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Loya Jirgas and Political Crisis Management in Afghanistan: Drawing on the Bank of Tradition

By Scott S. Smith



Delegates assemble at the Consultative Peace Loya Jirga in Kabul on April 29, 2019, to discuss an approach for achieving peace with the Taliban. (Photo by Omar Sobhani/Reuters)

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Summary

- Loya jirgas, though rooted in traditional Afghan practices, are essentially modern political institutions that are convened to address problems of great national importance. Loya jirgas have almost always endorsed the decisions of the national leader.
- Since 1915, no loya jirga has been convened under the same modalities, yet they have in common their national composition, their attempts to demonstrate broad inclusiveness, their generally large size, and their lack of formal rules of procedure. Despite inconsistencies in how they are convened and managed, their decisions almost always have been respected.
- The post-2001 political order is founded on two loya jirgas: the 2002 Emergency Loya Jirga, which legitimized the post-Bonn Agreement interim government; and the 2004 Constitutional Loya Jirga, which ratified Afghanistan's current constitution.
- The 2004 constitution included specific provisions for convening future loya jirgas: the majority of delegates are to be selected from among district councils. But because these councils have never been elected, it has been impossible to convene a loya jirga in accordance with the Afghan constitution, thereby frustrating the resolution of national crises.
- Since 2010, three “traditional” or “consultative” loya jirgas—so called because of the inability to call together loya jirgas in accordance with the strict provisions set out in the 2004 constitution—have been convened on an ad hoc basis by Presidents Hamid Karzai and Ashraf Ghani.
- Should a loya jirga be required to resolve an electoral crisis or ratify a new political order following a peace agreement with the Taliban, particular attention will need to be paid to ensuring representativeness (including new political constituencies, such as women and youth, that have emerged in the post-2001 order) and transparency.

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**DEMOCRACY &
GOVERNANCE**

ABOUT THE REPORT

Derived from Afghan village assemblies, *loya jirgas* are important political institutions whose authority is rooted in traditional decision-making practices. In light of the growing political uncertainty in Afghanistan, this report examines the eighteen *loya jirgas* that have been held since 1915 and identifies what approaches have and have not worked in case this institution needs to be called upon again.

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Tribal heads gather at the Mirwais Nekah School in Kandahar to select candidates to participate in the June 2002 Emergency Loya Jirga to form a transitional government. (Photo by Eugene Hoshiko/AP)

The Modernity of a Tradition

At times of national crisis over the past century, Afghan political elites have utilized a *loya jirga*, or grand national assembly, when they have needed to demonstrate national consensus. The *loya jirga* is an extrapolation at the national level of traditional village jirgas convened to resolve local disputes. Yet despite this nod to tradition, *loya jirgas* are essentially modern political institutions. They came into existence at the same time as Afghanistan's first constitutions—one of the first *loya jirgas*, convened in 1923, ratified Afghanistan's first constitution—and since then a total of eighteen *loya jirgas* have been held. In 1964, for the first time, the modalities of convening a *loya jirga* were codified in the national constitution, bringing the tradition more into alignment with modern political institutions. This dual nature of the *loya jirga* explains both its strength (as an instrument for legitimacy and national unity) and its weakness (by being a brake on the political modernization of other institutions, such as the legislature and the courts). This duality is also at the heart of an enduring paradox: despite inconsistent methods of convening and managing *loya jirgas*—and contemporary complaints that they have been manipulated—their decisions consistently have been respected, surrounded by an uncommon aura of authority.

The reconstruction of political institutions after the toppling of the Taliban regime in 2001 relied heavily on the *loya jirga* mechanism. The interim arrangements agreed to at the 2001 Bonn Conference were ratified by an Emergency Loya Jirga (ELJ) in 2002, and the reframed Afghan constitution was ratified by a Constitutional Loya Jirga (CLJ) that came together in late 2003 and

concluded in January 2004. The 2004 constitution codified *loya jirgas*, specifying their composition and their purpose. However, the district councils from which the majority of *loya jirga* members were to be selected have never been elected, making it impossible to convene a *loya jirga* in accordance with the constitution. As the foundation of Afghanistan's constitutional legitimacy is increasingly questioned, the inability to convene a *loya jirga* under the constitution further weakens it.

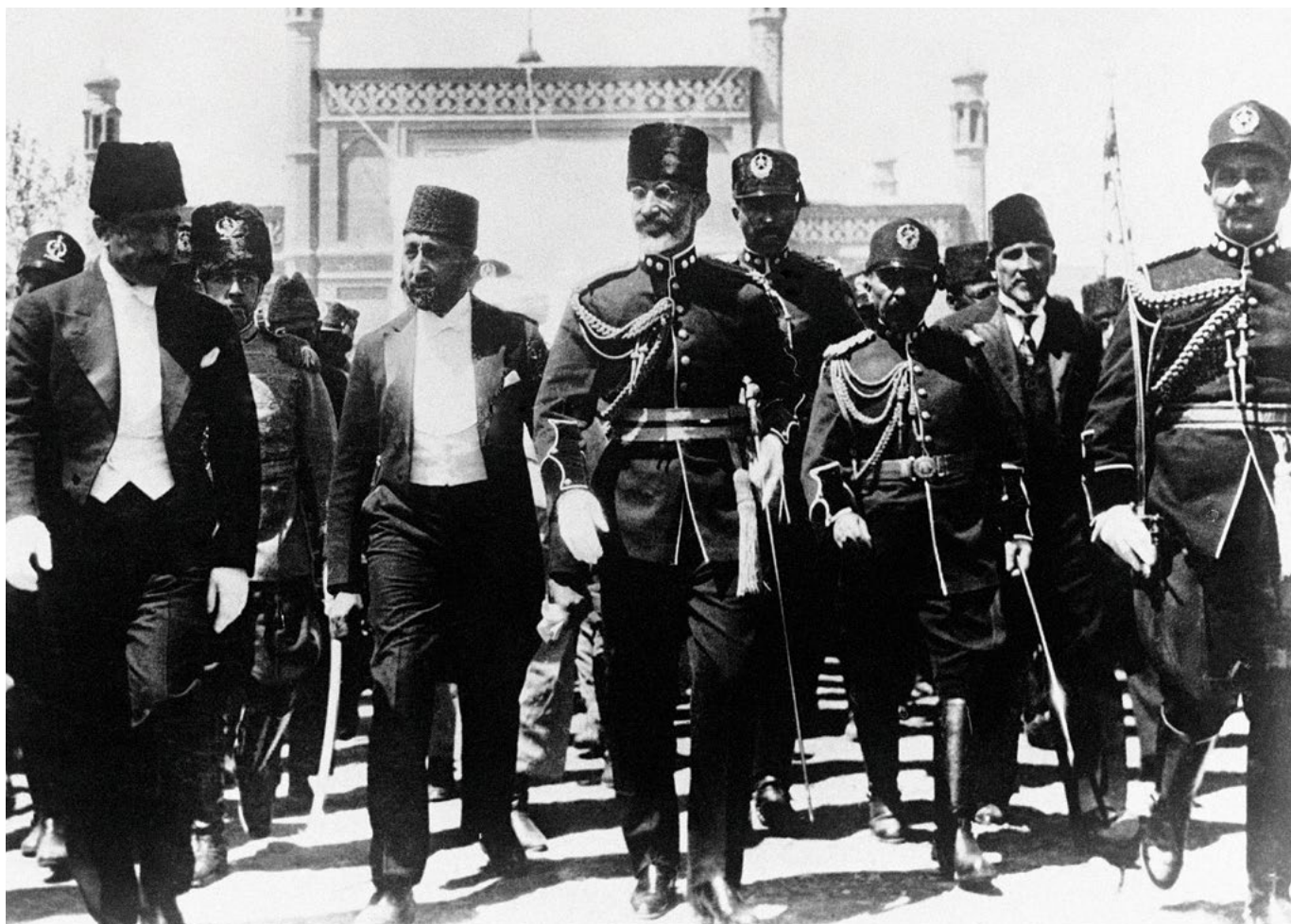
In the past two decades, the governments of Presidents Hamid Karzai and Ashraf Ghani have sought the appearance of national unity at critical moments by convening *loya jirgas* on ad hoc terms, since they have not been able to be convened on constitutional terms. Yet this approach sets up a paradoxical situation—a constitution that cannot be fixed by constitutional means, and nonconstitutional *loya jirgas* held to cover constitutional gaps.

History and Paradoxes of Loya Jirgas

The *loya jirga* is a national manifestation of a traditional system of collective decision making. Anthropologists have long documented the centuries-old function of village-level *jirgas*, but *loya jirgas* are a tradition of modern invention. M. Jamil Hanifi has made the case for the modernity of the *loya jirga* most forcefully. He casts doubt on the veracity of what can be called Afghanistan's founding myth—that its first king, Ahmad Shah Abdali, was elected by a *loya jirga* in Kandahar in 1747. Hanifi argues that this myth was “reproduced virtually intact by the Afghan government and by local and Western postcolonial writers interested in political processes and leadership in Afghanistan.”¹ The historicizing of *loya jirgas* has been used to reinforce their legitimacy. The most modernizing of Afghanistan's leaders, King Amanullah, actually proposed abolishing the concept of *loya jirgas* at the 1928 *loya jirga* as part of a raft of other modernizing reforms, such as greater freedoms for women and enforced monogamy.² Nonetheless, recourse to *loya jirgas* persisted throughout the century. Whenever a crisis begins to emerge in Afghanistan, the idea of convening a *loya jirga* is always part of the discussion of how to resolve it.

There has never been a consistent formula for calling for, forming, or managing *loya jirgas*, and no two *loya jirgas* have ever been convened in the same way. Similarly, as Hanifi points out, there has not been a “systematic examination of this feature of the Afghan state during the past century” to give the concept greater consistency or even retain it accurately in historical memory. A *loya jirga* thus “functions as a sodality—it dissolves when the need for it disappears.”³ Until the 1964 constitution, there were no specified rules on why or how to convene a *loya jirga*, and later constitutions (including the 1987 constitution, its 1990 update, and the current constitution adopted in 2004) also codified *loya jirgas*. No *loya jirga*, however, has been convened in accordance with the constitutional provisions in force at the time. As Benjamin Buchholz notes, “In reality not one such assembly has been summoned in the form prescribed by the relevant constitution. This is probably attributable to the *loya jirga*'s adaptability, the characteristic that makes it an attractive political tool.”⁴

This lack of consistency has not equated to lack of authority. Almost always, decisions made or ratified by *loya jirgas* have been respected, even when there have been complaints about the composition or management of the assembly. They tend to be composed of a mix of representatives from the provinces and from Kabul's political elite. The number of participants in *loya*



Mohammad Nadir Shah, king of Afghanistan, leaves a mosque accompanied by his ministers after the festival of Kurban Beirams in July 1930. (Photo by AP)

jirgas has ranged from around five hundred to several thousand. The rules of procedure and rules of decision making generally are ad hoc: decisions rarely are made by a formal vote, and written records hardly ever are kept.

In most cases, loya jirgas have been convened to ratify a decision of national importance already taken by the head of the executive. In these cases, loya jirgas have tended to respond in the affirmative. In some cases, however, loya jirgas have been called for consultation, and the government has not always received the response it sought or expected. Although most loya jirgas focused on the issue for which they were convened, on some occasions they have made decisions slightly beyond their original remit.

The fact that loya jirgas need to be convened in the first place is a reminder that Afghanistan's formal constitutional institutions have proven inadequate to address questions of a certain importance at a given time. Prior to 1964, when Afghan governments did not seek popular legitimacy for most of their decisions and legislatures were nonexistent, loya jirgas became unique mechanisms of representation.⁵ Straddling the formal and the informal, with the unusual feature that the issues of greatest importance require the convening of an essentially informal body, loya jirgas have

come to be part of Afghanistan’s customary constitutional law—or, in Hanifi’s words, a “hegemonic apparatus . . . in the absence of free and democratically elected parliamentary institutions.”⁶

Finally, even though *loya jirgas* have become fixtures of contemporary Afghan political thought, their revival in 2001—when Afghanistan was self-consciously designing political institutions for the twenty-first century—was not automatic. The Soviet-backed regime under the People’s Democratic Party of Afghanistan (PDPA) initially had attempted to undermine Afghan traditions, yet it held several *loya jirgas*. The mujahideen, who sought a more traditional vision of Afghanistan, tended to disdain these *loya jirgas*. Mujahideen leader Ahmad Shah Massoud had resisted calls for a *loya jirga* in 1992, when the mujahideen factions finally took Kabul. Unlike the 2001 Bonn Agreement, the 1992 Peshawar Accord—which established the post-communist Islamic State of Afghanistan—made no mention of a *loya jirga* and entrusted decision making on Afghanistan’s political future to a small “Islamic Council” of about fifty members.⁷ A year later, the more detailed Islamabad Accord called for elections to create a “constituent assembly” that would draft a constitution, but omitted the phrase “*loya jirga*.”⁸ By 2001, *loya jirgas* appeared to be more a feature of communist-era rule than of mujahideen politics. Nonetheless, they reentered Afghanistan’s political history with the 2002 ELJ and 2003–4 CLJ.

Decisions and Modalities

Loya jirgas have tended to be convened and managed in an ad hoc fashion, but all those that have been held have certain commonalities. This section uses available information on previous *loya jirgas* to identify these commonalities and highlight particular differences.

TYPES OF DECISIONS

Modern *loya jirgas* have dealt almost exclusively with either constitutional issues or issues of war and peace—with two exceptions. First, the 1930 *loya jirga* approved Nadir Shah as king amid tribal unrest caused by his forceful accession to the throne the previous year, and affirmed support for his policies. In a reversal of the typical sequence, 105 members of the 1930 *loya jirga* formed a National Council—essentially a legislature—and this council, rather than a *loya jirga*, adopted Nadir Shah’s 1931 constitution. As Shamshad Pasarlay, a legal scholar at Herat University, points out, it is not clear that the provisions were actually debated, and the discussion during the 1930 *loya jirga* was mostly about the circumstances under which Nadir Shah had come to power—an example of a *loya jirga* going beyond its original intent.⁹ In all other cases, *loya jirgas* have ratified constitutions, which in turn have created legislative bodies.

The second exception is the 2002 ELJ, which had three responsibilities: to elect a head of state for the Transitional Administration, which would take over from the Interim Administration established at Bonn; to approve the structure of the Transitional Administration; and to approve the selection of individuals to fill key positions. Most observers argued that the issues were presented and managed in a way that foreclosed certain options and forced others. Therefore, the ELJ was reduced to a ratifying body despite its deliberative pretensions. As a International Crisis Group report noted, “There were no illusions inside the tent that this was to be a fully democratic process.”¹⁰



Afghan people watch the opening assembly of the Emergency Loya Jirga on television at a market in Kabul on June 11, 2002.
(Photo by Beawiharta/Reuters)

Apart from the 1930 and 2002 loya jirgas (and disregarding the possibly mythical loya jirga of 1747), no national leader has been legitimized by a loya jirga. As the American anthropologist Thomas J. Barfield pointed out, “Zahir Shah ascended to the throne without a loya jirga in 1933, and Daud [i.e., Mohammed Daoud Khan] consulted with no one when he declared himself president in 1973. Although their reasons for doing so differed sharply, no successor regime (PDPA, mujaheddin, or Taliban) ever assembled a loya jirga to legitimize its leaders either.”¹¹

MODALITIES

Although no loya jirga has been held under the same modalities since the first modern loya jirga held in 1915, their organization has had three consistent factors: representation, type of decision (whether binding or not), and rules of procedure (whether specified or not). Even when loya jirgas have been codified in a constitution, that codification normally has not gone much beyond defining the participants or making vague references to “issues of national importance.” For example, while the 1923 constitution did not contain a provision for convening a loya jirga, the constitution itself was subsequently unanimously approved by an 872-member loya jirga.¹² The following year, to placate an armed rebellion by the Mangal tribe, the constitution was amended. These amendments did not go through a constitutionally defined amendment process but instead were ratified by a loya jirga that convened in Paghman. Similarly, the 1931 constitution did not mention loya jirgas, but several were held during the time in which it was in effect, including the 1941 loya jirga that considered how to respond to the British government’s wartime demand that German and Italian citizens leave Afghanistan. A loya jirga in 1955 approved the

policy supporting independence for Pashtuns in Pakistan (the “Pashtunistan” issue under the premiership of Mohammed Daoud Khan).

By enumerating several specific powers to the *loya jirga*, the 1964 constitution was an exception. Among those powers, *loya jirgas* were to attest to the abdication of the king (article 17); form part of a larger “electoral council” to elect a king from the royal line if the king abdicated or died without having a qualified brother (article 19); inquire into requests by more than one-third of the *Wolesi Jirga* (the lower house of the legislature) for impeachment of the prime minister or a majority of the cabinet for treason (article 93); inquire into requests by more than one-third of the *Wolesi Jirga* for impeachment of the chief justice or Supreme Court judges for treason (article 106); concur in the extension of a state of emergency (article 113); and approve constitutional amendments (articles 121 and 122).

ORGANIZATIONAL COMMITTEE

To prepare to convene *loya jirgas*, the first step usually is to form an organizational committee. Neither the 1964 nor the 2004 constitution paid much attention to how such a committee should be formed and what its mandate should be. Perhaps as a result, great attention has been paid to selecting overseers of preparations in the most recent nonconstitutional *loya jirgas*. With the exceptions of the 1964 and 2002 *loya jirgas*, overseers or delegates generally have not been chosen through elections. (Even in the exceptional cases, only part of the *loya jirga* was elected; for the 2002 ELJ, the elections were indirect.) Instead, governors or other officials have selected delegates. Given the opacity of selection methods, there is always the presumption that the person selected to oversee preparations has strong influence over the participants and is acting on behalf of the ruler.

The most transparent and structured organizing committee model was the Special Independent Commission that organized the 2002 ELJ. This commission was supported by a secretariat and received significant assistance from the United Nations and the international community, both of which were intensely involved in the selection of the representatives.¹³ If the 2004 constitutional model were followed, the vast majority of delegates would come from elected bodies, minimizing the influence of the organizing committee. However, as discussed below, the elections to those bodies to date have been flawed or nonexistent.

REPRESENTATIONS

Representation in *loya jirgas* generally has involved a combination of regional notables (who may or may not have a national role), national elites (who may or may not have regional constituencies), and prominent representatives of important social categories, such as the *ulema* (clerical figures), spiritual leaders, judges, and intellectuals. Representatives come from all over the country, and a key aspect of a *loya jirga*’s legitimacy is the fact that it contains representatives from all regions and tribes. Ranging in size from several hundred to more than three thousand in the most recent *loya jirga*, *jirgas* are large enough to convey this sense of nationwide representation. Since 2001, *loya jirgas* have expanded social categories to include women, youth, civil society, and the war-disabled. As the country has changed, so has the understanding of what representation means.

The 1964 *loya jirga*, convened to ratify the constitution, set a new standard for representation. In addition to the 176 members of the lower house elected under the 1931 constitution, it



Members of the Consultative Loya Jirga attend a gathering in Kabul on November 21, 2013. (Photo by Omar Sobhani/Reuters)

included 351 members from around the country elected specifically for the loya jirga as well as one hundred appointed members (included four women). Historian Richard S. Newell, writing in the early 1970s, observed that the jirga “represented virtually all elements of Afghan life, including non-Muslims, and it reflected virtually all variations of sociopolitical outlook, education, and experience.”¹⁴ The composition of this loya jirga was a deliberate attempt to be as representative as possible, in line with Zahir Shah’s overall prodemocratic disposition.

The 1964 and 2004 constitutions codified loya jirga representation. Loya jirgas were to include members of elected bodies as well as those appointed to representative bodies (the Meshrano Jirga, or upper house, in the case of the 2004 constitution) and key government officials. It likely was assumed that the electoral process would ensure that those who were elected would in fact be representative. One of the central failures of the current political environment has been the erosion of the credibility of elected institutions and their representativeness. District councils, as noted, have never been elected, preventing the legal convening of a constitutional loya jirga since 2004. The most recent parliamentary term was extended three years until elections finally were held in October 2018. The poor quality of those elections led to disputes about the results and about how representative the members of parliament really are. Provincial Council elections,

Despite the importance of the decisions they are convened to endorse, jirga representatives frequently are selected in opaque and inconsistent ways—and yet this is not a particular source of controversy in Afghan politics.

which should have taken place in 2018, have yet to happen; they were scheduled for September 2019, but the Independent Election Commission postponed them for an indefinite period.

The 2002 ELJ offered a middle ground, where 1,051 delegates were elected indirectly from about fifteen thousand figures selected at the district level. (Delegations were composed of figures selected at the district level,

with members from the 390 district delegations then elected to participate in the ELJ itself.) These delegates were complemented by 450 delegates selected from among refugee groups, universities, and civil society groups and approved by the Loya Jirga Commission.¹⁵ Controversially, approximately one hundred mujahideen figures who “had chosen not to stand as candidates, presumably because they considered it to be below their dignity or because they feared losing face (and thus political status) by not being elected” were added to the gathering at the last minute.¹⁶ A year and a half later, when the CLJ was convened, security had deteriorated to such a degree that it was decided not to hold new elections. Instead, 344 of the 450 elected members were elected by the same fifteen thousand district representatives chosen during the ELJ process, with an additional forty-two members elected as representatives of refugees, displaced people, Kuchis, Hindus, and Sikhs. Finally, the president selected a further fifty members, of which half were women.¹⁷

Other recent jirgas have exhibited similarities to and differences from the typical structure of a loya jirga. In 2010, a “national consultative peace jirga” endorsed the creation of the High Peace Council to prepare for talks with the Taliban. Thomas Ruttig of the Afghanistan Analysts Network suggested that this council technically should not be considered a loya jirga because of its ambiguous intent; nonetheless, it shared many characteristics with the loya jirgas described earlier.¹⁸ In 2013, the so-called Traditional Loya Jirga endorsed the Bilateral Security Agreement, formally the Peace and Security Agreement, with the United States. Notably, the jirga overruled President Karzai’s objections, marking one of the few examples of a loya jirga that did not endorse the ruler’s preferred outcome. Finally, the Consultative Peace Loya Jirga of April and May 2019 provided guidelines for the government to negotiate a political agreement with the Taliban. For all intents and purposes, the delegates of the 2010 and 2013 loya jirgas were selected by the president’s office. The 2019 jirga had 3,200 delegates, but there is no reliable information on how they were selected.

Despite the importance of the decisions they are convened to endorse, jirga representatives frequently are selected in opaque and inconsistent ways—and yet this is not a source of controversy in Afghan politics. This apparent level of acceptance is especially curious when compared to the criticism, complaints, and even public demonstrations surrounding parliamentary and presidential elections. The difference in reaction may stem from the absence of any expectation that such a “traditional” assembly would have formal elections, and perhaps also from the fact that a loya jirga is a temporary institution convened for a particular purpose. Yet these approaches leave a number of questions unanswered: What are loya jirgas actually meant to represent? Are they meant to bring the views of constituents to bear on the topic? Are they meant to represent the various communities of Afghanistan? Or, given their geographic and tribal diversity, do they simply represent *representativeness*?

The deliberative nature of the 1964 loya jirga suggests that loya jirgas are expected to represent the Afghan peoples' views. In the words of one 2013 loya jirga delegate, "People asked me where I was going and I said that I was going to the jirga, but that I didn't know anything about it yet. They said, if you don't know anything about the agenda and you haven't discussed it with us, how can you represent us and how can the jirga represent us?"¹⁹ That jirga was not particularly deliberative, even compared to the 2010 Peace Jirga, where "there had at least been a sense of real debate in the hall, even if much of their conclusions [were] eventually marginalized and the government made sure it got its priorities into the final agreement."²⁰

RULES OF PROCEDURE

Even though loya jirgas often are seen as the highest organs of representation and legitimacy in Afghan politics, they simultaneously can be tainted by the presumption that their purpose is ultimately to "legitimize the pre-planned decisions and actions of the governments."²¹ But there have been exceptions. As Newell noted of the 1964 loya jirga,

It is likely that many of the delegates may have seen their responsibilities as an obligation to give the government what they thought it wanted from the new constitution. But as proceedings progressed, criticism and expressions of independent views frequently dominated debate. . . . Despite past acquiescence in government demands, the debates within this assembly presented a remarkable combination of principles based upon the ideals of western liberal democracy and the spirit of Afghan traditional tribal councils.²²

Afghanistan scholar Ali Wardak agreed with this assessment, saying that the 1964 loya jirga was "generally accepted as legitimate" in part because the outcome was not immediately obvious.²³ As previously noted, however, this jirga was something of an outlier in terms of its scope, structure, and outcomes.

For some reason, complaints about inconsistent or even improvised procedures, along with vague agendas, have not undermined the authority of decisions made during the most recent loya jirgas. Even the most structured loya jirga, the 2002 ELJ, which was supported and closely watched by the international community, ended up resorting to ad hoc decision making. Afghanistan expert Anders Fänge described the approval of the preliminary list of ministers as follows:

On the last day, Karzai held a speech in which he presented the list [of 14 proposed ministers for the Transitional Administration,] after which he suddenly looked out over the assembly and asked for its approval. A few moments of confusion followed. Some delegates raised their hands, others stood up and tried to get their voices heard, while the majority appeared to be merely bewildered. "Very good," Karzai said, "the list is approved." And that was it.²⁴

Similarly, Ruttig described another major ELJ decision made almost in an ambush:

It reminds of what happened at the Emergency Loya Jirga when [Abdul Rasul] Sayyaf, who had taken over the podium, declared with assistance from [influential Shia cleric Asef] Mohseni, that "we" want the Transitional Government [to] be named as "Islamic." And he asked "all good Muslims" in the (same) tent to rise from their chairs if they agreed. Only a very few, possibly perplexed delegates dared to stay put.²⁵



Afghan women assembly for the Consultative Peace Loya Jirga in April 2019. (Photo by Omar Sobhani/Reuters)

The International Crisis Group reported that a lack of guidelines slowed the ELJ's proceedings, which resulted in "several agenda-less days, chaotic speakers' lists, and delegates frustrated at not knowing what, when, or how they were to decide issues."²⁶ These reports suggest that the vagueness of procedures allowed certain outcomes to emerge from the loya jirgas without it being clear that these outcomes represented

the will of the participants. As Ruttig concluded in his assessment,

Loya Jirgas are—and have usually been, despite all understandable idealisation of this traditional Afghan institution—gatherings which, despite all open discussions, simply rubber-stamped decisions [made] outside, "*posht-e purda*" (behind the curtain). . . . All you need is a clever white-bearded chairman . . . who proclaims unanimity without having a vote. Of course, "traditionally" jirgas have no votes.²⁷

The 2002 ELJ was interesting in this regard, taking place at a moment in Afghanistan's history where there was a concerted effort to modernize, but where the pull of tradition remained strong. Some observers reported that the decision on the final composition of the government was made by a show of hands rather than an actual vote, which they note "neither conform[ed] to the spirit of the traditional loya jirga, nor to the principles and values of modern democracy and the Bonn Agreement."²⁸ At the subsequent CLJ, which lasted several weeks, more deliberation seemed to have been expected of the participants. Certain issues, such as the choice of a national language and the nature of the parliamentary system, were divisive. Some two hundred delegates boycotted the assembly for three days during the discussion on the national language.

A consistent structural aspect of loya jirgas going back at least to 1964 is that the large assembly is divided into working groups that examine specific issues and report back to the plenary. This method of organization compensates for the fact that most loya jirgas are so large that it is unrealistic to expect every delegate to speak in the plenary. Consequently, even though loya jirgas may well be symbolically representative and able to carry out their consultation and ratification functions, they hardly ever are *deliberative*. Because records of working group discussions are not kept, it is impossible to know the tenor of their discussions, the weight of the opinions expressed,

or the major controversies that took place—even after the loya jirga has disbanded. According to Hanifi, only the 1924 loya jirga had “an officially issued, published, comprehensive record.”²⁹

A question raised by Afghanistan’s electoral and loya jirga processes is the degree to which Afghan elites (at least contemporary ones) actually *want* fixed procedures and accurate records. In many cases, their designs seem to depend on ambiguity. According to Ruttig, the printed constitution had been changed from its final iteration in the CLJ, including the addition of a clause that called for the exclusive use of Pashtun names in key institutions.³⁰ Could the clarity provided by more formal procedures inhibit the ambiguity required to achieve consensus? Or have these short-term, apparent consensus merely papered over problems rather than solving them?

In 2012, a “Youth Peace Jirga”—supported by the government but not organized by it—was held to discuss how to achieve peace in Afghanistan.³¹ It featured extensive preparations by a youth secretariat that had worked for eight months. Despite this unusual degree of formal preparation, the 1,700-member jirga split over the inclusion of certain issues in the final resolution, which led to recriminations relating to questions regarding the jirga’s true financial backers. This outcome again suggests the limitations of jirgas as deliberative bodies, regardless of their official or unofficial status and degree of formal preparation. The CLJ serves as a counterpoint, and yet its high degree of deliberation came with an equally high degree of international involvement. According to Ruttig, President Karzai initially called for a vote on a set of rules of procedure to govern the discussions. A delegate from the Jamiat-e-Islami political party responded by proposing that there first be a vote on the nature of the Afghan political system on which Karzai and the Jamiat disagreed. As Ruttig describes, “The discussion was quickly suppressed, however, and there was never a vote on the rules of procedure.”³²

The Present Era of Consultative Loya Jirgas

In the past decade, an unusually high number of nonconstitutional loya jirgas have been convened (in 2010, 2013, and 2019). The 2014 National Unity Government Agreement specified that a loya jirga should have been held to amend the constitution in 2016, but, as mentioned earlier, this was not possible according to strict constitutional guidelines. Afghan leaders convening these ad hoc jirgas have used qualifying words to describe them. President Karzai described the 2010 loya jirga as “traditional” and the 2013 loya jirga as “consultative.” The 2019 loya jirga, convened by President Ghani (to seek views on a peace agreement with the Taliban) also was described as “consultative.” These jirgas did not have the authority to amend the current constitution or make any other legally binding decisions, but they were still seen as promulgators and guardians of consensus.

The most recent of these, the 2019 Consultative Loya Jirga, came together in Kabul between April 29 and May 3. This jirga departed from previous examples in several notable ways. It was one of the largest jirgas ever held, with around 3,200 participants. At the same time, it was boycotted by much of the Kabul elite. The boycott had more to do with the impending presidential election, with rival candidates regarding the jirga as a campaign event for Ghani’s reelection or even as a political ploy to endorse his remaining in power if elections could not be held. Views

in Kabul were divided over whether the boycott hurt Ghani more than the boycotters. In the end, the jirga focused on the four peace-related questions it had been convened to address, and its work did not blur into political campaigning for the presidential election.

The preparations for the 2019 loya jirga were halting and uncertain. It was not clear how the delegates were selected either during the process or afterward. (Umar Daudzai, head of the Secretariat of the High Peace Council, had been given the task of organizing it, but did not reveal his selection method.) Some sources said that the method was similar to that of the 2003–4 CLJ, which involved indirect elections. Even after the delegates had been determined, it was not clear what questions would be put to the delegates until late in the process. Moreover, there was confusion about who would preside until the last moment, when Abdul Rasul Sayyaf was persuaded to take on the task. Finally, women were represented more than usual, comprising about 30 percent of the delegates, four out of the ten members of the administrative board, and thirteen heads and twenty-eight secretaries of the fifty-one committees.³³

The four-day jirga was asked to consider four questions: (1) How can the Taliban be convinced to participate in negotiations? (2) What should the government's redlines be? (3) How should the government's negotiating delegation be composed? (4) How should Afghanistan deal with its neighbors? Each working group submitted its responses, and these responses were distilled into a final 23-point communiqué—one that matched closely with President Ghani's known views on the four questions. At the jirga's closing ceremony, Ghani announced that the communiqué had established a road map for the government's future approach to a peace process. Observers of the jirga said that the working groups' documents had been selectively edited to produce the final document, and nonconforming points had been left out; however, nobody suggested that the final communiqué contradicted the general sense of the jirga. (A similar complaint had been raised during the loya jirga that debated the Bilateral Security Agreement in 2013, when a participant who had live-tweeted the event said the final communiqué deliberately ignored any recommendations that the government found undesirable.³⁴) Otherwise, the general pattern established by previous loya jirgas was maintained: decisions were made by consensus, there were few surprises, the head of state received what appeared to be a popular endorsement of a critical decision, and the country moved on.

The age of consultative loya jirgas, held in lieu of *constitutional* loya jirgas, raises several new questions. The most recent loya jirga reached a consensus, but the questions were broad and somewhat abstract, and the method of refining the discussions into a final document left a great deal of power to whoever held the pen. Would this method be sufficient to resolve a larger crisis involving matters that more directly touched the key interests of powerful actors? If not, are these repeated holdings of nonconstitutional, consultative loya jirgas weakening the value of the institution? Finally, have these loya jirgas undermined trust in more formal institutions, in particular the legislature and the judiciary, that ideally should have the competence and confidence to make these decisions?

Some observers suggest that by drawing too frequently on the bank of tradition, recent governments are undermining the usefulness of loya jirgas as mechanisms of last resort to seek consensus on issues of national importance. In a situation where such issues are growing, where constitutional loya jirgas cannot be held, where formal institutions are facing several crises of legitimacy, the devaluation of loya jirgas would leave Afghan political elites with few recognizable mechanisms to solve their problems.



Female delegates attend the Consultative Peace Loya Jirga in Kabul on April 29, 2019. (Photo by Omar Sobhani/Reuters)

Conclusion and Recommendations

Afghanistan is in a slow-motion political crisis. The government's inability to hold timely and credible elections undermines its legitimacy, and the entire political system faces the possibility of being redrawn in the event of a political settlement with the Taliban. Existing political institutions increasingly lack the competence and confidence to resolve the deepening problems of legitimacy.

Under these circumstances, contemporary Afghan politicians have reflexively turned to loya jirgas to resolve deep-rooted differences. The historical evidence, however, suggests several reasons to be cautious about relying solely on loya jirgas for this purpose. The first reason is that loya jirgas historically have never been used for such a purpose. For the most part, loya jirgas have taken place within an existing and uncontested constitutional order, and have been used to ratify constitutional changes or deal with matters having to do with external wars. They generally are predictable in what they are called upon to ratify—and thus appear to rubber-stamp the government's preferred decisions—because the government in place is sufficiently confident of its authority to call them. If political legitimacy is, as the sociologist Charles Tilly defined it, “the probability that other authorities will act to confirm the decisions of a given authority,” then each loya jirga is to some degree a bet on that probability.³⁵ At times, however, governments might be making a losing bet, most notably in situations where the legitimacy of the governing order itself has been thrown into question. This institution of “invented tradition,” with its uncertain rules and unclear demands of representation, has never been tested in such a way.

Another reason to be cautious is the inherently ratifying quality of loya jirgas and their weakness as deliberative bodies. A loya jirga convened to resolve serious political differences would face early disputes on the method of its composition and rules of procedure. These disputes might not be resolvable. Even deciding who among the elites should attend the jirga would be contentious in this more polarized time. For example, an attempt in April 2019 to assemble a delegation of 250 representative elites to talk to the Taliban fell apart, indicating the strong challenges to elite consensus.

Despite these reasons for caution, Afghanistan does not have another workable mechanism that has the perceived political authority and actual historical record to demonstrate national consensus at a time of crisis or significant change. The prospect of a political settlement with the Taliban—and whether or not a new constitution will need to be ratified to make such a settlement happen—would require such a demonstration of national consensus.

In looking ahead to a loya jirga to ratify a possible new political dispensation, the following recommendations should be kept in mind:

- Recent loya jirgas have represented the modernization of Afghanistan by including new and important constituencies such as women and youth. To ensure maximum representation, planning for a future loya jirga should include an exercise to determine additional constituencies that have emerged (for example, rural or non-Kabul-based civil society organizations).
- Given that the convening of a loya jirga would likely take place in a more permissive security context (under a cease-fire or cessation of hostilities), a significant number of delegates should be chosen by direct or indirect elections.
- Greater efforts should be made to keep an accurate and complete record of the loya jirga's proceedings. This record could be used to better understand the sources of future disagreements and help resolve them, and it would be a historical resource for future generations. Finally, it might improve the quality of debates if delegates are aware that their positions are being recorded for posterity.
- The loya jirga's organizing committee should establish transparent and fair rules of order. This will facilitate a more inclusive debate and encourage the forum to deal with substantive issues more effectively than in the past.
- Should a formal loya jirga be part of a future constitution, the modalities of convening such a constitutional loya jirga should be feasible at the moment of the constitution's ratification.

Annex: Key Characteristics of Loya Jirgas since 1915

This annex provides details on what are commonly considered the main loya jirgas convened since 1915, including their composition, purpose, and other relevant information.

HELD DURING THE REGIME OF HABIBULLAH KHAN (1901–19)

Known as:	No official name
Date & Place:	1915, in Kabul
Purpose:	To endorse Habibullah Khan’s decision to maintain Afghanistan’s neutrality in World War I.
Result:	Afghanistan’s neutrality endorsed.
Delegation:	540 representatives invited by Habibullah from across Afghanistan. ³⁶

HELD DURING THE REGIME OF AMANULLAH KHAN (1919–29)

Known as:	No official name
Date & Place:	1922, in Jalalabad
Purpose:	To create Afghanistan’s first constitution.
Result:	Successful in establishing a constitution, which was formally approved on April 9, 1923.
Delegation:	872 representatives—likely appointed by Amanullah Khan—from the Mohman, Bajwur, and Afridi tribes. The jirga consisted mostly of tribes from around Jalalabad because of difficulties relating to travel during the winter months. ³⁷

Known as:	No official name
Date & Place:	July 1924, in Paghman
Purpose:	To address and defend Amanullah Khan’s proposed social reforms.
Result:	Amanullah made minor amendments to his Nizamnama (constitutional) reforms and to the constitution.
Delegation:	1,054 delegates, appointed by Amanullah. M. Jamil Hanifi detailed the delegation as representing nine provinces, with 231 delegates from the central government bureaucracy (high-level government officials chosen by Amanullah), seventy-five delegates from the ulema (religious authorities); 111 Sadat delegates (non-Pashtun figures who claim sacred descent); thirty-three Mashayekh delegates (non-Pashtun mystics who claim sacred descent, including notable groups such as the mujaddidis and Qaderiya Sufi networks); 240 Khawanin delegates (local leaders and landowners); 272 wokala delegates (representatives, landowners, or merchants); 111 khawanin wa wokala (khans and representatives). The majority of the representatives (68 percent) were from non-Pashtun provinces. Hanifi believes this to have been representative of the Afghan population at that time. ³⁸

Known as:	No official name
Date & Place:	August 1928 and October 1928, both in Paghman
Purpose:	To discuss and recall Amanullah Khan's reforms (August) and to amass support on Amanullah's behalf for even-more-radical social reform policies (October).
Result:	The August jirga rejected most of Amanullah's policies. The October jirga resulted in general support for his policies but received significant backlash from religious communities.
Delegation:	Approximately one thousand representatives, appointed by Amanullah. Some sources cite this loya jirga as the first time women delegates were selected to sit on the council. Other sources claim that the 1964 loya jirga was the first to include women. The second jirga was composed of one hundred of Amanullah's loyal followers, mostly government officials and prominent figures in Kabul.
Note:	In some reports, these are considered two separate loya jirgas. They are listed together here because the second loya jirga was held shortly after the first and was a direct consequence of the unfavorable ruling in the first loya jirga. ³⁹

HELD DURING THE REGIME OF MUHAMMAD NADIR SHAH (1929–33)

Known as:	No official name
Date & Place:	September 1930, in Kabul
Purpose:	To officially name Muhammad Nadir Shah as king, discuss a constitution, and establish the governing bodies under Nadir's rule.
Result:	Nadir Shah became king. The jirga reintroduced traditional policies and created governing and legislative bodies, all of which were approved by Nadir.
Delegation:	According to Louis Dupree, this loya jirga had 286 delegates, all of whom were "notables." Another source claims there were 506 delegates from "various districts of the country as well as around twenty members of the diplomatic corps in Kabul." Regardless of the exact number, the representatives were likely picked by Nadir. The loya jirga was headed by Prime Minister Mohammed Hashem, Nadir's brother. Thomas Barfield writes that the loya jirga was "hastily assembled and composed only of his [Nadir's] followers." Both Dupree and Shamshad Pasarlay claim that 105 loya jirga delegates were appointed to form a National Council. ⁴⁰

HELD DURING THE REGIME OF MOHAMMAD ZAHIR SHAH (1933–73)

Known as:	No official name
Date & Place:	November 1941, but the location is not known
Purpose:	To determine Afghanistan's position and alliances in World War II.
Result:	Afghanistan chose to expel Axis nationals from Afghanistan and to remain neutral for the remainder of the war.
Delegation:	The number of representatives, their breakdown, or how they were selected is not known. ⁴¹

Known as:	No official name
Date & Place:	July 26, 1949, in Kabul
Purpose:	To hold a vote on the Durand Line (the Afghanistan-Pakistan border) and to settle border disagreements between the Afghan and Pakistani governments.
Result:	According to Louis Dupree, the loya jirga “repudiate[d] all boundary treaties made with the British, gave support to the idea of an independent Pashtunistan and urged that all the people in those areas should be given a referendum and the right to vote to join Afghanistan.”
Delegation:	The number of representatives, their breakdown, or how they were selected is not known. ⁴²
Known as:	No official name
Date & Place:	1955, in Kabul
Purpose:	To warn Afghan leaders of imminent war against Pakistan.
Result:	Afghan leaders grew increasingly worried about the possibility of war. According to Thomas Ruttig, Afghanistan “started military cooperation with the Soviet Union that year.”
Delegation:	The number of representatives, their breakdown, or how they were selected is not known. ⁴³
Known as:	No official name
Date & Place:	September 1964, in Kabul
Purpose:	To draft, discuss, and endorse a constitution.
Result:	Successful in creating Afghanistan’s 1964 constitution.
Delegation:	452 representatives selected by Mohammad Zahir, including members of the National Assembly (176 delegates), the Senate (nineteen), the Cabinet (fourteen), the Supreme Court (five), the Constitutional Committee (seven, including four women), the Constitutional Advisory Commission (twenty-four, including two women), elected provincial candidates (176), and thirty-four other delegates selected by Zahir (including four women). Three delegates belonged to more than one of these groups. ⁴⁴

HELD DURING THE PRESIDENCY OF MOHAMMED DAOUD KHAN (1973–78)

Known as:	No official name
Date & Place:	January 1977, but the location is not known
Purpose:	To ratify a constitution for the new administration and to legitimize President Daoud’s ascent to power.
Result:	Successful in ratifying a constitution. However, this decision was short-lived, as Daoud would be overthrown in a coup and assassinated in 1978.
Delegation:	The number of delegates is not known with certainty, although delegates would have been mostly, if not entirely, selected by Daoud. In an analysis of the 1977 constitution, Shamshad Pasarlay writes that the composition of the loya jirga consisted of members of the Milli Jirga, Daoud’s cabinet, members of

the Central Committee of the National Revolutionary Party, the Supreme Court, the High Council of the Armed Forces, provincial representatives (five to eight from each province, based on population), thirty additional delegates selected by Daoud, and 130 appointed delegates to represent the public (including military officers, factory workers, small farmers, urban intellectuals, and women). Pasarlay estimates that women comprised 15 percent of the delegation.⁴⁵

HELD DURING THE PRESIDENCY OF MOHAMMAD NAJIBULLAH (1987–92)

Known as: No official name

Date & Place: November 1987, but the location is not known

Purpose: To ratify a new constitution.

Result: Successful in ratifying the constitution. However, the constitution was poorly received among the mujahideen parties.

Delegation: The number of representatives, their breakdown, or how they were selected is not known.

Notes: After Najibullah claimed the presidency, he formed the Extraordinary Commission for National Reconciliation and tasked it with drafting a constitution, which was adopted and ratified by the *loya jirga*. This constitution named Islam as the official religion of Afghanistan and established a political structure driven by elections that would be held in 1988. Despite significant concessions to more fundamentalist religious policies, the constitution did not win the support of Afghanistan's religious militias, which believed that the Najibullah administration lacked legitimacy and authority.⁴⁶

Known as: No official name

Date & Place: 1990, in Kabul

Purpose: To amend the 1987 constitution, ratify it, and “moderate the communist face of the Afghan government.”

Result: Successful in ratifying a constitution, but with few substantive changes.

Delegation: The number of representatives, their breakdown, or how they were selected is not known.

Notes: Afghanistan's growing political and social turbulence encouraged Najibullah to make another attempt at a more inclusive constitution. He created a constitutional amendment committee for the purpose of amending the constitution to protect “the interests of the nation, the basics of Islam, and peace and national reconciliation.” The amended constitution was very similar to the 1987 version and did not dispel mujahideen tensions. The amendment committee included several representatives from the official religious establishment but no mujahideen representatives. Ultimately, the most significant change was the labeling of Afghanistan as an “Islamic State.”⁴⁷

HELD DURING THE “AFGHAN INTERIM AUTHORITY,” CHAIRIED BY HAMID KARZAI

Known as: Emergency Loya Jirga

Date & Place: June 2002, in Kabul

Purpose: To elect a head of state, agree on the structure of the Transitional Administration and agree on the Transitional Administration’s cabinet/key posts.

Result: Appointed positions for the Transitional Administration, but only through poorly conducted elections and an unrepresentative loya jirga.

Delegation: The delegation consisted of 1,501 elected representatives. Women accounted for 140 of the delegates (but only forty were directly elected). The delegation also included 450 civil society appointees. Last-minute additions by government officials of about one hundred delegates pushed the total count to about 1,600. Representatives were selected from each constituency “on the basis of an allocated number between twenty and sixty, according to the size of the constituency.” The elected representatives were then placed on a panel from which the “quota” for the election would be selected. The process finally ended in the secret election of the final members to the loya jirga. The constituency observation team and the regional observation team oversaw the process to ensure fairness.⁴⁸

HELD DURING THE PRESIDENCY OF HAMID KARZAI (2002–14)

Known as: Constitutional Loya Jirga

Date & Place: December 2003–January 4, 2004, in Kabul

Purpose: To create and ratify a new constitution.

Result: Approved the constitution unanimously.

Delegation: 502 delegates selected by elections and appointments by President Karzai. Each province was guaranteed two female representatives. The final delegation included 102 women, only eight of whom were directly elected; all others were appointed by President Karzai or pulled from other lists of representatives. The selection process took about six months.⁴⁹

Known as: Peace Jirga

Date & Place: June 2010, in Kabul

Purpose: To discuss whether the government should negotiate with the Taliban.

Result: Endorsed President Karzai’s proposals to negotiate with Afghan insurgents,

Delegation: 1,600 delegates, split into twenty-eight subcommittees, many of which included women as deputy chairs. Most delegates were handpicked by Karzai. The delegation was widely criticized for excluding civil society activists and those with conflicting political views.

Notes: This jirga was noted for being “consultative,” meaning that there was no concrete decision made in the process. Many considered this to be contrary to the institution of jirgas, in that a jirga is meant to be a “binding decision-making power.” Thomas Ruttig has noted that this jirga’s ambiguous intent means that it technically should not be considered a loya jirga. The jirga’s chairman position

was hotly contested and ultimately fell to former Afghan President Burhanuddin Rabbani, whose appointment was met with widespread disapproval. As Rabbani was one of the only Tajik leaders of Afghanistan, his supporters felt that he would be able to “bring the Tajiks in.” Some blamed him for death and destruction during the civil war of the 1990s, which had taken place during his time in office. Despite any progress that may have been made by discussing peace, there was little effort to actually implement changes as recommended by the Peace Jirga.⁵⁰

Known as:	Traditional Loya Jirga
Date & Place:	November 2011, in Kabul
Purpose:	To endorse the Strategic Partnership Agreement between Afghanistan and the United States and begin peace negotiations.
Result:	No lasting results. The jirga was widely viewed as political theater.
Delegation:	2,030 delegates, split into forty working groups. A quarter of the available seats were reserved for women, and 230 seats were to represent Afghan refugees in various countries. The delegates included underrepresented civil society actors such as the ulema, tribal elders, refugees, the disabled, and women. Most were appointed by President Karzai or selected by provincial officials. Delegates were selected based on sixteen criteria designed to encourage social, ethnic, and political diversity. The Afghanistan Analysts Network cites a Pajhwok News Agency report that stated that “all sitting parliamentarians, some former MPs, 30 per cent members of each provincial council, representatives of civil society and special people [this might be handicapped people], religious scholars and influential tribal elders will attend.” (Brackets in the original.) Despite the superficial diversity in representation, the delegation was criticized for being stacked with Karzai loyalists. ⁵¹

Known as:	Consultative Loya Jirga
Date & Place:	November 2013, in Kabul
Purpose:	To discuss the Bilateral Security Agreement between Afghanistan and the United States.
Result:	Supported signing the agreement, but President Karzai held negotiations until he could make more amendments to it. Karzai ultimately signed the Bilateral Security Agreement.
Delegation:	2,500 delegates, chosen by the Jirga Commission, whose thirty-two members were all appointed by Karzai. The delegates were chosen to represent seventeen groups, including “ulama, lawyers, civil society activists, members of both houses of parliament, governors, provincial council chairmen, ‘well known women,’ tribal elders, businessmen, representatives of Afghan refugees living in Pakistan, Iran and other countries, of Kuchis and the disabled, and candidates of the upcoming presidential election.” The jirga was split into fifty working groups. Overall, the jirga was criticized for mostly consisting of supporters of the Karzai administration. ⁵²

HELD DURING THE PRESIDENCY OF ASHRAF GHANI (2014–)

Official name: Consultative Peace Loya Jirga

Date & Place: April 29–May 3, 2019, in Kabul

Purpose: To find a common approach to peace with the Taliban through three phases—prenegotiations, negotiations, and postagreement—over a five-year period.

Result: Inconclusive.

Delegation: 3,200 delegates, including 1,500 provincial representatives (including Kuchis, Sikhs, and Hindus), 250 members of parliament, 750 “people from different ethnicities,” 423 from the provincial councils. A gender quota stated that the delegation must be at least 30 percent women. The delegation also included the heads of the thirty-four provincial councils and 387 district councils. Delegate elections were poorly regulated and many reported unsafe election sites. Delegates theoretically were chosen according to constitutional guidelines, but in reality provinces were allocated representative positions and selected their representatives by “consensus of elites.”⁵³

Notes

The author is grateful for the invaluable assistance of Lucy Stevenson-Yang for compiling the information contained in the annex.

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