

SPECIAL REPORT

NO. 440 | FEBRUARY 2019

UNITED STATES INSTITUTE OF PEACE www.usip.org

Intra-Afghan Peace Negotiations: How Might They Work?

Sean Kane



Foreign delegation members listen as Afghan President Ashraf Ghani speaks at the February 2018 peace and security cooperation conference in Kabul. (Photo by Omar Sobhani/Reuters)

Contents

Introduction	3
Constitutional Review Process Issues	5
Key Substantive Constitutional Issues.....	13
Possible Political Roles of the Taliban after a Peace Agreement.....	19
Conclusion.....	24

Summary

- Following several months of US-Taliban talks on the international dimensions of the Afghan conflict, attention is expected to increasingly turn to the goal of intra-Afghan negotiations.
- During 2018, the Afghan government and the Taliban separately released their most detailed visions for peace to date. A key sticking point is likely to be the possible review of Afghanistan's constitution offered by the Afghan government.
- Key questions include who would draft constitutional amendments, how these amendments would be approved, and how existing amendment procedures might be followed. These questions are likely to become proxy battlegrounds in the political contest over the legitimacy of the existing constitutional order.
- The main substantive issues that could be raised in a constitutional review include the organization of the Afghan state; the fundamental rights of Afghan citizens, especially women; and Afghanistan's foreign policy orientation.
- The role of the Taliban in the Afghan political system immediately following the signing of a potential peace agreement will also be a fulcrum point for negotiations. This issue broadly comes down to the government's proposal for the demobilization and integration of the Taliban into the current order and the group's controversial calls for an interim government.
- Afghan stakeholders should devote early efforts to developing common positions on these key procedural and substantive issues. They should also seek to ascertain to what extent Taliban positions on political and social issues have evolved since they ruled Afghanistan.
- If and when intra-Afghan peace talks begin, preparation on these key issues could reap important strategic benefits for Afghanistan relative to security, stability, national cohesion, and social uplift.

SPECIAL REPORT

NO. 440 | FEBRUARY 2019



ABOUT THE REPORT

The Afghan government has expressed a conditional willingness to negotiate a review of the nation's constitution and to integrate the Taliban into the Afghan polity as part of potential peace talks. Supported by USIP's Asia Center, this report provides Afghan and international policymakers with a practical resource to address procedural and substantive issues implicated by this part of an intra-Afghan peace process.

ABOUT THE AUTHOR

Sean Kane worked for the United Nations in Afghanistan from 2012 to 2014. He was also an adviser to the 2006–7 Iraqi constitutional review process and facilitated local constitutional dialogues in Libya. The views expressed are those of the author and do not necessarily reflect those of the United Nations or any other organization.

The views expressed in this report are those of the authors alone. They do not necessarily reflect the views of the United States Institute of Peace. An online edition of this and related reports can be found on our website (www.usip.org), together with additional information on the subject.

© 2019 by the United States Institute of Peace

United States Institute of Peace

2301 Constitution Ave., NW
Washington, DC 20037

Phone: 202.457.1700

Fax: 202.429.6063

E-mail: usip_requests@usip.org

Web: www.usip.org

Special Report No. 440. First published 2019.

ISBN: 978-1-60127-754-1



UNITED STATES
INSTITUTE OF PEACE
Making Peace Possible



People celebrate the Eid cease-fire in Afghanistan's Nangarhar Province, June 16, 2018. (Photo by Parwiz/Reuters)

Introduction

During the years of discussion of a potential Afghan peace process, most of the work has gone into the launch of talks—each side's preconditions, how to enable direct meetings between the Afghan government and the Taliban, and initial confidence-building measures. With the Taliban and the United States now holding direct talks and the United Nations stating that the possibility of a negotiated end to the Afghan conflict has never been more real, there is an urgent need to focus on the substance and organization of putative intra-Afghan negotiations.¹

On February 28, 2018, the Afghan government made a landmark offer of peace to the Taliban. This offer was reaffirmed and further elaborated in a document entitled "Road Map for Achieving Peace," which was presented at the Geneva Conference on Afghanistan held on November 27–28, 2018. Taken together, the two documents represent the most fully realized vision put forward by Kabul on a political agenda for intra-Afghan talks. Among the specific substantive constitutional and political aspects of the peace plan that warrant detailed scrutiny are a proposed review of the Afghan constitution in which the rights and obligations of all Afghans (especially women) are ensured and the proposed integration of the Taliban into the Afghan political system.

The release of the government's peace plan was followed by several other consequential developments related to the Afghan conflict during 2018. In June, Afghan President Ashraf Ghani announced a unilateral cease-fire by the Afghan security forces to mark



President Ashraf Ghani attends a two-day conference on Afghanistan at the United Nations in Geneva, Switzerland. (Photo by Denis Balibouse/Reuters)

Eid al-Fitr. Remarkably, the Taliban responded to Ghani's cease-fire by announcing their own three-day unilateral cease-fire. The outpouring of public support for the cease-fire and striking scenes of Taliban fighters and government officials praying together may have bolstered the possibility for peace.² Several months later, at the first Moscow Conference on Afghanistan held on November 9, 2018, Taliban

representatives delivered what was at that point their most detailed public vision for a potential peace process. Their statement recognized a "need for peace" and described the Afghan constitution as a "major obstacle" to achieving this end.³

At the international level, in September 2018, the United States appointed its former ambassador to Afghanistan, Zalmay Khalilzad, as special advisor on Afghanistan to lead State Department efforts on Afghanistan reconciliation. As of January 2019, Khalilzad had held at least four formal rounds of meetings with Taliban officials. These took place in the context of the Taliban refusing to meet directly with the Afghan government and its demand for a two-step peace process: first, talks with the United States to address international aspects of the conflict (such as the withdrawal of American troops); and, second, talks with the "Afghan side" on internal affairs (such as the future government and the constitution).⁴ For its part, the Afghan government maintains that peace talks must be Afghan-led and that no entity other than the elected, sovereign government has the right to discuss "new governance formulas or structures."⁵

These interlocking processes appeared to take a step forward in late January 2019, when Special Representative Khalilzad confirmed that American and Taliban officials had agreed to a framework deal. This would reportedly entail Taliban guarantees to prevent Afghan territory from being used by terrorists and a possible future US troop withdrawal conditioned upon Taliban commitments to a cease-fire and peace talks with the Afghan government.⁶ A second Moscow meeting held on February 5 illustrates the opportunities and challenges to actually launching such peace talks. Moscow II notably featured informal dialogue between senior Afghan political figures and the Taliban, but still did not include the Afghan government. Nonetheless, there is a suddenly tangible possibility of genuine peace negotiations between the government and the Taliban. This report therefore examines key constitutional and political issues and how a viable peace process could handle them.

Constitutional Review Process Issues

An important reference for Afghanistan's constitutional review process is *Constitution-Making and Reform: Options for the Process*, a how-to guide for constitution makers published by Interpeace in 2011.⁷ With extensive reference to comparative international experience with constitution-making, the handbook is the most comprehensive resource on the tasks and institutions to be considered in designing a constitutional process. It also has a focus on the special needs of constitution making processes intended to help end violent conflict, making it well suited to help inform Afghan stakeholders.⁸

At the outset, the handbook points out that constitutional reform efforts that emerge from peace processes are intensely political. Such processes tend not to be drafted by legal experts in the halls of parliament but hammered out at the negotiating table between political and military leaders in peace talks. The Afghan government's peace plan fits within this broad context as it frames the Afghan government's goal as an agreement in which (1) the constitutional rights and obligations of all citizens (especially women) are ensured, (2) the constitution is accepted, or amendments are proposed through existing constitutional provisions, (3) Afghan security forces and the civil service function according to law, and (4) armed groups with ties to transnational terrorist networks and criminal organizations will not be allowed to join the political process.

In addition to setting this overarching goal, the government has identified seven main building blocks for a peace talks agenda:

1. A political process that includes a cease-fire, confidence-building measures, recognition of the Taliban as a political party, and inclusive and credible elections;
2. A legal framework that includes a constitutional review, provides access to justice, and addresses grievances;
3. Reorganization of the state to promote the rule of law and governance reforms, balanced spatial development between different regions of the country, and the reintegration of refugees and internally displaced populations;
4. Security for the population and for ex-combatants who are reintegrating;
5. Economic and social development that includes measures promoting sustained and inclusive growth, equitable access to land and public assets, a firm stance against corruption, national job creation programs, and the reintegration of refugees and ex-combatants;
6. International community support and partnership; and
7. Implementation modalities.⁹

A hypothetical peace agreement with the Taliban could therefore be expected both to address the design of a constitutional review and to situate such a review within other elements of the peace process. With respect to the broader peace process, the Afghan government and the Taliban would likely need to consider the sequencing of a possible constitutional review and other proposed peacebuilding efforts, such as initial confidence-building measures, cease-fire agreements, a US troop withdrawal, and the Taliban's integration into Afghan politics.

Furthermore, the Afghan electoral calendar must be considered. The July 2019 presidential elections have been referenced several times by Afghan authorities as critical to the peace

Comparative experience underscores the importance of factoring in the electoral calendar to planning constitutional review processes. The Taliban may perceive little current incentive to negotiate with an Afghan government that may look substantially different after elections.

process. District council elections, which may also occur sometime in 2019, are also important in the context of legally convening a Constitutional Loya Jirga (constitutionally required for amending the constitution).

At the time of writing, it was unclear whether formal intra-Afghan peace talks would launch—let alone produce results—before these votes. There have also been months of

lively debate in Kabul regarding whether the elections should be postponed to give potential peace efforts time to bear fruit.¹⁰ (The presidential elections have already been postponed once for technical reasons from April to July 2019.) For its part, the government has repeatedly stated that holding presidential elections is “key” to providing the Afghan people with the opportunity to give an elected government the mandate to conclude and implement a peace agreement.

Comparative experience underscores the importance of factoring in the electoral calendar to planning constitutional review processes. In other contexts, elections have stalled constitutional reviews if the incoming government is unenthusiastic about the process or proposed constitutional changes (such as Kenya in the early 2000s).¹¹ In addition, the Taliban may perceive little current incentive to negotiate with an Afghan government that may look substantially different after elections.

Potential key issue

- What sequencing of a constitutional review with the Afghan government’s proposed “peace building blocks” and upcoming elections would be preferable in a potential intra-Afghan peace process?

WHAT LAUNCHES THE CONSTITUTIONAL REVIEW PROCESS?

The Interpeace handbook indicates that peace-related constitutional reform processes are usually launched by agreements negotiated between the main parties to the conflict (Nepal, South Africa). The Afghan government’s peace plan largely conforms with this pattern, as it requests the Taliban to provide input to shape the peace process. If this route is indeed followed, there may also be a need to give legal effect to any political agreement, particularly if it veers from the normal method of amending the Afghan constitution.

In cases where peace agreements have referenced constitutional changes, they have usually limited themselves to providing timelines and general guidance for agreeing on and enacting amendments to the constitution. Many peace agreements stop short of specifying substantive changes to the existing constitutional text out of a deference to the need to consult society as a whole. However, there are exceptions, and in some circumstances peace agreements have included detailed timelines and procedures or have even

Zalmay Khalilzad, Special Representative for Afghanistan Reconciliation, US Department of State (Photo by USIP)

identified specific agenda items or questions the constitutional drafting body must consider (Yemen, Ukraine).

Moreover, especially in conflict situations, parties might not agree to talk about constitutional issues without guarantees that their core interests will be protected. Some peace agreements therefore contain guiding principles for the content of a new or reformed constitution.

For example, Burundi's Arusha Peace Agreement enumerated specific human rights that the future constitution would need to protect and specific agreed constitutional reforms to the executive, legislative, and judicial branches of government. When mistrust between negotiating parties is particularly acute, some peace agreements have even required domestic courts or international bodies to verify that agreed guiding principles were actually codified into the draft text of new constitutions (South Africa, Burundi, Namibia, Timor).¹²

In the case of Afghanistan, either the Taliban (to ensure that the issues they wish to reopen are on the agenda) or the Afghan government (either to protect existing women's and human rights provisions or at the behest of its various constituencies with respect to issues of concern to them) could conceivably seek such reassurances.



Potential key issues

- What detail on the rules to follow, scope, and timetable for constitutional reform does the Afghan government potentially want to prenegotiate with the Taliban in a peace agreement?
- Should the Afghan government insist on prenegotiating substantive guiding principles for a constitutional review in a peace agreement? What might these principles be?

HOW WILL CONSTITUTIONAL AMENDMENTS BE APPROVED?

The key process design decision hovering over any constitutional reform is who will approve the proposed reforms. Closely related to this issue are decision-making rules, including the size of the majority required to make decisions. A simple majority may not afford enough protection to minorities. A large majority is preferable if the country is regionally or ethnically divided. But the requirement of a large majority also increases the risk that no reforms will be adopted.¹³

The Interpeace handbook notes that, especially in postconflict situations, it is sometimes not possible to observe existing rules and decision-making mechanisms for amending a constitution. It lists some of the tactics that have been tried to address this reality, including the use of as many of the existing provisions as possible (Nepal); by negotiation, using the existing mechanisms even if they are not recognized as legitimate by one of the parties (South Africa); accepting that the constitution is hard to change, and working within the constraints (Australia); and acting outside the constitution entirely by calling a national conference or a constitutional convention or assembly (Yemen Conference for National Dialogue).

In this respect, the Afghan government in November 2018 reiterated earlier statements that “amendments [should be] proposed through the [relevant] constitutional provision.”¹⁴ The Afghan constitution is relatively clear on its amendment process. Article 150 states that proposed constitutional amendments must be approved by a two-thirds majority of a Constitutional Loya Jirga.¹⁵ (The Constitutional Loya Jirga is separately described in article 110 as consisting of the members of Afghanistan’s National Assembly and the heads of the country’s provincial and district councils.) Once approved, the amendments are enacted after their formal endorsement by the president. Finally, article 65 of the Afghan constitution appears to preclude the president sidestepping this process by instead calling a referendum on constitutional amendments.

These amendment rules create important procedural questions. Since the adoption of the constitution in 2004, Afghanistan has not held district council elections. This means that the positions of the country’s approximately four hundred district heads—a majority of a Constitutional Loya Jirga’s participants—have not been filled. In the sensitive environment that would likely surround any accord with the Taliban, this seemingly obscure technical question could take on political significance if it detracts from the body’s legitimacy. Likely aware of these constraints, former president Hamid Karzai has at various intervals called for a traditional loya jirga to generate national consensus on key issues should it not be possible to convene a Constitutional Loya Jirga.¹⁶ It is unclear, however, what legal effect such a body would have.¹⁷

Potentially just as important, the Taliban do not have direct representation in the National Assembly or on provincial councils. This lacuna is important because the Taliban have an ownership problem with the 2004 constitution, labeling it “illegitimate” because it was written in the “shadow of U.S. B-52 bombers.”¹⁸ At the November 2018 Moscow conference, the movement accepted that a constitution is a “dire need for every state” but reasserted their long-standing demand for a new constitution written by Afghan scholars in a “free atmosphere” and which is then presented to the nation for approval.¹⁹ Indeed, the Taliban’s statements on the perceived faults of the Afghan constitution have largely focused on this ownership issue rather than on specific substantive features such as elections, women’s rights, protection for minorities, and

In the Afghan context, deciding whether to follow existing procedures for amending the constitution is not a legal nicety but rather could emerge as a proxy debate on the legitimacy of the current constitutional order.

“modern” education. It is therefore unclear as to whether it would view a Constitutional Loya Jirga as a mechanism capable of resolving what appears to be their main ownership objection to the Afghan constitution.²⁰

In the Afghan context, deciding whether to follow existing procedures for amending the constitution is not a legal nicety but rather could emerge as a proxy debate on the legitimacy of the current constitutional order. The Taliban would likely resist following current constitutional procedures since doing so would imply recognition of the system extant in Kabul. The Afghan government has insisted on following current procedures for the obverse reason, but also because the amendment procedures may confer certain tactical advantages in terms of control over the approval mechanism and upholding its extant human rights protections.

Potential key issues

- How closely does the Afghan government wish to follow the current amendment procedures? Are these mechanisms capable of addressing the Taliban’s ownership complaint with the constitution?
- Is it possible to legally convene a Constitutional Loya Jirga? Is a traditional loya jirga a politically and legally viable alternative option?
- Could supplementary representation in a Constitutional Loya Jirga for the Taliban be somehow agreed on? If not, would the Taliban ever agree for a package of amendments the group had previously negotiated with the Afghan government to be submitted to a Constitutional Loya Jirga (where it risks being altered)?
- Should a potential constitutional review be sequenced to occur after a peace agreement with the Taliban has first enabled the movement’s integration into the country’s polity and hence the Constitutional Loya Jirga?

WHO WILL DRAFT THE CONSTITUTIONAL AMENDMENTS?

Constitutional drafting processes should balance the interests of different groups and communities and seek to include commonly marginalized groups such as women, minorities, or youth.²¹ Often, however, powerful incumbents, the urban population, or warring parties dominate the process. To achieve the goal of inclusivity in the drafting process, peace agreements have recently included measures to require representation on the constitutional drafting body of different political, ethnic, or regional constituencies, civil society, and women (Burundi, Yemen).

Article 150 of the Afghan constitution requires that proposed constitutional amendments be

The makeup of the constitutional amendment drafting commission raises questions regarding how the Taliban would participate in such a commission if existing amendment procedures are to be followed.

prepared by a commission established pursuant to a presidential decree. This commission is described as comprising members of the government, the National Assembly, and the Supreme Court. As described above, the commission's proposal is then presented to a Constitutional Loya Jirga for approval.

The makeup of the constitutional amendment drafting commission raises questions regarding how the Taliban would participate in such a commission if existing amendment procedures are to be followed. One option is partially at hand: a number of reconciled former Taliban are serving in the Afghan government, and some conceivably could be appointed to a drafting commission. One could also imagine the negotiation of future appointments for other Taliban members to address this need. Another option comes from the Colombian peace process, which grappled with analogous issues of representation. That country's 2016 peace agreement gave the FARC's successor political party the right to appoint three "spokespeople" to each of the two chambers of parliament exclusively to participate in debates on constitutional and legal reform bills.

Inclusivity is likely to prove problematic with respect to key parts of Afghan society as well. The government announced that a high advisory board for peace will oversee the work of its peace negotiation team and that the former body will have women's, youth, civil society, war victims, and refugees committees.²² But in light of the specific constitutional reform commission mechanism mentioned in article 150, it is unclear what role, if any, this structure and its women members could play in actually drafting constitutional amendments (as opposed to negotiating the broader peace agreement).

Potential key issues

- Will the constitutional commission envisaged in article 150 or some other ad hoc body agreed to in negotiations serve as the primary body for drafting constitutional amendments?
- If the former, is the president limited to appointing those officials named in article 150 to the constitutional commission, or can the president also make additional appointments from the Taliban and other segments of Afghan society?
- How would women and civil society be included in the amendment drafting process, insofar as article 150 names only (predominantly male) government officials as members of an amendment commission?

HOW WILL PUBLIC CONSULTATION BE CONDUCTED?

Public consultation in constitution-making processes is now widely recognized as a form of good practice. From a more utilitarian standpoint, the Interpeace handbook shows, on the basis of more than one hundred cases, that there are also well-defined strategic advantages to public participation. For example, it is difficult to fully achieve important peacebuilding objectives, such as promoting national reconciliation, in the absence of public participation.

On the other hand, the risks of public participation are also real. Prominent among them are the manipulation of the process by interest groups and the potential for mobilization of ethnic parties and populist or conservative social forces whose agendas may limit the room for substantive debate on sensitive social and political issues. Promises of public consultation can also cause disillusionment if not fulfilled. This could be of particular concern to Afghanistan's liberal constituencies, which are anxious that existing women's and human rights protections in the constitution will be sacrificed on the altar of peace. However, these risks cannot be avoided by limiting public consultation. Interest groups may be even more likely to organize if they feel excluded from the process. For Afghan stakeholders making decisions on the public participation issue, the Interpeace handbook offers a simple rule of thumb: the greater the contemplated constitutional changes, the greater the public participation that should be attempted.

A major decision with respect to public participation identified by Interpeace is whether the public should be consulted before or after the preparation of draft constitutional amendments. Subsequent consultation provides a chance to comment on concrete proposals, while prior consultation may allow greater opportunity for public views to help shape the process. It is of course possible to have public consultation both before and after a draft is prepared, but this approach will likely extend the process timelines. Public consultation may assume a wide variety of forms, including questionnaires, town halls, and full-fledged national dialogues (Yemen).

In the Afghan case, public participation may prove to be a particularly important source of political legitimacy for a constitutional review if it is not possible to follow existing amendment rules in all respects. Public initiatives may also be used to contribute ideas to talks. For example, in Kenya, a number of civil society organizations produced drafts of new constitutions to show that a workable alternative was possible.²³ This may be a type of track 2 effort that international donors would consider supporting as part of their contribution to the peace process.

Potential key issues

- At what point in the constitutional review should the “clearly delineated process of [public] consultation” referred to in the February 28 peace offer occur—before or after the amendments are drafted? How extensive should it be?
- In addition to the approval function of the Constitutional Loya Jirga, what other forms of public consultation should be attempted?



Afghanistan's new National Assembly building opened in 2015. (Photo by Omar Sobhani/Reuters)

HOW LONG SHOULD THE CONSTITUTIONAL REVIEW PROCESS TAKE?

It is useful to have deadlines for the different stages of the constitutional review process. However, the Interpeace handbook warns that close deadlines may limit public input, whereas extended deadlines can stretch out the process at a time when closure is needed. Extenuating factors in favor of a near dead-

line may include the risk of a return to conflict, the desire to complete the process before an election, or other peace process milestones (for example, troop withdrawal timetables). A key consideration in setting deadlines is the extent of public consultation envisaged, for engagement of large segments of the population would be expected to add substantially to the length of the process.

Various peace agreements have provided timetables for the completion of subsequent constitutional processes: South Africa (twenty-four months), Afghanistan's Bonn Agreement (eighteen months), Yemen (seventeen months), Ukraine (eleven months), Libya (four months), and Cambodia (three months). However, Interpeace's research finds that processes tend to exceed original timelines, and so including a procedure to extend constitutional reviews may be worthwhile. The Libya constitutional drafting process, for example, has taken five years (and counting) rather than the planned four months.

Potential key issues

- What is a realistic potential deadline for the completion of the proposed constitutional review?
- What consequences might ensue if deadlines are not met?

Key Substantive Constitutional Issues

At the 2003 Constitutional Loya Jirga, Pashtun leaders, including Hamid Karzai, made sure that the constitution established a centralized presidential system. This political system was an updated analogue to the (Durrani Pashtun) monarchy that ruled the modern Afghan state until the 1970s. The Northern Alliance and its allies had sought some degree of decentralization from Kabul and also wanted to establish a prime minister position, anticipating that a Tajik prime minister would share power with a Pashtun president. Karzai (as well as then finance minister Ashraf Ghani) opposed decentralization out of concern that it might lead to communal groups seeking autonomy, possibly with the support of neighboring states. Although unsuccessful in obtaining institutional power sharing, non-Pashtuns won recognition of the ethnic pluralism of the country, a role for Shia jurisprudence, and the right to education in one's mother tongue. They also dominated the security forces, resulting in a de facto form of power sharing.²⁴

The issue of the decentralization of the Afghan state and power sharing within the executive branch returned to the fore in Afghanistan's 2014 elections, which resulted in President Ghani appointing the runner-up, Abdullah Abdullah, chief executive officer and agreement to convene a Constitutional Loya Jirga within two years to consider amending the constitution to create an executive prime minister position (that loya jirga has not yet been held). Calls for statutory decentralization of powers to the provinces and constitutional amendments to replace Afghanistan's presidential system of government with a parliamentary one are now likely to feature in the 2019 presidential campaign. In addition, it is conceivable that the prospect of a reconciled Taliban joining the Afghan polity might further increase support for decentralization among non-Pashtun groups so as to limit the scope for Taliban social and religious mores and traditional Pashtun tribal codes to be applied across the country.²⁵

A constitutional review process, especially insofar as the government's peace plan refers to the reorganization of the state, will therefore not only have to deal with substantive differences with the Taliban but likely also this long-standing difference among the major political constituencies that have made up the post-2001 Afghan governments.

Potential key issues

- What, if any, is the relationship between the constitutional review described in the peace offer and long-standing demands from other Afghan actors for a constitutional review?
- How will the post-2001 differences on decentralization and the possible creation of an executive prime minister post be resolved?

ORGANIZATION OF THE STATE

The Taliban did not formally adopt a constitution during the time they ruled Afghanistan, believing that the Quran and sharia provided sufficient guidance for organizing the state.²⁶ In 2005, however, the movement issued an order of the Islamic Emirate of Afghanistan in response to the promulgation of the 2004 Afghan constitution. (The Taliban order and an analysis of it by the United Nations Assistance Mission to Afghanistan’s Human Rights Unit formed the basis for an earlier USIP investigation of likely key issues of debate in any constitutional review.)²⁷ A summary of this analysis is provided here, but it should be noted that the Taliban claim to have moved away from several political and social stances outlined in the 2005 order and now make only limited public reference to it. Where possible, this section updates presumed Taliban positions based on their public statements during the last two years.

The Afghan constitution establishes a democratic system of government in which a popularly elected president is the head of state and government. The Taliban ruled Afghanistan as an Islamic emirate under the leadership of the Amir ul-Momineen (Commander of the Faithful), with limited separation of powers between the executive, legislative, and judicial branches of government. To this day, the movement continues to insist that Afghanistan must have a “pure Islamic government” that is “independent,” without fully elaborating what this means.²⁸ The Taliban is also still headed by an Amir ul-Momineen, although in recent years it has not directly called for future Afghan governments to be headed by such a figure.

Both the Afghan constitution and the Taliban recognize Islam as the state religion and require that no law conflict with its tenets and beliefs. All Afghan constitutions have had a similar repugnancy clause. Since 1923, however, the country’s constitutions have swung back and forth between formally prioritizing sharia or statutory law. Amanullah Khan’s reformist 1923 constitution, Zahir Shah’s modernizing 1964 constitution, and the 2004 constitution acknowledge sources of legislation other than sharia. Meanwhile, Nadir Shah’s traditionalist 1931 constitution and the mujahideen leaders (1992–96) and Taliban emirate (1996–2001) declared sharia the sole basis for organizing their respective states.

This issue regarding the exact method of the use of sharia as a source of legislation has emerged as a central and frequently divisive point of debate in almost every major constitutional process in the Islamic world, most recently in the post–Arab Spring processes in Egypt and Tunisia. It can be expected to be a major issue in the potential peace talks given the Taliban’s prioritization of sharia.

From the standpoint of the geographic centralization of power, the first article of the Afghan constitution describes Afghanistan as an “independent, unitary, and indivisible state.” It proceeds to establish provinces as local administrative units, along with provincial and municipal councils. Article 137 also requires the national government to transfer the powers necessary to achieve these outcomes to local administrations. The 2005 Taliban order’s discussion of subnational governance, meanwhile, is almost nonexistent. It is limited to two articles, which merely note that the emirate shall be divided into provinces, districts, and subdistricts “controlled and financed” by the national government. In more recent statements, the movement’s emphasis on maintaining Afghanistan’s territorial integrity could be read as continued opposition to decentralization initiatives.

Potential key issues

- How far have Taliban positions evolved regarding elections for the head of state, the separation of powers, and the role of the Amir ul-Momineen?
- Will the 2004 constitution's prioritization of statutory law be maintained?
- Will potential decentralization initiatives be on the constitutional review agenda?

FUNDAMENTAL RIGHTS

The Afghan bill of rights enshrines the presumption of innocence and the right to liberty, due process of law, the right to vote and run for elected office, freedom of expression, freedom to assemble and hold property, the right to education for both men and women, and access to health care and the right to work. It also prohibits torture, establishes the Afghan Independent Human Rights Commission (AIHRC) to promote these rights, and states that Afghanistan will “observe” the Universal Declaration of Human Rights. Similar protections are found in earlier Afghan constitutions, including the 1931 and 1964 charters.

The Taliban have, meanwhile, referred at various points to the presumption of innocence; the prohibition of torture; rights to due process of law, legal representation, freedom of expression (within the limits of sharia), peaceful assembly, property ownership, and work (including for women); and a requirement for mandatory primary education (including for girls).

The differences between the Afghan government and the Taliban on human rights are most marked with respect to political, women's, and minority issues. The 2004 constitution provides a right for Afghan men and women to vote for representatives and to be elected to office. It further provides guarantees for women's representation in both houses of the National Assembly. By contrast, all government positions under the 2005 Taliban order were reserved for male followers of the Hanafi school of Sunni jurisprudence. In addition, while the 2004 constitution recognizes that men and women have equal rights and duties before the law, in a number of provisions the 2005 Taliban order denied women fundamental rights on the same basis as men. Finally, despite Afghanistan's tradition of elected legislative bodies dating to the 1923 constitution, the Taliban have made no direct mention of the right of citizens to elect their representatives.

The Afghan constitution also provides recognition and protection of minority rights, such as approving the use of Shia schools of jurisprudence among Afghan Shia for personal status cases. It further recognizes the rights of the small number of non-Muslim Afghans to practice their faith within the bounds of the law and specifically mentions instruction in minority languages other than Pashto and Dari.

The Taliban routinely claim to have moderated their positions on several of these issues, especially relating to women's and minority rights. The Taliban's statement at the first Moscow Conference includes a full section on “Women's Rights,” including rights to ownership,

The Taliban repeated in 2016 that there should be no discrimination against people with different religions and backgrounds. The unacceptable record of the Taliban's emirate on these questions looms large for other Afghans, however.

inheritance, education, and work in the context of what the Taliban terms “Afghan and Islamic values.”²⁹ Notably, the statement does not make reference to a role for Afghan women in political life, although at the second Moscow Conference the Taliban did sign on to a joint declaration that explicitly references protecting women’s political

rights.³⁰ With respect to minority rights, the movement’s representatives at track 2 talks in 2012 stated that “the personal, civil, and political rights of all citizens of Afghanistan,” including those of “brother ethnicities,” should be regulated through a new constitution.³¹ The Taliban repeated in 2016 that there should be no discrimination against people with different religions and backgrounds.³² The unacceptable record of the Taliban’s emirate on these questions looms large for other Afghans, however, and there is a real risk that the Taliban will contest these rights in any constitutional negotiation.

Finally, the Afghan constitution also renders some of its provisions to be nonamendable. Specifically, article 149 says that changes to the fundamental rights of the Afghan people shall be permitted only to “improve” them. This means determining whether or not following existing amendment procedures could have a substantial impact on the human rights–related outcomes of any intra-Afghan negotiations. It might also require some common understanding between the Afghan government and the Taliban of what would constitute an improvement to the rights of the people.

Potential key issues

- To what extent do the Taliban maintain positions in contradiction with the 2004 Afghan constitution, including reserving leadership positions for men?
- To what extent do the Taliban accept key rights provisions in the 2004 Afghan constitution, including political rights to vote and stand for office; equal treatment of women in areas such as political life, work, and education; minority rights (including language rights); recognition of non-Hanafi schools of Islamic jurisprudence in areas of personal status; freedom of religion; and recognition of the Universal Declaration of Human Rights and the AIHRC?
- Will the Afghan government insist on the nonamendable requirements set out in article 149 to safeguard fundamental human rights?

MAP OF AFGHANISTAN

Adapted from artwork by Peter Hermes Furian/Shutterstock.

FOREIGN POLICY AND EXTERNAL ORIENTATION

The logic for including provisions related to the constitutional reform of a country's foreign policy in a peace agreement is to address the consequences of external rivalries for its internal stability, end external support for factions in a civil conflict, and reassure external stakeholders as to the regional balance of power.

In the Afghan context, the government's peace plan devotes substantial attention to mechanisms for building regional and international support for the proposed peace process. Meanwhile, for the Taliban, US troop withdrawals are of fundamental importance. The Taliban perceives peace in Afghanistan and the withdrawal of foreign troops as directly "tied with each other" and identifies cycles of "foreign invasion" as the "fundamental cause" of four decades of war.³³

Currently, the Afghan constitution says little regarding Afghanistan's foreign policy. Article 8 requires the foreign policy of the country to follow the principles of noninterference, good neighborliness, mutual respect, and equality of rights. However, in light of several neighboring states' objections to a long-term US military presence in Afghanistan, the implications of the India-Pakistan rivalry for Afghanistan's stability, and US national security concerns related to terrorist attacks originating from Afghanistan, further constitutional exploration of Afghanistan's foreign policy may be considered to help address key external drivers of Afghanistan's conflict.

From the standpoint of comparative constitutional practice, the most common approach to addressing external drivers of civil conflicts is for international and local actors to agree on the relevant country becoming a neutral state. Historically, Afghanistan has explored this concept as well, with one form of neutrality, known as *bitarafi* in Farsi/Dari, forming a long-standing pillar of Afghanistan's foreign policy.³⁴ The possibility of Afghan authorities issuing a declaration of neutrality was also previously explored during negotiations on the Soviet troop withdrawal from Afghanistan in the 1980s.³⁵

The precedent for a neutral state was the creation of Belgium and Switzerland after the nineteenth-century Napoleonic wars, with these countries agreeing to a permanently neutral foreign policy. The 2015 Minsk II accords, the 1991 Paris Peace Accords regarding Cambodia, and the 1989 Taif Agreement to end the civil war in Lebanon provide more recent examples of how internal conflicts linked to external rivalries can lead to agreement on principles (sometimes constitutionally expressed) concerning foreign policy neutrality, prohibitions against entering into external military alliances, pro-



hibitions against stationing foreign troops in a country (or else making their presence temporary), or not allowing activities in one's territory to constitute a source of threat to other countries.

The Taliban has frequently been called on to provide the latter type of assurance with regard to international terrorism: for example, the opening of their political office in Qatar in 2013 was conditioned on pledging not to allow Afghan soil to be used to attack other countries. They reiterated this commitment at the November 2018 Moscow Conference and it now apparently features prominently in a potential framework agreement with the United States. It is conceivable that such a commitment could also find expression in a reformed constitution, to cover both regional states' concerns that rivals might use Afghan territory to attack them and international concerns that Afghanistan might once again become a launchpad for international terrorism.

Cyprus, meanwhile, presents a mirror image to the neutrality approach. Rather than adopting neutrality with respect to two competing neighboring powers, the newly independent republic entered into military alliances with both Greece and Turkey and granted the two countries most-favored-nation trade status. Cyprus's new constitution simultaneously gave these treaties constitutional effect. The economic and trade aspects of this model could be of some use to Afghanistan in exploring how to manage relations with India and Pakistan.

Finally, constitutional principles on neutrality or alliances in international peace agreements may also be accompanied by formal international guarantees. In the cases of Cyprus and Cambodia, peace agreements were accompanied by separate statements of guarantee or alliance by specific external guarantors (Turkey, Greece, and the United Kingdom for Cyprus, eighteen countries and the United Nations in the case of Cambodia). Notably, at the first Moscow Conference the Taliban expressed a need for an eventual peace agreement to be backed by international guarantees. The Taliban's lead negotiator later welcomed the participation of Saudi Arabia, United Arab Emirates, and Pakistan at the December 2018 meeting between the United States and the Taliban. He further suggested that these countries could be acceptable guarantors of a future peace agreement.³⁶

Potential key issues

- Is Afghanistan's foreign policy within the scope of a potential constitutional review, and is it one possible mechanism for building regional and international support for the peace process?
- Could constitutionally expressed foreign policy reforms be one way to address international concerns regarding terrorism and Taliban demands for a US troop withdrawal?

Possible Political Roles of the Taliban after a Peace Agreement

The irreducible issue likely to be foremost on negotiators' minds in any future intra-Afghan peace talks is the political role of the Taliban in the immediate period after signature of a peace agreement, including as it relates to governing and oversight of a constitutional review.

Comparative research into twenty-seven post–Cold War peace processes reveals three broad possible combinations of peace agreements, power sharing, and constitutional reform: (1) peace agreements that leave the current authorities in place to oversee the drafting of a new or revised constitution; (2) peace agreements that create transitional or interim power-sharing institutions designed to enable former armed adversaries to jointly govern and oversee constitution drafting or reform; or (3) armed adversaries negotiating an interim constitution (rather than a peace agreement *per se*) which provides a road map to a new permanent constitution (South Africa).³⁷

Because the Afghan government has insisted on following the 2004 constitution's amendment provisions, the third pathway—negotiating an interim constitution—seems unlikely. A fulcrum for intra-Afghan peace talks therefore could be whether the constitutional review will be overseen by the current government or an interim power-sharing arrangement between current political actors and the Taliban.

The Afghan government's peace plan contains the former option. It proposes implementing a cease-fire with the Taliban, the Taliban transforming into a political party and participating in inclusive elections, and a constitutional review getting under way. Implicit in this is that the current government would remain in place to oversee the transition process (that, the first model described above). This is also the broad shape of the September 2016 peace agreement between the Afghan government and Hezb-e-Islami leader Gulbuddin Hekmatyar. Colombia, El Salvador, and Mozambique provide comparative examples of peace processes similarly structured around reaching a cease-fire, demobilizing armed insurgents, and integrating (or subsuming) them into the state's existing political and legal structures.³⁸ Comparatively speaking, this model is perhaps more likely to emerge when government forces have the upper hand on the battlefield.

Especially in recent years, peace agreements have followed the path of establishing interim power-sharing institutions to jointly oversee transitions from war to peace so as to increase stakeholder confidence that constitutional reform commitments will be implemented (the second model above). For obvious reasons, it is often the preference of armed opposition groups. Notably, this model has often been pursued when there is a military stalemate or when insurgent groups are militarily strong enough to force political concessions from governmental opponents. The Taliban has not talked openly about potential power sharing (it continues to not meet with or recognize the Afghan government) but has apparently (ambitiously) proposed that it should nominate the head of a "caretaker" government as part of a negotiated package on a cease-fire.³⁹ Unsurprisingly, a senior Afghan official responded by stating that an interim government is not in the interest of Afghanistan and is against the constitution.⁴⁰ President Ghani has added that an interim government will never be accepted.⁴¹

Potential key issue

- What role will be negotiated for the Taliban in a potential transitional period pursuant to a peace agreement: demobilization and political integration into current structures or possible interim power sharing?

TRANSITIONAL ARRANGEMENTS

The term power sharing is widely used in the context of describing the transitional arrangements created by peace agreements. Despite this, there is no consensus definition of what power sharing entails, beyond the general notion of broad inclusion. This is in part because the aims of the transitional arrangements contained in peace agreements vary substantially according to context.⁴² In this sense, the term power sharing is elastic enough to cover both the Afghan government's preference for the Taliban's demobilization and integration into current structures and the movement's apparent preference for a caretaker government. Given the possibility that different actors could make use of the term power sharing and at the same time mean very different things by it, this section unpacks the concept and explores the different types of transitional arrangements contained in peace agreements.

In general, academic researchers refer to four categories of power sharing: political, security, territorial, and economic. These types of approaches are widely pursued because it has often been deemed that ensuring stability requires all groups to be represented in government for at least an initial period of time.⁴³ Empirical research has found that the inclusion of territorial and security power-sharing provisions in peace agreements has yielded positive effects in preventing the recurrence of violent conflict. The empirical record of political power sharing is more mixed, while the impact of economic power-sharing measures has not been extensively studied.⁴⁴ In addition, political power-sharing mechanisms have also been criticized for their alleged potential to hinder democratic development and statebuilding in the long run.⁴⁵

The content of recent peace agreements is nonetheless most extensively developed in relation to **political power sharing**—that is, the inclusion of former adversaries in government and reforms to promote more inclusive politics and elections. Peace negotiations on political power sharing can risk becoming narrowly focused on the distribution of positions in the executive branch, but such arrangements may also extend to the legislature and judiciary, to quotas in the civil service, and to electoral reforms.

For example, peace agreements in Cambodia, South Africa, Burundi, East Timor, and Libya established multimember national unity presidencies. These were sometimes required to operate on the basis of consensus (Libya). The 2011 Yemen implementation mechanism specified a 50-50 division of government between the national government and the opposition, with an equal sharing of six “sovereign ministries.” Such structures tend to be in place until the first set of elections following enactment of a new constitution. However, the empirical evidence tying



Participants attend a conference arranged by the Afghan diaspora in Moscow, February 5, 2019. (Photo by Maxim Shemetov/Reuters)

political power sharing in peace agreements to longer, subsequent durations of peace is particularly weak for measures focused on the distribution of executive positions.⁴⁶

Colombia's peace agreement meanwhile provides a comparative example for the Afghan government's proposed transformation of the Taliban insurgency into a political party. Under the peace agreement, the FARC could only register its new party after completing a disarmament process verified by the United Nations. Individual FARC members were also required to go through transitional justice processes to have their individual legal status regularized.

Political power sharing can also be extended to the legislature. In a possible parallel to the Taliban's participation in a Constitutional Loya Jirga, Burundi's Arusha Peace and Reconciliation Agreement (2000) augmented an elected eighty-one-member National Assembly with thirty-seven new members (twenty-eight for civil society and nine for parties to the agreement, including former armed groups) and created a new upper house to ensure regional and ethnic balance. These two bodies also had the shared responsibility of drafting a new constitution to be approved by a two-thirds majority of their joint membership. Similarly, for a temporary period of ten years, the 2016 Colombia peace agreement guaranteed the FARC a minimum of five seats in the country's upper and lower houses of parliament.

Finally, from a political power-sharing standpoint, peace agreements may also establish certain safeguards to ensure that appointments to the judiciary during a transitional period are not dominated by any one group. Such measures may include requiring a two-thirds majority approval of judicial nominees by the interim legislature (South Africa, Burundi).

Security power sharing is also frequently included in peace agreements and addresses the integration of armed forces, disarmament and demobilization, and initial security sector reform. In the Afghan case, the government's peace plan prioritizes disarmament and demobilization of the Taliban. The Taliban would meanwhile likely press for some form of recognition of its fighters and reform of the security sector. More generically, the literature describes the importance of security power sharing to armed groups as a way to provide security guarantees and some assurance that peace agreements will be implemented after the groups potentially lose their main leverage by disarming.

Peace agreements may therefore establish checks on the constitutional powers of the commander in chief or require the integration of former insurgents into the security forces. Lebanon's Taif Agreement describes the president as the ceremonial commander in chief but twice states that the armed forces are controlled by the cabinet. The 2015 Libyan Political Agreement designates the collective Presidency Council as the "Supreme Commander of the Libyan Army" while according a new committee of the transitional legislature a strong security sector oversight role. The 2011 Yemen transition agreement did not allow either the government or the opposition bloc in the government of national unity to simultaneously hold the Ministry of Defense and the Ministry of Interior. Burundi's 2000 Peace and Reconciliation Agreement has a lengthy chapter on restructuring the leadership of the security sector and integrating Hutu rebel groups into the security forces.

Territorial power sharing, through local autonomy or federalism, has also historically been used to address self-determination demands. Papua New Guinea (Bougainville), Sudan (South Sudan), Indonesia (Aceh), and the Philippines (Mindanao) are examples of peace agreements devolving substantial powers to specific regions as the main attempted political means of conflict resolution (as opposed to focusing on providing opposition groups with a share of political power or representation in the national security forces).

Notwithstanding the floating of ideas to create "safe zones" for the Taliban in parts of southern Afghanistan, there is little evidence that the militant group is interested in local autonomy.⁴⁷ The Taliban formerly ruled Afghanistan and are associated with ethnic Pashtuns, the country's largest ethnic community and traditional political elite. The movement claims to be interested not in a mini-Islamic emirate in southern Afghanistan but rather a substantial share of power in Kabul. It has historically favored a highly centralized model for the Afghan state. Moreover, Islamist movements are in general wary of federalism or decentralization initiatives as dividing the Islamic community of believers.

This is not to say that the Taliban would be uninterested in appointments to key provincial political and security positions, but rather that the constitutional decentralization of authority to the provinces is not a key political goal of the movement. This understanding of Taliban views, however, should not be tested. Its positions or those of its prominent field commanders may have evolved during the lengthy conflict. Non-Pashtun communities and other constituencies

in Afghan society could also find the prospect of some degree of local Taliban autonomy in the south or southeast preferable to it having a major share of political power in Kabul or the systematic integration of Taliban fighters into the national security forces.

Economic power sharing is often used where systematic discrimination has resulted in differential development among the various regions of a country, and particularly where community grievances over maldistribution of resources have generated conflict.⁴⁸ While extensive challenges related to socioeconomic development and job creation are a perennial challenge for the Afghan state, it is not clear that perceived discriminatory access to economic resources in areas of the traditional Taliban heartland of southern Afghanistan is a root cause of the insurgency.

The government's peace plan does, however, refer to the need for balanced development, inclusive and sustained growth, equitable access to land and public assets, fighting corruption, job creation, and the reintegration of refugees and ex-combatants. The economic aspects of peace agreements are indeed understudied, and economic power sharing could theoretically be explored as a means to accelerate the delivery of a peace dividend and to promote reintegration.⁴⁹

Potential key issue

- What types or combinations of transitional arrangements—political, security, territorial, economic—are most appropriate for the envisaged political goals of intra-Afghan Talks?

DURATION OF TRANSITIONAL ARRANGEMENTS

If transitional arrangements to enable the Taliban to participate in Afghan political life are established by a future Afghan peace agreement, questions would naturally follow regarding their appropriate duration.

Most recent peace agreements with transitional governing arrangements have set time-bound road maps. The 2000 Burundi accords and Afghanistan's own 2001 Bonn Agreement, for example, had transition timetables of more than thirty months. More recently, most Arab Spring countries had transition timetables of twenty months or less, although several of these timetables had to be extended or were not completed (Yemen, Libya). Peace agreements may also seek to prevent interim leaders or ministers from entrenching themselves in power by requiring them to pledge not to run in the first set of elections pursuant to a new constitution (Tunisia).

For comparison purposes, the Afghan government's November peace plan proposes a five-year implementation period for the peace process. It also specifies that this timetable should be front-loaded with political actions during the first twelve months to create trust and confidence.

Potential key issue

- What would be the duration of any potential transitional arrangements pursuant to a peace agreement?

Conclusion

As of early 2019, there is no agreement to hold intra-Afghan talks between the Afghan government and the Taliban. Heavy fighting continues on the Afghan battlefield and the Taliban continues to reject formally meeting with the Afghan government. The reported tentative US-Taliban understanding on a framework agreement, however, makes intra-Afghan talks a more tangible possibility than ever before. There is also the wider context of 2018's temporary Eid cease-fire, separate presentations by the Afghan government and the Taliban of competing, substantive agendas for an Afghan peace process, and increasingly frequent informal dialogue between the Taliban and senior Afghan political figures.

This report has sought to create a practical resource for Afghan and international policymakers to further elaborate their thinking on two crucial potential aspects of the peace agenda outlined by the Afghan government: a possible constitutional review and how the Taliban might be integrated into the Afghan polity. The Taliban for its part has called for changes to the Afghan constitution and discussion of the future government in talks with what they still euphemistically refer to as the “Afghan side.”

At this point, there are more questions than answers as to how to address these interrelated issues. What procedures could be used to activate the institutions to implement a potential constitutional review? What substantive issues could be on the agenda in potential constitutional negotiations as relates to the internal organization of the Afghan state and its foreign policy? How will the fundamental rights of Afghan citizens, and especially women, be protected in a hypothetical reformed constitutional order? And what would be the initial post-peace agreement role of the Taliban in the Afghan political system?

These questions represent complicated issues in their own right. Moreover, procedural questions related to who drafts and approves possible constitutional amendments could become proxy contested areas in the fight over the legitimacy of the current political order and, by extension, how government will operate in the immediate period after signature of a possible peace agreement. Further elaboration and public consultation by Afghan authorities on the specifics of these matters could thus yield strategic benefit if and when current diplomatic efforts mature into genuine intra-Afghan peace talks.

Notes

1. United Nations Assistance Mission in Afghanistan, “Briefing to the United Nations Security Council by the Secretary-General’s Special Representative for Afghanistan,” December 17, 2018, unama.unmissions.org/sites/default/files/17_december_2018_srsrg_briefing_security_council_english.pdf.
2. Kate Clark, “The Eid Ceasefire: Allowing Afghans to Imagine Their Country at Peace,” *Afghan Analysts Network*, June 19, 2018, www.afghanistan-analysts.org/the-eid-ceasefire-allowing-afghans-to-imagine-their-country-at-peace.
3. *Voice of Jihad*, “Transcript of a Speech Delivered by Delegation of the Islamic Emirate at Moscow Conference,” November 9, 2018, www.alemarah-english.org/?p=37316.
4. Faridullah Hussainkhalil, “Taliban Reiterates Its Focus Is on Withdrawal of Foreign Troops,” *TOLONews*, November 10, 2018, www.tolonews.com/afghanistan/taliban-reiterates-its-focus-withdrawal-foreign-troops.
5. *Frontier Post*, “NSA Mohib reacts to speculations regarding UAE talks over Afghan peace,” December 20, 2018, www.thefrontierpost.com/nsa-mohib-reacts-to-speculations-regarding-uae-talks-over-afghan-peace.
6. Mujib Mashal, “U.S. and Taliban Agree in Principle to Peace Framework, Envoy Says,” *New York Times*, January 28, 2019, www.nytimes.com/2019/01/28/world/asia/taliban-peace-deal-afghanistan.html.
7. Michele Brandt, Jill Cottrell, Yash Ghai, and Anthony Regan, *Constitution-Making and Reform: Options for Process* (Geneva: Interpeace, November 2011), www.interpeace.org/wp-content/uploads/2011/09/2011_11_Constitution-Making_Handbook_English.pdf.
8. Interpeace is an international organization for peacebuilding that supports locally led initiatives around the world. It was established in 1994 by the United Nations. Its constitution-making handbook draws upon the experiences of 119 countries and was written by experts with decades of experience in advising on constitutional matters. In his foreword to the handbook, former UN Special Representative for Afghanistan Lakhdar Brahimi notes that he wishes that this resource had been available when he was mandated to assist Afghanistan’s 2004 constitutional drafting process.
9. Islamic Republic of Afghanistan, “Offering Peace: Framing the Kabul Conference of February 28, 2018,” on file with the author.
10. Pamela Constable and Sayed Salahuddin, “Afghan Election, Taliban Talks May Be on Collision Course,” *Washington Post*, November 15, 2018, www.washingtonpost.com/world/asia_pacific/afghan-election-taliban-talks-may-be-on-collision-course/2018/11/15/02415522-e840-11e8-bbdb-72fdbf9d4fed_story.html.
11. Brandt et al., *Constitution-Making and Reform*.
12. Ibid. In South Africa and Burundi, verification was carried out by constitutional courts. In Namibia and Timor, the UN Security Council helped to verify that constitutional principles were followed.
13. Ibid.
14. “Summary of Islamic Republic of Afghanistan’s Road Map for Achieving Peace,” presented at the Geneva Conference on Afghanistan, November 27–28, 2018, on file with the author.
15. A loya jirga (Pashto for “grand council”) is a gathering of Afghan tribal elders, religious figures, and political leaders. Such gatherings have historically been used in Afghanistan to make national decisions. Loya jirgas approved the 2004 constitution as well as its twentieth-century predecessors.
16. Following the adoption of the 2004 Afghan constitution, a distinction has come to be made between loya jirgas convened based on the procedures and with membership outlined in the constitution (“Constitutional Loya Jirga”) and those convened on an ad hoc basis (“traditional loya jirga”).
17. Hamid Mohmand, “Karzai Calls for a Loya Jirga to Determine Afghan Future,” *Ghandara*, August 16, 2016, gandhara.rferl.org/a/afghanistan-hamid-karzai-interview/27926333.html.
18. “Text of Speech Enunciated by Islamic Emirate of Afghanistan at Research Conference in France,” December 24, 2012, shahamat-english.com/index.php/paighamooona/28777-textof-speech-enunciated-by-islamic-emirate-of-afghanistan-at-research-conference-in-france.
19. *Voice of Jihad*, “Transcript of a Speech Delivered by Delegation of the Islamic Emirate at Moscow Conference.”
20. See Sean Kane, “Talking to the Taliban: Should the Afghan Constitution Be a Point of Negotiation?” Special Report no. 356 (Washington, DC: US Institute of Peace, January 2015), www.usip.org/sites/default/files/SR356-Talking-with-the-Taliban-Should-the-Afghan-Constitution-Be-a-Point-of-Negotiation.pdf.
21. Brandt et al., *Constitution-Making and Reform*.
22. *TOLONews*, “Government Announces High Advisory Board for Peace,” December 12, 2018. www.tolonews.com/afghanistan/govt-announces-high%2%A0advisory-board%2%A0-peace.

23. Ibid.
24. See Barnett R. Rubin and Georgette Gagnon, “The US Presence and Afghanistan’s National Unity Government: Preserving and Broadening the Political Settlement” (New York: Center on International Cooperation, August 2016), cic.nyu.edu/sites/default/files/national_unity_government_final.pdf.
25. Kane, “Talking to the Taliban.”
26. Sharia is a set of broad principles on morality, religious obligations, and legal rules derived from the Quran and the Sunnah (the practices of the Prophet Mohammed). Detailed principles and legislation are derived from sharia by the exercise of analogy and independent reasoning by Islamic scholars.
27. Kane, “Talking to the Taliban.”
28. *Voice of Jihad*, “Transcript of a Speech Delivered by Delegation of the Islamic Emirate at Moscow Conference.”
29. Ibid.
30. *TOLONews*, “Joint Declaration Issued after Moscow Talks,” February 6, 2019. www.tolonews.com/index.php/afghanistan/joint-declaration-issued-after-moscow-talks.
31. “Text of Speech Enunciated by Islamic Emirate of Afghanistan at Research Conference in France.”
32. *Voice of Jihad*, “The Just Stance of [sic] Islamic Emirate Regarding Lasting Peace in the Country,” January 24, 2016, web.archive.org/web/20160404132909/https://shahamat-english.com/the-just-stance-of-islamic-emirate-regarding-lasting-peace-in-the-country.
33. *Voice of Jihad*, “Transcript of a Speech Delivered by Delegation of the Islamic Emirate at Moscow Conference.”
34. See Nasir A. Andisha, “Neutrality in Afghanistan’s Foreign Policy,” Special Report no. 360 (Washington, DC: US Institute of Peace, March 2015), www.usip.org/sites/default/files/SR360-Neutrality-in-Afghanistan’s-Foreign-Policy.pdf.
35. Diego Cordovez and Selig S. Harrison, *Out of Afghanistan: The Inside Story of the Soviet Withdrawal* (New York: Oxford University Press, 1995): 299–300.
36. Reuters, “Afghanistan Ceasefire Push in Focus in U.S., Taliban Talks,” December 18, 2018, <https://uk.reuters.com/article/uk-usa-afghanistan-taliban/afghanistan-ceasefire-push-in-focus-in-us-taliban-talks-idUKKBN1OH0MC>.
37. Christine Bell and Kimana Zulueta-Fülscher, “Sequencing Peace Agreements and Constitutions in the Political Settlement Process,” International IDEA Policy Paper no. 13 (Stockholm: International Institute for Democracy and Electoral Assistance, November 2016), www.idea.int/publications/catalogue/sequencing-peace-agreements-and-constitutions-political-settlement-process.
38. Ibid.
39. Reuters, “Afghanistan Ceasefire Push in Focus in U.S.”
40. Voice of America Dari Service, “Interim Government Not in the Interest of Afghanistan—Daudzai,” December 19, 2018, United Nations Assistance Mission for Afghanistan Media Monitoring, on file with the author.
41. *TOLONews*, “President Ghani Says Afghans Will Never Accept an Interim Government,” January 20, 2019, twitter.com/tolonews/status/1087046938200027139.
42. Helga Malmin Binningsbo, “Power-sharing, Peace and Democracy: Any Obvious Relationships?” *International Area Studies Review* 16, no. 1 (2013): 89–112.
43. Brandt et al., *Constitution-Making and Reform*.
44. See, for example, Anna Jarstad and Desiree Nilsson, “From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords,” *Conflict Management and Peace Science* 25, no. 3 (2008): 206–23; Karl DeRouen Jr., Jenna Lea, and Peter Wallensteen, “The Duration of Civil War Peace Agreements,” *Conflict Management and Peace Science* 26, no. 4 (2009): 367–87; and Philip Martin, “Coming Together: Power-Sharing and the Durability of Negotiated Peace Settlements,” *Civil Wars* 15, no. 3 (2013): 332–58.
45. Chandra Lekha Sriram and Marie-Joëlle Zahar, “The Perils of Power-Sharing: Africa and Beyond,” *Africa Spectrum* 44, no. 3 (2009): 11–39.
46. Martin, “Coming Together.”
47. Anuj Chopra, “Afghanistan Is Trying a Radical Strategy to Undermine Pakistani Influence over the Taliban,” Agence France-Presse, January 10, 2017.
48. Sriram and Zahar, “The Perils of Power-Sharing.”
49. Achim Wennemann, “Money Matters: Economic Dimensions of Peace Mediation,” PSIS Occasional Paper no. 4 (Geneva: Programme for Strategic and International Security Studies, University of Geneva, 2007), repository.graduateinstitute.ch/record/225605.

ABOUT THE INSTITUTE



The United States Institute of Peace is an independent national institute, founded by Congress and dedicated to the proposition that a world without violent conflict is possible, practical, and essential for US and global security. USIP pursues this vision on the ground in conflict zones, working with local partners to prevent conflicts from turning to bloodshed and to end it when they do. The Institute provides training, analysis, and other resources to people, organizations, and governments working to build peace.

BOARD OF DIRECTORS

Stephen J. Hadley (Chair), Principal, RiceHadleyGates, LLC, Washington, DC • George E. Moose (Vice Chair), Adjunct Professor of Practice, The George Washington University, Washington, DC • Judy Ansley, Former Assistant to the President and Deputy National Security Advisor under George W. Bush, Washington, DC • Eric Edelman, Hertog Distinguished Practitioner in Residence, Johns Hopkins School of Advanced International Studies, Washington, DC • Joseph Eldridge, University Chaplain and Senior Adjunct Professorial Lecturer, School of International Service, American University, Washington, DC • Kerry Kennedy, President, Robert F. Kennedy Center for Justice and Human Rights, Washington, DC • Ikram U. Khan, President, Quality Care Consultants, LLC, Las Vegas, NV • Stephen D. Krasner, Graham H. Stuart Professor of International Relations at Stanford University, Palo Alto, CA • John A. Lancaster, Former Executive Director, International Council on Independent Living, Potsdam, NY • Jeremy A. Rabkin, Professor of Law, George Mason University, Fairfax, VA • J. Robinson West, Chairman, PFC Energy, Washington, DC • Nancy Zirkin, Executive Vice President, Leadership Conference on Civil and Human Rights, Washington, DC

Members Ex Officio

Mike Pompeo, Secretary of State • Patrick Shanahan, Acting Secretary of Defense • Frederick J. Roegge, Vice Admiral, US Navy; President, National Defense University • Nancy Lindborg, President, United States Institute of Peace (nonvoting)

THE UNITED STATES INSTITUTE OF PEACE PRESS

Since its inception in 1991, the United States Institute of Peace Press has published hundreds of influential books, reports, and briefs on the prevention, management, and peaceful resolution of international conflicts. All our books and reports arise from research and fieldwork sponsored by the Institute's many programs, and the Press is committed to expanding the reach of the Institute's work by continuing to publish significant and sustainable publications for practitioners, scholars, diplomats, and students. Each work undergoes thorough peer review by external subject experts to ensure that the research and conclusions are balanced, relevant, and sound.

OTHER USIP PUBLICATIONS

- *Youth Protest Movements in Afghanistan: Seeking Voice and Agency* by Srinjoy Bose, Nematullah Bizhan, and Niamatullah Ibrahim (Peaceworks, February 2018)
- *Pakistan's Approach to Navigating the Saudi-Iranian Split* by Ankit Panda (Special Report, February 2018)
- *Civilian-Led Governance and Security in Nigeria After Boko Haram* by Jibrin Ibrahim and Saleh Bala (Special Report, December 2018)
- *Securing China's Belt and Road Initiative* by Zi Yang (Special Report, November 2018)
- *Resisting Violence: Growing a Culture of Nonviolent Action in South Sudan* by Moses John, Philip Wilmot, and Nicholas Zarembo (Special Report, November 2018)



**UNITED STATES
INSTITUTE OF PEACE**
Making Peace Possible

2301 Constitution Avenue, NW
Washington, DC 20037
(202) 457-1700
www.USIP.org