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KURDISTAN PARLIAMENT: EMERGENCE AND DEVELOPMENT OF A NON-STATE PARLIAMENTARY SYSTEM

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**ABSTRACT**

The Kurdistan Parliament – Iraq has been established in 1992 and has increasingly gained legitimacy both inside and outside the region. The Parliament is a unicameral legislative body in the Northern part of Iraq recognized as a federal region officially known as Kurdistan Region of Iraq (KRI). It has been functioning as a *de jure* institution in a *de facto* state, with a rather stable legislative capacity. Formalized procedures and legally established functions of this parliament are proving a functional institution, albeit with periods in which the main parliamentary parties do not reach the required consensus to legislate, for a long period. After five election cycles, five parliamentary terms and hundreds of issued laws, are the region and its representative institution willing to pass the test of a minimal democracy?

**Introduction**

This paper delves into the existing legal bases and formal provisions that regulate the parliament of the Kurdistan Region of Iraq (KRI). Firstly, the background of the parliament will be described from the perspective of the recent history and constitutional attempts to legalize this emergent institution. Then, general considerations are brought regarding the elections and party composition of the successive parliamentary terms, since the establishment of the parliament in the region in 1992. Descriptions of the formal structure, functions and powers of the Kurdistan Parliament - Iraq, along with its relationship with other institutional bodies are presented afterwards.

The chapter also describes internal dynamics and mechanisms of functioning, as well as the role of fractions and committees. Subsequently, the chapter offers some insights into the legislative process and legislative production of the parliament. Given the absence of research of reference on the case of Kurdistan Parliament-Iraq, this chapter is to be received as being an initial attempt to uncover the case, a rather broad sketch of the existence of the institution, the unfolding of the inherent formal arrangements and functions of the Kurdistan Parliament-Iraq. Large research and narrative gaps are urgently needed to be covered by further research, adapting quantitative data and inserting it in the larger number of similar and dissimilar case studies, employing mainstream comparative methodology.

### ***Legal Bases of the Kurdistan Parliament-Iraq***

The Kurdistan Parliament, along with the other political institutions of the region, is functioning in the virtue of Iraqi constitution, along with other regulatory and provisional laws self-emitted by the regional emergent institutions of the KRI, since the inception of the autonomous government of the KRI. This autonomy has been considered mostly as a *de facto* state until the fall of Baath regime and continued with a recognized legitimacy in 2005, until nowadays. The autonomous government of the KRI was established in 1992 and the establishment of the *Kurdistan National Assembly* was among the first acts of institutionalization of the autonomous government. The *Law number one*<sup>1</sup> of the region instituted the one chamber parliament, elected by direct vote every 4 years, on the inspiration of the consolidated democracies. Later on in 2009, the name of the parliament has changed from Kurdistan National Assembly into *Kurdistan Parliament-Iraq*<sup>2</sup> through an amendment to the Iraqi Kurdistan Parliament's bylaw.

After the US led coalition and removal of Baath party from the power in Iraq, the Kurds, as one of the main opposition group took part in rebuilding a new Iraq together with other entities of Iraq. After the fall of Baath regime, an interim government was appointed in Iraq composed of the representatives of different Iraqi ethnic and religious groups<sup>3</sup> and have participated in the committee that drafted the Iraqi constitution. In accordance with the Iraqi Constitution ratified in 2005<sup>4</sup>, Kurdistan

<sup>1</sup> Kurdistan Parliament. (1992). *Yasayi Jimare 1, 1992, Yasayi Helbijardini Kurdistan* [Law n. 1, 1992, Kurdistan Elections Law] Available at: <http://perleman.org/files/articles/010315072126.pdf>. See also the Kurdistan National Assembly Elections Law – Iraq, No. 1 of the year 1992 (Unofficial translation): <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKewjavZv1x9jmAhUFrosKHUHCyQQFjAAegQIBxAK&url=http%3A%2F%2Fgipi.org%2Fwp-content%2Fuploads%2Fconsolidated-amendment-to-electoral-law-of-the-kip-unami-unofficial-translation-final-annotated.doc&usg=AOvVaw3RGH-pC9a9bgeMELuvlHxn>

<sup>2</sup> Kurdistan Parliament. (2009). [The KRI Election Law's Fourth Amendment.] Available at: <http://perleman.org/files/articles/260309020909.pdf>

<sup>3</sup> Iraqi interim government was created on June 28, 2004, to govern the country until the drafting of new constitution. It was replaced with the Iraqi transitional government on May 3, 2005.

<sup>4</sup> See for more regarding the arrangements of the Iraqi Constitution in John McGarry and Brendan O'Leary (2005) *Iraq's Constitution of 2005: Liberal consociation as political prescription*, *International Journal of Constitutional Law*; Nathan J. Brown Senior Associate Carnegie (2005) *The Final Draft of the Iraqi Constitution: Analysis and Commentary* Endowment for International Peace; Dodge, Toby (2005) *Iraq's future: the aftermath of regime change*. Adelphi Papers.

Parliament-Iraq has the authority to legislate as a regional parliament within a large array of issues, on the condition that these do not contradict with the Iraqi Constitution<sup>5</sup>. The legislation of the federal parliament can be optionally enacted, amended or not adopted by the KRI and the priority is given to the legislation and laws legislated by the Kurdistan Parliament-Iraq. The Iraqi Constitution recognizes, among others, that the region of Kurdistan has the right to exercise legislative powers. In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power has the right to amend the application of the national legislation within the region. Furthermore, the 2005 Constitution recognizes the legislation enacted in the region of Kurdistan after 1992, “...*Provided that they do not contradict with the Constitution.*”<sup>6</sup>.

After more than two decades, the Kurdistan Parliament-Iraq is in continuous evolution in both structure and the content. This is an ongoing reshaping process to adjust itself and accommodating internal factors deriving from manifest intentions of independence and breakaway from the central government, modest democratic aspirations, regional security and economic issues, local cultures, continues internal struggles and need of learning for political elites.

The main characteristic of the system of KRI is the absence of a constitution that would regulate the political system in the classic sense of the concept. The draft of Kurdistan constitution was finalized in 2009, but due to a number of disagreements among the political parties, a new committee for redrafting were established in 2015. This committee consisted of 21 members intending to represent the diversity in Kurdistan region, but yet, the committee members and their representation was fully

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<sup>5</sup> The provisions in the Iraqi Constitution regarding the Region of Kurdistan are as follows:

Article 116: The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations.

Article 117: First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

Article 121: First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

Second: In case contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.

Third: Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the percentage of their population.

Fourth: Offices for the regions and governorates shall be established in embassies and diplomatic missions, in order to follow cultural, social, and developmental affairs.

Fifth: 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.

Article 141: Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.

\*see for more: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=230001](http://www.wipo.int/wipolex/en/text.jsp?file_id=230001)

<sup>6</sup> “Iraq’s Constitution of 2005.” Available at: [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en). Retrieved February 11, 2017.

politicized. The committee was granted with a period of 90 days to finalize the draft but due to disagreements between the main parties the committee stopped its work shortly after its creation. Besides the intra-group misunderstandings, there is no large pressure for this constitution to come into being, because a constitution of KRI would unveil and expose the intentions of independence which are not accepted by the central government of Iraq.

*The Parliament of Kurdistan-Iraq: a story of a Stable Instability (1992-2018)*

The KRI and its institutions function based on laws legislated by the region itself since 1992. The election law number 1, of the year 1992<sup>7</sup> is the first law legislated by the Kurdistan Parliament and is considered the foundation stone for the government and a de-facto state institutions. The elections for the first parliamentary term was held in 1992 based on an electoral system of closed party list, with a threshold minimum of %7. Nowadays, due to new amendment in 2013, semi-open party list system of proportional representation<sup>8</sup> is adopted. This system is still enacted and the electors vote for one party list and prioritize one candidate inside the same list. After the election results are announced, each party is allocated seats in proportion to the number of received votes, using the order of top winning candidates on its list.

The history of the Kurdistan Parliament-Iraq can be described as a stable instability, given the periods of intense willingness of the political parties to move forward, alternated with periods of total inactivity due to instabilities and conflicts. After the first elections, the region was self-granted an autonomous status and the government's institutions including the parliament were established upon a consensus between the two main political parties, Kurdistan Democratic Party (KDP) Patriotic Union of Kurdistan (PUK). After the elections KDP and PUK joined in an alliance with seven other political parties to form a government called as a *United Government*.

Due to the internal instabilities and conflict the elections were not held regularly every four years in the KRI. Therefore, the elections for the second term of the parliament took place in 2005, thirteen years after the first elections. During this elections due to the amendments of the election law, the 7% threshold was lifted and the minorities were granted with more quota seats. During the second term a unitary government of all the major political parties in the parliament.

The elections for the third term of the parliament took place after the end of regular and legal four years of the second term in 2009. These

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<sup>7</sup> The law was drafted by a committee consisted of representatives of *Kurdistan Front* and then passed and approved by the Kurdistan Front leadership. On May 19 1992, about one million voters participated in parliamentary elections in the three governorates of the areas under Kurdish control in Northern part of Iraq.

<sup>8</sup> Kurdistan Parliament. (2013). *Yasayi Jimare 15 î sali 2013, Hemwarî Hewtemi Yasayi Helbijardinî Perlemanî Kurdistan* [Law Nr. 15, 2013, The Seventh Amendment of the Kurdistan Elections Law] Available at: <http://perleman.org/files/articles/080713065045.pdf>

elections took place after a major change in the political atmosphere of the KRI. This was when a significant number of PUK leading members under decided to leave the party and found a new political party named as *Movement for Change (Gorran)*. This newly founded party won 24% of the parliament seats in 2009 elections and KDP and PUK alliance won 57. Thereafter, the newly founded movement for change decided to remain as an opposition party in the parliament. This marked a historical moment when for the first time a political party with such significant presence at the parliament takes decision to remain as opposition.

For the fourth term also the elections were held on a regular four-year basis in 2013. None of the winner parties could guarantee a 50%+ of the seats and therefore a coalition was needed to form the government's cabinet. After months of discussions, a coalition of all parties and a consensus government was formed. Nevertheless, the political agreement between the parties did not last long and as a result the parliament sessions were shut down in October 2015. The dispute was over the presidency term which its second term was to be ended by August 2015, which was already amended for two years in 2013. The main four party fractions of Gorran, PUK, Islamic Union and Islamic Group stood against while KDP was in favor of the second amendment. The four fractions attempted to hold a parliament session and end the term by introducing a new amendment to the presidency law and change the election of president from a public vote into an in session parliament vote. However, their attempts to fulfill this amendment was unsuccessful due to the lack of gathering the necessary majority of the attendees for the session to be held. A week after this, the president of the parliament who was from Gorran movement was not allowed to enter Erbil and he was sent back to his home in Silemani from a checkpoint on his way to Erbil. The following day the prime minister who was from KDP sacked the ministers of Gorran movement from his cabinet justifying that Gorran has violated the agreement which this consensus government was built upon.

The fifth term of parliament elections were held on September 30, 2018. The parties who won the seats for the fourth legislature are: KDP, PUK, Change Movement, Islamic Movement, Islamic Union, Islamic Group, Social democrat, Labors Party, Armenian, National council of Chaldean, Assyrian, Ashuri, Turkmen Change and Renovation, Iraqi Turkmen Front and Turkmen Development party. KDP won 45 seats, PUK came second with 21 seats and Gorran movement with 12 seats in 2018 elections.

**\*\*INSERT TABLE HERE: Characteristics of the Parliaments of the KRI (1992-2018)\*\***

### *KDP-PUK Civil War*

Before moving forward, some historical accounts are needed to be brought in regarding the civil war that sparked in the early 90' between the two main political parties, KDP and PUK. In the occasion of the first elections in the KRI, only two big parties have managed to cross the 7% threshold: KDP and PUK. The results announced with almost equal percentages, giving KDP and its coalitions a 50.8% of the votes, while PUK with its

coalitions took 49.2%. The impossibility of the two parties to share power has resulted into a civil war and division of administration in two competing governorate administrative bodies, based on the territorial coverage of each of the parties: KDP with the center in Erbil and PUK with the center in Sulaymaniyah<sup>9</sup>.

One of the outcomes of civil war between KDP and PUK was the emergence of an era known as *two administrations*. The two administrations left a great impact, to the extent that some characteristics and practices of this split system are still sensible in the region's system until today. The Washington Peace Agreement signed in 1998 with the intervention of the US, where the two parties agreed upon ceasefire. The Law Number 16 of 2002 is the law passed by the parliament with the ratification of the Washington ceasefire Agreement between KDP and PUK. Nevertheless, the agreement also was not a final solution and it did not put an end to two administrations and the split of governments. During all this period, the MPs of two sides agreed on several extensions of the parliament first term which was supposed to be concluded in 1996. In October 2002, the members of parliament from both KDP and PUK entered a transitional parliament term and this lasted until elections of 2005.

The denial of parliamentarians to be a part of the war is among the most prominent parts of this civil war. Members of parliament elected on the lists of both parties remained at the chamber in Erbil, the capital city of the region, without getting involved in the civil war. For more than a decade, the parliament had legislated for the both administrations established in the two rival governorates, that of Erbil and Sulaymaniyah. At the beginning of the civil war, Jawhar Namiq, the president of Kurdistan Parliament, member of KDP politburo, released a statement opposing the civil war between the two parties. Together with other members of parliament from both parties, they went on public protest against the war. This resulted in a 103-day sit-in protest at *Panagiri* hall inside the parliament. Although their protest did not put an end to the civil war, this marks a crucial position from the side of the MPs that continued

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<sup>9</sup> The post-election negotiations went to a direction where the two parties decided to have a coalition to form government and this power-sharing agreement is known as *Government of Fifty-Fifty*. The initial purpose of this coalition was to create balance of power and it was intended to put the two parties in a position of agreement. This fifty-fifty was an attempt to convince the two main parties to have equal power, starting with the formation of cabinet with almost fifty percent of ministers from each. The deputy ministers were also granted exactly equal powers of a minister to practice. These deputies were intended to reserve the balance of power as follows: if the minister was KDP, his deputy was PUK and the way around. This power sharing was not without problems, especially for the leadership of the two parties who spent at least the last five decades of their history as rebels in the mountains. Therefore, on one hand, power-sharing and reaching to an agreement to form a government at that time was crucial to maintain the peace among these two parties. On the other hand, this type of power-sharing was not functioning and it was rather a blockage on the way of decision making. For instance, in a case when a KDP minister who has a PUK deputy with the same powers and authority, or the way around with a PUK minister or KDP deputy minister, none of them would be able to easily make decisions especially when there was already a background of disagreement between the two parties. Instantly, conflicts arose. Rapidly growing disputes over matters such as revenue shares appeared. The *Government of Fifty-Fifty* survived for less than two years, after which the both parties stepped into a civil war. The war between PUK and KDP divided Kurdistan of Northern Iraq into two administration territories; one under the control of PUK with Sulaymaniyah as its capital city and Erbil remained under control of KDP as the centre of decision for their administrated territories. KDP established its government in 1996 and right after PUK established itself in Sulaymaniyah in January 1997.

cooperation and did not stop legislation process.

### **Parliament Closed Doors and Disputes of Presidency**

The presidency crisis in the KRI reached its peak in November 2015. President's term which should have ended in 2013, was extended for two years by a KDP and PUK majority in the parliament. After two years, the issue was raised in the parliament in 2015 by four main fractions of Gorran, PUK, Islamic Group and Islamic Union. These four fractions proposed a draft of amendment to the law No. 1 of the year 2005<sup>10</sup>. This move agitated KDP as their leaders interpreted it: (1) the four fractions shouldn't have taken this step unilaterally while they are main components of a consensus government in coalition with the KDP; (2) the focus is mainly on KDP's leader President Masoud Barzani and crashing his character more than focusing on the presidency institution and position; (3) the committee to re-draft the constitution is formed to take a decisive towards the type of government and its institutions in KRI and what is proposed by the four fractions is interference in their work; (4) the issue should have been discussed by all political parties in the region to reach a national agreement over the presidency issue while the region is in a war fighting ISIS terrorists.

Although the parliament was in its two months legislation break in July and August but the four main parties managed to form the majority and pass the draft from the first hearing of the parliament session in July 23, 2015. The draft needed the second and final hearing to pass and the four fractions declared the second hearing session to be held on August 19, 2015, which was still during the legislation break. This raised tension among the political parties in the region and divided them into two main fronts of KDP and its allies and all the other. As a result, the UN and diplomatic missions in Iraq and KRI interfered and met in Erbil in the evening of August 18, the night before the parliament session. The meeting brought together all the party leaders mediated by the UN and a significant number of diplomats where they decided to postpone the second hearing session. The day after, the MPs from the four parties who were in the meeting went to the parliament to hold the session disregarding the agreement. However, the attendance did not meet the minimum of plus 50% of MPs to conduct and the session was dismissed. Following that, a series of protests occurred in which the protestors attacked KDP headquarters and offices in a number of cities and towns in Silemani province. This escalated the tension between the parties and KDP accused Gorran to be behind these attacks and that the protests are organized and directed by Gorran leaders to attack KDP in Silemani province. Later in October 12, the president of parliament was not allowed to enter Erbil and the parliament at Pirdê check point on the Kirkouk-Erbil highway. This was followed by suspending the Gorran ministers from the cabinet accusing Gorran Movement for instigating violence and unrest in the political process in KRI. As a result, the

<sup>10</sup> Kurdistan Parliament. (2005). *Yasayi Jimare 1 î sali 2005, Yasayi Serokayeti Herêmi Kurdistan* [Law Nr. 1, 2005, Kurdistan Presidency Law] Available at: <https://www.parliament.krd/media/2456/ياسای-سه-ر-وکایه-تی-هه-2456.pdf>



parliament entered a virtual shut down that lasted more than two years.

The issue of presidency remained disputed although the legislative council of KRI declared that the president shall remain in his position with all his powers until the next presidential elections are held. This decision of the council was criticized and was considered not neutral by the opposing political parties on top of the Gorran. In September 15, 2017, the parliament was reactivated as a part of the agreement among the members of supreme committee of the referendum who represented the major political parties of KRI. Gorran did not take part in the reactivation session and the deputy president from KDP and secretary of parliament from PUK hold the session without the presence of the president. Later, the Gorran fraction returned to the parliament sessions but the president of parliament sent a resignation letter.

After holding the referendum on September 25, KRI faced a series of unrest and pressure both internally and from the neighboring and international communities. In October, Barzani sent a letter to the parliament refusing to stay in the position as president during further extensions. Based on that, the parliament in October 29 held a session in which the powers of the president were divided between the government and the parliament until next elections. However, the next elections which were held in September 30, 2018, took place only for the parliament while traditionally both presidential and parliamentary elections were held together in the KRI. The position remains vacuum until today and the main discussions among the political powers refer to the amendment of the law and leaning towards a more parliamentary system.

### **The Parliament and Independence Referendum**

In June 7, 2017 Masud Barzani called for an inter-party meeting where majority of the KRI political parties attended. The outcome of this meeting was forming a committee and setting a date for the independence referendum of Kurdistan. The committee unanimously voted for September 25, 2017, as the date which the independence referendum will be held. Another decision of the committee was to “hold the efforts together in order to reconvene the Kurdistan parliament”<sup>11</sup>. However, the decision was criticized specially on the fact that the parliament is the place to take such fateful decisions and the committee’s decision will have no legal binding without the parliament’s approval. The Movement for Change (Gorran) and the Islamic Group (KIG) were the only two political parties who boycotted the referendum committee and its meetings. They urged that the “high priority is to reconvene parliament”<sup>12</sup>. The following meeting of the committee on June 30, 2017 concluded with a statement<sup>13</sup> that the parliament must be reconvened in two weeks. However, the parliament was only able to hold its reopening session six weeks later on September 15,

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<sup>11</sup> See the statement of the meeting of the political parties at:

<http://presidency.krd/kurdish/articledisplay.aspx?id=ovrdCltbCyg=>. December 18, 2017

<sup>12</sup> The official statement of the Gorran spokesperson can be found at: <http://www.gorran.net/en/Detail.aspx?id=12447&LinkID=128>. October 23, 2017.

<sup>13</sup> The statement can be found at: <http://presidency.krd/kurdish/articledisplay.aspx?id=BWd4AEWj3N8=>. Retrieved November 21, 2017.



2017, more than two years after its closure. Yet, the two opposing parties, Gorran and KIG, refused to take part at the reconvention session. This caused a pressure while the president and the secretary of the board were Gorran and KIG which made two out of three members of the parliament's presidency board. Nevertheless, the session was held and led by the deputy president of the parliament from KDP with 73 out of 111 MPs present at the session. The first agenda of the session was nomination of a secretary for the parliament's presidency who was nominated by the PUK fraction and was approved unanimously. The next agenda of the session was to pass a resolution which delegated the Kurdistan Independent Higher Elections and Referendum Commission (IHERC)<sup>14</sup> to hold a referendum in the KRI<sup>15</sup>

## **Structure, Functions, and Powers of the Kurdistan Parliament-Iraq**

### *Structure*

The formal structure of the Kurdistan Parliament-Iraq resembles the model of the classic parliamentary structures in Western democracies, with even some advancements in terms of legalized gender quotas and quota for religious and ethnic minorities.

The first two parliaments constituted of 105 seats in the chamber, under the name of National Council of Kurdistan-Iraq according to Law No. 1 of 1992. In 2009, the law was amended and the name was changed to Kurdistan Parliament-Iraq. The same amendment increased the number of seats to 111 places, among them 11 seats are allocated for the quota of minorities as following: 5 seats for Turkmen, 5 seats for Assyrians and Chaldeans, and one seat for Armenian minorities. This amendment has lowered the minimum age of candidates from 30 to 25 years old. At the same time, the minimum quota for women was increased from 25% to 30%.

The parliamentary sessions are divided into spring and winter sessions, for a duration of four months. There is an interval of two months legislative break when members focus on matters related to oversight. The presidency of parliament consists of a president, deputy president and secretary of the parliament. The three members of the presidency are elected in a secret vote inside the chamber. President of parliament calls for sessions and extraordinary sessions. 1/4 of MPs can also request a session from the presidency.

### **Minority Quota Manipulation**

The KRI is home to a religious, ethnic and cultural diversity. Along with the Kurds, other ethnic groups such as Chaldo-Assyrians, Turkmen, Arme-

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<sup>14</sup> The IHERC was established according to Law No. 4/2014. The drafting of the law started after KRI President's address to parliament on July 3, 2017, when he requested a committee to be formed to study referendum. In less than a month (Kurdistan Parliament, 2014) was passed in a popular vote in parliament and the commission was established after that.

<sup>15</sup> The parliament delegated the commission to hold the referendum at its first meeting after it was reconvened. See the details at: <http://perleman.org/Default.aspx?page=article&id=23494&l=3>. Retrieved December 18, 2017.



is usually decided upon a consensus between political fractions of parliament taking their votes into consideration. For the complete list of committee, please see the table 1.

*Table 1. Parliamentary Committees, fifth Parliamentary Term*

1. Committee of legal affairs
2. Committee of finance and economic affairs
3. Committee of Peshmerga, interior, security and local councils
4. Committee of agriculture and irrigation
5. Committee of education, higher education and scientific affairs
6. Committee of health, environment and consumers rights
7. Committee of social affairs, children and family
8. Committee of Municipalities, transportations, reconstructions, resettlement and investment.
9. Committee of rituals and religious affairs
10. Committee of martyrs, genocide affected and political prisoners
11. Committee of industry, trade, energy and natural resources
12. Committee of culture, civil society, sports and youth
13. Committee of integrity, parliament affairs and complaints
14. Committee of relations and diaspora affairs
15. Committee of Kurdistan areas outside Kurdistan administration (disputed areas)

*Functions and Powers of the Parliament: Representation, Legislation and Government Oversight*

According to the acting laws in Kurdistan - Election law, presidency law, Kurdistan Parliament's bylaw<sup>18</sup> - the three main functions and powers of the Kurdish parliament are as follows: representation, legislation and government oversight (see table 2). These functions are interrelated and have the same scope: to represent the constituency in decision-making, and this can be seen as being the main function of MPs. KRI is based on a social tribal system and traditionally the individuals appeal more often to the structures of the tribe in order to search for their rights. Reminding that the parliamentary representation has never been an occurrence in the region until 1992, after being set up, the institution of the parliament has started slowly to shift the tribal practices towards a modern arrangement of application and execution of the individual rights. Still, a large number of rural population is linked to their MP through their tribe and through the mediation and clientelism of the tribal leaders. In this way, the MPs can be perceived both as representatives of the tribal system and representatives of the individuals that bypass the traditional tribal settings<sup>19</sup>. This arrangement

<sup>18</sup> During the fourth term of the parliament the bylaw was amended and the new bylaw is active from the fifth term onward.

<sup>19</sup> The tribal aspect of the Kurdish society is among the most curious reminiscences of the past social constructions. There are no studies related to the relationship between politics and tribes in the Kurdistan Re-

plays a decisive role in the election process as well, being the funnel that determines the number of votes taken by the candidates and parties. In other words, the closer a candidate to the tribal constituency, the higher the probability to be elected and have popular support.

When it comes to the gender and minority representation, there is a formal descriptive representation present in the parliament. However, given the low experience of democratic exercise, along with the intricate tribal-political party system, it is rather intuitive that the main decisions are taken within and between political parties. These quotas are, more often than not, a formal concession to give an appearance of consociational arrangements, rather than the emanation of a genuine democratic practice.

*Table 2: Three main functions of the Parliament of Kurdistan - Iraq*

Representation	Representation of the constituency. Debating the major issues of the day.
Legislation	Drafting and examining proposals for new laws. Passing laws. Amendment of laws
Government Oversight	Scrutinize government policy and administration. Check and challenge the work of the Government. Check and approve Government spending (budget). Provide for the formation of a government the designation of the candidate for the office of prime minister to form a cabinet. Granting and taking off the vote of confidence to the cabinet or a minister.

*Legislation: Legislative Process*

The drafts of laws and resolutions are proposed from and through an initiative of one of the following venues: 1) at least 10 members of parliament; 2) the Presidency of Kurdistan Region; and 3) the Council of Ministers. Every draft is proposed to the presidency of the unicameral parliament of Kurdistan. Then the draft is distributed among all the MPs. After that the draft is put in the agenda of the plenary session to pass through the first hearing. The proposed drafts of laws must be proposed either by presidency, council of ministers or at least 10 members of parliament. Then the draft of laws after agreed by the presidency of parliament, will be put on the agenda of the session and these will pass through the first hearing. The proposed draft is directed by the presidency of the parliament to the related committee. The related committee then comes up with a report after discussing it in

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gion of Iraq. For this reasons, any account on parliamentary representation can not be informative enough, as there are much more hidden ties and relationships between this social structure and political institutions to be described.

the committee meeting in presence of majority of the members of committee.

The related committee will be designated by the president of the parliament to prepare the report of the draft in cooperation with the committee of the legal affairs within 10 days. There are some drafts prioritized by the president of the parliament, and in this case the report shall be ready within 5 days. The report will be distributed again among all the MPs to be discussed in the next session as second hearing. The draft is discussed article by article and the new proposals and suggestions for each article or sub articles are voted by the MPs. At the end the whole project is voted and while it is passed it goes to the president signature. Within 10 days from the date the new passed legislation is sent to the president and then the president may propose a revision on a part or the whole legislation and send it back to the parliament and in such cases the decision of the parliament is the final one.

All the sessions are open and accessible to the public through online live-stream, TV, or other means of communication such as Facebook live stream. 1/4 of the MPs can request to have a private exclusive session with no live coverage and this request needs to be agreed by the majority vote to have the session exclusive, otherwise it goes on publicly. This is usually done when there are sensitive issues to be discussed<sup>20</sup>. The plenary has a special place on the top for the public who are willing to attend and watch the process from inside the hall. The whole discussions of all the sessions are registered in a protocol book which is also available at the parliament library there is easy access to it by the public.

*--an example: the approval of the yearly Budget*

A most important law for any parliament is the annual law of the budget. The process of coming into existence of this law is described here, as an indicator of the established rules and routines of legislation in the Kurdistan Parliament-Iraq. The proposed budget is prepared by government and also the annual account is due to submission to the parliament before the end of each year<sup>21</sup>. The budget proposal is given a priority status and when it reaches to parliament, the finance committee is designated to prepare their report on the draft and bring it to the session for further discussions. The committees report must be prepared no later than three days from the date of the proposal arrival. All the committees have the right to give their comments and insights in accordance to their specialty. The report is distributed among the MPs in order to be studied two days before to the session. Fractions discuss the budget proposal among themselves usually, in accordance to their party position. The session on the budget has two focuses, first discussions on the expenditure and then discussion on the budget proposed law. Parliament also has its budget that is added to the

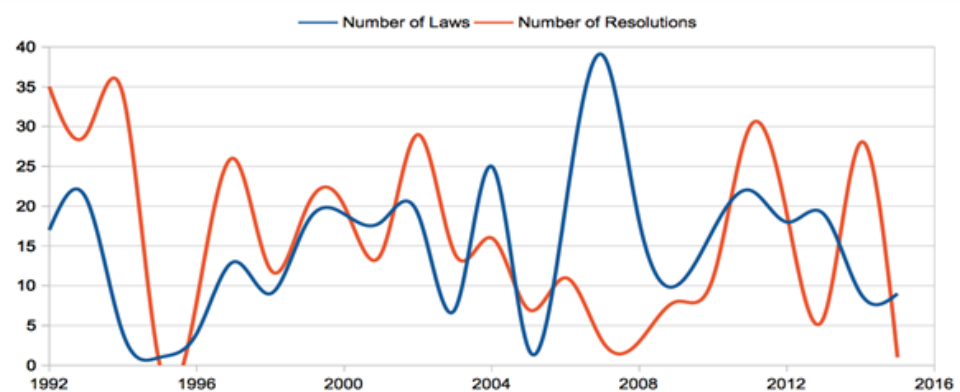
<sup>20</sup> Usually MPs request an exclusive session in cases related to security, because of the sensitivity of the topic.

<sup>21</sup> There are large differences between the law and its practical application here. For instance, since the start of the fourth term of the parliament in 2013, there have been no budget proposals by cabinet to parliament. Some of the main reasons of not having any budget proposals reside in: the financial crises; the war against ISIS; the disputes between the region and Baghdad that led to cut of budget and salaries of the region from the central government; the fall of oil prices, etc.

overall budget of KRI. The project then is voted by parliamentarians and it requires a majority vote to pass.

### *Legislative Production*

During the first two years of the parliament, the number of passed laws covered the establishment institutions of the Kurdistan Regional Government. With 38 laws and 64 resolutions, these two years were the most active ones. Despite in 1994, the two main parties entered the civil war, the parliament and the MPs decided to continue. The civil war influenced legislation process but it was not completely stopped. In 2005, the second term of parliament was elected and since then every four years the parliamentary elections are held and the legislation is ongoing (see graph 1). The legislative process is blocked in the first months of the fourth term, causing a legislative void that was replaced by the Council of Ministers through decrees.



**Graph 1: Number of laws and resolutions passed by the Parliament of the Kurdistan Regional Government in the period 1992-2015<sup>22</sup>**

### *Party Cohesion and Voting Behavior*

The parliament consists of different fractions that represent political parties. Members of each fraction are mostly cohesive particularly in legislation voting. Each fraction has a presidency unit. For instance, the presidency of KDP fraction consists of the president of the fraction, deputy president, coordinator and a spokesperson. The fractions abide by the political party disciplines and this is secured through the presidency of fractions that are in continuous contact with their political parties over the issues being discussed at the parliament. Besides, there are constant meetings between the members of fractions and their leadership of political party. Usually the members are asked by the presidency of the fraction to be aware of acting cohesively in order to achieve the party goals in certain legislations. There are few cases when members vote against their party, but this usually ends with the interference of the fraction's presidency or a party leaders to solve the issue.

<sup>22</sup> This graph is computed by the authors, based on data available on the website of the Parliament [www.perleman.org](http://www.perleman.org).

*The function of Oversight and Relations with the Council of Ministers*

The oversight function of the Parliament of Kurdistan - Iraq has three stages: parliamentary questioning, parliamentary scrutiny and vote of confidence. Every member of parliament has the right to address written or oral questions to the executive power through the presidency of the parliament (Article 62). The questions are to be responded by the prime minister or by any related member of the Council of Ministers or the addressed minister, within a period that does not exceed 15 days from the date that the question is addressed (Article 65). The response to the question is disclosed in the next parliament session and in case the questioner is satisfied with the response or he/she is not present and no one else follows the it, the issue is considered accomplished (Article 66). Otherwise, in case the response is not satisfying or if the Council of Ministers does not respond in time, the next stage is the parliamentary scrutiny of the government. Parliamentary scrutiny is the request of explanation addressed by the parliament to the executive (Article 67 and 68). The scrutinised member of the Council of Ministers usually appears in the next session and gives his/her explanation regarding that particular issue (Article 69, 2). At the end of session the explanation of the member of executive is voted and in case the majority votes go in favor of the explanation the case is considered finished. Otherwise, in case 2/3 of the votes go against the explanations, the member of the executive considers to be censured with vote of no confidence (Article 70).

*The relationship between the Parliament and the President of Kurdistan*

The relationship between the parliament and the president of KRI is set in the law Nr. 1 of 2005, the Presidency law<sup>23</sup>. 12 articles outline the relationship between the President and Parliament. After being elected by direct vote, the President takes the oath of office in the Parliament. As part of the legislative process, the laws adapted in the parliament require the approval of the President, within fifteen days. In case the president has a disagreement with a part or the whole of law, he sends it back to parliament. However, the president has no veto powers over law. The final decision whether accept the disagreement and amend the law, or just pass it as it belongs to the parliament. In practice, neither the parliament nor the president have challenged each other until this moment during the law making process. Still, the unique source of dispute between some of the parliamentary political parties and the president were focused on the amendment of the presidency law. This dispute was severe enough to lead to the blockage of the parliament, which is still active at the moment of writing this article<sup>24</sup>.

<sup>23</sup> The Presidency Law: <http://perleman.org/files/articles/101207105105.pdf>

<sup>24</sup> The current president, Mustafa Barzani, the leader of the KDP was elected in 2005 and reelected in 2009 and his term was coming to an end in August 2013. In the last session of the third term of the parliament in 30/06/2013 extended the presidency law for another two years which is not extendable for the second time. Two years after, in June 15, 2015, two months before the termination of the extension the president requested the Kurdistan elections commission to make necessary preparation to hold presidency elections. According to the law Nr. 1 of 1992, amendment 4 2009, which is called as Kurdistan Elections Law, the president shall request the election commission to hold elections at least two months before the termination of parliament or presidents term.

After that the commission declared their inability of holding elections in a session in front of parliament justifying with the following factors:



### *Parliament and Judicial Systems*

Unlike established institutional arrangements in modern political systems, in KRI there is no such institution that would resemble the Constitutional court present in modern democracies, one which would check for the constitutionality of the legislation adapted by the Kurdistan Parliament. The only formal constitutional court is present in Baghdad, that checks the compliance of the KRI law with the Iraqi constitution. This court has been contacted in regard to the the KRI legislation only once in 2009, on the initiative of a leader of the Change Movement. The question regarded the act of passing law by the Kurdistan Parliament while its term is concluded. This was replied by the constitutional court of Iraq as a legal act as long as the term was extended by law. It is important to mention the existence of the Shura Council within the Ministry of Justice, which in some cases are asked for interpretations of law, even if this interpretation is neither formalized, nor binding<sup>25</sup>.

### *Relations with the Iraqi and Foreign Parliaments*

The Kurdistan Parliament-Iraq has formalized and unfolding relations both with the Iraqi federal parliament (Iraqi Council of Representatives) and a large number of foreign parliaments.

Out of 328 seats of the Iraqi Council of Representatives, the Kurdistan representation is between 60 to 65 seats. The relationship between the two parliaments is limited to the constitutional rights of Kurdistan region. This includes issues such as budget project or even international treaties and agreements. The MPs from Kurdistan Region to the Iraqi parliament are the ones who mostly carry on this relationship. The Kurdistan Parliament is fully authorized, according to the constitution, whether to accept, refuse or amend any legislation passed from the Iraqi council of representatives to be practiced in KRG or not.

The Kurdistan Parliament is a member in number of inter-parliamentary unions and also parliamentary friendship groups. The rela-

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1) War against terrorism: being at war and having a frontline of more than 1000 Km with IS terrorist groups who are close to borders of the region.

2) Economic deficiency: Cut of budget and wages from the central government since January 2014 and dramatic downfall of the oil prices. At the same time, receiving nearly 1.8 million refugees and IDPs at this hard time.

3) Logistic deficiency: The commission is newly established and the proposed structure has not been put in place due to the lack of budgeting by the government.

In order to solve the issue, some political powers proposed to amend the presidency law and have the president elected in the parliament. Meanwhile, a committee was formed by the parliament and designated to draft the constitution of Kurdistan. This committee was made up of representatives from all the political parties. KDP and its allies proposed to wait for the drafting committee of the constitution to decide for the political system: whether direct or indirect vote, and whether parliamentary, presidential, mixed or any other political system would be proposed.

<sup>25</sup> For more details about the Judiciary system in KRI, please see the Global Justice Program: Iraq <http://gjpi.org/2009/08/14/the-judiciary-and-the-law-in-the-kurdistan-region-of-iraq/> ; and United Nations Development Programme Iraq (2003) Promoting Rule of Law in the Kurdistan Region of Iraq through a Modern, Efficient and Accountable Justice Sector at <https://info.undp.org/docs/pdc/Documents/IRQ/RoL%20Annual%20Rep%202013%20V2%20with%20Output2.3.docx>

tionship with the parliaments from other countries is a direct one. International parliaments also realize that the way to contact Kurdistan Parliament is not through Iraqi council of representatives. It receives and sends official delegations from and to the parliaments around the world.

*Some Conclusions:*

There are a few conclusions that can be drawn upon the overview of the development of the functions of the Parliament of Kurdistan - Iraq. The first conclusion is that this case represents a unique occurrence for the entire history of the Kurdish population in the Middle East and might represent a case to be replicated in an unknown future by other Kurdish groups, living under the flag of other nation states. Since the very first days of its foundation, the Kurdistan Parliament had been functioning as a parliament for a *de facto* independent state, with formal arrangements and functions of an independent state. This is proved also by the fact that both the parliament and all its body of legislative decisions were considered valid and continued after the change of regime in Baghdad.

Secondly, the Iraqi Council of Representatives is still a work under construction, that has gained some elements of a classic parliament, expressed in the formalization of rules and processes. Still, much more institutional practice has to occur, in order for these rules and procedures to get internalized both by political elites and the broad population. The very fact of having its own parliament is a novelty for such a large group of Kurdish population. Intense rubbing between ambitions of modernization and embedded structures of the tribal system are taking place. This is a process that will require more than a few decades and any comparison with parliaments existing elsewhere are of disservice.

A third conclusion is that each of the four parliamentary terms can be seen as a variation of exercises with the aim to learn self-government and consolidation of power over a territory with undecided future. The last three terms of the parliament 2005, 2009 and 2013 were the result of different types of consensuses that kept the parliament function actively. As soon as the consensus was broken, the parliament faced blockage and halt in its functioning. From this point of view, the first term of Iraqi Kurdistan Parliament represented an exception: during the first term in 1992 there was a fifty-fifty agreement between the main two parties, KDP and PUK. When the two parties entered a civil war in 1994 the parliament decided not to be a part of this and continue its job. Despite the civil war led KRI to have two governments at the same time in two different cities - one in Erbil under the rule of KDP and a second government in Sulaymaniyah under the control of PUK - this division did not happen to the institution of the parliament, as it remained mostly functioning.

A fourth conclusion is that just having the formal prerogatives of an independent, fully fledged parliament is not enough for it to function as one. The activity and results of the Parliament of Kurdistan-Iraq naturally reflect the dynamics and divisions of the society that it represents: this parliament had periods of high activity, altering with periods of inactivity. This institution had frozen periods caused by broken agreements and consensus among the main political parties (KDP and PUK) and their territorial constituencies (Erbil and Duhok vs. Sulaymaniyah). Differently put, the only

times when the parliament has been functioning efficiently, were the times when the main political parties had maintained a common agreement and were in peace among each other.

A last conclusion that can be drawn is that, generally speaking, the Kurdistan Parliament can be seen as an piece of a broader puzzle of the region. Despite its ups and downs, this institution has gained sufficient legitimacy inside the territory and plenty of recognition abroad; whenever and whatever it's decisions, these are legally applied and binding for the entire KRI. Thus, all the decisions adopted so far have lead to an encompassing economic independence backed up by the parliamentary decisions and agreements, and a rather dense control over the territory and over its social groups. It is just a matter of time and window of opportunity that the political independence will be officially discussed and declared by this institution. Whenever this decision will be made, this parliament will have sufficient legislative legacy and popular support to continue its existence.

Further research is needed in order to have a better understanding about the dynamics and factors at play in the development of this institution. Qualitative and quantitative data are a must in further exploring the efficiency and effectiveness of this parliament. However, given the geopolitical circumstances, the very fact of proving existence is already a measurable result.

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**TABLE: Characteristics of the Parliaments of the Kurdistan Region of Iraq (1992-2018)**  
**Source: Authors' compilation**

Term	Period	Date of Elections	Parliament official start	Parliament termination	Electoral System	NR. seats	Quota Minorities and Women	Parliamentary Party Composition
<b>First</b>	1992 – 2005	19 May 1992	15 July 1992	15 January 2005	Closed Party List  7% threshold	105	5 seats Quota for Christian minorities;  25% party list for women	PUK, KDP, Purple list (created <i>after</i> elections), Turkmen
<b>Second</b>	2005 - 2009	30 January 2005	05 June 2005	07 September 2009	Closed Party List  No Threshold	105	5 seats Quota for Christian minorities;  25% party list for women	KDP, PUK, KIU, Communist Party of Kurdistan, YNDK, Turkmen, Assyrian, Social Democrats, Labors party, Islamic Group, Labors

<b>Third</b>	2009 - 2013	25 July 2009	20 August 2009	30 June 2013	Closed Party List  No Threshold	111	1 for Armenians, 5 for Christians, 5 for Turkmen,  30% party list for women	KDP, PUK, Change, Communist party, Islamic Movement, Islamic Union, Islamic Group, Social Democrats, Future Party, Rafidayn, National council of Chaldean, Assyrian, Ashuri, Turkmen Democratic Movement, Turkmen Brotherhood, Turkmen Reform Movement
<b>Fourth</b>	2013-2018	09/21/13	06 November 2013	06 November 2018 (Extended for One year)	Open List Proportional  No Threshold	111	1 for Armenians, 5 for Christians, 5 for Turkmen  30% party list for women	KDP, PUK, Change, Islamic Movement, Islamic Union, Islamic Group, Social democrat, Labors Party, Rafidayn, National council Chaldean, Assyrian, Ashuri, Abna Nahrain, Erbil Turkmen List, Turkmen Change and Renovation. Iraqi Turkmen Front. Turkmen Development