

JUSTICE SECTOR REFORM IN AFGHANISTAN: FROM A 'LEAD NATION' APPROACH TO A 'MIXED OWNERSHIP' REGIME?

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In early 2002, the reform of a large part of the Afghan public administration was divided between 'lead nations', each one being in charge of managing the reconstruction activities within a single sector of responsibility. Italy was entrusted with the reform of justice. This mostly unilateral approach waned in 2006, being considered redundant with the growing efforts of the Afghan government, aimed at taking direct responsibility for the administration of courts and judicial personnel. As a result, the new mantra among the donor community rapidly became that of the 'local ownership' of reform process. At the operational level, this principle was implemented by reshaping comprehensively the whole decisional framework, in order to secure the full participation of Afghan authorities in the decisional process. In particular, the overall policy-making structure was aligned with the templates included in policies and guidelines set by major International Financial Institutions (IFIs) for countries emerging from conflicts. In addition, Afghan authorities were granted the presidency of all the consultative bodies established to support the Executive in formulating sector policies. Eventually, this local ownership consolidating process has recently led to the adoption of a sector development strategy (National Justice Sector Strategy) by the Afghan government, to be implemented through a National Justice Programme. The latter's key feature is the use of an integrate funding structure to finance justice sector reform, through the creation of a dedicated project, run jointly by Afghan justice institutions (Supreme Court, Attorney General's Office – AGO, Ministry of Justice – MoJ). Such project will be funded through the Afghanistan Reconstruction Trust Fund (ARTF), which is in turn participated by a number of contributing countries and administered by the World Bank (WB).

On the other hand, however, the application of the local ownership principle within the justice sector has suffered from a number of problems. At first, such difficulties may be ascribed to the

lack of organizational capacity and legal experience among Afghan officials, corruption, dearth of skilled international consultants to carry out aid programmes and the poor security conditions.¹ Secondly, problems affecting sector development are due to a fragmented decision-making process, at all levels, that hampers the system's effectiveness and the full application of the local ownership principle. The confusion of roles between international and local players, together with the contradiction between official statements and the reality on the ground (which often imposes external inputs in order to fill the gaps of capacity and expertise among Afghan authorities), generates a 'mixed ownership' regime within the existing institutional reform.

In this context, the study attempts to describe the evolution of the development aid strategy within the reform of the shaky Afghan system of justice. More specifically, the research analyses single approaches and effects of the current reconstruction process, by giving a practitioner's view of the ongoing activities 'from within'. To this aim, it is first necessary to draw a broader picture of strategies and frameworks used at international level to support the development of countries recovering from conflicts. In view of this, the first paragraph briefly illustrates the major changes that occurred after the September 11 attacks in IFI development aid policies. The second one presents the overall policy-making framework set up according to such policies. There then follow three paragraphs which outline the key phases of the justice sector reform that has occurred so far. Indeed, such phases have been marked up by three pivotal conferences, held in Bonn, London and Rome, respectively. The sixth paragraph discusses the progress towards the local ownership of justice sector reform achieved after the Rome Conference, by offering some examples taken from current activities. The article concludes that sector reform is *de facto* still influenced by external players, generating a decision-making process which is characterized by a national/international mixed regime.

A major change in the overall approach to reconstruction activities

The September 11 attacks in New York and Washington D.C. generated a vast consensus among key actors participating in the international intervention in Afghanistan over the leading policy to be implemented in the reconstruction activities. In this respect it was agreed that, while the international assistance efforts should combine into an integrated approach to support the political process, the short-term relief activities should turn rapidly into long-term investment strategies, aimed at reducing poverty and consolidating the government authority all over the state territory (Costy 2004: 145). In this respect, the external assistance was mainly intended to stabilize the Afghan state structure and provide legitimacy for the central government, under a strategy that has

been further labelled as ‘aid-induced pacification’ (Stockton 2002: 25). This approach reflects a wider change at the global level in the concept of humanitarian action, which becomes increasingly professionalized and rationalized and whose purposes are now openly politicized (Barnett 2005).

The peace-building strategy experimented in Afghanistan also comes at the end of process of transformation in the approach taken by IFIs towards countries recovering from conflicts (Cammack 2006: 336). Some months before the beginning of the international intervention, the WB had adopted its Operational Policy No. 2.30 (World Bank 2001) that sets the scope and the terms of its intervention in conflict prevention activities,² while since 1999 both the Bank and the International Monetary Fund (IMF) had adopted a common broader approach to development planning, called Comprehensive Development Framework (CDF) which lays down the framework for ‘concessionary’ lending, mostly through the mandatory adoption of a Poverty Reduction Strategy Paper (PRSP) by requesting countries (Wolfensohn & Fischer 2000). A PRSP outlines the country's macroeconomic, structural and social policies and programmes over a three year or longer period. The PRSP aims at promoting growth and reducing poverty, as well as identifying associated external financing needs and major sources of financing (IMF 2008). The PRSP formula was developed in order to respond to evident weaknesses in relations between poor countries and IFIs – in particular the lack of country ownership of reforms (Bretton Woods Project 2003). On the other hand, a major change was similarly affecting the UN approach to peace-building. At the time of the intervention in Afghanistan, and before, since 1999, the UN had started to implement the concept of UN ‘integrated mission’ in Kosovo, after the experience matured in the former Yugoslavia with the adoption of a similar model based on single lead agencies. Indeed, integrated missions are conceived to address situations of transition from war to peace through a wide UN response, which subsumes relevant actors and policies within an overall political-strategic crisis management framework (Eide et al. 2005: 4, 13). Under this holistic approach, missions should immediately focus on capacity building without jeopardizing the local ownership of the reform process. Therefore, if the stabilization is now conceived as passing through an effective policy of aid assistance, the real objective of the reform process becomes that of structuring state political economy so that participation is more rewarding than resistance for opponents or spoilers (Jones 2004: 214).

Yet, while formally there may be a wide consensus among the key players within the international scenario on whether to integrate their activities, it is still to be seen how such integration is legitimized and then implemented. Generally, during the most recent UN missions,

like those in Afghanistan, Timor Leste, Iraq and Kosovo, the role of IFIs within the country's reconstruction has been partially provided by Security Council resolutions, revealing 'an important and developing legal relationship between the IFIs and the UN' (Boon 2007: 515). Hence, as the Afghan experience clearly shows, operationally the reform process has been run according to policies and manuals for Low Income Countries Under Stress (LICUS), developed mostly by the WB and the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD-DAC) (e.g. World Bank 2004; OECD-DAC 2005). Such models have been applied both at macro and micro level, i.e. within both the strategic and the operational structure of the new institutional architecture. Therefore, while, on the one hand, the coordination among donors and Afghan authorities has been characterized by the use of the 'consultative group' formula, on the other hand the formation of the National Development Budget has been assisted by the IFIs through relevant inputs. The latter have taken the form of close assistance and performance monitoring of Afghan institutions, partially by means of joint assessment missions, as well as the perspective of short and medium-term financial assistance, as conditioned to the accomplishment of those stages described in IFIs manuals. It is remarkable to note that, as IFIs policies and procedures themselves changed, they were immediately applied to the Afghan reconstruction. Therefore, as the principles of local ownership, alignment, harmonization, managing for results and mutual accountability emerged at the Rome and Paris conferences on aid harmonization and effectiveness,³ the international aid architecture was itself reformed and the aid programmes readapted to comply with the new tenets.

Putting in practice the local ownership principle: The consultative groups

As previously anticipated, both the CDF approach and the aid harmonization procedures developed by the OECD-DAC promote a model of development for LICUS which is based on a particularly complex framework. Such articulated structure is designed to practically implement the local ownership principle. Its functioning may be briefly described as follows.⁴ At first, the requesting state prepares its own long-term, holistic vision for the future. Then, at the strategic level, the government drafts a PRSP or, at an earlier stage, an Interim PRSP (I-PRSP), which basically draws broad development policies. The latter are divided into macro-areas and more specific sectors of intervention, as they also contain time-bound medium-term objectives and priorities (World Bank 2004: 4). The PRSP is complemented by sector strategies, one for each development sector (OECD-DAC 2005: 42). At the operational level, a sector strategy is realized through a specific, time-bound and costed set of actions and activities, included into a Sector Development Programme (SDP)⁵

(*Ibid.*: 37). There then follows the creation of Consultative Groups (CGs), participated jointly by all the relevant stakeholders (national and international) within distinct sectors of interest, but chaired by the local government. The CGs are in turn aligned with the PRSP sectors, so that they practically represent the main policy-making *fora* for each development area. At the lower level, sector and thematic working groups are created in order to address sub-sector policies. Again, such groups are mixed international/national, but they are led by the relevant government institutions. Finally, the whole structure is monitored by a high-level institution (presided over by the government) in charge of coordinating government agencies with international partners (World Bank 2004: 17). Therefore, the system is basically composed of ‘technical-level bodies to facilitate practical work, donor-coordination bodies, *ad hoc* working groups to tackle specific issues ... and a wider consultative forum ... that allows participation by a range of stakeholders’ (OECD-DAC 2005: 51). As the following paragraphs will show, this represents the model used to shape the aid architecture in Afghanistan.

The lead nation approach

The institutional reform in Afghanistan started in Tokyo, on 22 January 2002 at the end of the International Conference on Reconstruction Assistance to Afghanistan. In addition to their financial commitments in the reconstruction, a few donor countries were entrusted with the ‘lead’ in the reform of specific sectors within the ‘Security and Rule of Law’ area. Italy took the responsibility for leading the reform of the Afghan justice system. At the Conference, an ‘Implementation Group’ was also established as a high level monitoring institution. It initially convened in Kabul on 10-11 April 2002 and in October of the same year. In April 2002 the government released the National Development Framework (NDF), comprised of 12 national development programmes. The reform of justice was then conceived as a segment of a wider ‘Security and the Rule of Law Programme’, which was in turn encompassed within the ‘Governance and Security’ pillar. Programme groups, programme secretariats and programme working groups were also established and aligned with the NDF. In December 2002, the programme groups were replaced by consultative groups, mandated to coordinate key government agencies and donor organizations within the NDF and the full range of national reconstruction programmes. Every CG included a focal point, designated by the lead Ministry, which replaced the existing programme secretariat. Justice was one among the five working groups contained in CG No. 2 (Security & Rule of Law). The Justice Sector Consultative Group (JSCG) was created in January 2003, although its formal terms of reference were only agreed upon in 2005. The JSCG was chaired by the MoJ, with Italy being the donor focal point. In

addition, both UNAMA (i.e. the UN Assistance Mission in Afghanistan) and Italy were granted the chairs of *ad hoc* working groups on specific topics.

Generally speaking, the ‘lead nation approach’ generated a donor-oriented system, with broad bilateralization of planning and programming. The national budget request for the justice sector, for years 2003-2004, was \$ 27 million and was almost entirely covered by the Italian government with a contribution of \$ 20 million. In addition, at the same time, most of the adopted laws were influenced by external actors. This was the case, for instance, with the new 2004 Interim Criminal Procedure Law, the 2005 Juvenile Code, and the 2005 Law on Prisons and Detention Centres, drafted with main inputs offered by the Italian Justice Project Office. Under this bilateral scheme, donors were supposed to perform justice reform by influencing the political will of local authorities through direct financial and technical support. However, on the one hand, at the beginning the financial assistance was even too fast, given the country’s slow absorption capacities; on the other hand, the changes in national politics have been partial at best (UNDP 2004: 144). This might be due to the limited powers, financial capacities and expertise of the selected ‘lead nations’. According to the RAND Corporation research director in the field of state-building, James Dobbins, ‘Italy simply lacked the expertise, resources, interest and influence needed to succeed in such an undertaking’ (Dobbins et al. 2007: 101). Criticism against Italian activities has been also recently pointed out by the International Crisis Group (ICG 2008: 6). Besides, the failure of the lead nation approach in Afghanistan is not only restricted to the justice sector. Indeed it probably encompasses all the ‘leads’ and it is probably due to very similar reasons.

The end of the Bonn process: A turning point?

A major evolution within the justice sector policy-making structure began in 2005. Early that year, the government had started preparing its long-term vision, which was included in the Afghanistan first Millennium Development Goals Country Report, presented last September at the UN World Summit in New York (Government of Afghanistan – GoA 2005b). On 15 August 2005, the ‘Justice for All’ policy paper (GoA 2005a) was delivered at a National Justice Consultative Conference, held in Kabul. The document, which was further revised and finally adopted on 10 October 2005, represented the primary medium-term development strategy for the sector, covering a period of up to 12 years. Its drafting involved staff from the MoJ, AGO, Supreme Court, as well as international advisors from the UN and other international actors (Center for Policy and Human Development – CPHD 2007: 120). Other crucial developments occurred at the London Conference on Afghanistan, which took place at the end of January 2006. The conference saw the signing of the Afghanistan

Compact (Islamic Republic of Afghanistan – IRA 2006a) and the presentation of the Interim Afghanistan National Development Strategy (I-ANDS) (IRA 2006b), which also represented the country's I-PRSP. The former was basically a political agreement between the GoA and the international community towards the achievement of 42 benchmarks within a five-year term. The Compact's rule of law component was comprised of 4 benchmarks, which mirrored those contained within the I-ANDS. Such benchmarks were related to the adoption and dissemination of new codes and laws, the establishment of functioning justice institutions, the adoption of anti-corruption procedures, as well as the construction and rehabilitation of judicial infrastructure. The event also created the Joint Coordination and Monitoring Board (JCMB, established in April 2006), designed to monitor progress towards the achievement of the benchmarks included in the Compact.

As a consequence, the CGs were reformed to align with the I-ANDS structure, having two main functions: to coordinate the implementation of I-ANDS programmes, and to assist in preparing the national budget. The new policy-making structure was then reformed. Still nowadays, it consists of a Government Oversight Committee (OSC), a Consultative Group Standing Committee (led by the Ministry of Finance, lately replaced by a Coordination Team – CT), eight Consultative Groups (one for each I-ANDS sector, grouped in turn into three macro-pillars), five Cross – Cutting Thematic Groups (one for each cross-cutting sector), and 28 working groups. The CGs receive indications from the WGs. Such indications are further collected into reports to be sent to the OSC through the CT (GoA 2007). The information contained in these reports is eventually used for presentations made during the JCMB quarterly meetings. Among the CGs, CG No. 2, entitled 'Governance, Rule of Law and Human Rights', has approximately 75 members, of whom more than a half are international experts (CPHD 2007: 121). It is divided into eight working groups, one of which is the (Advisory) Rule of Law Working Group (RoL WG), chaired by the MoJ, with UNAMA and Italy being key international partners. The RoL WG itself includes sub-working groups on particular topics. Since March 2007, all the WGs and sub-WGs were renamed Technical Working Groups (TWGs). The TWGs included within the RoL WG are now: 1) Law Reform (divided into a Criminal Law Committee and a Civil Law Committee); 2) Justice Physical Infrastructure; 3) Justice Institutions and Judicial Reform (divided into three committees on the reform of Judiciary, AGO and MoJ, respectively); 4) Legal Education and Training (sub-WGs on Legal Higher Education, Professional Training, Establishment of the National Legal Training Centre); 5) Access to Justice and Legal Aid; and 6) Corrections (sub-WGs on Reconstruction and Rehabilitation of Prisons, Training, Administrative Reforms, Establishment of a High Maximum Security Facility at Pol-i-Charki Prison). In addition, it is provided with a Technical Advisory Group on Women and

Children in Justice (TAG). CG No. 2 also includes other working groups somehow related to justice: land registration/reform, human rights (including transitional justice), counter-narcotics and anti-corruption (UNAMA 2007: 4).

The opening of the London Conference marked up the ‘The end of the Bonn process’ (Deledda 2006). However, even if the basic pillars of the new justice system could be considered established, the local ownership of sector reform was still missing. With the increasing number of IFIs activities within the Afghan ‘reconstruction market’ and the growing US financial and material assistance, the role of ‘lead nations’ was rapidly reconsidered to that of ‘key partners’. Notwithstanding the increasing use of pooled financing mechanisms – i.e. the trust funds administered by WB and UNDP — to support the reform of Afghan public administration, justice sector development was still passing through a myriad of single projects, each advancing independently. The need for more coordination among donors led to the establishment of the International Coordination Group for Justice Reform (ICGJR) on 31 October 2006, in order to improve donor communication regarding justice sector policies. Accordingly, the International Coordination for Legal Training (ICLT) was constituted on 7 May 2007, as an ICGJR sub-working group, with the aim of coordinating the plethora of legal training programmes operated by a number of international agencies and organizations. However, improving coordination among donors does not necessarily mean to improve the local ownership of reforms as well. Indeed, the path towards its achievement still lacked a fundamental step, being the Afghan government’s adoption of a clear policy framework for sector development.

From Rome to Paris and beyond: Broadening the ownership of reforms

The process of gradually empowering national actors with the decision over the reform of justice evolved with the outcome of the Conference on the Rule of Law in Afghanistan, held in Rome at the beginning of July 2007. The event represented a cornerstone for the evolution of sector policies and paved the way to a new process of reforms, oriented towards the full Afghan ownership. At the Conference, it was decided to set up, within the ANDS framework, a National Justice Sector Strategy (NJSS) to be implemented by a National Justice Programme (NJP), under the logic of a ‘Sector-Wide Approach’ (SWAP).⁶ The NJP, in particular, was initially conceived as a SDP – derived from the sector strategy. The Programme would be finalized with the assistance of the World Bank and funded in significant part through the ARTF. This would also imply the establishment of a pooled financing mechanism for justice development, i.e. the creation of a ‘Justice Sector Reform Project’ (ARTF Justice Project), financially sustained by the ARTF and

administered by Afghan authorities with the overall control performed by donors and the WB. Operationally, such multilateral approach was intended to gradually replace the ‘bilateralization of aid assistance’ (see e.g. Macrae 2002) experimented at the beginning of the international intervention. This would have implied an evolution from a ‘supply-driven’ to a ‘demand-driven’ approach, characterized by the capacity of Afghan Government to articulate a plan for sector development, which in turn would have expanded the local ownership of reforms. In addition, at the Rome Conference donors agreed to adopt a coordinated approach towards the reconstruction of justice at central and provincial levels. To this aim, it was decided to establish a Provincial Justice Coordination Mechanism (PJCM), chaired by UNAMA, as well as to finance 15 high priority, quick implementation projects presented by Afghan justice institutions (five projects each). In the state-building theory, this method to collect funds (also called the ‘wedding registry’ budget) is normally portrayed as an interim step towards the full autonomy of government to produce a proper development budget (Carnahan et al 2004: 24).

On the other hand, the process of adoption of both the NJSS and the NJP was rather extensive and problematic. At the Rome Conference, a seminar for their adoption was planned to take place in October of the same year in Kabul. As the conditions for its organization were lacking, all the stakeholders began to concentrate most of their efforts on coordinating documents and policies, in order to shape a more rational and coherent policy-making system. Indeed, it was decided that justice sector reform should adapt to the broader national development strategy, to be adopted in the forthcoming months. Eventually, after extensive consultation, on 23 February 2008 the ANDS final draft was circulated among stakeholders. It included the Draft NJSS as an attachment. A month later (24 March 2008), the NJP final draft was presented to the donors during a special session of the ICGJR. As initial criticisms by both the IMF and the WB about the ANDS document appeared in the media (Boone 2008), the National Development Strategy was completely redrafted and simplified. The document lost all its attachments, which were kept separate and were individually adopted by relevant government agencies. On 21 April 2008 the ANDS was finally approved by the President of Afghanistan and submitted to the Boards of both the IMF and the WB, being also the country’s PRSP. On the very same day, the final version of the NJSS was presented for approval to the Afghan justice institutions, which signed the document in early May. As for the NJP, at the time of writing (end of May 2008), consultations regarding its final adoption were still under way. Yet, all three documents will be presented to the donors at the imminent pledging conference for Afghanistan, to take place in Paris on 12 June 2008.

A mixed ownership regime?

Although this process should rationally lead to a wider integration of all reconstruction activities within the justice sector, this target appears to be still challenging. Generally, recent researches based on empirical findings support the idea that aid development is often marked by scarce coordination among donors (Thiele et al. 2007: 614; Mascarenhas & Sandler 2006). In Afghanistan, this seems particularly true, as recently observed by the ICG (ICG 2008: 12). According to Zalmay Khalilzad, US representative to the UN, ‘As things stand, more than 30 national embassies and bilateral development agencies, several United Nations agencies, four development banks and international financial institutions, and about 2,000 nongovernmental organizations and contractors are involved in rebuilding in [the country]’ (Khalilzad 2008). Coordinating this plethora of international actors (often pursuing different and competing interests) with national agencies, aiming at securing the local ownership of reforms, is naturally an uneasy job. With the recent adoption of the UN Security Council resolution No. 1806, an expanded coordinating role has been conferred to UNAMA, notwithstanding the current scarcity of personnel and capacities, especially within its Rule of Law Unit. Naturally, the lack of coordination does not spare the justice sector (Tondini 2007: 346), as was extensively reported during the Rome Conference (Bassiouni & Rothenberg 2007: 10). However, apart from that, other factors indicate that the Afghan ownership over justice reform is yet to be met and that we are probably experimenting a mixed regime, in which external players still influence *de facto* the decision-making process.

Examples of this trend can be found at both the policy-making and the operational level. At first, however, the local ownership of reforms is seriously put at risk by the country’s economic and financial dependence on external aid, as well as by the way funds are disbursed. International assistance represents around 90% of all public expenditure, while some two-thirds of aid bypasses the Afghan government, being spent bilaterally by donors (Waldman 2008). As for the reform of justice, apparently, this trend will not cease in the future. This may be proven by a comparison between the limited funds that will be channelled multilaterally (i.e. through the ARTF Justice Project, which will initially cost only \$ 27 million) and the incredible number of projects to be implemented bilaterally in the near future, as reported in the NJP. The dependency is even amplified by the donors’ practice of disbursing less money than initially pledged. For instance, at the Rome Conference donors agreed to offer \$ 360 million for justice reform. However, countries included in their pledges, money that was previously promised but not been spent yet. As a

consequence, the total amount of contributions was broadly over quoted, resulting in only \$ 60 million of ‘fresh cash’.

At the strategic level, the application of the local ownership principle in reshaping the new sector’s policy-making structure has been, at best, partial. With regard to the NJP, the document was initially drafted by a dedicated working group, whose participants were almost completely international, except for a representative of the ANDS Secretariat. The document is composed of four parts: 1) an introductory chapter; 2) a logical framework of actions, expected results and bottlenecks; 3) the ARTF Justice Project (which represents the Programme’s multilateral funding channel); and 4) a matrix of future activities to be carried out bilaterally by donors. While the first part was entirely drafted by the dedicated working team, the second one was finalized with major contributions from a representative of a foreign embassy. The third part was instead drawn up by the World Bank, and then amended after requests made by donors. The fourth part was prepared by UNAMA, with relevant inputs coming from contributing states. UNAMA also set up the matrix of current reconstruction activities, contained in the first annex to the document. Conversely, the sole Afghan stakeholder involved in the drafting process, i.e. the ANDS Secretariat, only prepared the second annex to the document, including priorities identified through consultations at provincial level.

The lack of inputs by local actors in the drafting process may be due to a number of reasons. They may probably include the limited capacity of local personnel to contribute to such a complex document, which requires specific skills, and also the determination of international actors to complete the Programme as quickly as possible. However, this can also stem from the poor interest of the Afghan authorities themselves. Indeed, so far the latter have appeared reluctant to be absorbed in difficult tasks like that of preparing a complicated aid development framework for the sector, and more inclined to use their powers after the completion of the initial drafting process. At that stage, they can successfully bargain their ‘institutional weight’ with that of other external actors, in order to obtain a major role within the designed policy-making structure. In fact, at the time of writing, notwithstanding the meagre contribution of local experts to its original contents, extensive consultations among Afghan government agencies over the NJP final text are delaying its official endorsement.

The NJSS approval process may be regarded as another example of such a trend. The document’s framework was initially conceived during Summer 2007 by a UNDP officer seconded to the ANDS Secretariat. The draft paper was then completely reviewed in September 2007 by a

dedicated working group (whose members were, once again, all but one international) and sent to both ANDS Secretariat and donors. The latter made various comments which were further included in the draft by the same working group. At that point the document was translated in *dari* (by a US contractor and another international organization) and resubmitted to the ANDS Secretariat in order to be circulated among the Supreme Court, the AGO and the MoJ. Following on from that, a number of discussion tables among international and national stakeholders took place at the ANDS Secretariat. At the end, other modifications were included in the document, as required by Afghan justice institutions. The final draft was then sent again to the ANDS Secretariat, which made a few formal amendments and finally published it in a restricted area of its website, in order to circulate it before its official adoption.

At the operational level the ‘mixed ownership regime’ of reforms seems even more apparent. Membership and powers of TWGs, sub-WGs and committees established within the RoL WG are based on terms of reference agreed by the MoJ. This would formally preserve the authority of state institutions, though it remains to be seen how effectively such authority is exercised. Among the TWGs, those within the Law Reform TWG are probably the *fora* in which the local ownership principle is better implemented. Although their meetings are normally held at international offices and the Government’s chairmanship is not always granted (e.g. the Criminal Law Committee is chaired jointly by UNODC and JSSP – Justice Sector Support Program – a US contractor), the weight of Afghan members differs from group to group. Generally, their influence varies with the ability of international experts to involve the local counterparts in the works. The final aim should be that of creating a common will towards the adoption of laws and regulations which comply with international norms and standards but that also respect local legal traditions. This is possible only if Afghan members understand their significance, and above all, their usefulness. Besides, TWGs are strictly consultative bodies. The last decision over the adoption of laws or policies remains in the hands of Afghan institutions. Sometimes, as in the case of some articles contained in the forthcoming new Police Law, local authorities are unwilling to accept amendments suggested by international experts. Obviously, all this negotiation process delays the approval of new norms. Nevertheless, it is essential in order to create the preconditions for such norms to be effectively abided by people, once they come into force. However, this open procedure does not prevent external actors from putting some pressure on the adoption of specific laws, requesting amendments to the annual legislative plan or rather organizing a seminar abroad (held in Siracusa – Italy – at the end of April 2008), *inter alia*, to offer inputs taken from international manuals to the upcoming new criminal procedure code.

Besides, *de facto* influence of international actors over justice sector reform may be powerful at any rate. It can take the form of legal advisors or ‘mentors’ seconded to justice institutions, as was done by the EU/EC missions and by several US contractors, as well as recently advocated by UNAMA. International consultants cover positions at all levels, including personal advisors to the highest sector’s authorities. Sometimes, influence is exercised by the creation of privileged relationships between such authorities and international representatives, as was the case, for example, with the business lunches organized on a regular basis between representatives of two international agencies and the Attorney General. Occasionally, international actors operate as guarantors, by playing the role of promoting confidence-building among Afghan institutions. The Ministry of Interior – Attorney General’s Office Commission, born to facilitate the establishment of good relationships between the two institutions, is being held under the auspices of a number of representatives of international agencies, being the US (through its contractor JSSP), Germany, Italy (both through their development cooperation agencies) and the EU Police Mission.

Concluding remarks

Contrary to appearances, the mixed regime which characterizes the decision-making process within justice sector reform in Afghanistan may be considered as an evolution. It is far away from the ‘bilateralization of aid assistance’ registered at the beginning of the international intervention and it has the merit of being open to a wider number of stakeholders, including the growing key role of government authorities. How genuinely the system is oriented towards the achievement of the full Afghan ownership will be revealed when the real intentions of donors will be unveiled. This will happen when they will be asked to support principally pooled financing mechanisms for the justice area, and reduce bilateral projects, as recently requested by the new Special Representative of the Secretary General, Kay Eide (quoted in Hemming 2008). Indeed, the path from the lead nation approach to the local ownership of reforms may be described with the loosening of political interests by single contributing nations and the birth of a real common political end-state, being that of truly establishing a functioning *sovereign* nation. In this respect, the growing lack of confidence among all the stakeholders, as testified e.g. by the huge number of US bilateral projects listed into the NJP, is the most serious danger that threatens the success of future reforms.

Acknowledgments

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Endnotes

- ¹ See the recent statements made by Nipa Banerjee, former head of the Canadian International Development Agency in Levitz 2008.
- ² This policy should now be read in conjunction with the World Bank Operational Policy No. 8.00, entitled "Rapid Response to Crises and Emergencies".
- ³ Among the most important international initiatives occurred in recent years in the field of aid delivery to development countries, see the 2002 Monterrey Consensus on Financing for Development, the 2003 Rome Declaration on Aid Harmonization, and the 2005 Paris Declaration on Aid Effectiveness.
- ⁴ The model described is voluntarily restricted to bodies and documents of interest to the present article. For a complete description see OECD-DAC (2005) and World Bank (2004). See also Eggen & Bezemer (2007).
- ⁵ A Sector development programme is defined by the OECD-DAC as a specific, time-bound and costed set of actions and activities which support a sector strategy.
- ⁶ There is not an agreed definition of SWAP. The most commonly used is that of Mick Foster, according to whom a SWAP is when 'funding for the sector supports a single sector policy and expenditure programme, under Government leadership, adopting common approaches across the sector, and progressing towards relying on Government procedures to disburse and account for all funds' (Foster 2000: 9).

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