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TELEGRAM

February 09, 2006

To: SECSTATE WASHDC - PRIORITY
Action: SA
From: AMEMBASSY NEW DELHI (NEW DELHI 994 - PRIORITY)
TAGS: CJAN, CVIS, KCRM, PGOV, PHUM, PREL, PTER, IN
Captions: SIPDIS, SENSITIVE
Subject: AMBASSADORIAL ASSESSMENT OF BARAPIND EXTRADITION ASSURANCES
Ref: A. STATE 6905 B. 05 NEW DELHI 9513 C. 96 NEW DELHI 14669

1. (SBU) The MEA on February 7 sent Diplomatic Note T-413/11/2004 with reference to the requested extradition of Kulbir Singh Barapind (Ref A), along with the text of the relevant section of the Indian Penal Code. The Note outlines that persons extradited to India are protected by law from torture and that Barapind's family, attorneys, and the National Human Rights Commission will have access to Barapind during his incarceration. The GOI also assured that officers of the USG will have access to persons in Indian custody, including Barapind, on a reciprocal basis. Ambassador's assessment of these assurances follows the text.

GOI Assurances

2. (U) With reference to the requested extradition of Kulbir Singh Barapind (referred to in the Indian note as Kulbir Singh Kulbeera aka Barapind) and USG obligation under the Convention Against Torture, the MEA has provided the following diplomatic note:

Begin text of MEA Diplomatic Note T-413/11/2004, dated 6 February 2006:

The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to their Note Verbale No. 06/054/Pol dated 18th January, 2006 has the honour to state that in the context of the extradition of Kulbir Singh Kulbeera aka Barapind, India has signed the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment, 1984. As a signatory, India has good-faith obligation not to act against the objectives and purposes of the Convention.

The Indian Constitution provides for the protection of life and personal liberty. It guarantees accused persons the right to be defended by a legal practitioner of his or her choice. India has legislation for the protection of human rights. The National and States Human Rights Commissions can visit prisons and can enquire on their own initiative or on a petition into any complaint of human rights violation. Indian criminal law prohibits the use of force or causing hurt to extort confession. Persons violating these provisions are subject to prosecution and imprisonment. Extracts from the Indian Penal Code of relevant sections are enclosed.

Further, family members, attorneys of a person extradited to India as well as the Human Rights Commission have access to them. Officials of the country extraditing a fugitive may also have access on reciprocal basis.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: THEODORE SELLIN
DATE/CASE ID: 09 JUL 2008 200603431

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Thus Kulbir Singh Kulbeera aka Barapind on extradition to India will be dealt in accordance with the law. He will be entitled to all rights of defense, protection, and remedies available and shall not be subjected to any kind of torture.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in New Delhi the assurances of its highest consideration.

End Text.

Begin text of Extract from the Indian Penal Code:

330. Voluntarily causing hurt to extort confession, or to compel restoration of property. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offense or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offense or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

End Text.

Assessment of Assurances

3. (SBU) India signed the Convention against Torture in 1997. The descriptions of Barapind's protections under the Indian Constitution and Indian Law are accurate to the best of this Mission's knowledge. Similarly, this Mission believes to the best of its knowledge that the rights of access to Barapind by his family members and attorneys, the National Human Rights Commission (NHRC), and US diplomats (on a reciprocal basis), as described, are accurate and, it is likely the Government of India will in practice comply with them. ✓

4. (SBU) During the Sikh insurgency in the 1980s and 1990s, police routinely tortured and/or killed terrorists' families and associates. Today, however, India has numerous activist human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab. The free press is also sensitive to human rights, and the Supreme Court has recently issued guidelines aimed at preventing and, if necessary, prosecuting incidence of torture and custodial abuse. The NHRC has emerged as an increasingly forceful advocate for the observance of human rights. } to

5. (SBU) The Punjab of today is different from the Punjab Barapind fled. Then, a blazing, foreign-supported insurgency raging across the Punjab threatened the security of the government in Delhi and deepened divisions between India and Pakistan. Today, Punjab is one of the richest states in

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India, with a progressive, pro-agriculture government whose Chief Minister (a Sikh) is working to promote harmonious relations among Sikhs and between India and Pakistani Punjab.

India's free press, including in Punjab, actively pursues and exposes government excesses of all varieties, including police abuse, torture, and corruption. The end of the Punjab insurgency in the 1990s ushered in a dramatic decline in custodial deaths and torture allegations. The current Indian Prime Minister and Army Chief are Sikhs. The intensive police and security force anti-insurgency efforts of the 1980s and 1990s are largely a thing of the past.

6. (SBU) As noted in the 2004 Human Rights Report, however, custodial abuse, including sometimes torture, remains a problem in India, and many alleged police violators, particularly from earlier, more violent times, (including the officer Barapind accused of having directed his torture) have not been tried for their reported offenses. The Indian media reported, however, that 59 Punjab police officers were found guilty of human rights violations in 2004, and the Director General of Punjab Police reported that criminal proceedings had begun in the cases of two persons who died in police custody during the year.

7. (SBU) Despite the improved situation, torture and other forms of custodial abuse do continue to occur in all parts of India. As a consequence, many cases like Barapind's may also revolve around personal testimony that is subject to coercion or force.

8. (SBU) While we cannot guarantee absolutely that Mr. Barapind would not face torture or other forms of custodial abuse, this Mission is satisfied that, given the assurances provided by the Government of India and the high profile of this case, it is more likely than not that Mr. Barapind's rights would be respected and that he would not face torture while in custody in India. The level of confidence that Mr.

Barapind would not be abused could be further increased by establishing a program of monitoring of his situation by one or more human rights, NGOs, or Embassy staff. His extended family and local media will also provide a level of oversight.

9. (SBU) As noted in the note conveying the GOI's assurances, Indian federal and state law prohibits torture. India today has many human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab. The National and State Human Rights Commissions should be able to visit Barapind in prison. Assuming Barapind is also permitted to have contact with NGO activists, they will help ensure that abuses, if they occur, are aired in the Indian media.

10. (SBU) India's relationship with the United States and the rest of the world is also dramatically different than it was less a decade ago. India has far greater incentives to be seen as a reliable partner and a country that honors its international commitments. All this, together with the high-profile nature of this case and India's interest in being able to return others for prosecution in the future, should help protect Mr. Barapind's freedom from abuse.

MULFORD

Additional Addressees:
None

cc:
AMCONSUL CALCUTTA
AMCONSUL CHENNAI
AMCONSUL MUMBAI
DEPT OF JUSTICE WASHDC
NSC WASHDC

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