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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SHARON E AHMAD
DATE/CASE ID: 04 NOV 2004 200303827

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ALL POSTS FOR PAO, USSOCOM FOR POLAD

E.O. 12958: N/A

TAGS: OPRC, KPAO

SUBJECT: WHA GUIDANCE, FEBRUARY 27, 2002

SUMMARY OF CONTENTS:

1. L/CA/WHA PRESS GUIDANCE, FEB 27 (PERU)
 2. L PRESS GUIDANCE, FEB 27 (GUANTANMO/DETAINEES)
- END SUMMARY.

1. L/CA/WHA PRESS GUIDANCE, FEBRUARY 27, 2002

-- PERU: LORI BERENSON CONVICTION UPHELD --

Q: WHAT IS YOUR REACTION TO THE PERUVIAN SUPREME COURT'S
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DECISION TO UPHOLD THE CONVICTION AND SENTENCE OF LORI
BERENSON?

A: THE PERUVIAN SUPREME COURT ON FEBRUARY 18TH UPHELD BY A
4-1 VOTE MS. BERENSON'S CONVICTION AND SENTENCE FOR
COLLABORATION WITH THE TUPAC AMARU REVOLUTIONARY MOVEMENT
(MRTA). THIS IS THE FINAL STEP IN THE PERUVIAN APPEALS
PROCESS. WE UNDERSTAND THAT MS. BERENSON STILL HAS A CASE
PENDING BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
HERE IN WASHINGTON

Q: WILL PRESIDENT BUSH ASK PRESIDENT TOLEDO TO PARDON
BERENSON WHEN HE TRAVELS TO LIMA MARCH 23?

A: I WOULD REFER YOU TO THE WHITE HOUSE FOR INFORMATION ON
THE PRESIDENT'S TRIP TO PERU.

Q: DOES THE U.S. GOVERNMENT BELIEVE THAT MS. BERENSON
RECEIVED JUSTICE FROM THE PERUVIAN LEGAL SYSTEM?

A: IT IS OUR UNDERSTANDING THAT THE PERUVIAN SUPREME COURT
EXAMINED AT THE ISSUES RAISED BY MS. BERENSON'S DEFENSE
ATTORNEY IN THE APPEAL HE FILED ON HER BEHALF. IT APPEARS
THAT MS. BERENSON,S ATTORNEY WAS ABLE TO ENSURE THAT HIS
CLIENT RECEIVED ALL RIGHTS AND PROTECTIONS AFFORDED UNDER
PERUVIAN LAW.

Q: WHY DID THE EMBASSY NOT SEND SOMEONE TO ATTEND THE APPEAL COURT HEARING?

A: THE HEARING WAS CLOSED TO THE PUBLIC.
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Q: DOES THE U.S. GOVERNMENT SUPPORT MS. BERENSON'S EFFORTS TO HAVE HER CASE REVIEWED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS?

A: THIS IS A MATTER FOR MS. BERENSON TO DECIDE. SHE IS FREE TO SEEK REDRESS THROUGH THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, SHOULD SHE CHOOSE TO.

Q: WHAT IS YOUR REACTION TO CLAIMS BY MS. BERENSON'S PARENTS AND U.S. ATTORNEYS THAT HER TRIAL AND THE PERUVIAN APPELLATE PROCESS WERE A SHAM AND THAT SHE DID NOT RECEIVE DUE PROCESS? YOUR OWN HUMAN RIGHTS REPORT STATES THAT THE CIVILIAN TERRORISM COURT IN WHICH LORI BERENSON WAS TRIED "DOES NOT MEET INTERNATIONALLY ACCEPTED STANDARDS OF OPENNESS, FAIRNESS AND DUE PROCESS."

A: STATE DEPARTMENT HUMAN RIGHTS REPORTS ARE RETROSPECTIVE -- THEY DEAL WITH EVENTS OF THE PREVIOUS YEAR AND, IN THE CASE OF PERU, THE PREVIOUS GOVERNMENT. IN OUR 2000 HUMAN RIGHTS REPORT THE UNITED STATES JUSTIFIABLY CONDEMNED THE UNDUE INTERFERENCE OF THE FUJIMORI ADMINISTRATION WITH PERU'S JUDICIAL SYSTEM. WE ARE UNAWARE OF ANY INTERFERENCE SINCE THE END OF THE FUJIMORI ADMINISTRATION.

Q: SO ARE YOU SAYING THAT LORI BERENSON'S CIVILIAN TRIAL WAS FAIR AND MET INTERNATIONAL STANDARDS?

A: THE COURT RENDERED ITS VERDICT AFTER A PUBLIC TRIAL FREE OF THE MOST EGREGIOUS FLAWS IN THE MILITARY TRIAL AND WHICH ADDRESSED SOME OF THE CONCERNS WE HAD ABOUT MS. BERENSON'S
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MILITARY TRIAL. FOR EXAMPLE, MS. BERENSON WAS ABLE TO CONFRONT THE ACCUSATIONS AGAINST HER AND PRESENT EVIDENCE IN HER OWN DEFENSE -- RIGHTS DENIED HER DURING HER MILITARY TRIAL. WE ALSO DO NOT BELIEVE MS. BERENSON WAS DISCRIMINATED AGAINST IN HER CIVILIAN TRIAL OR DURING THE APPELLATE PROCESS FOR BEING A U.S. CITIZEN. IT APPEARS THAT MS. BERENSON'S ATTORNEY WAS ABLE TO ENSURE THAT HIS CLIENT RECEIVED ALL RIGHTS AND PROTECTIONS AFFORDED UNDER PERUVIAN LAW.

Q: ISN'T THE U.S. GOVERNMENT'S ADVOCACY ON BEHALF OF LORI BERENSON INCONSISTENT WITH THE U.S.'S ANTI-TERRORISM POLICIES?

A: THE U.S. CONDEMNS TERRORISM IN ANY FORM. WHAT THE U.S. HAS LONG ADVOCATED IN LORI BERENSON'S CASE IS THAT SHE BE AFFORDED A FAIR TRIAL UNDER PERUVIAN LAW.

Q: ISN'T THE MILITARY TRIBUNAL THAT ORIGINALLY SENTENCED LORI BERENSON TO LIFE IMPRISONMENT, AND WHICH THE U.S. SO STRONGLY CRITICIZED FOR NOT PROVIDING A FAIR TRIAL, SIMILAR TO THE MILITARY TRIBUNALS THE U.S. IS NOW PROPOSING TO TRY CASES OF FOREIGN TERRORISTS?

A: NO, THE SUMMARY MILITARY TRIBUNAL THAT ORIGINALLY CONVICTED LORI BERENSON FAILED TO MEET DUE PROCESS STANDARDS IN SEVERAL RESPECTS. FOR EXAMPLE, MS. BERENSON WAS NOT ABLE TO CONFRONT THE ACCUSATIONS AGAINST HER OR TO PRESENT EVIDENCE IN HER OWN DEFENSE.

2. L PRESS GUIDANCE, FEBRUARY 27, 2002
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-- STATUS OF DETAINEES IN GUANTANAMO --

Q: WHAT IS THE INTERNATIONAL LEGAL BASIS FOR THE U.S. HOLDING THE DETAINEES FROM THE AFGHANISTAN CONFLICT AT GUANTANAMO BAY?

A: THE DETAINEES ARE BEING HELD ON THE BASIS OF THEIR HAVING BEEN PART OF AN OPPOSING FORCE IN AN ARMED CONFLICT IN WHICH THE UNITED STATES IS ENGAGED. THUS, THEY ARE BEING HELD BECAUSE THEY ARE ENEMY COMBATANTS.

THE CUSTOMARY LAWS OF ARMED CONFLICT GIVE THE U.S. THE RIGHT TO DETAIN THESE COMBATANTS AT LEAST UNTIL THE CONCLUSION OF HOSTILITIES. THESE ACTIONS ARE ENTIRELY CONSISTENT WITH THE 1949 GENEVA CONVENTIONS.

THE PRESIDENT HAS DETERMINED THAT THE THIRD GENEVA CONVENTION ON PRISONERS OF WAR DOES NOT APPLY TO THE AL QAEDA DETAINEES. THEREFORE, THEY ARE NOT ENTITLED TO PRISONER OF WAR STATUS. IN ADDITION, THE PRESIDENT HAS DETERMINED THAT THE THIRD GENEVA CONVENTION DOES APPLY TO THE CONFLICT WITH THE TALIBAN. HOWEVER, THE TALIBAN DO NOT QUALIFY FOR PRISONER OF WAR STATUS.

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IT IS FIRMLY ESTABLISHED IN DOMESTIC AND INTERNATIONAL LAW THAT COMBATANTS MAY BE CAPTURED AND DETAINED. THIS WAS STATED EXPLICITLY BY THE U.S. SUPREME COURT DURING THE SECOND WORLD WAR. (EX PARTE QUIRIN)

THE INDIVIDUALS BEING DETAINED AT GUANTANAMO ARE BEING UNCLASSIFIED

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TREATED HUMANELY CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTIONS.
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