

UNCLASSIFIED

D4

FOUO

PAGE: 0001

INQUIRE=DOC6D
ITEM NO=00395153

DTG
FROM
CONTROLS

191820Z SEP 88
FM AMEMBASSY LIMA

R

Dept. of State, RPS/IPS, Margaret P. Grafeld, Dir.
(X) Release () Excise () Deny (X) Declassify
Date 01-25-03 Exemption

LIMITED OFFICIAL USE SECTION 01 OF 08 LIMA 12568

DIA FOR IR BRANCH

DIA FOR OA-5/OS-1D/DB-6D2/JSI-4B/DB-3C1

DECONTROL

USCINCSO ALSO FOR POLAD JOHN YOULE

E.O. 12356: DECL: OADR

/***** THIS IS A COMBINED MESSAGE *****/

BODY

TAGS: PGOV, PE

SUBJECT: OBSTACLES TO TERRORIST CONVICTIONS IN PERU

1. [REDACTED] - ENTIRE TEXT.
2. SUMMARY: PERU HAS A NOTORIOUSLY LOW RATE OF CONVICTION OF PERSONS CHARGED WITH TERRORISM-- ONLY 20 OF THOSE DETAINED ON SUSPICION OF TERRORISM ARE EVENTUALLY CONVICTED AND SENTENCED. THE LOW CONVICTION RATE IS IN OUR VIEW A SIGNIFICANT SOURCE OF SERIOUS HUMAN RIGHTS ABUSES, AS THE POLICE AND MILITARY ARE PRONE IN THESE CIRCUMSTANCES TO TAKE JUSTICE INTO THEIR OWN HANDS. AN ALREADY TENSE SITUATION INVOLVING THE POLICE (BOTH CIVIL AND MILITARY), THE PUBLIC MINISTRY AND THE JUDICIARY HAS BEEN GETTING WORSE. MUTUAL FAULT-FINDING AND RECRIMINATIONS CHARACTERIZED OUR INTERVIEWS WITH A WIDE VARIETY OF PARTICIPANTS IN THE PROCESS -- POLICE, MILITARY, JUDGES, PROSECUTORS AND DEFENSE ATTORNEYS. POLICE CLAIM THAT PROSECUTORS ARE INCAPABLE OF DIRECTING THE INVESTIGATION. THEY AND MEMBERS OF THE PENITENTIARY SYSTEM BELIEVE THAT THE PROSECUTORS AND JUDGES ARE SELLING-OUT TO TERRORISTS OR FAIL TO PROSECUTE OR CONVICT BECAUSE THEY FEAR REPRISALS. PROSECUTORS ARE CONVINCED THAT THE PRINCIPAL OBSTACLE LIES IN AN INCOMPETENT POLICE FORCE UNABLE TO ACQUIRE AND TRANSMIT JURIDICALLY ADMISSABLE AND CREDIBLE EVIDENCE. THE JUDICIARY AGREES. IN ADDITION, THEY POINT TO INFIGHTING BETWEEN THE THREE POLICE GROUPS, THEIR JEALOUSY OF PROSECUTORS AND THEIR EMPHASIS ON OBTAINING CONFESSIONS.

3. LEGISLATION IN EFFECT SINCE JUNE 1987 NO LONGER MAKES MEMBERSHIP IN A TERRORIST ORGANIZATION A CRIME; NOR IS IT A CRIME TO PUBLICLY PRAISE AN ACT OF TERRORISM OR TO

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0002

INCITE OTHERS TO TERRORISM. THE INVESTIGATIVE PROCEDURE IN TERRORIST CASES, ALSO AMENDED IN 1987, SETS AN IMPOSSIBLY HIGH STANDARD WHOSE RESULT HAS BEEN DELAYS AND ACQUITTALS. FOLLOWING THE JULY 20 DECISION BY A LIMA COURT TO ABSOLVE SL LEADER OSMAN MOROTE OF THE FIRST SET OF CHARGES AGAINST HIM, PRESIDENT GARCIA ON JULY 28 PROPOSED THREE CHANGES TO CORRECT LEGISLATIVE DEFICIENCIES. THERE IS AS YET NO INDICATION THAT OTHER SOURCES OF THE PROBLEM ARE BEING ADDRESSED. THIS CABLE FOCUSES ON THE CURRENT OBSTACLES TO TERRORIST CONVICTIONS; A SUBSEQUENT REPORT WILL ADDRESS CONGRESSIONAL ACTION ON THE PRESIDENT'S PROPOSALS. END SUMMARY.

4. INTRODUCTION.

THIS PAPER WAS RESEARCHED BY THE SENIOR AMERICAN CITIZENS SERVICES OFFICER, IN A TWO-WEEK DETAIL TO THE POLITICAL SECTION. IT ADDRESSES TWO QUESTIONS:

--WHAT ARE THE OBSTACLES TO A HIGHER RATE OF CONVICTIONS IN TERRORIST CASE?

--WHAT IS BEING DONE BY WHOM TO OVERCOME THESE OBSTACLES?

AMONG THOSE CONSULTED WERE (A) TWO LAWYERS SPECIALIZING IN THE DEFENSE OF PERSONS ACCUSED OF TERRORISM; (B) JUDGES, INCLUDING ONE SUPREME COURT JUSTICE, THE PRESIDENT AND THE TWO OTHER MEMBERS OF THE SPECIAL APPELLATE COURT ESTABLISHED TO JUDGE TERRORISM CASES EXCLUSIVELY AND ONE LOWER COURT JUDGE (JUEZ INSTRUCTOR) PRESIDING IN THE CASE OF AN AMERICAN CITIZEN ACCUSED OF TERRORISM; (C) MEMBERS OF THE PROSECUTOR'S OFFICE (MINISTERIO PUBLICO), INCLUDING TWO MEMBERS OF THE ATTORNEY GENERAL'S OFFICE (FISCALES SUPREMOS), THE APPELLATE COURT PROSECUTOR AND HIS ALTERNATE (FISCAL SUPERIOR AND HIS SUPLENTE) RESPONSIBLE FOR PROSECUTING ALL CASES INVOLVING TERRORISM, ONE CHIEF PROSECUTOR FOR THE CALLAO JUDICIAL DISTRICT AND ONE PAST PRESIDENT APPELLATE PROSECUTOR (FISCAL SUPERIOR DECANA) FROM AYACUCHO; (D) MEMBERS OF THE PERUVIAN INVESTIGATIVE POLICE, ANTI-TERRORISM DIVISION (PIP, DIRECCION CONTRA EL TERRORISMO DIRCOTE), INCLUDING THE DIRECTOR, THE SECOND IN COMMAND, AND HIS PRINCIPAL ASSISTANT; (E) ONE SENATOR; (F)

/***** BEGINNING OF SECTION 002 *****/
ONE ACTIVE AND ONE RETIRED GENERAL OF THE PERUVIAN ARMY FAMILIAR WITH THE MILITARY JUSTICE SYSTEM AND WITH POLICE ACTIVITIES IN THE EMERGENCY ZONES OF PERU; (G) ONE ADVISER IN THE MINISTRY OF JUSTICE; AND (H) THE EXTERNAL COORDINATOR FOR THE PERUVIAN PRISON SYSTEM (INSTITUTO PERUANO PENITENCIARIO, INPE). ALSO, VARIOUS TERRORISM TRIALS AT THE SPECIAL TERRORISM APPELLATE COURT WERE

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0003

ATTENDED.

5. THE INSTITUTIONS:

TERRORISM CASES ARE PROCESSED BY THREE, SOMETIMES FOUR, INDEPENDENT BODIES OF THE GOP. THE INITIAL ARREST IS HANDLED BY THE POLICE OR BY THE MILITARY (IN EMERGENCY ZONES). THE POLICE ITSELF IS DIVIDED INTO THREE INDEPENDENT DIVISIONS-THE GUARDIA CIVIL (RESPONSIBLE FOR MAINTAINING PUBLIC ORDER), THE GUARDIA REPUBLICANA (RESPONSIBLE FOR SAFEGUARDING THE BORDERS, PUBLIC BUILDINGS AND PENAL INSTITUTIONS) AND THE PERUVIAN INVESTIGATIVE POLICE (RESPONSIBLE FOR DIRECTING ALL POST-ARREST INVESTIGATIONS, EXCEPT THOSE INVOLVING TERRORISM). THE THREE DIVISIONS OF THE PERUVIAN POLICE ARE PART OF THE MINISTRY OF INTERIOR (MINISTERIO DEL INTERIOR). THE MILITARY POLICE IS UNDER THE DEFENSE MINISTRY (MINISTERIO DE DEFENSA). AFTER ARREST, THE PROSECUTOR (FISCAL), A MEMBER OF THE INDEPENDENT PUBLIC MINISTRY (MINISTERIO PUBLICO), INTERVENES TO DIRECT THE INVESTIGATION AND TO PROSECUTE THE CASE BEFORE YET ANOTHER INDEPENDENT BODY, THE JUDICIAL BRANCH (PODER JUDICIAL). CASES INVOLVING TERRORISM ARE THE ONLY CASES WHERE THE PUBLIC MINISTRY SPECIFICALLY DIRECTS THE INVESTIGATIVE WORK OF THE INTERIOR MINISTRY (IN ALL OTHER CASES THE POLICE DIRECTS AND CONDUCTS THE INVESTIGATION.) NONE OF THESE BODIES HAS PROMULGATED ANY SPECIFIC REGULATIONS BY WHICH TO APPLY OR INTERPRET THE LAW. DURING THE INTERVIEWS, EACH PARTICIPANT MADE REFERENCE TO THE GENERAL LAW ONLY AND ARRIVED AT HIS OR HER OWN CONCLUSIONS REGARDING EACH CLAUSE. BECAUSE THERE IS NO JUDICIAL PRECEDENT OR IMPLEMENTING REGULATION EXPLAINING THE LAW, EACH GOP BODY APPEARS TO INTERPRET THE LAW SOMEWHAT DIFFERENTLY. THIS LACK OF SECONDARY SOURCES IS A SOURCE OF CONFLICT.

6. THE LAW

A. SUBSTANTIVE LAW:

THE PRESENTLY EXISTING ANTI-TERRORISM LAW, LAW 24651, BECAME EFFECTIVE ON JUNE 22, 1987, REPLACING LAW 046. THE ENACTMENT OF LAW 24651 RESULTED IN TWO IMPORTANT CHANGES. FIRST, IT ESTABLISHED A MINIMUM SENTENCE OF 15 YEARS FOR THOSE CONVICTED OF TERRORISM, WITH A MINIMUM OF 18 YEARS IF THE ACTION RESULTED IN INJURIES OR PROPERTY DAMAGE. SECOND, THE NEW LAW ELIMINATED THREE ACTS FROM THE PENAL CODE. IT IS NO LONGER A CRIME TO (1) BE A MEMBER OF AN ORGANIZATION THAT UTILIZES TERRORISM TO ACHIEVE ITS GOALS; (2) INCITE OTHERS TO COMMIT A TERRORIST ACT; OR (3) PRAISE OTHERS FOR HAVING COMMITTED A TERRORIST ACT. A BILL TO SET UP AN AMNESTY-LIKE PROGRAM (ARREPENTIMIENTO) TO REWARD

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0004

THOSE WHO RENOUNCE THEIR PARTICIPATION IN TERRORIST ACTIVITIES AND ORGANIZATIONS (SIMILAR TO THE ITALIAN LEGISLATION THAT IS CREDITED WITH HELPING TO ELIMINATE THE RED BRIGADE) WAS NOT APPROVED, PARTLY BECAUSE A SERIES OF ASSASSINATIONS AT THE TIME IT WAS BEING DEBATED IN MID-1987 CAUSED PUBLIC AND APRA PARTY SENTIMENT TO TURN AGAINST IT.

B. TERRORISM PROCEDURAL LAW-THE ARREST:

LAW 24700, ENACTED ON JUNE 25, 1987, ESTABLISHED PROCEDURES FOR CASES INVOLVING TERRORISM. THE LAW MADE THE RIGHT TO A DEFENSE LAWYER NOT WAIVEABLE, AUTHORIZED THE CREATION OF SPECIAL COURTS TO JUDGE SUCH CASES AND SET

/***** BEGINNING OF SECTION 003 *****/
DEADLINES FOR EACH STEP OF THE INVESTIGATIVE AND JUDICIAL PROCESSES. TO ILLUSTRATE: IMMEDIATELY UPON DETENTION, THE POLICE MUST NOTIFY THE DUTY PROSECUTOR (FISCAL DE TURNO) OF THE DETENTION; THE PROSECUTOR MUST REPORT IMMEDIATELY TO THE PLACE OF DETENTION. THEREAFTER, THE PROSECUTOR ASSUMES EXCLUSIVE RESPONSIBILITY FOR THE INVESTIGATION. THE PARTICIPATION OF A DEFENSE LAWYER IS REQUIRED AT ALL STAGES OF THE PROCEEDINGS. ONLY IF THE DEFENSE LAWYER SELECTED BY THE ACCUSED FAILS TO APPEAR FOR TWO CONSECUTIVE PROCEEDINGS AFTER BEING GIVEN PROPER NOTICE MAY ANOTHER DEFENSE ATTORNEY BE APPOINTED (A DEFENSOR DE OFICIO). UPON DETENTION, THE POLICE MUST GIVE WRITTEN NOTICE OF THE DETENTION TO ANY ONE PERSON SELECTED BY THE ACCUSED.

C. TERRORISM PROCEDURAL LAW-THE INVESTIGATION AND TRIAL:

IF DEEMED NECESSARY TO PURSUE THE INVESTIGATION, THE PROSECUTOR MAY PETITION THE LOWER COURT JUDGE (JUEZ INSTRUCTOR) TO ORDER THE ARRESTEE BE HELD INCOMMUNICADO (SAVE FOR THE RIGHT TO MEET WITH THE DEFENSE LAWYER AND, IN PRACTICE, WITH CONSULAR REPRESENTATIVES) FOR A PERIOD NOT TO EXCEED 10 DAYS. (THE ENTIRE POLICE INVESTIGATION PERIOD CANNOT EXCEED 15 DAYS. FOR ALL OTHER OFFENSES, EXCEPT DRUG TRAFFICKING, THE POLICE MAY HOLD THE ARRESTEE WITHOUT JUDICIAL INTERVENTION FOR ONLY 24 HOURS.) WITHIN 24 HOURS IMMEDIATELY FOLLOWING THE 15-DAY POLICE INVESTIGATION PERIOD, THE PROSECUTOR MUST SOLICIT THE LOWER COURT JUDGE TO ISSUE AN INDICTMENT AGAINST THE DETAINEE (DENUNCIA). THE JUDGE THEN HAS ONLY 24 HOURS TO DETERMINE WHETHER TO INDICT (INCULPAR) THE DETAINEE. IF THE LOWER COURT JUDGE DETERMINES THERE IS NO CRIME, THE JUDGE MUST, WITHIN 24 HOURS THEREAFTER, REFER THE MATTER TO THE APPELLATE COURT FOR CONSULTATION. THE ARRESTEE REMAINS INCARCERATED THROUGHOUT THE THREE DAY PERIOD IN

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0005

WHICH THE APPELLATE COURT REVIEWS THE LOWER COURT'S DECISION NOT TO INDICT. IF THE LOWER COURT INDICTS THE DETAINEE, IT PROCEEDS WITH A JUDICIAL INVESTIGATION OF THE CASE FOR ONE 60-DAY PERIOD. AFTER 60 DAYS, THE JUDGE TRANSFERS THE FILE TO THE PROSECUTOR WHO MUST, WITHIN THREE DAYS, DECIDE WHETHER TO BRING FORMAL CHARGES (ACUSAR). IF CHARGES ARE ISSUED, THE CASE, IN LIMA, IS REFERRED TO THE THREE-JUDGE PANEL (VOCALIS SUPERIORES) IN THE APPELLATE COURT (CORTE SUPERIOR OR TRIBUNAL CORRECCIONAL).

7. THE OBSTACLES

A. THERE ARE NUMEROUS REASONS WHY PROBABLE TERRORISTS ARE RELEASED OR ACQUITTED:

-- POLICE COLLECTION OF EVIDENCE IS DEFECTIVE.

-- THE PROCEDURAL LAW IS BOTH OVERPROTECTIVE OF ACCUSED TERRORISTS AND CUMBERSOME IN PRACTICE.

-- POLICE, PROSECUTORS AND JUDGES, AT EVERY LEVEL, ARE AFRAID OF REPRISALS.

-- JUDICIAL DELAYS RESULT IN THE LOSS OF EVIDENCE AND TESTIMONY AND MAY AFFECT THE AMOUNT OF TIME AND INTEREST ACCORDED TO THE CASE.

-- PROSECUTORS ARE NOT TRAINED TO DIRECT THE INVESTIGATION.

-- THERE IS LITTLE COOPERATION OR COORDINATION AMONG POLICE, JUDICIARY AND PUBLIC MINISTRY, AMONG THE THREE POLICE GROUPS, OR BETWEEN THE CIVILIAN AND MILITARY POLICE

-- POLICE, PROSECUTOR AND JUDICIAL INSTITUTIONS ARE ESPECIALLY WEAK IN RURAL AREAS, WHERE THE GREAT MAJORITY

/***** BEGINNING OF SECTION 004 *****/
OF TERRORIST CRIMES ARE COMMITTED.

-- THE 1987 REPEAL OF THE SUBSTANTIVE LAW RESULTED IN THE RELEASE OF MANY PERSONS CONVICTED UNDER THAT LAW AND IN THE ACQUITTAL OF THOSE BEING PROCESSED.

-- THERE APPEARS TO BE CORRUPTION, TO GREATER OR LESSER DEGREES, IN ALL GOP INSTITUTIONS INVOLVED, AT EVERY LEVEL.

8. DEFECTIVE POLICE WORK:

TERRORISTS ESCAPE CONVICTIONS PRIMARILY BECAUSE POLICE OFFICIALS ARE UNABLE TO TRANSMIT JUDICIALLY SOUND EVIDENCE TO THE PROSECUTOR FOR USE IN COURT. WITHOUT SUFFICIENT

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0006

EVIDENCE, THE JUDGE IS REQUIRED TO ACQUIT. A CONFESSION, IN AND OF ITSELF, IS INSUFFICIENT TO CONVICT.

9. POLICE AGREE THEY ARE PARTLY TO BLAME. IN SELF-DEFENSE, HOWEVER, THEY SAY ECONOMIC REASONS ARE LARGELY RESPONSIBLE FOR DEFICIENT INVESTIGATIONS. IN ADDITION, THEY CLAIM THAT, BECAUSE THE PUBLIC MINISTRY PROSECUTORS ARE CHARGED UNDER THE PROCEDURAL LAW WITH DIRECTING THE INVESTIGATION, THE PROBLEM IS REALLY THE PROSECUTOR'S AND NOT THEIRS. ALTHOUGH THEY COULD BE BETTER TRAINED, THEY SAY LACK OF TRAINING IS LESS OF A PROBLEM THAN LACK OF RESOURCES. POLICE LACK EVEN THE MOST BASIC TOOLS. FOR EXAMPLE SOME PRECINCTS DO NOT HAVE ANY VEHICLES, TELEPHONES OR TRANSCRIBING EQUIPMENT, CAMERAS OR EVEN RADIOS. BECAUSE OF THESE LIMITATIONS, THEY SAY THEIR INVESTIGATIONS MUST NECESSARILY BE QUOTE RESULT-ORIENTED UNQUOTE. THAT IS, ONCE THEY OBTAIN A CONFESSION, THE INVESTIGATION ENDS. ADDITIONAL EVIDENCE IS SELDOM GATHERED. THIS ORIENTATION TOWARD CONFESSIONS INEXPLICABLY PERSISTS DESPITE THE MANIFEST INSUFFICIENCY OF CONFESSIONS. THE LIMA POLICE IS THE ONLY GROUP IN THE COUNTRY WITH SUFFICIENT TECHNICAL TRAINING AND FACILITIES TO PREPARE ACCEPTABLE EVIDENCE FOR TRIAL. TERRORIST CRIMES IN RURAL AREAS ARE UNLIKELY TO BE INVESTIGATED ADEQUATELY, OR TO RESULT IN DETENTIONS OR CONVICTIONS.

10. PROSECUTORS UNIFORMLY ATTRIBUTED CURRENT PROBLEMS TO POLICE REACTION TO THE PROCEDURAL LAW, WHICH TRANSFERRED THE INVESTIGATIVE FUNCTION FROM THE POLICE TO THE PROSECUTORS. POLICE HAVE REACTED, THEY CLAIM, BY OFTEN PROVIDING DEFECTIVE EVIDENCE PURPOSELY IN ORDER TO SABOTAGE THE PROSECUTOR'S CASE AND THEREBY ILLUSTRATE THE PROSECUTOR'S INABILITY TO DIRECT THE INVESTIGATION. THEY SAY THE POLICE ARE DETERMINED TO HAVE THAT SECTION OF THE LAW REPEALED (COMMENT: IN FACT, THIS IS INCLUDED AMONG THE PROPOSALS PRESIDENT GARCIA MADE JULY 28). PROSECUTORS FEAR THAT IF THE POLICE REGAIN COMPLETE CONTROL OVER TERRORIST INVESTIGATIONS HUMAN RIGHTS ABUSES WILL ONCE AGAIN INCREASE. THEY DISPUTE THE POLICE CONTENTION THAT TRAINING IS NOT THE PROBLEM, CLAIMING THAT BECAUSE THE POLICE ARE NOT TRAINED TO INVESTIGATE FROM A LEGAL PERSPECTIVE, ANY EVIDENCE GATHERED WITHOUT THE PROSECUTOR'S PARTICIPATION WILL BE SO DEFECTIVE THAT IT WILL HAVE LITTLE PROBATIVE VALUE IN COURT AND RESULT IN EVEN A GREATER NUMBER OF ACQUITTALS.

11. PROCEDURAL LAW SETS TOO HIGH A STANDARD:

PROSECUTORS SAY THAT THE PROCEDURAL LAW MAY ITSELF BE UNCONSTITUTIONAL BECAUSE IT ISOLATES THE CRIME OF TERRORISM AND GRANTS PERSONS ACCUSED OF COMMITTING

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0007

TERRORIST ACTS SPECIAL TREATMENT. FOR EXAMPLE, ONLY THOSE CHARGED WITH TERRORISM MUST BE PROCESSED WITHIN THE TIME TABLES CONTAINED IN THE SPECIAL PROCEDURAL LAW. PERSONS ACCUSED OF OTHER CRIMES ARE SUBJECT TO LESS EXPEDITED PROCESSINGS. (THE CONSTITUTIONALITY HAS NOT BEEN CHALLENGED, HOWEVER.) FURTHER, BECAUSE THE NEW LAW REQUIRES THE FISCAL AND DEFENSE ATTORNEY TO BE PRESENT AT ALL INVESTIGATIVE AND JUDICIAL PROCEEDINGS, THE INVESTIGATIVE PROCESS IS STYMIED WHEN ALL THREE PERSONS

/***** BEGINNING OF SECTION 005 *****/
ARE UNABLE TO GATHER AT ONE LOCATION TO PROCEED WITH THE INVESTIGATION. THIS IS ESPECIALLY A PROBLEM IN THE PROVINCES WHERE, BECAUSE OF EXTENSIVE DISTANCES AND LACK OF TRANSPORTATION, THE EVIDENCE OR WITNESS TENDS TO DISAPPEAR BY THE TIME EVERYONE ASSEMBLES. DEFENSE ATTORNEYS CONTEND THAT THE REQUIREMENTS IS NECESSARY TO PREVENT ABUSES BY THE POLICE. ONE PROSECUTOR, ALTHOUGH NOTING THE PRACTICAL DIFFICULTIES IN HAVING TO GATHER EVERYONE, EXPLAINS THAT THE REQUIREMENT WAS IMPOSED BECAUSE OF EXCESSIVE POLICE ABUSES AND BECAUSE POLICE LACKED THE LEGAL TRAINING TO COLLECT THE NECESSARY EVIDENCE.

12. PROSECUTORS AND JUDGES FEAR REPRISALS:

POLICE, DEFENSE ATTORNEYS, AND THE MINISTRY OF JUSTICE ADVISOR SAY THAT MANY KNOWN TERRORISTS ARE NEVER EVEN CHARGED BECAUSE PROSECUTORS FEAR REPRISALS. IF CHARGED, THEY ARE OFTEN FREED BY FEARFUL LOWER COURT JUDGES OR ARE EVENTUALLY ACQUITTED AT THE APPELLATE LEVEL. ASKED ABOUT THE POSSIBILITY OF GIVING PROTECTION TO THE PARTICIPANTS IN THE JUDICIAL PROCESS, MINISTRY OF INTERIOR OFFICIALS THROW UP THEIR HANDS IN DESPAIR, SAYING THAT CURRENT AND PROSPECTIVE RESOURCES ARE FAR TOO INADEQUATE EVEN TO CONSIDER SUCH A REMEDY.

13. CONTINUAL AMENDMENTS TO LAW RESULTS IN CONFUSION AND DELAYS:

PERU'S ANTI-TERRORISM LAW HAS BEEN THE SUBJECT OF NUMEROUS REVISIONS, REFLECTING PERU'S CONTINUING LACK OF CONSENSUS ON HOW TO RESPOND TO TERRORISM. THE 1987 AMENDMENTS HAVE RESULTED IN CONFUSION, GROWING DESPAIR AND SIGNIFICANT DELAYS. FOR EXAMPLE, ONE AMENDMENT MANDATED THAT ALL CASES BE TRIED IN LIMA. CASES BEING TRIED THROUGHOUT THE COUNTRY WERE CLOSED AND THE FILES WERE TRANSFERRED TO LIMA. BECAUSE OF BUDGETARY RESTRICTIONS, HOWEVER, IT WAS OFTEN IMPOSSIBLE TO TRANSFER THE DETAINEE TO LIMA FOR TRIAL. THE CASE WAS THEREFORE CONTINUED ON THE COURT'S PROVINCIAL CALENDAR. MONTHS LATER (AND TWO OR THREE PROSECUTORS OR JUDGES LATER) WHEN FUNDS WERE AVAILABLE,

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0008

THE DETAINEE WAS BROUGHT TO LIMA. UPON HIS ARRIVAL, IT WAS NOT UNCOMMON TO FIND THAT THE FILE WAS EITHER LOST, STOLEN OR RETURNED TO PROVINCE FOR ADDITIONAL INVESTIGATIONS. THE CASE WAS THEREFORE PUT ONCE AGAIN ON THE COURT'S CALENDAR. RECOGNIZING THE IMPRACTICALITY OF THE MANDATE, THE PROCEDURE WAS REPEALED. NOW, ALL COURTS IN ALL REGIONS ADJUDICATE CASES INVOLVING TERRORISM.

14. ANOTHER 1987 AMENDMENT CREATED A SPECIAL COURT TO TRY ALL TERRORISM CASES IN LIMA:

THIS AMENDMENT RESULTED IN SIGNIFICANT DELAYS. THE MAJOR PROBLEM WAS THE RELUCTANCE OF JUDGES AND OTHER JUDICIAL PERSONNEL TO BE ASSIGNED TO THIS COURT, PARTICULARLY BECAUSE NO EFFORT WAS MADE TO PROVIDE COURT PERSONNEL WITH POLICE PROTECTION. IN THE FACE OF JUDICIAL OPPOSITION, THE SPECIAL COURT HAS BEEN DISSOLVED. JURISDICTION REVERTED TO ALL 14 APPELLATE COURTS. THAT AMENDMENT RESULTED IN ADDITIONAL DELAYS, AS CASES WERE PARCELED AMONG ALL COURTS. PRESIDENT GARCIA HAS NOW PROPOSED GIVING THE SPECIAL COURTS ANOTHER TRY.

15. PROSECUTORS NOT TRAINED TO INVESTIGATE:

THE LAW GIVES THE PROSECUTOR FULL RESPONSIBILITY FOR THE INVESTIGATION, THE ONLY SUCH INSTANCE IN PERUVIAN LAW. THE POLICE CONTEND THAT PROSECUTORS ARE NOT TRAINED TO CONDUCT A POLICE INVESTIGATION. PROSECUTORS AGREE THEY ARE NOT TRAINED TO INVESTIGATE, BUT INSIST THAT OBSTACLES ARE INTENTIONALLY CREATED BY THE POLICE IN PETTY RETALIATION FOR THEIR BEING EXCLUDED FROM DIRECTING THE INVESTIGATION. THEY INSIST THAT THEIR INVOLVEMENT IN THE

/***** BEGINNING OF SECTION 006 *****/
INVESTIGATION IS INDISPENSABLE. IF THE LAW IS AMENDED, AS PROPOSED BY PRESIDENT GARCIA, PROSECUTORS PREDICT AN INCREASE IN POLICE ABUSES AND IN DEFENDANT ACQUITTALS BECAUSE OF THE POLICE'S INABILITY TO GATHER JUDICIALLY SOUND EVIDENCE. THEY POINT OUT THAT THE PROSECUTORS WERE GIVEN RESPONSIBILITY FOR THE INVESTIGATIVE FUNCTION ONLY IN MID-1987 AND THAT THE PROBLEM WITH ACQUITTALS EXISTED PRIOR TO MID-1987.

16. CONFLICTS BETWEEN POLICE AND MILITARY:

NOT ONLY IS THERE CONFLICT AMONG THE POLICE AND THE JUDICIARY, PROSECUTORS AND DEFENSE BAR. OBSERVATIONS BY DIRCOTE AND PROSECUTORS INDICATE THERE IS LITTLE COOPERATION AMONG THE THREE POLICE GROUPS OF BETWEEN THE CIVILIAN AND THE MILITARY POLICE. THESE CONFLICTS FREQUENTLY AFFECT THEIR ABILITY TO GATHER EVIDENCE AND

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0009

CONDUCT COMPLETE INVESTIGATIONS. EACH GROUP TENDS TO WORK INDEPENDENTLY OF THE OTHER AND BLAMES THE OTHER FOR DEFECTIVE INVESTIGATIONS AND ACQUITTALS. DIRCOTE REPRESENTATIVES SAY THE MILITARY POLICE ARE NOT PROPERLY TRAINED AND THAT CONVICTION RATES ARE LOWER IN EMERGENCY ZONES, WHERE MILITARY POLICE PERFORM THE ARREST FUNCTION. (THERE ARE NO STATISTICS TO SUBSTANTIATE THIS ASSERTION, BUT IT IS PLAUSIBLE.)

17. TERRORISTS MAY BE AWARE OF POLICE LIMITATIONS:

PROSECUTORS CLAIM THAT BECAUSE OF THE WELL-KNOWN RIVALRIES BETWEEN THEM AND THE POLICE, AMONG THE POLICE GROUPS AND BECAUSE OF THE WELL-KNOWN LIMITATIONS OF THE POLICE IN THEIR ROLE AS INVESTIGATORS, TERRORIST GROUPS PLAN COMPLEX TERRORIST ACTIONS IN REMOTE AREAS WHERE ACCESS IS DIFFICULT AND RESOURCES ARE FEW. (COMMENT: IT IS TRUE THAT SL MAINTAINS A COMPLEX CELL STRUCTURE AS A MATTER OF SECURITY. SL EMPHASIZES RURAL OVER URBAN ACTIONS AS A MATTER OF STRATEGY AND IDEOLOGY, HOWEVER, NOT AS A FUNCTION OF POLICE DEFICIENCIES. END COMMENT.) THE LIMITATIONS AND THE LACK OF COOPERATION BETWEEN THE PROSECUTORS AND THE POLICE IN RURAL AREAS, IN PARTICULAR, LEAD TO ACQUITTALS. DEFENSE ATTORNEYS EXPLAIN THAT MOST ACTS INVOLVED A NUMBER OF PARTICIPANTS AND THE PARTICIPANTS OFTEN DO NOT EVEN KNOW EACH OTHER. THIS CELL STRUCTURE MEANS THAT THE CAPTURE OF ONE PARTICIPANT DOES NOT NECESSARILY LEAD TO THE CAPTURE OF OTHERS. POLICE IN THE PROVINCES OFTEN LACK ACCESS TO EVEN ONE CAR, FREQUENTLY LACK TELEPHONES AND ALMOST NEVER HAVE RADIOS.

18. REPEAL OF THE LAW RESULTED IN RELEASES AND ACQUITTALS

LAW 24651 REPEALED LAW 046. MORE SPECIFICALLY, IT ELIMINATED THE CRIMINALITY RESULTING (1) FROM MEMBERSHIP IN AN ORGANIZATION WHICH UTILIZES TERRORISM TO ACHIEVE ITS GOALS, (2) FROM INCITING OTHERS TO COMMIT A TERRORIST ACT AND (3) FROM PRAISING OTHERS FOR HAVING COMMITTED A TERRORIST ACT. BECAUSE OF THE RETROACTIVE APPLICATION OF THE NEW LAW, MANY KNOWN TERRORISTS WERE RELEASED AND ALL THOSE BEING TRIED UNDER THESE PROVISIONS WERE ACQUITTED. THEIR RELEASE RESULTED IN EXTENSIVE DEBATES AND RECRIMINATION, ALONG PREDICTABLE LINES. HUMAN RIGHTS ORGANIZATIONS AND THE LEFT ARGUED THAT THOSE IMPRISONED HAD BEEN DENIED FUNDAMENTAL RIGHTS OF FREEDOM OF EXPRESSION AND ASSOCIATION. OTHERS ARE CONVINCED THAT THE REPEAL OF THE LAW WAS A MAJOR VICTORY ONLY FOR TERRORISTS. MEMBERS OF THE JUDICIARY ACKNOWLEDGE THAT MANY OF THOSE RELEASED WERE TERRORISTS, BUT SAY CONGRESS TIED THEIR HANDS AND FORCED THEIR RELEASE; FAILURE TO

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0010

ORDER RELEASES COULD HAVE SUBJECTED THE JUDICIARY TO LEGAL SANCTIONS. THE PRESIDENT OF THE SPECIAL APPELLATE COURT FOR TERRORISTS NOTED THAT MANY OF THOSE RELEASED COULD HAVE BEEN CHARGED WITH OTHER TERRORIST ACTIVITIES. MANY

/***** BEGINNING OF SECTION 007 *****/
HAD BEEN CHARGED ONLY WITH ONE OR MORE OF THE THREE REPEALED CRIMES, HOWEVER, BECAUSE CONVICTIONS WERE RELATIVELY EASY TO OBTAIN FOR THESE OFFENSES. ANY ATTEMPT BY THE JUDICIARY TO PREVENT THEIR RELEASE BY REFERRING THEIR CASES TO THE PROSECUTORS FOR FURTHER INVESTIGATION ON OTHER CHARGES FAILED DUE TO PRESSURES FROM CONGRESSMEN AND THE LEFTIST PRESS. PROSECUTOR DISAGREE. THEY BLAME THE RELEASE ON THE POLICE AND EXPLAIN THAT MANY HAD BEEN CHARGED WITH ONE OF THE THREE OFFENSES REPEALED BECAUSE THE POLICE WERE UNABLE TO PROVE THE MORE COMPLICATED CHARGES.

19. EXTENSIVE CORRUPTION AT ALL LEVELS IN ALL INSTITUTIONS:

EACH GROUP REPEATEDLY BLAMES THE OTHERS FOR THE PROBLEMS, CITE CORRUPTION AS ONE OF THE PRINCIPAL REASONS AND IS EAGER TO EXPLAIN ALL THE POSSIBILITIES BY WHICH MEMBERS OF THE OTHER GROUPS COULD BE CORRUPTED. NO GROUP ADMITTED CORRUPTION WITHIN ITS GROUP. THE POLICE CAN BE CORRUPTED BY CONTROLLING WHO GETS ARRESTED OR BY ALTERING THE QUALITY OF EVIDENCE THAT IS GATHERED OR DESTROYED. THE PROSECUTORS ARE CORRUPTED IN ASSEMBLING OR DIRECTING THE INVESTIGATION AND RESULTING EVIDENCE AND IN PURSUING THE PROSECUTIONS. APPELLATE JUDGES ARE BRIBED OR INTIMIDATED TO ISSUE LENIENT SENTENCES OR TO ORDER ACQUITTALS. LOWER COURT JUDGES MAY BE CORRUPTED BY THEIR POWER TO GRANT UNCONDITIONAL LIBERTY. LOW SALARIES ARE AN ENDURING CAUSE OF CORRUPTION.

20. CURRENT PROSPECTS FOR ADDRESSING DEFICIENCIES:

PRESIDENTIAL PROPOSALS:

ON JULY 28TH, PRESIDENT GARCIA MADE PERU'S TERRORISM A PRINCIPAL FOCUS OF HIS ANNUAL POLICY ADDRESS. HE PROPOSED THREE AMENDMENTS TO PERU'S ANTI-TERRORISM LAWS. THE AMENDMENTS WERE PRESENTED PARTLY BECAUSE OF EXTENSIVE CRITICISM OF THE JUDICIARY ARISING FROM THE ACQUITTAL OF OSMAN MOROTE, A LEADER OF PERU'S MAOIST TERRORIST GROUP, SENDERO LUMINOSO. IN MOROTE'S CASE, THE APPELLATE COURT REASONED THAT MEMBERSHIP IN SL, IN AND OF ITSELF, IS NOT PUNISHABLE AND THAT THE PROSECUTION WAS UNABLE TO PROVE HIM GUILTY OF ANY OTHER CRIME. NOTWITHSTANDING THIS REASONING, THE PUBLIC WAS OUTRAGED.

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0011

21. PRESIDENT GARCIA ASKED THAT THE BILL BE DEBATED AND APPROVED WITHIN 15 DAYS, A DEADLINE THAT HAS ALREADY PASSED. THE SUBSTANCE OF HIS PROPOSED BILL IS AS FOLLOWS: FIRST, THE BILL WILL ONCE AGAIN MAKE IT A CRIMINAL ACT TO (A) BE A MEMBER IN AN ORGANIZATION THAT UTILIZES TERRORISM TO ACHIEVE ITS GOALS, (B) INCITE OTHERS TO COMMIT A TERRORIST ACT AND (C) PRAISE OTHERS FOR HAVING COMMITTED A TERRORIST ACT. IT WOULD ALSO MAKE IT A TERRORIST ACT TO CARRY FALSE IDENTITY DOCUMENTS. SECOND, THE BILL WILL REPEAL PROCEDURAL LAW 24700. THE PRACTICAL EFFECT WILL BE TO RETURN TO THE POLICE THE INVESTIGATIVE FUNCTION (IN TERRORIST MATTERS). THIRD, THE BILL MAKES THE POSSESSION OF FIREARMS AND EXPLOSIVES A CRIMINAL ACT. AT PRESENT POSSESSION RESULTS ONLY IN FORFEITURE. TO APPLY THE NEW LAW, GARCIA HAS PROPOSED THE CREATION OF NEW COURTS TO ADJUDICATE CASES INVOLVING TERRORIST ACTIVITIES.

22. THE PRESIDENT OF THE SUPREME COURT HAS STATED HE IS READY TO DISCUSS THE NEW COURTS PROPOSED BY GARCIA. HE EXPLAINED THAT THE PROPOSED SPECIAL COURTS HAVE ALREADY EXISTED (UNTIL THEY WERE DISSOLVED LAST PRIL). MEMBERS OF THE APPELLATE COURTS WHO WILL SERVE ON THESE COURTS, HOWEVER, HAVE FORMALLY EXPRESSED THEIR OBJECTION TO THE CREATION OF SPECIAL COURTS.

23. ALTHOUGH PUBLIC SUPPORT FOR EFFECTIVE ACTION IS

/***** BEGINNING OF SECTION 008 *****/
WIDESPREAD, THE PRESS HAS FOUND GLITCHES IN THE PROPOSED BILLS. IT IS SAID THAT THE LAW IS SO VAGUE THAT IT WILL BE IMPOSSIBLE TO DETERMINE WHAT IS A CRIMINAL ACT AND WHAT IS NOT. THE LAW DOES NOT ESTABLISH OBJECTIVE STANDARDS. FOR EXAMPLE, IT IS UNKNOWN HOW THE LAW, IF ENACTED, WILL AFFECT THE PRESS IN ITS REPORTING OF TERRORISM OR WHETHER EXTREME LEFT NEWSMEDIA WILL BE PERMITTED TO EXIST. THIS PORTION OF THE BILL WILL BE SUBJECTED TO EXTENSIVE CONGRESSIONAL DEBATE. AT THIS POINT IT IS ANYONE'S GUESS IN WHAT FORM THE FINAL BILL WILL BE APPROVED.

24. CONGRESSIONAL ATTITUDES:

APRA SENATOR JAVIER VALLE RIESTRA, HEAD OF THE SENATE JUDICIARY COMMISSION, HAS BEEN AND WILL REMAIN AN IMPORTANT PLAYER IN WHATEVER HAPPENS IN THE CONGRESS. A STRONG HUMAN RIGHTS ADVOCATE, VALLE RIESTRA IS NOW FEELING VERY DEFENSIVE ABOUT HIS PAST SUPPORT FOR THE PROCEDURAL LAW AND CHANGES TO THE SUBSTANTIVE LAW THAT ARE TODAY THE FOCUS OF SO MUCH PUBLIC CRITICISM. HE IS THUS GIVING STRONG SUPPORT TO THE THRUST OF THE PRESIDENT'S PROPOSALS. HE IS LIKELY, HOWEVER, TO HAVE SOME AMENDMENTS TO PROPOSE, AS HE HAD ALREADY PREPARED DRAFTS BILLS ALONG

FOUO

UNCLASSIFIED

UNCLASSIFIED

FOUO

PAGE:0012

THE SAME LINES AS THOSE PRESENTED BY THE EXECUTIVE IN THE PRESIDENT'S JULY 28 MESSAGE. ONE CONCERN HE HAS IS TO KEEP SOME SORT OF ROLE FOR THE PROSECUTOR IN THE POST-DETENTION INVESTIGATIVE PROCESS. HE NOW SUPPORTS, HOWEVER, THE TRANSFER OF DIRECT RESPONSIBILITY FROM THE PROSECUTOR BACK TO THE POLICE.

25. COMMENTS: EVERYONE AGREES THAT A PROBLEM EXISTS WHEN SELF-ADMITTED TERRORISTS ARE BEING SET FREE. THOSE CLOSEST TO AND INVOLVED IN THE INVESTIGATIVE AND JUDICIAL PROCESS ALSO AGREE, HOWEVER, THAT NEW LEGISLATION (OR THE RE-INSTITUTION OF OLD LEGISLATION) AT BEST OFFERS ONLY A PARTIAL SOLUTION. THEY RECOGNIZE THAT THE PRINCIPAL SOURCE OF THE PROBLEM IS THE INVESTIGATIVE/EVIDENCE-GATHERING STAGE. THE USAID ADMINISTRATION OF JUSTICE PROJECT HERE IS SUPPORTING THE PUBLIC MINISTRY AND THE COURT SYSTEM IN DEVELOPING A TRAINING PROGRAM FOR JUDGES AND PROSECUTORS ON INVESTIGATIVE TECHNIQUES. PROGRESS TO DATE HAS BEEN SLOW, IN PART BECAUSE OF RESTRICTIONS ON INVOLVING POLICE IN AID-FINANCED COURSES, EVEN AS PAID INSTRUCTORS. WATSON

FOUO

UNCLASSIFIED