

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

Index: ASA 11/020/2012
2 November 2012

UK ordered to continue moratorium on detainee transfers in Afghanistan

The High Court of England and Wales today ordered the UK government to maintain a moratorium on the transfer of detainees to Afghan security forces due to the risk of torture or other ill-treatment there.

The ruling relates to a case brought by Serdar Mohammed, an Afghan national who was detained by UK forces in Afghanistan in 2010 and subsequently handed over to the Afghan intelligence service, the National Directorate of Security (NDS). Serdar Mohammed has alleged that he was tortured while in NDS custody and then subjected to a flagrantly unfair trial.

Lawyers acting for Serdar Mohammed brought a claim against the UK government over the legality of his transfer to the NDS, which in May 2012 resulted in the UK imposing a moratorium on detainee transfers to the Afghanistan authorities.

Today's interim ruling extends that moratorium at least until 27 November 2012, when the case will be heard in full. The UK government had informed Serdar Mohammed's lawyers in October 2012 that transfers would resume prior to the full hearing, prompting them to seek the continuation of the moratorium, which was granted as a result of today's ruling.

The decision by the High Court to maintain the detainee transfer moratorium is welcome, but no more than what is required under international law, given the real risk of torture that many detainees still face in detention in Afghanistan.

The UK government has alleged improvement in how the NDS treats detainees, but Amnesty International has seen no systematic change in how the NDS operates, particularly in terms of the prevention of torture.

Amnesty International is still receiving reports of detainees being beaten and otherwise tortured by the NDS in some provinces. Furthermore, there is an almost complete lack of any kind of investigation into accusations of torture, which allows torture to thrive - there is no accountability.

The UK government has claimed that it has secured "diplomatic assurances" from the Afghan authorities that detainees transferred from UK to Afghan hands will not be tortured or otherwise ill-treated. Amnesty International opposes reliance on such assurances. Such promises of humane treatment are inherently unreliable.

Diplomatic assurances are not a reliable safeguard against torture and other-ill treatment, This is all the more so in this case, where the assurances are reported to have come from Assadullah Khalid, the current head of the NDS, who allegedly was involved in acts of torture when he served as Governor of Ghazni and Kandahar provinces. None of those allegations of torture has been investigated, raising the question of how anyone could trust such assurances under these circumstances.

According to court documents, the UK government has withheld some evidence in Serdar Mohammed's case by invoking public interest immunity or allegedly heavily redacting documents. Amnesty International is concerned that information related to human rights violations might be among that information.

It is also worrying that the UK government may have sought to withhold evidence of possible human rights violations by the Afghan security forces, including torture. Information concerning gross violations of human rights or international humanitarian law should never be withheld from the victims or the public, even on national security grounds.

This case, and detainee transfers in general, have also been the subject of significant attention in Denmark, following Denmark's decision to resume transfers in October.