair elections and the oppositions’ frequent demands, the SCC ordered the judicial supervision of polling stations in 2000.[[503]](#footnote-503) However, after the 2000 legislative elections, the regime practically subverted judicial supervision by escalating the security and thug numbers working for the ruling party. In 2002 local elections were completely exempted from judicial supervision by the ruling party-dominated People’s Assembly, which provoked one of the prominent opposition parties, Muslim Brotherhood, to boycott the elections.[[504]](#footnote-504)

While in the KR, generally there are either no institutional designs of checks and balance system to give horizontal accountability, or they are weak and undermined by the DPG. Specifically, the RP’s decrees are excluded from appeals to the administrative court, as the presidential decrees are classified within the sovereignty acts.[[505]](#footnote-505) Besides, the KR also lacks a constitutional court to decide on the constitutionality of the then RP’s position and decisions, including the one related to holding the referendum on 25 September 2017. Meanwhile, the IFSC that has authority to oversee the constitutionality of laws and regulations, in effect has no authority over the KR jurisdictions.[[506]](#footnote-506) In this sense, only restrained by existing political power relations not legal regulations, the RP has been viewed to be the embodiment of the Kurdish nation and the main guardian of its interests.[[507]](#footnote-507) Through the very weak or absence of either horizontal or vertical accountability, the de facto president administrated a manipulative political power, which delivered somehow a kind of delegative democracy.[[508]](#footnote-508)

In sum, the KR political institutions were based on weak foundations, as they have been suffering from the actions of unrestrained ruling parties, that shows no respect even to the laws enacted by themselves. Consequently, the rule of law is undermined when the laws were either being amended or abandoned, therefore subverting basic democratic values. As a reverse wave, such a manipulative and unrestrained duopoly in the political will eventually transformed electoral authoritarianism into a hegemonic authoritarian rule. This party dominant regime induced two legal-institutional outcomes on the governing system. Firstly, it created an institutional gap between the legal rules and political reality. This is alternatively filled by a prevailing political will as an informal institution, relatively incompatible with the formal institutions. These institutions are perceived by the ruling parties as obstacles to their partisan interests. Secondly, in consequence it transformed the character of the legal rules with a constitutional function to a self-guidance tool, as they are undermined and curtailed from their core functions as general, clear, prospective and binding rules; such distinctiveness either prescribes or proscribes activities related to political practice of power in society.

**CHAPTER FOUR**

**Semi-Competitive Elections: Subverting Proportional Representation in Kurdistan Region**

**4.1 Introduction**

Electoral system is vital institution for representative government. Also, it is perhaps the most significant constitutional choice for emerging democracies. The democratic constitutional design envisions either plurality or proportional representation (PR) ideal types. However, there are some democracies that have adopted mixed systems. A majoritarian scheme is mainly designed to promote a dominant and accountable single-party cabinet by awarding most representatives to the leading party with plurality. PR aims to generate inclusive and consensus government by producing a parliament representing wider diversity by encouraging a multiparty system. However, both electoral systems can produce a coalition government. Attempts to address the constitutional design of electoral systems have commonly sought to achieve a balance between clear democratic accountability via a majoritarian model, or parliamentary diversity through PR.[[509]](#footnote-509)

The variety of electoral systems reflects political and social circumstances and seeks to maintain political stability and social cohesion. Theoretically, the principles of electoral justice, stability, clear accountability of government, and producing and encouraging either dual or multiparty systems are all considered when assessing electoral systems in contemporary democracies.[[510]](#footnote-510) Accordingly, various aspects of elections are regulated by many intertwined legal rules, found in official documents; such as constitution, electoral law, political party act, electoral management law, and other supplementary administrative procedures that are authorised by law and enforceable by courts. All institute the legislative framework for regulating elections. Relatively, the legal framework is a critical institution for embodying democracy, specifically in a transitional context. Notably, when the law retains one kind of electoral system rather than another, considering historical, economic, social, and political circumstances, this constitutes the prevailing legal idea - the foundation stone of systematically regulating a specific issue by law.[[511]](#footnote-511)

PR is mainly characterised by working to avoid the unwanted results of a majoritarian system. In many emerging democracies, in particular those facing acute social divisions, the involvement of all social groups becomes a key prerequisite to build and strengthen a democratic government. Such a system provides an opportunity for both minorities and the majority to participate in the process of democratic government. It is argued that in transitional countries, broad political representation is required to reach a consensus in institutional design. In transition theory, this contributes to the consolidation phase, where a compromise can be designated, at least between the soft-liners among the authoritarian incumbents and the moderates from the opposition.[[512]](#footnote-512) This is what can be achieved by adopting PR. To establish the constitutional basis for a new regime, ‘it is often thought desirable to adopt a system that will provide the opportunity of representation to as many groups as possible, to avoid attempts at undermining the fragile new constitutional settlement’.[[513]](#footnote-513)

This chapter argues how the ruling parties in the KR have adopted an electoral system that maintains an institutional position favourable to them. Moreover, the compatibility of such a political engineering with the proposed democratic transition in the KR will be examined using examples in post-communist Europe and AME contexts. To manage this, the scope of the analysis will consider the legal basis for the third and fourth terms of the KP elections. Wherever necessary, the historical background relating to the evolution of electoral rules and the implementation of the SA will be highlighted with some reference to the Iraqi constitutional framework and both the regional and federal governorates’ electoral laws.

**4.2 The Post-Communist Contexts**

The democratic transition in post-communist Europe has carried through a prominent reconception of political representation, reflected in the electoral reforms during the early post-transition years. The communist understanding of representation often focused on the proportional inclusion of different groups in society. This was transmuted in post-communist era conceptions of democratic representation into a desire for a fair competition among political parties. In terms of electoral systems, this conceptual shift addressed institutional design by transferring demographic proportionality into political one. Almost all post-communist European countries, specifically those that joined the EU, have been democratised via adopting the party lists PR. Historically, democratisation addressed two basic changes; namely, extending citizen participation (universal suffrage), and the liberalisation of contestation, which constitutes reforms in candidate entry restrictions, both de jure and de facto, through establishing the multiparty system.[[514]](#footnote-514) Thus democratisation ‘requires open contestation over the right to win control of the government, and this is in turn requires free competitive elections’.[[515]](#footnote-515)

Unlike Western Europe, the electoral reforms that accompanied democratic transition in post-communist Europe revolved mainly around issues of political contestation, rather than citizen participation. As in most post-communist countries:

franchise reform was completed only under communism, and thus coincided with a radical restriction rather than an expansion of the terms of contestation. Once the ‘class enemies’ had been dealt with, the universal franchise was unproblematic, with voting rights denied only to the insane and those disenfranchised by a court of law. At the same time, there was virtually no genuine political competition.[[516]](#footnote-516)

It is obvious that the political competition connected to the party systems were per se interlinked to the electoral regulations that represent a mutual underlying interaction. Electoral reforms in post-communist Europe simultaneously evolved with developments in party systems. Relatively, parliamentary elections, especially those conducted under the rules of PR, have embodied major party developments. In this regard, factors of historical, external, contextual, and interest-based calculation determined how the electoral systems have been adopted. Historically, national schemes would be applicable ‘if a state had a positive electoral experience in the not-too-distant past, especially if there was an urgent need for an electoral law to be adopted’.[[517]](#footnote-517)

The electoral systems ought to reflect the social and political context. Nonetheless this does not mean that for each state there is a perfect electoral system. The contextual factors are vital in determining the appropriateness of an electoral system. The social and political contexts of the post-communist era were related to the issues of multi-ethnicity and the existence of alternative political parties because elections in Communist Party states were either plebiscitary or limited-choice pattern; elections without political choice.[[518]](#footnote-518) Multi-ethnicity is regularly regarded in adopting a PR system, to ensure appropriate representation for minorities through representation from their own group.[[519]](#footnote-519) Potentially, the political context is expected to have an influence in shaping perceptions of the role of electoral systems. In the post-communist era, constitutional design has provided an institutional space for the promotion of alternative parties with different ideologies.[[520]](#footnote-520)

Amongst the factors that affect choosing a specific electoral system, interest-based attitudes are prominent in many of the electoral designs and reforms in the post-communist context. The communist parties tended to desire a majoritarian system, while opposition groups were inclined to prefer PR. Through the RTT, which delivered consensus democratisation, most of the post-communist countries in Europe espoused PR.[[521]](#footnote-521)

Each group of contemporary democracies adopts a politically and socially compatible electoral scheme. The Anglo-American democracies embrace the first-past-the-post system (FPTP) in their electoral laws and customs. Meanwhile such a system was adopted during the unfree elections of the Communist Party states before the collapse of the Soviet Union in 1989. Notably, in the Western Europe PR is the norm,[[522]](#footnote-522) whereby, Belgium introduced PR in 1899, which induced a prominent wave of electoral reform in Europe.[[523]](#footnote-523) This was motivated by the desire to accommodate minority interests.[[524]](#footnote-524)

Most of the electoral systems in post-communist Europe have experienced significant reforms since 1990. PR was the prominent system found in Croatia, Macedonia, Romania, Poland, the Czech and Slovak Republics, Slovenia, Estonia, Latvia, Moldova, Bulgaria, Bosnia and Herzegovina, Serbia and Montenegro. While in countries, such as; Russia, Ukraine, Lithuania, Armenia, Azerbaijan, Georgia, Hungary, and Albania the mixed proportional–single-member district system is implemented. Only Belarus has preserved the majoritarian single-member district system for its lower-house elections, though a similar electoral design has been adopted in the elections of senates in both Poland and the Czech Republic.[[525]](#footnote-525)

It is conceivable in any context that a variety of issues work together to indicate the best design for an electoral system. The relevance and nature of contextual elements will noticeably differ from state to state according to their specific social, cultural, historical and economic situation.[[526]](#footnote-526) In the post-communist contexts, the electoral legal reforms restructured elections from being a party-state controlled process (via controls on nomination, campaign finance, and media regulation) to an open or semi-open competition among political parties. Electoral systems thus have been used to accomplish the dismantling of monopolistic parties that served as the leading instrument and functioning apparatus of the Party Communist state’s political and economic institutions.[[527]](#footnote-527)

The way the electoral system was implemented affected the party system in the post-communist Europe. PR stimulates the formation of national parties, which will tend to regulate party competition across regions. This system has been used in post-communist countries typically including a threshold of votes. Accordingly, each party in parliamentary elections must reach at least three to eight per cent of the total votes in order to share in the distribution of seats. Such thresholds represent resilient constraining elements on party systems by reducing the proliferation of parties with very few seats. Notably, ‘thresholds in Central and Eastern Europe are high by international standards; the average single-party lower-tier threshold in West European PR systems was 1.23 at the millennium, as compared with an average of 4.25 in 20 Central and East European states at the same point in time’.[[528]](#footnote-528) With high thresholds, parties are expected to escalate their electoral strength and weakness, and consequently respond by merging with other parties or leave the electoral competition.

**4.3 Kurdistan Region: National List Proportional Representation**

The social and political inclusiveness of an electoral system, which can be achieved via PR, is vital for democratic transition. The parliamentary elections in the KR since 1992 have been held according to the National List PR, which mainly prescribes a fractionalised rather than a concentrated party system. It also provides chances for the entry of new parties rather than the single-district majority system.[[529]](#footnote-529) Despite the undeniably positive aspects of such a system for the transitional path, concurrently it is not without deficiencies. Since somewhat irregular elections have been held, the democratic transition is still incomplete in the region, as a representative government has not been established there yet.

In de facto states, the dominant party system is resulted from two different external gravities that affect such states. First, external pressures to democratise and to be internationally viewed as a multiparty system. Accordingly, de facto states were determined ‘only by the desire to be recognized, then all would be democratic’.[[530]](#footnote-530) Second, however, there are also external pressures, in terms of facing external threats, basically from the parent states from which they seceded, that have consequences ‘against political pluralism, even de jure pluralism’.[[531]](#footnote-531) In this context, ‘unrecognized states are born out of conflict; they exist in very volatile parts of the world, they are often founded on violence and ethno-nationalist mobilization, and they lack the protection provided by the norms of non-intervention’.[[532]](#footnote-532) Hence, to face such threats, there is motivation to sustain unity and often the emphasis is on military capacity. Basically, this encompasses the militarisation of society resulted in authoritarian party system and decline of party competition and political pluralism.

In the KR, the ruling parties still control the military forces and economic resources that have often been used through a clientelistic network and political patronage scheme to sustain the DPG. In other word, they turned into a powerful apparatus to obtain electoral legitimacy as they were generated to rule rather than to contest. Although having no favour of holding elections as somehow periodic elections were held in the KR, but nonetheless elections are fulfilling their desire to: first, settle tensions among themselves over the distribution of resources and power, and second, to be internationally viewed as pro-democracy forces delivering multiparty system and seeking to obtain international recognition for the KR’s de facto status, though lacking internal legitimacy.[[533]](#footnote-533) This all forces the KRG, KP, and the judiciary to share power with other unelected institutions. And this contrasts with the principles of free and fair elections that constitute an authoritative government with popular legitimacy.[[534]](#footnote-534)

The electoral system in both the parliamentary elections held on 25 July 2009 and 21 September 2013 was party-list PR, which considered the entire region as a single district, where the seats were allocated by an electoral divider (Hare quota and largest remainder). Candidates were often nominated through the direct decision of the Politburos and the Leadership Councils of most political parties, rather than going through an internal democratic procedure. However, Law No. 1 enabled the IHEC to implement the Coalition Provisional Authority (CPA) Order No. 97 in 2004; the Political Parties and Entities Act that confirms the right of individuals to be candidates in the elections as independent political entities.[[535]](#footnote-535) As it is difficult for independent candidates to secure a seat in the KP. The National List PR infers that the KR is designed as a single district, it disregards any provincial connections between the MPs and the voters.[[536]](#footnote-536)

This type of PR led to the formation of a coalition government between the KDP and PUK with some other regime-friendly parties in the third parliamentary term (2009-2013). As the 7 per cent threshold was abolished from the second KP election that created a high level of proliferation in the number of parties, which reached 29 licenced parties in 2009. They were mostly regime-friendly oppositions with many applications waiting to be ratified then.[[537]](#footnote-537) The most preferred consequence of this institutional design for those ruling parties supported by clientelism, is that they can distract the opposition, as the votes were dispersed among many party contestants.

Additionally, PR returned a consensus government in the fourth parliamentary term until the coup of 12 October 2015. Basically, PR puts forward political parties, but it is possible for the system to work by clearing the way for voters to choose candidates from different parties. In the post-communist context of European countries, as mentioned above, rarely has the FPTP majoritarian system been applied. Most of them have adopted PR, while some adopted the hybrid arrangement with multi-member districts.

As far as the choice for voters is concerned, which in turn depends on the voting system, the closed list system[[538]](#footnote-538) is used in a modified form in Romania, Russia, Lithuania, Bulgaria, and Hungary- where some seats are determined by the FPTP and others by the PR closed list system. While in Estonia, Poland, and Slovenia, the preference ballot is adopted, and the total number of winning seats depends on the total votes gained by the party candidates. In the Czech Republic, Slovakia, and Latvia, the preference ballot depends on the voters’ choice, the candidate they choose affects the party ranking in the list, otherwise ‘the voter is presumed to have endorsed the party’s ranking’.[[539]](#footnote-539)

While for the third KP election in the KR, a closed list PR was applied throughout. The voters chose party lists. Hence, the parties won a share of the seats proportionate with their share of the votes, and the candidates won on the party lists according to their ranking order.[[540]](#footnote-540) This electoral design was favoured by the KDP and PUK, whereby they used the electoral laws to control the entire electoral process and to ensure party loyalty from their MPs. Because selecting and prioritising the candidates in the sequence of the electoral list was a purely party-controlled process, which did not adhere to democratic procedures within the parties. In addition, the entire process was subject to the opinion of the party leaders and members of the politburos, who preferred to choose loyal party members whatever their capabilities.[[541]](#footnote-541) Applying the closed list PR for third term of the KP would leave the voters no freedom of choice, as it would break the link between the MPs and the represented.[[542]](#footnote-542) This created constrained representatives; party delegates. In such a centralised scheme of candidature, the parties could impose programmes, so that the delegates typically could not debate or vote freely, as they were subject to the party whip. They would be circumscribed, and face pressures and even forced to resign. That is why almost all delegates were nominated by the parties, and most of them were originally party members. Even the very few independent MPs on the electoral lists were unable to vote freely for public interests, so they had to resign.[[543]](#footnote-543)

The electoral institutions therefore were designed to conform to the existing structure of the political parties. Consequently, the parliamentary factions sustained the agenda proposed by the party to which they belonged. According to legal rules, however, it is possible for an MP to abstain, or oppose, or even to change her/his party affiliation. They can also join another faction, or even become an independent MP without being penalised or receiving any legal pressure as a consequence of switching parliamentary party. Thus, there is neither an anti-defection law, nor any article within the related laws which ban MPs from crossing the floor in the KR. Moreover, the electoral law absolutely prohibits depriving candidates of their seats for any reason by political entities.[[544]](#footnote-544) This legal guarantee perhaps contributes to making space for free debates in the KP by securing political liberties for MPs. Generally, however, candidates are viewed by the public as not representing the electorate but are there to make money instead. MPs are seen by the public as unproductive and overpaid, either as MPs or pensioners. Their substantial salaries are often compared with the salaries of teachers and other low-paid public servants. Unless the MPs earnings are reformed, they will be considered as a significant waste of public income, especially as MPs act more as party delegates than public representatives.[[545]](#footnote-545)

For the fourth term (2013-2018), the KP has reformed the electoral law addressing the way that PR is implemented by changing the system of a closed list into a preference-ballot. Accordingly, each party makes a list of candidates, in which voters choose a candidate among the preferred list.[[546]](#footnote-546) While since 2010, the IFG adopted such voting scheme for the first time in both parliamentary and provincial elections according to Law No. 26 of 2009.[[547]](#footnote-547) Adopting such a system at the federal level does not legally commit the KRG to conduct elections with the same prescribed legal rules. This is due to the IFC that provides the KRG the powers to regulate the regional authorities of legislature, executive, and the judiciary according to a regional constitution.[[548]](#footnote-548) Perhaps federal implementation and consistent pressure by the opposition during the third KP term, had affected the attitudes of the parliamentary majority to the value of such electoral reform.[[549]](#footnote-549)

The Kurdish parties have presented candidates with different social backgrounds, though they are mostly party members or receivers of patronage, to ensure supposedly wider social representation. The voters’ support for a particular party was not only based on the party’s programme, but also on the choice of the party of a balanced electoral list from all sectors and backgrounds. According to the voting scheme, the party delegates were chosen based on the votes they obtained. This enables voters to choose a candidate within a preferred party list. Simultaneously, it provides an opportunity for the candidates to compete in obtaining the plurality of votes required to have access to the KP against their rivals in the electoral lists.[[550]](#footnote-550)

The shift from a closed to a semi-open list perhaps initiates a change in the unequal relationship between MPs and the parties as the preferred candidates can be directly elected to the KP. However, miracles cannot be expected from such electoral reform. Since change depends also on prescribing further institutional redesign.[[551]](#footnote-551) Meanwhile, the party-based interest that is deeply rooted in the KR has led to noticeable cleavages among the political elites during the democratisation process. Due to clientelism, party affiliation is the strongest element affecting perceived interests resulting in the MPs mostly performing in favour of their party’s interests instead of the public good. In such a situation, adopting the preference-ballot scheme in the fourth KP, however, contributed to the amplification of political rights and encouraged regional links between MPs and citizens.[[552]](#footnote-552)

The influence of voters’ preference on a specific candidate gives MPs direct support from their voters. This seems influential especially for the MPs who achieve electoral nomination. Such a position gives MPs a kind of independence within their parliamentary faction when forming opinions and attitudes, either when they give a speech for the media or participate in parliamentary debates. However, the parties’ leaders still dominate the entire process of nomination and would provide support in the campaign to those candidates who show greater affiliation. Therefore, the institutional consequences of redesigning the voting scheme are limited due to the political parties’ decisive role in the entire electoral process.[[553]](#footnote-553)

To contest the ruling parties’ dominant position, a proportional, mixed member system could improve representation into the electoral system and alternatively support political parties’ internal democracy. The advantages of adopting such a system are twofold. Firstly, it will keep the PR virtue of political and geographical inclusiveness in the KP that is important for a region recovering from the civil war and its consequent split administrations. Secondly, it will bring bottom up mechanisms of accountability either inside the contested political parties or through decentralising the political institutions in the KR.[[554]](#footnote-554)

**4.4 Undermining Proportional Representation**

In the KR, implementation of PR faced institutional and practical obstacles. The series of power-sharing agreements can be considered the main institutional impediments for democratisation in the KR. However, through such arrangements the region passed through a sensitive historical stage after the collapse of the Iraqi regime in 2003. The power-sharing agreement dates back to the first parliamentary election in 1992 and was reinstated after the civil war in 1998. The war resulted in two emerging administrative zones where both the KDP and PUK have operated in each zone as informal state-like units via security apparatus and ministers in their stronghold territory. Constituting such a government during the second KP term established a partially unified government on 7 May 2006.[[555]](#footnote-555) Notably, the coalition government, led to two negative institutional consequences, which are still in existence. Firstly, it sustained the DPG. While the party system changed from a duopoly party-dominant system of the KDP and PUK-as they had an overwhelming majority in the KP- to a dominant party system of the KDP, if the PUK’s seats were to be separately counted. This phenomenon continues even after the emergence of the parliamentary opposition; the MC, which mostly affected PUK representation. However, the PUK continued governing the KR with the KDP, due to having military leverage and keeping military action as a crucial option when necessary. Despite both ruling parties having substantial leverage in their administrative zones, they have shared all the local, regional and national top positions. Such governance is in opposition to a constitutional process when a democratic constitution is written by consensus by as many political parties and social groups as possible. This has been precipitating political tensions and harsh disagreements constantly between the opposition and the ruling parties often resulting in instability and institutional deadlock. Secondly, it has caused weak political accountability of the government. To a broad extent, the adoption of full PR without a threshold in the KR has properly proved a claim of pro majoritarian theorists that implementing such a system makes for weak accountability of the government. Equal division of political institutions has made it difficult for voters in elections to determine who should be held responsible for the government’s incapacity, ineffectiveness and eventually its political failure.[[556]](#footnote-556) Both consequences will be discussed in detail in chapter five.

**4.4.1 Semi-Competitive Elections: Political Oppression**

Democratic elections require minimum degrees of liberty. It is obvious that if elections are to be qualified as democratic, they have to be held under conditions where civil and political freedoms are respected. But authoritarian incumbents often invent biased electoral rules and exclude opposition parties and candidates. They are often motivated to limit electoral competition by terminating regime-unfriendly contests. Various ways of political exclusion involve institutional coercion and other schemes, which might include violating their civil and political liberties, limit their access to media outlets and campaign or party finance, enforce suffrage restrictions on their followers and fragment the opposition via pressure or corruption. Although there are numerous forms of manipulative strategies under different forms of authoritarian regimes, all aim to contain the ‘troubling uncertainty of electoral outcomes’.[[557]](#footnote-557)

Under electoral authoritarianism, as long as there is an electoral prospect of alternation, the authoritarian incumbents utilise institutional and practical manipulative approaches to subvert and devalue the electoral process while sustaining and legitimising authoritarian rule. Within the AME electoral authoritarianism, the democratisation processes, or more fairly the waves of political liberalisation, are ‘slowly unfolding for greater participation and contestation’.[[558]](#footnote-558) Such liberalised autocracies, even after the Arab Spring, have not led to the establishment of a representative government and the rule of law. They could not even abandon systematic corruption and serious violations of human rights. That is why almost all AME electoralism suffers from high, regular and organised corruption. The latest 2017 International Transparency Index demonstrates their low ranking, which is also related to violations of freedoms and the oppression of civil society and political opponents. Similarly, the KR suffers from systematic corruption and infringement of civil and political rights, as is noticeable from Iraq’s 169th low rank among 180 countries on the Index.[[559]](#footnote-559)

A recent report from Freedom House revealed that democracy faces the worst crisis in decades. There has been a 12-year decline in political and civil rights worldwide; free and fair elections, minority rights, freedom of the press and the rule of law are under siege. In addition, the report classifies countries into free, partly free and not free groups. Accordingly, within AME countries only Tunisia was classified as free with an assessment of 70 per cent. However, Tunisia's political rights index declined in 2017 due to what the report called a delay in local elections and increased pressure on the country's political system from former regime forces. While the countries of Kuwait, Jordan and Morocco were categorised as partly free and other Arab states classified as not free countries, placing Iraq including the KR, in this category.[[560]](#footnote-560)

The purpose of elections is to establish representative democracy. While in the AME countries, ‘elections are now everywhere …. but democracy nowhere. Elections are ubiquitous. But democracy is still awaited’.[[561]](#footnote-561) Although periodic elections were regularly held by AME electoralism, little or no democracy resulted from such elections. Despite having elected parliaments, political participation has often been mere constitutional rite, as in most electoral outcomes there were low levels of opposition representation. Because in much of AME electoralism, the opposition parties or independent candidates have either been legally excluded or permitted but controlled. The ruler’s political durability depends on a minimum threshold of legitimacy, which is internally and internationally maintained by manipulative elections. Hence, elections were devalued and lost their democratic function as participatory means for the alternation of rule, as they regularly legitimized the authoritarian incumbents.[[562]](#footnote-562)

AME electoralism’s presidential and parliamentary contests between 1998-2008 allowed for some checks and balances when there was some opposition representation. However, since independence, these states have been ruled by successive controlling elites-independent from colonialism yet controlled by national elites. Even when the election outcome led to power alternation, there are fears of reproducing the previous regimes’ nondemocratic and corrupted government backed by military apparatus. For example, in Egypt the Muslim Brotherhood and its political wings have often excluded from running for elections, when democratic activists, secularists and Islamists have consistently been lumped together as extremists. This has led to a reduction in their political liberties in public spaces in the name of combating terrorism under anti-terror law, specifically after the 11 September event.[[563]](#footnote-563) Even after the Arab Spring, when the Muslim Brotherhood had a chance via elections to rule the country, the military overthrew president Mohammed Morsi in July 2013 by a coup held by the incumbent president Abdel Fatah al-Sisi (Sisi). Later, the Muslim Brotherhood's political wing; the Freedom and Justice Party had been dissolved by the judiciary. Ironically, however, even after the revolution, when the Muslim Brotherhood was dominant, the Egyptian parliament passed a law banning senior officials who served the ex-president, Hosni Mubarak, from running in the 2012 presidential election.[[564]](#footnote-564)

While in the KR, the ruling parties arrange somehow multiparty elections, however, as explained above, the ruling parties utilized elections to sustain authoritarian rule rather than to establish a democratic government. A menu of manipulative strategies that intensely and thoroughly violate the democratic values of freedom and fairness has often been developed. Accordingly, the KR shares some features of AME electoralism. Since the electoral processes there are generally ‘inclusive (they are held under universal suffrage) as well as minimally pluralistic (opposition parties are allowed to run), minimally competitive (opposition parties, while denied victory, are allowed to win votes and seats), and minimally open (opposition parties are not subject to massive repression, although they may experience repressive treatment in selective and intermittent ways)’.[[565]](#footnote-565)

Despite sharing characteristics with Egyptian electoralism, in the KR, however, there is no formal-legal exclusion for a candidate or a political party in elections. While in practice, the ruling parties put their opponents under discriminatory and irregular actions of harassment and intimidation. There are some points to support this claim. Firstly, since the emergence of MC, intimidation against its members continues; the violence, harassment, and death of the MC members similar to that which had been committed against the Kurdistan Islamic Union (KIU) in 2005. Despite the edict against such activities issued by the then RP Barzani, no further action or even official investigations were taken which devalued the KRG’s authority.[[566]](#footnote-566) The ruling parties also started cutting the salaries of many of those who voted for MC, particularly in the Peshmerga and security forces and the term ‘Cut off Livelihood’ became broadly used. Secondly, during the referendum campaign in September 2017, the NRT stations were stormed because its owner was leading the ‘No for Now’ campaign against the vote.[[567]](#footnote-567) Such partisan procedures and acts against electoral regulations reveal the ruling parties’ infringement of civil and political rights, depriving citizens of the freedom to vote for preferred parties and to express their opinion in electoral contests.

There are reports that political opponents of the ruling parties have been arrested, detained, assaulted and even killed by the Kurdistan authorities. In this sense, journalists place themselves at risk in the KR if they cross the red line by criticising the Barzani or Talabani families, or by reporting on the financial dealings of the officials; ‘some journalists have disappeared, been arrested, or even been killed for crossing the red line’.[[568]](#footnote-568) However, what makes such policy endure is that there is very little regard of law enforcement among people where they do not make use of the police or the courts. As ‘the courts are not seen to respond, even though, in principle, they have a number of excellent laws meeting international standards’.[[569]](#footnote-569) Meanwhile, although the KR’s Judicial Council is legally, financially, and administratively independent from the KR’s Ministry of Justice, but nonetheless the KRG often affect politically sensitive cases.[[570]](#footnote-570)

**4.4.2 Unfair Ground for Electoral Contestation**

In terms of party financial funds and media outlets, there are some points that relate to unfair grounds for political contestation in the KR. There is a direct financial fund arrangement that allocates the parties’ funds on a monthly basis. However, within the clientelism network the ruling parties implemented an imbalanced partisan policy for allocating party funds without following standards. This has burdened the public budget and is still one of the sources of corruption in the KR.[[571]](#footnote-571)

The KR Political Parties Act of 1993 stipulates that grants for political parties come from the public budget according to the KP regulations.[[572]](#footnote-572) However, until recently, the KP has not passed any law regulating grants to KR parties. Following pressures from the opposition parties, independent media outlets and civil society, the KRG officials approved that each of the KDP and PUK received US$35 million per month from the public budget to fund their own parties, which represented almost 20 percent of the budget for each year from 2004 to 2010.[[573]](#footnote-573) Besides, the KRG allocated such funds without any sound basis; as the KDP received 4 billion and 800 million IDs monthly for 30 seats in the third and 38 seats in fourth parliamentary terms and the same amount for the PUK for 29 and 18 seats. While the MC received 600 million IDs monthly for 25 and 24 seats in both terms, yet the Kurdistan Communist Party (KCP) was provided with 580 million IDs for only 1 seat in both terms. Moreover, the regime friendly parties received from 20 million IDs to 70 million IDs without having any parliamentary seats.[[574]](#footnote-574)

Since 2014, the KP issued the Political Parties Fund Act (PPFA), with which some standards were adopted. Accordingly, the KRG shall designate an annual budget,[[575]](#footnote-575) which will not exceed one percent of the public budget, for licenced parties in the KR according to their parliamentary seats in the previous two terms, where each seat has a monthly estimated value. The law provides financial funds for parties without parliamentary seats if they gained 20 to 39 percent of the threshold. It also provides funds for those parties that contributed to the KLM if they have only one parliamentary seat in the current term.[[576]](#footnote-576) Despite the recent enactment of the PPFA, its implementation has been paralysed due to the economic crisis, the IS war and the fact that the KDP and PUK have always manipulated the public budget to fund their own activities, as explained above.[[577]](#footnote-577)

Moreover, the ruling parties have used the public budget to fund numerous partisan and shadow media channels, estimated to be more than 400 outlets. While the handful of independent media outlets and those that belong to the opposition parties are denied such financial support. The partisan and shadow media channels are dominant, covering most of the media space in KR, where ‘they provide jobs for journalists…strengthen the personality cults of some leaders, provide propaganda for both parties, form and influence public opinion, and attack each other as well as other parties and independent media’.[[578]](#footnote-578) With such a huge access to media outlets, the ruling parties have manipulated the election campaigns unfairly, delivering more opportunities for participants in the elections who are in favour of the ruling parties.

Above all, like hegemonic authoritarian regimes, the ruling elites explicitly declared that the elections cannot practically institute the alternation rule in the KR. As the head of the PUK Politburo’s Executive Board clearly stated, ‘it makes no difference if we will be winning either 1 or 100 seats in the election. The PUK remains as it is, which has such a leverage cannot be measured by parliamentary seats. No decisions can be made in Iraq and KR without the PUK’.[[579]](#footnote-579) He further stated that ‘we will never allow ourselves to be disarmed by a parliamentary majority’.[[580]](#footnote-580) This can be viewed as another survival strategy of the authoritarian incumbents in the KR. Through the rhetoric of leading politicians, elections are devalued and curtailed from fulfilling their essential function to deliver the peaceful alternation of power. This is disheartening for voters and undermines political contestation by demonstrating the superiority of the prevailing, unelected, militia-style organisations over the formal governing institutions.

**4.4.3 Supportive Minorities of Dominated Majority**

Democracy is difficult to achieve in societies consisting of different minority groups. Political participation is essential to strengthen minority rights that are codified in constitutionally and internationally legal frameworks. Scholars identified some institutional designs to protect minorities from suppressive majority rule, where they can have their own representatives in parliament and on regional councils. Alternatively, they can run self-administrating institutions, or both together. Yash Ghai has identified positive institutional accommodations such as minority representation, power-sharing, or regional autonomy to increase minority presence in government.[[581]](#footnote-581) Ghai has also noted that:

minorities have the right to influence the formulation and implementation of public policy, and to be represented by people belonging to the same social, cultural and economic context as themselves. For a political system to be truly democratic, it has to allow minorities a voice of their own, to articulate their distinct concerns and seek redress, and lay the basis of deliberative democracy.[[582]](#footnote-582)

One of the modern concepts of democracy is concerned with the rule of the majority while minority rights are guaranteed. Deficiencies in basic legal rules to guarantee political representation through elections can inspire radical ethnic demands, zero-sum institutional design and ethnic conflict via deep ethnic cleavages. Andrew Reynolds has pointed to the importance of minority representation referring to ‘the idea of the mirror, which argues that the government should be a portrait in miniature of the society as a whole, reflecting divergent groups, opinions and traits’.[[583]](#footnote-583) Inclusion of majorities and the minorities within a parliament can diminish group hostility and violence in divided societies where governing is often viewed as a zero-sum game.[[584]](#footnote-584) Through collecting broad studies of different legislatures in contemporary democracies, he focuses on the incorporation of reserved seats systems by several national governments based on race/ethnicity, language/nation, religious, or geographic representation.[[585]](#footnote-585) He noted that ‘the existence of reserved seats in national legislatures for minority groups turns out to be much more widespread, and less idiosyncratic, than many scholars previously thought’.[[586]](#footnote-586) In this regard, he indicated four criteria to classify the nature of the reserved seats system in legislatures. They are: ‘the identity of the groups for whom seats are reserved,’ ‘the mechanism for reserving seats,’ ‘the electoral system used’ and ‘the number of seats reserved’.[[587]](#footnote-587)

Since the collapse of the Communist Party regimes, the electoral rules in post-communist Europe are designed to maintain multi-ethnic representation, which results from two factors. Firstly, the history of minority suppression in the ex-communist European states and secondly, the legal adoption of minority protection related to the institutional prerequisite for entry into the European Union.[[588]](#footnote-588) Consequently, the perception of minority pluralism in electoral legislation has changed considerably. The status of minorities in post‐communist electoral laws has been transformed from hostility in the form of the laws prohibiting the formation of ethnically based parties, to the adaption of ethnic identification as a reason for the formation of political parties and representation. This is referring to the diverse nature of Central and Eastern Europe that produced the ethno-parties’ phenomenon after the collapse of the Communist Party states. Therefore, the prohibition of discrimination based on ethnic or religious origins is considered as essential for a democratic and rule‐of‐law state.[[589]](#footnote-589)

Concurrently, similar to post-communist Europe, the reserved seats system for ethnic and religious minority groups is adopted worldwide, including countries of the Middle East. Seats were mostly reserved for language and national identities in the post-communist European democracies of Croatia, Romania, Slovenia, Poland, Kosovo, Bosnia, Macedonia, and Ukraine. While religious identity mostly exemplifies the source of reserved seats in the Middle East and South Asia.[[590]](#footnote-590) Both the IFG since 2009 and the KRG since 1992 have allocated reserved seats for minority groups in their parliaments and local councils.

In the KR, Law No. 1 of 1992 has instituted a reserved seats system in the KP to guarantee the inclusion and safeguarding of minorities. Through an electoral reform in 2004, the reserved seats for minority groups increased from 5 to 11 seats in the KP, out of a total of 111 seats. Of which, one hundred seats are open to contested electoral lists and the rest are reserved for particular ethnicities, currently guaranteeing five seats for the Chaldeans and the Assyrians, five seats for the Turkmen, and one seat for the Armenians.[[591]](#footnote-591) Law No. 1 stipulates that ethnic and religious minority parties standing for election should receive seats in the KP, even without adequate votes to gain them. The rule postulates that a properly registered ethnic and religious minority party inevitably receives a seat in the KP if they collect more votes than other parties referring in their name to the same ethnic or religious group.[[592]](#footnote-592) Nevertheless, in such a system, these seats are only minimum guarantees and encourage minorities to participate in the elections. The minority parties could receive seats without obtaining the electoral divisor. Also, the current legal rules allow minority groups potentially to gain further seats through standing candidates and active participation in political parties during the elections for the 100 contested seats of the KP. Nevertheless, more or less every religious and ethnic minority group residing in the KR obtains seats, as the status is offered to only specific groups based on demographic considerations imprecisely determined by electoral law, because as explained above, there are no official demographic records of the Iraqi population since 1987, due to ethnic tensions arising from the movements of Arabs and Kurds into the disputed areas.[[593]](#footnote-593)

In the KR, such legal rules were originally designed to tackle the suppression of minorities, including the Kurds themselves, during the establishment of Iraq. This is similar to the justifications behind the post-communist electoral designs in Europe. Moreover, in the KR, the ruling parties tried to show their democratic credentials via minority guarantees. This is viewed as a means of attaining international recognition for the KR’s quasi-state status via democratisation, as with other similar counterparts’ efforts.[[594]](#footnote-594) But the ruling parties subverted such legal guarantees by favouring only supportive minorities for their authoritarian rule instead. In addition, the main institutional obstacles to further guarantees for minority groups’ political representation relate to the uncertainty of conducting a general census in Iraq. This feature differentiates the KR from East European countries where the seats are reserved according to general censuses. Accordingly, to ensure parliamentary representation of minority groups by a logical design, in the KR context, would mean the allocation of reserved seats to areas with minority residency. But, to do this, it is necessary to determine the electoral districts where minorities constitute the majority of the population.

Taking Reynolds’ criteria into consideration, one can see that the nature of the electoral system in the KR has weaknesses in relation to minority representation, since there is no demographic or statistical basis to determine the 11 seats for minorities, or any seat in the KP. Parliamentary seats have been legally predetermined without any demographical or geographical basis or consistent with the number of voters and therefore enabling the identification of a valid turnout. The reserved seats system thus offers an opportunity to the ruling parties to win seats in the KP via fewer votes than the electoral divisor that is required for ensuring a parliamentary seat from the 100 contested ones. The ruling parties could direct their members, as international observers noticed, to vote for a specific electoral list, ‘whereby non-minority individuals can vote for minority lists. As a consequence, minority groups do not consider their reserved seats to be adequately representing their communities’.[[595]](#footnote-595) The ruling parties can also choose candidates from the minority groups that follow their party disciplines while elected. Meanwhile, new minority parties that could win most seats are created only a couple of weeks ahead of the elections and have loyalty to the ruling parties. In this regard, ‘dominant political parties can easily allocate a part of their votes to these new minority parties; it becomes very easy for them to secure control over minority seats’.[[596]](#footnote-596) Such a partisan agenda occurs especially in areas where the most minority groups reside and on the Special Election Day, when the affiliated security forces cast their votes.[[597]](#footnote-597)

In summary, there is a strong connection between the type of electoral system and the existing political parties’ model of governance and agreements in the KR. Among the various criteria indicating how and why a specific kind of electoral system is chosen, the interest-based method, or rational institutionalism, is the most effective and prominent one for analysing electoral law in Kurdistan, even for the subsequent amendments to the law passed in the KP. In other words, in all the processes of enacting electoral law, choosing electoral and voting systems, the way that PR is implemented, even the reserved seats system for minorities, the KDP and PUK’s dominant institutional position is maintained effectively. The ruling parties are subverting electoral systems by prescribing unfair grounds for unbalanced contests, where democratic measures have not taken root. In the KR, the elections are subject to severe, widespread, and systematic manipulation and explicit rhetorical devaluation to such an extent, that they do not qualify as democratic. The consequences will create challenges for the political institutions resulting from such elections in the KR. The next chapter addresses the challenges the KP faces in terms of its functions for preserving the rule of law and holding the KRG to account.

**CHAPTER FIVE**

**Kurdistan Parliament: Outcomes of Legislative Control**

**5.1 Introduction**

Besides the governing institutions, there appears to be a superior power acting as an arbitrary authority, unconstrained by the prevailing legal rules. It embodies the ruling parties’ will, either alone or combined. This has created an unstable collection of formal rules, where these have been either amended or impaired, and new rules brought in, which is known as abusive constitutionalism. Accordingly, the ruling parties have used, formally or informally, changes to the constitutional rules to make the KR significantly less democratic and thereby accomplishing electoral authoritarianism.[[598]](#footnote-598)

In addition, there are unstable institutions, as the legal rules have been interpreted in a way that required a new law to be issued or an existing one repealed. The pre-condition for the ruling parties to be able to use such a method, is that there are no tiered constitutional provisions, due to the absence of a written constitution restraining the will of a parliamentary majority.

The continuity of the DPG resulted in an authoritarian relationship between the ruling parties and the governing institutions and also, the interrelation of these institutions. Additionally, it caused structural disruption to the functioning of public authorities, such as, subverting the KP’s oversight over the KRG's performance, which is the cornerstone of parliament in contemporary democracies, in parallel with its representative and legislative functions.[[599]](#footnote-599) The KP is designated to sustain the ruling parties’ abusive constitutionalism, as the means of legislative control is also characterised by electoral authoritarian regime.[[600]](#footnote-600) The weaker legislature is a product of authoritarian rule, which is faced with three institutional consequences. Firstly, it supports executive control over the other governing agents which maintain horizontal accountability. Specifically, those agents that require the approval of a consistently supportive legislative majority, such as in the constitutional courts and electoral commission. Secondly, it enhances the ruling party’s ability to extend or deepen authoritarian rule via constitutional amendments, such as eradicating presidential term limits or extending its tenure. Finally, legislative control has a defensive strategy: to eliminate the legislature as arena for contestation that potentially could frustrate presidential appointments, generate new devices of scrutiny, conduct investigations into government manipulation, and put forward a vote of no confidence, threatening the incumbent’s political survival.[[601]](#footnote-601)

In terms of legislative control, this chapter tackles how the ruling parties influence the KP's legislative and oversight functions. It demonstrates how the ruling parties have enabled the KP to enact laws in favour of their interests, even though it used illegal procedures of law making. It discusses when the parliament has become an arena for political contestation and conflicts due to an effective parliamentary opposition and it has been illegally closed. It was illegally reopened to re-establish authoritarian rule. The chapter also deals with how the ruling parties deliberately designed dysfunctional oversight devices and employed its patronage networks to stop the KP from holding the KRG to account.

**5.2 Kurdistan Parliament: Historical Background**

When the negotiation stalemate happened between the ICG and the IKF after the uprising in 1991, a governmental and legal vacuum was created due to the withdrawal of the ICG's military units from the KR in September 1991. This was followed by the withdrawal of the administration in October 1991. In this new situation, the IKF as a de facto authority found a unique opportunity to shape the KR’s governing institutions; the KP and the KRG.[[602]](#footnote-602)

The idea of forming an elected legislature was not new. It dated back to 1988, when the IKF had already decided to form a national council that could embody the views and interests of Iraqi Kurdistan citizens.[[603]](#footnote-603) However, circumstances and events did not allow it to be applied on the ground, until the opportunity appeared in 1992.[[604]](#footnote-604)

Domestic and international factors delivered the opportunity to establish the KR’s governing institutions. Firstly, the Iraqi defeat in the FGW contributed to the mass uprising of March 1991 and that consequently paved the way for the IKF to control the KR as a de facto authority. Secondly, the issue of Resolution No. 688 by the UN Security Council to protect the Iraqi civilian population, which in turn set up a safe haven via a no-fly zone for the Kurds in the north and the Shiites in the south.[[605]](#footnote-605) Thirdly, there was the withdrawal of the Iraqi military apparatus and civilian administrations from the KR and the imposition of the economic blockade by the Iraqi regime, while the negotiations between the IKF and the Iraqi regime ultimately failed to reach agreement on the outstanding issues. Eventually, the decision was made by the IKF to hold a parliamentary election along with an election for the leader of the KLM.[[606]](#footnote-606)

Since 1992, the KP has seen many difficulties.[[607]](#footnote-607) It is argued that the early parliamentary experience was circumscribed by the insurgency legitimacy due to the breakout of the civil war in 1994. This was a challenging situation that produced the first reverse to democratisation in the KR. In contrast to the ruling parties’ rhetoric pertaining to democratic institutions, the civil war decisively created the dichotomy of the KRG. The KR, as Stansfield stated, ‘was partitioned between the KDP and PUK in 1994, [and] the division was consolidated…in 1996’.[[608]](#footnote-608)

There are three reasons behind this institutional phenomenon. Firstly, the political parties, especially the ruling ones, have constituted the governing institutions in the region, and sustained their survival and durability for the whole life of the formal institutions under their political control. In other words, from the institutional conception, the existence of the political parties, as rebel insurgent, preceded the political and legal presence of the KR. Secondly, the ruling parties have firmly established themselves as paramilitary organisations. Thirdly, the endurance of the tentative relationship between the KDP and PUK, which has led, in turn, to the emergence of political instability and the development of an institutional situation that has created the DPG in their administrative zones.

In the first parliamentary term, the KP passed through three stages. The first was characterised by legislative control resulting from a bilateral agreement between the KDP and PUK on 22 May 1992 and subverting the oversight mechanism of the KP.[[609]](#footnote-609) At the same time, a parliamentary opposition did not exist because the 7 percent threshold had left no room for political expression and prevented the other parties from gaining even one parliamentary seat.[[610]](#footnote-610) Concurrently, the election of the supreme leader was held and neither Masoud Barzani nor Jalal Talabani secured a majority of the votes. The position was vacant until 1999, when Talabani unilaterally declared himself as the leader of the KLM backed by the PUK politburo.[[611]](#footnote-611)

In the second era of the first KP term, the legislature was divided according to the KDP and PUK dominated administrative zones resulting from the civil war. The KR was politically and administratively divided, however, it was originally separated into three areas because of the infighting among the three strongest and most belligerent parties at that time. The first one was the KDP administrative zone (Yellow zone), which included the governorate of Duhok and most areas of the governorate of Erbil. The second one was the PUK administrative zone (Green zone) and included the governorate of Sulaimani, the eastern part of the governorate of Erbil and the then liberated areas of the governorate of Kirkuk.[[612]](#footnote-612) These two zones have existed de facto since 1993 and formally from 1998 until 2001 when the ruling parties’ leaders cooperated to challenge Islamic radicals in the third zone that was located under the influence of the Islamic Movement in Kurdistan (IMK), covering the province of Halabja and its suburbs.[[613]](#footnote-613) However, several un-allied MPs from the PUK’s Green Faction continued supporting the KP after the forceful control of Erbil, where the parliament convened, by the KDP forces with the Iraqi regime’s assistance on 31 August 1996.[[614]](#footnote-614) The KDP controlled and extended the KP’s term for one year. Accordingly, the KP’s meetings continued and provided confidence to the ‘third’ cabinet of the ‘coalition government’ in the Yellow Zone- Erbil Administration. Notwithstanding the lack of parliamentary representation, some parties participated in the cabinet due to political agreements, such as the IMK, KIU and the KCP.[[615]](#footnote-615)

To a broader extent, that geographical, political and administrative division resulted in a legal and constitutional partition, particularly when the PUK’s politburo supported its Secretary-General (Jalal Talabani) as the ‘president’ of the KR with legislative authority. In practice, he was only the ‘president’ of the areas controlled by the PUK.[[616]](#footnote-616) The ‘president’ issued some decisions that had the force of law in the Green Zone- Sulaimani Administration, where a ‘coalition government’ was also formed by the PUK with the allied political parties: the Kurdistan Toilers' Party (KTP) and the Kurdistan Socialist Democratic Party (KSDP).[[617]](#footnote-617)

In the third era of the first KP term, the unified KP held its first post-war meeting on 10 April 2002. This was under the nickname of the Transitional Session since the Washington Agreement was signed in 1998, which painted a road map to achieve peace and re-establish the KR institutions. The WA asked for a parliamentary election to be held as soon as possible, but the ruling parties decided to call the PUK MPs instead.[[618]](#footnote-618) Due to the lack of trust and fears for the electoral outcomes, a partisan arrangement was delivered instead. The PUK thus nominated its MPs according to the election results of 19 May 1992 (49 seats for the PUK and 51 seats for the KDP) and disregarded the fifty-fifty system. This ensured that the KDP secured a parliamentary majority during the Transitional Session, though the two administrations remained in their zones. This situation prevailed and the KP could potentially not have been able to fulfil its regulatory and financial functions, because of the bipartisan agreement and the absence of parliamentary opposition.[[619]](#footnote-619) The reality of parliamentary sessions revealed that there were rarely dissenting voices or abstentions against the decisions and laws during the various periods of the first KP term by the regime-friendly parties allied with the two ruling parties' factions.[[620]](#footnote-620)

Law No.1 gave a mandate for the first parliamentary term for three years, which started with the first meeting of the KP and ended with the last meeting in the third year.[[621]](#footnote-621) The first parliamentary term was expected to end on 4 June 1995 and a parliamentary election was supposed to be held then. Conversely, the legal existence of the KP was abrogated due to the civil war. Consequently, the legislature was partitioned by the KDP and PUK in their respective administrative zones. Thus, the rule of law was undermined, as the mandate of the KP had been extended under laws enacted by MPs themselves in the subsequent years of 1995, 1996, and 1998 until the parliamentary election that was held in January 2005.[[622]](#footnote-622) During the first KP term, the KR was unsuccessful in making a ‘transfer from a party-oriented system to a government-based structure’.[[623]](#footnote-623)

The second KP term started from the election held on 31 January 2005, when the new political and constitutional circumstances began. These were marked by the overthrowing of the Ba'ath regime in Iraq on 9 April 2003 by the occupying forces. Then, the process of re-establishing political institutions in the new Iraq started in accordance with basic laws; namely, the Transitional Administrative Law in 2004 and the IFC in 2005. These political and constitutional facts induced a parliamentary election in the KR incorporated with the elections held in Iraq for both the Iraqi National Assembly and governorates' councils. Hence, after years of civil war, a parliamentary election was held to form a unified legislature in KR.[[624]](#footnote-624) Although the KDP and PUK were supposed to reunite the KR institutions according to the WA from 1998, the status of the Iraqi state after the Ba’ath collapse encouraged the Kurdish ruling parties to bury their differences to secure the status of the KR in the IFC.

The PUK and KDP eventually reached an agreement on 7 May 2006 for an equal distribution of senior positions, in either the KR or Baghdad. Incidentally, they returned to the previous fifty-fifty power-sharing system. In addition, they founded a broad-based government by giving some ministerial positions to the other parties of the Kurdistan Islamic Group (KIG), KTP, KSDP, KIU and KCP.[[625]](#footnote-625)

During the third parliamentary term, a positive outcome occurred on 25 July 2009 as an effective parliamentary opposition emerged; the MC, which has enriched considerably the parliamentary experience in the KR. The third parliament could be described as a pluralist parliament after 1992 embracing both the opposition and ruling parties’ factions. For the first time, an active parliamentary opposition from the MC, KIU and KIG factions emerged. Meanwhile, the KP exuded a spirit of vitality and dynamism. The parliamentary opposition raised internal issues related to corruption, cronyism, institutionalisation, rule of law and social justice rather than national issues.[[626]](#footnote-626) Additionally, they mainly focused on the ruling parties’ domination and asked to reform the governing system.[[627]](#footnote-627)

During the fourth parliamentary term as both the KDP and PUK had independently entered the election, new political outcomes appeared. The results of the parliamentary election[[628]](#footnote-628) held on 21 September 2013 produced a hung parliament- a constitutionally new situation for the KR when the KRG can only be formed through a coalition. The election produced an undesirable outcome for the PUK.[[629]](#footnote-629) This temporarily ruled out the KDP’s strategic ally, the PUK, as a sole partner to form the KRG together. However, it was theoretically possible for the ruling parties, as they have enough with their 56 seats, to form a bipartisan coalition government.[[630]](#footnote-630) Hence, the declining electoral weight of the PUK was unable to perpetuate the party dualism of the KRG. Serhat Erkmen has described the situation as ‘the two-party system….no longer exists. The political dynamics stemming from the conflict and/or collaboration between the KDP and the PUK have been replaced by a multi-equilibrium game and a more complex structure’.[[631]](#footnote-631) The election results considerably increased the opposition backbenchers from 35 to 41 compared to the previous KP term. This also generated a change in the political equation, as one of the opposition parties, the MC, had stepped up to second place, after the KDP.[[632]](#footnote-632) That led to a new process of forming a broad-based government, in which the parties with parliamentary seats participated according to their electoral capability. Meanwhile, to some extent the SA had been considered in the distribution of ministerial positions, even though negotiations to form such a government lasted almost 8 months, from October 2013 to May 2014.[[633]](#footnote-633) It was broadly argued that the time taken to form the cabinet demonstrated the struggle for the democratisation process and the resistance to a peaceful alternation of power, though, it was a partial success as a broad-based government eventually formed. The negotiation for the eighth cabinet configuration faced extreme difficulties because ‘the KRG has never been fully institutionalized as an administrative organization and has been strongly influenced by the two leading parties since 1990s’.[[634]](#footnote-634) A prolonged process, however, is better than a situation being dragged towards internal conflict.

It is worth mentioning that, the former opposition parties have held senior positions in the KP and KRG including the Speaker, the Ministry of Finance and Economy, the Ministry of Peshmerga, and some other high positions. Therefore, a new stage of political and institutional development could have started in KR, though initially this would depend on conducting constitutional and legal reforms.

Despite many challenges related to the IS war and the grave economic crisis the KR faced, the KP has issued many laws since May 2014 that could bring in institutional redesign. Such laws related to parties’ funds, the structure of the KRG and establishing a unified Peshmerga and security apparatuses. However, a broad-based government would be expected to lead the way towards partial institutional reforms, during an extremely sensitive political stage in contemporary history. Meanwhile, a parliamentary majority emerged challenging the then RP to address the presidential term crisis. Consequently, the KP faced a coup and was closed for nearly two years until it was reopened to legitimise the independence referendum held on 25 September 2017 and to suspend the KP election, which resulted in extending the KP term for eight months.[[635]](#footnote-635) This marked a reversal to authoritarian rule due to authoritarian and violent interruption.

This historical background of the KP, its establishment, elections, extensions, divisions according to the KDP and PUK’s zones and recently its closing by a coup and reopening are all compatible with Steven Levitsky and Lucan Way’s conception of legislative control. The two ruling parties have used the KP as an instrument to serve their authoritarian rule, otherwise, when it fails to serve their ends, it has been suspended or closed. This demonstrates that the KP is not an independent institution by itself. Its existence rather depends on the political will of the ruling parties.

**5.3 Legal Framework of the Kurdistan Parliament**

The KP exercises powers according to Law No. 1 of 1992 and its bylaw. Their enactment returns to the prevailing political and historical circumstances that required the unity of the parties’ political will as embodied in IKF to constitute the KR structure in 1992. While the outcome of the first parliamentary election affirmed the status of party governance either in combination or separated.

Since then, the ruling parties strongly refused to promote a balance of power and opposition. In other words, none of them was ready to take part as a parliamentary opposition. Alternatively, they founded a party quota system for the equal distribution of parliamentary delegates and ministerial positions, including the entire KR revenues, administrations, military and security forces based on fifty percent each. The aim of such a fifty-fifty scheme was to ‘achieve an even division of power between the KDP and PUK in all government offices’.[[636]](#footnote-636)

In this regard, the status of the Kurdistan Parliament Presidium (KPP) as a political position rather than a legislative duty[[637]](#footnote-637) is equivalent to the prime minister.[[638]](#footnote-638) Accordingly, the ruling parties agreed that the KDP, ostensibly the party of the parliamentary majority, held the position of the KPP with comprehensive authority, whereas, the position of prime minister was taken by the PUK. In addition, members of the politburo, the highest decision-makers who have the major political influence after the party leader, held the presidency and its deputy in the KP and KRG. Real power was informally entrusted to the politburos.[[639]](#footnote-639) The main purpose beyond this, on the one hand, was to indicate the significance of the ruling parties to participate in the governance by relatively decision-makers and those who had the ability to control and restrain ministers and party members in the KP. This is also to guarantee that the bilateral agreements between them will be fulfilled. On the other hand, it aimed to restore confidence that the ruling parties could form a national government capable of managing the outstanding issues after years of rivalry and infighting.[[640]](#footnote-640)

At this time neither of the KDP and PUK leaders, Masoud Barzani or Jalal Talabani, was ready to hold either government or parliamentary offices. The consequence of their decision not to participate themselves was reflected in two aspects. Firstly, it ‘denied the government valuable credibility and left it in the hands of mere lieutenants of the KDP and the PUK’.[[641]](#footnote-641) In other words, the KRG and KP officials were essentially subordinate as ‘functionaries for their political party leaders’.[[642]](#footnote-642) Secondly, it mirrored their parties' political vision by considering their parties as being much higher than the governing institutions. Holding the highest position in their parties also meant ruling the government indirectly or at least their party's entity in the government. That was apparent, particularly after none of them could gain an absolute majority to secure the position of the KLM leader in the first round of the election. The second electoral round was not conducted and was ultimately postponed, contrary to the rule, which postulated that it should be done between the two candidates who gained the majority votes in the first electoral round,[[643]](#footnote-643) respectively, Masoud Barzani and Jalal Talabani. The law was deactivated until 2005 when it was substituted with the Presidency Act. According to the SA, Masoud Barzani was selected by the KP as the RP since then. Meanwhile, Jalal Talabani became the president of Iraq in the same year.[[644]](#footnote-644)

This political situation and the institutional framework will be examined, particularly after the emergence, for the first time, of a parliamentary opposition on 25 September 2009. Since then, the KR governing system has seen some changes that affected the relations between political parties, specifically parliamentary factions. The relations between the parliamentary majority and the opposition have passed through convulsions and conflicts that might have led to political instability and other predicaments. Consequently, the relationship between the opposition factions and the KPP faced inevitable challenges, resulting from the highly patronised and party affiliated administration of the KP meeting under the rule of the SA.[[645]](#footnote-645) Accordingly, it is important to address the KPP during the third term by looking at its partisan nature and its broad powers as to whether it could keep an equal distance to the parliamentary factions and deal with them impartially when exercising its powers.

**5.4 Kurdistan Parliament Presidium: Embodiment of Legislative Control**

The KPP has many powers correlated with the constitutional, legislative, political oversight and financial powers of the KP as a governing and political establishment. The Speaker exercises the presidium’s authority either unilaterally[[646]](#footnote-646) or cooperatively[[647]](#footnote-647) with his/her colleagues. There is a close relationship between the presidium and the performance of parliament as a political institution and legislative authority. The governing body of the parliament has an impact on the actual functioning of the institution. That is why, after elections, the KRG cannot be formed until the political parties reach an agreement on the KPP with the other KRG offices as a package.[[648]](#footnote-648)

The legislative process consists of several phases starting with the proposal of a bill, then the debate on it inside the parliamentary committees: reading, discussing and voting in the chamber, then its publication, its enactment and then its legal enforceability. The KPP, along with MPs and parliamentary committees, plays a prominent role in the entire legislative process. Accordingly, it manages the administrative procedures related to the identification of parliamentary sessions, holding meetings, general debate on the issues and projects raised, and suspending them.[[649]](#footnote-649)

The partisan and weakly institutionalised management of the KP sessions has led to the relationship between the presidium and the opposition factions becoming explosive. During sessions and on many occasions, verbal arguments among the presidium and opposition MPs broke out and even turned to quarrels and fighting among MPs from the ruling and opposition factions inside the chamber. Once, after having a verbal argument between one of the opposition MPs and the Speaker,[[650]](#footnote-650) the latter, at a press conference in front of a crowd of journalists from the local and international press, which he also confirmed later in an interview on NRT, said that ‘we could give him a lesson never to be forgotten’.[[651]](#footnote-651)

The KPP ought to be impartial when dealing with the disputes that arise among the MPs and their factions. Otherwise, if the presidium uses its powers to threaten one side of the conflict and support the other, this will eventually obstruct the parliament's mission. For instance, when daily demonstrations started in Sulaimani governorate, on 17 February 2011 and lasted for two months, asking for more infrastructure resources and reform in the KR, the presidium witnessed violence between demonstrators, and the police and other security forces. Throughout the demonstrations, a group of opposition MPs gathered in the KP chamber to address the potential options- either to stay or withdraw from the entire political process, or to express their political views in a statement about contemporary events. Meanwhile, the opposition MPs were detained as the Speaker ordered that all the chamber's doors should be closed.[[652]](#footnote-652) This can be regarded as a partisan and political act, but it was also an illegal and undemocratic one, having a negative impact on the actual performance of the KP while exercising its functions.

There was another dispute between an opposition MP and the Speaker, but this time the Speaker was from the PUK. The latter ordered the MP to be silent and take his seat, otherwise, the KP guards would be asked to take him out of the chamber. The Speaker can take necessary steps to maintain security and order during meetings by determining the appropriate force for this purpose. The KP guard unit is under his command, and as stated it is within his powers to enforce the law.[[653]](#footnote-653) This is one of the powers that might be turned against the freedom of MPs to speak in parliamentary debates and express their views on the issues raised. The main loophole of Law No. 1 and the KP bylaw is that they provide the KPP with excessive powers to impose bilateral agreements between the two ruling parties to secure order during KP’s meetings. The way the presidium’s powers are being exercised by the party affiliated Speakers proves the KP is a partisan institution serving the ruling parties’ agenda.

Parliamentary sessions cannot be held without a work schedule. The presidium organises the agenda for each meeting. Then, the Secretary notifies MPs and the cabinet members, and communicates with them directly to provide them with projects, proposals, and reports for discussion at least two days prior to a session. Therefore, topics that have not been mentioned on the agenda will not be put forward for discussion in the session. The MPs start discussing the points mentioned on the agenda, according to their sequence in the list, one after another. Their sequence can only be substituted by the majority approval of the attendant MPs. If the discussion about a clause in the agenda could not be processed for whatever reason, the presidium can postpone it to the next session. Each KP faction leader has the right to request the inclusion of a new topic on the agenda 24 hours prior to the session, but only in the case of public or urgent issues.[[654]](#footnote-654)

The presidium during the third KP term, in some instances, breached legal rules that shape the course of its work. The aim of scheduling the KP meetings and notifying the MPs at least two days prior to the meeting is to allow MPs sufficient time to prepare for the meeting. The presidium has infringed this on several occasions. The most notable occasion was during the last meeting of the KP held on 30 June 2013, which was devoted to extending the mandate of the RP for another two years[[655]](#footnote-655) and to prolong the parliamentary term until 1November 2013.[[656]](#footnote-656) The presidium proposed a bill on 30 June 2013, after the ruling parties had agreed on four points a day earlier. Among them, was the extension of the mandate of the then RP Barzani, until 19 August 2015,[[657]](#footnote-657) which satisfied the KDP’s policy,[[658]](#footnote-658) while his presidency ought to have ended on 20August 2013.[[659]](#footnote-659) However, according to the Presidency Act, a president's nomination for a third term is not allowed.[[660]](#footnote-660) In accordance with the proposed bill of 30 June 2013, the KP’s third term was extended until 1 November 2013, whereas the fourth KP election was scheduled for 21 September 2013.[[661]](#footnote-661) Nevertheless, Edict No. 45 issued on 6 February 2013 by the KPP ordered MPs to suspend proposing and submitting new draft laws. Its justification was that the current term of KP was nearly finished and there were already many proposed bills under discussion. Thus, there would not be enough time to discuss new proposals. Conversely, the presidium announced the bill to extend the presidential and parliamentary terms within the KP session held on 30 June 2013 and incorporated it into the session agenda. Therefore, the presidium violated the edict issued by itself. This indicates that political agreements are used to make new rules and can make amendments to existing laws to protect the governing parties' interests, even if they are processed through illegal procedures.[[662]](#footnote-662)

In that way, the KPP angered opposition MPs; especially the MC MPs. Consequently, during the session one of them attacked the presidium, by throwing a bottle of water hitting the giant TV screen behind the KPP platform, and the microphones in front of them were knocked away. The situation turned into clashes among MPs of the opposition and majority factions, consequently the police guard of the KP detained an opposition MP for hours, and the session was suspended for four hours. Eventually, after the resumption of the meeting in the early evening of the same day, the majority agreed to extend the then RP’s mandate and the KP term.[[663]](#footnote-663) This can be identified as a clear violation of the KP bylaw, which adjudicates that when a bill is proposed, the presidium should send it, after the first reading, to the relevant parliamentary committees.[[664]](#footnote-664) Subsequently, the committees have to prepare reports on the bill within 5 to 10 days and deliver them to the presidium.[[665]](#footnote-665) Additionally, such a situation in the chamber, which had seen clashes among MPs and caused chaos, was not legally empowered to pass laws. In such circumstances, bills cannot be discussed, and votes cannot be counted. The legal rules, therefore, were suspended and temporarily deactivated when the political wills of the KDP and PUK appeared in bilateral agreements. If the existing rules can serve the ruling parties' political agenda, then they are seen to have been implemented properly. Otherwise, the ruling parties prefer to fulfil the rules that are produced by themselves via bilateral agreements. Without a constitutional court, the KR lacks an impartial arbiter to raise the issue of constitutionality of such laws.[[666]](#footnote-666)

Conversely, earlier on 9 January 2013, around 50 MPs from various parliamentary factions, including MPs of the Kurdistani Ally; particularly the PUK MPs, proposed a bill concerning the method of selecting the RP. It aimed to change the scheme from a public election to a president selected by parliament. It also intended to diminish the president’s powers and oblige those who hold the position to resign from her/his party. Each bill submitted to the KP needs either to be proposed directly by the KRG or to be signed by at least ten MPs.[[667]](#footnote-667) The KPP rejected the inclusion of the bill in the session agenda. The bill was not serving the interests of the ruling parties. Specifically, it was contrary to the KDP's strong will and policies that aimed to support the party president who held the RP with broad constitutional powers. That is why both the Deputy Speaker and the Secretary of KP, who were from the KDP, refused to allow the bill on the session’s agenda.[[668]](#footnote-668)

The KPP is supposed to manage the KP's sessions impartially, when exercising powers vested under the effective laws and regulations, standing apart from partisan attitudes and policies espoused by the parliamentary majority. In this sense, the KP should not be envisioned as a council of the ruling parties, but as an institution representing the public will from various spectra and the prevailing political movements. The KDP ought to defend its policies in accordance with the prevailing legal rules. But the governing system is designed to maintain the constitutional position that serves the ruling parties’ interests. Through the Deputy Speaker and the Secretary of KP, the KDP could impede the passage of any bill contrary to its policies. It should be possible to modify those laws that give privileged powers over the constitutional function, only through issuing new laws or the amendment of existing ones. This was subject to a legal process involving the will of the two ruling parties through a parliamentary majority, which was absent with respect to that bill. Accordingly, the submission of a draft law by the parliamentary factions, without the KDP backing, to amend the constitutional position of the RP would have been futile.

Most MPs of the PUK, the strategic alliance of the KDP, signed up to the proposed bill that intended to change the governing system from semi-presidentialism to a parliamentary government. To return to the PUK MPs' support for the project, a shift in their attitudes occurred as they supported such a project after an agreement between the PUK and MC on 24 September 2012 known as Dabashan Agreement (DA) or memorandum of understanding. The key points in this agreement were to return the draft constitution to the KP to make new amendments and to work together to change the governing system from semi-presidential to parliamentary government so that it would be consistent with the IFC. In addition, both agreed to enact those laws in the KP that reflect the national interest by consensus.[[669]](#footnote-669)

In this regard, the Presidency Act of 2005 was enacted according to the SA between the KDP and PUK. To make any changes in such laws, the approval of the ruling parties is predominant. The KPP is designed to maintain the ruling parties’ conventions. This has already happened on 30 June 2013 when the ruling parties agreed to modify some provisions required by their bipartisan interests, even if the amendment was illegally conducted because it ignored the KP bylaw. Even in disastrous situations when the ruling parties were involved in bloody events when innocent people were killed by their affiliated gunmen in the 17 February 2011 events, the KPP continued supporting the ruling parties’ position. This was either through the refusal to take actions or has undertaken investigations, but without any political and legal consequences, which all make the KP’s legitimacy questionable. Therefore, the KP under its partisan presidium has served the ruling parties either legally via the majority or illegally by blocking and passing of bills despite the infringement of the KP bylaw.

**5.5 Kurdistan Parliament’s Partisan Role Endures: The 17 February Events**

In 2011, a series of bloody events happened that necessitate more analysis to clarify the third KP’s performance. In the contemporary situation that reflected the Arab Spring, the MC had issued on 19 January 2011 a seven-point statement for reform, mainly asking for the dissolution of the KP, the KRG and holding new elections.[[670]](#footnote-670) This statement was a warning for the ruling parties as waves of anti-government protests echoed across the entire region. If the KDP and PUK do not reform, then Kurdish Spring could happen in the KR.[[671]](#footnote-671) This caused heated debates among people, politicians and the KRG. The KDP and PUK in a statement via a meeting called by the then president Barzani on 30 January 2011, which was also signed by other parties, including the KIG and KIU, and some minority groups, immediately rejected the MC appeal. This statement denounced the MC’s call as irrational and illegal, jeopardising the KR’s stability and security.[[672]](#footnote-672) Notwithstanding it recognised the KRG’s shortcomings and corruption, alternatively it promised reforms via cooperation between the government, opposition and civil society.[[673]](#footnote-673)

Moreover, inspired by the Arab Spring, a group called the Network to Protect Rights and Freedom of People, held a gathering in Sulaimani, Iraqi Kurdistan's cultural capital. This aimed to proclaim support for the peoples of Egypt and Tunisia on 17 February 2011.[[674]](#footnote-674) During the meeting, some speakers criticised the KRG for failing to provide basic services. The demonstrators demanded better living conditions and employment opportunities.[[675]](#footnote-675) After ending the gathering, some protestors marched towards the local office of the KDP as a symbol of power across the KR, chanting slogans against corruption and throwing stones at the building. The KDP affiliated security guards responded by shooting, resulting in the death of a male adult and injuring 53 civilians.[[676]](#footnote-676) Thereafter, this event marked the beginning of a daily mass protest with thousands of people taking to the streets and continuing strongly for two months across the Sulaimani governorate resulting in the death of 10 people and the injury of dozens.[[677]](#footnote-677) The demonstrators started to organise themselves through the Freedom Square Council. Several protestors, social reformers, independent journalists, students, academics, lawyers, and opposition activists had been oppressed, tortured, detained, or threatened.[[678]](#footnote-678) Many journalists and media channels were threatened and faced intimidation, including the NRT; the first independent Kurdish television broadcaster, following its live broadcast of the demonstrations, which was burned down by anonymous gunmen.[[679]](#footnote-679)

The KR is rich and has vast reserves of oil and natural gas. However, its people demonstrated calling for basic services. Gradually, during the daily sit-ins in Sulaimani's central square, the demonstrators expanded their demands from basic rights to reform of the political system. Meanwhile, opposition parties, specifically the MC headed the demonstrations, which then took on a political dimension. They had voiced their collective demands calling for equality, a fair share of resources, fighting corruption, political, economic and social reforms. The demonstrators complained about the political and economic control wielded by the ruling parties.[[680]](#footnote-680) The demonstrators and opposition parties then asked for all political institutions, including the KP and KRG to be toppled. Opposition tactics are various between elections. Rather than limit their actions to parliament, oppositions in electoral authoritarian regimes may organise and take part in public demonstrations intended either to bring down the government or at least to put pressure on the government to start democratizing reforms before the end of its mandate. Compatible with the literature, such strategies were broadly adopted in the KR following the emergence of the parliamentary opposition in 2009.[[681]](#footnote-681) Eventually, after 63 days, the bloody protests came to an end when the ruling parties, as an ongoing option, used security forces widely and ordered the militarisation of the city on 19 April 2011.[[682]](#footnote-682)

The question of the KP's attitude to its legal commitments and the ruling parties' political will, the issuing of Resolution No. 2 is a good example. It clarifies how the KP chose to protect the ruling parties' interests rather than the public interest. Resolution No. 2 was a response to the demonstrators' demands. The background of the decision returns to the fact-finding parliamentary committee formed according to Section No. 17 of Resolution No. 1[[683]](#footnote-683) on 23 February 2011 from all KP factions to investigate the facts, to hold meetings with the demonstrators' representatives of the 17 February events to tackle their demands. Following the meetings, the committee prepared a report signed by all the committee's MPs. Later, it was approved during an extraordinary session No. 7 on 17March 2011 where 104 out of 111 MPs voted for and only 5 voted against.[[684]](#footnote-684) Following that event, publishing that decision in the Kurdistan Waqaee became one of the most important demands of the then opposition factions.

The KPP has primarily had the responsibility to send decisions and laws approved by the KP to the RP to be issued unless the president has used the veto. The KP might pass laws, whether the presidential veto is taken into consideration or not. Whereby it could legally pass the laws that being, either entirely or partly, rejected by the RP through the majority that is required for passing laws. Politically, however, the KP could not pass a law if the RP has used the veto, because he is simultaneously the president of the KDP. Accordingly, the KDP faction's consent has predominance for such a legal situation. As far the KPP’s authority to issue laws and decrees is concerned, the amendment act of the Presidency Act in 2005 had abolished this parliamentary jurisdiction and granted it to the RP. The law prescribed that the RP issues laws and decrees that are prescribed by the KP within fifteen days of their arrival, and other legal text or decision inconsistent with the provisions of this law is not valid.[[685]](#footnote-685) Under the rules of the SA, the RP was established with excessive powers and legislative functions that were given exclusively to the KP only.[[686]](#footnote-686) Meanwhile, there is a difference between the power to issue laws and decrees, which require the RP’s consent, and the responsibility of the KPP to send out laws and resolutions to the RP to be issued. After the laws and resolutions are approved by the parliament, the KPP is legally responsible for sending them to the RP to be issued and thus become enforceable.

It is worth mentioning, the KPP has obstructed the issue of any decision opposing ruling parties’ interests, by deliberately hindering sending it out to the RP to be issued. The best evidence is the neglect of Resolution No. 2, which was overwhelmingly approved by both the opposition and ruling majority, as its promulgation depended on its issuance. It was the responsibility of the Speaker to send out every approved law and resolution to the RP to be issued. This resolution has not been published up until now because it has not been sent out yet. That aroused an extreme and ongoing debate among the opposition, ruling parties, parliamentary factions, RP and the KPP.

As stated in Hansard No. 64, the Speaker said, ‘the resolution has been voted on. The points just read will be the mechanism to process Resolution No. 1 of the KP on 23 February 2011. This is to say; a mechanism for Resolution No. 1 is put by Resolution No. 2’.[[687]](#footnote-687) However, what published in the official Waqaee as Resolution No. 2 was one with a different content concerning the appointment of Shirwan Naseh Abdullah in the absence of Firsat Ahmed, the KP Secretary then.[[688]](#footnote-688)

Resolution No. 2, and its content, had become and still continues to be, an ongoing thorny issue between the opposition and the ruling parties. For the opposition, it was an urgent demand to calm the contemporary political situation and to maintain the opposition's credibility in the political process. They focused more on some issues, including the amendment of the draft constitution and the laws that have a national dimension. Others have been concerned with achieving justice, the rule of law, the independence of the judiciary, organising the political parties' relationship with the governing institutions, especially their relationship with the security forces and Peshmerga apparatuses. On the other hand, the concealment of Resolution No. 2 became an ongoing matter of debate on independent and opposition media outlets. What people in general, and the relatives of the 17 February events victims were concerned about was that justice could only be maintained via a fair trial of the party affiliated gunmen who were accused of shooting at and killing civilians during the demonstrations. Furthermore, social justice, poor quality service, financial and administrative corruption, breach of the citizens' fundamental rights, and victim families' compensation were predominant issues for public discussion.[[689]](#footnote-689)

Two years later, on 1 April 2013 the president Barzani then called for the issuance of Resolution No. 2 soon when he met with ’the Committee of Assuming Attitudes’ which was composed of party delegates and was formed to tackle the outstanding issues between the IFG and the KRG. Barzani’s call was only to convince the opposition's request in the meeting and their condition for participation and assuming attitudes alongside the ruling parties.[[690]](#footnote-690)

On 20 May 2013, in another development, when the Speaker, Arsalan Baeez,[[691]](#footnote-691) via a statement by the Speaker Media Office announced to the public explaining the obstacles that prevented Resolution No. 2 being promulgated. Kamal Kirkuki had been the Speaker when the resolution was approved by the KP in 2011. This was a direct response to what the RP's head officer, Fuad Hussein, stated; what the RP could do about a resolution when the KP issued it but had not published it, whereby the RP had called for its promulgation twice.[[692]](#footnote-692) This statement aimed to discharge the responsibility of the RP to issue the resolution. Similarly, the Speaker’s statement raised a range of issues aiming to remove the accountability of Baeez. In this regard, the main justification was concerned with Baeez’s status as a Deputy Speaker instead of the Speaker when the resolution was approved. The statement highlighted the following topics that are worth mentioning:

1. The parliamentary committee was formed from all parliamentary factions under Section 17 of Resolution No. 1 issued by the KP at its extraordinary meeting on 23 February 2011.
2. Most MPs, from different parliamentary factions voted for the report that reflected the demonstrators' demands in the extraordinary session No. 7 on 17 March 2013 wherein one hundred and four MPs voted for and only five voted against. That had been recorded in Hansard No. 64 on pages 476-485.
3. The Parliament Affairs Directorate usually drafts resolutions, while it is the responsibility of the Speaker to promulgate them.
4. The content of the published Resolution No. 2 was about appointing an MP to hold the position of the KP Secretary in the case of the Secretary's absence.
5. The Speaker wanted the RP to ask the previous Speaker who was from the KDP, for the reason beyond obstructing the promulgation of Resolution No. 2. Baeez stated that, when he was the Deputy Speaker, he never stood against the promulgation of the resolution despite having legal concerns about its content. During a meeting held on 29 April 2013 between the Speaker, Deputy Speaker and Secretary, where two MPs from the KP’s legal committee and opposition representatives attended to formulate the resolution's draft and its publication Baeez showed his support. But one of the legal committee members expressed reservations about a new formulation of the resolution and as a result, it was not promulgated.[[693]](#footnote-693)

The importance of Resolution No. 2 lies in its procedural implementation of Resolution No. 1, which contains important issues concerned with establishing the rule of law and converting the KRG organisations from party-controlled into democratic institutions. Politically, the reasons beyond the non-issuance of Resolution No. 2, whereby the opposition held firm to its content, either directly or indirectly, demonstrates the resolution's political and constitutional importance. The ruling parties occasionally express their intention to issue the resolution, despite showing opposing attitudes, even causing embarrassment to each other. They have been reviewing their attitudes and showing a new unified stance to reject its issuance.

The ruling parties' attitude towards the resolution and the required political reforms are based on achieving narrow political gains. For example, gaining time and using it in the election campaign, or strengthening their positions by attracting the opposition for a united political front concerning the outstanding issues with which to challenge the IFG in Baghdad. While the above-mentioned statement can be legally criticized from three aspects, as following:

Firstly, the statement holds legal contradictions, which also reveals the inconsistent attitudes of the KPP. A part of the statement emphasized that proceedings were legal that were taken to pass the resolution. In this regard, the statement quoted the Speaker's word in Hansard as evidence of the legal proceedings’ credibility. On the other hand, despite referring to the different content of the published Resolution No. 2, as discussed earlier, the statement refers to a meeting between the opposition and ruling parties, under the supervision of the KPP to promulgate the resolution. In the meeting, a member of the legal committee prevented its issuance. Legally, it is beyond the authority of one member, to be able to hinder the promulgation of a resolution when it has passed all legal procedures. The logical explanation for that situation is that the ruling parties had changed their minds, and the KPP has followed and supported the KDP and PUK interests, showing that remarkably it could not stand against their wishes even if it is illegal.

Secondly, the statement assigned the responsibility for drafting the resolution to the Parliament Affairs Directorate and to the Speaker to publish it. The latter was from the PUK however, he was the Deputy Speaker at that time. Accordingly, he was not responsible for the non-issuance. Instead, he considered the former Speaker from the KDP responsible for violating the legal rules. While instead of exempting himself from responsibility, specifically when Baeez became the Speaker, he could have sent the resolution to the RP to be issued. Furthermore, holding an office for two years based on the SA, is not enough for either the parliamentary or the government’s senior offices to implement their policies and attain their mission. Additionally, it sometimes created a situation where those who swapped offices accused each other of being responsible for not carrying out their assigned duties and so accountability itself vanished.

Thirdly, the statement says the Speaker has authority to issue decisions where they have been legally drafted. The statement referred to the authority of the second amendment of the KP bylaw in 1998, as the Speaker can issue those decisions that are approved by the KP. The subsequent act of the RP in 2005 provides the RP with the authority to veto laws and resolutions approved by the KP.

What is worth mentioning here is that no article of these two mentioned laws specifies what type of rule could directly be issued by the KP and which type can be sent to the RP for approval. Furthermore, there are no legal institutions, either administrative or judicial, to decide on which kind of laws can be directly sent by the KP to the RP without the latter's request, and which kinds of laws can be directly issued by the KP without the RP's referral. As far as Resolution No. 2 was concerned, the KPP had not undertaken responsibility neither to issue it directly nor to send it out to the RP to be issued. Consequently, both the RP and KP had violated the relevant legal rules, because neither the KDP nor the PUK were ready to accept the consequences of Resolution No. 2 at that time.

Incidentally, the KPP induced a legal and political paradox by preventing the issuance of Resolution No. 2, because, legally, it was a clear violation of the articles regulating how to pass laws and resolutions that had been approved by the KP. Whereby, when the KP approves any resolution, the Parliament Affairs Directorate could, if necessary, organise the resolutions' sections, and then pass it to the KPP to send it out to the RP for its promulgation. Politically, such a lengthy procedure helped the KDP and PUK to have enough time to escape from the political crisis created by the bloody demonstrations. On the other hand, it can be considered as the non-fulfilment of the ruling parties' promises and commitments to a resolution approved by the KP, even with their MPs’ backing. That was a serious reverse to the entire political process, which could have led to political disaster and civil war, as well as destabilizing the fragile mutual trust that was nearly established among the political parties then, and potentially between the citizens and governing institutions.

To sum up, as far as the ruling parties controlled the KPP, its performance in enacting laws and resolutions unabashedly served the partisan interests of the KDP and PUK. It worked in their favour and defended their interests by precisely implementing the bipartisan agreements, even if that brought about the infringement of the constitutional rules; including those issued by themselves. When the ruling parties’ determinations and interests were at stake, there was no commitment to legal rules and the rule of law was often undermined.

**5.6 Kurdistan Parliament Dysfunctional Oversight Devices**

The concept of political accountability is recognised in liberal democracies where the people are sovereign, and the government as an agent has legitimacy to exercise authority delegated by the people. Accordingly, the government is restrained by its accountability in practising powers in the name of the people and compatible with the will of the people.[[694]](#footnote-694) Political accountability originates from the theory of delegated powers. It is a ‘cornerstone of representative democracy’ and ‘represents the umbilical cord that connects citizens to their elected representative’,[[695]](#footnote-695) directing the political system towards the public interest through maintaining oversight of even unelected officials and civil servants. In this sense, the common feature of political accountability, as Tero Erkkilä outlines, governors 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’.[[696]](#footnote-696) In this regard, when they fail, they can be replaced via effective democratic procedures and institutions to ‘ensure that the exercise of power is a rule-guided enterprise’.[[697]](#footnote-697)

Similarly, Schedler has conceived political accountability as a two-dimensional concept. Firstly, answerability, which implies that there is an obligation by powerholders to answer questions and explain the validity of their decisions. This involves the right to receive information with explanations and the corresponding obligation to reveal necessary detail with justifications. Secondly, enforcement, which indicates the capacity to hold agencies accountable via effective institutions rewarding good and eventually punishing inappropriate actions.[[698]](#footnote-698) Therefore, the ‘accountable persons not only tell what they have done and why, but bear the consequences for it, including eventual negative sanctions’.[[699]](#footnote-699)

Political accountability has been mainly classified into horizontal and vertical accountabilities. Horizontal accountability arises when government agencies via checks and balance mechanisms hold the decisions made by each other to account.[[700]](#footnote-700) These devices are invented to preserve democracies from its threats by self-interested governors. While vertical accountability requires the public to restrain officials in government via democratic elections. This aims to prevent the change of regime from a democracy to an oligarchy. Both criteria are essential to indicate the distinctiveness of democracy.[[701]](#footnote-701) Accordingly, electoral authoritarian regimes are often inclined to diminish vertical and horizontal accountabilities. This can result from, the eradication of scrutinising institutions in the political sphere and developing menus of electoral manipulation, and the extension of presidential tenure. In such regimes, the cumulative mode of corruptions and human rights violations are closely associated with diminishing horizontal and vertical accountability.[[702]](#footnote-702)

Legislatures have developed various oversight devices to put into place the two dimensions of government accountability- answerability and enforceability. To deliver answerability, legislatures have often prescribed particular devices of oversight committees, questioning processes, and the ability to approve/review government appointments.[[703]](#footnote-703) While in order to institute enforceability, legislatures have promoted various tools such as a ‘motion of confidence, motion of censure, impeachment, and election/selection of cabinet ministers’.[[704]](#footnote-704) Constitutionalising these apparatuses broadly correlated with the espoused form of government, where despite variations, are generally classified as parliamentary, presidential and semi-presidential regimes.[[705]](#footnote-705) As the form of government in the KR is semi-presidential, which is analysed in detail in chapter seven, the oversight dysfunctionality of the KP addressed here is only related to the accountability of the prime minister and the KRG cabinet. While the KP is not entitled to scrutinize the authority of the RP according to semi-presidentialism, wherein the president is hardly accountable to the legislature- a president can only be sacked through an impeachment process.[[706]](#footnote-706)

In the context of societies undergoing democratic transition, generally the lack of an executive’s accountability leads to a change in the democratic legitimacy from a public authority into an authoritarian one. In the KR, similar to its legislative powers, the KP’s capability to scrutinize the KRG is also broadly affected by its bipartisan governance and in a similar way the KDP and PUK has often deprived the KP of raising the accountability of the KRG in order to sustain their authoritarian rule, whereby, such a process per se has depended on a prolonged and party-controlled parliamentary majority. The main obstacle to accountability in such bipartisan governance was the ruling parties’ frustration of their delegates in the cabinet responsibilities to the KP or other regulatory authorities. In other words, if the KDP faction in the KP tried to raise the accountability of a minister belonging to its strategic ally, the PUK, then the latter would start the same process with a minister belonging to the former. Similarly, they were unable to interrogate even a low-ranked official in the KRG.[[707]](#footnote-707)

Relatively, it was a challenging task for the broad-based government from 2014 until the coup of October 2015, which formed from the winning parties and with the participation of the former opposition parties, to eliminate concerns about the sustainability of depriving the KP of oversight and of holding the KRG to account. The KRG’s lack of ability to exert horizontal accountability has produced a contradiction to the principle of popular sovereignty and representative government that can be achieved through holding the governor responsible to the governed via effective institutions.[[708]](#footnote-708)

Through extreme weakness or absence of accountability, the KR governance presents a manipulative political power. Consequently, the ruling parties are not positioned in institutionalised power relations that enable a scheme of checks and balances, by which autonomous institutions, calling them into question and eventually leading to the possible discharge of the incumbents.[[709]](#footnote-709) The KRG lacks horizontal accountability whereby the KP cannot operate devices of checks and balances.[[710]](#footnote-710) There are many reasons beyond the KP’s deficiency of oversight. Firstly, political power in the KR has been practised informally beyond the formal institutions and via them as well since they have been controlled by the ruling parties. Consequently, the KP, even the KRG, has been deliberately weakened, like the parliaments in the AME electoralism. The KP, however, has power to inspect and oversee the lack of transparency and corruption in KRG agents, but this is subverted in practice. This is the crucial problem for the rule of law which underpins electoral authoritarianism. The weak enforcement of formal rules made by the prescribed authorities of the KP is undermined in practice, rendering them useless. The constitutionally functioning laws in the KR regularly fail to constrain the executive, or similarly the ruling parties.[[711]](#footnote-711) In this regard, even the institutional design, which is constituted by the ruling parties, serves their interest, as their governance is simply released from any kind of accountability.

More specifically, the legal articles concerning the answerability of the KP questioning process and oversight committees deliberately provide the KRG and ministers with flexibility to either provide information or to refuse to answer inquiries. This was originally designed to release the KRG and ministers from being accountable to the KP. The questioning process classifies written and spoken questions.[[712]](#footnote-712) When the prime minister or ministers do not reply to the questions, MPs can start an interrogation.[[713]](#footnote-713) However, such a process needs the consent of the KPP,[[714]](#footnote-714) which is highly politicised. If the prime minister or ministers did not answer the questions or attend the interrogation assemblies, one fourth of the MPs can ask for a motion of no-confidence.[[715]](#footnote-715) However, it is difficult for MPs to pass such a motion, as the censure needs a two-thirds vote of MPs attending the session to make the prime minister or ministers resign.[[716]](#footnote-716) If such a parliamentary dismissal vote happened, the prime minister and ministers have to resign straight away.[[717]](#footnote-717) The KRG, however, cannot be unilaterally sacked by a two-thirds vote of the attendant MPs. If the parliamentary dismissal vote happened, which is almost politically and institutionally impossible, then, the RP would issue the resignation decree.[[718]](#footnote-718) Concurrently, with the resignation decree, the RP can ask the prime minister and ministers to continue working in their office despite the parliamentary dismissal vote.[[719]](#footnote-719)

Such an institutional process, which was designed by the ruling parties in 1992, nullifies the KRG’s horizontal accountability. Moreover, the KR governing system can be classified as semipresidential, in which the KRG is accountable to both the RP and the KP. While neither the ministers nor the prime minister is often elected as an MP. Consequently, they already have no vertical accountability. The KRG’s lack of horizontal accountability is the result of the high threshold majority necessary for dismiss the KRG, which is, firstly hard to achieve and secondly, it is not a one-shot game by the KP.[[720]](#footnote-720) Respectively, the KP shares the enforceability with the RP who possesses discretionary authority to either accept the KRG minister’s resignation or to keep them in office. In addition, to face such discretionary authority, if the KP voted for the KRG’s dismissal, should also seek to deliver, this time, an impossible majority vote of three-quarters of the total MPs, to dismiss the RP.[[721]](#footnote-721) The enforcement dimension of the KRG accountability therefore is highly impractical, as dismissing the KRG requires further enforcement stages to vote out the RP. This demonstrates how the KRG whether formed by the two ruling parties (2005-2013) or even with the participation of other parties as a broad-based government (2014-until the coup of October 2015) is confronted with a deliberately designed institutional immunity for the ruling parties, namely, the respectively prescribed specific majorities for the dismissal vote and espoused semipresidentialism.

Ironically, the nomination of and a vote of confidence in the government requires only the simple majority of the attendant MPs and likewise for most parliamentary issues.[[722]](#footnote-722) While the dismissal of the KRG needs all the unattainable specific majorities in the KP with the consent of the RP. Such a favourable institutional design helps the ruling parties to form the KRG with ease. When the government has been formed, it will never be held accountable by a motion of no-confidence. Historically, the KP inclined to prevent raising the interrogation of the KRG. That is why since 1992, the KP has not dismissed even a prime minister or minister notwithstanding widespread corruption and abuse of power.[[723]](#footnote-723)

The KP’s dysfunctional devices for enforcement, which originated from the high threshold of votes for dismissal, concurrently devalued its mechanisms for answerability, as the KRG often disregard MPs’ questions. For instance, during the second KP term (2005-2009) 62 questions were sent to the KRG but the replies only addressed 27 questions. While, due to the rise of the opposition during the third KP term (2009 to 2013), the number of questions increased, with 418 questions addressed to the KRG, but the total answers were only addressed to 285 questions.[[724]](#footnote-724) The interrelation of both the institutional design and the performance of the KRG concerning its horizontal accountability have consistently sustained the DPG, maintaining authoritarian rule and a highly corrupted government as classified by the international transparency agent.[[725]](#footnote-725) Such authoritarian constitutional engineering, which is supported also by the adoption of the PR electoral system and the political cleavage based on a dysfunctional multiparty scheme that will never allow an effective and accountable KRG cabinet, at least in the foreseeable future unless the institutional design is fundamentally reshaped.

Secondly, the KPP is more a political than a legislative role, and often its members are from politburos. Without agreement over the KPP being reached among parties after elections, the KRG cabinet cannot be formed.[[726]](#footnote-726) As its political nature has affected the KP’s legislative functions in favour of the ruling parties, the KPP has also reinforced the ruling parties’ unwillingness to address the KRG’s accountability. Consequently, instead of chasing and revealing corruption cases, where the ruling parties have been frequently involved, the KPP has often tried to obscure or has deliberately disregarded them by depriving the KP committee of its potential for oversight of the KRG or even its senior officials. During the third KP term, for example, Saiyid Akram, the ex-director of the security department at the Ibrahim Khalil border gate with Turkey from 2000- 2006, publicly claimed that tax revenue was transferred to the personal office of Nechirvan Barzani-the incumbent prime minister and KDP’s deputy leader, instead of the treasury of the KRG. Subsequently, 50 MPs, mostly from opposition factions, and 11 MPs from the majority faction- all from the PUK, the KDP’s strategic ally and intermittent rivals as well, signed a petition demanding transparent accounting of the income produced at that border gate. However, the KPP undermined the petition by blocking the formation of a fact-finding committee.[[727]](#footnote-727) The available accountability devices against the KRG tend to be dysfunctional and the executive tends to accumulate powers and to act unaccountably in the absence of active parliamentary oversight devices.

Thirdly, besides the institutional fallout which eliminates the KRG’s horizontal accountability, party discipline, clientelism and the patronage network, have affected the KP’s oversight functions.[[728]](#footnote-728) As long as the KP is viewed as a place to reward highly affiliated members, even with the emergence of the MC, MPs continue to be more party delegates than representatives of the public. In the KRG, the MPs are not the most important political figures. Party leaders do not usually run for KP seats, because of the KP’s paralysed position within the KR governing system, parties have often nominated upper cadres to run for KP seats so as to increase their votes. Therefore, the leaders hold their office within the parties or as senior officials in the KRG. This tendency continues, though in different ways, as the ruling parties would often reward their most loyal clients with parliamentary seats.[[729]](#footnote-729)

Ministers and MPs are broadly selected from among close associates and relatives of the ruling elites, families and wings within the party leadership.[[730]](#footnote-730) In legislative and oversight processes, MPs follow party leadership instructions, as they are more disposed to satisfying party leadership preferences than the voters’. Almost all MPs are whipped, as they are directed by their parliamentary leaders to follow their party leaders’ instructions as well. When parties have strong discipline, MPs are obliged to follow it and submit to the party’s agenda, and to abstain in parliamentary inquiries and censure votes called to hold their senior leaders in the government to account. Perhaps any disagreement is perceived as a kind of rebellion against the party itself. Furthermore, criticism of party leaders will exclude MPs from the opportunity to be re-elected and any career in the future, even from party membership, as it will not be seen simply as a difference of opinion. Consequently, MPs reluctance also affected administrating accountability devices that depend on the party leaderships’ consent. In the KR, therefore, MP’s cannot exercise horizontal accountability due to clientelism and a highly patronised process. This phenomenon produced a controlled legislature having a dysfunctional oversight authority in terms of institutional ineffectiveness and a party patronised process.

Above all, within a broad-based government and under uncontrolled legislature, the KP was able to change such method, as its presidium represented the two effective opposition factions of KIG and MC in the fourth term from 29 April 2013 until the coup of 12 October 2015. Significantly, the KP has issued some new laws that marked a starting point for the democratisation process. However, the core objective of the legislative reforms was situated in the constitutional making process, which was one of the main challenges faced by the KPP and then it failed to implement it as the whole parliamentary process was suspended by the coup of October 2015. This happened when a new majority emerged in the KP asking to change the form of the KR government from semipresidentialism to parliamentary through the amendment of the RP law. The resulting political tension continued without any compromise until the KDP, by using the security forces, banned the Speaker from entering Erbil, where the KP sessions were held. If the KDP had worked on maintaining another parliamentary majority instead of choosing the military option, the coup could have been avoided. However, the military option is an ongoing issue in the KR as it is often implemented with ease, due to the presence of paramilitary political forces there.[[731]](#footnote-731)

Moreover, such events resulted in further control of the legislature, as ruling parties have not been submitted to any restrictions when they decided to extend the fourth KP term (2013-2017) for eight months from 6 November 2017,[[732]](#footnote-732) and even the dates of the next parliamentary and presidential elections are unknown and not planned then. Meanwhile, on the federal level, due to the Iraqi Supreme Federal Court’s verdict, the demand to suspend the Iraqi parliamentary election was ruled out as unconstitutional.[[733]](#footnote-733) Accordingly, the parliamentary election will be held within the timeframe provided by the constitution on 12 May 2018. Without the constitutional court, the ruling parties have been left unconstrained when they extended the KP term to legalise their undemocratic decision.

The extension of the KP is prescribed to legitimise the ruling parties’ manipulative policies and in order to conceal the KRG’s governance failure by holding the referendum for independence on 25 September 2017. Earlier, the KP was illegally reopened on 13 September by the ruling parties when the Deputy Speaker, who is from the KDP, acted instead of the Speaker, but the latter was not absent as he was in the region at that time. The entire process concerning parliamentary protocols for opening sessions and the failure to inform MPs about the KP’s session agenda at least 48 hours before the meeting was all against the KP bylaw. In the first KP session after the long closure time, a new secretary was temporarily selected. However, she continued with the Deputy Speaker to run the parliamentary sessions after this. Following this, the KP also used an illegal procedure; made the recommendation, similar to a letter from the de facto president Barzani, asking the IHERC to hold the referendum. While earlier the Speaker through an official letter asked the IHERC to hold the presidential and parliamentary elections during the legal period. In the letter, the Speaker also asked if the KP issue a referendum act, then can the referendum be held concurrently with the general elections? Notwithstanding that the referendum act was not issued by the KP, the IHERC decided to arrange the referendum on 25 September 2017, and both the presidential and parliamentary elections on 1 November 2017. Meanwhile, the referendum was held and caused particular consequences for the region’s status quo, yet ironically the presidential and parliamentary elections were suspended by an act from the KP without indicating a date for those elections onwards then.[[734]](#footnote-734) Therefore, by issuing such law, the PMs were functioning as party delegates not representatives of an electorate in a party-controlled legislature, because they had no mandate to extend the term of the KP term as they were only elected for a limited period and defined duties.

To sum up, under such a party dominated power, which created a centralised executive, the KP has failed to accomplish its representative, legislative and oversight functions. The prevailing conditions of the KP had made it clear that it was subjected to the will of the KDP and PUK, rather than the public will. This is exemplified by the process of dividing and re-unifying the legislature in accordance with the ruling parties’ policy, without holding general elections in earlier parliamentary periods, closure/reopen and eventually the extension of the KP term beyond its legal date. Notably, the will of the political parties is superior to the public will in prescribing deliberately dysfunctional oversight devices in the KP that paralysed the two dimensions of political accountability- answerability and enforcement. The KP, therefore, due to institutional fallout and a high level of political patronage, is unable to hold the KRG to account. This contradicts the legal basis of the governing system embraced in Law No. 1 in 1992, which stipulated on paper the democratic system. Such a circumstance could be regarded as a constitutional vacuum between the legal rules and political realities, which has even obstructed the fragile democratic process. The KP therefore has failed to strengthen representative and effective government, as it has been controlled by the ruling parties, which consequently moulded a legislature considered to be a rubber stamp of the executive. Besides the authoritarian institutional engineering and highly patronised process, the legislative control in the KR also is sustained by the military option available to the ruling parties. This issue requires to be addressed further, and it will be considered in the next chapter.

**CHAPTER SIX**

**Low to Non-Institutionalised Political Parties: Kurdistan Region Fragile Stability and Authoritarian Outcomes**

**6.1 Introduction**

A democratic government needs sustainable and institutionalised parties to stabilise political contestation, to provide the capacity to represent citizens and to deliver public choices that demonstrate their ability to govern for the public good. Under electoral authoritarianism, the enduring antagonism between the opposition and the ruling parties might cause a decline in political activity.[[735]](#footnote-735) In the KR, this occasionally led to the choice of a military option as an ongoing solution to political and institutional crisis. Consequently, the rise of anti-democratic actors affects the opposition by constantly confronting them with narrow options to either accept the tough reality created by nondemocratic decisions or provoke further antagonism by more direct and revolutionary responses instead. In the KR, due to the less institutionalised party system, the ruling parties still maintain and unabashedly use the armed forces to solve political issues. If the opposition, in return, was inclined to echo similar actions, the already fragile stability in the KR would be lost, leading to another phase of civil war. In comparison with the analyses in the relevant literature, years of political competition in the KR have failed to change the puzzling structures and activities of its political parties, on the contrary these have endured.[[736]](#footnote-736)

This chapter discusses the political party in democratic theory. Then, it deals with the regulation of parties in both the established and the newly emerged democracies, arguing that if democracy is assessed in institutional terms, the most important means of improving democratic institutions is to improve political parties. It further tackles party regulation in the KR addressing the alternation rule. It also examines the organisation of the military in the KR, addressing its relationship with the parties and the obstacles to the establishment of a unified national army and to show how the party system is suffering from non-to low levels of institutionalisation in terms of a democratic civil-military relationship.

**6.2 Political Parties in Contemporary Democratic Theory**

It seems to be merely speculation to address democracy without parties. Parties are some of the most important organisations in the exercise of liberty of association, playing the essential role of maintaining pluralism and the functioning of democracy.[[737]](#footnote-737) Modern democracy remains ‘unthinkable save in terms of the parties’.[[738]](#footnote-738) Their status constitutes the character of the regime type. Accordingly, parties are prescribed as the most vital distinction between democracy and dictatorship.[[739]](#footnote-739) From this perception, democracy has come to be defined as multi-party competition for political power.[[740]](#footnote-740)

The regulation of parties in the constitution, or generally party regulation, is a new phenomenon in western liberal democracies, as they did not refer to parties in their constitutions in the past. This is due to either the historical sequence- generally the adoption of the constitution preceded the appearance of political parties, or through embracing a certain normative conception of democracy, in which parties are seen as fundamentally incompatible with the supposedly neutral public interest.[[741]](#footnote-741)

In contemporary democracies, specifically after the Second World War, parties have been recognised in constitutional terms ‘to the point that political participation, representation, pluralism, and competition in many democratic constitutions have come to be defined increasingly, if not almost exclusively, in terms of the party’.[[742]](#footnote-742) Notwithstanding that their actual functioning might relatively weaken the quality of democracy; parties have been perceived constitutionally as necessary institutions functioning to underpin democratic government.[[743]](#footnote-743) Moreover, in recent decades, even countries with deep-rooted and stable democratic traditions have considered party regulation, in the form of party laws, electoral campaigns and financial laws or via constitutional revisions.[[744]](#footnote-744)

Moreover, some international standards have been developed for party regulation: some explicitly entrenched in international agreements, and others are evolving by adopting the most convincing practices of successful democracies.[[745]](#footnote-745) The guidelines on party regulation issued by the European Union in October 2010,[[746]](#footnote-746) which are based on accepted international obligations and represent what might be described as ‘minimum standards’, reflecting inevitable compromises.[[747]](#footnote-747)

Perhaps, party regulation is even more vital in emerging democracies, where the task is to establish new political institutions to consolidate democratic transition. Accordingly, party regulation is increasingly recognised to be important for both the proper foundations, and the legitimate functioning of democracy.[[748]](#footnote-748) However, the contexts for emerging democracies unfold in different scenarios, as the formal institutions, from electoral rules to civil–military relations, are less institutionalised. In this sense, there is a tendency for regular institutional change to produce institutional uncertainty, or in Landau’s term, ‘abusive constitutionalism’.[[749]](#footnote-749) Then institutional instability will arise in a situation when formal democratic institutions cannot secure certain basic credible commitments[[750]](#footnote-750) and the likelihood of an authoritarian reversal is high.[[751]](#footnote-751)

**6.2.1 Legal Status of Political Parties: Conceptual Framework**

Due to their privileged constitutional status in a democratic government, parties come at the top of the mechanisms and institutions that must be managed and are most likely to be the object of change during the process of democratisation. As Richard Katz has rightly pointed out:

If there is a problem with democracy in a country, something about the parties is most likely a cause and/or some reform of the parties is most likely a cure, and thus that adopting or reforming party laws is an appropriate means to the end of improved democracy. Most obviously, if democracy is defined and assessed in institutional terms, the most direct way to improve democracy is by improving democratic institutions, of which parties are central.[[752]](#footnote-752)

Over time, political parties have changed their structures and functions from being private associations to gradually enjoying a quasi-official status as part of the state: as predominantly a public organisation,[[753]](#footnote-753) or a semi-state entity,[[754]](#footnote-754) or even as ‘public utilities’.[[755]](#footnote-755) Consequently, parties’ internal affairs and external activities, including party financing, organisation or ideology are increasingly regulated by the state through public laws and constitution.[[756]](#footnote-756) Accordingly, party structure and function have increasingly become ‘legitimate objects of state regulation to a degree far exceeding what would normally be acceptable for private associations in a liberal society’.[[757]](#footnote-757) This party constitutionalism is generally justified by the recognition that parties are an important semi-state entity, indispensable for a functioning democracy. Respectively, states must protect and improve democracy.[[758]](#footnote-758) It has become obvious that the ‘liberal principle of non-intervention in political parties' internal matters’ no longer remains ‘the dominant paradigm’.[[759]](#footnote-759)

In contemporary democracies, constitutions and other supplementary laws are responsible for party regulation. A constitution outlines the structural basis of the state and the procedural rules to restrain, organise and divide the exercising of political power. It thus regulates the general framework of the state and political institutions in terms of composition, mandate, powers and the relationships among them, aiming to protect the fundamental rights and freedoms of citizens.[[760]](#footnote-760) It also functions by constituting a liberal and rights-based model of constrained government to represent, safeguard, and to be accountable through founding and sustaining effectively regularised restraints upon political, and more precisely, upon governmental activities.[[761]](#footnote-761) In addition, constitutions echo the fundamental values and principles upon which the state is based. They are also imperative and relevant sources for underlying normative ideas about the institutional status of political parties to support the functioning of a democracy.[[762]](#footnote-762) Constitutions thus deliver a significant insight into conceptions of democracy and political parties.[[763]](#footnote-763)

The constitutional codification of political parties seems to be related to drafting new constitutions, constitutional revisions and the processes of democratisation and state building.[[764]](#footnote-764) Hence, political parties have been incorporated into the earliest constitutions adopted by the newly established democracies.[[765]](#footnote-765) Most of the institutional designs have come from new democracies rather than the established Western countries.[[766]](#footnote-766) For instance, party regulation in Eastern European Constitutions started when the 1949 Communist Constitution was amended profoundly by the Hungarian National Assembly in 1989.[[767]](#footnote-767) After the collapse of the Soviet Union, in a snowballing effect,[[768]](#footnote-768) other post-communist countries followed the party constitutionalism trend, in which political parties are associated with essential democratic values and principles, such as political participation, pluralism, competition and popular sovereignty.[[769]](#footnote-769) Modern constitutions reflect this mind-set via granting constitutional status to political parties and enshrining various protections for them.[[770]](#footnote-770) In this regard, ‘attempts to improve democracy through institutional reform have been most pronounced… but more recently political parties have also been the object of efforts to improve or assure the quality of democracy through legislative reform’.[[771]](#footnote-771) Respectively, the German Basic Law of 1949 served as a typical constitution.[[772]](#footnote-772)

Constitutional regulations for parties vary across European democracies. Some structural differences can be found between the long-established democracies and those recently established in Southern, Central and Eastern Europe after the collapse of the Soviet Union in 1990, and the ones re-established since the Second World War following nondemocratic rule. Their constitutions are essential sources for the precise regulation of political parties. For instance, both Italy since the 1947 constitution and Germany according to the basic law of 1949, tend to regulate parties more extensively than the older liberal democracies in nearly all aspects, including democratic principles and values, rights and duties, institutional structure and judicial oversight.[[773]](#footnote-773) While in the older democracies, constitutional party regulations tend to focus primarily on their electoral role.[[774]](#footnote-774)

Another difference between them is related to the primary function of political parties in society. In the established democracies, parties generally started out as organisations within society demanding participation. Conversely, in emerging democracies, parties faced the challenge of ‘enticing citizens who already have rights of participation to actually exercise those rights’.[[775]](#footnote-775)

Despite their significant functions in the articulation and aggregation of people’s demands and interests,[[776]](#footnote-776) parties in contemporary democracies are not allowed to control state institutions. Some of the recently established democracies ostensibly propose the activities of parties due to a legacy of the recent past.[[777]](#footnote-777) In some cases, for example, in ex-communist Europe, the communist parties played an influential and dominant role in establishing and maintaining totalitarian regimes.[[778]](#footnote-778) In this sense, almost all post-communist constitutions have endeavoured to distance themselves from their totalitarian past by generating formal boundaries between parties and state institutions,[[779]](#footnote-779) particularly via ‘establishing membership incompatibilities with certain public offices’.[[780]](#footnote-780) Consequently, most post-communist constitutions explicitly stipulate the separation between parties and those state institutions, which are expected to be impartial: such as the bureaucracy, judiciary, and the head of state.[[781]](#footnote-781) The new constitutions therefore discarded the previously dominant paradigm which embodied the leading role of the communist parties as the organ of state power. Respectively, the ex-communist constitutions vested state powers in a popularly elected assembly but via elections without political choices. Such a constitutional paradigm ensured a constant majority for the Communist Party through a deliberately chosen electoral system, which basically made the assembly ‘a rubber stamp for Party decisions’.[[782]](#footnote-782) Accordingly, ‘the Party was in fact synonymous with executive power’.[[783]](#footnote-783) This system has been invalidated through constitutional amendments or by writing a new constitution. Regarding post-communist Europe, for instance, Hungary has made considerable changes to these institutions in a way that has helped to consolidate their democratisation.[[784]](#footnote-784)

Moreover, alongside the constitution, there are other relevant party regulations. Party Law, with capital initials, refers to statutes regulating political parties and arranged under a comparably descriptive title: for example, Germany’s ‘Law on Political Parties’.[[785]](#footnote-785) While ‘party law’[[786]](#footnote-786) as a common noun can be defined as the ‘body of state-based regulations that determines the legal status of political parties and that often specify what constitutes party membership, how parties must be organised, how they should campaign, [and] how they must handle party funds’.[[787]](#footnote-787) Thus, it refers to a body of laws regarding what parties should or should not do and what is legal or illegal for political institutions.[[788]](#footnote-788)

Scholars have classified patterns of party law according to the adopted supreme norms. In this regard, Pippa Norris has prescribed three general ideal types. The first type is monopolistic regulations, which are clearly tilted towards the ruling party, restricting all opposition parties and dissident movements. This sustains one-party states as well as repressive regimes. The second one is cartel regulations, which respects general human rights. However, they limit party competition via various restrictive practices planned to benefit established parties in government. The last one has the most unrestricted regulations which are designed to facilitate multiparty competition. This is to ensure that they have equal access to public resources and have minimal legal restrictions as to which parties and candidates appear on the ballot.[[789]](#footnote-789)

Katz also refers to three objectives of state party law. Firstly, party regulation concerns what defines a party as an organisation. This infers questions of membership and internal structure and decision-making processes. Particularly, it addresses the selection of party leaderships and candidates and the formulation and adoption of a party’s programme and rules.[[790]](#footnote-790)

Secondly, party regulation, specifically in the emerging democracies, considers parties as contestants in elections. It prescribes standards for registration or recognition as a party, for ballot access and for access to public resources. It regulates the activities that parties may engage in during elections, and sometimes proscribes the use of violence or other illegal means to achieve a party’s aims. Such regulation also covers the raising and spending of party funds, campaign activities (including campaign finance), campaign standpoints in party platforms, the qualifications for a position on the ballot, and any other rights, privileges, or obligations accorded to parties in elections, with which individuals or other organisations are not provided.[[791]](#footnote-791)

Thirdly, party regulation concerns the activities of parties in government and parliament when the election ends. It addresses questions of patronage and other possible abuses of state resources for partisan advantage and which weaken a politically neutral administration serving the public interest. It prescribes the requirements for the formation of a recognised parliamentary group, and the restrictions on the freedom of party switching by MPs during a parliamentary term.[[792]](#footnote-792)

**6.2.2 Kurdistan Region: Unrestrained Parties Generating Authoritarianism**

The study of political parties in Iraq, including the KR is challenging for specialists in the field of social sciences. The parties and political movements are currently complex entities, in terms of their organisational design, sources of legitimacy, sources of funding and their relationships with the state and society. As far as the KR’s governance is concerned, political organisations have passed through different historical stages. At each stage, they are characterised by some attributes that ostensibly have a definable structure. However, the central feature is the party governance. The KDP and PUK have ruled the KR either combined in an electoral alliance or in a government coalition, or separately through the dominant governance of their own zones.[[793]](#footnote-793) Consequently, this situation created a power-sharing government, which applied a strict party quota across the entire upper and lower levels, even being applied to universities and schools (as explained in chapter three).[[794]](#footnote-794)

The ruling parties have released themselves from the obligation of writing a constitution. Accordingly, the issues of separation of powers, rule of law and fundamental rights are all dependent on the interests and wishes of the majority, embodied by the ruling parties. Instead, the KDP and PUK agreed to enact some constitutional laws that could be amended in conformity with the will of the parliamentary majority. There is thus no constitution, also no constitutionalism, but only an abusive constitutionalism that meets the ruling parties’ interests. Notably, although the fourth KP was expected to revive the draft constitution by political consensus it failed to do this due to the coup of 12 October 2015.[[795]](#footnote-795)

In the KR, parties are seemingly subject to legal rules concerning their principles, procedures for their establishment, rights and duties, financial support and their dissolution. During the uprising of March 1991 until the KP was formed on 19 May 1992, the KR was administrated by the IKF. In the absence of a written constitution, the KP then issued several laws to regulate political institutions, including the Political Party Act No. 17 of 1993. The law regulates political parties and defines one as a political organisation having a legal personality composed of a voluntary union of natural individuals gathering by common goals declared in the party platform. The party must aim to achieve these goals via peaceful means.[[796]](#footnote-796) Within this perspective, the law stipulates the legal principles and procedures for founding a political party in the KR.

Law No. 17 contains provisions for the freedom to form political parties and provides legal guarantees for their activities. Accordingly, the law states that citizens have the right to form a party, join or withdraw from it according to the party’s bylaw, as long as they are at least eighteen years old and have legal capacity.[[797]](#footnote-797) This right was paralysed under the Ba’ath Party rule, as the one-party system was imposed. Law No 17 was a different type of legal regulation of political parties in the KR, compared with the previous regime. This can be considered a relatively positive legal and political development.

The freedom to form parties aims to provide the legal basis to ensure a multi-party scenario. Such legal regulation is essential in the KR for the formation of opposition parties within the prescribed terms and conditions. In the framework of the basic principles stated in the law, Kurdish parties should promote the rights and institutions gained by Kurdish people, develop democratic principles and respect human rights enshrined in international conventions. They should also achieve their goals by peaceful means and use democratic methods in their activities. They also have to respect the peaceful alternation of power without using violence, terror and bribery. Among such restrictions, as stated in the law, parties should avoid raising racial, religious and sectarian issues, as there are different ethnicities, religions and doctrines in the KR. Their political and cultural rights require respect and legal protection. Party platforms also can not undermine public order.[[798]](#footnote-798)

There are some conditions required by the law, which are legally binding on political parties involved in the political and parliamentary process. These restrictions were essential for the then emerging semi-democracy in the KR because they aimed at restraining parties’ behaviour and to encourage respect for human rights and to achieve equality among the citizens of the region. Additionally, the law considered peaceful alternation of power as an essential binding condition for building a democratic government and delivering political stability, not least between the ruling parties due to their historical struggles in armed conflicts. However, under electoral authoritarianism, party regulation in the KR embodies the cartel pattern, specifically with the ongoing issues of clientelism, patronage networks, electoral fraud, violations against civilian protests and the oppression of opposition (as explained in detail in chapters three, four and five). In reality, such legal regulations are subverted by the ruling parties. This lack of party regulation contradicts the current tendency to regard parties as public utilities or quasi-public organisations, subject to detailed regulations and interference in parties’ internal lives. That is why almost all political parties in the KR, including oppositions, specifically the ruling ones, disregard even their own bylaw concerning procedures at party conferences, internal elections and candidate and leadership selections.

It is worth mentioning that when the KP issued the law, it was dominated by an overwhelming majority of the KDP and PUK. This law applies to all the existing parties, but particularly in the matter of its binding conditions it applies most to the ruling parties. This is because the primary institutions that are supposed to respect the peaceful alternation of power, human rights and equal citizenship are the current ruling parties of the KRG. These restrictions were aimed at avoiding the one-party state model of the Ba’ath Party and the authoritarian rule experienced in Iraq by starting to build a democratic experience. Therefore, on the one hand, the legislature was aware that the then political reality in the region required these restrictions on political parties and, on the other, these legal restrictions indicated the will of the ruling parties at that time, to work towards building a democratic government. Controversially, however, the KDP and PUK have broken the law that they enacted together, continuously and moreover, it mostly addressed their own legal status, institutional design and relations.

As far as the alternation rule is concerned, Law No. 17 has remained as just words on paper, since the political reality has contradicted the written legal rules. Accordingly, they failed to maintain their legal significance as binding rules. The ruling parties passed the law but started to break it when they acted contrary to what they were supposed to do according to the legal commitments. This has led to the paralysis of the rule of law and its vital role in consolidating democracy.

Paralysing party law in the KR went through a long process. The law was enacted in 1993, a year after the first parliamentary election held in the KR, which established a consensus government between the KDP and PUK. It is argued that the two ruling parties did not trust each other because neither of them could accept the peaceful hand over of power to the other one and consequentially accept their role as an opposition faction in the KP.[[799]](#footnote-799) It could be argued that this beginning of the democratic phase could reasonably be excluded because political consensus was essential for redesigning political institutions at the commencement of democratic transition. But this argument becomes a mockery and even appalling, when it is used to justify the lack of progress towards democracy during the internal war, partisan administrations, and the second, third and even fourth parliamentary terms. Indeed, during the fourth KP, the political process was ended by a coup where the KP closed down for nearly two years and reopened again according to ruling parties’ inclinations.

In 1996, instead of holding a parliamentary election, civil war broke out between the KDP and PUK, causing the death of thousands of people. Following this, partisan administrations emerged, and their political and economic manifestations have lasted until the present. There are two main reasons behind this lack of a peaceful devolution of power in a democratic institution. Firstly, both the KDP and PUK have stuck to their positions and policies. Secondly, both stayed as militia style organisations accomplishing their aims via highly affiliated forces rather than forming a united military apparatus subject to civilian control and legislative oversight.[[800]](#footnote-800) This demonstrates a form of non-institutionalised government, through which the ruling parties are reluctant to respect party law. Moreover, it seems impossible to deliver the alternation rule in the KR, because the KDP and PUK formed a coalition government, whether they were participating in elections with a combined electoral list or a separate one. Even after the coup of 12 October 2015, the PUK remained in the cabinet as the KDP’s faithful strategic ally.

In addition to all this, the best evidence to prove that the ruling parties are reluctant to respect the democratic alternation rule is that the RP and the KDP’s leader Masoud Barzani has continually refused to step down from office, despite being president for 10 years. When his term was about to end in June 2013, his KDP and its strategic ally PUK, agreed to extend his term for two years on 30 June 2013, via a parliamentary motion. According to the extension law the president's tenure could not be prolonged for more than two years.[[801]](#footnote-801) The two-year period ended on 20 August 2015, however, he continued to hold the office illegally. He resigned on 29 October 2017 under international pressure as a consequence of the failed referendum. However, he will continue as dominant figure through the party governance as his presidential powers were mostly granted for his nephew and son-in-law, the prime minister Nechirvan Barzani.[[802]](#footnote-802)

This is what originally called into question the existence of such a principle in the KR Party Law. In addition, the ruling parties are not ready to reshape the prevailing institutional design. The secret of their success in keeping political power is their control over the military and economic spheres. As long as there is no separation between the parties and the armed forces, it is not possible to build democratic institutions based on free and competitive elections. The paralysis of the rule of law by the ruling parties does not invalidate democratic transition, but it begins the transformation of the governing system from electoral authoritarianism to a hegemonic authoritarian regime. This is what the KR is currently experiencing, where neither self-governance nor federalism can transform the ruling parties from military organisations maintained by insurgency legitimacy. This will be addressed below.

**6.3 Non-Institutionalised Government: Party-Affiliated Forces and Ongoing Military Option**

The KR Party Law imposes several obligations on political parties. Accordingly, they must be committed to the rejection of terrorism in all forms, respect the rule of law and preserve the independence of the judiciary. Moreover, parties should avoid having para-military organisations or possessing weapons in violation of the law.[[803]](#footnote-803) This demonstrates the KP’s consideration of the ruling parties’ monopoly of the authorisation of legitimate force, which must be under the control of the KRG rather than parties.

Concerning the contemporary situation of the civil-military relation in the KR, the important questions are: is this article still necessary after being included in Party Law 27 years ago? Are political parties still maintaining militias? Can the Peshmerga forces be considered as a national army under democratic civilian command or as partisan forces under the control of the parties’ leadership thereby sustaining authoritarian rule?

To answer these questions, this section considers the structure of the Peshmerga and its historical functions as a complex entity involved with both federalism and a de facto status. To achieve this, since this subject covers the right to bear and keep arms, its definition within the conceptual framework of militia and its historical background will be explained. In terms of federalism and democratic civil-military relations, the chapter also deals with the status of the militia and its integration into both the regional and federal legislations. In this context, the reference to federal jurisprudences such as in the US and the Australian constitutions is relevant to explain military organisations in federal states.

**6.3.1 Conceptual Framework**

The right to keep and bear arms confers personal rights to own weapons for personal defence, or the right to bear arms in an army. The general concept of this right differs widely from country to country depending on the relevant laws. It is also one of the most provocative topics concerning human rights in domestic and international laws.The phrase "the right to keep and bear arms" was first written in the Second Amendment to the US Constitution. This amendment is a relic of a lost tradition[[804]](#footnote-804) that contains the core of the controversy, which guarantees: ‘A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed’.[[805]](#footnote-805) This single sentence in the constitution is capable of an extraordinary number of interpretations. The main source of misperception has been the meaning and purpose of the initial clause: a well-regulated militia.

The proponents of a broad, individual right to keep and bear arms argue that the Second Amendment bars any violation of this right, not only by the federal government, but also by the individual states. This position is based on the theory that the right to possess and use guns is a fundamental right that combines with other rights via the Fourteenth Amendment, and thus applies to the states. While those who oppose the freedom to possess weapons refute this argument by concluding that the US Supreme Court has never explicitly linked the Second Amendment with the Fourteenth Amendment. The Court has rejected the idea that the Bill of Rights could inevitably be applicable to the states by the Fourteenth Amendment. Individual rights can be guaranteed within the framework of the federal state through both federal and regional constitutions.[[806]](#footnote-806) The federal courts have consistently determined that the constitution does not guarantee to any individual the right to keep and bear arms. They perceive that the constitution protects only the right of the states to maintain organised military forces Instead. Thus, the Second Amendment cannot be perceived as an impediment to governmental control of keeping and bearing guns.[[807]](#footnote-807)

The concept of a militia itself is by no means clear. It has been argued that a small, highly trained citizen army was envisioned in the Second Amendment. Accordingly, all able-bodied men comprise the militia, those who have joined voluntarily or performed compulsory military service, in some cases, to protect their country, or colony, or states. The word militia was changed to National Guard in 1824. Militia systems emerged due to the military history of the United States of America; the idea of ​​defending the homeland and protecting the country from the potential abuse by the government or a professional army. The militia as a phenomenon emerged during the existence of former British colonies, characterised by armies that had a popular character and received initial military training for defensive purposes.[[808]](#footnote-808)

The Second Amendment is envisioned more as a collective right of states to maintain a well-organised militia than an individual right to keep and bear arms outside of governmental control. It depicted the official central concepts of civilian militias by establishing additional or supporting units for the army. Such a military organisation is composed of enrolled and trained citizens to serve in times of national emergency, and it can be formed either by volunteers or compulsory recruits. The US constitution empowers Congress following the declaration of war, to raise and support armies and provides for calling upon the militia to protect the laws of the US. The constitution thus allows the use of state guards to exercise both ongoing state control and in the service of the federal government to ‘execute the laws of the Union, suppress insurrections and repel invasions’.[[809]](#footnote-809) Respectively, the constitution has given reserved powers to the states to appoint the officers of the militia, and the authority for their training according to the discipline prescribed by Congress.[[810]](#footnote-810) However, the constitution does not allow any state, without the consent of Congress, to keep military forces or warships in peacetime, or engage in war, unless invaded, or in a situation where because of imminent of danger it should not be delayed.[[811]](#footnote-811) Therefore, the US President is the commander in chief of the US Army and Navy, and of the militia of the several states, when they are called into the service of the US.[[812]](#footnote-812)

Moreover, as the state guards are funded and trained in accordance with federal standards and can be used by the federal government, they are not independent from it. Such unique state-based military forces in the US are shared by the states and the federal government. They are accordingly reliable forces either administrated by the states to be used for both state, shared state and federal aims, or by the federal government for federal purposes.[[813]](#footnote-813) The constitution has been proffered as evidence of the state’s collective right to defend itself and the union when militia have been called on to serve.[[814]](#footnote-814)

The constitutional status of militia in the US is related to the federal form of the state, whereby the states shall keep forces established according to federal laws and discipline, for regional defence in an emergency and in the service of the union as prescribed in the constitution under a civilian and central commander. Thus, a militia is a part of the defence system for the whole country, which functions within the central perception of the military mission to defend stability and safeguard national security.

**6.3.2 Iraq: Challenges of Militia Incorporation**

The establishment of militia in Iraq dates back to the era of the Ba’ath Party governance (1968-2003), which exemplifies a regime had successfully politicised the army.[[815]](#footnote-815) On the one hand, the Republican government had systematically employed militia as part of its political power under the Constitution of July 1958. On the other hand, the phenomenon is known to the Iraqi oppositions as military wings, including the Kurds’ Peshmerga forces in the context of KLM, when they were fighting against successive authoritarian regimes in Iraqi: starting in 1960s, and primarily in 1970s and 1980s. To deal with the complexity of military organisation in Iraq, this section addresses the challenges of the IFG to incorporate militias outside the KR.

Currently, the militia in Iraq can be characterised as quasi-military organisations, which are barely incorporated into the Iraqi armed forces. They consist of diverse elements concerning background and age, which take the form of irregular armed groups that might have uniform army suits but are not completely trained for professional wars. Nonetheless they are not civilians, since they are popular organisations prepared in some way and trained to use conventional weapons for political purposes by parties or to resist an authoritarian regime, fight ethnic, religious and sectarian cleansing.[[816]](#footnote-816)

Iraq is an example of the Middle Eastern state pattern, which represents ‘little more than an arena of socially engendered conflict or an instrument of family, sect, or class domination’.[[817]](#footnote-817) Iraq is often described as an ‘artificial state that has failed to weave a national identity that incorporates its otherwise centrifugal ethnic and sectarian groups’. [[818]](#footnote-818) Since the foundation of Iraq in 1920s, the prevailing tendency of the governing regime concerning the army and ruling elites throughout this time is characterised by the mixture, with no divisions, of the civil-military relations. There emerged a reciprocal relationship between the successive Iraqi governments and the armed forces- they both used each other and needed each other to sustain a militarised authoritarian rule.[[819]](#footnote-819) Notwithstanding that it preceded the foundation of the Iraqi state, the military has rarely contributed to the maintenance of stability. Predominantly, it has interfered in governance through either dictating the formation of governments or toppling authoritarian regimes.[[820]](#footnote-820) The military apparatuses in Iraq functioned in a situation when the likelihood of the risk of a coup increased and the political leader was inclined to implement coup-proofing strategies.[[821]](#footnote-821)

Political leaders in Iraq could rely on coup-proofing strategies to diminish the risk of the military or other political elites to successfully coordinate the replacement of the leader by a coup.[[822]](#footnote-822) Such strategies include founding paramilitary organisations with different command structures from the regular armed forces, partition of the military into many and mutually suspicious rival units, ethnic stacking or bribery to subordinate the military, frequent rotation of commanders and sacrificing organisational efficiency to reduce the chances of a successful coup.[[823]](#footnote-823) The military apparatuses in Iraq were often politicised and functioned to sustain successive authoritarian rule, mainly between 1958-2003,[[824]](#footnote-824) specifically after the rule of the Revolutionary Command Council led by Saddam Hussein (1979-2003).[[825]](#footnote-825)

Since 2003, the IFG has often faced major challenge of integrating militias into the Iraqi armed forces. Despite a clear constitutional prohibition of the formation of militias outside the framework of the formal armed forces,[[826]](#footnote-826) many pro-government and anti-government sectarian militias have emerged.[[827]](#footnote-827) The militias seek to be a state-recognized unit, but they also aspire to preserve their own self-governing chain of command autonomous from the IFG. Although it seems that their status has changed after the enactment of the ‘Al-Hashd Al-Shaabi’; Popular Mobilisation Forces (PMF) Act, on 26 November 2016, when the integration of militias become a challenging task for the IFG. The Iraqi Parliament passed this controversial law to legitimise the coalition of Shi’a volunteer militias. The law confirms the Iraqi Council of Ministers’ announcement on 07 April 2015, which considered the PMF as an official body reporting to the prime minister.[[828]](#footnote-828) It provides legal status for the PMF as supporting and reserve forces for the Iraqi Army and Federal Police, empowering them to maintain security and prevent terror threats.[[829]](#footnote-829)

The PMF has been both critical to the success of the fight against IS, and controversially, has been accused of delivering revenge and hatred killings, kidnapping, forced evictions, torture and other brutal punishments without being held to account. Despite passing the PMF law, some factors have been leading to a more controversial situation. Firstly, the militias have been repeatedly accused of abuses against Sunni civilians in areas retaken from IS, according to international human rights reports.[[830]](#footnote-830) Secondly, Iran’s impact is strong; as the PMF is being sponsored by Iran and is inclined to adapt to an Iraqi version of Iran’s Islamic Revolutionary Guard Corps (IRGC), that is a military structure that stands in parallel to the Iranian army.[[831]](#footnote-831)

By legalising the PMF, the IFG attempted to incorporate a hazardous competitor, to gain control of it, proclaim authority over it, and reduce the armed groups’ dependence on Iran and reduce the power of other factions that work against the prime minister’s agenda. However, the prime minister’s capability to command the PMF remained a source of disagreement and debate, because the PMF consists of various militants that have loyalty to different commanders. The more powerful groups that assembled under this military organisation’s umbrella in 2014 are Iranian-backed Shiite militias that do not report directly to Sistani and which are not necessarily committed to Haider al-Abadi’s success as a prime minister and commander in chief.[[832]](#footnote-832)

In summary, integration is a risky move since it enshrines the government’s dependence on the PMF, which undermines the Iraqi Army. It is challenging for these forces to be directly accountable to the prime minister. However, it is calculated by the government to be worthwhile and will help to reclaim the state monopoly over the authorisation of legitimate force. In this context, the key understanding is not that there should be no paramilitaries, but rather that the incorporation of the PMF, as essentially autonomous Shi’a militias, into the official Iraqi security apparatus, is central, though risky.

**6.3.3 Iraqi Federalism: Another Complexity in Military Organisation**

Before 2003, all the para-military organisations were often asked to assist the tyrannical regime in Iraq and were employed to oppress civilians, minorities and different components of Iraqi society, including the Kurds. After the Iraqi regime was overthrown in 2003, there was a need to fill the power vacuum and to compensate the absence of authority and most components of Iraqi society tended to establish militias for self-protection.[[833]](#footnote-833) In this regard, however, the Peshmerga forces, despite being used for partisan purposes, are a product of the Kurd’s decades-long resistance against successive authoritarian Iraqi regimes, which ‘sought to deny Kurdish identity and assimilate Kurds within a unitary state’.[[834]](#footnote-834)

Federalism provides federal governments with the authority to defend the whole union. If individual member states are provided with such a responsibility, this undermines the integrity of the federation. Any legal, economic, and territorial issues that are expected to arise in federal states can be solved via various federal institutions. Therefore, providing state members with the responsibility of defence would produce competition among state members to have more powers and arms and to become a dominant entity within the federation. Perhaps such a situation would lead to armed conflicts between state members and endanger the unity of the federation. There is no federal country, in which regions or states ‘possess independent regional troops strong enough to stand up to the national army. In fact, the very idea of federalism has been specifically set forth to avoid such scenarios’.[[835]](#footnote-835) ‘[A]llowing each region to have its military force would make secession and ethnic conflict all the more likely’.[[836]](#footnote-836)

Federal constitutions thus grant federal government authority for security and defence. In the case of allowing states to have their own armed forces, constitutions prescribe federal approval and oversight to ensure the federal legacy of their establishment and service. For instance, article (114) of the Australian constitution stipulates that states ‘shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force’.[[837]](#footnote-837) While the US constitution, as explained above, has granted the states the constitutional right to have national guards to protect internal security and external threats in emergent circumstances.

The IFC, like other federal constitutions in the world, defines the status of the military forces. The constitution addresses the controversial ethno-sectarian roles of the former Iraqi armed forces, whereby, it has established principles for a professional army in the service of the whole union.[[838]](#footnote-838) Accordingly, the armed forces shall be subject to ‘the control of the civilian authority, shall defend Iraq, shall not be used as an instrument to oppress the Iraqi people, shall not interfere in political affairs, and shall have no role in the transfer of authority’.[[839]](#footnote-839)

Although the IFC outlaws ‘the formation of military militias outside the framework of the armed forces’,[[840]](#footnote-840) the constitution itself, proclaims ‘this Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region’.[[841]](#footnote-841) Accordingly, it empowers the KR, as the only federal region with the authority to establish internal security forces and guards of the KR.[[842]](#footnote-842) However, the legal existence of armed forces in the KR dates back to 1992 and was established by regional acts of the KP. Its legitimacy is thus based on the de-facto status of the KR. Meanwhile, the IFC of 2005 confirmed the recognition of the regional forces provided by the Iraqi Administration Law of 2004, as an interim constitution for the transitional period, as it recognised all the then political institutions in the KR including the regional forces.[[843]](#footnote-843) Hence, contrary to the federal conception of militia, the general command, training, missions and deployment of the Kurdish military apparatuses are all regulated by the regional acts sustaining party governance in the KR. There are no existing federations, in which ‘constituent units are endowed with their own security forces that could be used independently from the federal center, and this is particularly true for more delicate cases of ethnic federations’.[[844]](#footnote-844)

Considering the ongoing struggles and ethnic violence between the Kurds and the Arabs in Iraq, it is expected that such tensions will endure. The ethnic fault lines, particularly over the unresolved issue of disputed territories, are perilous for relations between the KRG and IFG. With the oil-rich city of Kirkuk’s status unsettled, the non-implementation of the constitutional provisions, Article 140, regarding the disputed territories, and the deployment of two highly politicised military organisations there is the risk of a violent confrontation leading to unforeseen consequences.[[845]](#footnote-845) That’s why all such issues, specifically the number of the Peshmerga forces and KRG budget including the Peshmerga’s budget,[[846]](#footnote-846) often become ongoing issues and which sometimes cause military confrontation between the KRG and IFG in Iraq. Such a unique federal design of armed forces keeps a fragile stability in Iraq.[[847]](#footnote-847)

**6.4 Kurdistan Region: Party Affiliated Forces and Authoritarian Persistence**

Against that background, to address the two main concerns of the democratisation literature regarding, (1) how armed forces can pose threats to democracy; and (2) the need to preserve military organisation subordinate under democratic civilian control,[[848]](#footnote-848) this section deals with the structure and loyalty of the security forces in the KR. It concerns the influential position of the KDP and PUK in the control of security forces. The use of military units for partisan purposes will be examined to show the reality of authoritarian governance and democratic failure. The consequences of how such situations may threaten national security will also be explained.

During the 20th century, the Kurds have succeeded in overcoming excessive hostility demonstrated by various countries in the Middle East. Their defender and resistance in Iraq are the Peshmerga forces. The Peshmerga can be identified as a complex and multi-faceted military organisation functioning as Kurdish ethnic group armed forces. Its loyalty divided among the KRG (sometimes the IFG), the ruling parties and influential individuals of dominant families. They can be considered as national, regional, party and personal forces.[[849]](#footnote-849) They have existed, under different names, as the military wing of the KLM, which have fought against Iraqi governments since 1960s. They also fought each other in the mid-1990s. Some belong to the KDP led by Masoud Barzani who also held the KRP for nearly 12 years, and then held the general command of the Peshmerga until his resignation on 29 October 2017, while the others were in practice under the PUK command.

Kurdish parties have controlled the KR since 1991. The Peshmerga forces are also deployed in almost all the administratively disputed areas since 2003. Both the PUK and KDP’ military tendencies aimed to use highly politicised forces for the continued control of the party and the KRG, and this caused considerable instability.[[850]](#footnote-850) Such a status challenges civilian control of the military, as there is no defining line in the KR between civil and military control. Civilian control of the military has been considered as an essential condition for democratic government,[[851]](#footnote-851) specifically in democracies emerging from authoritarianism, where the military has predominance.[[852]](#footnote-852)

The depoliticization of the KR’s military apparatuses could create stability. In this regard, the KRG has often faced an ongoing crisis. Notwithstanding many attempts to depoliticise the Peshmerga, they have remained divided upon partisan lines. In compatible with relevant literature, as a sign of non-institutionalised and authoritarian governance, the ruling parties have kept control of their armed forces explicitly or implicitly to remain in power,[[853]](#footnote-853) sometimes by threatening each other and intimidating political oppositions.[[854]](#footnote-854) The armed forces have also been used to deprive democratically elected civilians of their offices.[[855]](#footnote-855) Therefore, neither self-governance nor federalism could disarm the ruling parties in the KR, because of the prevailing ethno-sectarian policy and electoral authoritarianism. Based on disastrous historical episodes of armed conflicts between the KDP and PUK, it can be stated that the Peshmerga’s patrimonial history and organisation means that the KR’s already fragile stability cannot be sustainable.[[856]](#footnote-856)

The ruling parties failed to address the democratic civil-military relations in the KR. Although the KR’s military is non-institutionalised, the KR either as a de facto state or as the only federated region of Iraq, displayed unusual involvement in the international arena due to having its security organisation independent of the federal state.[[857]](#footnote-857) In this sense, the Peshmerga was as an active international partner or proxy fighter against extremists in an unstable area.[[858]](#footnote-858) Because of the historical Arab-Kurdish rivalry, however, these forces are considered as an obstacle for the IFG progress to control the disputed areas, where the failure of the referendum helped the IFG to achieve it[[859]](#footnote-859). Besides their regional and national function to maintain stability, the Peshmerga forces have been facing challenges from unification under the command of the KRG, to replace partisan and personally affiliated units under the influential leadership of the ruling parties’ and their families.

**6.4.1 Non-Institutionalised Forces: Partisan Military Division and Dominance**

The integration of the Peshmerga forces has been dealt with as a partisan controlled issue based on a power-sharing system. Both the KDP and PUK agreed to unify the armed forces under the command of the Ministry of Peshmerga, which was first established in 1992 and reconstituted as a joint body in 2010. However, it remained a superficial body and is primarily loyal to ruling parties.[[860]](#footnote-860)

The law is demanding one scenario, but the reality is quite different. The KR president and the KDP head, Masoud Barzani was formerly the commander in chief of all armed forces, and the PUK’s Deputy Secretary-General Kosrat Rasul was his deputy as a vice KR president. This situation continued until Barzani resigned on 29 October 2017 due to the failed referendum for Kurdish independence,[[861]](#footnote-861) when his authority was transferred to the KP and KRG.[[862]](#footnote-862) Nevertheless, Barzani had restricted any impact on the Peshmerga groups belonging to the PUK, and it is the same situation for Rasul concerning his relationship to the Peshmerga units in the KDP dominant areas.[[863]](#footnote-863)

To understand the real situation of these forces, firstly, it is important to address their structure and numbers, to explain their division and how they became the dominant parties’ clients. Secondly, it is essential to explain their complex role in maintaining security and legitimacy for the KRG which alongside their authoritarian function of political control, might jeopardise an already fragile stability.

**6.4.1.1 Peshmerga Structure and Numbers: Political Patronage and Clientelism**

The KDP and PUK have many types of armed forces. In terms of hardware, software and military structure, some are formally under the command of the KRG, and others of a partisan body. Accordingly, despite the requirements of the law, these forces are divided upon partisan lines.[[864]](#footnote-864)

The Peshmerga has developed within specific civil-military arrangements that echo a particular trajectory of party dominance government and particularly to deliver coup proof strategies. The structure of the Peshmerga can be divided into five entities along with their subordinate commands. On the KDP side: the formal Peshmerga units are under the command of the Ministry of Peshmerga, Zeravani troops are under the command of the Ministry of Interior, and some organised units are supervised by the Kurdistan Army Command (KAC), which form the KDP’s military bureau. On the other side, PUK military apparatus includes forces under the command of the Ministry of Peshmerga, Emergency Force under the command of the Ministry of Interior, and some organised units administrated by the General Command of Peshmerga forces, which partly includes the Counter-Terrorism Group (CTG). In addition, there are two separate partisan military academies in Zakho’s KDP and Qalachualan’s PUK areas that are responsible for providing military training and political ideology to the Peshmerga. Moreover, both parties have some semi-organised forces led by Peshmerga veterans that lack modern training but carry a continuing legacy of the revolution. Through such organisations, both ruling parties have controlled all the armed forces.[[865]](#footnote-865)

Although the interior security and intelligence agencies of the PUK (Dezgai Zanyari) and the KDP (Dezgai Parastin) were officially united in 2012 under the KR Security Council, they are still internally divided along partisan lines. Recently, Lahur Talabani, as head of the KR’s intelligence service and a founding member of the PUK’s CTG, said that both intelligence services of the PUK and KDP are still separate and even if they are working without a reasonable amount of coordination with each other, but they have been working with international and regional intelligence agencies.[[866]](#footnote-866)

Compared to the KR population, the ruling parties have kept a huge number of armed forces as a proportion of the entire population. There are estimated to be nearly 350,000 fighters. Since January 2010, as an attempt to unify armed forces, fourteen integrated Peshmerga units have been formed and ostensibly brought under the authority of the Ministry of Peshmerga. They are called, Regional Guard Brigades (RGBs), and consist of around 40,000 fighters.[[867]](#footnote-867) This organisation, however, represented a facade of unity, as the so-called integrated RGBs are still organised upon partisan lines based on the fifty-fifty power-sharing system. Brigades headed by the PUK commanders have the KDP deputy commanders, and vice versa.[[868]](#footnote-868) Therefore, the role of the Ministry of Peshmerga is circumscribed to the coordination of highly politicised and controlled armed forces. Meanwhile, the Minster of Peshmerga has been the spokesman for these forces.[[869]](#footnote-869)

Such a prolonged power-sharing governance of a sensitive military organisation has undermined the related formal institutions by keeping them as marginalised and dysfunctional party affiliated armed forces. The main reason behind the absence of integrated and depoliticised armed forces is the KRG governing institutional design being personalised and clientelistic.[[870]](#footnote-870) In general, holding a government office depends on the employee’s loyalty to one of the dominant parties. This form of clientelism is much stronger for those holding offices within the armed forces. Alongside party affiliation, the employees need to show loyalty to influential leaders of the ruling parties or become one of their followers, because, even inside each party, the armed forces have been divided amongst individuals within the parties’ politburos and ruling families.[[871]](#footnote-871)

Clientelism helps to explain the massive increase in the number of Peshmerga fighters over the years. After 1992, both the KDP and PUK together had nearly between 70,000 to 80,000 full-time members and supporting fighters.[[872]](#footnote-872) The combined number of Peshmerga forces had increased to 190,000 fighters by 2007. Currently, as mentioned above, Peshmerga members have reached nearly 350, 000, as claimed by the KRG, reflecting the continuing growth of patronage-based recruitment.[[873]](#footnote-873)

One of the reasons beyond the ongoing issues between the IFG and the KRG is the real number of Peshmerga fighters, which has led to a cut in the Peshmerga budget by the IFG.[[874]](#footnote-874) Besides financial unpredictability, the KRG still lacks accurate bookkeeping, which creates ambiguity around the actual number of Peshmerga forces. This has created opportunities for corruption, known as ghost soldiers,[[875]](#footnote-875) who are either no longer fighters or forged individuals because salaries are paid through partisan commanders rather than a professional ministry.[[876]](#footnote-876)

Currently, the KRG has started biometric registration for all employees in a variety of offices to deal with the problem of ghost employees. However, even if this system is applied to the armed forces, their real number cannot be assessed, because it is a national secret.[[877]](#footnote-877) Consequently, the so-called ghost soldiers remain for the foreseeable future. This partisan policy has been continually and consciously practiced by the KDP and PUK instead of maintaining economic and social rights. Clearly, the clientelistic system remains an effective mechanism to ensure political backing for the ruling parties to stay in power for as long as they want. With the KP’s inefficient and dysfunctional oversight devices, these politicised forces have been used to oppress political opposition, as will be dealt with in the following section.

**6.4.1.2 Partisan Instrument Fits Different Political Purposes**

The armed forces are expected to ensure national security for the nation’s social, economic and political institutions from threats arising either from outside or within its institutional and territorial confines. Each aspect of national security has both functional and institutional levels. The functioning policy of the state deals with quantity and quality of military organisations and resources, and to define the situations under which the military forces are brought into action to meet a security threat, while the institutional aspect deals with how the military function is formulated and executed.[[878]](#footnote-878) The principle issue of the nation’s military organisation is the civil-military relationship. As far as the institutional pattern is concerned, national security aims to ‘develop a system of civil-military relations which will maximize military security with the least sacrifice of other social values’.[[879]](#footnote-879) To achieve this, nations which induced balanced civil-military relations through institutional arrangements will have the advantage of effective security establishments. While ‘nations which fail to develop a balanced pattern of civil-military relations squander their resources and run uncalculated risks’.[[880]](#footnote-880) Military organisation which reflects social values and the dominant social forces, ideologies and institutions can perform their military function effectively.

From that perspective, the KRG military organisations have been facing problematic civil-military relations, continuously and reflecting exclusively the ruling parties’ policies and interests. This has delivered no defining line between the civilian and the military, because originally the dominant political leaders were veterans who echoed their previous national dream of Kurdish independence but now this arrangement sustains electoral authoritarianism. The KRG’s military pattern lacks a balanced combination of power and attitudes from among military and civilian figures. By having party dominant governance, the KRG’s armed forces cannot provide a proper military function to preserve national security.[[881]](#footnote-881) Instead, the military has been used to fulfil the ruling parties’ different political purposes. This contradicts the democratic civil control of the military, as the ‘purpose of the military is to defend society, not to define it’.[[882]](#footnote-882)

Above its hybrid functions, the prevailing conception of the Peshmerga is broadly related to its cultural role associated with the KLM to redraw political boundaries. This aims to fit ethnic figures within wider Middle East countries, where national boundaries rarely follow those of existing states. Accordingly, the Peshmerga, having the will to die to ensure the existence of the Kurds, for the nation or the land is the highest embodiment of patriotism delivering an individual’s adherence to the whole nation by fulfilling their national duties. Such national loyalty, which is signified by the Peshmerga, could hinder the emergence of any form of liberal democracy.[[883]](#footnote-883) Moreover, such patronisation, or as Rubin described as ‘lionized’ forces,[[884]](#footnote-884) brought politicisation of the security issues in the KR.

In this regard, Linz designated that ‘when the regime needs to be reassured of the loyalty of the forces of repression’; it can be considered an indicator of the democratic failure.[[885]](#footnote-885) Within such conditions, politicisation develops securitisation, which are basically interrelated.[[886]](#footnote-886) Accordingly, a security issue arises due to it being displayed as a threat rather than there is a real threat.[[887]](#footnote-887) This leads to securitisation delivering anti-democratic settings[[888]](#footnote-888) that disregard the real security of both majority and minority (opposition) in society.[[889]](#footnote-889) In this circumstance, the KR’s ruling elites politicised the Peshmerga to achieve their aim of staying in power.[[890]](#footnote-890) As long as the KR’s ruling parties’ coercive capacity is strong, authoritarianism is sustained, and democracy is subverted. Like other examples of AME electoralism, the KR’s exceptionalism lies more in contemporary politicised and securitised settings that support authoritarianism, specifically a vigorous coercive apparatus that suppresses democratic initiatives which would deliver transition. As Eva Bellin has aptly indicated, ‘democratic transition can be carried out successfully only when the state’s coercive apparatus lacks the will or capacity to crush it’.[[891]](#footnote-891)

Despite laws, agreements and even deadlines occasionally announced by the RP Barzani,[[892]](#footnote-892) the Peshmerga and security forces are still politically and geographically divided. Accordingly, both the legislature and executive aimed to but failed to prohibit party-affiliated forces.[[893]](#footnote-893) This status endured even during the very sensitive situations the KR passed through. More recently,[[894]](#footnote-894) for instance, during IS threats to the control by the KR of nearly one third of Iraqi territories, all military forces were evenly deployed between the KDP and PUK on the KR’s front lines. The majority of the deployed Peshmerga forces are partisan forces: the PUK’s Seventy Forces and the KDP’s Eighty Forces, are both led, either by a member of the politburos or leadership councils of each ruling party.[[895]](#footnote-895) The main role of formal institutions like the Ministry of Peshmerga is limited to maintaining cooperation between the mixture of partisan forces. In such a non-to-low institutionalised condition, the informal routines is not only substituting the formal ones, but also is the core pattern of the Civil-Military relation in the KR.[[896]](#footnote-896)

The IS war also revealed the quality of the Peshmerga as a divided, partisan, though ‘lionized’,[[897]](#footnote-897) force that cannot preserve national security. It is understandable that the IS war was unbalanced: the Peshmerga has fewer military resources compared to the Iraqi Army, unexpected attacks happened, ruthless fighting and the long distance of front lines which the Peshmerga must cover with short notice. Despite all these issues, the Peshmerga could fight the IS and somehow prevent it from further advancement.[[898]](#footnote-898) However, these facts cannot disguise the uselessness of party dominant governance, through which the KRG failed to establish a unified and professional military apparatus to face such situations. Moreover, the IS war is an experience which is testing the capabilities of the KR governing organisations, especially the military ones, to overcome severe security threats, but it has failed all the real challenges. It is worth mentioning here, without the international coalition air strikes, the KRG could hardly have survived, because the IS was likely to invade the KR, and in fact the capital city of Erbil almost fell under IS control.[[899]](#footnote-899)

Besides, the armed forces have occasionally caused a threat to the security of the KR and therefore have maximised the sacrifice of individual liberties and political rights, as will be shown by many examples.

Democratic state institutions prescribe instruments for checks and balances to oversee the executive and maintain a democratic rule of law. While authoritarian ones deliver devices to suppress opposition and maintain political domination. Accordingly, all security apparatuses provide governments ‘with tools to monitor, co-opt, intimidate, and repress potential opponents’.[[900]](#footnote-900) In this regard, coercive capacity is central to the stability of electoral authoritarianism. ‘The greater a government’s capacity to either prevent or crack down on opposition protest, the greater are its prospects for survival’.[[901]](#footnote-901)

The KDP and PUK have used their coercive capacity against civil protests, political opponents and legitimate institutions.[[902]](#footnote-902) In almost all anti-KRG civilian protests, incumbents have used armed forces to violently spread fears in society by shooting and killing, injuring, detaining and torturing activists (as explained in chapter five). All such criminal acts committed by the KDP and PUK personnel were disregarded and nobody was held accountable or punished by the KRG. Controversially, but predictably, the KRG functioned to keep criminals unpunished due to their party affiliation instead of protecting the public from threats and offenses.[[903]](#footnote-903)

The partisan control of the armed forces has also enabled the ruling parties to impose their agenda and take the military option by holding a coup against the legitimate authority. For example, prior to 12 October 2015, negotiations over the term of the KR presidency ended in a deadlock concerning whether the KP would prevent Masoud Barzani from retaining the office or extend the tenure for two more years. The KDP had a political option via attempts to form a parliamentary majority. Conversely, the KDP prevented a convoy of the KP Speaker Yusuf Mohammed Sadiq[[904]](#footnote-904) and MPs of the MG faction from entering Erbil, where the KP was located, through its affiliated forces in the Prde checkpoint.[[905]](#footnote-905) Using armed forces to deny the entry of the Speaker and MPs represents a coup against legitimate authority. These unlawful circumstances lead to more desperation and distrust among political parties about the fate of institutional arrangement. As long as the KRG depends on party affiliated forces, the threat of civil war has not become history but is still a threat for the future.[[906]](#footnote-906)

Establishing a unified and professional non-affiliated military force would prevent the ruling parties from delivering authoritarian rule. That such a military organisation in the KR should be controversial, explains the great distance that exists between democratic and insurgency legitimacy. Democratic legitimacy requires democratic institutions in order to keep and implement the real power gained by a democratic mandate. In contrast, when the ruling parties preserve their own armed forces, they advocate that insurgency legitimacy should be preserved.

In summary, the KDP and PUK continue to keep separate armed forces which maintain their political dominance, but this does not take into account that such a pattern of civil-military relations provokes security risks and leads to undemocratic consequences. Above their party-affiliated and regional divisions, the KR armed forces are also characterised by their personal affiliation to ruling families and political leaders. As long as the ruling parties are reluctant to reform such military organisations, the integration and depoliticization of the Peshmerga will be marginalised. The military and the partisan status quo endanger stability in the KR and its future. Unless the military is depoliticised, the KR will never step onto the path to democratic transition and authoritarian rule will persist.

**CHAPTER SEVEN**

**Semi-Presidentialism and Authoritarian Persistence in Kurdistan Region**

**7.1 Introduction**

The third wave of democratic transitions in 1980s and 1990s made democracy the most common regime-type, particularly after the collapse of the Soviet Union and democratisation in Central and Eastern Europe, Africa, Latin America, and Asia.[[907]](#footnote-907) At that time, alongside issues of a market economy, civil society and political elites, institutional engineering[[908]](#footnote-908) as a concept was reintroduced by many scholars as being of considerable value to democratic government. In this regard, the debate about forms of government became more urgent; addressing which institutions are vital to the establishment of successful democracies. Meanwhile, the virtues of presidentialism and parliamentarism regained importance in the deliberations concerning which institutions support or hinder the process of democratisation, or which may even cause a reverse effect and the failure of democracy.[[909]](#footnote-909)

Many scholars link democratic failure to presidentialism.[[910]](#footnote-910) Linz, for instance, put forward many arguments against presidentialism, as he saw it as fundamentally more inclined to democratic breakdown than parliamentarism. Consequently, Linz considers parliamentarism to be more conducive to stable democracy than presidentialism. This could be applied particularly to ‘nations with deep political cleavages and numerous political parties’[[911]](#footnote-911) and which provides ‘a better hope of preserving democracy’.[[912]](#footnote-912) Parliamentarism, therefore, is regarded as a respectively reliable choice for developing democracies.[[913]](#footnote-913)

The authority of strong scholarly arguments and the wide-ranging results from empirical evidence[[914]](#footnote-914) mean that the Linz’s initial scepticism about presidentialism remains the leading attitude within the academic community. Although a strong scholarly consensus formed in favour of parliamentarism, emerging democracies, since 1960s, responded differently by adopting systems with an elected president, either presidentialism or semi-presidentialism.[[915]](#footnote-915)

Unlike researches on presidential and parliamentary governments, semi-presidentialism is almost neglected by comparison. Semi-presidentialism was widely recognised in 1970s and refined in 1990s but since then, the relationship between semi-presidentialism and democratisation was only first discussed as late as the 1990s. Accordingly, it lacks sufficient work, resulting from having few academic supporters.[[916]](#footnote-916)

The KR adopted semi-presidentialism following the Presidency Act in 2005, which amended Law No. 1 of 1992 that adopted parliamentary government. Accordingly, this chapter is devoted to explaining the concept of semi-presidentialism and its advantages and disadvantages. Also, the relationship between semi-presidentialism and democratic survival will be examined here. With this in mind, this chapter addresses sub-types to show the difference between president-parliamentarism and premier-presidentialism. This is to explain why a president-parliamentary system is expected to be linked with a poorer democratic performance. Later, the linkage between semi-presidentialism and authoritarian outcomes in the KR will be analysed here as the system did not alternate to a parliamentary one when the RP lost its majority in the KP. To reach a conclusion, the origin of the KRP will also be considered here. This will show how the KRP is personified and the RP is basically exempted from any vertical accountability-being the least mechanism to hold the president to account in systems with an elected president.

**7.2 Semi-Presidentialism: Definition and Classification**

Democracies can be designed with different types of governing systems. The most common forms of democratic government are parliamentarism, presidentialism and semi-presidentialism. Conceptually, in a democracy the origin and survival of the branches of government and the way the relationship between the legislative and executive is organised produces these governing systems.[[917]](#footnote-917) Semi-presidential government is an alternative to presidentialism and parliamentarism. It consists of both a popularly elected fixed term president and a prime minister selected by parliament, with a cabinet subject to legislative confidence.[[918]](#footnote-918)

Scholars who write about such a system agree that semi-presidentialism can be different in theory and in practice, as it works differently in various contexts. Furthermore, Maurice Duverger considered semi-presidentialism to be an alternative to parliamentarism and presidentialism rather than something to be regarded as a mixture of both.[[919]](#footnote-919) Duverger’s perception of semi-presidentialism referred to behavioural outcomes rather than the institutional design of this governing type and is inspired by Georges Vedel’s much-quoted article in the *Le Monde* in 1979; entitled as ‘Synthesis or paralysis’. Vedel states that ‘semi-presidential government, if it could exist in France, would in fact be not a *synthesis* of the parliamentary and presidential systems, but an *alternation* between presidential and parliamentary phases, which is quite another thing’.[[920]](#footnote-920) In practice, the alternation of the system depends on whether the president’s party preserves its majority in the assembly.[[921]](#footnote-921) In this sense, semi-presidentialism shares features with both parliamentary and presidential governments. Like parliamentarism, the semi-presidential government has a divided executive. However, theoretically the president and the prime minister with ‘his’ cabinet might have more or less equal constitutional powers. Like presidentialism, it has a popularly elected, fixed term and powerful president, who even shares some legislative powers; such as the president’s legislative veto, which ensures ‘his’ considerable influence.

Duverger’s argument on the alternation phases of semi-presidentialism, was clearly objected by Gianfranco Pasquino who considered semi-presidentialism as a specific form of government that keeps its own ‘appropriately devised institutional features’.[[922]](#footnote-922) The necessity to establish a semi-presidential government is an ‘explicit, purposive and well-designed act of institutional and constitutional engineering’.[[923]](#footnote-923) Thus, semi-presidential systems are not alternating between presidential and parliamentary regimes; rather they are examples of both pure presidentialism and pure parliamentarism.[[924]](#footnote-924) In this sense, semi-presidential governments, unlike pure presidentialism and parliamentarism, basically show more than one form of political practice within the same institutional structure.

Semi-presidentialism has been inclined to definitional difficulties. Notably, there has been misperception, or divergence among scholars concerning both the definition of the concept itself and, consequently, the classification of countries as semi-presidential.[[925]](#footnote-925) There are various definitions of semi-presidentialism with each categorising different groups of states as semi-presidential. In the last version of Duverger’s formulation explaining the government of the French Fifth Republic, a political regime is defined as semi-presidential ‘if the constitution which established it, combines three elements: (1) the president of the republic is elected by universal suffrage, (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them’.[[926]](#footnote-926)

The Duverger’s insight into semi-presidentialism has raised more behavioural questions than those of institutional design. However, both methods to analyse both constitutional structure and political practices are justifiable, though if both are combined in the classification of governing systems it is highly likely to create conceptual ambiguity.[[927]](#footnote-927) As Duverger acknowledges, ‘this definition comes up against several difficulties’[[928]](#footnote-928) concerning some cases of indirectly elected presidents, such as in Finland, or those having a weak president with very few personal powers, like Ireland. Duverger himself states that ‘the constitutions of Austria, Ireland and Iceland are semi-presidential, but political practice is parliamentary’.[[929]](#footnote-929) Due to there being a figurehead presidency, he classed them as parliamentary. Meanwhile, he considered the Weimar Republic, Finland and Portugal alongside of France as semi-presidential due to having a balanced dual executive of presidency and government.[[930]](#footnote-930) Duverger’s definition combines constitutional structures with actual political powers. Consequently, the direct election of the president is a required condition but not a sufficient one to classify a country as semi-presidential.

Additionally, Sartori by using a similar method excludes Austria, Ireland and Iceland as semi-presidential due to having a figurehead president. In this regard, Sartori asks, ‘what is the point, then, of assigning these countries to semi-presidentialism on a dead letter basis?’.[[931]](#footnote-931) Despite the difficulties in defining a system of dual executive, he stipulates that a governing system is semi-presidential if there are some characteristics that jointly apply; having a popularly elected, either directly or indirectly, fixed term president, who is independent from parliament and will govern indirectly via the government. In addition, the government is a president-independent body, though it has parliament-dependent characteristics depending on a parliamentary majority for survival and subject to a no confidence vote, and there is a prescribed dual authority that allows for various balancing and shifting of political power between the president and the government, despite them keeping their potential autonomy.[[932]](#footnote-932)

There are some other scholars who defined semi-presidentialism by focusing either on the executive’s considerable power, or only on constitutional design. For the first group of scholars, for example, Patrick O’Neil defines semi-presidentialism as regimes that prescribe a dual executive, in which the president ‘wields real executive power over the prime minister and cabinet’.[[933]](#footnote-933) Accordingly, to classify a country as semi-presidential, the respective powers of the president and prime minister are decisive and the way the president is elected is extraneous, accordingly.[[934]](#footnote-934)

Despite ‘a frequent disregard of the concept’[[935]](#footnote-935) by many scholars, Robert Elgie has defined semi-presidentialism broadly as, ‘the situation where a popularly elected, fixed-term president exists alongside a prime minister and cabinet who are responsible to parliament’.[[936]](#footnote-936) Elgie’s definition of semi-presidentialism depends only on dispositional properties, which is solely concerned with ‘whether there is a president and/or a prime minister, whether or not they are popularly elected and whether or not they serve for a fixed term’.[[937]](#footnote-937)

To eliminate any subjectivity in an analysis, Elgie has avoided making a judgment about how powerful the president is or can be, in semi-presidential systems due to the varieties of presidential powers in semi-presidential countries[[938]](#footnote-938). He claims that varieties of semi-presidential countries are designated according to a scholar’s subjective judgment as to what establishes a relatively strong president. This definition thus reformulated Duverger’s one to avoid the two most debatable points on electing the president, whether directly or indirectly, and considering the presidential powers in order to indicate the semi-presidential regime type.[[939]](#footnote-939) Beyond the six West European and other well-known examples of semi-presidential countries, Elgie classed many other countries as semi-presidential according to the different continents and different levels of democratic performance as being either fully consolidated, or non-consolidated, or even collapsed.[[940]](#footnote-940)

Elgie’s perception, as also Duverger acknowledges, constitutes an understanding of semi-presidentialism as a pure regime type and exhibits as much diversity as both parliamentarism and presidentialism.[[941]](#footnote-941) Accordingly, based on Elgie’s definition, semi-presidential systems share a basic constitutional framework by having a popularly elected president alongside a prime minister and a cabinet which are responsible to the legislature. Despite sharing a constitutional basis, semi-presidential systems put their political powers into practice in a variety of ways. The constitutional authorities of the president, the prime minister and the legislature, diverge in their political practice between these institutions. Semi-presidential constitutions organise the relationship between the president, the prime mister and the legislature in a variety of ways as their politics vary. Remarkably, as Elgie indicated, ‘constitutionally strong presidents are sometimes politically weak and constitutionally weak presidents are sometimes politically strong. Presidents sometimes dominate prime ministers. Prime ministers sometimes dominate presidents. Sometimes neither one dominates the other’.[[942]](#footnote-942)

Within the general category of semi-presidentialism, however, there is still significant institutional variation and some scholars have categorised the system as two sub-types of premier-presidential and president-parliamentary forms of government, in order to deal with the institutional and political variation within semi-presidential countries. There are various ways to capture the distinctions among those countries concerning the constitutional structure and actual power of political institutions. The method used here is to focus on constitutional elements to indicate the semi-presidential sub-types. Concerning the constitutional structure, there is a common method adopted by most of the scholars that is concerned with capturing the variation between semi-presidential countries, and this takes into consideration the constitutional powers of the president.[[943]](#footnote-943) Accordingly, semi-presidential systems are divided into two forms of premier-presidential and president-parliamentary. Elgie defines premier-presidentialism as ‘a form of semi-presidentialism where the prime minister and cabinet are collectively responsible solely to the legislature’.[[944]](#footnote-944) President-parliamentarism is defined as ‘a form of semi-presidentialism where the prime minister and cabinet are collectively responsible to both the legislature and the president’.[[945]](#footnote-945)

**7.3 Semi-Presidentialism and Survival of Democracy**

In addition to clarifying and capturing the variations among semi-presidential countries, the performance and survival of democracy is also a concern beyond such variations. This classification aims to study the effects of semi-presidential institutions on political life, indicating under which kind of semi-presidential sub-types the performance of democracy is better than the other. Accordingly, the classification tries to answer the question whether, in general, the semi-presidential regime’s democratic performance leads to democratic breakdown, or potentially whether either premier-presidential or president-parliamentary leads to democratic failure.In comparison with studies on both parliamentarism and presidentialism, less work has been conducted on semi-presidentialism. Additionally, however, there is a consensus within the scholarship that semi-presidentialism is basically challenging to democracy, and this makes difficulties for emerging democracies.

There are three key criticisms of the semi-presidential system. Firstly, there is the issue of the dual executive design: secondly, the problem of dual democratic legitimacy: thirdly, the problem of the winner-takes-all paradigm for the presidential election. The second and third issues are also encountered under presidentialism. This section, however, will place the emphasis on those perils that are specifically related to semi-presidentialism.

**7.3.1 Dual Executive Design and Constitutional Crisis**

All scholars agree that semi-presidentialism constitutes a dual executive system; a popularly elected fixed term president and a prime minister, responsible to the legislature. This prescribes two competing players within the executive, which is the essential difference between semi-presidentialism and both presidentialism and parliamentarism. It is argued that the dual executive perhaps makes problems to the executive coordination, which might weaken the performance of democracy or even threaten its existence. The dual executive was one of the critical issues that drove Linz to be nearly as opposed to semi-presidentialism as to presidentialism. Semi-presidentialism can work when ‘it becomes a de facto parliamentary system’[[946]](#footnote-946) and this can be considered a promising situation when the president, the prime minister and all the ministers in the cabinet are from the same party or in a coalition with a legislative majority.[[947]](#footnote-947)

The presidential-style of divided government can also be applied to semi-presidentialism, as it is called ‘cohabitation’ or might equally be termed split-executive government.[[948]](#footnote-948) This takes two forms according to the parliamentary and presidential components of semi-presidentialism. When the president, the prime minister and all ministers come from the same party, but the party fails to deliver a majority in the legislature, the situation corresponds to a minority government in parliamentarism and a divided government in presidentialism.

In this context, however, the split-executive government in semi-presidentialism can also present itself quite differently from both the equivalent situation in parliamentarism and presidentialism. The parliamentary component of semi-presidentialism proscribes a government that works without the legislative majority’s backing. While the presidential aspect of the system means the president can serve in office even without the support of the legislative majority. This combination prescribes a situation wherein the president, despite being faced with a legislative majority that can assist and support a prime minister who is also opposed to the president, can choose to stay in office until the presidential term expires. Thus, the semi-presidential form of divided government entails an executive-split between two senior office-holders; one of whom is supported by the legislative majority and the other who can remain in office until the end of the term, despite the opposition of both the legislature and the prime minister.[[949]](#footnote-949)

Moreover, the main theoretical and political concern about semi-presidentialism is precisely this question of deadlock and constitutional conflict implicit in the dual executive design.[[950]](#footnote-950) The president and the prime minister are sharing power in a way that ‘excludes a neat division of powers, leading to ambiguity’.[[951]](#footnote-951) Both senior office-holders have fundamentally different legitimacy and accountability; the prime minister comes from and is responsible to the assembly, while the president enjoys more autonomy and can survive without the assembly’s approval. Such a greater autonomy precipitates ‘incentives for the president to push his own agenda, even if it means invading the prime minister’s domain. The shared power, but unequal legitimacy and accountability in the structure creates theoretically predictable and empirically verifiable tensions within the semi-presidential type’.[[952]](#footnote-952) Some scholars therefore advised against countries borrowing semi-presidentialism, which is a ‘more risk-prone system than the modern parliamentarism that has evolved in Europe, other than in France after World War II’.[[953]](#footnote-953)

Rather, the dual executive might entail instances of intra-executive conflict if the prime minister seeks to achieve a degree of autonomy.[[954]](#footnote-954) Despite considerable constitutional authority, ‘in most instances, the relationship between a president and a prime minister coming from the same party has, sooner or later, turned sour’.[[955]](#footnote-955)Semi-presidentialism thus induces instability and inefficiency even within a promising situation.[[956]](#footnote-956) The president inevitably ‘has his own staff and can develop policies that are at odds with those of his prime minister’[[957]](#footnote-957) and ministers will appeal to the president when they have not received what they consider to be auspicious treatment from the prime minister, who is then in an uncomfortable position. The predictable result is ‘a lot of politicking and intrigues that may delay decision making and lead to contradictory policies’.[[958]](#footnote-958)

In this context, who, the president or the prime minister, has the authority over the armed forces if the dual executive prescribes no clear lines of political control over the military establishment? In contrast, leaving aside the issue of whether the authority over the military is devoted to a civilian or military professional, there is a clear line in both parliamentarism; viewing the president as the symbolic head of military and presidentialism; wherein the president is the actual head of the armed forces.[[959]](#footnote-959)Whileunder semi-presidentialism, there are likely to be ‘at least three major actors and very often four: the president, the prime minister, the minister of defence, and generally a joint chief of staff who has the immediate command of the forces. The hierarchical line that is so central to military thinking acquires a new complexity’.[[960]](#footnote-960) Notwithstanding that the hierarchical relation is decisive for the military, the minister of defence’s loyalty to the president, especially if both have a military background, makes the relationship between the president and the military establishment strong and above the political parties. Once the special relationship is established among these military institutions, a congenial situation for the president prevails, who is able to limit any interference by the prime minister. To deliver the prime minister’s choice of the appointment of the minister of defence over the president, the prime minister in either situations; when he/she belongs to a different party or coalition, or when the defence minister is in conflict with high military commanders who are perhaps in favour of the president, will face an embarrassing situation. Under semi-presidentialism, a dual executive with this military organisation might exempt the military from the civilian and political control of both the prime minister and parliament.[[961]](#footnote-961) By prescribing inefficiency in the decision-making process, the dual executive ‘has room for constitutional ambiguities regarding one of the central issues of many democracies: the subordination of the military to the democratically elected authorities and hopefully to civilian supremacy’.[[962]](#footnote-962) In this sense, the dual executive model produces a crisis not only in the quality of democracy but even for the failure of democracy itself.[[963]](#footnote-963)

**7.3.2 Dual Democratic Legitimacy: Cohabitation and Democratic Crisis**

The second criticism of the semi-presidential system is that dual democratic legitimacy, which is also encountered under presidentialism. It means that both the president and the prime minister can legitimately claim to be the citizens’ true representative; the president is privileged with the popular vote and the prime minister with parliamentary support.[[964]](#footnote-964) While neither can ‘trump the authority of the other’,[[965]](#footnote-965) when the president loses the legislative majority, institutional conflict could potentially arise between the legislature and the president. The conflictual situation is likely to occur when the two competing legitimacies represent different political majorities; the president is elected by popular vote and the prime minister represents the majority in the legislature that is in opposition to the presidential popular majority.[[966]](#footnote-966)

Under semi-presidentialism, the dual democratic legitimacy problem takes two forms. Firstly, semi-presidentialism is likely to lead to a divided minority government (as explained above), which focuses on the conflict between the executive and the legislature. In contrast, secondly, the problem of cohabitation concentrates on the intra-executive conflict; as struggles between the president and the prime minister over the executive. Cohabitation means the situation wherein a president is from a party that is not represented in the cabinet but holds power concurrently with a prime minister from the opposition.[[967]](#footnote-967) During cohabitation, the president has the choice to either accept the assembly’s will and coexist with a political opponent or, if the constitution permits, to challenge the assembly and dismiss the prime minister if the assembly appoints a prime minister ‘who is equally opposed to the president’.[[968]](#footnote-968)

In this context, scholars have showed considerable concern over the ‘perils of cohabitation’.[[969]](#footnote-969) As either ‘the cabinet may refuse to accept the legislative powers of a president’[[970]](#footnote-970) or a ‘president may refuse to acknowledge the claims to executive leadership made by an opposition assembly majority’.[[971]](#footnote-971) In such a situation, the two senior officeholders will probably be reluctant to share power. When either or both segments of the executive ‘fail to recognize the claim to executive authority made by the other, cohabitation could generate a regime crisis’.[[972]](#footnote-972) This might lead to deadlock, in which both governing segments are reluctant to compromise and where decision-making comes to a halt.[[973]](#footnote-973) Alternatively, a potential scenario is that ‘one of the executive actors, usually the president, tries to seize power so as to resolve the situation and restore executive authority’.[[974]](#footnote-974) Consequently, either the military will interfere as a mediating power circumscribing both the president and the prime minister, or each will be seeking to attain power solely against the other. Both situations are leading potentially to democratic failure.[[975]](#footnote-975)

**7.3.3 Cohabitation and Emerging Democracies**

Semi-presidentialism, like presidentialism, is more attractive to emerging democracies and among countries experiencing more political and constitutional instability,[[976]](#footnote-976) while parliamentary systems are ‘clustered among the relatively prosperous and politically stable OECD countries’.[[977]](#footnote-977) Accordingly, in emerging democracies, deciding to choose an appropriate form of government is an essential issue attracting enormous debates and even divergence among political parties. The functioning of democratic institutions initiates debates about which forms of government are salient and should become part of the institutional engineering to set up a successful democracy.[[978]](#footnote-978)

Since 1990, semi-presidentialism has been preferred most often as a constitutional choice for emerging democracies.[[979]](#footnote-979) However, most scholars are concerned with the wide spread of semi-presidentialism. The main argument is that semi-presidentialism is a fragile institutional design for new democracies. Despite having many reasons for the refusal of semi-presidentialism, the most common academic objection concerning semi-presidentialism is the dual legitimacies that potentially lead to institutional conflict, specifically for emerging democracies.[[980]](#footnote-980) In this regard, Elgie affirmed that ‘the prospect of ongoing intra-executive conflict or a prime ministerial merry-go-round until the next presidential or legislative election, and perhaps beyond, is a scenario that young democracies can well do without’.[[981]](#footnote-981)

Within the context of post-communist Europe, Linz and Stepan also discussed the possible perils of semi-presidentialism. They agreed that in the context of the institutional conflict between the president and assembly it ‘is not necessarily detrimental to democracy when both sides respect each other and do not intend to eliminate the other’.[[982]](#footnote-982) However, they have explicitly explained the perils of cohabitation for new democracies. They stated that ‘when supporters of one or the other component of semi-presidentialism feel that the country would be better if one branch of the democratically legitimated structure of rule would disappear or be closed, the democratic system is endangered and suffers an overall loss of legitimacy, since those questioning one or the other will tend to consider the political system undesirable as long as the side they favor does not prevail’.[[983]](#footnote-983) In parliamentarism, the conflict in a democratic parliament inclines toward policies among parties. While in semi-presidentialism, ‘policy conflicts often express themselves as a conflict between two branches of democracy’.[[984]](#footnote-984)

This argument against semi-presidentialism is like Linz’s argument against presidentialism; as the crises of government in the absence of effective constitutional mechanisms, develop into regime predicaments that are perilous not only to the quality of democracy but to democracy itself.[[985]](#footnote-985) In other words, semi-presidentialism through generating cohabitation will probably be transforming an institutional conflict between the president and the assembly over policies, into crises in the regime and the actual legitimacy of the political system itself.

Furthermore, Cindy Skach related such criticism to the classification of semi-presidential governments according to electoral results. Accordingly, she identified three electorally generated semi-presidential sub-types. Firstly, there is a consolidated majority government, where both the president and prime minister have the same legislative majority. Secondly, a divided majority government, in which the prime minister has the majority in the legislature, but the president, does not.[[986]](#footnote-986) Thirdly, and as she calls it, the most conflict-prone subtype of semi-presidentialism, there is a divided minority government where ‘neither the president nor the prime minister, nor any party or coalition, enjoys a substantive majority in the legislature’.[[987]](#footnote-987) Institutional conflict will arise from a situation where ‘the legislature is highly fragmented and where there is no stable or coherent legislative majority’.[[988]](#footnote-988) The general concern about such a situation, as Elgie describes, is that ‘governing becomes difficult for anyone, for the president, for the prime minister, and for the legislature, [where] a stalemate, or power vacuum, emerges’.[[989]](#footnote-989) In this context, either the president or the military might be interested in filling the vacuum and rule by decree. Meanwhile, ‘the rule of law may be violated, and democracy may collapse’.[[990]](#footnote-990)

Additionally, a divided minority government perhaps leads to the unstable scenario of a vicious circle, which is problematic for democracy and characterised by ‘legislative immobilism, on the one hand, and continuous presidential dominance, on the other. Presidential domination usually takes the form of extensive rule by executive decree as a substitute for a legislative majority. It is often accompanied by a narrowing of the decision-making arena to a small group of handpicked, non-party ministers’.[[991]](#footnote-991) This violates the inclusion and contestation values of democracy and delegitimizes the democratically elected assembly.[[992]](#footnote-992) When the president continues using his emergency powers and decrees beyond their constitutional limits for a prolonged period, a disloyal political opposition emerges questioning not only the president’s behaviour, but also starts to question the validity of the institutions. Consequently, the whole regime passes through a predicament where democracy itself will be at risk.[[993]](#footnote-993)

Skach has also related the argument of adopting semi-presidentialism in emerging democracies, to the institutionalised party system.[[994]](#footnote-994) Basically, when party systems are not institutionalised, that is they are not stabilized in society’s roots thereby preventing party volatility, which would include most emerging democracies; the argument for borrowing semi-presidentialism has profound difficulties. Thus, she warns against the introduction of semi-presidentialism in new democracies.[[995]](#footnote-995)

Based on the academic assumption that a semi-presidential scheme is risky for new democracies either due to periods of cohabitation or divided minority government, Elgie considered some cases to examine whether there is empirical evidence to support this specific premise. He found a few cases of cohabitation in emerging democracies and only one case where the intra-executive conflict has directly led to democratic breakdown.[[996]](#footnote-996) Conversely, despite the survival of some new democracies, he found more cases of democratic breakdown resulting from a divided minority government, particularly in presidencies associated with a dangerous personalization of the political process. While in established democracies, neither cohabitation nor a divided minority government have ever led to either democratic failure or even to the decline in status from a full democracy to a partial one. However, the adoption of semi-presidentialism is characteristically perilous and needs more academic study.[[997]](#footnote-997)

**7.4 Semi-Presidential Sub-types and Democratic Performance**

The variation within semi-presidentialism associated with democratic performance is also argued in the academic community. The argument is that the two sub-types of semi-presidentialism ‘provide different incentive structures for political actors and that the incentives under premier-presidentialism are likely to be less damaging for the performance of democracy than those under president-parliamentarism’.[[998]](#footnote-998)

The difference between premier-presidentialism and president-parliamentarism was first elaborated by Shugart and Carey. When they refined the concept, they highlighted the significant variations within semi-presidentialism. They classified semi-presidential governments into two forms; premier-presidential in which the prime minister exercises greater executive power and president-parliamentary in which the president wields greater authority.[[999]](#footnote-999) However, they refer to semi-presidentialism in Duverger’s definition as a premier-presidential government.[[1000]](#footnote-1000) While in consideration of the various institutional designs for the executive-legislature relation, they defined president-parliamentary government as:

1. the popular election of the president;
2. the president appoints and dismisses cabinet ministers;
3. cabinet ministers are subject to parliamentary confidence;
4. the president has the power to dissolve parliament or has legislative powers, or both.[[1001]](#footnote-1001)

The distinction is based on the distribution of power between the dual executives; the president and the prime minister, and the accountability of the cabinet to either the president or parliament. In premier-presidential government, ‘the prime minister and cabinet are collectively responsible solely to the legislature’.[[1002]](#footnote-1002) While in president-parliamentary, ‘the prime minister and cabinet are responsible collectively to both the legislature and the president’.[[1003]](#footnote-1003) As expected, such diversity has effects on political outcomes, where ‘these seemingly small changes in the formal definition of executive-legislative relations are in fact crucial’.[[1004]](#footnote-1004)

The dominant idea for measuring the performance of democracy is the stability of government. Although most studies disregard the performance of democracy, some scholars have found evidence to show the difference within semi-presidentialism sub-types. For example, Oleh Protsyk in two studies in 2005 and 2006 has operationalised this distinction in the context of intra-executive relations, particularly in comparative studies of former communist states in Europe. He found that in premier-presidential governments, the appointment of a prime minister more consistently reflected the preferences of the parliamentary majority than the choice of prime minister in president-parliamentary governments that reflected the preferences of the president.[[1005]](#footnote-1005) Accordingly, he concluded that ‘the outcomes of cabinet formation in premier-presidential regimes are much more predictable’.[[1006]](#footnote-1006) However, such a distinction between the two forms of semi-presidentialism depends on the degree of political fragmentation and party clientelism as active non-constitutional factors.[[1007]](#footnote-1007) In another study, Protsyk found that ‘intra-executive conflict is a frequent phenomenon both in president-parliamentary and premier-presidential regimes’.[[1008]](#footnote-1008) In contrast to one of the preliminary hypotheses, an initial statistical test identified that there is ‘no significant relationship between the type of semi-presidential system and the likelihood of intra-executive conflict’.[[1009]](#footnote-1009)

Other scholars focused on only one of the forms of semi-presidentialism or one case study. For example, Steven Roper has focused only on premier-presidential regimes in Eastern Europe and the former Soviet Union. By re-examining the impact of institutional design on the process of post-communist democratisation, he evaluates the relation between the form of government and cabinet stability. He found variations among those countries and concluded that ‘premier-presidential regimes that are considered to be the most presidential have the greatest level of cabinet instability’,[[1010]](#footnote-1010) such as in Poland. In his study about the Ukraine, Protsyk indicates how the president-parliamentary system there ‘contributed to high levels of intra-executive conflict, cabinet instability and executive–legislative confrontation’.[[1011]](#footnote-1011)

In their influential work in 1992, Shugart and Carey made a comparison study; specifically, they were concerned with semi-presidentialism which had received little attention from comparatists then. Their study addressed ‘how various institutional designs for representative democracies affect the ways in which the political process operates’.[[1012]](#footnote-1012) They concluded that when ‘the electorate has two agents [an assembly and a president], it becomes critical for the relative powers to be spelled out clearly in the constitution’.[[1013]](#footnote-1013)

As far as semi-presidential subtypes are concerned, they generally shed light on the problems of constitutional ambiguity or disproportionate constitutional powers when cohabitation happens. In this regard, they addressed the president-parliamentary governments in Portugal, Sri Lanka and the Weimar Republic (1919-1933). Thus, they agreed that the primary challenge for constitutional design is to build a clear division between the authorities of both the president and the prime minister. Precisely, this distinction should be recognised constitutionally when the president loses the majority in the assembly.[[1014]](#footnote-1014) Accordingly, they emphasised ‘the danger of institutional arrangements that do not provide clear mechanisms for the resolution of conflict between presidents and opposition assemblies’.[[1015]](#footnote-1015) Specifically, in president-parliamentary regimes ‘ambiguity will increase the danger that either a president or an opposition assembly majority will reject the claims to executive authority of the other’.[[1016]](#footnote-1016) Within the president-parliamentary systems, in which ‘the president alone fills cabinet posts, [while] either the president or the assembly can dismiss ministers’,[[1017]](#footnote-1017) are included among the regimes that ‘might be labelled “confused,” in that the responsibility of cabinet ministers is unclear and quite possibly contradictory’.[[1018]](#footnote-1018) Thus, due to the dual responsibility of the government to both the president and the assembly, president-parliamentarism generates greater institutional confusion and ambiguity than premier-presidentialism. The dual responsibility, as Shugart argues, in a situation where the constitution permits either the president or the assembly ‘acting unilaterally to dismiss cabinet ministers’,[[1019]](#footnote-1019) produces the situation in which ‘there is no institutionally defined authority over the cabinet’.[[1020]](#footnote-1020) Therefore, the shared control of the cabinet in president-parliamentary regimes is the vital concern over all other ones with dual democratic legitimacy. In a situation where there is no clear democratic principle to define who fills and dismisses the cabinet, which is ‘one of the most basic elements to any democracy’,[[1021]](#footnote-1021) then ‘conflicts of a very basic nature are likely’.[[1022]](#footnote-1022) Potentially, such an intra-executive conflict leads to a legitimacy crisis of the regime itself, because specifically president-parliamentarism has no reasonable answer to the question ‘Are the ministers the president’s ministers, or are they the assembly’s?’.[[1023]](#footnote-1023) Such an institutional design, as they state, contradicts the very principle of democratic institutions that are ‘supposed to be conflict regulators, not conflict generators’.[[1024]](#footnote-1024) That is why they concluded with a clear ‘warning to stay away from president-parliamentarism design’.[[1025]](#footnote-1025)

Moreover, perhaps the intra-executive conflict continues because both the president and the assembly have an impact on the process of appointing a new cabinet. Neither institution, as they argue, can hold the other responsible if the situation continues and produces a prolonged impasse.[[1026]](#footnote-1026) In this situation, the dominant strategy for both the president and the assembly ‘is to make the next move, creating an appointment-dismissal game in which there is no stable equilibrium’.[[1027]](#footnote-1027) In the intra-executive conflict, the institutional design encourages the unstable pattern of the appointment-dismissal game between the president and the assembly as has happened in some president-parliamentary countries and any new ones will face the similar problems.[[1028]](#footnote-1028) Accordingly, Shugart and Carey would prefer a parliamentary system rather than premier-presidentialism and president-parliamentarism, which can lead potentially to democratic failure. However, compared to premier-presidentialism, they consider president-parliamentarism is likely to precipitate democratic breakdown.

**7.5 Semi-Presidentialism and Successful Authoritarianism in Kurdistan Region**

Previous chapters have been devoted to other institutional designs that generally contributed to authoritarian persistence in the KR. While this chapter considers how the adoption of semi-presidentialism in 2005 is a cause and consequence of electoral authoritarianism itself in the KR, particularly considering other supporting circumstances. Notwithstanding that insufficient work has been conducted on semi-presidentialism compared with either presidentialism or parliamentarism, there is an equivalent academic consensus that semi-presidentialism is inherently unsafe and leads to political instability.[[1029]](#footnote-1029) Beyond considering the rise of the opposition parties and military involvement as a mediating power, this section concentrates on the related institutional effects of the adopted semi-presidential system on the breakdown of democracy. It is important to deal with the situation of how semi-presidentialism sustained authoritarianism in the KR and to systematically evaluate the empirical evidence for and against the theoretical assumptions. The most problematic issues that will be argued here are the president’s indefinite term, exercising his powers without being held accountable, ruling by decree and the referendum after the coup of 12 October 2015. Additionally, the section first explains how and why semi-presidentialism was adopted, as the RP created and added to the executive; the KRG. At the time it was considered to be the highest branch of the executive power in KR.

**7.5.1 The Origin of the Kurdistan Region Presidency**

Semi- presidentialism as an attractive constitutional choice has emerged in various political circumstances. Above the external socio-political incentives for the spread of semi-presidentialism in particular geographical regions or cultural contexts, there are five other political reasons behind the adoption of such regimes worldwide.[[1030]](#footnote-1030)

Firstly, semi-presidentialism emerged due to the political dynamics among supporters of competing constitutional options to either adopt presidentialism or parliamentarism. Hence, semi-presidentialism represented an appropriate compromise for both sides; each feeling that they had political power through sharing the executive. This has happened in the democratic transition in Central and Eastern Europe in the early 1990s through the RTT, particularly in countries like Lithuania and Slovenia. This was also the incentive in Francophone Africa in the early 1990s in countries that held so- called ‘national conferences’ among political parties and civil society decision makers.[[1031]](#footnote-1031)

Secondly, semi-presidentialism is also attractive to nations that wish to be seen or identified as democratic to the outside world. This incentive has demonstrated itself in two different ways. A figurehead, but nonetheless a popularly elected president in both Iceland and Ireland was deliberately preferred to demonstrate a symbolic interruption and a new more democratic sovereign country than a former colonial or dominating power that functioned under a parliamentary monarchy.[[1032]](#footnote-1032) While semi- presidentialism for some other countries, is also ‘attractive to powerful leaders, or autocrats, who wish to remain in office but who also wish to establish a veneer of democracy’.[[1033]](#footnote-1033) Under semi- presidentialism, it seems that the ‘regime is committed, ostensibly at least, to democratic principles’[[1034]](#footnote-1034) due to prescribing a popularly elected president and a cabinet that is responsible to an elected assembly.

Thirdly, generally through prescribing a popularly elected president by constitutional amendments, semi- presidentialism has consistently been adopted to establish strong leadership and reinforce executive authority in unstable countries. This has been experienced in Egypt, France, Poland, Singapore, Slovakia, Sri Lanka, Taiwan, Turkey, and Yemen. In this regard, when the Fourth French Republic collapsed in 1958, Charles de Gaulle agreed to return to power but subject to increasing executive authorities, particularly presidential powers contained in a new constitution.[[1035]](#footnote-1035)

Fourthly, the functioning of semi-presidentialism basically depends on the relationship among the parties and between the parties and the president. However, when the distrust among parties and polarization could make the functioning of parliamentarism difficult, the idea of ‘a neutral power arbitrating between the parties or above them was very appealing’,[[1036]](#footnote-1036) such as in France 1958-1962 and in Austria’s constitutional reform 1929.[[1037]](#footnote-1037)

Finally, in different situations, through creating the office of prime minister and/or making the cabinet collectively responsible to the assembly, semi-presidentialism has been adopted ‘to reduce, or be seen to reduce, the power of the president by increasing the role of the legislature’.[[1038]](#footnote-1038) This has happened in Belarus, Cameroon, Gabon, Georgia, Kenya, Senegal, Tanzania and Tunisia.[[1039]](#footnote-1039)

Considering the first and second internal incentives, semi-presidentialism has emerged in the KR as a convenient compromise option between the KDP and PUK to show a veneer of democracy by creating the KRP. After the parliamentary election in 1992, the ruling parties via the fifty-fifty scheme, distributed whole governing institutions in the entire upper and lower levels between themselves, until the outbreak of civil war in 1996. The war lasted until September 1998 when the DPG was restored due to the equal distribution of power and income between them.[[1040]](#footnote-1040)

This institutional design has resulted in the outbreak of civil war in 1994 and the appearance of the two administrative zones of the KDP and PUK. From 1998 until 2003 the KR had known neither war nor peace. Then, a new Iraqi government was established after the Second Gulf War, when Saddam Hussein’s regime was overthrown. Accordingly, the Kurds aspired to obtain high positions in the IFG. This situation allowed the KDP and PUK to sign an agreement to distribute higher executive offices between both federal and regional levels. The historical origin of the semi-presidential government dates precisely from a power-sharing agreement; the SA, between the KDP and PUK in December 2004.[[1041]](#footnote-1041) The SA was signed by both the KDP and PUK leaders, Masoud Barzani and Jalal Talabani, which reflected the composition of the KRP. Therefore, Talabani was appointed as Iraqi president and Barzani was selected by the KP as the RP.[[1042]](#footnote-1042)

Although, the first direct election for the RP was held in the second term in 2009, nonetheless semi-presidentialism in KR emerged after 2005. Because, as Elgie stated, ‘the starting date of semi-presidentialism can predate the first direct presidential election and/or the first parliamentary election under the new constitutional framework’.[[1043]](#footnote-1043) This has occurred in Turkey, after the 2007 constitutional amendment created a directly elected president although the incumbent president was elected indirectly for the first time. The same situation happened in France in the 1960s; the 1962 constitutional amendment initiated the direct election of the president, despite the fact that the first direct presidential election did not occur until 1965.[[1044]](#footnote-1044)

The agreement on the institutional design of the KRP was prolonged and the formation of the KP was delayed due to the PUK politburo’s rejection of the draft law. Meanwhile, Barzani was deprived from being inaugurated as president. Eventually, however, on 28 May 2005 Talabani and Barzani agreed on the KRP draft law, which had been prepared by the KDP, even before the inauguration of the KP. This indicated the pattern of legislative control. The draft law embodied the KDP’s preferred political system; semi-presidentialism, because, on 8 June 2005, only four days after its formation, the KP passed the Presidency Act. The first meeting of the KP was held on 4 June 2005, while the election was held on 30 January 2005, after its illegal suspension for more than four months caused by the status of the KRP. Accordingly, Barzani was selected by the KP as the RP. Furthermore, following the SA, the other senior positions were allocated between the KDP and PUK, such as the speaker and the prime minister. The KRG was re-unified, but some other senior ministerial positions were kept separate and connected to the KDP and PUK’s split-administration zones then.[[1045]](#footnote-1045)

The four months of disagreement between the KDP and PUK involved many unilateral and bilateral meetings between the KDP and PUK. As well as discussing Iraqi affairs, the dominant issues were concerned with the KRP statute, which related to the presidential term, respective authorities and the way by which the RP would be elected; either directly by popular vote or indirectly by the assembly. These issues indicate the regime type as explained above. It is obvious that the KDP supported, as adopted in its proposals, a system with a directly elected and powerful president; at least semi-presidentialism, while the PUK supported the parliamentary options.[[1046]](#footnote-1046) Eventually, as a convenient political compromise then, semi-presidentialism was adopted by creating the position of RP with a prime minister responsible to the KP.

In this sense, semi-presidentialism resulted from political consensus; the PUK accepted the bargain as Talabani’s personal popularity maintained his position as Iraqi president for nearly a decade. Such a bargain could create enough stability, for the KRG re-unification to get started. However, such stability held pitfalls of future uncertainties. The problematic issues continued to cause the split of the PUK and the MC was formed. It could have been expected to cause another military conflict in the KR. These ongoing issues caused much turbulence with both sides of the pro parliamentary and pro semi-presidential regime debate continuing to assert their positions without reaching a new agreement on writing a democratic constitution.[[1047]](#footnote-1047) Accordingly, the KR is ruled by political agreements and laws with a constitutional nature only approved by a parliamentary majority. Such a situation precipitated the collapse of the KR’s incomplete democratic transition and the authoritarian persistence. This particularly led to the cohabitation of the two main parties as the KP and Barzani disagreed over the amendment of the KRP act and this preceded the employment of the armed forces on 12 October 2015 to suspend the work of the KP.[[1048]](#footnote-1048)

**7.5.2 Indefinite Rule of the Regional President: Lack of Vertical Accountability**

Under those regime-types with elected presidents, presidentialism or semi-presidentialism, their relevant constitutional rules provide every person the right to be president for a limited number of consecutive terms. In the KR, according to the Presidency Act of 2005, the RP could remain in power for two consecutive terms and each term is four years.[[1049]](#footnote-1049) In 2005, the KP nominated Barzani as the RP. This was the first and the last occasion when the presidential nomination was carried out as the law prescribed it; that is for the first transitional period of the RP only.[[1050]](#footnote-1050) Despite being selected indirectly by the KP, Barzani enjoyed the same authorities granted by the law.[[1051]](#footnote-1051) Then in 2009, Barzani was directly elected as president by the popular vote. The law allowed the re-election of the incumbent president for only one more term. Thus, Barzani's second term was supposed to expire in 2013 and legally he could not put himself forward as a presidential candidate. However, since the KRP was created in 2005, Barzani continued to be RP, either legally or illegally, until 29 October 2017 when he resigned as a consequence of the failed referendum for Kurdish independence held on 25 September 2017. However, as was widely expected, that as long as Barzani lives he will continue to hold the presidential office with great powers, despite the law. It is argued, that even during his formal resignation, Barzani will continue in practising great powers, as he embodies the core of informal and dominant party governance beyond the scene. Particularly, his nephew and son-in-law Nechirvan Barzani is granted his powers and there are many other family members positioned in high KRG offices, including his son Masrour Barzani.[[1052]](#footnote-1052)

In this regard, one of the characteristics of the electoral authoritarian regimes is the failure of formal institutions to constrain the executive to limit a presidential term. Although in much of the African countries in 1990s presidential term limits were constitutionally imposed, in states like; Burkina Faso, Cameroon, Chad, Gabon, Namibia, Niger, Togo, Uganda, and Zimbabwe, presidents changed or abolished such constitutional barriers to extend their stay in office.[[1053]](#footnote-1053) Across the continent the ‘talk is of altering constitutions to allow [Presidents] to stay on for a longer term, another term or for an unlimited number of terms’.[[1054]](#footnote-1054) The constitutionally imposed term limits were also disregarded or modified in Azerbaijan, Belarus, Peru, Tajikistan, Ukraine, and Venezuela.[[1055]](#footnote-1055)

The KR followed the same authoritarian path to deal with the legally imposed presidential term limits. In this sense, on 30 June 2013, the KP has extended Barzani’s second and last term for two years. Meanwhile, there was intense argument among political parties over the KR draft constitution, which embodied the will of the ruling parties and espoused the same institutional design of semi-presidentialism that was being organised already according to effective laws. The real disagreement was between, on one side, the KDP and PUK with the opposition factions in the KP led by the MPs that joined the MC when emerged in 2009, on the other. Opponents to Barzani’s continued rule have complained that the draft constitution was enforced via the KP by the KDP-PUK governing alliance during a period of caretaker government, and that it was then revised by the ruling parties even though a significant number of MPs were absent.[[1056]](#footnote-1056)

By extending the presidential term, the KP postponed presidential elections for two years according to law No. 19 of 2013. Thus, the incumbent president Barzani could stay in office until 19 August 2015, while the KP election was held as scheduled in September 2013.[[1057]](#footnote-1057) The official reason behind the rescheduling of presidential elections was to justify the need to amend the KR draft constitution, which was approved by the KP in 2009 and expected to be ratified in a referendum that supposed to be scheduled by both the Speaker and the Prime Minister at that time.[[1058]](#footnote-1058) However, the draft constitution has never been ratified by the electorate, as the law prescribes the KP to start a process of re-writing the constitution by political consensus by 19th August 2015, when the president’s extended term expires.[[1059]](#footnote-1059) When it expired, all presidential authorities legally reverted to the Speaker for just 60 days. Then, within that period a new president should be elected.[[1060]](#footnote-1060) As a consequence of the consensus government early during the fourth parliamentary term, the KP enacted law No. 4 of 2015 for the preparation of writing a new regional constitution.

The argument over the regime-type is mainly between the KDP and the MC.[[1061]](#footnote-1061) Notwithstanding that Barzani completed his first term and was elected in 2009 by a popular vote for the second term, the article 64 of the draft constitution, which was supposed to be ratified in a proposed referendum, stipulated that the RP can be elected for two consecutive four year terms as of the date this constitution enters into force. This means that if the draft constitution is ratified by a referendum as it stands, Barzani would be privileged to have the right to put himself for nomination for another two consecutive presidential terms in addition to the two and a half terms he has previously served.[[1062]](#footnote-1062) This was as a longstanding and problematic issue that precipitated political disputes, especially between the KDP and the MC. That draft constitution was deliberately designed to allow the incumbent president to stay in power via the legal, partisan arrangements as long as he desires, since the SA agreement was still active between the ruling parties.[[1063]](#footnote-1063)

The motion to extend the presidential term was submitted by the KDP and its ally in government the PUK, based on an agreement only made a day earlier in the SA. This provoked the anger of opposition parties, especially the MC MPs, prompting fights and the throwing of water bottles in the KP chamber. Despite parliamentary procedures, the KPP continued the meeting, illegal in the circumstances of fighting and chaos, and apparently was able to count the votes to deliver the Extension Act, as explained in detail in chapter five.[[1064]](#footnote-1064) The bill enabled the second term to be extended, which would be the last term of his presidency expiring on 20August 2013. According to the Presidency Act, the incumbent president is not allowed to be nominated for a third term[[1065]](#footnote-1065). Barzani was the first person to hold the RP since its establishment in 2005. This was why he is the only person in the KR who is not allowed to be nominated for the post, because he has already finished both his presidential terms.

It seems that semi-presidentialism in the KR is a product of authoritarianism rather than a cause and it is embodied in the DPG. With such partisan arrangements, the events demonstrated the KDP’s ongoing dominance under Barzani’s authoritarian path, but also showed the scope of opposition to Barzani’s typical rule. In this regard, the governing alliance of the KDP and PUK, known as the Kurdistan Alliance then, can be considered as essential for the formation and survival of such a regime-type. In other words, the PUK’s consent to the presidential term extension demonstrates the gradual subordination of the KDP’s power through the adopted semi-presidentialism system.

The existence of the fragile party system affected the other political parties’ attitude to this issue, which the incomplete regional constitution is expected to resolve. There are five main rival political parties. They can primarily be classified as either pro-status quo or pro-change. The ruling parties of the KDP and the PUK as expected are both in support of the status quo, while the MC, KIU and KIG as undeclared oppositions are pro-change parties.[[1066]](#footnote-1066) However, some of them occasionally supported the KDP’s political view of establishing a form of government, either presidentialism or semi-presidentialism with a popularly elected and powerful president. Others supported the MC’s political preference for constituting a parliamentary system in the KR.[[1067]](#footnote-1067)

Semi-presidentialism’s essential advantage is its compatibility with multiparty politics but this had been misused and has precipitated institutional deadlock and instability in the KR. The KDP and PUK’s agenda was to use other regime-friendly parties to support their political view during the constitution-writing process. Through advocating a popular referendum on the draft constitution, the ruling parties could be counting on their influence via patronage networks and Barzani’s popularity to ensure victory and approve the constitution.[[1068]](#footnote-1068) The PUK has subsequently been involved in the constitutional process through patronage, though the party has continuously faced severe political and organisational challenges. In 2009, the MC emerged as a strong parliamentary faction and a popular break away party from the PUK, led by former deputy Mustafa. This politically party divergent precipitated difficulties for the duopoly of power-sharing governance, specifically for the PUK, because it has been adding a new and unfamiliar element to the region’s fragile institutions. Also, it has been weakening the PUK’s strongest constituency. The PUK has lost influence over both its governing partner, the KDP and to its own splinter party, the MC. The party’s stronghold area in Sulaimani was weakened significantly by the MC’s split in 2009. Its ongoing struggle due to Talabani’s absence caused it to be exposed to further losses. However, even during the presence of Talabani, the PUK fragmented[[1069]](#footnote-1069) due to advocating a pro KDP agenda to preserve its interest and keep its share of power at both the federal levels and the regional higher positions.[[1070]](#footnote-1070)

The PUK is trapped between the need to stabilise Barzani’s power by preserving its interests ensured by the SA with the KDP and the need to tackle the challenge within its administrative zone from the MC, which paints the PUK as a power-sharing partner in a corrupt and nepotistic government. In 2013 when the timeframe was announced for elections to be held in September, this forced parties to take a public stand. Supporters of a strong KDP-PUK alliance demanded that the PUK should be backing Barzani’s mandate extension or supporting the holding of a referendum on the draft constitution, which will also ensure Barzani’s position. While they have feared that without the protection of the KDP, the PUK would lose further seats to the MC in the forthcoming provincial and parliamentary elections then. Their fears became reality. Notwithstanding semi-competitive and unfair elections, the MC could obtain respective parliamentary representation and became the second major faction that had political impact on the PUK’s traditional zone. The issue of Barzani’s term extension illustrates the complications for the PUK in maintaining the equilibrium. Since Barzani was directly elected as the RP in 2009 by popular vote, then the KP has had no authority to secure an extension to his tenure. However, the KP has been involved in granting Barzani such an extension, which even contradicts the professed agenda of the KDP itself, which consistently advocates a form of government with a popularly elected president rather than one nominated by the assembly.[[1071]](#footnote-1071)

The dissenting political and parliamentary party group has opposed the ratification of the draft constitution as it’s in a referendum, arguing that it will further strengthen the KDP. Consequently, the MC could paint the PUK as backing authoritarian rule in the KR. This encouraged Talabani to agree with his former deputy Mustafa and sign the Dabashan Agreement demanding the resubmission of the draft constitution to parliament in September 2012 and to call for the RP again to be selected by the KP; a positive initiative that was hindered when Talabani was absent and had a stroke and went away to Germany for treatment. As a result, and looking to limit its own internal struggles, the PUK has officially called for political consensus over constitutional issues and agreed with the KDP to enact the law to extend Barzani’s presidential term. The PUK is still in the essential patronage of the KDP’s political agenda, transforming a failed transition to democracy to an autocratic and authoritarian rule. In such a situation, the PUK’s support for such an agenda has been provided either as a part of the parliamentary majority or dealing with the illegal consequences of the KDP’s nondemocratic movement tackling institutional dilemmas in the KR, as ‘realpolitik’ preserving its leverage and interests.

This all signifies that there is basically no vertical accountability for the RP in the KR. Because the president was selected by the KP for the first term and by popular vote for the second term, then the extension and de facto status by coup. So, there was neither return to the KP nor to the electorate, as the least device to provide accountability in systems with an elected president.

**7.5.3 Considerable Powers: Personalisation and Government without Accountability**

The KR semi-presidentialism is a president-parliamentary subtype with a hybrid character in which the RP exercises greater executive powers.[[1072]](#footnote-1072) However, the RP cannot solely appoint and dismiss the KRG cabinet ministers. While he/she has the power to dissolve parliament,[[1073]](#footnote-1073) legislative veto, which can be overturned by a simple majority.[[1074]](#footnote-1074) The president-parliamentarism in the KR prescribes the shared authority between the RP and the KP to appoint and dismiss the prime minister and ministers; the appointments are subject to the approval of the KP and dismissals are subject to the high threshold bipolar majority in the KP.

The distinction between president-parliamentary and premier-presidential governments is based on the distribution of power between the two branches of the executive; the president and the prime minister, and the accountability of the cabinet to either the president or the assembly, or both. In premier-presidentialism, the prime minister and cabinet are collectively responsible solely to the assembly.[[1075]](#footnote-1075) While in president-parliamentary government, the prime minister and cabinet are collectively responsible to both the president and the assembly.[[1076]](#footnote-1076)

As explained in chapter five, the KR executive authority; the RP-as the highest branch and the KRG are lacking in horizontal accountability due to both the deliberately designed dysfunctional devices for oversight and the political reality of party control of the legislature. Because even if parliament voted to dismiss the cabinet,[[1077]](#footnote-1077) the KRG cannot be unilaterally discharged by a two-thirds vote in support because in practice this is impossible due to the required high threshold of super-majority votes, it needs a further resignation decree by the RP.[[1078]](#footnote-1078) Alongside the resignation decree, the RP can ask the prime minister and ministers to continue working in their office despite the parliamentary dismissal vote.[[1079]](#footnote-1079) Therefore, the KRG is accountable to both the RP and the KP.

Within president-parliamentary governments, this might be labelled as confused, in that the responsibility of cabinet ministers is unclear and quite possibly contradictory.[[1080]](#footnote-1080) Due to dual responsibility of the government to both the assembly and the president, president-parliamentarism creates more institutional ambiguity than premier-presidentialism. In this regard, the significant difference between premier-presidentialism and president-parliamentarism is that the latter is more damaging for the performance of democracy than the former.[[1081]](#footnote-1081) Respectively, the KP shares the enforceability with the RP that wields a discretionary authority meanwhile to either accept the KRG minister’s resignation or keep them in office. Moreover, to face such discretionary authority, the KP if voted for the dismissal of the KRG, should also seek to achieve a further impossible high threshold majority of a three-fourths of all MPs to dismiss the RP.[[1082]](#footnote-1082) Such political engineering, which has been used by the ruling parties since 1992, eliminates the KRG’s horizontal accountability.

Conceptually, the forms of government in democracy are classified according to the origin and survival of authorities.[[1083]](#footnote-1083) The relationship among ‘the government, the assembly, and (where they exist) elected presidents’[[1084]](#footnote-1084) identifies regime-types. The key point is ‘whether the government can be removed by the assembly in the course of its constitutional term in office’[[1085]](#footnote-1085) either by a vote of confidence or a motion of censure or powers held by the elected president[[1086]](#footnote-1086) for the dismissal of the government or indirectly for the assembly.

In this regard, it might be questioned that when the president is responsible to the assembly, it might conflict with a requirement for a fixed-term presidency as a primary condition with which to classify semi-presidential countries. In a small but potentially problematic number of cases; such as president-parliamentarism in the KR, where the president is classed constitutionally as the head of both the state and government, so as the latter, is politically accountable to the assembly, and then consequently, the president would appear to be equally politically responsible to the assembly.[[1087]](#footnote-1087) ‘This would violate the fixed- term requirement for the president and would mean that the country should not be classed as semi-presidential’.[[1088]](#footnote-1088) President-parliamentary government in the KR prescribes the dual executive design; alongside the RP there is also a prime minister, but nonetheless the RP is the high branch of the executive. Besides, it is important to perceive the KR’s president-parliamentary government within electoral authoritarianism, which prescribes democracy only on paper while subverting it in reality. Consequently, this perception does not disregard the constitutional structure to be considered for regime-type classification.

Furthermore, semi-presidentialism shares with presidentialism concerns over the impact of a directly elected president via the zero-sum results and the winner-takes-all problem. In a situation where only one person can become the president, and if the president’s party also enjoys a majority in the assembly, both the assembly and the cabinet will probably confirm their loyalty to the presidency by supporting the president’s agenda. Consequently, the assembly fails to ‘act as a check on the executive or, more specifically, the president’.[[1089]](#footnote-1089) In a situation where the president is supported by a loyal majority in the assembly, as Lijphart argues, semi-presidentialism ‘actually makes it possible for the president to be even more powerful than in most pure presidential systems’.[[1090]](#footnote-1090) That is what exactly has happened in the KR. Through political engineering, the duopoly super majority threshold of the KP necessary to dismiss the executive, including the RP, was apparently designed to make the executive accountable. Also, the threshold to form a cabinet is a simple majority, whereas the threshold for the dismissal of the KRG l is high. Accordingly, cabinet formation is easy and straightforward, whereas dismissal is hard and complicated. Above such legal obstructions, political accountability of the executive is unlikely to be achieved due to the duopoly of party governance, consensus government and a full PR which consistently produces a parliament fragmentated with many parties.

Moreover, as Linz argues, direct elections for the head of state, despite inspiring political outsiders to seek election specifically in the absence of a strong party system,[[1091]](#footnote-1091) make presidents ignore political parties and personalize the presidential process. Semi-presidentialism is somehow even more hazardous, as Linz states, ‘as much or more than a pure presidential system, [whereby] a dual executive system depends on the personality and abilities of the president’.[[1092]](#footnote-1092) Accordingly, as Valenzuela argues, semi-presidentialism ‘may not solve some of the inherent problems of presidentialism, and indeed could make them worse by reifying the conflict between two state powers and personalizing them in the figure of the president and the prime minister’.[[1093]](#footnote-1093)

Compatible with the literature, keeping power through all the available mechanisms, either legally or illegally; selection, election, extension and eventually holding a coup reveals how the RP in the KR is being personalised around Barzani’s character. As the KDP’s politburo has announced consistently and even officially demanded that the other parties agree, Barzani is the only appropriate person to be the RP.[[1094]](#footnote-1094)

Moreover, other factors caused Barzani’s presidency to be more personalised and circumscribed around his charismatic figure. This is also related to his military background, being the KDP’s leader since 1979 following the death of his father Mulla Mustafa; the charismatic leader of the KDP and the KLM. That is why Barzani has often been accused of working for the partisan interests of the KDP, sometimes also the PUK, more than national interests. He has acted to sustain the DPG, more as a party leader than a national president for the KR.[[1095]](#footnote-1095) In this regard, for example, as a consequence of the failed referendum, Barzani found he was increasingly isolated and resigned on 29 October 2017 under international pressure.[[1096]](#footnote-1096) When the position of the RP is vacant for any reason, the KP’s Speaker is supposed to exercise the presidential powers for 60 days, during which time, a new presidential election should have been arranged according to the law.[[1097]](#footnote-1097) However, due to the coup, the KP Speaker was not able to wield these powers, in practice. Instead, the KP, after reopening in order to legitimise the referendum, enacted a law to allocate the presidential powers between the KP, KRG and the High Judicial Council until the next parliamentary election.[[1098]](#footnote-1098) Recently, the KP decided to freeze the activities of the KRP. Such legislation to deal with Barzani’s presidential vacancy demonstrated how the RP is highly personalised around Barzani’s character; he could stay in office as if it is his property, despite the rule of law. While the position of RP is basically suspended, when he cannot be the RP, and the redistribution of presidential powers over the other KR’s institutions continues[[1099]](#footnote-1099) until during the first and second sessions of the next KP, the destiny of the KRP will be sorted out.[[1100]](#footnote-1100)

The RP as a high branch of the executive wields broad powers including the right to veto legislation, to conduct foreign affairs, to appoint judges, the general attorney and the chancellor of the KR Security Council.[[1101]](#footnote-1101) Many examples can be provided showing the failure of government in KR to deliver answerability and any enforcement of political accountability due to deliberate institutional design and direct political control. For instance, despite being the KR commander in chief,[[1102]](#footnote-1102) the RP failed to establish unified Peshmerga forces, subject to democratic control and parliamentary oversight. Therefore, without holding any kind of accountability, a manipulative political power employed by the de facto president. Thereby, the ruling parties are not subject to a scheme of checks and balances. The relatively autonomous institutions can call into question perhaps leading to dismiss the incumbents.[[1103]](#footnote-1103) In other word, the KR’s political engineering lacks the answerability and enforcement as the two essentials of maintaining political accountability.[[1104]](#footnote-1104)

**7.5.4 The Regional President: Declining Legitimacy and Authoritarian Reversal**

When a broad-based government was formed early during the KP’s fourth term in 2013-2015, there was an opportunity for some institutional redesigns towards strengthening the semi-democratic experience. The KP started enacting some laws that would serve to move things in such a direction and constituted two committees. The first one was to amend the KP’s bylaw to deliver proper opportunities for MP’s freedom of speech in the chamber and to make it easier to hold the KRG to account. The second one was concerned with the prolonged issue of writing a regional constitution. Within the latter process, issues related to the method of selecting the RP and its respective authorities were the most problematic subjects that were confronted by the constitutional committee. As one of the committee’s members affirmed, the constitution-writing process is prolonged due to the absence of a political agreement over the presidential powers and their origin.[[1105]](#footnote-1105)

As the constitutional committee could not agree on a draft constitution, the problem of Barzani’s position emerged again, months before his extended term expired on 20 August 2015. Simultaneously, the KRG was challenged by some other difficulties related to the IS war and the budget cut from the IFG. The parliamentary factions of the MC, PUK, KIU and KIG, constituting a parliamentary majority, prepared proposals to put to the KP. In this regard, such proposals were aimed at transforming the regime-type from semi-presidentialism to parliamentary through prescribing a figurehead president; also, to be selected by the KP. The only faction that did not provide the KP with a proposal to find a solution for such a long running issue was the KDP.[[1106]](#footnote-1106)

It seems that cohabitation took place. In this regard, it proved perilous that the institutional design of the adopted semi-presidentialism did not provide any explicit devices for the resolution of conflict between the president and an opposition assembly.[[1107]](#footnote-1107) Although the political parties held numerous RTT outside the chamber and under the supervision of UN, UK and US ambassadors in Iraq, the entire process reached a stalemate and the political disagreement took a very dangerous direction. Instead of trying to form a different majority grouping to support their agenda in the KP, Barzani chose to hold a coup and closed the KP and banned the Speaker from his work. Because party-affiliated armed forces given oral commands, did not let him enter the KR capital city of Erbil on 12 October 2015.[[1108]](#footnote-1108) In addition, all ministers from the MC were sent home and banned from their ministerial offices. In contrast, all ministers belonging to the PUK, KIU and KIG were allowed to continue working as ministers. Incidentally, through action to support the status quo maintained by a coup, the other parties failed to direct the political process onto the right path, as they were practically backed Barzani’s coup. The incumbent president’s cousin; the Prime Minister Nechirvan Barzani, stated that their choice, as KDP leadership, was hard and narrow. It was between the worse and worst decisions; they took the worse one instead, however, they also could have taken the worst.[[1109]](#footnote-1109) This is similar to many post–Cold War autocrats who used ‘informal mechanisms, such as thugs and oral commands, which provide greater plausible deniability’,[[1110]](#footnote-1110) instead of ‘engaging in high-intensity repression’[[1111]](#footnote-1111) due to fears of provoking international reaction.[[1112]](#footnote-1112)

By holding such a coup, Barzani could stay in power for an unlimited period until he resigned on 29 October 2017. He could gloss over his military action by obtaining a consultative decision from the Regional Consultancy Council (RCC). In contrast to its legally prescribed aims[[1113]](#footnote-1113) the RCC issued a decree prescribing that as long as there is no opportunity for holding a presidential election, Barzani can stay in power. However, the RCC’s decree is not binding and it remains as a consultative decision for the top positions;[[1114]](#footnote-1114) presidencies in the KR, such as; the KP, KRG, KRP. It is invalid if it is being used to justify the illegal mandate of the RP. After the coup some parties continued to deal with Barzani as RP, specifically the PUK to preserve its interests.[[1115]](#footnote-1115) Even foreign states continued to deal with Barzani due to the IS war, despite his declining legitimacy.[[1116]](#footnote-1116) With the difference in time and the aims of Western support, this is similar to Boris Yeltsin’s suppression of parliament in Russia in October 1993. In this regard, explicit Western backing allowed Yeltsin to publicly support the use of extreme measures against parliament. ‘Despite Russia’s relative weakness, any potential for Western democratizing pressure was outweighed by fears that Russia – and its nuclear weapons – would fall into the wrong hands’.[[1117]](#footnote-1117) Consequently, the success of the suppression of parliament allowed Yeltsin to enact a new super-presidentialism constitution and a new parliamentary election was held jointly with a referendum on the constitution in December 1993.[[1118]](#footnote-1118)

Ironically, the KRG also continued in governance and Barzani stood down. Furthermore, the KP, which provides support for the KRG, was sidestepped by the RP. This conflicts with democratic legitimacy indicate that it is declining. As Kamran Mantik explained, ‘parliament is supposed to give the government legitimacy’.[[1119]](#footnote-1119) Accordingly, as he states, ‘if parliament is suspended, then the government loses that legitimacy’.[[1120]](#footnote-1120) However, the real manifestation of the government in the KR is the DPG with its highly personalised political process, dominated by the KDP leader.

Like presidentialism, semi-presidentialism, as explained above, suffers from a highly personalised political process.[[1121]](#footnote-1121) The survival of the regime depends on the president remaining in office and the opposition to the president will obviously be connected to the dissident of the regime itself. Therefore, the government becomes so personalized that it threatens the very existence of democracy. This depends on the president’s commitment to democracy. When his/her promise is or becomes dubious, then democracy will collapse.[[1122]](#footnote-1122) The political stalemate in the KR, produced by a president who refuses to step down and to deliver power democratically and legally, leading to democratic failure and changing the source of legitimacy.[[1123]](#footnote-1123) This shows how formal rules lost their effectiveness to constrain powerful political actors, as they had no noteworthy effect on the outcomes for the regime.[[1124]](#footnote-1124)

The democratic legitimacy has transformed into a military one, thereby changing the pseudo democratic experience in the KR to an authoritarian one.[[1125]](#footnote-1125) In other words, electoral authoritarianism changed to hegemonic authoritarianism. As explained above, such regime-types with a long-standing president is a product of authoritarianism itself embodied in a duopoly of party governance that imposed the regime and sustained it. The process of democratic breakdown in the KR is also related to the KRG’s lack of effectiveness to solve such a prolonged crisis of the KRP that would need a compromise among parties in a consensus government to overcome it. In such circumstances, when one party or the other provides a solution with the support of armed forces; as happened in the KR on 12 October 2015, the opposition within the regime is viewed as disloyal. Consequently, an opposition labelled disloyal can also attract supporters to challenge the declining legitimacy of the system and potentially to provide solutions via violent activities, which provokes further violence precipitating the polarisation of society and then civil war. In other words, instead of people’s votes, the coup has become popular as an undemocratic, uncivilized mechanism and a source of legitimacy in the KR. It is possible that other parties may use similar mechanisms. Meanwhile, this potentially makes the KR more vulnerable to instability. When the unsolvable crisis reaches an intensity among parties that could easily misuse partisan forces, leading to democratic failure, the stability of entire society is at high risk and there is a likelihood of civil war.[[1126]](#footnote-1126) Because of the violent break, perhaps this is a situation which was reached on 12 October 2015 in the KR.

Directly elected presidents can aspire to act above parties due to their claim to be privileged by a popular mandate. Such a mandate, they believe, ‘gives them the authority to act in the best interests of the country, as they see it’.[[1127]](#footnote-1127) This can lead presidents to disregard the rule of law. After the coup of October 2015, through presidential decrees, Barzani continued ruling the KR illegally as a de facto president embodying authoritarian rule for more than two years. When the war with IS finished with the retaking of the Mosul governorate, Barzani decided to bring forward a referendum for a Kurdish independent state, scheduled for 25 September 2017. It seems controversial that Barzani aimed through the referendum to take notice of the citizen’s votes in order to announce a Kurdish state, because he failed to be constrained by the formal rules in other areas.[[1128]](#footnote-1128) He showed no commitment to the KRPA and its amendments, which had been issued by his own party with its strategic ally; the PUK. Furthermore, he overturned the KP, which embodies the people’s will. He even showed no respect for his own earlier speeches and promises. Although he has mentioned on various occasions that it is easier for him to leave the presidency than anyone else as he describes himself as a member of the Peshmerga, but he has never accepted the peaceful alternation of power.[[1129]](#footnote-1129) Instead, he continued his mandate forcefully via a coup. Ironically, Barzani disregarded the will of people on other occasions, but he then pretended that he needed the people’s vote to determine their destiny.

Despite miscalculating the penalties that might come from the IFG, neighbouring countries and the international community’s frequent warnings, the referendum lacked internal legitimacy and political consensus.[[1130]](#footnote-1130) Barzani formed the High Referendum Council, which was a political umbrella gathering all political parties in the KR, except the MC and KIG. The latter both agreed that the referendum is illegal and will bring disaster to the KR whatever the outcome; failure or success. This was justified by the KR’s institutional, economic and political failure caused by authoritarianism and a corrupt government. However, the KRG leadership under Barzani persisted in its attempt to achieve statehood through holding an independence referendum.[[1131]](#footnote-1131) Since that time the KRG leadership has been determined in their belief that statehood is vital for the continuance and the survival of the KR rather than just to exercise a fundamental right to self-determination and to strengthen national legitimacy and prosperity.[[1132]](#footnote-1132) Conversely, the KR’s referendum on independence has led to an already Kurdish dilemma becoming far worse, because instead of enhancing the Kurds’ political leverage and independence, it has squandered international goodwill towards them and provoked the Iraqi government and neighbouring countries into much worse antagonism as well as deepening the economic crisis and political divisions.[[1133]](#footnote-1133) Despite the fact that it is unconstitutional, the IFG has used armed forces to solve internal political struggle. It has also precipitated the loss of the Peshmerga-controlled territories and resources, like the oil-rich governorate of Kirkuk. Meanwhile, the KRG leadership finds itself hemmed in politically and economically; its underestimation of the Kurds as being geographically surrounded by their enemies, which is a unique situation for a nation with a great population without statehood in the world. Nevertheless, the independence referendum was only an extra factor, but not the source of the KRG’s prevailing crisis.[[1134]](#footnote-1134) The KRG has offered to halt (freeze) the referendum results in response to the political response and to try to forestall further advances of Iraqi forces into Peshmerga-controlled territories. In turn, the IFG has demanded the complete cancellation of the referendum and its outcome, despite no further steps being undertaken by the KRG leadership following the result.[[1135]](#footnote-1135) Eventually, the entire process was turned over when the IFSC ruled the referendum and its consequences unconstitutional, and it was declared invalid on 20 November 2017.[[1136]](#footnote-1136)

Notwithstanding recording a major victory with nearly 93 percent of the vote saying a definite yes for independence, Barzani found himself ever more isolated. Since the referendum failed, the region has been facing turmoil. Under international pressure, Barzani resigned on 29 October 2017. Consequently, the KP, after reopening to legitimise the referendum, enacted a law to distribute the RP’s authorities over the KP, KRG and the High Judicial Council until the next parliamentary election.[[1137]](#footnote-1137)

In summary, authoritarian reversal in the KR is compatible with the academic literature concerning fears of democratic failure, specifically in emerging democracies, resulting from the adoption of semi-presidentialism. It causes political deadlock leading to cohabitation and intra-executive conflict through its dual executive design. Presumably, the institutional conflicts provoke internal regime struggle that could be resolved by a mediating power, mostly from a military apparatus. In the KR, however, despite almost all of these endogenous regime outcomes happening, semi-presidentialism is more a product than a cause of authoritarianism, because semi-presidentialism prescribes neither horizontal nor vertical accountability for the RP due to both institutional design and political practice. It was first created by a political agreement legalised by a majority in the KP under duopoly governance, instead of by constitutional engineering that was supposed to be approved by a consensus of all parties. The president continued ruling the region for more than 12 years, both legally or illegally. For the first term, the president was selected by the KP and for the second one by popular election. Since then, his term has been either extended or he has stayed in office illegally. He did not return to the electorate to be judged so that either he would be elected again or somebody else would be the president. Hence, there was no vertical accountability for the president, which is the minimum device for the president to be held accountable in both semi-presidentialism and presidentialism. Authoritarianism persisted in the KR due to military action, which has often been present as an option alongside political and institutional ones due to the existence of the highly party-affiliated armed forces.

**CONCLUSION**

The thesis addresses some main questions; namely, how do elections in the KR discredit democracy and embody electoral authoritarianism? How does the KP fail to hold the KRG to account and preserve the rule of law? How do the ruling parties’ institutional positions, their relations with the governing institutions, specifically the armed forces, sustain authoritarian rule? How does semi-presidentialism serve authoritarian rule in the KR? How does the adopted president-parliamentary regime reflect authoritarian persistence?

**How do elections in the KR discredit democracy and embody electoral authoritarianism?**

Since its foundation in 1992, the KR passed through reverse waves when episodes of democratisation happened. In other words, there have been incomplete phases of democratic transitions in the KR, where in each one the outcome has consistently been perilous to the prevailing electoral authoritarianism and even for the destiny of the KR itself. Such a prolonged situation has produced electoral authoritarianism in the KR resulting from the DPG.

In testing the theory of democratisation, when a democratic transition struggles, the democratic experience will fall between the authoritarian reality and democratic appearance, shaping a hybrid regime; that is, the failure of democratisation and thus an authoritarian reversal. This is mostly referred to as an electoral authoritarian regime. To understand such a regime-type in the KR, the minimum normative perception of democracy was applied. This is to provide some indication as to whether democratic features are emerging or not in the KR.

Accordingly, based on a set of standards for democratic elections, the research has examined unfree elections in the KR. It thus concluded that elections have been managed as an instrument of authoritarian rule rather than an instrument of democracy, as they provide the authoritarian incumbents with victory and constantly empower the ruling parties of the KDP and PUK, ensuring their dominant governance.

The DPG in the KR is channelled through clientelist networks and party-based privileges, controlling all civil and military administrations and economic institutions. These have created the pre-conditions for authoritarian rather than democratic elections. Additionally, the ruling parties via a menu of manipulations have infringed democratic standards for elections. Elections under such dominant governance have precipitated the KR security and political conditions into occasional instability. Such instability is caused by political and partisan conflicts, especially during general elections, as the entire region passes through a complex phase that might lead to an unpredictable situation, specifically, if the election results were not in favour of the ruling parties' interest. Under the KR’s electoral authoritarianism, where the ruling parties are deeply rooted in society through clientelism, corruption and economic and military control, the KRG has held elections that do not meet democratic standards. Accordingly, it has enabled repeated victories for the KDP and PUK.

In this sense, the KR elections have been held to serve authoritarian functions, demonstrating that the core survival strategy of the KDP and PUK is to strengthen the durability of their authoritarian rule. Accordingly, elections are diminished and do not play the role of delivering a peaceful alternation of power. Notwithstanding that opposition parties have been legally allowed, elections in the region fail to meet one of the key democratic requirements: a sufficiently fair grounding for political contestation, that is by allowing the KDP and PUK to be turned out of power. This has systematically structured a paradox of the governing system, which is a feature of electoral authoritarianism, as elections are curtailed in performing their democratic function to deliver popular sovereignty and a peaceful alternation of power in the construction of a representative and authoritative government.[[1138]](#footnote-1138)

In addition to all this, the research illustrated that the ruling parties are reluctant to deliver power under the alternation rule. To prove this, the thesis concluded by analysing how presidential terms were continuously extended, similar to other authoritarian regimes. President Barzani eventually resigned under international pressure. Previously, he had been refusing to step down from presidential office, despite holding the position, legally and illegally, for more than 12 years. When his term was about to end in June 2013, the KDP and its strategic ally the PUK agreed to extend the presidential term via a parliamentary motion for two years. According to the legal provisions introduced to extend Barzani's term, it had been explicitly stated that the president's tenure would not be prolonged for more than two years. The two-year period lasted until August 2015 and he held on to the presidential office illegally for another two more years. Then, when he and his allies failed to build an independent Kurdish state after holding a referendum on 25 September 2017, he stepped down under international pressure.

Moreover, despite their effect of sustaining the durability of authoritarian rule, as the research pointed out, parliamentary elections in the KR have concurrently led to the emergence of a credible parliamentary opposition in July 2009, for the first time in contemporary history. This parliamentary opposition emerged based mainly on an anti-corruption manifesto, as a result of a split in the PUK. Regarding the prospects for democracy, the presence of legal opposition parties is a necessity for future democratic development.[[1139]](#footnote-1139) In other words, in the KR, frequent unfair elections are a double-edged sword—supporting an authoritarian regime so far, but potentially contributing to its slow collapse by providing the opposition parties with opportunities and incentives to defeat the ruling parties.

**How does the KP fail to hold the KRG to account and preserve the rule of law?**

To answer this question, the research determined that the KP, like other political institutions, is viewed by the ruling parties as an instrument to preserve their authoritarian rule and it can be seen as a product of this rule. As long as the ruling parties preserve their parliamentary majority, even though it is via nondemocratic elections, they have been able to view the KP as an arena for the embodiment of their will and to achieve their partisan interests. In such a situation, as the thesis concluded, there are no superior prevailing rules restraining the ruling parties’ will. Accordingly, the KPP has served the interests of the ruling parties. It has worked in their favour and defended their interests precisely by implementing bipartisan agreements, even if that meant the infringement of constitutional rules, which issued by themselves. Where partisan willingness and interest exist, there is no commitment to legal principles. Therefore, the parliamentary majority via bilateral agreement has resolved matters.

Consequently, as the thesis pointed out, the prevailing conditions for the KP have made it clear that it was subjected to the will of the KDP and PUK, rather than the public will, which is exemplified by the processes of dividing, re-unifying, closing and opening the assembly in accordance with the two parties' policy. Even holding parliamentary elections depends on their political will, as they have occasionally suspended elections and extended the term of the KP. Notably, the will of the political parties has been superior to the public will. This, as illustrated in the research, contradicts the principles of representative democracy and even with the legal basis of the governing system embraced in Law No. 1 in 1992, as well. In this regard, the research concluded that there is a constitutional vacuum between the legal rules and political realities. This constitutes an institutional phenomenon that has obstructed building a representative and accountable government.

The thesis has demonstrated that there are effective informal institutions beyond the formal organisational arrangements that are superior, do not match with the formal institutions and are hardly constrained by the legal rules. In this sense, the thesis determined how Law No. 17 covering political parties has remained as just words on paper, since the political reality contradicts what was written in these legal rules and fails to maintain their legal significance as binding. The ruling parties passed the law and started breaking it when they acted contrary to how they are supposed to behave according to their legal commitments. Meanwhile, the KP has been dysfunctional in preserving the rule of law. This has led to the paralysis of the rule of law which is a vital condition for the democratisation process. The thesis, by analysing the historical background to the long process of the paralysis of the rule of law, concluded that the weakly institutionalised parties deliberately designed dysfunctional oversight devices of the KP, which structured the challenges to the establishment of a democratic government in the KR.

**How do the ruling parties’ institutional positions, their relations with the governing institutions, specifically the armed forces, sustain authoritarian rule?**

The civil-military relationship in Iraqi Kurdistan has deliberately been organised along partisan lines. Since the uprising of 1991 and the establishment of a de facto authority, integrating the Peshmerga forces has been dealt with as a partisan-controlled issue. This is similar, as the research concluded, to the other administrative and economic institutions that have been managed according to a strict fifty-fifty power-sharing scheme between the two dominant parties. Both the KDP and PUK agreed between now and then to unify their military forces under the command of the Ministry of Peshmerga Affairs. However, it remained a military body of superficial unity, while various Peshmerga units are still divided between the partisan KDP and PUK’s lines.

Informal institutions have affected the military apparatus as well, where legal rules are prescribing something, but the reality is different. The research addressed the phenomenon where formal military leaders are restricted to be the leader of only the party-affiliated armed groups that belong to the ruling parties, in their administrative zones.[[1140]](#footnote-1140) There are many challenges facing the achievement of democratic control of military in the KR. Both parties preserve their separate Peshmerga forces and apply significant political pressure on the additional groups that are under the command of the Ministry of Peshmerga Affairs’ weak authority. Even though, after decades of self-governance, they preserve most of their forces separate from ministerial arrangements with commanders from their influential politburos. On the one hand, Peshmerga forces are divided politically and regionally between two parties and within their zones, on the other hand, they are also divided within each party and zone according to their personal affiliation to various political leaders and ruling families.

Above their national duties as the KR guard, the Peshmerga forces have partisan and personal affiliations which have made them instrumental in maintaining multiple and complex partisan purposes, as they have been functioning within the survival strategy of the ruling parties to strengthen their authoritarian rule. From addressing the structure and numbers of these partisan forces, the research deduced that they have been backing the dominant parties within clientelistic links and political patronage networks. Their various partisan functions were called upon repeatedly and deliberately by the KDP and PUK to sustain the durability of their authoritarian rule. The clientelistic system remains an effective mechanism for the political support of the KDP and PUK and for backing them to stay in power whenever necessary. In addition, the ruling parties are not ready to reshape the prevailing institutional design. The secret of their success in staying in power is their control over the military and the economic entities, which, as the thesis pointed out, contradicts the relevant laws. Paralyzing the rule of law by the ruling parties does not only invalidate the semi-democratic experience in the region, but it has changed the original form of government from electoral authoritarianism to a hegemonic one. This is what the KR is currently experiencing.

The thesis showed the link between the ruling parties’ practice of dual organisation for the military apparatus and the challenging structures of the KR governing system. Such a controversial military organisation explains the large distance between democratic and insurgency legitimacy. Democratic legitimacy requires democratic institutions that keep and implement real power attained by democratic mandate. When the ruling parties keep military forces, they invoke insurgency legitimacy to preserve the status quo. Since there is no separation between the political parties and the armed forces, it would be impossible to build democratic institutions. Unless the armed forces are depoliticized and unified, the KR is unlikely to be on the road to democratic transition. This is the basis of the thesis and this phenomenon is titled, conditional democracy. ‘Democracy can be independently invented and reinvented whenever the appropriate conditions exist’.[[1141]](#footnote-1141) So, without certain conditions to support a tendency towards democratic government, there is no room for transition.

**How does semi-presidentialism serve authoritarian rule in the KR? How does the adopted president-parliamentary regime reflect authoritarian persistence?**

In societies transforming from authoritarianism to democracy initiates deciding on an appropriate form of government. This is an essential issue attracting enormous debate and even divergence among political parties. In this context, the debate about parliamentarism, presidentialism and semi-presidentialism is growing and it has become part of the institutional engineering to set the basis for democratic government and stability.[[1142]](#footnote-1142) Despite academic consensus in favour of parliamentarism, semi-presidentialism, like presidentialism, is a more attractive system for emerging democracies and ‘among countries that have experienced more political and constitutional instability’.[[1143]](#footnote-1143)

Since 1990, semi-presidentialism has often been preferred as a constitutional choice for emerging democracies. As it is viewed by scholars, it can afford all the participants in the democratic transition process, a share of the governing powers, particularly concerning the executive. However, most scholars are concerned with the continuing spread of semi-presidentialism. Notwithstanding, not enough work has been conducted on semi-presidentialism compared with either presidentialism or parliamentarism and there is an equivalent academic consensus that semi-presidentialism is inherently unsafe and leads to political instability. The dominant argument is that semi-presidentialism is a fragile institutional design for new democracies, which potentially leads to intra-executive conflict and induces institutional conflict. The prospect of ongoing intra-executive conflict extends until the next presidential or legislative election, and perhaps beyond, ‘is a scenario that young democracies can well do without’.[[1144]](#footnote-1144) There is a possibility of a grave constitutional crisis in the event of the emergence of a legislative majority opposing the incumbent president, due to the recognition in the constitution of two national sovereignties, known as cohabitation. Many scholars have showed considerable concern about the ‘perils of cohabitation’,[[1145]](#footnote-1145) arguing that semi-presidentialism potentially produces split-executive government, where both the president and the cabinet with assembly support, have different mandates and can be in conflict with each other. Consequently, this creates antagonism between the legislature and the executive.

In emerging democracies, the stalemate between the executive and the legislature, particularly when social and ideological polarization exists, might transform institutional struggles into a severe and threatening situation. This might lead to institutional failure initiating a reverse wave of democracy, specifically for those nations with fragile institutions, especially their military forces, like the KR. Meanwhile, as the thesis points out, the military is highly likely to mediate in the legislative-executive conflict, resolving the issue, but also dismissing the rule of law, diffusing political uncertainty and reinforcing democratic failure.[[1146]](#footnote-1146) The fears of military intervention to solve the inevitable institutional conflicts resulting from adopting systems with an elected and powerful president are similar to the breakdown of several Latin American democracies in the 1960s and 1970s, related to episodes of legislative-executive conflict leading to ‘military intervention in politics, displacing civilian leaders and imposing long periods of authoritarian rule’.[[1147]](#footnote-1147) Thus, as the research deduced, under semi-presidentialism, the weakly institutionalised and partisan organisation of the military might exclude the military from political and civilian control of both the prime minister and parliament.[[1148]](#footnote-1148) In other words, the dual executive model produces a crisis, not only in the quality of democracy, but also could bring about the failure of democracy itself, thoroughly changing the features of the prevailing regime.[[1149]](#footnote-1149)

Based on the academic assumption that the semi-presidential system is risky to new democracies due to periods of cohabitation, divided minority government and the hazard of a powerful president. This thesis studied semi-presidentialism in the KR to systematically evaluate the empirical evidence for and against the theoretical assumptions. The research concluded that the adoption of semi-presidentialism was originally prescribed within the political engineering of the ruling parties. Accordingly, as the thesis concluded, it is rather like other institutional design in the KR, a product, not a cause, of authoritarianism. It is these factors with some other supporting institutional conditions, especially military involvement as a mediating power, by which authoritarianism persisted.

Moreover, the research concluded that the antagonism between the KP and the president Barzani certainly preceded the military coup in 2015. He decided to suspend the KP and banned the speaker from entering Erbil, where the KP holds meetings. This was due to a new majority which emerged in the KP which was legally and democratically trying to solve the prolonged issue of extending the presidential term. Such a coup made an authoritarian reversal.

By holding such a coup, Barzani could stay in power for an unlimited period as he could gloss over his military action by obtaining another illegal action from the RCC, which issued a consultative decree prescribing that as long as there is no opportunity for holding a presidential election, president Barzani can stay in power.[[1150]](#footnote-1150) After the coup, some parties continued to deal with Barzani as regional president, particularly the PUK, in order to preserve its interests embodied in bilateral agreements. Semi-presidentialism’s essential advantage is its compatibility with multiparty politics, originating from the social and political cleavage within the KR, but it has been misused and precipitated institutional deadlock and instability.

Democratic failure in the KR also resulted from the KRG’s lack of effectiveness in solving the prolonged crisis of the RP that needed a compromise among parties in a consensus government. In such circumstances, when a party provides a solution with the support of military forces, as happened in the KR on 12 October 2015, the opposition within the regime is labelled as disloyal. In consequence, the disloyal opposition can also gather supporters to address the declining legitimacy of the system and potentially, to provide solutions via violent activities which provoke further violence, precipitating the polarization of society and civil war. When the unsolvable crisis reaches an intensity among parties that can easily misuse partisan forces, this inevitably leads to failed transition and the stability of the entire society is highly likely to be diminished where there is a likelihood of civil war.

The 12 October event is resulted from a prolonged and unsolvable crisis of the RP. This issue is perilous where the KR is ruled by an autocrat backed by a coup, governing by illegal decrees and then initiating the independence referendum that made the already political and institutional crisis far worse. This provoked the suspension of election in the KR and consequently extended the terms of all the political institutions. This will eventually undermine the fragile contemporary institutions in the KR, in which electoral authoritarianism becomes more hegemonic.

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329. Bulgaria signifies the communist-initiated transition in 1989; revolution from above. As the collapse of Soviet Union, with its message of non-intervention, encouraged preventive action for political liberalisation from the less concerned Communist leaders in the ruling centre. Although they were weakly organised to resist Communist rule, they gathered under the Union of Democratic Forces, which consulted with Gorbachev in November 1989, before initiating a "palace coup" that replaced the discredited top leadership. However, the strategy was to open competition to forestall a more truly popular organisation that might diminish Communist dominance. ibid 356-57. [↑](#footnote-ref-329)
330. The so-called velvet revolution; a non-violent revolution for the transition of political power, started from 17 November to 29 December 1989. Through popular demonstrations, in response to the repression of a student demonstration in November 1989, the 41 years rule of the Communist Party government ended in Czechoslovakia. ibid 354-55. [↑](#footnote-ref-330)
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333. The four-actor cases were as following: ‘(i) Genuine threats: If you go in that direction, I shall fire a shot that will- wake up a lion that will kill you; (ii) Genuine warnings: If you go in that direction, you will wake a lion; (iii) Disguised threats: If you go in that direction, my hot-tempered friends will fire a shot that will wake up a lion; and (iv) Pseudo-warnings: If you go in that direction, you will wake up a lion that I put in place there last night’. ibid 456. [↑](#footnote-ref-333)
334. ibid. [↑](#footnote-ref-334)
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337. The subsequent events were very quick. It was less than a year, from the beginning of the RTT in Poland in February 1989, to the death of Nicolae Ceausescu and the victory of the Romanian revolution in late December. After the first non-communist government was formed in September 1989 in Poland and the dissolution of the Communist Party in Hungary, no one could stop the fall of communism in the entire region. See Wiktor Osiatynski, 'Revolutions in Eastern Europe' (1991) 58 The University of Chicago Law Review 823, 823; Elster, ‘Constitutionalism in Eastern Europe: An Introduction' (n 145) 454. [↑](#footnote-ref-337)
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615. Hamed Gohary, *Kurdistani Bashur la Newan Dw Halbzhardnda* [in Kurdish] *South Kurdistan between Two Elections 1992-2005* (Kawa 2005) 329; Ala’Aldeen (n 5) 87-88 and 100. [↑](#footnote-ref-615)
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618. Gohary (n 18) 453-54; Ala’Aldeen (n 5) 103. [↑](#footnote-ref-618)
619. Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy* (n 7) 146-47; Natali (n 2) 41; Ala’Aldeen (n 5) 103. [↑](#footnote-ref-619)
620. Mohammad Sabir Karim, *Al-Taadudya Al-Siyasiya wa Asaruha al Al-Sulta Al-Tashrieya fi Eqlim Kurdistan Al-Iraq* [in Arabic] *Political Plurality and Its Influence on The Legislative Authority in Iraqi Kurdistan Region* (Academy of Awareness and Capacity Building 2012) 217. [↑](#footnote-ref-620)
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623. Akiko Yoshioka, ‘The Shifting Balance of Power in Iraqi Kurdistan: The Struggle for Democracy with Uninstitutionalized Governance’ (2015) 9 International Journal of Iraqi Studies 21, 32. [↑](#footnote-ref-623)
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629. Yoshioka (n 26) 29-30. [↑](#footnote-ref-629)
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632. Yoshioka (n 26) 30-31. [↑](#footnote-ref-632)
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839. CRI 2005, a 9 (1) (a). [↑](#footnote-ref-839)
840. CRI 2005, a 9 (1) (b). [↑](#footnote-ref-840)
841. CRI 2005, a 117 (1). [↑](#footnote-ref-841)
842. The ‘regional government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region’. CRI 2005, a 121 (5). [↑](#footnote-ref-842)
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1033. Elgie, ‘Semi-Presidentialism: An Increasingly Common Constitutional Choice’ (n 73) 13. [↑](#footnote-ref-1033)
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1035. ibid 14. Introducing semi-presidentialism in France can be argued that the system provides ‘subordination of the army to a president who had particular legitimacy with the armed forces’. Linz, ‘Presidential or Parliamentary Democracy: Does It Make a Difference?’ (n 3) 50. [↑](#footnote-ref-1035)
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