



SPECIAL REPORT

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ABOUT THE REPORT

This Special Report examines Afghanistan's potential political roadmap through 2020, from the operation of the current National Unity Government agreement to parliamentary, district, and presidential elections and proposals for constitutional amendment. As the US government, its partners, and NATO consider a revised military strategy, it is essential to recognize that politics has been, and remains, at the center of the Afghan conflict.

ABOUT THE AUTHOR

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Alex Thier and Scott Worden

Political Stability in Afghanistan A 2020 Vision and Roadmap

Summary

- Sixteen years after the start of the international intervention in Afghanistan, the country remains beset by a debilitating array of conflicts, undermined political stability, an economic and security decline since the withdrawal of a majority of international forces, and a divided government since the 2014 elections.
- Afghanistan needs to reform and restructure its political institutions if it is to have stability, peaceful and sustainable governance, and economic growth. Four approaches, in combination, may have the potential to put Afghanistan on a more stable and sustainable path while improving prospects for reconciliation.
- Between now and the 2019 presidential elections, President Ghani and CEO Abdullah need to continue and improve progress in implementing the executive power-sharing approach of the National Unity Government concerning appointments, key policy initiatives, and the coming elections.
- At the same time, Afghan leaders need to reform key aspects of the electoral system to facilitate negotiation and compromise across voting blocs and political parties to allocate power based on popular support.
- The government in Kabul needs to follow through on commitments to decentralize administrative power and authority within the current constitutional system, through, for example, strengthening municipal and district-level governance, democratic processes, and accountability.
- Long-term political stability requires agreement on reforms to balance power across regions and between the central government and the provinces within the political system.
- A political settlement with the Taliban will require an even more difficult balance of power, which makes it especially important that reforms include accommodating new political actors.

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Introduction

Afghanistan is undergoing yet another in a seemingly endless series of radical transitions. Since 1973, the country has changed regimes, political systems, and outside interveners with the frequency that most countries hold national elections. This turmoil has led to decimated institutions, widespread fear and trauma, rampant short-termism, and deep distrust within and between all major factions. The current shift from the NATO military surge is marked by a 90-plus percent reduction of international forces and concomitant economic slowdown, continued assertions of dominance by Afghanistan's neighbors, and Afghan security forces shouldering the primary burden of counterinsurgency. In 2014, Afghanistan undertook the first democratic transition of power between heads of state—though the result was controversial and led to a negotiated power-sharing arrangement labeled the National Unity Government (NUG).

Despite sixteen years of massive international military, economic, and political assistance, the country remains beset by a debilitating array of conflicts driven by both internal and exogenous factors. The Taliban insurgency, with support from within Pakistan, continues to take territory. Militants affiliated with the self-proclaimed Islamic State are making inroads and have punctuated their presence with a series of high-profile terror attacks. Levels of violence continue to rise, and with them alarming numbers of civilian casualties. Economic migrants are leaving for Europe and neighboring countries, contributing to a brain drain and lost investment. And criminality in the otherwise peaceful cities causes fear among the slowly growing middle class.

It is clear that a lasting, inclusive, and legitimate political settlement—begun in Bonn in 2001 and continuing through the US-brokered National Unity Government agreement in 2014—remains elusive. The formal terms and structures of governance continue to flounder. Elections have culminated in deeply divisive results, as in 2009, 2010, and 2014. Alternatively, they fail to be held at all, as with the current parliamentary and district council elections, which were recently delayed, again, to be held in July 2018. The ad hoc arrangement to create a split head of state and head of government has failed to resolve competition for power among major factions, remains extra-constitutional, and is not likely to be resolved before the next presidential election in 2019. This situation has clouded the legitimacy and effectiveness of the current government and given powerful fodder to those who oppose it.

At a deeper level, the long-standing competition between provincial actors and central government elites over subnational power and resource sharing in a pluralistic and atomized society has gone untended. Thus current conflicts over appointments, elections, revenues, and the like play out against a tableau of long-term mistrust, grievance, and demands by actors outside Kabul for greater authority and self-reliance. These issues are not effectively addressed in the current political and constitutional system and thus give purchase to an insurgency that builds from a foundation of Pakistani support and capitalizes on fault lines between rural communities and a government that has failed to serve many of their needs. Furthermore, the lack of capacity to set and accomplish objectives in national, let alone subnational, institutions may continue to prevent practical realization of these goals. Meanwhile, the ongoing conflict heightens divisions and presents the specter of return to full-scale warfare or ethnic domination through either conquest or an unbalanced peace deal.

The biggest conclusion from sixteen years of international intervention—which included both light and heavy footprints, too little and too much money, two very different Afghan presidents, and a wide variety of military, economic, and diplomatic tools—is that a new approach is needed to change the political dynamics that have led to decades of violent conflict. Ultimately, Afghanistan needs to reform and restructure its political institutions

if it is to have stability, peaceful and sustainable governance, and economic growth. The United States and international allies are not in a position to dictate terms of new Afghan political arrangements. But they can and should focus Afghan political actors to address the problems and should facilitate decisions that can lead to a more stable political arrangement among Afghan political factions, including the Taliban.

The National Unity Government in Perspective

The crisis leading to the establishment of the NUG in 2014 was precipitated by two fundamental factors. The first was an electoral process and associated institutions that failed—in part because of the high levels of distrust among the population and key political actors that the mechanisms could verify clean results—to produce a verifiably legitimate outcome. The second is continued political dissatisfaction with the consequences of a winner-take-all system in a highly divided pluralistic society that, according to the constitution, has one of the world's most highly centralized governments. Given greater trust and stronger governing institutions, election losers might more easily accept defeat and rely on the democratic process to afford them legal checks on the winners' powers and a bona fide chance to win the next time. But after forty years of political conflict, this trust is hard to find. Without structural reforms, it is hard to see how it will be.

Since the 2014 NUG agreement, a sense of entropy has gripped Kabul and dissatisfaction with the government is widespread. Creeping insurgency in the countryside, rising ethnic division, rampant criminality and kidnapping, mass out-migration of youth, a spate of demoralizing attacks in major cities (including Kabul), economic downturn, resurgent regional strongmen, unrepentant meddling by neighbors, and an international community whose priorities have shifted to other global challenges are overwhelming. In the face of all this, the two camps that make up the NUG seem more bent on guarding their prerogatives than on resolving the nation's myriad problems. Despite some increase in cooperation in 2017, promoting patronage continues to trump advancing reforms—particularly in the security sector. Opinions differ as to whether the political battles have actually led to increased insecurity, but popular perception is that the insurgency must be gaining advantage and that increasingly visible ethnic tensions between pro-government groups are rising as a result.

President Karzai's tenure from 2001 to 2014 was marked by constant efforts to balance the distribution of power through informal deals with elites and local power holders, keeping a wide tent while attempting to keep any faction from getting too powerful. Indeed, as a result, Karzai neither groomed nor really backed a successor. This strategy was replicated in his approach to the United States, regional actors, and even his occasional embrace of the Taliban, playing each off the other in a perpetual balancing act. Karzai's strategy, backed by a massive US-led NATO security blanket, delivered some short-term gains but failed to establish a long-term institutional framework for power sharing, subnational governance, and a nonpersonalistic political order.

Uncertainty about the direction of US engagement in Afghanistan and the region following the US presidential election makes risk-taking for peace or bold political reforms unlikely in the short term. Although the NUG put aside some of its differences in the wake of the successful donor conference in Brussels in October 2016, the sense is that the Afghan government is on its best behavior while the Trump administration gets its bearings and determines whether Afghanistan remains worthy of continued support or is a losing investment.

The two leaders of the NUG are publicly committed to reform-minded priorities but have been unable to implement them because they disagree over appointments, which

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reflects the deep roots ethnic patronage has in the country. The litmus test of political power remains how many jobs have gone to a particular group. It is reinforced by grand corruption whereby control of a ministry or provincial security post means not only power but also potentially millions of dollars in profit. More broadly, the sense among non-Pashtun groups is that they should have a reasonable path to have a non-Pashtun candidate win the presidency in the short term, and that electoral fraud has taken that path away from them. On the other hand, Pashtuns feel that their rightful share of power has been eroded by the insurgency, which has been fought predominantly in Pashtun areas.

Paths to Reform and Power Sharing

New approaches are needed to address the long-term aspiration for subnational power and resource sharing in a pluralistic and atomized society. Without changes to the political system and constitution, Afghanistan is unlikely to maintain a stable and secure political order. If the substantial commitments of donor assistance at Brussels and the NATO commitments at Warsaw are not renewed in substantially the same form in 2020, the need to address structural weaknesses in the Afghan political order are even greater.

The last sixteen years, and indeed much of Afghanistan's history as a state, have been a struggle between centralizing and decentralizing forces. The centralizers argue that a modern, centralized state is necessary to establish a monopoly on violence, the rule of law, and the resources to build infrastructure, deliver essential services, and carry out foreign relations. These communal goods cannot be produced or safeguarded without a central state to manage policy and finance. Central control also has the potential to limit the power of local warlords, though it also makes appointments more susceptible to corruption.

Those pursuing more decentralized allocation of power believe that equitable inclusion of all of Afghanistan's groups requires the ability to hold onto power and resources at the local level, lest the central government keep it all for itself. Absent the practical capacity to devolve power, advocates of greater decentralization have argued for greater power sharing at the central level, in particular by having a prime minister who would have governing powers along with the president so that regional interests would have more representatives in the central government. This stipulation was specifically included in the negotiations between Ghani and Abdullah to form the NUG because (largely Tajik) Abdullah supporters were concerned that if the Ghani ticket won, their interests would not be well represented.

The current political gridlock is likely to play out through and after the 2019 presidential election. A delay in parliamentary and district council elections, and an apparent lack of political will on either side of the NUG, means that the constitutional Loya Jirga called for in the NUG agreement is virtually impossible before the next presidential election. Ghani prefers to keep all of the constitutional powers of the president for as long as he can. Meanwhile, Abdullah is politically weaker than he was initially and the Jamiat party that largely supports him and the prime ministerial position is politically divided.

But the desire by many factions to address the balance of political power is not going to go away and will in fact intensify as the next set of opportunities—through elections, constitutional amendment, or decentralization—emerge. Against the tide of growing challenges for the government, it is unlikely that the political process will produce an uncontested outcome with a stable coalition that balances the main ethnic and regional interests and uses appointment powers to achieve a broadly acceptable balance of merit and patronage. Therefore, the underlying structure of the government and its ability to balance political interests must be addressed.

Given that the power-sharing approach of the NUG has not led to effective governance, three basic institutional approaches to resolving recurring tensions are promising:

- reforming the electoral system to enable different voting blocs or political parties to balance power more evenly across political, ethnic and regional factions, which would include strengthening nonethnic political parties;
- working within the current constitutional system to decentralize administrative power and authority to the provinces to better accommodate different interests beyond Kabul; and
- revising the constitution to adjust the formal balance of government power between the president, parliament, and the provinces, which could include changes to a prime minister position and local election of governors and other senior provincial officials.

These approaches are not mutually exclusive. But, given the current political fragility of the country, trying to tackle more than one at a time would be difficult and putting together a complex package of reforms is likely to fail. Simpler is better. A thoughtful debate among Afghans about options for the structure of the Afghan state is needed to avoid continued conflict and political paralysis after each election.

A More Effective NUG

A significant political crisis has been brewing since the NUG agreement was signed in 2014. As the two-year deadline in the agreement for holding a Loya Jirga passed in September 2016, President Ghani and CEO Abdullah continued to disagree about their relative powers under the agreement. This stalemate has arguably exacerbated negative trends by undermining the domestic legitimacy of the current government, further disrupting the key institutions, draining confidence in a shaky economy, reducing international support, and creating a perception of rising insecurity and political instability.

The inability to implement a reform agenda emerges directly from the failures of collaboration, power sharing, and systemic reform called for in the NUG agreement. Its roots, however, are in the unfinished business of allocating political power to ethnic, political, and regional groups within Afghanistan through the Bonn Agreement and subsequent 2004 constitution. Sustainable resolution requires both a more manageable day-to-day modus operandi between Ghani, Abdullah, and their teams in the short term, and a clear, shared commitment to meaningful electoral and power-sharing reforms prior to the 2019 presidential election.

Recommit to the inclusive, power-sharing, reform, and stability principles of the NUG. Despite complaints from Karzai and his former cabinet members on the so-called Stability Council, no alternative to the NUG is currently viable. Ghani is unable to effect a coup and get rid of Abdullah altogether because it would leave Tajiks without a representative at the most senior levels of government. Nor would replacing Abdullah with someone else, such as Mohammad Atta or Yunus Qanooni, be feasible or more attractive. Ghani would inherit a more formidable adversary seeking new powers and Abdullah would mobilize his portion of the Tajik constituency to oppose the government. In recent months, Ghani has skillfully divided the opposition to his presidential authority. Abdullah's Jamiat remains divided and Ghani's outreach to Governor Atta removes support for Abdullah's position within the NUG. The peace deal with Gulbuddin Hekmatyar and his return to Afghanistan has divided Hizb-e-Islami and the de facto exile of First Vice President Dostum to Turkey (following credible allegations of his kidnapping and sexually abusing a rival) has reduced the strength of the Uzbeks in the North. The NUG arrangement is therefore likely to remain through the spring 2019 election. Moreover, the threat of a traditional Loya Jirga to install a

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transitional government is at best a narrow interest of a few pretenders and does not appear to have much popular support.

Clarify and stick to a mechanism for making key appointments. A central point of friction in the NUG has concerned the power of appointments. This was left deliberately vague in the NUG agreement but the vagueness of the terms and the failure to address them became a significant source of instability. A recently created mechanism for both civilian and security positions reflects greater cooperation but has not been tested. Ensuring the NUG agreement calls for a “merit-based mechanism for the appointment of senior officials” that enable “equitable” representation is central to addressing ongoing tensions. The window for progress is narrow because by the middle of 2018 the next presidential election campaign will begin and appointments will increasingly be seen through political lenses.

Establish a path to address systemic questions of both national and subnational power sharing. Holding a Loya Jirga before 2019 is increasingly unlikely, not least because the required district council elections have not been held to select an important portion of Loya Jirga delegates. But the NUG could still address the spirit of the agreement on executive power sharing by forming the commission called for in the agreement, which can review potential power sharing adjustments that may or may not require constitutional adjustment in the medium term. Such a commission could also address how to make progress in subnational governance, including mayoral elections for key municipalities.

After the 2016 US presidential election, Afghanistan’s political leaders seemed to sense wisely that it was not strategic to continue public in-fighting while the new US administration figured out what its Afghanistan policy would be. The chance was just as good that the Trump administration would cancel US monetary and security commitments made in 2014 as it would increase its support to the Afghan government: on the one hand the campaign stated an aversion to nationbuilding, and on the other it called for protecting the United States from terrorism. The incentive for good behavior will not last forever, however. New crises are sure to arise that will test NUG cooperation for the sake of the country. As Taliban offensives increase, a key Afghan security failure could quickly bring back calls of illegitimacy that will make a more clear understanding of responsibilities within the NUG more important.

Electoral Reform

The NUG agreement committed the government to establishing the Special Election Reform Commission (SERC) and to implement significant reforms before holding parliamentary and district council elections as soon as possible. Parliamentary elections were to be held in the spring of 2015 but the controversy over fraud and the results of the 2014 presidential election made that impossible. Despite many disagreements over the election, both Ghani and Abdullah expressed a strong desire for electoral reform. NUG infighting delayed all of the initiatives, however. New electoral laws and a new Independent Election Commission (IEC) and Electoral Complaints Commission were established only in the closing months of 2016. After repeated delays, the Afghan government announced in June 2017 that the Parliamentary and District Council elections would be held in July 2018. It typically takes at least a year to plan and execute national elections in Afghanistan, so there should be enough time. But if the results are again controversial and take months to resolve, then it will be difficult to hold presidential elections on time in spring 2019, which could cause a new legitimacy crisis for the government.

Despite assertions that electoral reform is a high priority, Ghani and Abdullah have each acted in ways that make meaningful reforms impossible. Many in the NUG recognize that not holding elections gives opposition groups grounds for charges of ineffectiveness and

illegitimacy. At the same time, holding elections could have other negative political consequences. For one, poor security and a relatively unprepared IEC make another fraud-filled and ethnically divisive election likely. Even a relatively well-run election can bring political controversy—particularly in a system where politics is seen as a zero-sum game in which losers have little confidence that their interests will be represented.

Controversial elections have consistently resulted in political turmoil. In 2010, a significant shift in the ethnic balance of the parliamentary delegation elected in Ghazni (due in large part to differences in security and access of voters to the polls within the province) delayed seating the Parliament for a year. If something similar were to happen in the 2018 parliamentary elections, the more important 2019 presidential election would be clouded in mistrust and doubt. Ultimately, a discredited 2018 election would require yet another restructuring of the IEC and a new round of attempted reforms, which increase the chances that the presidential election would fail to yield the political unity that Afghanistan badly needs to fight the insurgency.

Rather than rush badly needed electoral reforms for an election likely to have mixed benefits and costs, it would be wiser to focus on the broader issues of how elections can contribute to increasing government legitimacy and better balancing of political interests and powers. Adjusting the electoral system to promote more coalition building and power balancing seems necessary to address the concerns both of non-Pashtun groups that they do not currently have a realistic path to the presidency, and of Pashtun factions that rivals can use a weak electoral system to gain unfair advantages. At the same time, Pashtun concerns about disenfranchisement due to worse security in Pashtun areas and different cultural norms within Afghanistan about female voting need to be addressed.

Beyond the ethnic balance of power, a key goal of electoral system reform is to promote stronger political parties that can increase electoral predictability and provide some protection from a complete loss of political power in the event of an electoral loss. Afghanistan's current weak political parties have little to offer candidates in terms of help getting reelected. Electoral reform should also increase links between representatives and constituents in ways that promote service delivery from the government to the people and accountability from the people to their representatives. In the current system, because each province has many independent representatives, it is difficult for a voter to know which person or party to hold accountable when local interests are not met. In larger electoral constituencies with dozens of candidates competing for multiple seats, most representatives win a seat with only single-digit percentages of the vote.

Afghanistan now faces a sadly familiar dilemma for election planning and election reform. Following a fraud-ridden and controversial 2014 election, the electoral institutions were purged. New and relatively inexperienced staff have taken over at a time when election planning is already behind and pressure to hold quick elections under exceptionally challenging circumstances is strong and immediate. At the same time, the underlying conditions that enable fraudulent elections persist. Most important, poor security limits voter registration, public outreach, and access to the polls by voters and independent observers. This is a problem across the country, but more so in politically important Pashtun areas, where the insurgency is greatest. In addition, Afghanistan has not had a valid census since the 1970s and the IEC does not have accurate population estimates or a credible voter registry, making fraud more likely and results less credible. Without security and accurate voter lists, those who stuff ballots can claim plausibly that they mobilized thousands of supporters and losers can claim plausibly that fraud occurred.

To shift elections from a moment of political instability to a process that increases stability, three changes need to occur. One is changing the electoral system to promote both

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more credible and organized political parties and greater accountability between voters and their representatives. Second is obtaining accurate information about how many voters there really are and where they live. Third is finding ways to promote more local elections and local level representation. The problem is that political leaders do not seem to want to risk losing political leverage in a reform process that produces more objective results when the current weak election system allows for dubious results to be negotiated outside the formal election process. Such short-term thinking produces repeated crises, however, rather than long-term stability.

Reforming the electoral system. The reform most likely to produce more predictable balances of political power is to change the current single non-transferrable vote system to an alternative that better enables the growth of strong and diverse political parties. The SERC spent much of its time in 2016 considering the best alternatives. The two options that emerged were Proportional Representation, which is common in Europe and facilitates strong political party organization and identity, and single member districts, which is used in the United States and the United Kingdom and leads to strong links between representatives and constituents, but tends to reinforce a binary party system within constituencies. The majority of the SERC favored a mixed system that would enable elements of proportional representation whereby voters choose political parties for some seats and a certain number of seats are also reserved for independent candidates. The debate over electoral systems took on an ethnic dimension when two Pashtun members who favored single-member districts boycotted the SERC process because they perceived that the SERC did not duly consider that option. Having single-member districts would enhance voter accountability and limit the risk that insecurity in one part of a province would prevent representatives from being elected, which is a greater concern in Pashtun areas where the insurgency is most disruptive to voting. The Afghan government expressed a preference for single-member districts but ultimately deferred the question to the new IEC, which is preparing a recommendation now.

Each alternative has significant downsides, which gives opponents enough ammunition to block change even though the status quo is widely recognized as harmful and costly over the long term. Drawing proportional districts, absent accurate population data, local expertise, and a supportive political environment will be nearly impossible. Also, under insecure conditions without strong rule of law, elections in many single-member districts tend to favor strongman candidates who cheat or intimidate their way to victory. On the other hand, opponents of a proportional representation system have an aversion to political parties because of the Islamist parties that formed in opposition to the Soviet occupation, which became ethnic militias that tore Afghanistan apart during the 1990s civil war. Afghanistan is not ready yet for a strong political party system, the argument goes, because few are multiethnic and few have policy-based agendas that transcend patronage politics.

Fixing voter registration. The most visible flaw in the past several Afghan elections has been inaccurate voter registration, highlighted by the approximately twenty-two million valid voter registration cards issued by the IEC since 2004 for an estimated population of approximately thirteen million eligible voters. The surplus in cards is largely the result of several rounds of “top up” registration exercises that added new names to the voter rolls that could not be checked—because of design flaws in the voter registration conducted in 2004—against those already on the list. Without an accurate voter registry, determining how many voters live in a given location is at best difficult, as therefore are how many polling stations to open and how many ballots to send them. This undermines election credibility: in some cases polling stations run out of ballots and in many others the surpluses wind up being stuffed to commit large-scale voter fraud.

After each election since 2005, Afghan and international election experts have demanded in unity that voter registration be fixed and voter lists created that can be verified. The NUG agreement calls specifically for fixing voter registration by rolling out a national identification card with biometric verification called the E-Taskera, which President Ghani and CEO Abdullah have each endorsed. Yet none of these efforts have ever managed to start in time to be useful for the next elections. Most likely they have not because the political risk for some groups and regions is considerable to know exactly how many people, and voters, they have—some would lose relative influence and political leaders seem to prefer negotiations for power based on unprovable assumptions of constituency size rather than more objective processes. National tacit assumptions are that Pashtuns make up nearly a majority of the population, that Tajiks are the next most populous, and that Hazaras and then Uzbeks follow. Shares of political power are quietly presumed based on these assumptions. Within provinces, meaningful assumptions about ethnic balance, size, and strength of provincial tribal and ethnic subgroups cause electoral controversies.

Although greater clarity about population would significantly improve the electoral process, no political leader seems willing to take the risk: more accurate numbers could show that their constituencies are in fact smaller than assumed. No one really knows the demographic changes in the wake of multiple waves of displacement and migration brought on by the Soviet invasion, the Mujahedin civil war, the Taliban, and post-2001 refugee return and insurgent violence, not to mention increasing urbanization and economic migration and internal displacement. Demographic assumptions are the elephant in the room of Afghan political debates. Testing these assumptions through a comprehensive voter registration process or a national ID process would help clarify discussions about competing claims to political power. However, time and transparency are critical if the results are to be trusted and the process to be productive.

Holding local elections. The quickest way to address Afghans' desire for greater local autonomy and inclusion would be to hold district council and municipal elections called for by the constitution. This would need to be accompanied by legislation that gave real powers to those offices in the form of budget authorities and a role in approving government projects to address local concerns about an unaccountable central government. Lawmakers in Kabul have so far found it difficult to surrender the significant powers they have over subnational political appointments and spending authorities. Notably, the provincial council law passed in 2005 on the eve of the first provincial council election gives the councils no direct authorities in governance; instead, they serve as advisers to the centrally appointed governor about their constituents' needs. The constitution grants them one significant power, that the chairperson of each council has a seat at a constitutional Loya Jirga—meaning that nearly half the Loya Jirga membership is to come from the districts. This explains why holding prompt district council elections was a key provision of the NUG agreement.

District council elections have never been held in part for logistical reasons: several districts have disputed boundaries and the election authorities have struggled to administer presidential, parliamentary, and provincial council elections without adding separate contests in nearly four hundred additional constituencies. Another factor is the question of what district councils would do and who would pay for them. But the main reason these elections have not been held may be political. Establishing elected representation at the district and municipal level would reduce the power of officials in Kabul to give out patronage in local constituencies. Skeptics argue that capacity is quite low at the district level, and in the absence of greater rule of law, giving power to districts would at least empower incompetence and at worst increase warlordism and corruption. This would undoubtedly happen in some districts, but in many others, particularly in more developed and more

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secure areas, decentralizing power would have the salutary effects that the constitution intended and that serve as a foundation for democracy in more developed countries. One way to address concerns about district capacity would be to make district elections conditions based, and hold them in areas with clear boundaries and minimum levels of security, and to have a transparent alternative mechanism for selecting councils in districts that do not meet these conditions.

Holding mayoral elections has even clearer benefits and less risk for representative government. Municipalities are the only entities outside the central government authorized to collect revenue—from fees for services like trash collection and water—and have their own budget for paving roads, directing traffic, and the like. So an elected mayor would already have a mandate and authority to represent municipal residents without changes to current law. This is likely also the reason that the central government has so far resisted holding municipal elections: because cities are now the key population centers in Afghanistan and an elected mayor would have instant national political standing with a base of legitimacy in the form of the votes he or she would receive to win office. Consider that the largest vote-getter in the current Parliament received fifty-six thousand votes total in Kabul, which has a population of more than three million. An elected mayor from Kabul would probably win hundreds of thousands of votes.

It is understandable that, given the choice, current government leaders would not move to have more representative government at local levels. But developing local level democracy through municipal and district councils could increase accountability of governance and elections as well as building political capacity outside Kabul. Even though local elections risk capture by warlords in the short term, they are necessary for long-term health of the democratic system. They also will increase accountability in governance and build local capacity to understand, participate in, and monitor the electoral process. Although the international community recognizes that it cannot and should not make such big political decisions for the Afghan government, it can provide the government incentives to actually make a choice by conditioning assistance to the Afghan government on holding those elections and by providing matching funds for councils and municipalities that are successfully elected through a fair electoral process.

Revising the Constitution

Revising the constitution would be an opportunity to reshape the Afghan system of government to address perceived imbalances of political power. But it could also undo features that promote inclusivity—including protection of women’s rights—and therefore Afghans and international donors view the option warily. The most commonly discussed change that would address the balance of power between political factions is the creation of a prime minister position that would share power with the president. This was hotly debated during the 2004 constitutional Loya Jirga, but ultimately the idea of a singular presidency with strong powers won out. A prominent change that would affect the balance of power between the central government and provinces would be to have elected governors rather than the current system of presidential appointments. Under ideal conditions, Afghanistan’s strong presidential system could enable more rapid modernization and reform because “smart” development decisions can be made in the center and brought uniformly out to the rest of the country. A strong central government with integrity and a monopoly of force backing the rule of law can also more quickly root out corruption and ensure higher quality administration nationwide.

The facts on the ground are far from ideal, however. Ethnic divisions and patronage within the central government, an inherent mistrust in the provinces for central authority,

Revising the constitution would be an opportunity to reshape the Afghan system of government to address perceived imbalances of political power.

and failure to secure the country from insurgency or criminality weakens both the ability and the authority of the central government to impose its writ. Even under the NUG, which appears more committed to combatting corruption, few major actions have been taken on high-profile cases like Kabul Bank.

Many argue that given Afghanistan's history of ethnic, regional, and factional divisions, and its consensus-based decision-making traditions, a parliamentary or mixed system is more appropriate. A less winner-take-all approach that allows for coalition building and bargaining is more flexible than a five-year presidential term and is derived from agreement among a plurality of representatives, rather than the largest bloc of voters. Indeed, given the widespread problems with elections and the continued dominance of ethno-factional elites with recent history of internecine armed conflict, wedding these leaders into the political system is a key priority. However, a parliamentary system that allows a plurality to choose the leader could also make a non-Pashtun head of state more likely, which would encourage some but potentially inspire resistance from Pashtuns. Given the fractious nature of Afghan politics and lack of effective political parties, a parliamentary system is potentially less stable than a presidential system—as coalitions can divide and deadlock before policies can be effectively executed.

Currently neither the public nor the elite have much appetite for a system that promotes coalition governments because the experience of the NUG has been so negative. This is a short-term concern, but it is not a strong reason to avoid serious consideration of more consensus-based governance models that depend less on a president's skill or inclination to include opposing groups in his administration. The NUG structure was formed during a crisis over the course of four days and written down in two pages; a constitutional reform process would entail far more considered options and inclusive discussions about pros and cons.

The effects of creating a prime minister position and splitting executive power would in some ways be immediate, legitimizing the approach taken by the NUG agreement and more clearly defining the allocation of powers. It would also satisfy a long-standing demand of minority ethnic parties for a stronger guarantee of a share of chief executive authority. If it is to differ from the current situation with the creation of an ad hoc CEO, however, Afghans would need to clearly define both a workable division of powers between president and prime minister and clear mechanisms of appointment and approval of the appointment to avoid continued crisis and hamstring government. The method of appointment (and dismissal) of the prime minister would also be significant. Without a parliamentary system and strong political parties, a parliamentary appointment process would be likely to create divided government, challenged legitimacy, and ethnic imbalance. Yet having the prime minister serve at the pleasure of the president would likely also undermine the integrity of the power-balancing mechanism.

Many see the idea of the creation of a prime minister as an ethnic balancing tool—a role that the offices of first and second vice president were also envisioned to serve.¹ Some have proposed simply adding an additional vice president to encourage electoral slates that include four major ethnic groups, which would potentially add representation and distribute patronage to the main ethnic groups. However, the formal role of the existing vice presidents has been both weak and unclear. Adding yet another might further dilute these, without tangible gain in governance or power sharing. That the current first vice president, Rashid Dostum, has repeatedly been accused of gross violations of human rights and extra-legal activities even while serving as vice president, has done little to burnish this role.

A variation on the French system—with a popularly elected president serving as head of state and an appointed prime minister as head of government—was strongly considered during the 2003 constitutional formation process. Although the French prime minister is

appointed by the president, he or she is confirmed by the parliament. As a result, it may be the case that the president and prime minister are from different parties—known as “cohabitation.” Even when they are from the same party, the prime minister has clear responsibilities with executive authority and is accountable to the parliament. In a time of conflict and internal division, when the president is consumed with security and foreign affairs matters, a popular politician with parliamentary backing managing the operation of the government could boost capacity. Of course, conflict between the two and confusion over roles and authority, could seriously undermine the government. It is one option among many without a strong guarantee of success. However, absent political consolidation, unitary government without meaningful power sharing and checks on executive authority in Afghanistan will remain impossible.

Convening a Loya Jirga

Whether a Loya Jirga can be properly convened, what it can accomplish, and whether it is likely to achieve these objectives are all important questions. The parameters for a constitutional Loya Jirga (CLJ) are clearly prescribed in the 2004 constitution. That document (like that of 1964) codified the Loya Jirga as a formal institution empowered, when called, to “decide on issues related to independence, national sovereignty, territorial integrity as well as supreme national interests; amend provisions of this Constitution; and impeach the President” (Article 111). That is a fairly wide breadth of potential subject matter, but stands as the only means of constitutional amendment. Convening the CLJ, except in cases of impeachment, appears to be the exclusive authority of the president (Article 64). But specific amendments will be proposed by a presidentially appointed committee comprised of “members of the Government, National Assembly, and the Supreme Court” (Article 150).

The rationale for calling a CLJ must be either to amend the constitution or secure popular legitimacy for a decision of national significance that goes beyond what the standing executive and legislative institutions can provide. One can imagine a peace deal or a border treaty with Pakistan falling to a Loya Jirga for endorsement. A peace deal with the Taliban might fall into this category as well, depending on the terms. Although many changes to the functioning of the Afghan political system can be accomplished without constitutional amendment, some would require or be greatly aided by constitutional amendment.

As with most constitutions, amendment is not an easy process. Proposals for amendments must first be formulated by the specially convened commission and then garner approval by both the president and a majority of the National Assembly.² The proposal must then be approved by two-thirds majority of a CLJ.³ Apart from this high bar of approval, the process includes numerous uncertainties. For example, is the CLJ able to amend the proposal to allow for a negotiated outcome, or is it limited to an up-or-down vote? Would a slate of amendments be offered as a package, or could the CLJ treat them in line item fashion, for example, accepting the creation of a prime minister but rejecting a revenue-sharing clause for the provinces? Those managing a complex agenda of changes would need to think through these vicissitudes well in advance of convening the CLJ.

One of the biggest challenges to properly convening the CLJ lies in the constitutional make-up of the body. According to Article 110, the CLJ consists of the members of the National Assembly, and presidents of the provincial as well as district “assemblies.” Government ministers, the attorney general, and the justices of the Supreme Court as well as the attorney general are allowed to participate in the Loya Jirga, but without voting rights. In practice, this means that the 250 members of the Wolesi Jirga (lower house), 102 members of the Meshrano Jirga (upper house), the thirty-four provincial council presidents, and the

approximately four hundred district council presidents would all have a seat. However, district council elections have yet to occur. Therefore, pending district council elections, roughly half of the Loya Jirga would be either absent or have to be constituted by other means.⁴

Precedent for this exists. The Meshrano Jirga has been able to legally function since 2005 even though district council elections have never been held to contribute the constitutionally required one-third of its members. The members were otherwise selected, with the concurrence of the Supreme Court, namely, by duly elected provincial council representatives. Based on the experience of the Emergency Loya Jirga, the Meshrano Jirga, and proposals around using existing district councils (for example, for the National Solidarity Program and the Ministry of Education), a politically legitimate Loya Jirga could be formed short of free, general, secret, direct district council elections. Indeed, even in the event of district council elections, security deficits will likely leave numerous districts in need of alternative mechanisms for selection. However, any such approaches will require political consensus that has not yet been reached, proponents of constitutional change arguing for flexibility in Loya Jirga membership requirements and opponents arguing for strict interpretation of the constitution regarding district council elections for valid membership.

The second form is the so-called traditional Loya Jirga, which is of questionable constitutionality. In 2013, then president Karzai called one of more than 2,500 representatives from all corners of Afghanistan to weigh in on the decision to sign the US-Afghan Bilateral Security Agreement, allowing US forces to remain in the country. Even though the Loya Jirga approved the agreement, Karzai subsequently refused to sign the document, leaving it to his successor, Ashraf Ghani. In the summer of 2016, Karzai suggested convening a traditional Loya Jirga to resolve the NUG crisis—which many suspected was an attempt by Karzai and his allies to regain power by steering the outcome of that process. Although seemingly obviated by the existence of constitutional provisions for calling one, the use of this institution to reinforce key decisions by past Afghan leaders has resonance.

Loya Jirgas have historically functioned as legitimizing rubber stamps for decisions already put forward, but have not been expected (or desired) to make new policy while in session. The more unstable the government, the more inherent risks there are in calling a CLJ with uncertain outcomes. On the other hand, either a traditional Loya Jirga or a formal CLJ (even with a compromise on district-level representation) is more legitimate in the Afghan political system than an internationally brokered deal within the executive branch. To the extent that changes are needed to address the limitations of the current strong presidency with two weak vice presidential roles, pursuing a formal constitutional process will produce a more inclusive, durable, and legitimate result than private deals made among power brokers contesting the 2019 presidential election. Historically, promises among elites to share power as part of informal political coalitions have proved highly unstable and conflict prone.

At the time of publication, the Afghan government was still nominally committed to holding district council elections, which in theory would enable a CLJ to alter the basic structure and duties of the president and vice presidents. However, few election reforms have been made and no decisions have been announced with respect to resolving disputed district boundaries. Therefore, it is highly unlikely that formal district representatives could be available for a CLJ before the 2019 election. Moreover, there does not appear to be much political will to hold a CLJ before the next presidential election. Although many still criticize the legitimacy of the NUG, it passed the two-year deadline for holding a CLJ without public protests and has also passed numerous deadlines for holding elections without a strong public outcry. Both Ghani and Abdullah are unpopular, so conditions are not favorable for gathering majority support for

Loya Jirgas have historically functioned as legitimizing rubber stamps.

their positions in a CLJ. Realistically, therefore, the most likely time for a CLJ would be after a presidential election and after new parliamentarians are seated. The outcome of the 2019 election will therefore have a great bearing on possible amendments to address power-sharing concerns. But the need to address them is likely to remain.

Decentralizing Power

Even without a CLJ, much can be done within the national government system to enable more regional and local autonomy under the present constitution. In practice, Kabul does not exercise much direct control over citizens in the provinces given a combination of insecurity, remoteness, lack of capacity, and lack of credibility. Apart from the security forces, the main tools the government has outside Kabul are the appointments process, the national budget, and the delivery of services. According to the constitution, provincial governors are appointed by the president and district-level positions are also selected by the central government in Kabul. This gives Kabul a lot of control over provincial affairs. Reinforcing this control, the national budget is allocated to national ministries in Kabul, which then decides how much should go to which provinces and in which ways. Municipalities are the only subnational government entity entitled to collect revenue and make autonomous decisions on its use.

The Afghan constitution clearly contemplates the likely need for decentralization and establishes some mechanisms to achieve it. These have largely gone unrealized. For example, Article 137 states that “the government, in preserving the principles of centralism, shall transfer necessary powers, in accordance with the law, to local administrations in order to accelerate and improve economic, social, as well as cultural matters and foster peoples’ participation in developing national life.” The constitution also calls for elected village councils, district councils, and mayors of official municipalities, but none have yet been held. Better subnational governance has long been recognized as a key objective, and significant efforts have been undertaken to create local government facilities, to train officials, and to push service delivery out to the local level. Some efforts, such as the National Solidarity Program and the basic package of health services delivered across the country, have demonstrated real potential to deliver much-needed albeit low-level services. Further, the organic growth of key trading hubs such as Herat, Mazar, Kandahar, and Jalalabad has been a mix of national effort and local planning, investment, and entrepreneurship.

The principal impediment to these programs has been a debilitating lack of capacity in government and the lack of rule of law that enables state capture by local elites who are often uninterested in reform or engaged in criminal enterprises. Further, plans have often been donor driven and opposed by vested interests in Kabul, most importantly the president and ministers who enjoy their centralized powers.

Bringing together the conditions for effective local governance in Afghanistan is not an easy task. Rigid sequencing—building the center then slowly devolving—is unrealistic due to growing entropy. Such an approach also denies the creative energy and more tangible accountability at the local level to get things done. Pushing ahead with some high-profile experiments in decentralization and local ownership, especially in medium-sized cities, is recommended.

Urbanization is drawing many Afghans from the countryside, and cities can prove key engines of growth, improvements in development, and social transformation. A combination of local accountability through elected city councils, local taxation, and investment in IT infrastructure and communications that can keep people informed and government accountable would be worthwhile efforts.

Similarly, introducing some elements of local input to selection of governors would deepen a sense of their fidelity to the province as well as to the president. This could be accomplished by requiring provincial council approval of presidential appointees for governor and otherwise amending the provincial council law to give them greater powers and duties regarding input into line ministry budgets and programs at a provincial level.

Rather than leave a gap of district councils until a far off and challenging set of elections, taking advantage of the enormous investment that has already gone into the creation of district-level councils by the National Solidarity Program, the Ministry of Education, and the Independent Directorate of Local Governance is only logical. These existing councils could be used to select a body of representatives who have already gone through some community validation and been responsible for oversight of largely successful programs.

Reconciliation

The prospect of reconciliation with the Taliban also raises questions about subnational governance and constitutional reform. A serious effort at reconciliation will inevitably require further power sharing, diluting other political shareholders' stakes. Therefore, it will be important to ask over the next three years whether it makes sense to undertake a risky political exercise of constitutional amendment when the Taliban will likely demand further redrafting of the constitution. Does this lead to parties becoming more dug in, or does it demonstrate the potential for the constitutional amendment to address nagging political frictions?

The current conflict dynamic between the insurgency and the government appears likely to continue for the indefinite future. The Taliban have taken more territory in the countryside, pursuing an encirclement strategy that saps the government of control and undermines its credibility over the long term and gives the Taliban the opportunity to take provincial capitals for short periods when there are lapses in government security. This level of effort is difficult to maintain in terms of money, casualties, and morale, but it appears sustainable for the Taliban under present conditions. Presumably the pain of continued conflict will remain tolerable as long as outside forces are heavily subsidizing the combatants—Pakistan and, increasingly, Iran and Russia supporting the Taliban, and Western donors supporting the government.

Unfortunately for a peace process, both sides have reason to be optimistic about their prospects for success in the near to medium term. The Taliban have seen significant gains since international combat forces withdrew at the end of 2014 and can reasonably expect that their encirclement strategy will bear greater fruit over time. They apparently continue to enjoy strong external support and could reasonably project that international attention and support for the Afghan government will wane over time, thus increasing the chances of success.

The government narrative, on the other hand, is that of course it has suffered setbacks after the withdrawal of international combat troops, but the fact that no provincial capitals have fallen (except Kunduz, briefly) shows it is able to withstand the Taliban threat over the long term. The government argues that it has gone from a year of survival in 2015 to greater self-reliance in 2016, and that Afghan National Security Forces strength will only grow in 2018. Plus, the government is encouraged by the continued international commitments of civilian and military support at Warsaw and Brussels in 2016, which may grow stronger should the Islamic State threat increase. There is also hope that international pressure on Pakistan will increase, particularly in a new Trump administration.

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Thus far, the deal with Gulbuddin Hekmatyar's Hezb-i-Islami faction demonstrates both the promise and challenges of reconciliation. The deal nominally addressed some thorny issues relating to democracy, the role of sharia, and foreign troop presence. (It called for a proportional representation voting system, Hizb-e-Islami Gulbuddin participation in elections, recognition of Islamic primacy in law, and an eventual end to foreign troop presence). At the same time, the militarily-defeated Hizb-e-Islami Gulbuddin was a much less powerful negotiating party than the Afghan government or the Taliban. One would therefore expect Taliban demands to be much more challenging to the current constitutional order if the current strength of the Taliban maintains.

The reconciliation process that will play out over the next few years will be to try to alter perceptions and levels of support to gain an advantage in peace negotiations. From a US perspective, this carries three implications:

- A stronger, more unified, more popular, and more legitimate government is in a much better position to defeat the insurgency or at least convince the insurgency that it cannot win and is better off negotiating. Therefore, it is important to continue to provide security, development, and political support for the government, including efforts to keep the NUG together and improve its legitimacy. Reducing corruption and holding credible elections is part of that agenda. The Taliban is fundamentally unpopular on a national level in Afghanistan, and would fare poorly in free and fair elections. Credible elections would thus help the government in its negotiations. A failed election rife with fraud or other political controversy would help the Taliban assertion of government illegitimacy.
- Ending foreign support for the Taliban is the most important ingredient for a successful peace deal. This has long been true but difficult to achieve. The Trump administration could bring greater pressure to bear against Pakistan for allowing Taliban attacks to be planned from Pakistan and for allowing fighters to easily cross in and out of Pakistani territory. Pressure can be combined with inducements in cooperation with regional neighbors. China's \$50 billion commitment of infrastructure financing gives it some leverage to request Pakistani cooperation in a peace deal if it chooses to use it. Most important, tensions between Pakistan and India must be addressed. Pakistan's actions in Afghanistan are in many ways driven—rightly or wrongly—by its existential fear of India and potential encirclement by an Afghanistan government that would allow India to use its territory for anti-Pakistan activities. Therefore, some steps need to be taken to give Pakistan assurances that its support for an Afghanistan-led peace process will not risk losing power to India.
- Apart from the departure of international troops and an end to a government the Taliban brands as illegitimate, the Taliban have not expressed any public position on what terms they require to end the war and support the government. Given their shadow government structures, it is likely that several factions want formal or informal control at local levels. This would not necessarily require any constitutional or legal changes to enable. Taliban leadership may want positions at national levels and influence over national policy regarding religion, justice, and morality. This too can be accommodated within the current constitutional structure—though with some political difficulty. Without a more clear sense of what the Taliban want (which may not even be clear to the Taliban and its several competing factions and fragile leadership), it is best not to wait on governance reform for a peace deal, and vice versa. Instead, the United States and the Afghan government should pursue reforms that have the potential for future accommodation of insurgent elements with nationalistic rather than extremist motivations and are willing to support the government on reasonable terms.

Conclusion

Stability into and through the 2019 electoral process in Afghanistan needs to be a paramount objective if any hope for long-term peace and inclusive economic growth is to be met. It is therefore critical to assess whether the structure of governance and power sharing resulting from the interplay of the constitutional framework and its execution (through elections, creation of commissions, appointments, decrees, and so on) is likely to lead to political stability going forward. Alternatively, is a potential process of reform—constitutional or otherwise—more likely to succeed?

Afghanistan's current problems are in part a manifestation of a more systemic challenge. An electoral democracy in Afghanistan needs to leave less to chance in answering the fundamental questions of whether certain groups will feel included or excluded from the state and its resources. So long as any electoral outcome provokes an existential fear (whether fully justified or not) in certain communities, elections and their outcomes will likely be unstable. Because mutual trust between parties (groups) is so low (as in all long-term conflict environments) and because collective trust in government and the rule of law is so low, divided and atomized societies often fail to translate the need to share power into a political system that delivers on that demand. Lack of effective ways of power sharing, like winner-take-all presidential systems, can be destabilizing. Rigid schemes to ensure divisions of power can also lead to gridlock and fragmentation.

Afghanistan does have a path to political stability, but a serious course correction is needed, and urgently. Growing conflict only decreases the opportunity for a transformative, reformist government to deliver on the aspirations of the Afghan people. President Ghani and CEO Abdullah still have the opportunity to see past this moment and secure the future by taking up the principles embedded in the Bonn Agreement, the 2004 Constitution, and the NUG agreement to create an inclusive political system to rebuild a war-weary nation.

An electoral democracy in Afghanistan needs to leave less to chance in answering... whether certain groups will feel included or excluded from the state and its resources.

Notes

1. 2004 Constitution of Afghanistan, Article 60.
2. Ibid., Article 149.
3. Ibid., Article 150.
4. Article 150 states that an amendment to the constitution requires "a majority of two-thirds of its members."

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