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 FM AMEMBASSY LIMA
 TO SECSTATE WASHDC IMMEDIATE 5575
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 AMEMBASSY MEXICO
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 USCINCSO QUARRY HEIGHTS PM
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 USIA WASHDC 1659
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Release additional
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C O N F I D E N T I A L SECTION 01 OF 05 LIMA 006089

USCINCSO ALSO FOR POLAD

E.O. 12356: DECL:6/30/10

TAGS: PHUM PGOV PREL KJUS KDEM PREL PE
 SUBJECT: CONGRESS PASSES "BARRIOS ALTOS LAW" PROHIBITING JUDICIAL
 REVIEW OF THE AMNESTY LAW

1. (C) SUMMARY: THE GOVERNMENT-CONTROLLED PERUVIAN CONGRESS

Current Class: CONFIDENTIAL

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 UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: SAM A. MOSKOWITZ
 DATE/CASE ID: 15 JUN 2001 200101053

DEPT OF STATE APPEALS REVIEW PANEL (ARP)

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PASSED A BILL SHORTLY BEFORE MIDNIGHT JUNE 28 PROHIBITING THE JUDICIARY FROM REVIEWING THE JUNE 14 AMNESTY LAW. WE BELIEVE THIS MEASURE WAS PROPOSED BY FUJIMORI AND WILL BE SIGNED INTO LAW SHORTLY. THE JUNE 28 LAW IS A DIRECT RESPONSE TO THE RULING BY THE BARRIOS ALTOS JUDGE THAT THE CONSTITUTION, BY GUARANTEEING THE PROTECTION OF HUMAN LIFE AND CONFIRMING PERU'S SIGNATURE TO INTERNATIONAL HUMAN RIGHTS TREATIES, SUPERSEDED THE CONGRESSIONALLY-MANDATED AMNESTY. THE CONGRESSIONAL MOVE CAME AS A SURPRISE; OPPOSITION AND HUMAN RIGHTS ACTIVISTS HAD EXPECTED THE PRO-FUJIMORI SUPREME COURT TO UPHOLD THE GOP'S AMNESTY. DESPITE THE NEW LEGISLATION, THE OPPOSITION AND PROMINENT MEMBERS OF PERU'S LEGAL COMMUNITY (AND SOME GOVERNMENT CONGRESSMAN) CONTINUE TO CONSIDER THE AMNESTY FOR HUMAN RIGHTS ABUSERS AS UNCONSTITUTIONAL. THE CONSTITUTIONAL ISSUES SURROUNDING THIS AMNESTY ARE FAR FROM RESOLVED BY THIS NEW LAW, AND A SUPERIOR COURT TRIBUNAL IS STILL CHARGED WITH MAKING A RULING JULY 3 ON THE LAW'S APPLICABILITY TO THE BARRIOS ALTOS MASSACRE CASE. BY CHALLENGING THE JUDICIARY'S RIGHT TO REVIEW AND INTERPRET LEGISLATION, THE CONGRESS IS UNDERCUTTING A FUNDAMENTAL PRINCIPLE OF DEMOCRACY. BY SO DOING, THE GOP HAS RAISED THE STAKES, AND MADE IT HARDER FOR THE COURTS TO CAVE IN. END SUMMARY.

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2. (U) THE PERUVIAN CONGRESS BY A VOTE OF 35 TO 11, APPROVED A BILL AT 11:45 P.M. JUNE 28 STATING THAT THE AMNESTY LAW PASSED TWO WEEKS EARLIER WAS BASED ON THE CONGRESS'S CONSTITUTIONAL RIGHT TO GRANT AMNESTY AND THAT THIS AMNESTY MUST BE APPLIED BY THE JUDICIAL BRANCH. THE BILL WAS UNEXPECTEDLY INTRODUCED AT 7:30 P.M. BY CONGRESSIONAL SECOND VICE-PRESIDENT VICTOR JOY WAY. THREE GOVERNMENT CONGRESSMEN ABSTAINED (CARLOS FERRERO, RICARDO MARCENARO, AND JORGE VELASQUEZ) FROM VOTING ON THE LEGISLATION. ATTENDANCE AT THIS VOTE WAS MARKEDLY DOWN FROM THAT TWO WEEKS EARLIER WHEN THE AMNESTY LEGISLATION PASSED AT THREE IN THE MORNING BY A VOTE OF 47 TO 11 (WITH SIX GOVERNMENT CONGRESSMEN VOTING AGAINST THAT BILL). THE LAW WILL GO INTO EFFECT AFTER PRESIDENT FUJIMORI SIGNS IT AND THE BILL IS PUBLISHED IN THE GOVERNMENT DAILY "EL PERUANO." FOR A FULL TEXT OF THE JUNE 28 LAW SEE PARA 18.

3. (U) THE NEW LAW IS A DIRECT RESPONSE TO THE RULING BY THE FIRST INSTANCE JUDGE IN THE BARRIOS ALTOS MASSACRE CASE, ANTONIA SAQUICURAY, WHO DECLARED THE FIRST ARTICLE OF THE JUNE 14 AMNESTY BILL IN VIOLATION OF THE CONSTITUTION. AS A RESULT, THE PERUVIAN OPPOSITION HAS CALLED THIS NEW BILL "THE BARRIOS ALTOS LAW." IN HER RULING, SAQUICURAY HAD ARGUED THAT THE PERUVIAN CONSTITUTION GUARANTEED THE PROTECTION OF HUMAN LIFE AND THAT THE CONSTITUTION

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CONFIRMED PERU'S RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES, THEREFORE AN AMNESTY COULD NOT BE GRANTED TO HUMAN RIGHTS ABUSERS. IN RESPONSE, THE JUNE 28 LEGISLATION EXPLICITLY STATES THAT THE PERUVIAN CONGRESS HAS THE POWER TO GRANT AMNESTY UNDER THE AUTHORITY VESTED IN IT IN ARTICLE 102 OF THE PERUVIAN CONSTITUTION.

GOVERNMENT ARGUMENTS

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4. (U) IN PRESENTING THE LEGISLATION, JOY WAY ASSERTED THAT THE JUDICIARY HAD BEEN ERRONEOUSLY LIMITING CONGRESS'S RIGHT TO GRANT AMNESTY. HE BELIEVED THAT THE LEGISLATIVE BRANCH COULD NOT ALLOW ANOTHER BRANCH OF GOVERNMENT (THE JUDICIARY) TO ACT AS A TRIBUNAL OF CONSTITUTIONAL GUARANTEES. (NOTE: IRONICALLY, A BODY WHOSE MEMBERS THE CONGRESS HAS POINTEDLY YET TO SELECT. END NOTE.) JOY WAY CRITICIZED RESISTANCE TO THE AMNESTY LAW, SAYING IT WAS ROOTED IN POLITICAL OPPOSITION, AND SAID PROOF OF THIS WAS THE FACT THAT THE OPPOSITION DID NOT SEEM CONCERNED WITH ABUSES WHICH TOOK PLACE PRIOR TO 1990. OTHERS WHO SPOKE IN FAVOR OF THIS BILL INCLUDED CONGRESSMAN RAFAEL REY REY (RENOVATION), WHO CALLED THE U.S. STATE DEPARTMENT EXPRESSION OF CONCERN WITH THE AMNESTY FOR HUMAN RIGHTS ABUSERS AS "IMPERTINENT" AND "HYPOCRITICAL" SINCE ABORTION IS LEGAL IN THE U.S., AND DECLARED THAT "THE UNITED STATES IS NOT THE POLICEMAN OF THE WORLD." CONGRESSWOMAN MARTHA CHAVEZ, AN ARDENT FOE OF THE HUMAN RIGHTS COMMUNITY, POINTED OUT WITH SATISFACTION THAT PASSAGE OF THE JUNE 28 BILL WOULD LEAVE "INSTITUTIONS WHICH DEFEND HUMAN RIGHTS" WITHOUT WORK. CHAVEZ ALSO CRITICIZED THE UNITED STATES'S HUMAN RIGHTS RECORD BECAUSE IT ALLOWED FOR LEGAL ABORTION. IN COMMENTS TO THE PRESS AFTER THE VOTE, CONGRESSMAN

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USCINCSO ALSO FOR POLAD

E.O. 12356: DECL:6/30/10

TAGS: PHUM PGOV PREL KJUS KDEM PREL PE
SUBJECT: CONGRESS PASSES "BARRIOS ALTOS LAW" PROHIBITING JUDICIAL
REVIEW OF THE AMNESTY LAW

OSWALDO SANDOVAL SAID THAT THE JUDICIAL BRANCH MUST NOW RESPECT THE AMNESTY LAW, AND IF IT DID NOT, THEN A "GRAVE CRISIS" WOULD DEVELOP. A NUMBER OF GOVERNMENT SPEECHES REFERRED TO MY-LAI'S PROOF THAT WE LACK THE MORAL AUTHORITY TO LECTURE PERU. SEVERAL ARGUED THAT THE AMNESTY PARAGRAPH IN THE PERUVIAN CONSTITUTION IS UNQUALIFIED AND UNIVERSAL, EXTENDING TO ANY TYPE OF OFFENSE WHETHER OR NOT ADJUDGED. IN THESE CIRCUMSTANCES, THEY ALLEGED, THE COURTS ARE ACTING UNCONSTITUTIONALLY IN REVIEWING THE AMNESTY. (FYI: A U.S. FEDERAL DISTRICT COURT JUDGE IN WASHINGTON, D.C., TOLD A USIA ARNET AUDIENCE JUNE 27 THAT U.S. COURTS HAVE NO RIGHT TO REVIEW AMNESTY DECISIONS; THIS IS THE VIEW OF ONE JUDGE AND BEGS THE KEY ISSUE HERE -- WHETHER A COURT CAN RESOLVE CONSTITUTIONAL ISSUES RAISED BY THE CONFLICT BETWEEN THE AMNESTY POWER IT CONFERS AND THE CONSTITUTION INJUNCTION AGAINST JUDICIAL INTERFERENCE. END FYI.)

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OPPOSITION ARGUMENTS

5. (U) LEADING THE OPPOSITION TO THIS NEW LEGISLATION WAS CONGRESSWOMAN LOURDES FLORES NANO (PPC), WHO IN A SPIRITED PRESENTATION QUESTIONED THE CONSTITUTIONALITY OF THE NEW LAW. SHE TERMED THE NEW MEASURE "AN OUTRAGE AGAINST THE CONSTITUTION AND ORDER," NOTING THAT IT WAS CONTRARY TO INTERNATIONAL TREATIES
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SIGNED BY PERU. INVOKING THE SAN JOSE TREATY AND SEVERAL CASES OF THE SAN JOSE COURT, SHE CALLED UPON THE GOVERNMENT TO STOP EXCEEDING THE STATE OF LAW, AND ADDED THAT IF THE GOVERNMENT WISHED TO CONTINUE DICTATING THIS TYPE OF LAW, THEN IT MIGHT AS WELL DO AWAY WITH THE CONGRESS AND RULE BY FIAT. CONGRESSMAN FERNANDO OLIVERA (FIM) TERMED THE BILL "THE BARRIOS ALTOS LAW" AND NOTED THAT IT APPEARED THE GOVERNMENT WAS ENACTING THE NEW LAW IN ORDER TO PROTECT "THE BAD CHIEFS AT THE HIGHEST LEVELS OF THE ARMED FORCES," SUCH AS ARMED FORCES JOINT COMMAND CHIEF GEN. NICOLAS HERMOZA, INTELLIGENCE CHIEF GEN. JULIO SALAZAR MONROE, AND PRESIDENTIAL ADVISOR VLADIMIRO MONTESINOS. HE NOTED THAT THE LAW WAS BEING ENACTED BECAUSE JUDGES WERE REBELLING, AND TERMED IT AN EFFORT TO OVERRULE BARRIOS ALTOS JUDGE SAQUICURAY AND PROSECUTOR MAGALLANES. DRAMATICALLY, HE TOSSED A COPY OF THE LAW INTO A TRASHBIN PROCLAIMING "THIS LAW DOES NOT SERVE ANY PURPOSE AND BELONGS IN A WASTE PAPER BASKET." HE SUGGESTED THAT THE CCD PRESIDENT JAIME YOSHIYAMA (THEN PRESIDING) MOVE OVER FOR GENERAL HERMOZA TO ASSUME HIS POSITION, AND THAT THE OTHER GOVERNMENT DEPUTIES PUT ON ARMY UNIFORMS!

6. (U) THE OPPOSITION WAS ALSO UPSET WITH THE FACT THAT EARLIER ON JUNE 28, THE GOVERNMENT MAJORITY ON THE CONGRESSIONAL CONSULTATIVE COMMISSION FOR THE CONSTITUTIONAL TRIBUNAL DECIDED TO POSTPONE FOR THREE WEEKS A DECISION TO NAME MEMBERS TO THE CONSTITUTIONAL TRIBUNAL, EFFECTIVELY ENDING ANY CHANCE THAT THE LAME DUCK CONGRESS WILL BRING THE CONSTITUTIONAL TRIBUNAL INTO EFFECT BEFORE JULY 28. AS A RESULT ALL FOUR OPPOSITION MEMBERS OF THE NINE MAN COMMISSION RESIGNED IN PROTEST (AT LEAST FOR THE TIME BEING). A GOP CONGRESSMAN TOLD US PRIVATELY THAT THE GOP CONGRESSIONAL LEADERSHIP'S DECISION TO "POSTPONE" THE NAMING OF THE MEMBERS OF THE TRIBUNAL WAS DONE WITH THEIR FULL KNOWLEDGE THAT THE GOP WOULD
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INTRODUCE THE SURPRISE SECOND "AMNESTY" LAW LATER THAT EVENING. IN ADDITION, THE OPPOSITION WAS ALSO DISILLUSIONED WITH THE FACT THAT THE DEFENDER OF THE PEOPLE (OMBUDSMAN) LEGISLATION WAS NOT CONSIDERED OR PASSED AS EXPECTED BY SOME JUNE 28. IN A TELEVISION INTERVIEW JUNE 29, FLORES NANO STATED THAT THE OPPOSITION NOW BELIEVES THE FUJIMORI ADMINISTRATION HAS NO DESIRE TO SEE EITHER THE CONSTITUTIONAL TRIBUNAL NOR THE DEFENDER OF THE PEOPLE COME INTO BEING BECAUSE OF THE CHALLENGE THEY COULD POSE TO THE MILITARY. SHE EXPRESSED THE VIEW THAT THE PERUVIAN PEOPLE HAD NOT VOTED FOR FUJIMORI AND HIS PARTY IN APRIL IN ORDER TO HAVE UNCONSTITUTIONAL LEGISLATION PASSED, AND SAID THE OPPOSITION WOULD WORK TO OBTAIN ENOUGH SIGNATURES TO HOLD A REFERENDUM ON THE AMNESTY ISSUE, SO THAT THE PERUVIAN PEOPLE COULD MAKE THEIR VIEWS KNOWN. (FLORES NANO TOLD THE AMBASSADOR JUNE 29 THAT SHE BELIEVES FUJIMORI IS INTENT ON ESTABLISHING AN ALL-POWERFUL PRESIDENCY BY HOLDING TO A MINIMUM THE POWER OF ANY INTERVENING INSTITUTIONS.)

BARRIOS ALTOS JUDGE WATCHES DEBATE

7. (U) BARRIOS ALTOS FIRST INSTANCE JUDGE ANTONIA SAQUICURAY WATCHED THE JUNE 28 CONGRESSIONAL DEBATE LIVE ON TELEVISION AT THE

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USCINCSO ALSO FOR POLAD

E.O. 12356: DECL:6/30/10

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SUBJECT: CONGRESS PASSES "BARRIOS ALTOS LAW" PROHIBITING JUDICIAL
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JUSTICE MINISTRY WHERE SHE WAS WORKING UNTIL MIDNIGHT AS PART OF A JUSTICE MINISTRY "JAPANESE STRIKE" OF WORKING LONGER HOURS IN ORDER TO PROTEST LOW SALARIES. (NOTE: FIRST INSTANCE JUDGES, INCLUDING SAQUICURAY, ARE CURRENTLY BEING PAID THE EQUIVALENT OF 545 US DOLLARS PER MONTH, LESS THAN SECRETARIES IN SOME GOVERNMENT OFFICES. END NOTE.) SAQUICURAY TOLD JOURNALISTS THAT SHE WOULD NOT COMMENT PUBLICLY ON THE JUNE 28 LEGISLATION, NOTING THAT DECISIONS ON THE BARRIOS ALTOS CASE WERE NOW UP TO THE SUPERIOR COURT. SHE LATER STATED AFTER THE "BARRIOS ALTOS LAW" WAS PASSED THAT SHE WOULD NOT MAKE A SINGLE CHANGE TO HER RULING, WHICH SHE SAID WAS DONE IN STRICT CONFORMITY WITH THE CONSTITUTION. PRESS REPORTS INDICATE THAT THE SUPERIOR COURT PROSECUTOR WILL ARGUE IN FAVOR OF SAQUICURAY'S RULING BEFORE THE THREE PERSON SUPERIOR COURT TRIBUNAL HEARING ON JULY 3. (NOTE: IT APPEARS THAT THE LAWYER FOR THE BARRIOS ALTOS FAMILY MEMBERS HAS NOT BEEN SUCCESSFUL IN HAVING A JUDGE, WHO IS A FORMER POLICE CAPTAIN, RECUSED FROM THE THREE-MAN SUPERIOR COURT TRIBUNAL.)

CARDINAL AND BAR ASSOCIATION LEADERS REACT

8. (U) THE ARCHBISHOP OF LIMA, CARDINAL AUGUSTO VARGAS ALZAMORA REITERATED JUNE 29 HIS OPPOSITION TO THE AMNESTY FOR HUMAN RIGHTS
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ABUSERS, NOTING THOSE WHO VIOLATED THE FIFTH COMMANDMENT "THOU SHALL NOT KILL" HAVE COMMITTED A GRAVE MORAL CRIME AND SHOULD BE PUNISHED ACCORDINGLY. HE ADDED THAT HE DID NOT UNDERSTAND WHEN POLITICIANS WERE NOT ACTING FOR THE COMMON GOOD BUT RATHER FOR PARTICULAR INTERESTS. BOTH THE PRESIDENT OF THE LIMA BAR ASSOCIATION, FELIPE OSTERLING, AND HIS PREDECESSOR JORGE AVEDANO, HAVE PUBLICLY CRITICIZED THE JUNE 28 LEGISLATION AND LABELLED IT UNCONSTITUTIONAL. OSTERLING STATED THAT THE CONGRESS HAD NO RIGHT TO STATE THAT JUDICIARY COULD NOT DECLARE A LAW UNCONSTITUTIONAL. AVEDANO MADE CLEAR THAT WHILE HE DISLIKES THE FIRST AMNESTY LAW, HE AT LEAST FOUND IT CONSTITUTIONAL -- BUT AVEDANO SAID THAT THIS SECOND AMNESTY LAW CHALLENGED THE AUTHORITY OF THE JUDICIARY, AND WAS CLEARLY UNCONSTITUTIONAL.

9. (U) RETIRED GEN. RODOLFO ROBLES, WHO IN 1993 PUBLICLY REVEALED THE MILITARY'S INVOLVEMENT IN THE LA CANTUTA MASSACRE, HAS TERMED THE NEW LAW AN "ATTACK ON THE INDEPENDENCE AND AUTONOMY OF THE JUDICIARY." THE LEADING OPPOSITION PARTY IN THE NEW CONGRESS, UNION FOR PERU, ALSO ISSUED A COMMUNIQUE EXPRESSING SIMILAR SENTIMENTS.

COMMENT ON NEW LAW:

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10. (C)

TOLD POLOFFS JUNE 29 THAT THE "BARRIOS ALTOS LAW" WAS "IRRATIONAL." ASSERTED THAT THE LAW IN EFFECT STRIPPED JUDGES OF ALL AUTHORITY. HE SPECULATED THAT THE LAW HAD ORIGINATED WITH THE MILITARY LEADERSHIP. CHARACTERIZED THE NEW LAW AS "MORE UNCONSTITUTIONAL THAN THE AMNESTY LAW."

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THE CONGRESS HAD ENSURED THAT THE MEASURE PASSED BEFORE THE SUPERIOR COURT COULD DECIDE ON WHETHER OR NOT THE BARRIOS ALTOS CASE COULD PROCEED.

11. (C) NOTED THAT THERE WERE SEVERAL POSSIBLE SCENARIOS REGARDING WHAT COULD HAPPEN NEXT WITH THE BARRIOS ALTOS CASE. THE SUPERIOR COURT COULD IN THEORY DECIDE THAT THE JUNE 28 LAW IS ITSELF ALSO UNCONSTITUTIONAL AND ORDER THAT THE CASE PROCEED; IT COULD SEND THE CASE FILE BACK TO THE PUBLIC MINISTRY AND ASK FOR A PROSECUTOR'S OPINION; OR IT COULD CLOSE THE CASE. THOUGHT THE MOST LIKELY SCENARIO WAS THAT THE SUPERIOR COURT WOULD CLOSE THE CASE FOR GOOD. IF IT DECIDED

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NOT TO DO SO, THE DECISION WOULD THEN BE LEFT UP TO THE SUPREME COURT'S CONSTITUTIONAL CHAMBER, WHICH PROBABLY WOULD UPHOLD THE LAW. EVEN IN THE UNLIKELY EVENT THAT THE JUDICIAL BRANCH EXERCISED INDEPENDENCE AND ORDERED THAT THE CASE CONTINUE, THE CASE COULD STILL WIND UP IN MILITARY COURT (WHICH, WE NOTE, HAS ALREADY CLOSED THE CASE BASED ON THE AMNESTY LAW). CONCLUDED THAT THE CHANCES THAT THE AUTHORS OF THE BARRIOS ALTOS KILLINGS WOULD BE TRIED AND CONVICTED WERE VERY SLIM.

12. (C) BOTH CUBAS AND MAGALLANES ASSERTED THAT THEY WERE UNDER

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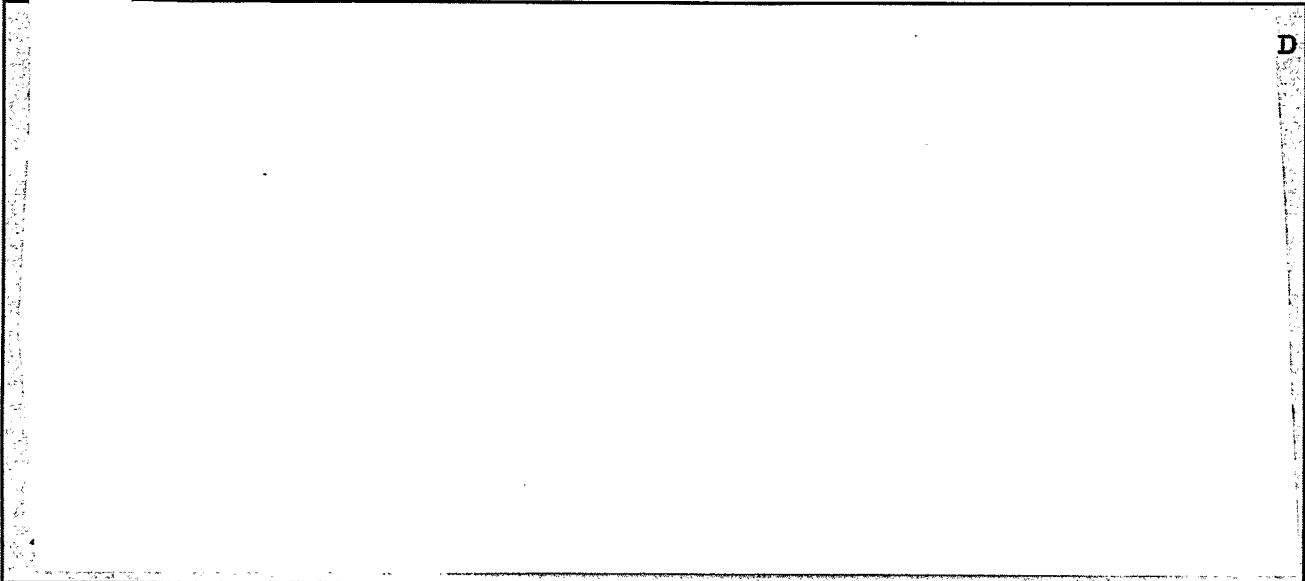
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REVIEW OF THE AMNESTY LAW



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GOP CONGRESSMAN: GOP CLEARLY AUTHORITARIAN GOVERNMENT

14. (C) A GOVERNMENT CONGRESSMAN WHO HAS PLAYED A LEADING ROLE IN
THE JUSTICE COMMITTEE IN CONGRESS TOLD POLOFF JUNE 29 THAT THE
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SECOND "AMNESTY LAW" CLEARLY DEMONSTRATES THAT THE FUJIMORI
ADMINISTRATION IS AN "AUTHORITARIAN GOVERNMENT." THE CONGRESSMAN
STATED THAT AT THE HEART OF THE CURRENT CONTROVERSY WAS THE ASSAULT
ON JUDICIAL AUTONOMY AND THE RIGHT OF JUDICIAL REVIEW. IN THE
CONGRESSMAN'S OPINION, THIS LAW "CAME FROM THE MILITARY HIGH
COMMAND" AND DID NOT ORIGINATE IN THE PALACE. HOWEVER, THE
CONGRESSMAN THOUGHT THAT THE PALACE WAS WILLING TO BLESS THE LAW
AND HAVE ITS CONGRESSIONAL MAJORITY APPROVE IT IN EXCHANGE FOR THE
MILITARY'S "GOOD BEHAVIOR," ACQUIESCENCE OR SUPPORT FOR THE
PALACE'S AGENDA ON OTHER NON-SECURITY RELATED ISSUES. THE
CONGRESSMAN, WHO IS HIGHLY CRITICAL OF U.S. HUMAN RIGHTS POLICY,

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SAID THE GOP WAS NOT CONCERNED BY U.S. REACTION TO THE FIRST
"AMNESTY LAW.

15. (C) THE CONGRESSMAN, WHO ABSTAINED IN THE VOTE ON THE SECOND AMNESTY LAW, IS UNDER PRESSURE FROM THE GOP MAJORITY LEADERSHIP TO "VOTE RIGHT" OR FACE EXPULSION FROM THE GOP BENCH. HE SAID HE HAD TOLD HIS CRITICS THAT HE WOULD NEVER "COST THE GOVERNMENT A VOTE" BUT AS HIS VOTE HAD NOT BEEN "NEEDED", HE HAD VOTED HIS CONSCIENCE. STILL, TO ILLUSTRATE THE DEGREE OF TENSION GENERATED BY THIS ISSUE, THE CONGRESSMAN HAD TERSELY ASKED POLOFF TO COME TALK WITH HIM IN PERSON BECAUSE "ANYTHING I SAY ON THE TELEPHONE CAN BE USED AGAINST ME."

COMMENT

16. (C) COMMENT: IT IS UNCLEAR WHY FUJIMORI, WHOM WE EXPECT TO SIGN THE LAW SHORTLY, TOOK THIS STEP RATHER THAN RELY UPON PRO-FUJIMORI JUDGES IN THE SUPREME COURT TO RULE IN FAVOR OF THE GOP ON THE AMNESTY OR SHORT CIRCUIT THE WHOLE PROCESS AT THE OUTSET BY
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PUSHING THE CASE INTO A MILITARY COURT. POSSIBLY FUJIMORI WANTED TO SHOW HIS AUTHORITY; OR PERHAPS HE CONSIDERED THE BARRIOS ALTOS CASE SO EXPLOSIVE HE COULD NOT RUN THE RISK THE COURT MIGHT LET HIM DOWN.

17. (C) THE JUNE 28 LEGISLATION GIVES THE IMPRESSION THAT THE FUJIMORI ADMINISTRATION WILL PULL OUT ALL THE STOPS TO BE SURE THAT THE AMNESTY FOR HUMAN RIGHTS ABUSERS IS APPLIED BY THE JUDICIARY. HOWEVER, SINCE MEMBERS OF THE JUDICIARY AND LEGAL PROFESSION APPEAR TO CONSIDER THIS NEW LEGISLATION A CHALLENGE TO THE JUDICIARY'S AUTONOMY AND UNCONSTITUTIONAL, IT APPEARS THAT CONTINUED CONFRONTATION ON THIS ISSUE IS LIKELY. THIS IS BECAUSE FUJIMORI HAS NOW SHIFTED DEBATE FROM THE SPECIFIC -- THE AMNESTY LAW -- TO THE GENERAL -- JUDICIAL REVIEW AND THE WHOLE CONCEPT OF DEMOCRACY. WHILE THE LARGELY PRO-FUJIMORI JUDGES IN THE SUPREME COURT PROBABLY WOULD HAVE SUPPORTED THE ORIGINAL AMNESTY LAW, THEY MAY WELL BALK AT THE PROPOSED EMASCULATION OF JUDICIAL AUTONOMY. THUS, FUJIMORI HAS SET THE SCENE FOR A MAJOR CONFRONTATION. IN ADDITION THE CONTINUED DELAY IN CONSTITUTING THE CONSTITUTIONAL TRIBUNAL AND THE DEFENDER OF THE PEOPLE ADDS TO THE IMPRESSION THAT THE FUJIMORI ADMINISTRATION IS MAKING EVERY EFFORT TO ENSURE THAT NO CIVILIAN BRANCH OF THE GOVERNMENT CAN AT THIS TIME CHALLENGE THE AMNESTY'S

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ACTION ARA-01

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	OASY-00	DOEE-00	SRPP-00	EB-01	EUR-01	INLB-01	H-01
	TEDE-00	INR-00	IO-08	LAB-01	L-01	ADS-00	M-00
	NSAE-00	OIC-02	OMB-01	PA-01	PM-00	PRS-01	P-01
	SP-00	SSO-00	SS-00	STR-01	TRSE-00	T-00	PMB-00
	PRME-01	DRL-09	G-00	/051W			

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FM AMEMBASSY LIMA
TO SECSTATE WASHDC IMMEDIATE 5579
INFO NSC WASHDC IMMEDIATE
AMEMBASSY MEXICO
AMEMBASSY SANTIAGO
AMEMBASSY BRASILIA
USCINCSO QUARRY HEIGHTS PM
USMISSION GENEVA
USIA WASHDC 1663
DIA WASHDC
CIA WASHDC
AMEMBASSY QUITO
AMEMBASSY LA PAZ
AMEMBASSY CARACAS
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USCINCSO ALSO FOR POLAD

E.O. 12356: DECL:6/30/10
TAGS: PHUM PGOV PREL KJUS KDEM PREL PE
SUBJECT: CONGRESS PASSES "BARRIOS ALTOS LAW" PROHIBITING JUDICIAL
REVIEW OF THE AMNESTY LAW

LEGALITY OR SEEK TO FURTHER INVESTIGATE PAST HUMAN RIGHTS. END
COMMENT.

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TRANSLATION OF THE JUNE 28 LAW

18. (U) THE FOLLOWING IS AN INFORMAL EMBASSY TRANSLATION OF THE NEW LEGISLATION:

BEGIN TEXT:

ARTICLE 1: THE AMNESTY AUTHORIZED BY LAW NO. 26479, WHICH IS IN ACCORDANCE WITH ARTICLE 139, ITEM 3, OF THE POLITICAL CONSTITUTION, DOES NOT CONSTITUTE INTERFERENCE IN THE EXERCISE OF THE JUDICIAL FUNCTION NOR WEAKENS THE POWER OF THE STATE TO RESPECT AND GUARANTEE THE FULL COMPLIANCE OF HUMAN RIGHTS AS RECOGNIZED BY ARTICLE 44 OF THE POLITICAL CONSTITUTION, AND AMONG OTHERS TREATIES ON THE SUBJECT, ITEM ONE OF ARTICLE ONE OF THE AMERICAN CONVENTION ON HUMAN RIGHTS.

ARTICLE 2: THE SAID AMNESTY, SINCE IT IS A LAW OF GRACE WHOSE CONCESSION IS EXCLUSIVELY GIVEN TO CONGRESS, IN CONFORMITY WITH ITEM SIX OF ARTICLE 102 OF THE POLITICAL CONSTITUTION, CANNOT BE
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REVIEWED BY THE JUDICIAL BRANCH

ARTICLE 3: ARTICLE ONE OF LAW 16479 SHOULD BE INTERPRETED IN THE SENSE THAT THE GENERAL AMNESTY THAT IT PROVIDES IS OBLIGATORILY APPLIED BY JURISDICTIONAL ORGANS AND COVERS ALL THE ACTIONS DERIVED OR ORIGINATED AS A RESULT OF THE WAR AGAINST TERRORISM, COMMITTED IN AN INDIVIDUAL OR GROUP FROM MAY 1980 UNTIL JUNE 14, 1995, WHETHER THE PERSONNEL INVOLVED WERE MILITARY, POLICE, OR CIVILIAN, AND WHETHER OR NOT THEY WERE ACCUSED, INVESTIGATED, SUBJECT TO PENAL PROCEEDINGS OR CONDEMNED; THUS LEAVING ALL THE JUDICIAL CASES IN PROGRESS OR DEFINITELY CLOSED IN CONFORMITY WITH ARTICLE SIX OF THE PREVIOUSLY INDICATED LAW.

ARTICLE 4: THIS LAW WILL TAKE EFFECT THE DAY FOLLOWING ITS PUBLICATION IN THE OFFICIAL DAILY "EL PERUANO."

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