

PUBLIC

AI Index: ASA 11/007/2006

UA 61/06

Death Penalty/Unfair Trial

17 March 2006

AFGHANISTAN

Asadullah Sarwari (m), aged 65

Former government minister Asadullah Sarwari was sentenced to death on 23 February for war crimes committed while Afghanistan was under communist rule, 1978-1992. His trial was grossly unfair and he has lodged an appeal; if this is unsuccessful, the sentence will need to be upheld by the Supreme Court and approved by President Karzai before it can be carried out. Amnesty International fears that public opinion in Afghanistan may force the judicial authorities to rush this process, though it is not yet clear how long it is going to take.

Asadullah Sarwari is accused of authorising the torture, abduction and killing of hundreds of people while he was the head of Afghanistan's intelligence service in 1979. He went on to be Vice-President and then Deputy Prime Minister. He may have detailed information relating to other human rights violations from the period during which he was an official, which have never been made public. The government is now setting up a mechanism to investigate allegations of human rights violations dating from around 1978 and to bring the perpetrators to justice. For this to succeed, it is vital that Asadullah Sarwari be given a fair trial in accordance with international standards. The trial is a test case for the government's commitment to justice for victims of crimes carried out in since around 1978 and for those alleged to have carried out such violations.

He was arrested in 1992 by a Mojahedin force following the Soviet withdrawal from Afghanistan. In 2003 they handed him over to the new government's intelligence service, the National Security Directorate. He had been detained without charge or trial for 13 years when he had his first court appearance on 26 December 2005.

The court proceedings fell far short of international fair trial standards. For most of his 13 years in custody Asadullah Sarwari did not have access to a lawyer. In late 2005, the court appointed a lawyer to represent him. The lawyer was from a rival political group, and reportedly did not provide effective or adequate assistance.

It appears that no witnesses were formally summoned to give evidence. Seven people were called to speak before the court, but none of them were eyewitnesses, and they did not speak under oath. They may even have been volunteers drawn from the spectators at the hearings. They were not questioned either by the prosecution or by the defence, and their names were not recorded (there is no court recorder) in case they needed to be summoned again or cross-examined.

Allegations made against Asadullah Sarwari were supported by a videotape of a document ordering executions and allegedly bearing his signature. The prosecution provided no evidence to show that the tape was genuine, and the court reportedly refused Sarwari's request for it to be forensically examined.

Afghanistan is a state party to the International Covenant on Civil and Political Rights (ICCPR). Under Article 14 it is obliged to provide Asadullah Sarwari with a fair trial. This includes the right to have adequate time and facilities for the preparation of one's defence; to communicate with counsel of one's own choosing; to have adequate legal assistance; and to be able to examine witnesses properly. The authorities ignored all of these in Asadullah Sarwari's case.

BACKGROUND INFORMATION

In November 2005, the Afghan government adopted the Peace, Reconciliation and Justice Action Plan, an initiative aimed at establishing practices and systems that will prevent the appointment of alleged human

rights abusers to important political posts and which will provide for the examination of such allegations, such as those in the case of Asadullah Sarwari. It also provides for the creation of a forum aimed at enabling those who have suffered certain human rights violations to come face-to-face with the alleged perpetrators in an effort to establish the truth about violations over the past 25 years.

A military commander during the 1992-1994 civil war, Abdullah Shah, was secretly executed in April 2004 for multiple murders, after a trial by a special, closed court in which he was denied basic rights of defence. He had no legal counsel and was not allowed to cross-examine witnesses. The court failed to investigate allegations that he had been tortured, despite his injuries being clearly visible and pressure on the judiciary to execute him came from a number of senior sources, including his former commander, who was not called to give evidence.

In 2003, President Karzai's Chief of Staff told the Secretary General of Amnesty International that there would be a moratorium on executions while judicial reform is being carried out.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English, Dari, Pashto or your own language:

- asking for details of Asadullah Sarwari's trial, and expressing concern that he was not provided with adequate safeguards;
- calling on the judicial authorities to safeguard the rights of the accused in all criminal proceedings and to take measures to ensure that judges and prosecutors become familiar with such safeguards;
- calling on President Karzai to publicly reaffirm the commitment given by his Chief of Staff to Amnesty International in 2003, that there would be a moratorium on executions while judicial reform is carried out;
- welcoming the adoption by the Afghan government of the Peace, Reconciliation and Justice Action Plan, and welcoming the commitment to develop mechanisms to address allegations of crimes committed under previous governments;
- stating that Amnesty International recognizes that governments have a right and responsibility to bring to justice those suspected of criminal offences, but that they must do so in proceedings which meet international standards of fairness;
- stating that Amnesty International opposes the death penalty unconditionally, as the ultimate cruel, inhuman and degrading punishment.

APPEALS TO:

President

His Excellency Hamid Karzai, Presidential Palace, Kabul, Afghanistan

Salutation: Your Excellency

Email: (via Ministry of Justice) info@moj.gov.af (in subject line, put "please forward to President Hamid Karzai")

Minister of Foreign Affairs

His Excellency Dr. Abdullah Abdullah, Ministry of Foreign Affairs of Afghanistan

Malak Asghar Road, Kabul, Afghanistan

Fax: +1 866 890 9988

+1 801 459 2967

E-Mail: contact@afghanistan-mfa.net

Salutation: Your Excellency

COPIES TO: diplomatic representatives of Afghanistan accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 28 April 2006.