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RUEAIIA/CIA WASHDC

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RHEHAAA/NSC WASHINGTON DC

RUCNDT/USMISSION USUN NEW YORK PRIORITY 0169

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<p>REVIEW AUTHORITY: Archie Bolster, Senior Reviewer</p>
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SENSITIVE

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SUBJECT: MODI MAY BE QUESTIONED ON HIS ROLE IN 2002 GUJARAT RIOTS

REF: A. 2009 MUMBAI 152

B. 2009 MUMBAI 72

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1. (SBU) Summary: On March 14, the Special Investigative Team (SIT) appointed by the Indian Supreme Court to investigate the major massacres in the 2002 anti-Muslim violence in Gujarat announced that it had summoned Gujarat's Bharatiya Janata Party (BJP) Chief Minister, Narendra Modi, to answer questions about his involvement in at least one major violent event. After a week of silence, Modi released an emotional letter accusing the SIT of tarnishing the image of the Gujarati people, and casting himself as a defender of the honor of Gujarat. The BJP leadership has said that Modi will appear before the SIT, but it is not clear what answers the SIT will seek from Modi, or whether Modi will cooperate with the investigators once he has appeared. Moreover, Modi may still use legal tactics to delay his appearance, and continue to resist inquiries and investigations into his role in the events of 2002, which he has done successfully so far. Nevertheless, although this summons has been shrouded in confusion, denials, and legal evasion, it is possible that Modi may be formally questioned for the first time on the 2002 violence within the next few weeks. End Summary.

The 2002 Violence

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2. (U) On the morning of February 27, 2002, one train coach of the Faizabad-Ahmedabad Sabarmati Express was burnt by unknown offenders near the Muslim majority town of Godhra in central Gujarat. Fifty-nine Hindus, many of them women and children, died in the fire. Reportedly, the corpses were taken in procession to various towns and villages in Central and North Gujarat, thereby igniting Hindu anger against the alleged Muslim culprits. On February 28, March 1, and March 2, hundreds of Muslims were killed and numerous Muslim women were raped. In 18 out of 25 districts of Gujarat, Muslim businesses were burnt and looted and places of worship were ransacked. Civilian enquiries later found out that in many places, the police did not restrain the Hindu rioters and did not offer adequate protection to Muslim victims. Moreover, in some extreme cases, the police aided the rioters. Haren Pandya, then Revenue Minister in Modi's Council of Ministers (who was later murdered), testified before the Indian People's Tribunal that Modi called an unscheduled and un-recorded meeting of senior officials on the evening of the train burning. (Note: The Indian People's Tribunal, created in April 2002, was a one-off independent civic inquiry group headed by three retired Supreme Court justices that recorded the testimony of victims from the riots. End Note.) In this meeting, Modi allegedly instructed top police officials to allow Hindus to "vent their anger" against Muslims for forty-eight hours, discouraging police action against rioters. The violence continued at a much lower level until mid-May 2002. The official death figure is slightly over 1,000, but human rights organizations believe that approximately 2,500 people were killed over the three month period.

#### Justice Process Convolute~But Moving Slowly

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3. (U) Since 2003, Citizens for Justice and Peace (CJP), a Mumbai-based advocacy group, has fought a legal battle in the Indian Supreme Court to transfer major trials outside Gujarat. Headed by Teesta Setalvad, a former journalist with Congress Party affinities, the CJP has spearheaded civil society efforts to bring the perpetrators of the 2002 violence to justice. CJP argued that the Gujarat lower judiciary was biased, allowing several accused Hindus to go free. The CJP also argued that the Gujarat police summarily closed many enquiries into the post-Godhra violence without adequate investigation. In the two cases that the Court transferred to Mumbai, approximately twenty alleged perpetrators received sentences in 2007 and 2008.

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4. (U) In one of the mass killing incidents that occurred on February 28, 2002, known as the Gulberg Society incident, survivor Zakia Jafri has fought a long legal battle to be allowed to file a complaint against Modi and 62 other senior officials of his administration, both elected and career officials, as well as the police. At the Gulberg Society, Jafri's husband, a former Congress Member of Parliament and 68 others were killed; Jafri has accused Modi and his administration of culpability in the incident. When the Gujarat police and Gujarat judiciary failed to register her complaint for over three years, she approached the Supreme Court. In March 2008, the Indian Supreme Court appointed a Special Investigation Team (SIT) headed by former Central Bureau of Investigation director R.K. Raghavan to investigate the Gulberg Society incident and eight other high-profile instances of mass killing, including the initial train-burning. The SIT included members from the Gujarat police and other state police units.

SIT Record Uneven, Pleasing No One

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5. (SBU) In its two years of operation, the SIT has pleased some with progress in a few investigations, but has disappointed others, as its momentum has appeared to flag. Initially, the SIT issued arrest warrants for two high level officials (one from the BJP and one from the Vishwa Hindu Parishad) in the Naroda Patia massacre case (ref A). This gave victims hope that the SIT was serious about pursuing the high profile individuals allegedly involved in the case. However, from the beginning, detractors had serious misgivings about the Gujarat police officers assigned to the SIT, some of whom were implicated in the mass killings by victims groups. Some were also under a cloud of suspicion for a separate scandal involving the extra-judicial killing of alleged criminals for money. Moreover, some depositions given under oath to the SIT and submitted under sealed cover to the Indian Supreme Court leaked to the Times of India, which published a report criticizing the CJP for coaching witnesses. In February 2010, the public prosecutor in the Gulberg Society case resigned, stating that the SIT was brow-beating witnesses and that the Gujarat sessions judge was blatantly biased in favor of the alleged perpetrators. Also in February, a witness in the train-burning case, accused SIT officials of torturing him to change his prior testimony. With these conflicts brewing, on March 14, Raghavan told the press that he had summoned Modi to meet with the SIT on March 21.

6. (SBU) Separately, in October 2009, the CJP petitioned the Supreme Court to reconstitute the SIT, arguing that its handling of some cases had been questionable. On March 15, after a series of hearings, the Supreme Court appointed India's Additional Solicitor General Gopal Subramaniam as an amicus curie ("a friend of the court") to study the SIT reports. The Supreme Court also postponed the hearings of the Gulberg Society case in the Gujarat court. CJP founder Teesta Setalvad told ConGenOffs that "the March 15 Court order is an indirect admission that it has lost faith in the SIT." Setalvad believes that Raghavan announced the summons on March 14 to pre-empt a negative verdict from the Supreme Court about his handling of the investigation. She noted that on March 15, the lawyer of another BJP accused argued before the Supreme Court that the court should have heard the objections of the 62 accused before transferring the Gulberg case to the SIT two years ago. According to her, these arguments are a "diversionary tactic," and the Supreme Court is serious about disciplining the SIT. The next hearing in the Supreme Court is scheduled for early April.

Modi, Defiant as Ever, Responds to the SIT

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7. (SBU) Modi did not appear at the SIT offices on March 21. Instead, on March 22, Modi issued a public letter to the people of Gujarat denying that he had been summoned. In his characteristic style, he said that the false media reports were a slight against the people of Gujarat. Seeking to communicate to people his "deep pain" and "despair" over the attempts to tarnish the "good image of Gujarat, my government and me," he strongly rebutted that he was scheduled to appear before SIT on March 21. "To say that I was summoned on March 21 is completely false. I shall respond to the SIT fully respecting the law and keeping in view the dignity of a body appointed by the Supreme Court." Modi insisted that he had respect for the rule of law, but equated criticism of him for allegedly not appearing before the SIT with a "systematic campaign to defame Gujarat." He added, "The SIT had suggested that a suitable date can be fixed for my appearance based on mutual convenience. Such a date, when it is fixed, will be known to the countrymen in due course~ After the 2002 Godhra incidents, I had categorically said that no one is above the Indian Constitution and the law, even if he happens to be the chief minister of a state. These are not mere words. My actions have reflected this statement in its true spirit. I assure you that this would be my stand in the future," Modi claimed in a statement.

8. (SBU) On March 23, the BJP national spokesperson announced in Delhi that Modi will cooperate with the SIT and would appear on March 27. However, the media reports that Modi may also ask to appear after April 5, when the Supreme Court will hear arguments from the accused in the Gulberg Society case. BJP National President, Nitin Gadkari, told a cable news channel on March 20 that he thought Modi was capable of becoming India's Prime Minister. On March 24, in a discussion with ConGenOffs, a Rashtriya Swayamsevak Sangh (RSS) insider was unfazed by the SIT summons, and claimed that Modi will become the BJP's national leader after the 2012 Gujarat state elections. According to the RSS insider, Modi is the only leader who can credibly challenge Rahul Gandhi in the 2014 national elections.

Comment: Modi's Options

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9. (SBU) From February 2002 until today, Modi has successfully avoided any formal questioning by any investigative agency about his role or complicity in the post-Godhra violence. It is unclear whether Modi will appear for the SIT, and, if he does, how seriously he will be questioned, especially about what was said at the crucial 27 February 2002 meeting. Modi as always is playing his cards close to his chest. What is certain is that few in his core constituency of Hindu nationalists believe that Modi bears any responsibility for the 2002 tragedy in Gujarat. Most supporters instead believe that the justice movements are cynical, anti-Modi Congress Party-inspired political games to consolidate the Muslim vote. As BJP [redacted] told ConGenOff on February 24, "What happened happened. What is there to apologize about?" However, Modi will undoubtedly face persistent questions regarding his handling of the 2002 riots and Gulberg Society case. What is certain is that any findings from these investigations will be hotly disputed, and that Modi will remain a highly polarizing figure in Indian politics for years to come, which is not necessarily a negative for his political future. End Comment.

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