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ACTION ARA-01

INFO LOG-00 ADS-00 AID-01 CIAE-00 C-01 DODE-00 DS-01  
HA-09 INRE-00 INR-05 L-03 NSAE-00 PA-01 PM-01  
PRS-01 P-02 SCT-03 SP-01 SSO-00 SS-01 USIE-00  
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O 072126Z NOV 90  
FM AMEMBASSY BOGOTA  
TO SECSTATE WASHDC IMMEDIATE 0216  
INFO RUEHPE/AMEMBASSY LIMA  
AMEMBASSY CARACAS  
AMEMBASSY LA PAZ  
AMEMBASSY QUITO  
AMEMBASSY PANAMA  
AMEMBASSY GUATEMALA PRIORITY  
USCINCSO QUARRY HEIGHTS PM

C O N F I D E N T I A L SECTION 01 OF 03 BOGOTA 17824

STATE PASS TO AID FOR AA/LAC, LAC/DI  
SOUTHCOM ALSO FOR POLAD

E.O. 12356: DECL:OADR  
TAGS: PHUM, PTER, PINS, CO  
SUBJECT: PALACE OF JUSTICE--PROCURADURIA DISCIPLINARY  
SANCTIONS PROVOKE A STORM OF CRITICISM

REF: A) BOGOTA 17654 B) BOGOTA 3705

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1. CONFIDENTIAL -- ENTIRE TEXT.

2. BEGIN SUMMARY: ALTHOUGH THE MOVE IS LARGELY  
SYMBOLIC, THE RECENT DECISION BY PROCURADOR DELEGATE FOR  
THE ARMED FORCES JOSE PLINIO MORENO TO ORDER THE REMOVAL  
FROM OFFICE OF ALREADY RETIRED GENERAL JESUS ARMANDO  
ARIAS CABRALES (REF A) HAS GENERATED A FIRESTORM OF  
CRITICISM. THE ALMOST UNIVERSAL PUBLIC CRITICISM OF THE  
PROCURADURIA IS LIKELY, AT LEAST TO SOME EXTENT, TO  
LIMIT THE INDEPENDENT INSTITUTION'S ABILITY TO PERFORM

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ITS CONSTITUTIONAL RESPONSIBILITY AS A WATCHDOG FOR HUMAN RIGHTS AND OTHER ABUSES COMMITTED BY GOVERNMENT OFFICIALS EFFECTIVELY. END SUMMARY.

3. MORENO FOUND ARIAS GUILTY OF TAKING INSUFFICIENT PRECAUTIONS TO PROTECT THE LIVES OF CIVILIAN HOSTAGES DURING THE 1985 ASSAULT ON THE PALACE OF JUSTICE, WHICH HAD BEEN SEIZED BY M-19 TERRORISTS. ARIAS WAS FOUND INNOCENT OF SETTING THE FIRES WHICH DESTROYED THE PALACE, ACCORDING TO THE TEXT OF THE DECISION, A COPY OF WHICH HAS BEEN OBTAINED BY THE EMBASSY. ALTHOUGH ONLY RECENTLY LEAKED TO THE PRESS, THE RULING IS DATED SEPTEMBER 28. (IN REF A WE INACCURATELY STATED THAT THE PROCURADURIA HAD MERELY FILED CHARGES AGAINST ARIAS AND ANOTHER OFFICER. IN FACT, THE PROCURADURIA FOUND ARIAS AND A SECOND OFFICIAL GUILTY OF ADMINISTRATIVE MISCONDUCT CHARGES AND IMPOSED THE MOST DRASTIC SANCTION AVAILABLE TO IT--REMOVAL FROM GOVERNMENT SERVICE.) MORENO'S DECISION IS ALSO HARSHLY CRITICAL OF THE DISREGARD FOR INNOCENT LIVES EXHIBITED BY THE M-19 DURING THE ASSAULT. THE PROCURADURIA, HOWEVER, CANNOT

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IMPOSE SANCTIONS ON PRIVATE CITIZENS. (SEE REF B FOR MORE ON THE FUNCTIONING OF THE PROCURADURIA.)

THE CRITICISM

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4. A NUMBER OF RETIRED MILITARY OFFICERS, EX-PRESIDENT MISAEL PASTRANA, AND OTHER POLITICIANS QUICKLY MADE STRONG PUBLIC STATEMENTS ASSERTING THAT THE PROCURADURIA'S ACTION WAS UNJUST. SEVERAL ACTIVE DUTY OFFICERS--NOTABLY THE TWO HIGHEST RANKING OFFICERS IN THE ARMY, DEFENSE MINISTER OSCAR BOTERO AND COMMANDER OF THE MILITARY FORCES LUIS EDUARDO ROCA MAICHEL AND OCTAVIO VARGAS SILVA, THE NATIONAL POLICE'S DIRECTOR OF OPERATIONS--JOINED THE CHORUS OF PUBLIC CRITICISM OF THE INDEPENDENT WATCHDOG INSTITUTION. ON NOVEMBER 6 THE COLOMBIAN SENATE REBUKED THE PROCURADURIA BY APPROVING, 75-5, A MEASURE TO PROMOTE ARIAS TO THE RANK OF A THREE STAR GENERAL. THE GENERAL'S STATUS AS A RETIREE MAKES THIS MOVE, LIKE THE PROCURADURIA'S PUNISHMENT, LARGELY SYMBOLIC.

5. EVEN M-19 LEADER ANTONIO NAVARRO WOLFF IS UNHAPPY WITH THE PROCURADURIA'S ACTION. IN A NOVEMBER 6

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INTERVIEW NAVARRO SUGGESTED THAT MILITARY MEN INVOLVED IN THE ASSAULT ON THE PALACE BE GIVEN AN AMNESTY SIMILAR TO THAT NOW ENJOYED BY HIS ORGANIZATION. WOLFF ALSO SUGGESTED THAT "SOME POLITICIANS" WERE DREDGING UP THE PALACE OF JUSTICE INCIDENT IN ORDER TO DISCREDIT THE M-19 POLITICAL PARTY PRIOR TO DECEMBER BALLOTING FOR THE CONSTITUTIONAL ASSEMBLY.

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6. THE PROCURADURIA'S CRITICS ARGUE IT IS INAPPROPRIATE FOR ARIAS TO BE PUNISHED, EVEN NOMINALLY, WHILE AN AMNESTY PROSCRIBES PUNISHMENT FOR FORMER M-19 GUERRILLAS. THEY ALSO ASSERT THAT ARIAS WAS ONLY FULFILLING THE ORDERS OF THEN PRESIDENT BETANCUR AND OF HIS MILITARY SUPERIORS. THE PROCURADURIA'S ACTION IN THIS CASE IS SAID TO ENCOURAGE DISOBEDIENCE TO MILITARY ORDERS. IN THE TEXT OF HIS DECISION, PROCURADOR DELEGATE MORENO EXPLAINS THAT, ALTHOUGH ARIAS WAS INDEED ORDERED TO SEIZE THE PALACE, THE GENERAL BEARS SOLE RESPONSIBILITY FOR THE DISREGARD OF INNOCENT LIVES WHICH

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FM AMEMBASSY BOGOTA  
TO SECSTATE WASHDC IMMEDIATE 0217  
INFO RUEHPE/AMEMBASSY LIMA  
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IS SAID TO HAVE CHARACTERIZED THE ASSAULT. THE  
PROCURADURIA'S DECISION LARGELY RESTS ON ITS ASSUMPTION  
THAT THE OVERRIDING RESPONSIBILITY OF THE SECURITY  
FORCES IN A HOSTAGE SITUATION IS TO PROTECT THE LIVES OF  
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THE HOSTAGES.

7. ALTHOUGH MOST OF THE CRITICISM HAS BEEN DIRECTED  
AGAINST THE PUNISHMENT IMPOSED ON ARIAS, SEVERAL RETIRED  
OFFICERS ALSO COMPLAINED TO THE PRESS ABOUT THE  
PROCURADURIA'S ORDER THAT COL. EDILBERTO SANCHEZ RUBIANO  
BE REMOVED FROM ACTIVE MILITARY SERVICE. SANCHEZ WAS  
FOUND RESPONSIBLE FOR THE DISAPPEARANCE (AND PRESUMED  
EXTRA-JUDICIAL EXECUTION) OF AN M-19 GUERRILLA CAPTURED  
ALIVE DURING THE FIGHTING. ACCORDING TO A PRESS REPORT,  
SANCHEZ IS CURRENTLY COLOMBIA'S MILITARY ATTACHE IN  
GUATEMALA. IN ADDITION TO SANCTIONING SANCHEZ, THE  
PROCURADOR DELEGATE FOR THE MILITARY FORCES ORDERED AN  
INVESTIGATION INTO THE CONDUCT OF ARMY COL. FERNANDO  
BLANCO GOMEZ FOR ALLEGEDLY ILLEGALLY DETAINING AND  
MALTREATING SEVERAL STUDENTS CAPTURED IN THE PALACE WHO  
WERE INITIALLY BUT INCORRECTLY ASSUMED TO BE GUERRILLAS.

THE DEFENSE  
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7. IN A NOVEMBER 6 OPEN LETTER TO PRESIDENT GAVIRIA, PROCURADOR GENERAL ALFONSO GOMEZ MENDEZ DEFENDED THE ACTIONS OF PROCURADOR DELEGATE MORENO. GOMEZ NOTED THAT THE PROCURADURIA WAS NOT BREAKING NEW GROUND IN FINDING OFFICIAL MISCONDUCT IN THE PALACE OF JUSTICE INCIDENT--YEARS AGO A SPECIAL COURT HAD DEMONSTRATED THAT "EXCESSES" HAD BEEN COMMITTED BY THE SECURITY FORCES. MOREOVER, GOMEZ NOTED, THE PARDON ISSUED FOR THE M-19 DID NOT MOQY THE PROCURADURIA'S DUTY TO INVESTIGATE OFFICIAL ABUSES.

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8. THERE HAVE BEEN VIRTUALLY NO EXPRESSIONS OF SUPPORT FOR THE PROCURADURIA BY INDIVIDUALS NOT AFFILIATED WITH THE INSTITUTION. ONLY ASONAL, THE LEFT WING JUDGES AND JUDICIAL WORKERS UNION, HAS PUBLICLY SUPPORTED THE SANCTIONS AGAINST ARIAS.

THE APPEAL  
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9. NORMALLY MORENO'S DECISION WOULD ESSENTIALLY BE FINAL, BUT ARIAS (AND POSSIBLY SANCHEZ), ALLEGING SERIOUS IRREGULARITIES AND USING AN UNUSUAL LEGAL TACTIC, HAVE APPEALED THEIR DISMISSAL ORDERS TO PROCURADOR GENERAL GOMEZ. GOMEZ, HOWEVER, HAS DISQUALIFIED HIMSELF, CITING PREVIOUS INVOLVEMENT IN THE CASE. SINCE VICE PROCURADOR MIRIAM RAMOS DE SAAVEDRA HAS DONE THE SAME, AN UNPRECEDENTED "AD HOC" PROCURADOR WILL LIKELY BE APPOINTED (POSSIBLY BY THE PRESIDENT) TO HEAR THE APPEAL.

THE IMPACT  
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10. VICE PROCURADOR SAAVEDREA TOLD POLOFF THAT THE TEMPEST OVER THE PALACE OF JUSTICE RULING WOULD LIKELY HAVE LITTLE LASTING IMPACT ON THE INDEPENDENT WATCHDOG INSTITUTION. PABLO GONZALEZ, HEAD OF THE PROCURADURIA'S POWERFUL OFFICE OF SPECIAL INVESTIGATIONS, HOWEVER, SPECULATED TO US IN A SEPARATE CONVERSATION THAT THE LACK OF PUBLIC SUPPORT FOR THE INSTITUTION MIGHT LEAD THE PROCURADOR GENERAL TO RESIGN. HE ADDED THAT THE SCANDAL WOULD FURTHER WORSEN RELATIONS BETWEEN THE INDEPENDENT INSTITUTION AND THE ARMY, WHICH HE DESCRIBED

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AS "EXTREMELY POOR." GONZALEZ SAID THAT IT TOOK FIVE  
YEARS FOR THE PROCURADURIA TO ACT IN THIS CASE BECAUSE  
PREVIOUS PROCURADOR DELEGATES FOR THE MILITARY FORCES  
HAD BEEN AFRAID TO DO SO. CURRENT PROCURADOR DELEGATE  
MORENO ASSUMED OFFICE IN OCTOBER 1989.

11. IT SEEMS INEVITABLE THAT THE VIRTUALLY UNIVERSAL  
CONDEMNATION OF THE PROCURADURIA WILL UNDERMINE THE  
PRESTIGE OF THE INDEPENDENT INSTITUTION. UNDOUBTEDLY,  
SOME MILITARY OFFICERS WILL INSIST ON INACCURATELY  
INTERPRETING THE DECISION AGAINST ARIAS AND RECENT  
INVESTIGATIONS BY THE PROCURADURIA INTO ARMY HUMAN

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RIGHTS ABUSES AS REFLECTIONS OF A CONSPIRACY TO CRIPPLE  
THE ARMY AS AN INSTITUTION.

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