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**Subject:** GUJARAT HIGH COURT REVERSES EARLIER CONVICTION FOR TWELVE MUSLIMS ACCUSED OF MURDERING FORMER MODI CRITIC

1. (SBU) SUMMARY: On August 29, the Gujarat High Court acquitted 12 Muslim men who had been convicted in 2007 of murdering Gujarat Bharatiya Janata Party (BJP) leader and former Revenue Minister Haren Pandya in March 2003. Pandya was a vocal critic of Gujarat Chief Minister Narendra Modi, and Pandya's family believes that his murder was a deeper political conspiracy by Modi to silence Pandya. The Court criticized the Central Bureau of Investigation (CBI) for accepting the Gujarat police theory that Pandya's assassination was Muslim revenge for the 2002 anti-Muslim violence. Accepting the verdict, the CBI has indicated that the agency will re-open the murder investigation. The re-opening of the case could bring to light new information regarding Pandya's killing and potentially cause political and legal headaches for Chief Minister Modi as he prepares for the 2012 state elections. END SUMMARY

#### GUJARAT VIOLENCE AND THE PANDYA DEPOSITION BEFORE A CITIZENS' TRIBUNAL

2. (U) On the morning of February 27, 2002, a train coach of the Faizabad-Ahmedabad Sabarmati Express was set ablaze, allegedly by an angry mob of Muslims from Godhra in central Gujarat. The coach was packed with Vishwa Hindu Parishad (VHP - a rightwing Hindu organization) volunteers. Eyewitnesses in Godhra claimed that the train passengers had taunted and insulted the train station workers (a majority of whom were Muslims), provoking an attack the train. Fifty-nine Hindus, many of them women and children, died in the fire. The train burning ignited Hindu anger and violence against Gujarat's Muslim community. As many as 2,000 Muslims were killed and numerous Muslim women were raped in the following days. Throughout Gujarat, Muslim businesses were burned and looted and places of worship desecrated (Ref A).

3. (SBU) In May 2002, the Concerned Citizens Tribunal, a citizens group led by retired Indian Supreme Court judges and social activists, conducted a preliminary investigation in the Gujarat riots. The group's report was published in November 2002. During Pandya's testimony before the panel, he alleged that on the evening of the train-burning incident, Chief Minister Modi gave instructions to the police to go easy on Hindu rioters for the next forty-eight hours. Pandya claimed he was present during this meeting of senior government officials. According to human rights groups, Pandya allegedly played a crucial role in organizing the 2002 riots. Pandya and Modi had been bitter rivals for years, particularly when Pandya refused to give up his state assembly seat to Modi. Though the Tribunal redacted Pandya's name from its report, various media outlets soon disclosed Pandya as the whistleblower. In August 2002, Modi removed Pandya from the council of ministers and later did not include Pandya on the BJP's ticket for the December 2002 state assembly election.

#### PANDYA'S MURDER AND SUBSEQUENT INVESTIGATION

4. (U) On March 11, 2003, unknown criminals shot and severely wounded Jagdish Tiwari, a leader of the Gujarat VHP. On March 26, unknown assailants shot and killed Haren Pandya. Initially, the Gujarat police registered separate complaints in the two cases and started an investigation. Within weeks, the Gujarat police claimed that both murders were part of a wider conspiracy by a group of young Muslims from Ahmedabad and Hyderabad to avenge the 2002 riots. The Gujarat police (and later the CBI) combined their investigations. However, in May 2003, the Gujarat government handed over the investigation of both crimes to the CBI following criticism from human rights groups and the media. In 2003, the CBI arrested 15 Muslim youth (10 from Ahmedabad and five from Hyderabad) for the two crimes under the Prevention of Terrorism Act (POTA), which meant that the youth would not be released on bail until the trial concluded. Pandya's family refused to believe the explanation from the Gujarat police or CBI. The family publicly accused CM Modi of conspiring to kill Pandya in revenge for his testimony before the citizens' inquiry.

5. (U) In 2004, the Congress Party-led United Progressive Alliance (UPA), now holding power in the central government, repealed POTA, but ruled that earlier cases under POTA would continue. (Note: POTA permitted confessions made before police officers to be admitted as evidence at trial. The Indian Penal code otherwise does not allow confessions before police officials as evidence. End note.) In June 2007, the special POTA Sessions Court in Ahmedabad sentenced Mohamed Asgar Ali of Hyderabad – charged as the main perpetrator in the Pandya-Tiwari case – to life imprisonment, gave a 14-year jail term to seven people, a 10-year jail term to two and a 5-year jail term to two. It acquitted three youth from Ahmedabad. The convicted were all held guilty of murder and conspiracy to spread terror in the Pandya murder case and attempted murder charges in the case of VHP leader Jagdish Tiwari. The CBI argued that the two attacks were part of a “larger conspiracy” to cause terror and avenge the 2002 communal riots in Gujarat that inflicted “severe sufferings” on Muslims. The convictions were immediately

appealed to the Gujarat High Court.

#### GUJARAT HIGH COURT VERDICT REVERSES CONVICTIONS, CBI PLANS NEW INVESTIGATION

6. (U) On August 29, 2011, the Gujarat High Court acquitted the accused of murdering Pandya, but held them guilty of the attempted murder of Tiwari. The High Court ruled that the prosecution failed to prove guilt for the Pandya murder beyond a reasonable doubt. The court also said that the trial court had completely ignored the forensic evidence in the Pandya murder and gave too much credence to an alleged eye-witness account. The High Court reduced Mohamed Asgar Ali's life sentence to 7 years in prison. For the remaining 11 accused, the court reduced their sentences to time already served in jail and ordered their release. The High Court's ruling stated, "The investigation in the murder of Shri Pandya has throughout been botched up and blinkered and it left a lot to be desired...The investigating officers [of the CBI] ought to be held accountable for their ineptitude resulting in injustice, harassment of many persons and enormous waste of public resources and time of the courts."

7. (U) On August 31, Pandya's wife Jagruti held a media conference in Ahmedabad and demanded the murder investigation be re-opened by the Gujarat High Court. She said that the family had always believed that there was a deep-rooted political conspiracy in the Gujarat state BJP to eliminate Pandya, and that the 12 youth sentenced for the murder were not involved in the killing. On September 5, the Indian media reported that the CBI would ask the Indian Supreme Court permission to re-open the case.

8. (SBU) COMMENT: The murder case of Haren Pandya has been a cause célèbre for numerous human rights activists who have pointed the finger at Modi and his government for the 2002 riots. The widely publicized bitter rivalry between Pandya and Modi only further ignited the media controversy following Pandya's mysterious assassination. The CBI's reopening of the investigation will likely stay in the news over the coming months and could potentially reveal new information on the murder, creating new political and legal headaches for Chief Minister Modi as he prepares for the state assembly elections in 2012. END COMMENT

**Signature:** Haas

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**Drafted By:** MUMBAI:Mundlay, Arundhati

**Cleared By:** CONS:Tyler, David A.  
POL/ECON:Rajan, Prashanth  
POL\ECON:Carlson, Robert W (Mumbai)  
POL:Narain, Paul F

**Approved By:** Haas, Peter D

**Released By:** MUMBAI:Rajan, Prashanth

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