

Statebuilding and Justice Reform

Post-conflict reconstruction in
Afghanistan

Matteo Tondini

Contents

<i>List of figures</i>	xi
<i>Preface</i>	xii
<i>Acknowledgements</i>	xv
<i>List of abbreviations</i>	xvii
1 Introduction: Justice reform and statebuilding in Afghanistan	1
2 Reforming public institutions in countries recovering from conflict: A brief overview	7
2.1 <i>A new approach to institutional reforms in the aftermath of 9/11</i>	7
2.2 <i>The role of international institutions in the formation of development aid policies</i>	9
2.3 <i>The 'local ownership': A new mantra?</i>	11
2.4 <i>The 'local ownership' in practice: The consultative group formula</i>	14
3 Justice sector reform in countries recovering from conflict	16
3.1 <i>Justice sector reform in post-conflict situations: A few introductory remarks</i>	16
3.2 <i>The dilemma between a neo-colonial or consent-based approach</i>	18
3.3 <i>The ingredients for success: Looking for consensus and responding to the local demand for justice</i>	19
3.4 <i>Transitional justice</i>	21
3.5 <i>Justice reform in countries recovering from conflict: Common features</i>	24
3.6 <i>Current situation</i>	28
4 The system of justice in Afghanistan before the US military intervention of 2001	31
4.1 <i>Brief outlines of Islamic law</i>	32
4.2 <i>The Islamic tradition in the Afghan justice system</i>	34
4.3 <i>The Taliban period</i>	38

x	<i>Contents</i>	
	4.4 <i>The justice system</i>	38
	4.5 <i>The applicable law</i>	41
5	From Tokyo to London: The ‘Lead Nation Approach’	44
	5.1 <i>Initial reforms after the Bonn Agreement</i>	45
	5.2 <i>The role of Italy</i>	47
	5.3 <i>The 2004 Constitution</i>	49
	5.4 <i>The (new) system of justice</i>	51
	5.5 <i>Assessment</i>	58
6	From London to Paris and beyond: Implementing the local ownership principle in justice sector reform	65
	6.1 <i>The end of the Bonn Process</i>	65
	6.2 <i>From Rome to Paris and beyond</i>	70
	6.3 <i>The National Justice Sector Strategy and the National Justice Programme</i>	72
	6.4 <i>Reform activities</i>	77
	6.5 <i>A ‘New’ leadership: The growing US and military involvement into justice sector reform</i>	81
	6.6 <i>Assessment: A mixed ownership regime</i>	87
7	Conclusion	91
	<i>Notes</i>	105
	<i>Bibliography</i>	145
	<i>Index</i>	163

Figures

6.1	The policy-making structure governing justice system reform in 2007	67
6.2	Percentage of judges serving in Afghan courts in 2007	68
6.3	Educational background of judges in Afghanistan in 2007	69
6.4	Percentage of cases discussed in Afghan courts in 2007	69
6.5	The new policy-making structure governing justice system reform	75
6.6	Funds allocated on justice system reform by the US, Italy and other donors	84