

# Party Laws and Party Nationalization: a Critique of Afghan Political Party Laws

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ABSTRACT: Afghan party laws have consistently discouraged ethnic parties and politics. Taking an implicit approach to party nationalization, the laws have set three qualification thresholds for parties: consisting of at least 10,000 members; having offices in at least 20 provinces; and having at least 35 founders, who represent a minimum of 20 provinces. Although these thresholds have not explicitly referred to the ethnic composition of political parties, they were indeed designed to encourage broad-based parties given the regional concentration of ethnic groups. Even so, these laws have failed to encourage cross-ethnic parties or coalitions. Afghan parties have remained fragmented, personalized, and ethnic-based. In fact, no cross-ethnic party has grown in Afghanistan. Although some cross-ethnic coalitions have emerged during elections, they have failed to institutionalize as stable and cohesive political forces. This paper shows that the failure of laws to encourage cross-ethnic parties and coalitions has been due to their command-and control nature (as compared to incentive-based) and the fact that the laws have failed to set a regulatory framework for the cross-ethnic coalitions that have emerged, particularly during the presidential elections.

KEYWORDS: *Party Laws; Party Nationalization; Constitution; Institutionalization; Elections*

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## 1. INTRODUCTION

Afghan party laws and regulations have consistently discouraged ethnic parties and politics. By prohibiting parties from forming or functioning on the basis of ethnicity, region, language, or religious sectarianism, Article 35 of the Constitution sets a principal framework towards nationalization of parties.<sup>1</sup> Subsequently, Article 6 of the Political Party Law provides that, “political parties shall not incite to ethnic, racial, religious or regional discrimination”.<sup>2</sup> To further encourage nationalization of parties, the Political Party Law of Afghanistan has set some thresholds, compelling parties to expand their membership, leadership positions and regional offices across over twenty provinces.<sup>3</sup> Although none of the thresholds have explicitly referred to the ethnic composition of political parties, they were indeed designed to encourage broad-based parties given the regional concentration of ethnic groups.<sup>4</sup>

Despite these laws and efforts, however, the so-called “parties” have remained fragmented, personalized and ethnic-based in Afghanistan.<sup>5</sup> In fact, no inclusive and programmatic party has grown out of the existing fluid party system.<sup>6</sup> Most parties have been one-man shows, functioning as the property of their leaders and serving only their interests.<sup>7</sup> These parties have continued to remain organizationally unstable, politically incohesive, programmatically indistinguishable, and

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<sup>1</sup> QĀNOON-I ASSĀSI-YE JAMHŪRI-YE ISLĀMI-YE AFGHANISTAN [CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], 2004, art. 35. hereinafter CONSTITUTION.

<sup>2</sup> See QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2003, art. 5; QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2009, art. 6 hereinafter POLITICAL PARTY LAW.

<sup>3</sup> See POLITICAL PARTY LAW, art. 9 (amended, 2012).

<sup>4</sup> See *Id.*

<sup>5</sup> See NOAH COBURN & ANNA LARSON, DERAILING DEMOCRACY IN AFGHANISTAN: ELECTIONS IN AN UNSTABLE POLITICAL LANDSCAPE 73 (2013).

<sup>6</sup> See Mohammad Shafaq Khawati, *Qawmcracy Wa Qabila Salari [Ethnocracy and Tribalism]*, in DEMOCRACY AFGHANI: FURSAT HA WA CHALISH HA [AFGHAN DEMOCRACY: CHALLENGES AND OPPORTUNITIES] 27 (Mohammad Nabi Ahmadi & Majid Ismaelzada eds., 2014).

<sup>7</sup> See S. Yaqub Ibrahimi, *Political Parties and Political Development in Afghanistan* 10 (Working Paper, 2014), <http://www.atlantic-community.org/documents/10180/dd2703aa-ff86-4553-a47c-369dcdfeaf>.

internally undemocratic.<sup>8</sup> Since they have failed to constitute parties in the conventional sense,<sup>9</sup> some scholars have referred to them as proto-parties<sup>10</sup> and other as factions,<sup>11</sup> *shabaka-hai siyasi* (political networks), *jiryanat siyasi* (political currents),<sup>12</sup> or *grohak-ha* (cliques).<sup>13</sup>

This article examines some important features of Afghan party laws to unravel their failures in party nationalization. The first section begins with a conventional typological analysis locating Afghan's regulation of party nationalization. Then, it discusses why Afghan party laws would ban ethnic parties and why they would take an implicit approach to party nationalization. The second section deals with whether the laws have been able to transform and nationalize parties in Afghanistan. Revealing that they have not, it introduces the main question: why have these laws failed to encourage cross-ethnic parties? To answer this question, it examines the scale and the content of party related regulations and whether they truly value development of parties and coalitions. The last section of this article examines alternative regulations and designs that would help institutionalize cross-ethnic coalitions and parties.

This article grew out of a single outcome case study as it compares Afghan party laws with those of other divided societies. These supporting cases are Bolivia, Burundi, Ghana, Indonesia, Kenya, Malawi, Nigeria,

<sup>8</sup> See Thomas Rutting, *Islamists, Leftists – and a Void in the Center: Afghanistan's Political Parties and Where They Come From (1902-2006)*, AFGHANISTAN ANALYSTS NETWORK (Jan. 1, 2006) <https://www.afghanistan-analysts.org/publication/other-publications/islamists-leftists-and-a-void-in-the-center-afghanistans-political-parties-and-where-they-come-from-1902-2006-2/>.

<sup>9</sup> See Anna Larson, *Afghanistan's New Democratic Parties: A Means to Organize Democratization?*, AFG. RESEARCH AND EVALUATION UNIT, (Mar. 2009), <http://www.refworld.org/pdfid/49c254a02.pdf>. (“They do not resemble parties in established and/or Western democracies, in that they are largely based on the ethnic ex-military factions that fought in the civil war.”).

<sup>10</sup> See *id.* at 1; See ANA LARSON, Anna Larson, *The Wolesi Jirga in Flux, 2010: Elections and Instability*, Afghanistan Research and Evaluation Unit, 5 (2010), [http://www.operationspaix.net/DATA/DOCUMENT/4581vThe\\_Wolesi\\_Jirga\\_in\\_Flux\\_2010\\_Elections\\_and\\_Instability\\_I.pdf](http://www.operationspaix.net/DATA/DOCUMENT/4581vThe_Wolesi_Jirga_in_Flux_2010_Elections_and_Instability_I.pdf).

<sup>11</sup> See Antonio Giustozzi, *The Ethnicisation of An Afghan Faction: Junbesh-I-Milli From Its Origins to the Presidential Elections* (Crisis States Research Center, Working Paper No. 67, Sept. 2005), <http://eprints.lse.ac.uk/13315/1/WP67.pdf>.

<sup>12</sup> See RUTTING, *supra* note 8, at 1.

<sup>13</sup> See Khawati, *supra* note 6, at 27.

Philippines, Sierra Leone, Sri Lanka, and Tanzania. Although political laws are undergoing changes in most of these countries, their innovative approaches and designs offer more exemplars/material to teach their counterpart societies than the centuries old laws and institutions in advanced democracies. Rules such as anti-switching provisions, ethnic party banning, merger provisions, party qualification thresholds, and party nomination thresholds are either the product of innovations of democratizing societies or are more prevalent in these countries.<sup>14</sup>

All countries in Table 1 are multi-ethnic societies. The scale of ethnic fractionalization ranges from 0.161 to 0.953 in these countries, with Afghanistan sitting almost in the middle.<sup>15</sup> Ethnic distributions in Ghana, Malawi, Nigeria, Indonesia and Sierra Leone are particularly similar to that of Afghanistan: they are all countries of minorities (see Table 1). Additionally, these countries are democratizing societies with mostly undeveloped party systems. Freedom House has categorized most of these countries, including Afghanistan, as partly free or not free.<sup>16</sup> Ghana is the only country that is marked as a free country by Freedom House.<sup>17</sup> Afghanistan's score of democratization is better only than Burundi;<sup>18</sup> notably, its score of democratization has worsened from 5 to 6 between 2007 to 2017. It only improved to 5.5 since 2018.<sup>19</sup> Based on their recent elections, most countries in the table have fewer effective parties and coalitions than Afghanistan. The countries with the fewest number of parties are Ghana and Sierra Leone, each having two prominent parties.

<sup>14</sup> *Infra* note 76; *infra* note 77; *infra* note 156.

<sup>15</sup> See James D. Fearon, *Ethnic and Cultural Diversity by Country*, 8 J. E. GROWTH 195 (2003).

<sup>16</sup> *Populists and Autocrats: The Dual Threat to Global Democracy*, Freedom House (2017), <https://freedomhouse.org/report/freedom-world/freedom-world-2017>.

<sup>17</sup> *Ghana*, Freedom House, <https://freedomhouse.org/report/freedom-world/2017/ghana>.

<sup>18</sup> See *Burundi*, Freedom House, <https://freedomhouse.org/report/freedom-world/2017/burundi>.

<sup>19</sup> See *Afghanistan*, Freedom House, <https://freedomhouse.org/report/freedom-world/2017/afghanistan>.

Country	Ethnic Distribution				Fractionaliz.	Rate of Democratization			Parties & Coalitions		
	Largest	2nd Largest	3rd Largest	4th Largest		Categorization	Score in 2018	Score in 2008	Elections	Parties	Coalitions
Tanzania	16	less than 5	less than 5	less than 5	0.953	Partly Free	4	3.5	2015	5	/
Kenya	22	14	13	12	0.852	Partly Free	4	3.5	2013	20 (in 3 Coal.)	3
Ghana	47.5	16.6	13.9	7.4	0.846	Free	1.5	1.5	2016	2	/
Malawi	35.1	18.9	13.1	12	0.829	Partly Free	3	4	2014	6	/
Nigeria	29	21	18	10	0.801	Partly Free	4	4	2015	4	1
Indonesia	40.1	15.5	3.7	3.6	0.766	Partly Free	3	2.5	2014	10 (in 2 Coal.)	2
Sierra Leone	35	31	8	5	0.764	Partly Free	3	3	2012	2	/
Afghanistan	40-44	25-27	9-12	6-9	0.751	Not Free	5.5	5	2010,2014	23 (in 5 Coal.)	5
Bolivia	68	20	5		0.743	Partly Free	3	3	2014	2	1
Sri-Lanka	74.9	11.2	9.2	4.2	0.428	Partly Free	3.5	4	2015	3	3
Burundi	85	14			0.328	Not Free	6.5	4.5	2015	2	1
Philippines	28.1	13.1	9	7.6	0.161	Partly Free	3	3.5	2016	16	1

Table 1: Afghanistan here is compared with eleven other divided societies. The comparison includes ethnic distribution, democratization scale, and number of parties and coalitions.<sup>20</sup>

As Table 1 indicates, Afghanistan is a divided society with at least four large ethnic groups, namely Pashtuns, Tajiks, Hazaras and Uzbeks, as well as numerous smaller groups. The population of ethnic groups ranges from below one percent to over forty percent, although every ethnic group tends to overstate its population.<sup>21</sup> Each ethnic group is likely to have at least one political faction or party; even so, most studies concur that parties tend to represent the interests of a few ethno-political elites rather than concerns of the ethnic masses.<sup>22</sup> While using parties repeatedly to mobilize communities for political gains, elites have remained hesitant to expand parties beyond their control primarily to avoid losing their leverage.<sup>23</sup> In addition to these elites, state policies, electoral systems, and historical misdeeds of parties have thwarted party development as well. However, exploring the role of these factors in party

<sup>20</sup>World Factbook: Afghanistan, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>; see also Freedom in World, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/freedom-world-2017>; Fearon, *supra* note 15, at 195-222.

<sup>21</sup>No scientific census of ethnic populations in Afghanistan has been conducted yet. Instead, numerous estimations of ethnic demographics have been produced by different domestic and international organizations which are almost all disputed by different groups. The most cited estimation is the one by C.I.A. sheet. Some international organizations including the U.N. Agencies, N.A.T.O., and the European Union have relied on C.I.A. Factbook for their analysis of Afghan society. Between 2001 and 2016, C.I.A. Factbook estimated Pashtuns between 40 to 44% of the population, Tajiks between 25 to 27%, Hazaras between 9 to 10%, and Uzbeks between 6 to 9%. Since 2016, the C.I.A. Factbook stopped releasing estimations on ethnic distribution in Afghanistan perhaps because of the doubt in such numbers. See *World Factbook: Afghanistan*, Central Intelligence Agency, [https://www.cia.gov/library/publications/theworldfactbook/geos/print/country/country\\_pdf\\_af](https://www.cia.gov/library/publications/theworldfactbook/geos/print/country/country_pdf_af).

<sup>22</sup>See, e.g., IBRAHIMI *supra* note 7; Larson *supra* note 9; RUTTING *supra* note 8.

<sup>23</sup>See IBRAHIMI, *supra* note 7.

development is beyond the scope of this article which intends to examine party laws only.

In literature, party laws are defined either in a narrow sense or in a general sense. In the narrow sense, as Richard Katz defines it, “*Party Law* refers to statutes regulating political parties and codified under a comparably descriptive title *Political Party Law*” or *Qanun-i-Ahزاب Siassi* in the case of Afghanistan.<sup>24</sup> This chapter uses the term *Political Party Law*, with capitals, to refer to *Qanun-i-Ahزاب Siassi*. In a more general sense, party laws consist of any formal rules and regulations about the structure, activities, and finances of political parties and coalitions.<sup>25</sup> In this way, party laws in Afghanistan include party related provisions in the Constitution, Political Party Law, electoral laws, and Parliamentary Rules of Procedure. Engaging with all these bodies of party laws, this article examines their influence on party transformation and nationalization in Afghanistan.

## 2. THE LEGAL APPROACH TO PARTY DEVELOPMENT IN AFGHANISTAN

Typically, making a decision about an appropriate party regulation is a technical matter that comes after the lawmakers decide what kind of parties best suit their society.<sup>26</sup> Taking this into account, different countries have adopted different types of party laws, some permissive and some very controlling. Explaining these different regulatory approaches, Kenneth Janda distinguishes five different types of party laws:

<sup>24</sup> Richard S. Katz, *Democracy and the Legal Regulation of Political Parties*, 2 (USAID Conference on Changes in Political Parties, Conference Paper, Oct. 1, 2004), <https://www.scribd.com/document/190180368/Democracy-and-the-Legal-Regulation-of-Political-Parties>.

<sup>25</sup> See *id.*; see also Abeje, *infra* note 187, at 315.

<sup>26</sup> See Matthijs Bogaards, *Strategies of Political Party Regulation*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 48, 48-9 (Benjamin Reilly & Per Nordlund, eds., 2008).

In general, nations that *proscribe* parties by law forbid them from operating entirely; nations that *permit* parties allow them to operate freely; nations that *promote* parties [adopt laws to] actively support them; nations that *protect* parties favor certain ones over others; and nations that *prescribe* for parties seek [a legal framework] to mold them to fit an ideal.<sup>27</sup>

Matthias Bogaard is another prominent scholar who, by focusing on the regulation of ethno-religious parties, distinguishes three types of party regulations:<sup>28</sup> (a) articulating regulations that by default allow translation of ethnic groups into ethnic parties; (b) blocking regulations that forbid the formation of ethnic parties; and, (c) aggregating regulations that require and encourage cross-ethnic parties.<sup>29</sup> Bogaard posits that a party law may combine a mix of these rules. Both Janda's and Bogaard's typologies have been popularly used by numerous scholars in different articles and books.<sup>30</sup>

These typologies are very helpful for a better understanding of how parties and party systems are perceived by the public and government and how they are regulated. For example, using Janda's typology, Afghan party laws fall within the prescriptive framework since the laws require transformation and nationalization of parties. Based on Bogaard's typology, Afghan party laws have incorporated both blocking and aggregating regulations: the blocking regulations include Article 35 of the Constitution, Article 6 of the Political Party Law, and rule 13 of the Wolesi Jirga (House of Representatives, hereinafter W.J.) Rules of Procedure, which explicitly prevent ethnic parties.<sup>31</sup> The aggregating regulations include Article 9 of the Political Party Law and its amendments that

<sup>27</sup> KENNETH JANDA, *THE NAT'L DEMOCRATIC INST. FOR INT'L AFFAIRS, POLITICAL PARTIES AND DEMOCRACY IN THEORETICAL AND PRACTICAL PERSPECTIVES: ADOPTING PARTY LAW* 8 (2005).

<sup>28</sup> Bogaards, *supra* note 26, at 49.

<sup>29</sup> *Id.*, at 59.

<sup>30</sup> See, e.g., INGRID VAN BIEZEN ET AL., *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* (Benjamin Reilly & Per Nordlund, eds., 2008); see also KATZ, *supra* note 24, at 2.

<sup>31</sup> CONSTITUTION art. 35; QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2003, art. 5; QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2009, art. 6; RULES OF PROCEDURES, 2016, Rule 13.

require structural and functional presence of parties across twenty provinces that naturally inhibit more than one ethnic groups.<sup>32</sup>

Although Janda's and Bogaard's typologies highlight some important distinctions between different types of party regulations, they do not explain why a country adopts any of the regulatory approaches. Additionally, they do not differentiate between explicit and implicit approaches to party nationalization; neither do they explain why party laws often fail to nationalize parties when they are intended to do so. This paper is intended to tackle these questions one by one in the particular case of Afghanistan.

## 2.1. WHAT IS WRONG WITH ETHNIC PARTIES?

A careful analysis of Afghanistan's case reveals that despite the prominence of ethnic affiliations in electoral practices and party politics, the political ideals value the nationalization of parties and de-ethnicization of politics in general. This gap between political practices and political ideals is well documented in the findings of a survey that I conducted for another research project from over 2900 respondents from all thirty-four provinces.<sup>33</sup>

Based on the survey, only 18% of respondents had a sympathetic view of the existing ethnic parties.<sup>34</sup> In contrast, 38% of respondents favored the institutionalization of the emerging cross-ethnic coalitions.<sup>35</sup> The other 45% thought that Afghanistan would be better off without parties and coalitions.<sup>36</sup> The primary reason for the latter group of

<sup>32</sup> *Id.*, art. 9 (2, amended, 2012).

<sup>33</sup> M. Bashir Mobasher, *Centrifugal Practices & Centripetal Ideals: An Overview of Afghan Political Practices, Ideals and Institutions*, 2019, International Conference on Global Risk, Security and Ethnicity (unpublished conference paper). With the help of academics from several universities including American University of Afghanistan, Kabul University and Alberoni University, I conducted this survey between August of 2016 and February of 2019.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



respondents was the involvement of ethnic parties in the civil wars and the clientelistic politics of both parties and coalitions.<sup>37</sup>

Since banning parties and coalitions would be counterproductive for a democratizing society, the option of banning was replaced with “keeping both political organizations” in a later question in the questionnaire. With this change, the number of those who favored cross-ethnic parties increased dramatically to 57%. Again, only 21% of respondents favored an ethnic party system and the remaining 23% were open to both kinds of parties but personally preferred cross-ethnic parties mostly.<sup>38</sup> With relatively small variations, these numbers reflect respondents from all ethnic groups, as illustrated in Table 1. In other words, a concurrent majority of ethnic groups prefer party nationalization over ethnic parties. Although pro-coalition majorities of Uzbeks and other groups are less than 50%, they are still twice as much as those who prefer ethnic parties.

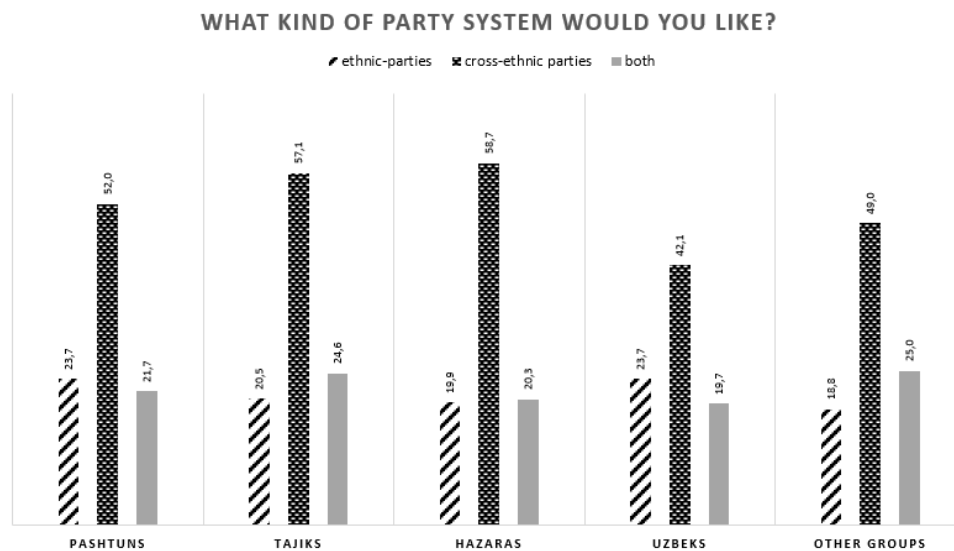


Table 2: Responses of subjects about their preferred party system for Afghanistan.<sup>39</sup>

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> The data is based on a survey from 2900 respondents from all 34 provinces, used for a different research project entitled *Centrifugal Practices & Centripetal Ideals: An Overview of Afghan Political Practices, Ideals and Institutions*.

The urge for party nationalization was ironically confirmed by the findings of a series of semi-structured interviews, which I conducted with over forty party and non-party elites.<sup>40</sup> Of the twenty-nine interviewees, who were asked about their ideal party system, twenty-eight favored cross-ethnic parties. Interestingly, the interviewees included seventeen party elites, from which the leader of only one party suggested that ethnic parties could function democratically as well.<sup>41</sup> Out of the seventeen parties' representatives who were interviewed, only three admitted that their parties were ethnic or mostly ethnic. The other fourteen claimed that they represented different groups and gender; at the same time, most parties would also suggest that no other party was cross-ethnic in Afghanistan. Not surprisingly, similar claims by party representatives were recorded by other researchers as well<sup>42</sup> while most studies on parties concur that finding a truly inclusive party is barely possible in Afghanistan.<sup>43</sup>

The survey and interview findings demonstrate that popular political ideals favor party nationalization pressuring even ethnic parties to claim that they are cross-ethnic. Reflecting these centripetal ideals, Afghan party laws challenge parties to nationalize. Afghan party laws not only indicate a centripetal approach but also a de-ethnicizing approach to party nationalization, which will be discussed in the following section.

## 2.2. WHY AN IMPLICIT APPROACH TO PARTY NATIONALIZATION?

If party laws of Afghanistan are to be appreciated for one thing, it is their implicit approach to party nationalization as they were meant to encourage

<sup>40</sup> *Supra* note 30. (The interview included leaders or spokesperson of parties (17); leaders or spokesperson of coalitions (10); members of The Independent Commission for Overseeing the Implementation of the Constitution (2); board members and advisors of Electoral Commissions (6); MP's from the Wolesi Jirga (4); and two officials from the M.o.J., which registers parties (2).

<sup>41</sup> Based on an interview with one of the party leaders in 2016 (on file with author).

<sup>42</sup> See, e.g., NATIONAL DEMOCRATIC INSTITUTE (NDI), POLITICAL PARTIES IN AFGHANISTAN, 16 (2011), <https://www.ndi.org/sites/default/files/Afghanistan-political-parties-july-2011.pdf>.

<sup>43</sup> See, e.g., *Id.*; IBRAHIMI *supra* note 7; RUTTING *supra* note 8; *infra* note 50.

cross-ethnic parties without setting an ethnic-based threshold to do so. This implicit approach to party nationalization sets a *de-ethnicizing legal framework* as opposed to *ethnicizing* or *indifferent laws*.

*De-ethnicizing party laws* encourage cross-ethnic parties without addressing their ethnic distribution in explicit terms. Afghan party laws have used three non-ethnic thresholds to implicitly encourage ethnic pluralism of parties: the threshold of membership requires that a registering party must have at least 10,000 members; the threshold of founders requires that a party must have a minimum of thirty-five founders from at least twenty provinces;<sup>44</sup> finally, the threshold of party offices requires a registering party to open offices in at least twenty provinces within a year from registration.<sup>45</sup> The thresholds of party offices and founders were specifically intended to have an aggregating effect since ethnic groups are regionally concentrated in Afghanistan. Since no single ethnic group has a substantial population in at least twenty provinces, a political party has to draw support from different ethnic groups to satisfy these thresholds. Therefore, while the threshold of party founders implicitly requires ethnic representation at the highest level of political parties, the office threshold commands parties' presence in more than one ethnic constituency.

This de-ethnicizing approach to party nationalization has two advantages. First, at least on the surface, the laws have taken away the political prominence of the ethnic divide. This is important because the decision whether the thresholds explicitly or implicitly address ethnic composition of parties has long-term social and psychological impacts.<sup>46</sup> While encouraging cross-ethnic parties, the thresholds are intended to minimize the role of ethnicity in politics in the long run. The other advantage of a de-ethnicizing approach is its recognition of alternative

<sup>44</sup> See MUQARERA TARZ TESIS WA SABB AHZAB SIASSI [THE REGULATION ON THE PROCEDURES OF FORMATION Registration of Political Parties] , 2010, art. 9.

<sup>45</sup> See MUQARERA TARZ TESIS WA SABB AHZAB SIASSI [THE REGULATION ON THE PROCEDURES OF FORMATION Registration of Political Parties] , 2010, art. 9; art. 9 (amended 2012).

<sup>46</sup> See Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 842 (2013).

identities to challenge the dominance of ethnic identity. Relying on provincial expansion of parties, the thresholds bring provincial affiliations into the political equation. In fact, by recognizing provincial affiliations, but not ethnic ones, the party laws leave ethnic identity in a comparatively disadvantaged position in the long-run. Given that many provinces cut across ethnic groups, party laws are likely to reduce inter-ethnic divide and intra-ethnic cohesion.<sup>47</sup>

Contrary to a de-ethnicizing law, an *ethnicizing party law* explicitly codifies the role of ethnicity in party politics. Ethnicizing party laws may be exemplified by the Kenyan and Burundi's party laws. Article 7 of Kenya's Political Party Act provides that "the composition of [the party's] governing body reflects regional and ethnic diversity, gender balance and representation of minorities and marginalized groups".<sup>48</sup> Article 168 of Burundi's Constitution states that during elections "Of three candidates registered together on a [party] list, only two may belong to the same ethnic group . . .".<sup>49</sup> Article 31 of Burundi's Political Party Act provides that the national leadership of a party may not have more than three-quarters of its leadership members belonging to a single ethnicity or gender.<sup>50</sup> These rules are referred to as ethnicizing laws because while encouraging the nationalization of parties, these laws emphasize the ethnic affiliation of party leaders and members. Such party regulations openly and permanently bring ethnic affiliations into the political equation.<sup>51</sup> More importantly, these rules "lock in" a political

<sup>47</sup> See *id.*, at 239.

<sup>48</sup> Kenya: POLITICAL PARTIES ACT (2007), art. 7, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/RepealedStatutes/PoliticalPartiesActCap7A.pdf>.

<sup>49</sup> LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI], 2005, art. 168, [https://www.constituteproject.org/constitution/Burundi\\_2005.pdf](https://www.constituteproject.org/constitution/Burundi_2005.pdf).

<sup>50</sup> LOI PORTANT ORGANISATION ET FONCTIONNEMENT DES PARTIS POLITIQUES [LAW ON ORGANIZATION AND OPERATION OF POLITICAL PARTIES], 2003, <http://www.grandslacs.net/doc/3964.pdf>.

<sup>51</sup> See Stephanopoulos, *supra* note 46, at 842 ("such techniques [explicit rules] are often controversial because they openly take race into account and deviate from the ideal of the color-blind state."); Anika Becher and Mathias Basedau, *Promoting Peace and Democracy Through Party Regulation? Ethnic Party Bans in Africa*, 8 (Working Paper, GIGA Research Programme: Violence, Power and Security, 2008).

environment, where civil and political actors are conscious of ethnicity and ethnic affiliation is politically salient.

Although it explicitly refers to ethnicity, Article 35 of the Afghan Constitution does not institutionalize ethnic politics because it is a blocking provision. A blocking regulation basically denies ethnicity a role in party politics. In other words, even though Article 35 and similar blocking provisions explicitly refer to ethnicity, their references do not imply recognition of ethnicity in party politics, but rather disallow it. Therefore, such blocking provisions are not ethnicizing laws.

*Indifferent legal frameworks* neither codify nor acknowledge the political role of ethnicity. Designing such laws is problematic in divided societies, where ethnic politics and ethnic tensions are real and need to be addressed by laws and institutions. The fact that Afghanistan's previous Political Party Law required only 700 members for a party to qualify and nothing else indicated that the law had adopted an indifferent approach to ethnic politics in party development.<sup>52</sup> The result was the registration of an overwhelming number of ethnic parties.

In light of this comparison, arguably the adoption of de-ethnicizing party laws was necessary to mitigate the role of ethnicity in politics in the long run. But the question remains as to whether these laws have been successful in encouraging cross-ethnic parties in Afghanistan. The following section reveals a negative answer.

### 3. A NEW PERSPECTIVE ON THE FLAWED PARTY LAWS

Afghanistan's 2009 Political Party Law and its amendments were slightly successful in reducing party fragmentation. This was mainly because the new law had a retroactive effect, requiring the already registered parties to

<sup>52</sup> See QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2003, art. 9.

meet the new thresholds. Since many parties were far from meeting the thresholds, almost half of them failed to re-register under the new law.<sup>53</sup> Indeed, the new law was adopted to remedy the negative effects of the previous law (2003), under which any party with over 700 members had been able to register in the Ministry of Justice (hereinafter M.o.J.).<sup>54</sup> The low threshold had led to the fragmentation of political parties and the registration of over 100 parties by 2009.<sup>55</sup> By imposing an obligation on the parties to re-register, the new law reduced their number to just over 50 parties.<sup>56</sup> In 2016, their number was further reduced temporarily to around 40 when the M.o.J. suspended 11 parties and issued warnings to 20 others for failing to meet the thresholds.<sup>57</sup> Even so, the impact of the new law remained limited to new and weak parties.

Many parties criticized the law and its sporadic enforcement by the Registrar Office, an office of the M.o.J that registers political parties in Afghanistan. Some questioned the constitutionality of the law for having retroactive effect on already-registered parties.<sup>58</sup> Many criticized that the laws were enforced only on new and weak parties while old *Jihadi* parties<sup>59</sup> continued to exist even though they had failed to meet the registration threshold.<sup>60</sup> These criticisms were warranted since several studies and reports indicated that indeed none of the political parties had

<sup>53</sup> See Anna Larson, *Political Parties in Afghanistan*, UNITED STATES SPECIAL REPORT 362 (Mar., 2015), <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>

<sup>54</sup> See QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2003, art. 9.

<sup>55</sup> *Fehrest-i-Kamel Ahzab Siassi Afghanistan [The Complete List of Political Parties of Afghanistan]*, BBC (Jun.12, 2009), [http://www.bbc.com/persian/afghanistan/2009/07/090718\\_a-af-election-political-parties.shtml](http://www.bbc.com/persian/afghanistan/2009/07/090718_a-af-election-political-parties.shtml).

<sup>56</sup> Interestingly, the number of registered parties is different from English version (fifty parties) to Dari and Pashtu lists of parties (fifty-seven parties) in the M.o.J. Website. Cf. MINISTRY OF JUSTICE [Parties' List in English] (May 4, 2016); MINISTRY OF JUSTICE [Parties' List in Pashtu] (May 4, 2016); MINISTRY OF JUSTICE [Parties' List in Persian] (May 4, 2016).

<sup>57</sup> Mukhtar Wafayee, *Ministry of Justice: 11 Suspensions and 20 Alerts*, HASHT SUBH NEWS (Feb. 27, 2016), [12/8/1394] [http://www.elonat.com/jantari\\_converter.php](http://www.elonat.com/jantari_converter.php).

<sup>58</sup> Interview with elites of three political parties in 2016 (on file with author).

<sup>59</sup> *Jihadi* parties are the parties that declared *Jihad* and engaged in war against Soviet backed regimes in Afghanistan between 1979 to 1992. According to Islamic scholars, one interpretation of *Jihad* is holy war.

<sup>60</sup> Interview with elites of five political parties in 2016 (on file with author).

perfectly satisfied all the qualification thresholds.<sup>61</sup> In fact, in a 2016 interview, the head of the Registrar Office confirmed that most registered parties had not met the required thresholds.<sup>62</sup>

The failure of party nationalization should be observable by the lack of electoral support across provinces.<sup>63</sup> However, since most party members ran as independents in Afghanistan, documenting electoral support of parties is highly unlikely.<sup>64</sup> An alternative way of assessing party nationalization is to look at the ethnic distribution of their representatives in the W.J.. Unlike a party's electoral support across the nation, parties' members can be easily verified in a given legislature. Additionally, an ethnic party may be able to recruit or even attract supporters from other groups but it may not have higher ranking, elected officials from other groups. Table 3 illustrates ethnic distribution of parties' representatives in the W.J..

Ethnic Representation of Parties in the Parliament (2010-2017)							
Title (Persian)	Title (English)	Seats #	Pashtuns	Tajiks	Hazaras	Uzbeks	Arab
Hezb-i-Islami Afghanistan	Islamic Party of Afghanistan	24	16	4		1+1	2
Hezb-i-Jamiat Islami	Islamic People's Party Of Afghanistan	18		17			1
Hezb-i-Wahdat Islami Mardom Afg.	Islamic Unity Party of Afghan People	12			12		
Hezb-i-Junbesh-e-Milli Afghanistan	National Movement Party of Afgh.	5				4	
Hizb-i-Wahdat Islami Afghanistan	Islamic Unity Party of Afghanistan	5			5		
Ehzbab-i-Chappi	Ulomi, Aryan, Ranjbar, Tanai	4				4	
Hezb-i-Paiwand-e-Milli	National Solidarity Party of Afg.	4			4		
Hizb-i-Afghan Milat Party	Social Democrat Party	3	3				
Hizb-i-Dawat Islami Afghanistan	Afghanistan's Islamic Mission Org.	3	2	1			
Hizb-i-Iqtedar Islami Afghanistan	Islamic Movement of Afghanistan)	3			3		
Hezb-i-Jamhorikhwahan	Republican Party	3		3			
Hezb-i-Mahaz-i-Milli Islami Afg.	National Movement Party of Afgh.	2	2				
Hezb-i-Afghanistan Naween	The New Afghanistan Party	1		1			
Hizb-i-Harakat Milli Afghanistan	National Sovereignty Party	1			1		
Nuzhat-i-Hambastagee Milli Afg.	The Solidarity of Afghan Nation Party	1	1				
Hizb-i-Kangra Mili Afghanistan	National Congress Party of Afg.	1		1			
Hizb-e Kongra-ye Melli-ye Afg.	National Congress Party of Afg.	1		1			
Hizb-e-Niyaaz Melli	National Need Party	1			1		
Hizb-e-Wahdat Islami Milat	Islamic Unity Party of Nation	1			1		
Hizb-i-Musharekat Milli	National partnership Party	1	1				
Hizb-i-Jama'at Dawa	United Mission Party	1	1				

Table 3: Illustration of the composition of proto-parties in the W.J.<sup>65</sup>

<sup>61</sup> See *Political Parties in Afghanistan*, NATIONAL DEMOCRATIC INSTITUTE (NDI) 16 (June 2011), <https://www.ndi.org/sites/default/files/Afghanistan-political-parties-july-2011.pdf>.

<sup>62</sup> Interview with the head of registrar office in 2016 (on file with author).

<sup>63</sup> One way of examining electoral support of parties across provinces is through Party Nationalization Score (P.N.S.) or Party System Nationalization Score (P.S.N.S.), using Gini Index. See Anika Moroff, *Comparing Ethnic Party Regulation in East Africa*, 17 DEMOCRATIZATION 750, 759 (2010).

<sup>64</sup> See ANDREW REYNOLDS & JOHN CAREY, AFG. RESEARCH AND EVALUATION UNIT, *FIXING AFGHANISTAN'S ELECTORAL SYSTEM: ARGUMENTS AND OPTIONS FOR REFORM* 9 (2012); see also *Afghanistan's parties in transition*, International Crisis Group (Policy Briefing n°141) (Jun. 26, 2013), <https://www.files.ethz.ch/isn/166110/b141-afghanistans-parties-in-transition.pdf>

As Table 3 illustrates, only *Hizb-i-Islami Afghanistan* [Islamic Party of Afghanistan] has some representatives from different ethnic groups. Even so, 78% of its representatives are ethnic Pashtuns, which constitute its main base of support. *Hizb-i-Jamiat-i-Islami* [Islamic Society Party] and *Hizb-i-Dawat Islami* [Islamic Mission Party] have only one M.P. from a different ethnic group. Other parties simply represent only one ethnic group in the W.J..

To sum up, Afghan party laws have prescribed thresholds that are too high for new parties to qualify for registration, and too futile to incentivize old, powerful parties to transform and nationalize. This issue is coupled with the lack of a proper enforcement mechanism, which also naturally favors the old, traditional parties over the new ones. The failure of party development in Afghanistan raises three questions. First, whether the drafters and the party laws have invested enough value to party development; second, whether party laws have provided enough incentive for party nationalization; and third, whether the laws have recognized the prospect for institutionalizing the emerging cross-ethnic coalitions. Each question is discussed below.

### 3.1. LACK OF INTEREST IN PARTY DEVELOPMENT

Enforcing a few banning and aggregating provisions is not enough to guarantee institutionalization of broad-based parties; the general attitude of both laws and lawmakers towards party development is just as important. Unfortunately for the parties the party laws of Afghanistan were developed under the dominant influence of political outsiders who were more invested in party fragmentation than party development. Both incumbents, President Ashraf Ghani and his predecessor, Hamid Karzai, came to office as political outsiders and both were concerned about the

<sup>65</sup>The 2010-2015 *Wolesi Jirga Directory*, NATIONAL DEMOCRATIC INSTITUTE (May 2012), <https://www.ndi.org/files/AFG-2010-2015-Wolesi-Jirga-Directory.pdf>; Reynolds, at 9-10.



empowerment of *Jihadi* parties which they considered hostile to their administrations.<sup>66</sup>

Karzai was particularly concerned that facilitating party development would allow *Jihadi* elites of the north and opposition elites among the unsatisfied Pashtuns in the south to challenge his presidential authority.<sup>67</sup> To address his own concern, he even issued a presidential decree for the first parliamentary election that prohibited candidates from using their party symbols on ballots or from publicly demonstrating any party affiliation in their campaigns.<sup>68</sup>

Embarrassed about their past, intimidated by the presence of international forces, and factionalized in even smaller patronage groups, party elites have exercised little influence in the development of party laws. Parties had little support among the masses and the government due to their notorious past in Afghanistan.<sup>69</sup> Communist and *Jihadi* parties have both perpetuated war, violence, and mass killings in their own eras of ruling the country (1979–1991 and 1992–1996 respectively).<sup>70</sup> After the Bonn Conference in 2001, the *Jihadi* elites—not necessarily their parties—have particularly gained significant political grounds in Afghanistan, generating serious concerns among the masses and the

<sup>66</sup> See Anna Larson, *Political Parties in Afghanistan*, UNITED STATES INSTITUTE OF PEACE (Special Report 362) (Mar. 2015), <http://www.usip.org/sites/default/files/SR362-Political-Parties-in-Afghanistan.pdf>; see also ICG, *supra* note 64, at 3, 5.

<sup>67</sup> See NDI, *supra* note 42, at 14.

<sup>68</sup> See REYNOLDS Carey, *supra* note 64, at 6. Even though Karzai's decree banned announcing party affiliations by candidates, around four candidates of 2004 presidential election and 14% of candidates in the parliamentary election of 2005 did so. See *id.*

<sup>69</sup> See Andrew Wilder, *A House Divided? Analyzing the 2005 Afghan Elections*, AFGHANISTAN RESEARCH AND EVALUATION UNIT (Dec., 2005), <http://www.refworld.org/pdfid/47c3f3c01b.pdf>. (“But by far the biggest challenge confronting political parties in Afghanistan is their major image problem among Afghans, who associate them with the various communist or *jihad*-era political parties that have played such a negative role in Afghanistan's tragic history”); see also USAID, *Formative Research for Civic Education Programs on Elections: Focus Group Discussions in the North, West, Southeast and South of Afghanistan* (2005), [http://pdf.usaid.gov/pdf\\_docs/pnadz213.pdf](http://pdf.usaid.gov/pdf_docs/pnadz213.pdf). (“The most common definition in the north was that parties were groups of people aligned on an ethnic basis in order to conspire against others. In the Pashtun areas of the south and southeast, the most common answer was that parties were groups of self-interested individuals organized to serve their own interests.”).

<sup>70</sup> See REYNOLDS Carey, *supra* note 64, at 6; see also, ZEKRIA BARAKZAI, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 338: 2014 PRESIDENTIAL & PROVINCIAL COUNCIL ELECTIONS, 6 (Nov 2013), <https://www.usip.org/publications/2013/10/2014-presidential-and-provincial-council-elections-afghanistan>.

government, resulting in a push for laws that would constrain party development.<sup>71</sup> This has led to a set of party laws that were little invested in strengthening the party system in Afghanistan. This can be indicated by the number as well as the content of provisions specifically dedicated to parties in the Constitution, election law, Political Party Law, and parliamentary rules of procedures.

The Afghan Constitution is among the recent constitutions to include few provisions about political parties. Notably, it has fewer references to political parties than most of the plural societies that are included in Table 4.<sup>72</sup> As Table 4 indicates, the Afghan Constitution has seven references to political parties in just four articles, compared to eighty-one references in the Kenyan Constitution and seventy references in the Sri-Lankan Constitution.<sup>73</sup> In fact, the Afghan Constitution ranks third from the bottom in Table 4 in terms of its references to and articles about political parties. Unlike the Afghan Constitution, the constitutions of Kenya and Nigeria as well as Ghana and Philippine have assigned an entire chapter or section to political party development.<sup>74</sup>

Political Party in the Constitutions					Political Party in Election Laws			
Country	Adoption Year	Dedicated Sections	References	Articles	Country	Adoption Year	Dedicated Sections	References
Tanzania	1977	Articles	58	/	Tanzania	85 (Amended, -201	Articles	38
Kenya	2010	Part	81	26	Kenya	2011	Chapters	206
Burund	2005	Chapter	38	22	Burund	2009	Chapters	74
Nigeria	1999	Section	53	20	Nigeria	2010	Chapters	243
Sri- Lanka	1978	Articles	70	11	Sri- Lanka	1981 (2 Acts)	Articles	439
Ghana	1992	Part	38	11	Ghana	2016	Articles	27
Sierra Leone	1991	Articles	40	10	Sierra Leone	2012, 2012	Articles	147
Philippines	1987	Chapter	17	8	Philippines	2016	Chapter	185
Malawi	1994	Articles	44	8	Malawi	1998	Articles	92
Afghanistan	2004	Articles	7	4	Afghanistan	1985	Articles	20
Indonesia	1945	Articles	6	4	Indonesia	2012	Chapters	280
Bolivia	2009	Articles	5	4	Bolivia	2010	Articles	3

Table 4: constitutions & election laws of twelve countries including Afghanistan in relation to their regulation of political parties.<sup>75</sup>

<sup>71</sup> See SONALI KOHATKAR & JAMES INGALLS, BLEEDING AFGHANISTAN: WASHINGTON, WARLORDS, AND THE PROPAGANDA OF SILENCE (2006).

<sup>72</sup> The Indonesian Constitution, which appears to have fewer references to political parties, was initially adopted in 1945, which was over half a century prior to the adoption of Afghan Constitution. Additionally, the Indonesian Constitution has two references to merger of political parties. Therefore, the Bolivian Constitution is the only recent constitution with fewer reference to political parties than the Afghan Constitution.

<sup>73</sup> THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, 1978; THE CONSTITUTION OF KENYA (2010).

<sup>74</sup> THE CONSTITUTION OF KENYA (2010); THE CONSTITUTION OF GHANA, 1992; THE CONSTITUTION OF NIGERIA (1999); SALIGANG BATAS NG PILIPINAS [PHILIPPINE'S CONSTITUTION] (1987).

<sup>75</sup> QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], 2004; KATIBA YA JAMHURI YA MUUNGANO WA TANZANIA YA MWAKA 1977

Of the four articles of the Afghan Constitution that address political parties, only Article 35 pertains specifically to political parties, their formation and activities.<sup>76</sup> Under this article, individuals are entitled to form or join political parties provided that parties cannot form or operate on the basis of ethnicity.<sup>77</sup> Additionally, Article 35 has a number of clauses preventing parties from forming militia, using arms, receiving aid from foreign states, and having an anti-Islamic agenda.<sup>78</sup> The last clause of Article 35 is the key provision because it bans parties on the basis of ethnicity, sect, language and region.<sup>79</sup>

The three other articles of the Afghan Constitution that address political parties are rather aimed at restricting party participation in state affairs. Article 118 disallows the Justices of the Supreme Court to be party members.<sup>80</sup> Articles 66 and 80 of the Constitution respectively prevent the president and the ministers from using their offices for their partisan considerations and interests.<sup>81</sup> Interestingly, the executives in all three administrations since 2003 have interpreted the latter two provisions to mean that government officials cannot be party members. In both of his presidential terms, Hamid Karzai used these constitutional provisions to

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[THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA OF 1977] 1977; THE CONSTITUTION OF NIGERIA (1999) (hereafter “NIGERIA CONSTITUTION”); CONSTITUCIÓN POLÍTICA DEL ESTADO [CONSTITUTION OF PLURINATIONAL STATE], 2009 (hereafter BOLIVIA’S CONSTITUTION); THE CONSTITUTION OF SIERRA LEONE, 1991; THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, 1978; THE CONSTITUTION OF KENYA (2010); THE CONSTITUTION OF GHANA, 1992; LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI], 2005; UNDANG-UNDANG DASAR REPUBLIK INDONESIA 1945 [THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA], 1945; THE CONSTITUTION OF MALAWI, 1994; SALINGANG BATAS NG PHILIPPINAS [CONSTITUTION OF THE PHILIPPINES], 1987; CONSTITUTION OF CYPRUS, 1960.

PORTANT CODE ELECTORAL [BEARING ELECTORAL CODE], REVISION N° 1/22 (2009); Public Election Regulation (2016); ELECTIONS ACT (Revised Edition, 2012); THE PUBLIC ELECTIONS ACT, Gazette Vol. CXLIII, No. 26 (2012); CODE OF ELECTION CAMPAIGN ETHICS (2012); PARLIAMENTARY AND PRESIDENTIAL ELECTIONS ACT (1993); ELECTORAL ACT, Official Gazette No. 65 (2010); THE REVISED ELECTION CODE, No. 1012 (1965); OMNIBUS ELECTION CODE OF THE PHILIPPINES (1985); PRESIDENTIAL ELECTIONS ACT No. 15 (1981); PARLIAMENTARY ELECTIONS ACT, No.1 (1981); THE NATIONAL ELECTIONS ACT (2010).

<sup>76</sup> CONSTITUTION, art. 35.

<sup>77</sup> *Id.*, art. 35.

<sup>78</sup> *Id.*, art. 35.

<sup>79</sup> *Id.*, art. 35.

<sup>80</sup> *Id.*, art. 118.

<sup>81</sup> *Id.*, art. 66 (“During the term of office, the Presidential position shall not be used for linguistic, sectarian, tribal, and religious as well as party considerations”); *Id.*, art. 80 (“During their terms in office, the Ministers shall not use their positions for linguistic, sectarian, tribal, religious or partisan purposes.”).

form a party-free executive branch as he encouraged his cabinet members to drop their party affiliations.<sup>82</sup> In a separate case, after running as a party member in the presidential election of 2014 and becoming the Chief Executive Officer—equivalent to prime minister—Abdullah disassociated himself from the *Jamiat-i-Islami* Party, suggesting that it was due to “his political post [in the government].”<sup>83</sup>

Lack of interest in party development can also be noticed in the election laws, which typically regulate parties directly through explicit provisions as well as indirectly through electoral systems. Incumbents in Afghanistan have purposefully pushed for the adoption of the single non-transferable vote (hereinafter S.N.T.V.) system to effectively disenfranchise parties.<sup>84</sup> Although numerous election laws were revoked, replaced, and amended, the electoral system remained the same. S.N.T.V.’s negative impacts on party development is beyond the scope of this paper; however, it is well documented in Afghan parliamentary elections that S.N.T.V. encourages intra-party competition, personalistic politics, large number of candidates, and ultimately party fragmentation.<sup>85</sup> Therefore, the prospect for development of a cross-ethnic party system under an S.N.T.V. system is almost non-existent.

Furthermore, as Table 4 indicates, the Election Law has twenty references to political parties, which puts Afghanistan at the bottom of the list of all countries compared in this study. Adopted in 2016, the Ghanaian Election Law is the closest to the Afghan Election Law in terms of the number of references to political parties; and, Ghana already has a

<sup>82</sup> See *Afghan Report*, Radio Free Europe (Dec. 30, 2004), <http://www.rferl.org/a/1340603.html>.

<sup>83</sup> *Jamiat Split as Supporters Defy New Interim Council*, TOLONNEWS.COM (May 25, 2017) <http://www.tolonews.com/afghanistan/jamiat-split-supporters-defy-new-interim-council>.

<sup>84</sup> See ICG, *supra* note 64, at 6; see also LARSON, *supra* note 66, at 3.

<sup>85</sup> See NAT’L DEMOCRATIC INST. FOR INT’L AFFAIRS, *THE SEPTEMBER 2005 PARLIAMENTARY AND PROVINCIAL COUNCIL ELECTIONS IN AFGHANISTAN* 13 (2006); see also Reynolds & Carey, *supra* note 64, at 4; BERNARD GROFMAN ET AL., *ELECTIONS IN JAPAN, KOREA, AND TAIWAN UNDER THE SINGLE NON-TRANSFERABLE VOTE: THE COMPARATIVE STUDY OF AN EMBEDDED INSTITUTION* 390 (Bernard Grofman, Sung-Chull Lee, Edwin A. Winckler & Brian Woodall eds., 1999); Coburn & Larson, *supra* note 5, at 115.

two-party system.<sup>86</sup> Other countries, however, have many more references to political parties than the Afghan Election Law. Election laws of some countries, such as Sri-Lanka, Indonesia and Nigeria, are party-dominant because parties are the only or main electoral actors according to these laws. In other words, only party affiliates can run in presidential or parliamentary elections in these countries. By contrast, the Afghan election law refers to political parties as one of the many political actors in the elections rather than as the main or even an important actor.

According to the thirteen articles of the Afghan Election Law, parties can launch campaigns,<sup>87</sup> have fair access to state-owned media,<sup>88</sup> attend electoral commission's meetings,<sup>89</sup> send observers,<sup>90</sup> attend referendum,<sup>91</sup> and make complaints.<sup>92</sup> Although these provisions imply the electoral participation of parties, surprisingly there is no explicit provision suggesting that parties can introduce candidates in elections. The remaining provisions are restrictive, preventing parties from having members in the Independent Electoral Commission,<sup>93</sup> Electoral Complaint Commission,<sup>94</sup> and Provincial Complaint Commission.<sup>95</sup>

Afghanistan's W.J. Rules of Procedure makes no reference to political parties and their functions in the Assembly.<sup>96</sup> Instead, the W.J. Rules of Procedure introduced the concept of parliamentary groups to encourage the creation of political blocs in the Assembly.<sup>97</sup> Under these

<sup>86</sup> See *Ghana: Party System and Campaigning*, EISA, <https://www.eisa.org.za/wep/ghapartiessystem.htm>, (last updated Dec., 2012).

<sup>87</sup> See QANOON INTIKHABAT [ELECTION LAW], 2016, art. 4 [hereinafter, Election Law].

<sup>88</sup> See *Id.*, art 19

<sup>89</sup> See *Id.*, art. 20.

<sup>90</sup> See *Id.*, 19(13).

<sup>91</sup> See *Id.*, art 102.

<sup>92</sup> See *Id.*, art. 27(4), 91 (1).

<sup>93</sup> See *Id.*, art. 12

<sup>94</sup> See *Id.*, art. 17

<sup>95</sup> See *Id.*, art. 31.

<sup>96</sup> The Rules of Procedure has no reference to political parties or coalitions at all while the regulation has twenty-eight references to parliamentary groups. Chapter five of the Rules of Procedure is about parliamentary groups with four articles. See THE RULES OF PROCEDURE, WOLESI JIRGA, art. 18.

<sup>97</sup> See COBURN & LARSON, *supra* note 5, at 85.

rules, a parliamentary group must have a minimum of twenty-three members.<sup>98</sup> These rules ban the formation of any parliamentary group that pursues ethnic interests or an ethnic agenda.<sup>99</sup> In their book, *Derailing Democracy in Afghanistan*, Anna Larson and Noah Coburn suggest that these rules are designed to prevent the re-emergence of ethnic parties in the Assembly.<sup>100</sup> When the Assemblies were formed after the 2005 and 2010 elections, a number of scholars optimistically categorized members of the Assembly into conservatives, liberals and moderate-traditionalists; others divided the M.Ps. into pro-government, pro-opposition, and independents.<sup>101</sup> However, these categorizations were misleading since such parliamentary groups were never formed.<sup>102</sup> In practice, M.Ps. stayed in ethnic boxes and alliances shifted on issue-by-issue bases.<sup>103</sup>

Although four parliamentary groups initially registered by 2007, forming parliamentary groups gradually became unpopular.<sup>104</sup> Members of the existing groups have failed again and again to vote in blocs.<sup>105</sup> Today, only one registered parliamentary group is listed on the website of the National Assembly.<sup>106</sup> Notably, even political parties have failed to form their own parliamentary groups partly due to their own organizational failures and to the lack of any legal framework for parliamentary parties in the W.J. Rules of Procedure.<sup>107</sup>

<sup>98</sup> See THE RULES OF PROCEDURE, WOLESI JIRGA, Mar. 2017, art. 18.

<sup>99</sup> See *id.* (“No group may be formed for the purpose of representing personal, regional, professional, religious, ethnic, tribal or linguist interests”).

<sup>100</sup> COBURN & LARSON, *supra* note 5, at 89.

<sup>101</sup> See WILDER, *supra* note 69, at 4.

<sup>102</sup> See *id.*

<sup>103</sup> See *Id*; see also Wahabuddin Ra’ees, *Democratizing Afghanistan: An Analysis of the 2005 Parliamentary Elections*, 14 INTELL. DISCOURSE 33, 42 (2006) (“Despite their strong presence in the Wolesi Jirga, observers of government and politics of Afghanistan believe that the Islamist right will not speak with one voice. Ethnic and regional divisions and even differences over adoption of a specific strategy will keep them divided.”); THE ASIA FOUND., VOTER BEHAVIOR SURVEY: AFGHANISTAN’S 2010 PARLIAMENTARY ELECTION (2012).

<sup>104</sup> See COBURN & LARSON, *supra* note 5, at 85.

<sup>105</sup> This information was obtained from interviews with four M.Ps. All interviewees confirmed that members of parliamentary groups were not able to vote collectively (On file with author).

<sup>106</sup> See *Parliamentary Groups*, WOLESI JIRGA.

<sup>107</sup> There is no evidence that the party members in the Assembly have even attempted to form their own parliamentary groups.

### 3.2. COMMAND AND CONTROL RULES

The true influence of party regulations depends on the level of incentive the rules offer for party development. As such, blocking regulations such as Article 35 of the Constitution, Article 9 of the Political Party Law, and Article 13 of the W.J. Rules of Procedure fall short of bringing about the desired party development.<sup>108</sup> These regulations are conventionally referred to as command and control rules since they offer no rewards or sanctions to modify parties' behavior or structure.<sup>109</sup> They merely set requirements about what parties should be like and what they should do. As Horowitz posited, such regulations function as aspirational provisions corresponding "to the illusion of a 'non-ethnic' society".<sup>110</sup>

Unlike the above regulations, as an aggregating regulation, article 9 of the Political Party Law imposes a sanction of suspension against parties that fail to meet the three qualification thresholds.<sup>111</sup> However, the question is whether the suspension of parties offer sufficient incentives to modify parties' behavior. The answer seems to be no, given the failure of party development in Afghanistan. As a sanction, party suspension has not been able to outperform patronage politics that tend to induce parties in the opposite direction. Most party elites have had access to patronage based on their ethnic affiliation and support. Suspension of parties targets their registration only and not their access to power, which is what the parties are interested in the most. More notably, after obtaining permanent registration, parties have even less incentive to nationalize. Even if they are suspended and deregistered, they can easily reregister.<sup>112</sup>

Additionally, Afghanistan's Political Party Law imposes a much higher burden on the Registrar Office than on parties to prove whether

<sup>108</sup> See Bogaards, *supra* note 26, at 60.

<sup>109</sup> See *Training Package - Module 5: Structure, Composition, and Role of an Energy Regulator*, UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION, [https://www.unido.org/sites/default/files/2009-02/Module5\\_0.pdf](https://www.unido.org/sites/default/files/2009-02/Module5_0.pdf).

<sup>110</sup> Matthijs Bogaards *Ethnic Party Bans and Institutional Engineering in Nigeria*, 17 DEMOCRATIZATION 730, 741 (2010).

<sup>111</sup> ELECTION LAW, art. 9.

<sup>112</sup> See POLITICAL PARTY LAW, art 12 (7).

the parties have met the requirements. The Registrar Office of the M.o.J. does not have regional agencies to investigate or monitor whether, for example, the parties have offices across twenty provinces to meet the office threshold for registration. The Registrar Office also lacks sufficient financial and human resources to launch regional investigations on whether parties have met such thresholds. In fact, the office has only four staff members, which is not enough even to process party registration in Kabul.<sup>113</sup> This overload of the under-resourced Registrar Office has allowed proto-parties to exist by simply claiming to have met or surpassed all of the required thresholds.

A party law has to provide sufficient incentives to help transform parties. In other words, the law should offer rewards or sanctions greater than those offered by other formal or informal rules, and greater than those imposed by the same rule on the government for enforcement. A good example of a truly incentive-based rule is the constitutional amendment in Comoros that restrict parliamentary representation only to those parties that won at least two seats on each of the three islands that make up the republic.<sup>114</sup> Another example is that of Nigeria wherein a party can gain a full registration only if it wins at least five percent of the votes in twenty-four of thirty-six states.<sup>115</sup> With these regulations, the Registrar Offices do not have to bear any cost of investigating whether the party has met the requirement since compliance can be determined by the electoral results. Since parties in these countries exist to compete in elections and win offices, these regulations provide sufficient incentives to encourage parties to seek support across regional and ethnic lines. In these countries, any party that neglects the importance of cross-ethnic support, is likely to lose the chance of entry into the parliament.

Generally, election-based thresholds tend to generate more incentives to shape party development than registration thresholds like those set by the Afghan Party Law. The registration thresholds normally

<sup>113</sup> It was brought up by the head of the Registrar Office in an interview (on file with author).

<sup>114</sup> See Bogaards, *supra* note 26, at 53.

<sup>115</sup> *Id.*, at 54.



impose suspension, denial of registration, and de-registration while the election-based thresholds put the electoral participation of parties at stake. The following table (Table 5.1) shows different types of party regulations and their incentivizing potentials. These potentials are illustrated in Table 5.2 with examples and the colors of the designated numbers: white (close to zero incentives), blue (insufficient incentives), and brown (sufficient incentives).

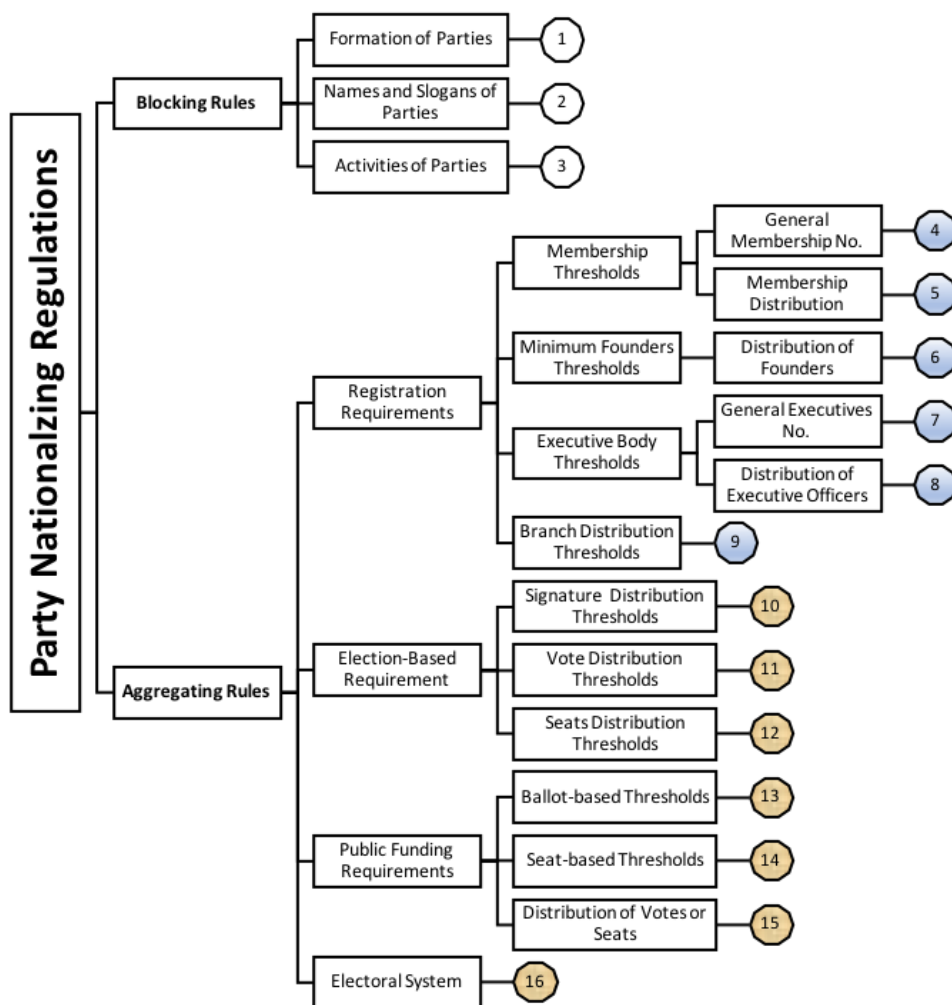


Table 5.1

1	• Afghan Con. Art. 35: a party cannot be formed on the basis of ethnicity.
2	• Ghanaian Party Law, Art 9(e): the party's name, emblem, colour, motto or any other symbol has not ethnic, gender, regional, religious or other sectional connotations...
3	• Afghan Party Law , Art. 6: a party cannot incite to ethnic and other forms of discrimination.
4	• Afghan Party Law, Art. 9: to avoid deregistration or suspension, a party must have at least 10,000 members.
5	• Tanzanian Party Law, Art. : a party must have 200 members from each of 10 regions.
6	• Afghan Party Law, Art. 9(1): a party must have at least 35 founders from 20 provinces.
7	• Sirra Leone, Party Law: a party must have executive members not from one ethnic group only.
8	• Nigerian Party Law, 203 (2, b): the executive committee or other governing body belong to different States not being less in number than two-thirds of all the States.
9	• Afghan Party Law, Art 9(2 amended): within a year of registration, a party must open offices in at least 20 provinces.
10	• Kenya, Political Parties Act, 7 (2, a): A provisionally registered political party shall be qualified to be fully registered [to be electable] if it has recruited as members, not fewer than one thousand registered voters from each of more than half of the counties;
11	• Nigerian Election law: to gain a permanent registration, a party must gain a least 5% of the vote in 24 of 36 states.
12	• Comoros Con.Amend.: parliamentary representation is restricted to parties that win at least two seats on each of three islands that make up the republic.
13	• Malawi Con. Art. 40(2): any political party that can win over one-tenth of votes nationwide can receive public funds.
14	• Burundi Con. Art. 84: the government provides public funds to parties proportional to their seats in the legislature.
15	• Not yet.
16	• Papua New Guinea Election Law, Art. 65(1): A ballot-paper shall have three spaces or boxes for a voter to indicate his preferences-1,2, and 3--either by the prescribed candidate identification number or by candidate name.

Table 5.2

### 3.3. LAWS OF NOT THE EMERGING COALITIONS

The prospect for the emergence of a broad coalition system has attracted little attention among Afghan lawmakers. The Afghan Constitution has no provisions dealing with political coalitions of any kind. The Election Law has only four references to coalitions referring to them merely as groupings of parties rather than as emerging distinct entities requiring a regulatory framework of their own. Specifically, in all four articles, the word coalition is used in the context of “parties or coalitions of parties”, implying that coalitions are extensions of parties.<sup>116</sup> Therefore, the Afghan Election Law seems to have given prominence to parties over coalitions, whose very existence the law considers to be based on collaboration of parties.

The emerging coalitions in Afghanistan, however, have been far beyond the alliance of merely ethnic, proto-parties. Although most coalitions have a core of a few prominent elites, they are indeed an amalgamation of party factions, civil society groups, cleric circles, village elders, district councils, sports clubs, women societies, and art associations as well.<sup>117</sup> In practice, Afghan coalitions are far larger, more participatory, and grassroots-based than alliances of some unpopular ethnic parties. Also, cross-ethnic coalitions have emerged in Afghan elections to replace the unpopular, ethnic parties than to bring them together.<sup>118</sup> Presidential elections in particular, while experiencing disintegration of ethnic parties, have witnessed the rise of cross-ethnic coalitions as viable alternatives.<sup>119</sup> In order to win a required minimum of fifty percent votes, viable presidential candidates have been compelled to form cross-ethnic coalitions instead of relying on ethnic parties.<sup>120</sup> To

<sup>116</sup> ELECTION LAW, art. 4, 9, 27, 105.

<sup>117</sup> See Mohammad Bashir Mobasher, *Understanding Ethnic-Electoral Dynamics: How Ethnic Politics Affect Electoral Laws and Election Outcomes in Afghanistan*, 51 GONZ. L. REV. 355 (2016).

<sup>118</sup> See Mohammad Bashir Mobasher, *Electoral Choices, Ethnic Accommodations, and the Consolidation of Coalitions: Critiquing the Runoff Clause of The Afghan Constitution*, 26 WASH. INT'L L. J. 413 (2017).

<sup>119</sup> See *id.*

<sup>120</sup> See *id.*

build their coalitions, they have reached out to political groups and communities beyond parties and their factions.<sup>121</sup> The most inclusive coalitions have indeed been the most viable ones. President Karzai, President Ghani and C.E.O. Abdullah have all formed larger coalitions than other candidates, by including elites and communities of different ethnic backgrounds.<sup>122</sup> The ever growing political prominence of these coalitions, however, has remained unappreciated in the laws of Afghanistan.

The Afghan Political Party Law has only a single reference to coalitions.<sup>123</sup> Similar to the election law, the single reference to coalitions in the Political Party Law has a rather party-oriented approach. Article 12 of the Political Party Law provides that, “A registered political party shall enjoy [the ability to join or form a] . . . permanent or temporary political alliance or coalition with other political parties”.<sup>124</sup> It has not set any particular legal framework as to whether the coalitions should register for elections, have logos, or even be cross-ethnic. As a result, while some coalitions have formed officially with titles, symbols, and constitutions, others have functioned merely as political networks and clientalistic groups. Ironically, unlike the proto-parties that have to expand in a manner which is formal, cross-ethnic, and programmatic according to the law, coalitions are free to be either formal or informal, ideologue or clientalistic, financially sovereign or puppet organizations.

Nonetheless, the most viable coalitions in Afghanistan have demonstrated that they are better positioned than parties to earn the support and votes of different ethnic groups. This is primarily because they are formed by equally important elites and factions from different groups. Since their interests are likely to be protected in such cross-ethnic coalitions, different ethnic groups are willing to endorse them. Additionally, these coalitions provide a constructive environment

<sup>121</sup> See Mobasher, *supra* note 119, 355.

<sup>122</sup> See *id.*

<sup>123</sup> POLITICAL PARTY LAW, art. 12.

<sup>124</sup> *Id.*, art. 12.

for inter-ethnic dialogue, especially when all negotiating partners share the goal of winning and governing, for which they need to make concessions and compromises.<sup>125</sup> Institutionalizing coalitions will further engage these partners in inter-ethnic dialogue. In his seminal work, *Ethnic Groups in Conflict*, Donald Horowitz suggested that inter-ethnic dialogue at the coalition level helps depoliticize ethnicity at the national and governmental levels.<sup>126</sup> Coalition-building by its very nature tends to minimize ethnic politics even though ethnic talks may dominate negotiations within coalitions.<sup>127</sup>

Afghanistan's existing proto-parties are not any more institutionalized than the emerging coalitions. Afghan parties have traditional structures and bureaucracies centered around single leaders.<sup>128</sup> They do not hold general assemblies regularly—or even once, in most cases.<sup>129</sup> They lack modern institutional and functional features, and most importantly, they are isolated from the electoral and political scenes.<sup>130</sup> Most members of political parties run as independents in both presidential and parliamentary elections, only to declare their party affiliations after elections.<sup>131</sup> Even then, shares of parties in the W.J. decreased from 62.4% seats in 2005 to 37.6% seats in 2010.<sup>132</sup> The number of truly independent M.Ps. almost doubled in 2010.<sup>133</sup> Parties have been even less relevant to presidential elections in Afghanistan since no party has engaged in a solo campaign in any of the last three presidential elections. It is true that the emerging coalitions are unstable

<sup>125</sup> See Danielle Resnick, *Do Electoral Coalitions Facilitate Democratic Consolidation In Africa?* 5/19 Party Politics 736-747, 739 (2011); see also M. A. Mohamed Salih and Per Nordlund, *Political Parties in Africa: Challenges for Sustained Multiparty Democracy*, INTERNATIONAL IDEA RESEARCH AND DIALOGUE COORDINATION (2007) <http://www.idea.int/sites/default/files/publications/political-parties-in-africa-challenges-for-sustained-multiparty-democracy.pdf>.

<sup>126</sup> DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 419 (2ND ED., 2001).

<sup>127</sup> See Herbert Kitschelt, *The Formation of Party Systems in East-Central Europe*, 20/1 POLITICS AND SOCIETY 7-50, 20 (1992).

<sup>128</sup> See IBRAHIMI, *supra* note 7, at 10.

<sup>129</sup> See *id.*

<sup>130</sup> See *id.*, at 5.

<sup>131</sup> See REYNOLDS & CAREY, *supra* note 64, at 9; ICG, *supra* note 64, at 5.

<sup>132</sup> REYNOLDS & CAREY, *supra* note 64, at 10.

<sup>133</sup> *Id.*

and clientelistic, but so are the proto-parties. In terms of inclusiveness, however, the emerging coalitions come closer to the objective of Article 35 of the Constitution than proto-parties.<sup>134</sup>

Afghanistan is not a unique case in which party laws have failed to regulate coalitions effectively. Although most democratizing states witness the emergence of cross-ethnic coalitions, their laws have failed to grasp an appreciation for these coalitions. As Table 6 indicates, very few countries on the list have set a legal framework for coalitions in their constitutions (six countries), election laws (four countries), and party laws (five countries).

Country	Coalitions (+Mergers) in Party Laws of Eleven Countries							
	In Con.		In EL		In PPL		Total	
	No. of References	No. of Articles	No. of References	No. of Articles	No. of References	No. of Articles	References	Articles
Ghana	2 (+1)	1	0	0	4 (+3)	1 (+1)	10	4
Kenya	4	4	0	0	33 (+19)	11	56	15
Philippines	4	3	14 (+3)	2	10 (+1)	4	32	9
Nigeria	2 (+2)	2	(+16)	(+2)	0	0	20	4
Burundi	2	2	4	3	13 (+3)	5	22	10
Indonesia	2	2	0	0	(+3)	2	5	4
Bolivia	0	0	10	7	47 (+16)	26	73	33
Sierra Leone	0	0	2	1	1 (+6)	1	9	2
Afghanistan	0	0	4	4	1	1	5	2
Sri-Lanka	0	0	0	0	0	0	0	0
Tanzania	0	0	0	0	0	0	0	0
Malawi	0	0	0	0	0	0	0	0

Table 6: Political coalitions and merger of parties in party laws of twelve countries.<sup>135</sup>

Among these countries, the constitutions of only Nigeria and Ghana refer not only to political coalitions but also merger of parties.<sup>136</sup> Only the Philippines, Nigeria, and Bolivia have more references to coalitions and mergers of parties in their election laws than Afghanistan.<sup>137</sup> Even so, these countries have not provided sufficient legal framework to help consolidate cross-ethnic coalitions. Except for Kenya and Bolivia, no country in the Table offers public fund or requires registration of coalitions because they do not consider coalitions to be permanent or structurally independent from political parties. The laws have instead

<sup>134</sup> QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], 2004, art. 35 (the “formation and operation of a party on the basis of ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted”).

<sup>135</sup> *Supra* note 76; *supra* note 77; *infra* 156.

<sup>136</sup> THE CONSTITUTION OF GHANA, 1992, art. 97; THE CONSTITUTION OF NIGERIA (1999), art. 68, 109.

<sup>137</sup> Philippines: THE POLITICAL PARTY DEVELOPMENT ACT OF 2007 (2007); Bolivia: LEY DE PARTIDOS POLITICOS [POLITICAL PARTY LAW] (1999); Nigeria: ELECTION ACT (2010).

focused on transformation of parties, which probably explains why the laws have suffered failures in most cases.

Analyzing party regulations in five African countries, Denis D. Kadima posited that “the laissez-faire approach to [electoral coalitions] has made such grouping dysfunctional”.<sup>138</sup> He criticized party laws for focusing too much on parties without producing an optimal outcome.<sup>139</sup> Kadima argued that despite the abundance of laws encouraging the nationalization of parties, ethnic parties tended to exist and even flourish.<sup>140</sup> Other studies have brought to light the failure of party regulations to transform unpopular, proto-parties in South America,<sup>141</sup> Eastern Europe,<sup>142</sup> Southeast Asia,<sup>143</sup> East Africa,<sup>144</sup> and other African countries.<sup>145</sup> In his book, *Political Parties in Conflict-Prone Societies*, Benjamin Reilly concluded that in most cases party laws have functioned as aspirational provisions, lacking real enforcement measures.<sup>146</sup>

<sup>138</sup> Denis K. Kadima, *Party Regulations, Nation-building, and Party Systems in Southern and Eastern Africa*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT*, 201 (Benjamin Reilly & Per Nordlund, eds., 2008).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See Marta Lagos, *How People View Democracy: Between Stability and Crisis in Latin America*, *J. DEM.*, Table 4, (Jan, 2001).

<sup>142</sup> See Richard Rose and Christian Haerpfer, *New Democracies Barometer V: A 12-Nation Survey*, *STUDIES IN PUB. POL'Y*, 59–62, 206 (1999).

<sup>143</sup> See Bogaards, *supra* note 26, at 60; see also Aurel Croissant & Philip Volkel, *Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia*, *Party Politics*, 2/18, 248 (2012) (Partisanship has a much lower rate in Southeast Asian countries. For example, party roots in the society is 30% in Indonesia, 54% in Philippines, 41% in Thailand, 57% in Taiwan, and 73% in South Korea... “the results of the Asian Barometer Survey (2005–07) show that the percentage of party members is low across most countries: 0.3 percent of respondents in Thailand, 0.5 percent in the Philippines, 1.2 percent in South Korea, 1.6 percent in Taiwan and 2.2 percent in Indonesia. Again, Mongolia is the exception here with 24.2 percent”).

<sup>144</sup> See Moroff, *supra* note 63, at 750, 762 (“In sum, in the three countries, results for P.N.S. do not point to a clear effect of the party laws in favour of parties with a more national support base. Banning particularistic parties and requiring parties to have members all over the country clearly does not translate into a nationwide following for these parties. Almost all opposition parties in the three East African countries therefore failed to mobilize support nationwide, no matter if they fulfilled the strict representation requirements, as in Tanzania and Uganda, or if they did not, as in Kenya”).

<sup>145</sup> See Anika Moroff, *Party Bans in Africa: An Empirical Overview*, 17 *DEMOCRATIZATION* 618–41. (2011).

<sup>146</sup> Benjamin Reilly, *Introduction* to INGRID VAN BIEZEN ET AL., *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 12 (Benjamin Reilly & Per Nordlund, eds., 2008).

While critics and proponents have debated the need and efficacy of banning regulation of ethnic-based parties, none has pointed to the importance of a proper legal framework for the emerging cross-ethnic coalitions. A legal framework to promote cross-ethnic coalitions is more effective than a law aiming to transform political parties. Under the current laws in Afghanistan, building new cross-ethnic parties is too difficult since the thresholds are too high for them to meet. Older ethnic parties are too difficult to transform since the institutional incentives are too weak to compensate for their past violence, constituency shifts, and benefits. Unlike a new party, an emerging cross-ethnic coalition can easily meet the thresholds and, unlike an old ethnic party, a cross-ethnic coalition does not need to transform into something else (larger). Emerging cross-ethnic coalitions only need a proper legal framework to incentivize sustainability and consolidation. An appropriate legal framework would and should focus more on promoting cross-ethnic coalitions through public funding, electoral advantages, and registration requirements than on banning proto-parties or requiring their transformation.

#### **4. REFORMING AFGHAN PARTY LAWS**

It is important that the laws should first recognize and regulate coalitions. Then, the laws should provide some financial and electoral advantages to cross-ethnic coalitions and parties over ethnic parties. In other words, they must raise the cost for ethnic parties and the prize for cross-ethnic coalitions. This section first explains the importance and effects of formal recognition and public funding of cross-ethnic coalitions and parties. Next, it proposes some additional regulatory designs that have been used to institutionalize parties, but which also can be used to promote cross-ethnic coalitions.



#### 4.1. RECOGNIZING AND PROMOTING THE EMERGING COALITIONS

Article 35 of the Afghan Constitution was meant to encourage ethnically inclusive parties, an objective that is better met by the emerging coalitions than by existing proto-parties.<sup>147</sup> Cross-ethnic coalitions are formed primarily to aggregate broad-based support to win elections. Ethnic parties, however, exist to serve a different purpose and interest: mobilizing ethnic groups, encouraging communal action, and gaining power or patronage on behalf of their groups.<sup>148</sup> Therefore, promoting the emerging coalitions is an incremental step to achieving the objective of Article 35.<sup>149</sup>

Adopting a legal framework that primarily entails registering cross-ethnic coalitions would likely encourage coalitions to become something more than just a gentlemen's agreement. In addition to registration thresholds, the political laws may include an electoral threshold, where only registered, qualifying coalitions can win offices in national elections. As indicated earlier, electoral thresholds generate more incentives than registration thresholds. Electoral thresholds may be based on the performance of coalitions in the past elections to promote their sustainability as well as based on their distribution of offices, votes, candidates, or seats across provinces to promote their inclusiveness. These measures have popularly been used in some countries to encourage nationalization of parties. In many countries, the law requires registration of parties before every election, although in those countries the electoral commission rather than a government body is responsible for registration and monitoring parties.<sup>150</sup>

<sup>147</sup> QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], 2004, art. 35 (the "formation and operation of a party on the basis of ethnocentrism, regionalism, language, as well as religious sectarianism shall not be permitted").

<sup>148</sup> See Horowitz, *supra* note 127, 291-295.

<sup>149</sup> QANUN ASSASSI JUMHURI ISLAMAI AFGHANISTAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN], 2004, art. 35.

<sup>150</sup> See generally Johanna Kristin Birnir, *Party Regulation in Central and Eastern Europe and Latin America: The Effect on Minority Representation and the Propensity for Conflict*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 159 (Benjamin Reilly & Per Nordlund, eds., 2008).

Switching the responsibility of registration from the M.o.J. to the electoral commission would lead to effective registration and monitoring of parties and coalitions. An electoral commission is better positioned than the M.o.J. to evaluate and incentivize the development of cross-ethnic coalitions and parties for several reasons. First, by running elections regularly, electoral commissions are better-positioned to generate incentives for institutionalization of cross-ethnic coalitions and parties through setting electoral, administrative, and procedural rules than the M.o.J.'s Registrar Office. Second, unlike the Registrar Office of the M.o.J., the electoral commission has branches in all provinces and districts, allowing the commission to make assessments about coalitions and parties across provinces without bearing considerable financial and transportation costs. And finally, a registrar's office under an electoral commission is more independent and less susceptible to the government's policy towards parties and coalitions than a Registrar Office under the M.o.J..

Many countries have transferred the responsibility of party registration from executives to their electoral commissions.<sup>151</sup> Table 7 indicates that only four of twelve countries, including Afghanistan, have authorized an executive body for the registration of parties. In six countries, their electoral commissions manage party registrations. In Indonesia, both the Ministry of Human Rights and the electoral commission are responsible for the registration of parties and coalitions in two different stages: registration as a party and registration as an electoral party, which is to allow a party to compete in an election.

<sup>151</sup> See, e.g., Moroff, *supra* note 63, at 750, 757.

<sup>152</sup> Ghana: *Party System and Campaigning*, EISA, <https://www.eisa.org.za/wep/ghapartiessystem.htm> (last updated Dec., 2012); see also Nigeria: Election Act (2010); Philippine, THE POLITICAL PARTY DEVELOPMENT ACT OF 2007 (2007) Sec. 6, [https://www.senate.gov.ph/lis/bill\\_res.aspx?congress=15&q=SBN-3214](https://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-3214); Indonesia, NOMOR 2 TAHUN 2008 TENTANG PARTAI POLITIK [LAW NUMBER 2 OF 2008 ON POLITICAL PARTIES] (2008), art. 2 and 3; LAW ON THE GENERAL ELECTION OF MEMBERS OF HOUSE OF REPRESENTATIVES, PEOPLE'S REPRESENTATIVES COUNCIL AND REGIONAL HOUSE OF REPRESENTATIVES (2012), art. 14; Bolivia: LEY No. 1983 LEY DE PARTIDOS POLITICOS [THE POLITICAL PARTY ACT], 1999, art. 5.

Country	Party Registrar Body in	Registration Tiers	
Kenya	Electoral Commission	Provisional Registration	Full Registration
Nigeria	Electoral Commission	Provisional Registration	Full/Electoral Registration
Sierra Leone	Independent	Provisional Registration	Full Registration
Ghana	Electoral Commission	Provisional Registration	Ful Registratior
Philippines	Electoral Commission	Full Registration	Electora Registration
Indonesia	Min./Electora Commission	Full Registration	Electora Registration
Tanzania	Executive	Provisional Registration	Full Registration
Burundi	Executive	Single Tier Registration	
Malawi	Executive	Single Tier Registration	
Afghanistan	Executive	Single Tier Registration	
Sri-Lanka	Electoral Commission	Single Tier Registration	
Bolivia	Electoral Commission	Single Tier Registration	

Table 7: Party Registrar Offices and registration processes of twelve divided societies.<sup>152</sup>

Countries have adopted different approaches to party registration. In some countries, including Afghanistan, there is only a single phase of party registration. Other countries, like Kenya, Ghana, and Tanzania, require a registration process that has two phases: provisional registration and full registration.<sup>153</sup> Provisional registration allows parties to recruit members, hold public meetings, have access to media, introduce their programs, and publicize the party. However, to participate in an election, conduct campaigns, or support candidates, parties need full registration. This may require different sets of conditions to be met by the parties. In Kenya, for example, a party must have a name that is not offensive, excessively long, or resembling the name of another registered party.<sup>154</sup> For full registration, however, the party must have a minimum of two hundred voters in each province, a governing member from each province,<sup>155</sup> and a founding member from each district.<sup>156</sup> Some countries like Indonesia require an additional electoral registration of parties in each election, for which the parties must meet certain electoral thresholds.<sup>157</sup>

<sup>153</sup> See *Ghana: Party System and Campaigning*, EISA, <https://www.eisa.org.za/wep/ghapartiessystem.htm> (last updated Dec., 2012).

<sup>154</sup> See *Political Parties Act* (2007), art. 20.

<sup>155</sup> See *Id.*, art. 23(1)(a)-(c), (*Political Parties Act* 2007, 23(1)(a)-(c)).

<sup>156</sup> See *Id.*, art. 23(1)(a)-(d), (*Political Parties Act* 2007, 23(1)(a)-(c)).

<sup>157</sup> See *LAW ON THE GENERAL ELECTION OF MEMBERS OF HOUSE OF REPRESENTATIVES, PEOPLE'S REPRESENTATIVES COUNCIL AND REGIONAL HOUSE OF REPRESENTATIVES* (2012), art. 14.

#### 4.2. PUBLIC FUNDING OF CROSS-ETHNIC COALITIONS AND PARTIES

Public funding of political coalitions is vital to their survival. One reason that coalitions in Afghanistan have not been sustainable is because of the lack of financial support. This is particularly true in the case of opposition coalitions that lack the resources to survive between elections, let alone institutionalize. As of now, the only provision about public funding is Article 15 of the Political Party Law. Article 15 states that parties can use “[s]ubsidies by the government in connection with elections”.<sup>158</sup> The law seems to have excluded coalitions from public funding. In practice, neither coalitions nor parties have received any public funds.<sup>159</sup>

Afghanistan is not the only case where party laws have neglected to provide for public financing of political coalitions. Although most countries provide public funds to political parties, they are reluctant to do the same for political coalitions. The only two countries under study in this article that provide public funding for coalitions, at least on paper, are Kenya and Bolivia (see Table 7).<sup>160</sup> However, a study by Ingrid van Biezen in 2007 indicated that the governments provide subsidies to parties in over 77% of consolidated democracies and 73% of democratizing societies.<sup>161</sup> Malawi not only requires public funding of parties by a constitutional provision but also ensures that fund to be drawn from 0.25% of the national revenue.<sup>162</sup>

<sup>158</sup> QANUN-I-AHZAB SIASSI [POLITICAL PARTY LAW], 2003, art. 15.

<sup>159</sup> This information was obtained through interviews with leaders of political parties and coalitions (on file with author).

<sup>160</sup> See *Ghana: Party System and Campaigning*, EISA, <https://www.eisa.org.za/wep/ghapartiessystem.htm> (last updated Dec., 2012); see also Bolivia: LEY DE PARTIDOS POLITICOS [POLITICAL PARTY LAW], 1999, art. 5.

<sup>161</sup> Ingrid van Biezen, *Party Regulation and Constitutionalization: A Comparative Overview*, in *POLITICAL PARTIES IN CONFLICT-PRONE SOCIETIES: REGULATION, ENGINEERING AND DEMOCRATIC DEVELOPMENT* 34 (Benjamin Reilly & Per Nordlund, eds., 2008).

<sup>162</sup> See THE CONSTITUTION OF THE REPUBLIC OF MALWAI, 1994, art. 40(2).

Country	Do Parties Receive Direct Funding?	When Receive Pub. Funding?	Why Parties Receive Pub. Funding?	What is the Threshold for Funding?	Free Media Access?
Indonesia	Direct	Election	Campaign Activities	Performanc at Previous Election	No
Bolivia	Direct and Indirect	Elections Between Elections	1. Campaign Activities 2. Other	Performanc at Previous Election	Yes
Malawi	Direct and Indirect	Elections	Campaign Activities	Number of Candidates Present	Yes
Sri Lanka	Direct and Indirect	Election	Campaign Activities	Equal Funding	Yes
Cyprus	Direct and Indirect	Between Elections	N/A	N/A	N/A
Burundi	Direct and Indirect	Between Elections	Campaign Activities, Other	Number of Candidates Present	No
Kenya	Direct and Indirect	Elections/Between Elections	Campaign Activities, Other	Equal Funding	No
Sierra Leone	Indirect	N/A	N/A	Equal Time	Yes
Ghana	Indirect	N/A	N/A	Equal Time	Yes
Nigeria	Indirect	N/A	N/A	N/A	No
Philippines	No	N/A	N/A	N/A	No
Afghanistan	No	N/A	N/A	N/A	No

Table 8: Direct and indirect funds that parties receive in twelve countries including Afghanistan.<sup>163</sup>

For the most part, public funding of parties has primarily been aimed at levelling the playing field and providing equal opportunity to all parties.<sup>164</sup> However, this cannot be the aim in Afghanistan, where the intention is to reduce party fragmentation and encourage broad-based coalitions. The latter goal requires the use of public funding to marginalize ethnic proto-parties while giving an edge to broad-based and inclusive coalitions. For this very reason, the laws need to set high thresholds so that only large and broad-based coalitions can receive funds. These thresholds should include (a) longevity of coalitions to encourage their stability, (b) a specified number of seats in the Assembly to strengthen their discipline, (c) and regional representation of parties and coalitions to promote their inclusiveness.

Some of these thresholds have been used in different countries although with regard to parties and not coalitions. For instance, in Malawi, any political party that can win over one-tenth of the votes nationwide can receive public funds from the government.<sup>165</sup> In Burundi the government is required to provide public funds proportional to parties' seats in the legislature.<sup>166</sup> Similarly, public funding in Germany,

<sup>163</sup> *Id.*, at 209-215.

<sup>164</sup> *See id.* at 14; Cass R. Sunstein, *Paradoxes of the Regulatory State*, 57 U. Chi. L. Rev. 407, 412 (1990).

<sup>165</sup> *See* THE CONSTITUTION OF MALWAI, 1994, art. 40 (2) ("The State shall provide funds so as to ensure that, during the life of any Parliament, any political party which has secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency") Political Party Act, 2011, art 25(2)(b) ("A party is not eligible for public funding if more than 2/3 of its elected officials are of one gender").

<sup>166</sup> *See* LA CONSTITUTION DU BURUNDI [THE CONSTITUTION OF BURUNDI], 2005, art. 84. ("To the end of promoting democracy, the law may authorize the financing of the political

Austria, Sweden, and Nordic countries depends on the presence of parties in the legislatures.<sup>167</sup> In the United Kingdom, financial aid is provided to parties for the purpose of policy research.<sup>168</sup>

## 5. OTHER MEASURES:

### 5.1. W.J. RULES OF PROCEDURE AND PARLIAMENTARY PARTIES AND COALITIONS

The W.J. Rules of Procedure is a potentially important body of party laws, even though it does not have a single provision about parties or coalitions. It is an important body of party laws because students of party studies have conventionally given special consideration to parliamentary parties and coalitions. The analyses of party systems, party institutionalization, and effective number of parties are primarily based on measuring parliamentary parties and coalitions. In spite of that, however, in the literature, as well as in practice, few have advocated for well-designed Rules of Procedure to foster parliamentary parties and coalitions. Nonetheless, if designed properly, the Rules of Procedure can bring great discipline to parliamentary parties and coalitions.

In fact, one reason for the failure of undisciplined parties and the prevalence of personalistic politics in the Wolesi Jirga is that the W.J. Rules of Procedure have no provisions with regard to parties and their functions in the Assembly.<sup>169</sup> Likewise, the Rules of Procedure have failed to regulate coalitions, merger of parties, or their splits in the assembly.

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parties in an equitable manner, proportionally to the number of seats that they hold at the National Assembly. This financing may apply both to the functioning of the political parties and to the electoral campaigns, and must be transparent. The types of subventions, advantages and facilities that the State may grant to the political parties are established by the law").

<sup>167</sup> See FRITZ PLASSER AND GUNDA PLASSER, *GLOBAL POLITICAL CAMPAIGNING: A WORLDWIDE ANALYSIS OF CAMPAIGN PROFESSIONALS AND THEIR PRACTICES*, 159 (2002).

<sup>168</sup> See Biezen, *supra* note at 162, at 35.

<sup>169</sup> The Rules of Procedure has no reference to political parties or coalitions at all while the regulation has twenty-eight references to parliamentary groups. Chapter five of the Rules of Procedure is about parliamentary groups with four articles. See *THE RULES OF PROCEDURE, WOLESI JIRGA [AFGHANISTAN HOUSE OF THE PEOPLE]*, 2017, Rule 18.

Instead, the Rules provided for a new political group called, parliamentary groups. However, parliamentary groups have failed to take hold in Afghanistan as much as parties, and coalitions have failed to hold their representatives together in blocs in the W.J..

One reason for the failure of parliamentary groups, coalitions, and parties to function cohesively is the way the legislators vote on policies and laws. Although public voting is required on principle by the rules of procedure,<sup>170</sup> it is performed mostly by showing hands and cards. The names of those voting for or against a policy is not recorded. Specific places in the legislature have not been designated for these political groups. Even though the new hall of the parliament is equipped with screens for electronic voting, legislators have refused to use it mainly to keep their voting hidden in the crowd. Therefore, the Rules of Procedure should allow for and even require recording of M.Ps.' votes so that M.Ps. of the same coalition or party are compelled to vote along the same line of policies or draw attention to the fact that they have voted against their coalition.

## 5.2. ANTI-SWITCHING PROVISIONS

For cross-ethnic coalitions to sustain, an effective political law should provide incentives for coalitions to remain functional and cohesive beyond elections. W.J. Rules of Procedure and other regulations can achieve this end by incorporating anti-switching provisions: mandating the removal of W.J. members from an office as soon as those members decide to disassociate from their parties or coalitions. Many new democratizing societies have adopted anti-switching laws to promote party discipline in their legislatures. As Table 8 indicates, in eight out of ten countries, legislators may lose their seats as soon as they disaffiliate from their parties or coalitions. Similar provisions exist in other diverse

<sup>170</sup> See RULES OF PROCEDURE (2017), Rule 64, 65, 66.

societies such as South Africa,<sup>171</sup> Mozambique,<sup>172</sup> Brazil, Fiji, India, Papua New Guinea, Thailand,<sup>173</sup> Belize, Namibia, Nepal, Singapore, and Zimbabwe.<sup>174</sup>

Country	Constitution Year	Anti-Switching Provision
Indonesia	1945	Yes
Sri-Lanka	1978	Yes
Philippines	1987	Yes
Sierra Leone	1991	Yes
Ghana	1992	Yes
Malawi	1994	Yes
Nigeria	1999	Yes
Afghanistan	2004	No
Burundi	2005	Yes
Bolivia	2009	No
Kenya	2010	Yes

Table 9: Rules on whether a party/coalition associate can defect his or her party once elected.<sup>175</sup>

Some scholars have expressed concerns that anti-switching provisions may encourage independent candidates, which in turn discourage party/coalition development.<sup>176</sup> For instance, in Malawi the existence of an anti-switching provision<sup>177</sup> incentivized more candidates to run as independents.<sup>178</sup> Nonetheless, such provisions may discourage party/coalition development only when individual candidates have the option of running as independent candidates under the election law. Why would a candidate choose to run as a party nominee if he or she later loses his or her seat because of voluntary party disaffiliation? In Malawi, the

<sup>171</sup> See, e.g., Denis Kadima, *Party Coalitions in Post-Apartheid South Africa and their Impact on National Cohesion and Ideological Rapprochement*, in *THE POLITICS OF PARTY COALITIONS IN AFRICA*, 69 (Denis Kadima, ed., 2006).

<sup>172</sup> See, e.g., Denis Kadima & Zefanias Matsimbe, *RENAMO União Eleitoral: Understanding the Longevity and Challenges of an Opposition Party Coalition in Mozambique*, in *POLITICS OF PARTY COALITIONS IN AFRICA* 149 (Denis Kadima ed., 2006) (“The amendment of 65 of the Constitution to provide for the expulsion from Parliament of any MP who associates with any party or grouping other than that which sponsored his or her parliamentary campaign”).

<sup>173</sup> See Reilly, *supra* note 147, at 15.

<sup>174</sup> See Janda, *supra* note 27, at 24.

<sup>175</sup> *Supra* note 76.

<sup>176</sup> See, e.g., Lise Rakner & Nicolas van de Walle, *Opposition Weakness in Africa*, *J. DEMOCRACY*, July 2009, at 108, 121 (2009).

<sup>177</sup> *THE CONSTITUTION OF MALAWI*, 1994, art. 40 (2) (“The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly”).

<sup>178</sup> See Rakner & van de Walle, *supra* note 177.



law does not require party affiliation for parliamentary candidates.<sup>179</sup> Therefore, it is no wonder that anti-switching provisions have indeed favored personalistic politics rather than party discipline there.

A similar effect could result in Afghanistan if an anti-switching provision were adopted within the existing Election Law since neither the law nor S.N.T.V. requires party affiliation for parliamentary candidates. However, the law could have a different impact if a mixed system were adopted, where for the P.R. elections, only parties could field candidates. The adoption of an anti-switching rule along with a mixed system (S.N.T.V.-P.R.), which has been proposed by a number of scholars and organizations, would be expected to bring some discipline within parties and coalitions in Afghanistan.<sup>180</sup>

## 6. CONCLUSION

Party laws have traditionally been meant to gatekeep party proliferation while promoting party institutionalization.<sup>181</sup> Party laws deal with parties' legal status, definition, registration requirements, finance, and even internal organization.<sup>182</sup> As such, some scholars have suggested that party laws have an important influence on party development in a divided society.<sup>183</sup> However, this contribution of the party law has yet to be seen in most divided societies which are still struggling to build a functional

<sup>179</sup> See Denis Kadima and Samson Lembani, *Making, Unmaking and Remaking Political Party Coalitions in Malawi: Explaining the Prevalence of Office-Seeking Behaviour*, in *THE POLITICS OF PARTY COALITIONS IN AFRICA* (ed., Denis Kadima, 2006).

<sup>180</sup> See Reynolds & Carey, *supra* note 64, at 18-21; ASADULLAH SA'ADATI, ET. AL. *ELECTORAL REFORM: A REPORT ON THE STUDIES, PERFORMANCE, RECOMMENDATIONS OF THE SPECIAL ELECTORAL REFORM COMMISSION*, 100-111 (2016).

<sup>181</sup> See F. Casal-Bértoa, D. R. Piccio & E. R. Rashkova, *Party Law in Comparative Perspective* (The Legal Regulation of Political Parties, Working Paper No. 16, 2012), <http://www.partylaw.leidenuniv.nl/uploads/wp1612.pdf>.

<sup>182</sup> See Dan Avnon, *Parties Laws in Democratic Systems of Government*, *J. OF LEGIS. STUD.* 287 (1995).

<sup>183</sup> See, e.g., Benjamin Reilly, *Political Stability and Party Law in New Democracies* 12 (International Political Science Association Congress, Seminar Paper, 2009), [http://paperroom.ipsa.org/papers/paper\\_1084.pdf](http://paperroom.ipsa.org/papers/paper_1084.pdf).

party system. After analyzing party laws in sixteen countries, Biezen and Rashkova concluded that, “in nine out of the 16 states, an increase in regulation does not correspond to a decrease . . . in the number of political contestants”.<sup>184</sup> Benjamin Reilly posited that in most cases party laws have functioned as aspirational provisions.<sup>185</sup> Therefore, Afghanistan is not a unique case where despite some reforms party laws have failed to nationalize parties or consolidate some emerging cross-ethnic coalitions. By examining parties and party laws in Afghanistan, this article explains why party laws fail to produce their intended outcomes.

The failure of Afghan party laws has been due to the laws being drafted at times when political parties were unpopular, and they had the least influence in drafting Political Party Law. In fact, the laws were originally meant to weaken the extant parties without proper regulations to encourage new broader parties and coalitions. The extant parties were mostly *Jihadi* party who have been involved in civil war and ethnic violence for decades now.<sup>186</sup>

Intended for party nationalization, the blocking and aggregating regulations are insufficient because they are mostly command and control rules that offer little incentives for parties to reconfigure their politics, missions and organization. Additionally, the laws have remained indifferent towards cross-ethnic coalitions that tend to emerge particularly during the presidential elections. The general issue that this article finds in the literature and the laws is that both have over-emphasized on the arduous transformation of ethnic parties while neglecting the more feasible institutionalization of the already emerging cross-ethnic coalitions.

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<sup>184</sup> I. Van Biezen & E. R. Rashkova, *Breaking the Cartel: The Effect of State Regulation on New Party Entry*, 14 (Economic and Social Research Council, Working Paper No. 12, Aug. 2011), <http://www.partylaw.leidenuniv.nl/uploads/wp1211.pdf>.

<sup>185</sup> See Reilly, *supra* note 147, at 12.

<sup>186</sup> See REYNOLDS & CAREY, *supra* note 64, at 6; see also Barakzai, *supra* note 70, at 6.