

Second part: Criminal law and Criminology

(1) Michael e. Hartmann and Agnieszka Klonowiecka-Milart

“Criminal Law Reform in Afghanistan: Legal Transplants without Consensus-based Adaptation”

Since 2004, Afghan law has been extensively revised and amended, with heavy input from foreign jurists, including whole laws being drafted by foreigners and adopted by Afghanistan. Belatedly, the government of Afghanistan and its international partners have developed a sound mechanism for facilitating Afghan-international consultation and consensus, but most new laws are still not subjected to this process, and do not reflect Afghanistan’s cultural, political and legal traditions and conditions. Based on this experience, this chapter argues that:

- foreigners cannot properly draft and revise Afghan laws by themselves, and thus even if Afghan authorities ask the foreigners to do so, any such exercise is doomed to fail;
- however, foreigners can, in partnership with Afghan authorities and experts, contribute to the creation of good law, provided the procedures for drafting and review are viable and transparent, allow full representation of different expert groups, and are adhered to consistently;
- only such a technical and quasi-political law reform process, which engenders consensus, may result in laws that that will be considered legitimate, and thus internalised and applied by Afghans.