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MILITARY TRIBUNALS AND DUE PROCESS:  
STATEMENTS BY THE US GOVERNMENT

➤ Introduction

- This memorandum reviews U.S. Government statements that are critical of military tribunals as used by other countries for trying terrorists, insurgents, and others engaged in subversive activities. (Also included, at pages 20-27, are statements made by various human rights groups.)
- Nearly all of the statements pertain to military tribunals that were used to try specifically terrorists, insurgents, or civilians engaged in subversive activities.
- The statements are organized as follows:
  - (1) USG statements organized by particular rights;
  - (2) more complete USG statements organized by country; and
  - (3) human rights groups' statements organized by country.

(1) USG Statements (organized by particular rights)

➤ Right to Independent and Impartial Trial

➤ USG criticized the Democratic Republic of Congo, noting that its tribunals were "not independent of the executive branch, which could and did manipulate [them]." 1998 DOS Country Report on Human Rights Practices.

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➤ USG has criticized Egypt, stating that "[w]hile military judges are lawyers, they are also military officers appointed by the Minister of Defense and subject to military discipline. They are not independent or as qualified as civilian judges in applying the civilian penal code." 1995, 1996 DOS Country Reports on Human Rights Practices.

➤ USG has noted with regard to Jordan that "[d]efense attorneys have challenged the appointment of military judges to the State Security Court to try civilian cases as contrary to the concept of an independent judiciary. Military judges appear to

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receive adequate training in civil law and court procedure . . . ." 1996 DOS Country Report on Human Rights Practices.

- USG noted in the case of Venezuela that "the Supreme Court selects military judges from a list of candidates provided by the Minister of Defense, a process that links the careers of military judges to the high command. The tendency of military judges to be responsive to the views of their military leaders, to maintain procedural secrecy, and to act slowly in high-profile cases in which the military is implicated make impartial or timely trials for defendants unlikely." 1996, 1997, 1998 DOS Country Reports on Human Rights Practices.
  
- Right to Public Trial
  - USG noted with respect to Israel that "[c]ases involving national security may be tried in either military or civil courts and may be partly or wholly closed to the public. The Attorney General determines the venue in such cases. The prosecution must justify closing the proceedings to the public." 1995, 1996 DOS Country Reports on Human Rights Practices.
  
  - USG stated with regard to Jordan that "[t]he State Security Court . . . frequently restricts public attendance at its trials." 1996 DOS Country Report on Human Rights Practices.
  
  - USG strongly criticized Nigeria, stating that a special military tribunal conducted in secret violated international norms of due process. US State Department Spokesman Nicholas Burns said "[w]e have repeatedly called on the government of Nigeria to respect its stated commitment to due process by providing fair, open, public trials, for all persons detained or charged with criminal conduct, including those detained or charged in connection with the alleged March coup plotting." Deutsche-Pressse Agentur, July 18, 1995.
  
  - USG condemned military tribunals in Peru, stating that "[p]roceedings in military courts that hear terrorism and treason cases do not meet

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internationally accepted standards for due process. Military trials are closed to the public and are carried out in secrecy by military judges whose identities are not revealed in court." 1996 DOS Country Report on Human Rights Practices.

- Right to Counsel
  - USG noted with regard to the Democratic Republic of Congo that "[l]ocal human rights groups expressed concern [that] . . . many of the accused apparently lack[ed] defense counsel." 1998 DOS Country Report on Human Rights Practices.
  - USG has said that Cuban military trials of counterrevolutionaries are unfair, stating that "[o]ften the sole evidence provided, particularly in political cases, is the defendant's confession, usually obtained under duress, and without the legal advice or knowledge of a defense lawyer. The authorities regularly deny defendants access to their lawyers until the day of the trial. Several dissidents who have served prison terms reported that they were tried and sentenced without counsel and were not allowed to speak on their own behalf. . . . Attorneys have reported reluctance to defend those charged in political cases due to fear of jeopardizing their own careers. 1998 DOS Country Report for Human Rights Practices.
  - USG noted with regard to Eritrea that "[t]he continued handling of civilian cases by these military courts raised problems of due process because of the absence of defense counsel . . . ." 1998 DOS Country Report on Human Rights Practices.
  - USG has criticized Iraq for its use of military tribunals to try terrorists, stating that "[a]uthorities often hold defendants incommunicado and do not permit contact with lawyers." 1995, 1996 DOS Country Reports on Human Rights Practices.
  - USG has noted with respect to Israel that "[d]efendants have the right to be represented by counsel even in closed proceedings . . . ." 1995, 1996 DOS Country Reports on Human Rights Practices.

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- USG has that, in Jordan, "[d]efendants tried in the State Security Court are often held in pretrial detention without access to lawyers, although they are visited by representatives of the ICRC." 1996 DOS Country Report on Human Rights Practices.
- Right to Presumption of Innocence
  - USG noted with regard to Pakistan that "[t]he Government may refer cases involving terrorism . . . or similar offenses to special terrorism courts . . . Many legal experts believe the special courts do not provide a fair trial. They maintain that the short time for investigations and trial procedures have effectively repudiated the presumption of innocence." 1995, 1996 DOS Country Reports on Human Rights Practices.
- Right to Due Process
  - Ambassador Howard Wolpe, Special Envoy for the Great Lakes, testified before the House Committee on International Relations Subcommittees on International Operations and Human Rights and on Africa, stating "[o]nly this week we learned of another sixteen executions in the Democratic Republic of the Congo. Fourteen of those executed were civilians who were condemned to death by a military tribunal and without any semblance of due process. This is unacceptable." (March 5, 1998)
  - USG has criticized Cuban military tribunals with jurisdiction over certain counterrevolutionary cases, stating that "[t]he law and trial practices do not meet international standards for fair public trials. Almost all cases are tried in less than a day; there are no jury trials. While most trials are public, trials are closed when state security allegedly is involved. . . . Criteria for presenting evidence . . . are arbitrary and discriminatory." 1998 DOS Country Report on Human Rights Practices.
  - USG has criticized Egypt, claiming that its "military courts do not guarantee civilian defendants due process before an independent tribunal." 1995, 1996 DOS Country Report on Human Rights Practices.

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- USG noted with respect to Eritrea that "[t]he continued handling of civilian cases by these military courts raised problems of due process because of the absence of defense counsel and denial of the right to appeal. Denial of due process has been a problem on occasion for critics of the Government . . . ." 1998 DOS Country Report on Human Rights Practices.
  
- USG strongly criticized Nigeria when State Department spokesman Nicholas Burns expressed "deep concern" about Nigeria's conviction and sentencing of 10 alleged coup plotters, including a former president. "The trials were carried out in secret . . . . The 10 Nigerians, including former president Olusegun Obasanjo and his former deputy Shehu Musa Yar 'Adua, were convicted by a special military tribunal in a secret process that Burns said violated international norms of due process. 'We have repeatedly called on the government of Nigeria to respect its stated commitment to due process by providing fair, open, public trials, for all persons detained or charged with criminal conduct, including those detained or charged in connection with the alleged March coup plotting,' Burns said. 'We urge the government of Nigeria to respect international norms relating to human rights, including the universal declaration of human rights,' he said." Deutsche-Pressre Agentur, July 18, 1995.
  
- US Assistant Secretary of State Susan Rice criticized Nigeria, stating that "[m]ilitary tribunals denied due process to political and other prisoners, prompting both the United Nations General Assembly and the UN Human Rights Commission to condemn the Nigerian Government and call upon it to respect fundamental human rights and restore civilian rule." July, 1998 Department of State Dispatch: Statements by the Assistant Secretary for African Affairs, Susan E. Rice, before the House International Relations Committee, Washington, DC; June 25, 1998.
  
- US State Department spokesman James Foley criticized Nigeria, stating that "the proceedings in the military tribunal . . . failed to meet minimum

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international standards of due process." AP Online April 29, 1998.

- USG condemned military tribunals in Peru, stating that "[p]roceedings in military courts that hear terrorism and treason cases do not meet internationally accepted standards for due process. . . . The sentencing in January to life imprisonment of U.S. citizen Lori Berenson on treason charges focused additional international attention on the lack of due process in the faceless military tribunals." 1996 DOS Country Report on Human Rights Practices.
- USG noted in the case of insurgents tried in Sierra Leone that "[w]hile some were tried in secret by a military tribunal, all were executed without right of appeal and probably without due process of law." 1992 DOS Country Report on Human Rights Practices.
- Right Against Self-Incrimination
  - USG has said that Cuban military trials of counterrevolutionaries are unfair, stating that "[o]ften the sole evidence provided, particularly in political cases, is the defendant's confession, usually obtained under duress . . . ." 1998 DOS Country Report on Human Rights Practices.
  - USG has criticized Iraq for its use of military tribunals to try terrorists, stating that "[t]he courts admit confessions extracted by torture, which often serve as the basis for conviction." 1995, 1996 DOS Country Reports on Human Rights Practices.\
  - USG has noted with respect to Jordan that "[i]n the State Security Court, judges have inquired into allegations that defendants were tortured and have permitted the testimony of physicians regarding these allegations. To date the Court has not invalidated confessions obtained under duress, but on review, the Court of Cassation has ruled that the State Security Court cannot issue a death sentence on the basis of such a confession alone . . . ." 1996 DOS Country Report on Human Rights Practices.

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- USG has noted in the case of Northern Ireland that "[t]he Diplock Courts have been widely criticized. . . uncorroborated confessions [are permitted], but they cannot be the sole basis for conviction anywhere in the UK. The 1988 Criminal Evidence Order allows judges to draw an adverse inference when a suspect refuses to answer questions." 1995 DOS Country Report on Human Rights Practices for the United Kingdom.
  
- Right to Confront Witnesses
  - USG noted that in Colombia's "faceless" tribunals "[i]t was . . . difficult for defense attorneys to impeach or cross-examine anonymous witnesses . . . . As a result of such concerns, judges may no longer base a conviction solely on the testimony of an anonymous witness." 1996 DOS Country Report on Human Rights Practices.
  
  - USG condemned military tribunals in Peru, noting that "[d]efense attorneys do not have access to evidence, nor can they interview police or military witnesses (to protect their identities) prior to or during the trial." 1996 DOS Country Report on Human Rights Practices.
  
- Right to Have Access to and/or Present Evidence
  - USG noted that in Colombian "faceless tribunals," "defense attorneys . . . often . . . did not have unimpeded access to State's evidence." 1996 DOS Country Report on Human Rights Practices.
  
  - USG has criticized Cuban military tribunals, stating that "[t]he law and trial practices do not meet international standards for fair public trials. . . . Criteria for presenting evidence . . . are arbitrary and discriminatory." 1998 DOS Country Report on Human Rights Practices.
  
  - USG has noted with respect to Israel that "[d]efendants . . . may be denied access to some evidence on security grounds. Convictions may not be based on any evidence denied to the defense." 1995, 1996 DOS Country Reports on Human Rights Practices.

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- USG condemned military tribunals used by Peru, stating that "[d]efense attorneys do not have access to evidence, nor can they interview police or military witnesses (to protect their identities) prior to or during the trial." 1996 DOS Country Report on Human Rights Practices.
- Right to Appeal
  - USG noted with regard to the Democratic Republic of Congo that "[l]ocal human rights groups expressed concern at the summary nature of the justice dispensed by this military court, with no automatic right of appeal to a higher court . . . ." 1998 DOS Country Report on Human Rights Practices.
  - USG noted with regard to Egyptian military tribunals for terrorists that although "sentences are subject to confirmation by the President," "[v]erdicts cannot be appealed." 1995, 1996 DOS Country Reports on Human Rights Practices.
  - USG has stated with regard to Eritrea that "[t]he continued handling of civilian cases by these military courts raised problems of due process because of the . . . denial of the right to appeal. Denial of due process has been a problem on occasion for critics of the Government . . . ." 1998 DOS Country Report on Human Rights Practices.
  - USG criticized Iraq and noted that "[m]any cases appear to end in summary execution, although defendants may appeal to the President for clemency." 1995, 1996 DOS Country Reports on Human Rights Practices.
  - USG has noted in the case of Jordan that "[d]efendants in the State Security Court have the right of appeal to the Court of Cassation, which is authorized to review the testimony, evidence, and judgment. Appeals are automatic for cases involving the death penalty. . . . and State Security Court decisions are reviewed by the Court of Cassation." 1996 DOS Country Report on Human Rights Practices.
  - USG noted in the case of insurgents tried in Sierra Leone that "all were executed without right of



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appeal and probably without due process of law."  
1992 DOS Country Report on Human Rights Practices.

- USG criticized Thailand, noting that "[a] separate military court hears criminal and civil cases pertaining to military personnel as well as those brought during periods of martial law. A serious flaw in providing due process rights is the lack of appeal from decisions of a military court." 1995 DOS Country Report on Human Rights Practices.

## (2) USG Statements (more complete; organized by country)

### ➤ USG on Algeria:

- "Under the state of emergency, military courts are authorized to try civilians accused of terrorism. . . . In February the Government abolished three special courts established to try terrorism and subversion cases. Their jurisdiction was transferred to the ordinary criminal courts. . . . About half of the prison population is being held for alleged terrorist offenses. The courts continued to hand down death sentences to those found guilty of terrorism; however, executions were suspended in 1993. . . . The law requires that the Government provide lawyers for indigent defendants. Lawyers representing Islamists have received death threats." 1995 DOS Country Report for Algeria.

### ➤ USG on Colombia:

- "The system of justice incorporates regional or public order jurisdictions to prosecute cases involving the crimes of narcotics trafficking, terrorism, kidnapping, subversion, and extortion. In these courts, faceless prosecutors, judges, witnesses, and attorneys act under cover of anonymity for security reasons. . . . It was still difficult for defense attorneys to impeach or cross-examine anonymous witnesses, and often they did not have unimpeded access to the State's evidence. As a result of such concerns, judges may no longer base a conviction solely on the testimony of an anonymous witness. Prosecutors, judges, and witnesses generally maintained, however, that the protection of anonymity that is provided by a faceless system

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is essential to the successful investigation and prosecution of human rights cases in a country where violence is endemic and acts of revenge against those prosecuting violent crime may be expected." 1996 DOS Country Report.

- USG on Congo, The Democratic Republic of:
  - "[I]n practice the judiciary was not independent of the executive branch, which could and did manipulate it. . . . The judiciary includes . . . a new military tribunal . . . [which] ordered the executions of dozens of soldiers and civilians in Bukavu, Goma, Kinshasa, and Lubumbashi during the year for various violent criminal offenses, including murder and armed robbery. Local human rights groups expressed concern at the summary nature of the justice dispensed by this military court, with no automatic right of appeal to a higher court, and many of the accused apparently lacking defense counsel. The tribunal also began to sentence civilians for nonviolent offenses with political overtones." 1998 DOS Country Report for Democratic Republic of Congo.
  - "Only this week we learned of another sixteen executions in the Democratic Republic of the Congo. Fourteen of those executed were civilians who were condemned to death by a military tribunal and without any semblance of due process. This is unacceptable." Statement of Ambassador Howard Wolpe's, Special Envoy for the Great Lakes, before the House Committee on International Relations Subcommittees on International Operations and Human Rights and on Africa, March 5, 1998.
- USG on Cuba:
  - "Military tribunals assume jurisdiction for certain counterrevolutionary cases. The law and trial practices do not meet international standards for fair public trials. Almost all cases are tried in less than a day; there are no jury trials. While most trials are public, trials are closed when state security allegedly is involved. . . . Criteria for presenting evidence . . . are arbitrary and discriminatory. Often the sole evidence provided,

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particularly in political cases, is the defendant's confession, usually obtained under duress and without the legal advice or knowledge of a defense lawyer. The authorities regularly deny defendants access to their lawyers until the day of the trial. Several dissidents who have served prison terms reported that they were tried and sentenced without counsel and were not allowed to speak on their own behalf. . . . Attorneys have reported reluctance to defend those charged in political cases due to fear of jeopardizing their own careers. 1998 DOS Country Report for Cuba.

➤ USG on Egypt:

- "[C]ases involving terrorism and national security may be tried in military or State Security Courts, in which the accused do not receive all the Constitutional guarantees of the judicial system. . . . The Constitution provides detainees with the right to counsel, at state expense if necessary. . . . However, the military courts do not guarantee civilian defendants due process before an independent tribunal. While military judges are lawyers, they are also military officers appointed by the Minister of Defense and subject to military discipline. They are not independent or as qualified as civilian judges in applying the civilian penal code. . . . Verdicts cannot be appealed; sentences are subject to confirmation by the President." 1995, 1996 DOS Country Reports for Egypt.

➤ USG on Eritrea:

- "The continued handling of civilian cases by these military courts raised problems of due process because of the absence of defense counsel and denial of the right to appeal. Denial of due process has been a problem on occasion for critics of the Government . . . ." 1998 DOS Country Report for Eritrea.

➤ USG on Iraq:

- "Special security courts have jurisdiction in all cases involving espionage and treason, peaceful political dissent, smuggling, currency exchange

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violations, and drug trafficking. . . . military officers or civil servants with no legal training head these tribunals, which hear cases in secret. Authorities often hold defendant's incommunicado and do not permit contact with lawyers. The courts admit confessions extracted by torture, which often serve as the basis for conviction. Many cases appear to end in summary execution, although defendants may appeal to the President for clemency." 1995, 1996 DOS Country Reports for Iraq.

➤ USG on Israel:

➤ "Cases involving national security may be tried in either military or civil courts and may be partly or wholly closed to the public. The Attorney General determines the venue in such cases. The prosecution must justify closing the proceedings to the public. Defendants have the right to be represented by counsel even in closed proceedings but may be denied access to some evidence on security grounds. Convictions may not be based on any evidence denied to the defense." 1995, 1996 DOS Country Reports for Israel.

➤ "Most of the protections afforded by law are not extended to Palestinian detainees, who fall under the jurisdiction of military law even if they are detained in Israel. . . . all Palestinian detainees held for longer than 1 or 2 days are incarcerated in Israel. The Government does, however, observe some humanitarian provisions of the Fourth Geneva Convention with regard to these detainees . . . ." 1996 DOS Country Report for Israel.

➤ USG on Jordan:

➤ "The State Security Court is comprised of panels of three judges, who may be either civilians or military officers. It frequently restricts public attendance at its trials. Defendants tried in the State Security Court are often held in pretrial detention without access to lawyers, although they are visited by representatives of the ICRC. In the State Security Court, judges have inquired into allegations that defendants were tortured and have permitted the testimony of physicians regarding

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these allegations. To date the Court has not invalidated confessions obtained under duress, but on review, the Court of Cassation has ruled that the State Security Court cannot issue a death sentence on the basis of such a confession alone . . . . Defendants in the State Security Court have the right of appeal to the Court of Cassation, which is authorized to review the testimony, evidence, and judgment. Appeals are automatic for cases involving the death penalty. Defense attorneys have challenged the appointment of military judges to the State Security Court to try civilian cases as contrary to the concept of an independent judiciary. Military judges appear to receive adequate training in civil law and court procedure, and State Security Court decisions are reviewed by the Court of Cassation." 1996 DOS Country Report for Jordan.

➤ USG on Morocco:

- "[S]erious state security cases . . . . may be brought before a specially constituted military tribunal. This court is subservient to other branches of the Government, notably the military and the Ministry of Interior. . . . Aside from external pressures, the court system is also subject to resource constraints. Consequently, criminal defendants charged with less serious offenses often receive only cursory hearings, with judges relying on police reports to render decisions. Although the Government provides an attorney at public expense for serious crimes (i.e., when the offense carries a maximum sentence of over 5 years), appointed attorneys often provide inadequate representation. . . . In June eight Sahrawi youths were put on trial for participating in a demonstration in Laayoune, Western Sahara, calling for Western Saharan independence. Although the eight were civilians, they were tried in a military court in a closed trial that reportedly lasted 3 hours over a 3-day period. The court found the eight guilty of 'threatening the security of the state' and sentenced them up to 20 years in prison. The sentences were later commuted to 1 year by the King. At the trial, the defendants claimed that they had been tortured during pretrial detention . . . ." 1995, 1996 DOS Country Reports for Morocco.

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➤ USG on Nigeria:

➤ "Military tribunals denied due process to political and other prisoners, prompting both the United Nations General Assembly and the UN Human Rights Commission to condemn the Nigerian Government and call upon it to respect fundamental human rights and restore civilian rule. The government's November 10, 1995 execution of environmental activist Ken Saro-Wiwa and the Ogoni Nine met with swift international response, including the imposition of additional sanctions by the United States, the European Union, and the Commonwealth." July, 1998 Department of State Dispatch: Statements by the Assistant Secretary for African Affairs, Susan E. Rice, before the House International Relations Committee, Washington, DC; June 25, 1998.

➤ "The United States deplored death sentences imposed against six Nigerians alleged to be coup plotters and it urged Nigeria's military government Wednesday not to carry out the sentences. State Department spokesman James Foley said the proceedings in the military tribunal the convicted and sentenced the men failed to meet minimum international standards of due process. He said 'hasty resort to irreversible penalties' will only further erode the world's already diminished confidence in the Nigerian government's willingness to administer justice fairly and equitably." AP Online April 29, 1998.

➤ "The United States expressed its 'deep concern' Monday about Nigeria's conviction and sentencing of 10 alleged coup plotters, including a former president. The trials were carried out in secret . . . State Department spokesman Nicholas Burns said in a statement issued late Monday that the United States urges the Nigerian government to grant clemency to the alleged plotters and to conduct any further proceedings in public. The 10 Nigerians, including former president Olusegun Obasanjo and his former deputy Shehu Musa Yar 'Adua, were convicted by a special military tribunal in a secret process that Burns said violated international norms of due process. 'We have repeatedly called on the

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government of Nigeria to respect its stated commitment to due process by providing fair, open, public trials, for all persons detained or charged with criminal conduct, including those detained or charged in connection with the alleged March coup plotting,' Burns said. 'We urge the government of Nigeria to respect international norms relating to human rights, including the universal declaration of human rights,' he said." Deutsche-Presse Agentur, July 18, 1995.

➤ USG on Northern Ireland:

➤ "In Northern Ireland, special "emergency" restrictions affect due process. Under the 1973 EPA, the Government suspended the right to trial by jury there for certain terrorist-related offenses because terrorists had intimidated the judiciary, jurors, and lawyers. Such offenses are tried instead by a "Diplock Court," a judge presiding without a jury. If the decision is to convict, the judge must justify it in a document that becomes part of the court record, and an appellate court may overturn it on substantive as well as legal grounds. The Diplock Courts have been widely criticized. The EPA also permits the use of uncorroborated confessions, but they cannot be the sole basis for conviction anywhere in the UK. The 1988 Criminal Evidence Order allows judges to draw an adverse inference when a suspect refuses to answer questions." 1995 DOS Country Report for United Kingdom.

➤ "In February the [European Court of Human Rights] found in John Murray v. United Kingdom that the denial in Northern Ireland of access to counsel for the first 48 hours in a situation where the right of the defense might thus be irretrievably prejudiced was, whatever the justification, incompatible with article 6 of the European convention on human rights." 1996 DOS Country Report for United Kingdom.

➤ USG on Pakistan:

➤ "The Government may refer cases involving terrorism . . . or similar offenses to special terrorism courts . . . . Many legal experts believe the

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special courts do not provide a fair trial. They maintain that the short time for investigations and trial procedures have effectively repudiated the presumption of innocence. . . . Moreover, the special courts may deny bail if the judges decide that the accused may have reasonably committed an offense. . . . Government officials . . . maintain that . . . the rules of evidence apply in the courts, defendants have the right to counsel, and the judges must meet the same standards as those appointed to a high court. Defendants also have the right to appeal, but only one appeal is allowed." 1995, 1996 DOS Country Reports for Pakistan.

➤ USG on Peru:

➤ "Proceedings in military courts that hear terrorism and treason cases do not meet internationally accepted standards for due process. Military trials are closed to the public and are carried out in secrecy by military judges whose identities are not revealed in court. Defense attorneys do not have access to evidence, nor can they interview police or military witnesses (to protect their identities) prior to or during the trial. There are reports that many of the judges are active duty line officers with no legal background. . . . Military tribunals in theory must pass judgment within 10 days. Defendants may appeal a verdict to the Superior Military Council, which has 10 days to make a decision. The Supreme Council of Military Justice must act on a final appeal within 5 days, although this calendar is subject to delays. . . . The sentencing in January to life imprisonment of U.S. citizen Lori Berenson on treason charges focused additional international attention on the lack of due process in the faceless military tribunals." 1996 DOS Country Report for Peru.

➤ "While terrorism cases are tried in civilian courts, cases of treason or aggravated terrorism may be tried only before military courts. . . . At the military superior court and Supreme Court levels, a significant number of judges are active-duty line officers with little or no professional legal training. . . . Defendants in treason cases who are found not guilty by a military court may be



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remanded to a civilian court for a second trial on terrorism charges based on the same facts, a practice criticized by human rights monitors as double jeopardy. . . . Even though the "faceless" military and civilian courts were abolished in 1997, and the identities of judges in treason and terrorism cases no longer are concealed, . . . criticisms still are relevant in regard to the basic unfairness, lack of openness, and shortcomings in due process that are characteristic of the military justice system, in particular." 1998 DOS Country Report for Peru.

- With respect to the Lori Berenson case: "Berenson was not tried by a public civilian court in 1996, nor was she allowed to cross-examine the witnesses who testified against her, as called for by international legal norms, the State Department said that year. The military trial was conducted by 'faceless judges' who wore masks, a system created by the anti-terrorist legislation enacted under Fujimori's 10-year iron-fisted regime." Inter-Press Service, June 21, 2001.
- With respect to the Lori Berenson case: "Let me reiterate that the United States considers that Miss Berenson's trial by a military tribunal did not meet minimal international standards of due process. We continue to raise this issue with the Peruvian Government, and will continue to do so and hopefully will have some success in this area." U.S. Department of State Daily Press Briefing with James Rubin, January 23, 1998.
- With respect to the Lori Berenson case: President Clinton "stated no opinion on her guilt or innocence but was interested in insuring that she was afforded due process and was concerned about her having been tried in a military, as opposed to civilian, court," a White House spokesman said. AP News Service, May 22, 1996.
- USG on Sierra Leone:
  - "In December the NPRC issued Decree No. 12, establishing a military tribunal which may try both military and civilians for serious crimes (including

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treason, murder, manslaughter, and aggravated robbery). The tribunal's decision may not be appealed, and punishment may include the death penalty. . . . During the last week of 1992, an estimated 29 persons, both civilian and military, were summarily executed by military firing squads. They were accused of participating in a failed coup. While some were tried in secret by a military tribunal, all were executed without right of appeal and probably without due process of law." 1992 DOS Country Report for Sierra Leone.

➤ USG on Syria:

- "The two security courts are called the Supreme State Security Court (SSSC), which tries political and national security cases . . . [the SSSC operates] under the state of emergency, not ordinary law, and [does] not observe constitutional guarantees. Charges against defendants in the SSSC are often vague. Many defendants appear to be tried for exercising normal political rights, such as free speech. . . . Nonetheless, the Government contends that the SSSC tries only persons who have sought to use violence against the State. Under SSSC procedures, defendants are not present during the preliminary, or investigative, phase of the trial, when evidence is presented by the prosecutor. Trials are usually closed to the public. Lawyers are not guaranteed adequate access to their clients, and are excluded from the court during their clients' initial interrogation by the prosecutor. Lawyers submit written defense pleas, rather than oral presentations. The State's case is often based on confessions, but defendants have not been allowed to argue that their confessions were coerced. There is no known instance in which the Court ordered a medical examination for a defendant who claimed that he was tortured. . . . Defendants do not have the right to appeal SSSC verdicts, but sentences are reviewed by the Minister of Interior, who may ratify, nullify, or alter sentences. The President may also intervene in the review process." 1995 DOS Country Report on Syria.

➤ USG on Thailand:

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- "A separate military court hears criminal and civil cases pertaining to military personnel as well as those brought during periods of martial law. A serious flaw in providing due process rights is the lack of appeal from decisions of a military court." 1995 DOS Country Report for Thailand.
  
- USG on Turkey:
  - "State Security Courts . . . . are composed of panels of five members--two civilian judges, one military judge, and two prosecutors--and try defendants accused of crimes such as terrorism . . . . Their verdicts may be appealed only to a specialized department of the High Court of Appeals. . . . Those accused . . . may be detained twice as long before arraignment as other defendants. The heavy caseload often means that cases drag on for years. These courts may hold closed hearings and may admit testimony obtained during police interrogation in the absence of counsel." 1996 DOS Country Report for Turkey.
  
- USG on Venezuela:
  - "Military courts can try civilians in cases of armed subversion . . . . Military courts are subject to a requirement for a speedy trial and a statute of limitations similar to that of civilian courts. Persons convicted by a military court have the same right of appeal to the Supreme Court as do those convicted by the civilian system. Military courts, however, are significantly different from civilian courts in that by law the President must review every case after the initial investigation stage and decide if that case will go to trial. Human rights groups assert that this gives the executive excessive power to intervene in military cases. In addition, the Supreme Court selects military judges from a list of candidates provided by the Minister of Defense, a process that links the careers of military judges to the high command. The tendency of military judges to be responsive to the views of their military leaders, to maintain procedural secrecy, and to act slowly in high-profile cases in which the military is implicated make impartial or

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timely trials for defendants unlikely." 1996, 1997,  
1998 DOS Country Reports for Venezuela.

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