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ACTION ARA-01

INFO	LOG-00	ACDA-08	ACDE-00	INLB-01	AID-00	ACQ-01	CIAE-00
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	OIGO-01	FBIE-00	UTED-00	H-01	IM-01	TEDE-00	INR-00
	IO-00	JUSE-00	L-01	ADS-00	MMP-00	DCP-01	NSAE-00
	NSCE-00	OIC-02	OMB-01	OPIC-01	PA-00	PM-00	PRS-00
	P-00	SCT-00	SP-00	STR-00	TRSE-00	T-00	ASDS-01
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P 151522Z JUN 98
 FM AMEMBASSY LIMA
 TO SECSTATE WASHDC PRIORITY 3549
 INFO AMEMBASSY QUITO
 AMEMBASSY ASUNCION
 AMEMBASSY LA PAZ
 AMEMBASSY SANTIAGO
 AMEMBASSY BOGOTA
 AMEMBASSY BUENOS AIRES
 AMEMBASSY BRASILIA
 AMEMBASSY CARACAS
 USIA WASHDC 4535
 USCINCSO MIAMI FL
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SOUTHCOM ALSO FOR POLAD AND J-5

SENSITIVE

E.O. 12958: N/A
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 SUBJECT: A REPENTANCE LAW FOR CRIMINALS, AND A CRIME-FIGHTING ROLE
 FOR THE SIN

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UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: OSCAR J. OLSON
 DATE/CASE ID: 7 AUG 2001 200003849

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REF: (A) LIMA 3635 (B) LIMA 3634 (C) LIMA 3454 (D) LIMA 3404
(E) LIMA 3344 (F) LIMA 2930-----
SUMMARY

1. (U) AMONG THE FINAL SET OF EXECUTIVE ORDERS ANNOUNCED BY THE FUJIMORI ADMINISTRATION UNDER THE AUTHORITY TRANSFERRED TO IT BY THE CONGRESS TO LEGISLATE REGARDING THE WAR ON CRIME (REF F) WERE THREE LEGISLATIVE DECREES OF PARTICULAR SIGNIFICANCE. THE FIRST PAIR, LEGISLATIVE DECREES 901 AND 902, WHICH WERE PUBLISHED IN THE JUNE 1 EDITION OF THE OFFICIAL GAZETTE, "EL PERUANO," CREATED A SYSTEM OF BENEFITS FOR SUSPECTED AND CONVICTED CRIMINALS WHO DECIDE TO REPENT AND COLLABORATE WITH THE AUTHORITIES IN THEIR INVESTIGATIONS. THE THIRD, LEGISLATIVE DECREE 904, WHICH WAS PUBLISHED IN THE JUNE 3 EDITION OF "EL PERUANO," ESTABLISHED WITHIN THE NATIONAL INTELLIGENCE SERVICE (SIN) THE NATIONAL INTELLIGENCE DIRECTORATE FOR SOCIAL PEACE AND SAFETY.

2. (SBU) DECREES 901 AND 902 ARE STRONGLY REMINISCENT OF A SIMILAR AND WIDELY-REVEILED REPENTANCE LAW WHICH WAS APPLIED TO
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REPENTANT CONVICTS UNDER THE ANTI-TERRORISM LAWS OF 1992. ALTHOUGH THIS TIME AROUND THE FUJIMORI REGIME HAS ATTEMPTED TO ENSURE AGAINST THE ABUSES GENERATED BY THE ANTI-TERRORISM-RELATED REPENTANCE LEGISLATION, MUCH OF THE PRESS AND MANY WITHIN THE HUMAN RIGHTS AND LEGAL COMMUNITIES HAVE NEVERTHELESS WARNED AGAINST A RECURRENCE OF INNOCENT PEOPLE BEING FALSELY ACCUSED AND CONVICTED WITHOUT BENEFIT OF DUE PROCESS. AS FOR DECREE 904, THE GOP HAS REPEATEDLY EMPHASIZED THE SIN'S PURELY INTELLIGENCE-GATHERING AND POLICE-SUPPORTING ROLE IN THE WAR ON CRIME. EVEN SO, OPPOSITION MEMBERS OF CONGRESS AND THE STRONGLY OPPOSITION DAILY, "LA REPUBLICA," HAVE INSISTED THAT THE SIN'S PLAN IS TO BECOME HEAVILY AND INDEPENDENTLY INVOLVED IN ACTUAL TRENCH WARFARE AGAINST ORGANIZED CRIME. END SUMMARY.

ELIGIBILITIES AND BENEFITS UNDER THE REPENTANCE LAW

3. (U) LEGISLATIVE DECREES 901 AND 902 APPLY TO AS-YET UNIDENTIFIED OR ALREADY SUSPECTED MEMBERS OF ORGANIZED CRIME GANGS, AS WELL AS TO CONVICTED OR SENTENCED MEMBERS OF SUCH GANGS, WHO

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COMMIT "EXTREME VIOLENCE," NOW CLASSIFIED AS "AGGRAVATED TERRORISM" (REFTEL E), OR TO INDIVIDUALS WHO COMMIT AGGRAVATED CRIMES, SUCH AS HOMICIDE, ASSASSINATION, KIDNAPPING AND RAPE/MURDER OF MINORS, AMONG OTHERS (REFTEL D). THESE INDIVIDUALS MAY ONLY RECEIVE THE BENEFITS OF THE REPENTANCE LAW IF THEY PROVIDE THE AUTHORITIES WITH TIMELY AND PROVENLY ACCURATE INFORMATION WHICH LEADS TO THE BREAK-UP OF ORGANIZED CRIME GANGS, THE CAPTURE OF THEIR MEMBERS AND/OR LEADERS, THE LIBERATION OF KIDNAP VICTIMS, THE RECOVERY OF ILLEGAL ARMS AND EXPLOSIVES, AND THE PREVENTION OF FUTURE CRIMINAL ACTIVITIES.

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4. (U) THE BENEFITS WHICH MAY BE GRANTED TO THESE INDIVIDUALS INCLUDE VARIOUS DEGREES OF SENTENCE REDUCTION, SENTENCE SUSPENSION OR THE PARDONING OF CRIMES FOR WHICH SENTENCES HAVE BEEN IMPOSED. THE SPECIFIC BENEFIT GRANTED IN EACH CASE DEPENDS ON AN INTRICATE NETWORK OF CONDITIONS, SUCH AS WHETHER INDIVIDUALS CONTACT THE AUTHORITIES OF THEIR OWN VOLITION; CONFESS THEIR CRIMES AND ABANDON ANY LINK THEY MAY HAVE HAD WITH CRIMINAL GANGS; AT WHAT STAGE DURING THE POLICE INVESTIGATION, PROSECUTION, TRIAL OR INCARCERATION APPLICANTS FOR BENEFITS UNDER THE LAW DECIDE TO REPENT; WHETHER APPLICANTS WERE SIMPLY MEMBERS OF GANGS OR THEIR LEADERS; WHETHER REPENTANTS WERE CAUGHT IN THE ACT OF COMMITTING A CRIME; WHETHER THE PARTICULAR CRIME COMMITTED CALLS FOR A LIFE SENTENCE; AND WHETHER THE INFORMATION PROVIDED LEADS TO THE CAPTURE OF GANG MEMBERS OR GANG LEADERS. ALL BENEFITS UNDER THE LAW ARE CONDITIONED UPON THE APPLICANT COMMITTING NO CRIME OF "EXTREME VIOLENCE" AND NO "AGGRAVATED CRIME" DURING A PERIOD OF 10 YEARS FOLLOWING THE GRANTING OF THE BENEFIT. SHOULD THE APPLICANT FAIL TO COMPLY WITH THIS CONDITION, THE RESULTING PENALTY WILL BE A LIFE SENTENCE.

PROTECTION AND DUE PROCESS GUARANTEES UNDER THE REPENTANCE LAW

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INFO	LOG-00	ACDA-08	ACDE-00	INLB-01	AID-00	ACQ-01	CIAE-00
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E.O. 12958: N/A
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REF: (A) LIMA 3635 (B) LIMA 3634 (C) LIMA 3454 (D) LIMA 3404
5. (U) IN ACCORDANCE WITH THE UNDERTAKING MADE BY PRESIDENT FUJIMORI DURING HIS JUNE 3 TELEVISION ADDRESS TO THE NATION (REFTEL B) THAT HIS ADMINISTRATION HAS LEARNED FROM THE EXPERIENCE OF THE ANTI-TERRORISM LAW AND WILL AVOID THE ERRORS OF THE PAST, LEGISLATIVE DECREE 902 SPECIFIES CERTAIN PROTECTIONS FOR WOULD-BE REPENTANTS AND CERTAIN DUE PROCESS GUARANTEES FOR THOSE FINGERED BY

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THEM. REPENTANTS WILL HAVE THE RIGHT TO REPRESENTATION BY COUNSEL AND THEIR STATEMENTS AND CHARGES WILL BE MADE VOLUNTARILY, THE RIGHT TO COMPLETE SECRECY OF THEIR IDENTITY, AND THE RIGHT TO GUARANTEED PROTECTION FOR THEMSELVES AND THEIR FAMILIES.

6. (U) ON THE OTHER HAND, DECREE 902 ASSURES ALL INDIVIDUALS ACCUSED BY REPENTANTS THAT THEY WILL BE PRESUMED INNOCENT UNLESS FOUND TO BE OTHERWISE, THAT THEY WILL HAVE THE RIGHT TO A LEGAL DEFENSE, AND THAT THEY WILL NOT BE CONVICTED OR SENTENCED BEFORE A TRIAL WITH FULL DUE PROCESS GUARANTEES HAS BEEN HELD. MOREOVER, THE DECREE STIPULATES THAT A FULL AND EXHAUSTIVE INVESTIGATION OF THE CHARGES AGAINST THEM WILL BE CONDUCTED UNTIL THEIR ALLEGED RESPONSIBILITY FOR A PARTICULAR CRIME IS UNEQUIVOCALLY ESTABLISHED. IF THE INFORMATION PROVIDED BY THE RESPECTIVE REPENTANT CANNOT BE PROVED, THE CASE WILL BE SHELVED. ON THE OTHER HAND, IF THE

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INFORMATION PROVIDED IS FOUND TO BE FALSE, THE PROSPECTIVE REPENTANT WILL BE LIABLE FOR APPROPRIATE JUDICIAL PENALTIES.

CRITICISM ABOUNDS

7. (SBU) THERE HAS BEEN NO SHORTAGE OF EDITORIAL WRITERS, HUMAN RIGHTS ACTIVISTS AND LEGAL SCHOLARS WHO HAVE BITTERLY CRITICIZED THE NEW REPENTANCE PROVISIONS. NOTWITHSTANDING THE GOP'S ATTEMPT TO INJECT INTO THE DECREES A MEASURE OF PROTECTION AND DUE PROCESS GUARANTEES FOR THE RESPECTIVE PARTIES INVOLVED, THOSE WHO REMEMBER THE ABUSES OF THE ANTI-TERRORISM LAWS AND THEIR RELATED REPENTANCE PROVISIONS CLAIM THAT THE EXACT SAME VIOLATIONS OF HUMAN RIGHTS WILL BE COMMITTED THIS TIME, TOO.

8. (SBU) ACCORDING TO THESE CRITICS, INFORMATION PROVIDED BY WOULD-BE REPENTANTS, ALTHOUGH DIFFICULT TO VERIFY, WILL BE RELIED ON AND, AS A RESULT, INNOCENT PEOPLE WILL BE CONVICTED AND SENTENCED. IN ADDITION, THE FUNDAMENTAL RIGHT OF DEFENDANTS TO BE ABLE TO CONFRONT THEIR ACCUSERS HAS BEEN OMITTED. SUCH PROVISIONS WILL BE MADE WORSE BY THE FACT THAT, AT LEAST IN CASES OF "EXTREME VIOLENCE," THE MILITARY COURTS WILL BE INVOLVED, WITH THEIR JUDGES INSUFFICIENTLY TRAINED IN CRIMINAL MATTERS, THEIR NOTORIOUS LACK OF DUE PROCESS GUARANTEES. MOREOVER, GIVEN THE DRASTICALLY REDUCED OPPORTUNITIES FOR THE PRESENTATION OF HABEAS CORPUS PETITIONS, WHICH WERE SPECIFIED IN LEGISLATIVE DECREE 900 (REFTEL A), THE PROSPECT OF JUSTICE BEING DONE WILL GROW EVEN MORE REMOTE.

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9. (SBU) THE CONSENSUS HAS BEEN THAT MOST OF THE CRIME-RELATED LEGISLATIVE DECREES ISSUED BY THE GOP WILL DO LITTLE TO ROLL BACK UNCLASSIFIED

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THE COUNTRY'S CRIME WAVE, AND THAT ONLY BEEFED-UP RESOURCES AND TRAINING FOR THE NATIONAL PERUVIAN POLICE WILL LIKELY ACHIEVE THE NEEDED RESULTS. AS EVEN SOME OF PRESIDENT FUJIMORI'S MOST ARDENT SUPPORTERS HAVE RECOGNIZED, CONGRESS WILL HAVE TO REVIEW THE DECREES AND REMODEL THEM INTO A MORE EFFECTIVE CRIME-FIGHTING INSTRUMENT.

THE SIN'S ROLE: INTELLIGENCE GATHERING OR FRONT LINE SOLDIERING?

10. (SBU) IN ESTABLISHING WITHIN THE SIN THE NATIONAL INTELLIGENCE DIRECTORATE FOR SOCIAL PEACE AND SAFETY, DECREE 904 PROVIDED THAT ITS MISSION WOULD BE TO COORDINATE WITH THE PERUVIAN NATIONAL POLICE IN PLANNING, ORGANIZING, DIRECTING, AND EXECUTING INTELLIGENCE ACTIVITIES, TO INVESTIGATE CRIMINAL ACTS COVERED BY THE LEGISLATIVE DECREES, AND TO DEVELOP AND FURNISH INTELLIGENCE INFORMATION REQUESTED BY THE POLICE. STATED AS SUCH, THE SIN IS PICTURED AS THE POLICE'S HANDMAIDEN, READY TO BACK UP THE POLICE'S OWN INTELLIGENCE-GATHERING CAPABILITIES.

11. (SBU) TAKING THE CHARITABLE VIEW, MANY PRO-FUJIMORI MEMBERS OF CONGRESS HAVE WELCOMED THE NEW BODY, SAYING IT COULD ONLY SERVE TO STRENGTHEN THE COUNTRY'S OVERALL INTELLIGENCE RESOURCES. HOWEVER, MANY CRITICS CLAIM THAT WHAT THE NOTORIOUS SIN REALLY HAS

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FM AMEMBASSY LIMA
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INFO AMEMBASSY QUITO
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IN MIND IS TO BECOME FULLY AND OPERATIONALLY INVOLVED IN THE WAR ON
CRIME. IN FACT, THE STRONGLY OPPOSITION "LA REPUBLICA," QUOTING
WHAT IT SAYS ARE UNIMPEACHABLE SOURCE DOCUMENTS FROM THE ARMED
FORCES AND THE SIN, CLAIMS THAT THE SIN HAS RECENTLY TAKEN
POSSESSION FROM THE MILITARY ENOUGH WEAPONRY AND MUNITIONS TO EQUIP
A 500-PERSON INFANTRY BATTALION, AND THAT IT HAS DONE SO PRECISELY
FOR THE WAR ON CRIME.

COMMENT

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12. (SBU) IT IS TEMPTING TO GO ALONG WITH THE CRITICS AND PREDICT THAT THIS REPENTANCE EXERCISE WILL BE NOTHING MORE THAN A REPLAY OF ITS ANTI-TERRORISM PREDECESSOR. HOWEVER, WHETHER BECAUSE, AS FUJIMORI SAYS, THE GOP MAY, IN FACT, HAVE LEARNED SOME LESSONS FROM THE PAST, OR BECAUSE OF THE PRESENCE IN THE GOVERNMENT OF THE MORE CONSTITUTIONALLY MINDED JAVIER VALLE Riestra, WE BELIEVE THIS REPENTANCE LAW WILL BE IMPLEMENTED MORE CAUTIOUSLY AND WITH BETTER RESULTS. EVEN SO, WE MAY STILL LIVE TO WITNESS A CRIME-WAR REINCARNATION OF THE PARDONS COMMISSION, ALBEIT WITH FEWER

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APPLICANTS AND A SMALLER NUMBER OF PARDON RECIPIENTS.
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