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TITLE: SUBJECT: NEW DECREES REFORM ASSET FORFEITURE PROCEEDINGS

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SUBJECT: NEW DECREES REFORM ASSET FORFEITURE PROCEEDINGS

REF: A) BOGOTA 19598 B) BOGOTA 09062

1. CONFIDENTIAL -- ENTIRE TEXT.

2. BEGIN SUMMARY: TWO RECENT STATE OF SIEGE DECREES--NO. 2790 OF NOVEMBER 20, WHICH ALSO REFORMED MUCH OF THE CRIMINAL JUSTICE SYSTEM (REF A), AND 2894 OF DECEMBER 3--ATTEMPT TO STREAMLINE COLOMBIA'S MORASS OF PERPETUALLY INEFFECTIVE ASSET FORFEITURE PROCEDURES. MUCH TO THE DISPLEASURE OF THE NATIONAL POLICE, A SHORT-TERM RESULT OF THESE CHANGES IS THAT LARGE NUMBERS OF ASSETS SEIZED OVER THE PAST SEVERAL YEARS WILL BE RETURNED TO THEIR OWNERS, MOST OF WHOM ARE PROBABLY NARCOTICS TRAFFICKERS. A THIRD STATE OF SIEGE DECREE, ISSUED IN MID SEPTEMBER, IS DESIGNED TO MAKE IT EASIER TO FORFEIT CERTAIN ASSETS SEIZED FROM THE NARCOS WHICH, UNDER COLOMBIAN LAW, ARE CONSIDERED CONTRABAND. END SUMMARY.

PREVIOUS LAW AND PRACTICE

3. UNDER COLOMBIAN JURISPRUDENCE, ASSETS USED IN OR OBTAINED FROM THE COMMISSION OF A CRIME (EXCEPT IN THE CASE OF CONTRABAND) CAN GENERALLY ONLY BE PERMANENTLY FORFEITED, AS OPPOSED TO TEMPORARILY SEIZED, IF THE OWNER OF THE ASSETS IS CONVICTED OF A CRIMINAL OFFENSE. FOR SEVERAL YEARS, HOWEVER, THE NATIONAL COUNCIL ON DANGEROUS DRUGS HAS BEEN AUTHORIZED TO APPROVE THE CONTINUED RETENTION AND TEMPORARY DISPOSITION OF

REVIEW AUTHORITY: James Cooper, Senior Reviewer

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SUSPECTED NARCO PROPERTIES WHICH HAVE BEEN SEIZED BY THE SECURITY FORCES WHILE THE CRIMINAL CASES INVOLVING THE APPARENT OWNERS OF THESE PROPERTIES SLOWLY MAKE THEIR WAY THROUGH THE COLOMBIAN COURT SYSTEM. THE COURTS ARE EVENTUALLY SUPPOSED TO DETERMINE THE FINAL DISPOSITION OF THESE ITEMS (SEE REF B).

4. GENERAL RAFAEL MUNOZ (STRICTLY PROTECT), DEPUTY CHIEF OF THE NATIONAL POLICE, RECENTLY EXPLAINED TO POLOFFS THAT THE COUNCIL, ALTHOUGH HAVING NO REAL LEGAL GROUNDS TO DO SO, FOR SEVERAL YEARS HAS, EVEN IN THE ABSENCE OF RELATED CRIMINAL CHARGES, BEEN AUTHORIZING THE INDEFINITE RETENTION OF SEIZED GOODS WHEN POLICE INTELLIGENCE REPORTS INDICATE THAT THE PRESUMED OWNER HAS BEEN INVOLVED IN DRUG TRAFFICKING. BECAUSE OF THE ABSENCE OF CRIMINAL CHARGES IN SUCH CASES, THERE IS NO MECHANISM TO TRANSFER TITLE TO THE GOC, MEANING THAT MOST ASSETS RETAINED ON THESE GROUNDS CANNOT BE PUT TO EFFECTIVE USE BY THE EXECUTIVE BRANCH. THEY ARE EFFECTIVELY CAUGHT IN A LEGAL LIMBO, NOT OWNED BY THE STATE, BUT NOT CONTROLLED BY THEIR OWNERS. OVER THE YEARS, THE GOC HAS ACCUMULATED A HUGE STORE OF SUCH ASSETS, INCLUDING AIRCRAFT, RANCHES, AND LARGE AMOUNTS OF GOLD AND U.S. DOLLARS, ALL OF WHICH IT IS REQUIRED TO GUARD AND MAINTAIN AT CONSIDERABLE EXPENSE.

## THE BIG CHANGE

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5. THE GOC'S LATEST DECREES (SPECIFICALLY, A CLAUSE IN DECREE 2894, ACCORDING TO MUNOZ, WHO GENERALLY APPROVES OF DECREE 2790) ELIMINATE THE EXECUTIVE BRANCH'S ABILITY TO PLACE SEIZED ASSETS IN THIS STRANGE LEGAL LIMBO. FROM NOW ON, PROPERTIES ARE ONLY TO BE RETAINED IF THEY ARE DIRECTLY CONNECTED TO A PENDING CRIMINAL CASE. EXCEPT FOR CONTRABAND, SEIZED ASSETS NOT LINKED TO CRIMINAL PROCEEDINGS WILL HAVE TO BE RETURNED IF THEIR OWNERS COME FORWARD. MINISTER OF JUSTICE GIRALDO HAS ADMITTED TO US THAT LARGE NUMBERS OF ASSETS WILL BE RETURNED. HE THINKS THAT ONLY SOME 25 PERCENT OF ALLEGED NARCO ASSETS NOW IN GOC HANDS ARE LINKED TO

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CRIMINAL CASES. THE MINISTER'S OVERRIDING OBJECTIVE,

HOWEVER, IS TO RATIONALIZE ASSET FORFEITURE PROCEDURES AND TO PUT THEM ON A FIRM LEGAL FOUNDATION.

6. THE NATIONAL POLICE HAVE PRIVATELY EXPRESSED SURPRISE AND DISPLEASURE AT THIS MAJOR CHANGE IN ASSET FORFEITURE LEGISLATION--GENERAL MUNOZ TOLD POLOFFS THAT IT REFLECTED THE WORK OF AN OVERLY ACADEMIC MINISTER OF JUSTICE OUT OF TOUCH WITH THE REAL WORLD. HE ADMITTED THAT, BECAUSE OF THE LEGAL COMPLEXITIES, IT WAS GENERALLY IMPOSSIBLE FOR THE EXECUTIVE BRANCH TO MAKE USE OF ASSETS WHOSE RETENTION WAS BASED ON INTELLIGENCE REPORTS, NOT CRIMINAL PROCEEDINGS. HE SAID, HOWEVER, THAT IT WAS BETTER TO HAVE AIRCRAFT AND OTHER SEIZED ASSETS SIT USELESSLY IN GOVERNMENT CUSTODY THAN TO RETURN THEM TO THE NARCOS.

7. MUNOZ INSISTED THAT POLICE INTELLIGENCE REPORTS ARE ACCURATE--HE IS "MORALLY CERTAIN" THAT ALL SEIZED ASSETS ARE INDEED NARCO PROPERTY. BECAUSE VIRTUALLY NO SIGNIFICANT COLOMBIAN TRAFFICKER FACES NARCOTICS CHARGES, MUNOZ BELIEVES THAT THE OVERWHELMING MAJORITY OF SEIZED PROPERTIES WILL NOW HAVE TO BE RETURNED. EVEN PABLO ESCOBAR IS NOT CHARGED AS A TRAFFICKER, ALTHOUGH HE DOES FACE CHARGES FOR MURDER.

8. WE DOUBT POLICE INTELLIGENCE IS AS ACCURATE AS MUNOZ INSISTS. JOSE MARTIN HERNANDEZ MALDONADO, DEPUTY DIRECTOR OF THE NATIONAL OFFICE ON DANGEROUS DRUGS, WHICH ACTS AS SECRETARIATE FOR THE DANGEROUS DRUG COUNCIL, RECENTLY RECONFIRMED TO POLOFF WHAT WE HAVE HEARD FROM OTHER SOURCES--THE SECURITY FORCES SOMETIMES ACTED INDISCRIMINATELY DURING THE WAVE OF MASSIVE ASSET SEIZURES IN THE SEVERAL MONTHS FOLLOWING THE GOC'S AUGUST 1989 CRACKDOWN. ACCORDING TO HERNANDEZ, IN MANY RECENT CASES WHERE ASSETS HAD BEEN LINKED TO A CRIMINAL PROCEEDING, JUDGES HAVE ORDERED THEIR RETURN BECAUSE OF LACK OF EVIDENCE OR BECAUSE THE SECURITY FORCES COMMITTED IRREGULARITIES IN SEIZING THEM. HERNANDEZ

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CLAIMS THAT FEW JUDGES ARE RETURNING ASSETS BECAUSE OF NARCO COERCION. SOME OF THE ASSETS WHICH WILL BE RETURNED IN COMING MONTHS WILL PROBABLY GO TO INNOCENT OWNERS UNJUSTLY DENIED THE USE OF THEIR PROPERTIES. THE MAJORITY, HOWEVER, WILL LIKELY BE RETURNED TO NARCO CONTROL.

OTHER CHANGES

9. THE NEW DECREES CONTAIN SEVERAL IMPORTANT IMPROVEMENTS IN ASSET FORFEITURE PROCEDURE. PERHAPS MOST SIGNIFICANTLY, DECREE 2790 SEEKS TO ESTABLISH A MECHANISM FOR THE GOC TO ASSUME TITLE TO SEIZED PROPERTY WHICH IS SUBSEQUENTLY ABANDONED BY ITS OWNER, EVEN WHEN NO CRIMINAL PROCEEDINGS ARE INVOLVED. IN THE PAST, ALTHOUGH THE GOC HAS REMAINED SADDLED WITH MAINTENANCE AND PROTECTION COSTS, IT HAS GENERALLY BEEN UNABLE TO OBTAIN TITLE TO UNCLAIMED PROPERTY. HERNANDEZ THINKS THAT MANY PROPERTIES, ESPECIALLY AIRCRAFT, WHICH ARE CURRENTLY UNDER GOC CONTROL, BUT NOT INVOLVED IN CRIMINAL PROCEEDINGS, WILL REVERT TO THE STATE UNDER THE NEW LEGISLATION BECAUSE NARCO OWNERS WILL NOT COME FORWARD TO CLAIM THEM. HERNANDEZ IS PROBABLY OVERLY OPTIMISTIC--THE NARCOS CONTROL SOME OF THE COUNTRY'S BEST LAWYERS AND DO NOT HESITATE TO USE THEM.

10. THE RECENT LEGISLATION ALSO TRANSFERS THE AUTHORITY TO PROVISIONALLY ASSIGN SEIZED ASSETS, WHILE RELATED CRIMINAL CASES MOVE SLOWLY THROUGH THE COURTS, FROM THE DANGEROUS DRUG COUNCIL TO THE OFFICE ON DANGEROUS DRUGS. THIS SHOULD FREE THE COUNCIL, WHICH IS SUPPOSED TO PLAN OVERALL ANTI-NARCO STRATEGY, FROM THE TIME-CONSUMING MINUTIA OF DECIDING WHICH FARM AND WHICH AIRCRAFT SHOULD GO TO WHICH GOVERNMENT AGENCY.

(PERMANENT ASSIGNMENT OF FORFEITED NARCO GOODS WILL STILL BE MADE BY JUDGES, FOLLOWING THE CONVICTION OF THE OWNER OF THE PROPERTIES IN QUESTION.)

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11. SOME ITEMS SEIZED FROM TRAFFICKERS, NOTABLY GOLD AND FOREIGN CURRENCY (GENERALLY ILLEGAL TO HOLD IN COLOMBIA) AND ILLEGALLY IMPORTED AIRCRAFT, ARE CONSIDERED CONTRABAND UNDER COLOMBIAN LEGISLATION. IT WILL BE LESS DIFFICULT FOR THE GOC TO OBTAIN THE FORFEITURE OF THESE PROPERTIES BECAUSE CONTRABAND CAN BE FORFEITED VIA AN ADMINISTRATIVE PROCEDURE, EVEN IN THE ABSENCE OF A CRIMINAL CONVICTION.

12. A SEPTEMBER 18 STATE OF SIEGE DECREE (NO. 2187) SEEKS TO GREATLY FACILITATE THE ABILITY OF THE GOC TO FORFEIT CONTRABAND ITEMS SEIZED FROM NARCOS. THE DECREE PROVIDES THAT ADMINISTRATIVE FORFEITURE PROCEEDINGS ARE TO PROCEED SIMULTANEOUSLY WITH ANY RELATED CRIMINAL PROCEEDINGS. CONTRABAND CAN BE FORFEITED EVEN IF ITS OWNER IS FOUND NOT GUILTY OF CRIMINAL CHARGES. TRADITIONALLY, ADMINISTRATIVE FORFEITURE PROCEEDINGS HAVE DRAGGED ON INDEFINITELY. THE NEW DECREE, HOWEVER, IMPOSES A FOUR MONTH TIME LIMIT ON SUCH PROCEEDINGS IN MOST CASES WHERE THE ASSETS INVOLVED APPEAR TO HAVE SOME RELATION TO NARCOTICS TRAFFICKING OR TERRORISM.

## CONCLUSION

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13. THE RECENT REFORMS TO ASSET SEIZURE LEGISLATION SHOULD MAKE IT EASIER TO OBTAIN THE FORFEITURE OF NARCO ASSETS, SOMETHING WHICH THE WEAK COLOMBIAN CRIMINAL JUSTICE SYSTEM HAS GENERALLY BEEN UNABLE TO DO. THE NATIONAL POLICE'S CONCERNS OVER THE ELIMINATION OF THE EXECUTIVE BRANCH'S DE FACTO ABILITY TO SEIZE AND INDEFINITELY HOLD (BUT NOT FORFEIT) ASSETS SUSPECTED OF BEING NARCO LINKED IS UNDERSTANDABLE. SO, HOWEVER, ARE GIRALDO'S REASONS FOR WANTING TO ELIMINATE THIS QUASI-LEGAL PRACTICE. THE POLICE'S STRONG NEGATIVE REACTION TO GIRALDO'S REFORMS, DESPITE SOME CLEAR IMPROVEMENTS OVER PAST PROCEDURES, PARTLY REFLECTS THE LIMITED DEGREE OF COMMUNICATION BETWEEN THE JUSTICE MINISTRY AND THE SECURITY FORCES.

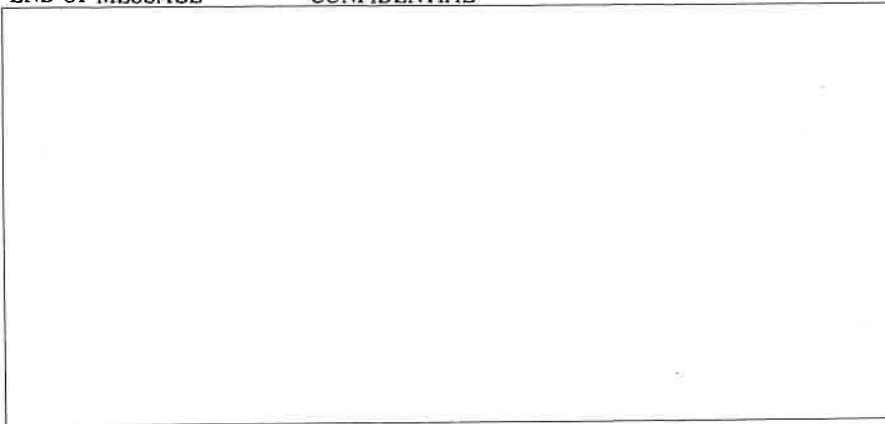
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