

# **MILITARY JUSTICE**

**Exploring the Essentials**

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# I | GENERAL, CONCEPTUAL AND NORMATIVE FOUNDATIONS

## 1. Defining Military Criminal Justice.

*At the global level, military criminal justice—also referred to as military jurisdiction—is defined as a specialized judicial system that regulates criminal conduct committed by members of the Armed Forces, generally while they are on active duty and performing their functions.*

*Its existence is justified by the need to preserve discipline, service, and military honor, and its scope may be broader or more restricted depending on the context in which it operates, whether in peacetime, armed conflict, stabilization processes, transitions, or international missions.*

However, notwithstanding the above, international human rights courts (hereinafter, IHRCs) have warned that its use must be exceptional, restrictive, subject to civilian control, and fully respectful of both formal and substantive due process:



It cannot be used to violate the human rights of the general population or of those involved.

It must not try civilians.

It must be subject to the principles of the rule of law and the fight against impunity as recognized internationally.

It must be limited to offenses or conduct related to military functions (this includes certain militarized conduct).

The principles of guarantee-based criminal law must guide its operation.

Military criminal justice is a special type of jurisdiction exercised by armies (military), and even police bodies, to try their personnel when they commit offenses related to service, discipline, and honor.

Its main idea is that uniformed personnel, due to having duties very different from those of civilians, in some situations require a different system of justice.

In 2026, more than 140 out of the 193 States that make up the UN operate this system, but its functioning and limits vary according to political, legal, and geographical factors, as well as the prevailing procedural systems. What is common, however, is that international human rights law (IHRL, hereinafter) requires that this jurisdiction be limited, not try civilians, and respect the fundamental rights of the accused and the participation of victims. It is also clear that serious violations of international humanitarian law (IHL) affecting persons and property fall under the jurisdiction of the ordinary justice system.

### International References:



## 2. Military Justice vs. Police Justice Systems.

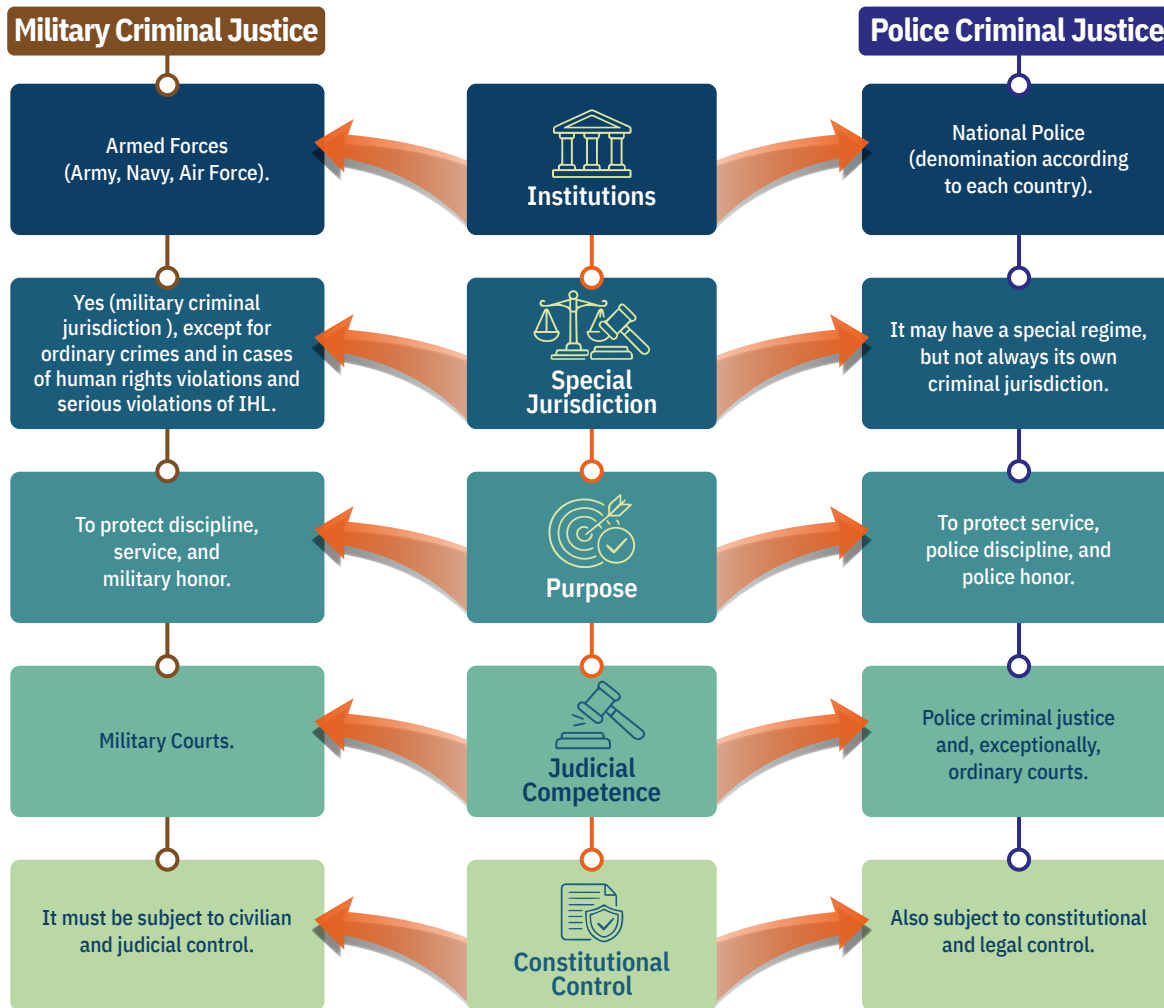
*The primary differences between military criminal justice and police criminal justice lie in their institutional origin, the applicable legal framework, and the type of function protected by the special jurisdiction. In some countries, police forces may be more militarized or, due to the context of violence, perform auxiliary roles. In such instances, specialized systems may apply.*

In general terms, around the world today there are law enforcement bodies specifically dedicated to preserving public security. Their members may even be non-uniformed civilians, include specialized units that wear uniforms for specific activities, and/or have uniformed specialties for different purposes (such as migration, environmental, traffic, or rural tasks, etc.). These police bodies may belong to ministries of the interior, government, or in some cases, ministries of internal security. If, exceptionally—or not—they perform military roles, their natural judges may be other civilian judges.

1. The term “soft law” refers to norms, principles, recommendations, protocols, or guidelines that, although not legally binding, guide the behavior of States and institutions. These norms come from international organizations, specialized committees, non-ratified treaties, or decisions which, while not mandatory, influence the interpretation of law. For example, the [Bangalore Principles](#) of Judicial Conduct or the [Minnesota Protocol](#) on the Investigation of Potentially Unlawful Deaths.

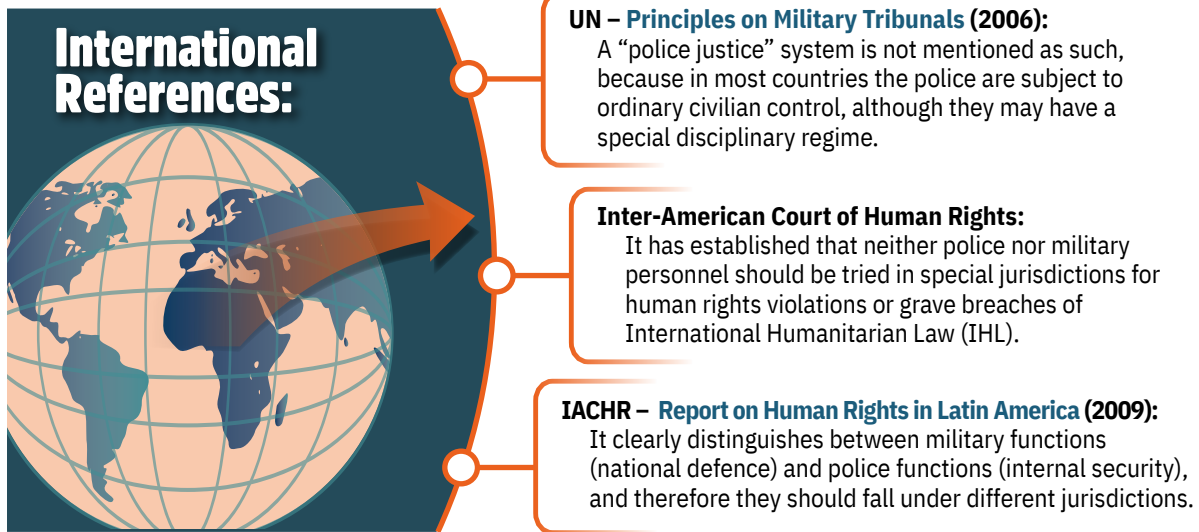
However, whether because they assume or develop military roles in situations of non-international armed conflict, or because they are uniformed police with highly specialized competencies and capabilities, or gendarmerie-type forces, intermediate forces, or national guards, their offenses may end up being judged—by constitutional or legal provisions—by specialized judges, provided that the conduct is related to the service.

The following are the main factors to consider when determining whether we are generally dealing with military criminal justice or police criminal justice:



Military criminal justice and police justice are different because they respond to distinct functions: national defence vs. public security and citizen coexistence. Although both may have special regimes, military criminal justice is more structured and traditional, while police justice may depend more on the ordinary system and the internal disciplinary regime, depending on the context. In countries with militarized police forces, the same jurisdiction may be shared, but under the principle of specificity. Military personnel try military personnel, but not police.

2. Criminal jurisdiction is the authority of the State to investigate, try, and punish crimes. When referring to military criminal jurisdiction, it means that there are specialized courts for members of the Armed Forces, but their competence is exceptional and limited, and is always subject to the Constitution and to human rights.



### 3. Scope of Jurisdiction.

*Military justice has a limited jurisdiction: it applies only when military personnel commit a service-related offense. It cannot be used to shield abuses of power, nor to prosecute civilians, nor to bypass the ordinary justice system when serious violations of human rights and IHL occur. Nor does it apply in states of exception. In any case of doubt, the ordinary courts have jurisdiction.*

Those tried by military criminal justice are:

- Active members of the Armed Forces (Army, Navy, Air Force).
- In some legislations, also cadets or personnel in training (entirely exceptional, as they are primarily students).
- Only for conduct committed in service and related to functions inherent to military duty. Functional offenses, previously referred to as typically military offenses, and in some cases militarized ordinary offenses.
- Military justice does not try civilians or police.<sup>3</sup>

In cases involving common crimes lacking a functional nexus, such as the homicide of a person protected under IHL, bodily harm against a person protected under IHL, torture, enforced disappearance, extrajudicial executions, or sexual violence, jurisdiction shall rest exclusively with the ordinary justice system. While certain offenses against life and personal integrity may exceptionally fall under the jurisdiction of the military and police justice system, any criminal act committed by military per-

<sup>3</sup> There are cases in which legislation allows the trial of civilians in specific circumstances, such as attacks on military installations. Civilian personnel of the Armed Forces are included in some legislations. Likewise, some countries provide in their legislation that, in times of war, courts-martial may try civilians. Regarding police, there are cases in which military criminal justice also tries police officers when they commit service-related offenses. This jurisdiction is exceptional. In Colombia, for example, the official name is Military and Police Criminal Justice, and in Peru, the Military Police Jurisdiction.

sonnel outside the scope of their duties must be investigated, tried, and, where applicable, sanctioned by the ordinary courts.

Under this system, jurisdiction is limited to military personnel tried for offenses directly related to their functions. Military criminal justice cannot be extended to investigate common crimes unrelated to service, nor may it be used to circumvent investigations into human rights violations or breaches of IHL.

## 4. Military Offenses and their Classification.

*Depending on the legal codes of each country, military or service-related offenses may include:*

- Disobedience.
- Abandonment of post.
- Sentinel offenses.
- Insubordination.
- Desertion.
- Treason.
- Mutiny or rebellion.
- Misuse of weapons or military insignia.
- Cowardice in combat.
- Abuse of authority.
- Sexual harassment and abuse.

## 5. Global Perspectives and Regional Models.

*A military criminal justice system is the set of rules, institutions, processes, procedures, and judicial bodies responsible for investigating, prosecuting, trying and sanctioning members of the Armed Forces – whether on active duty or, and exceptionally, in retirement—for military offenses or service-related crimes.*

### Key Elements of the Military Justice System



Regional differences respond to historical contexts, levels of democratic consolidation, and internal or international armed conflicts. Military criminal justice systems vary depending on the region, procedural system, and level of violence, but they must comply with international standards. In modern democracies, the trend is to limit their scope, prevent them from trying civilians, and always ensure respect for human rights and IHL.

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## 6. International Legal Frameworks and Standards.

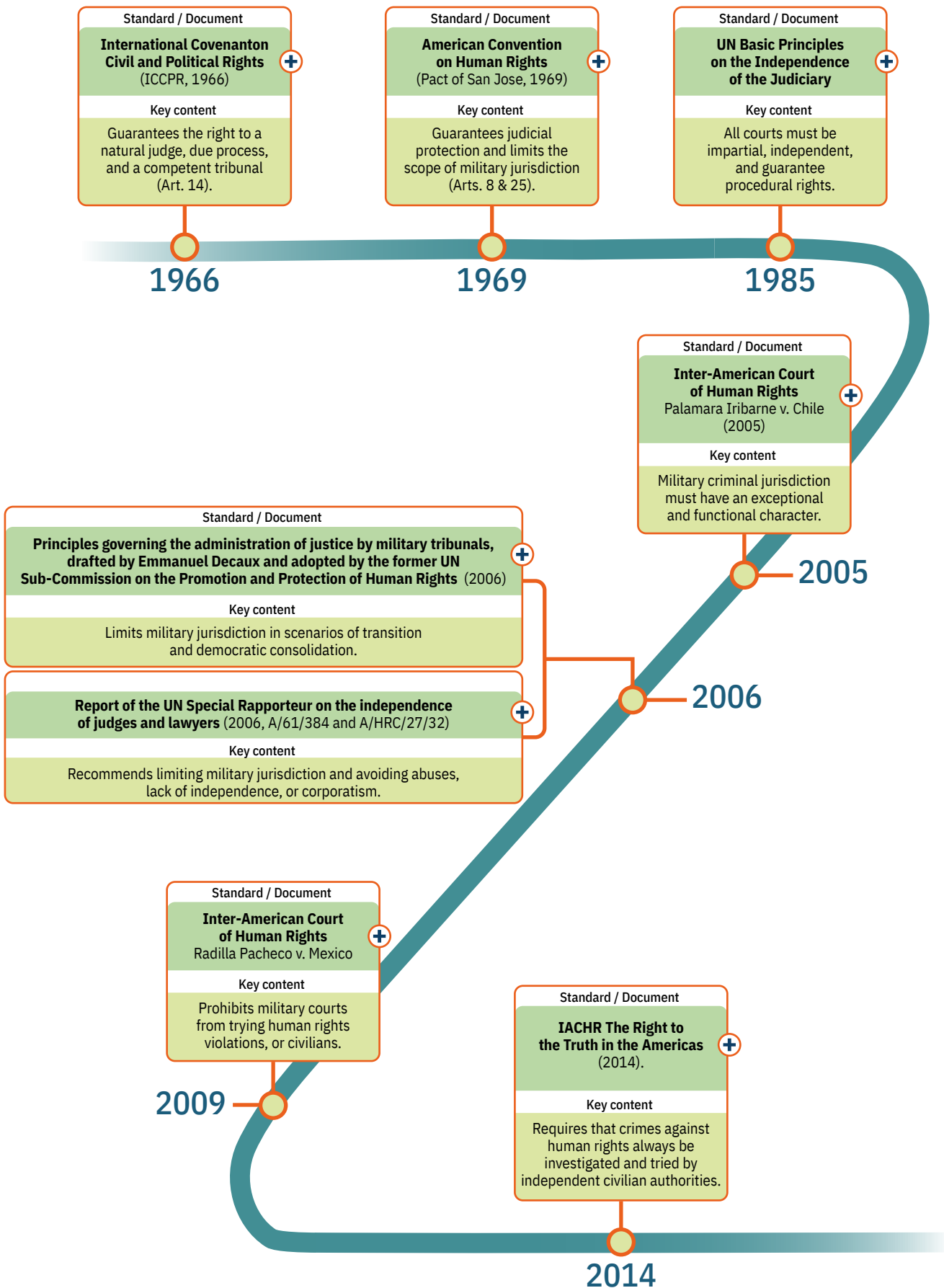
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*Public international law (hereinafter PIL) establishes fundamental principles to guide, limit, and regulate military criminal justice. These standards seek to guarantee:*

- Respect for due process.
- Prohibition of trying civilians in military courts.
- Lack of jurisdiction over human rights violations.
- Lack of jurisdiction over serious violations of IHL.
- Civilian judicial oversight of military courts.
- Participation of victims in proceedings.
- Standards for comprehensive reparation.
- Publicity of judicial proceedings.
- Judicial guarantees for persons subject to proceedings.
- Independence from military command.
- Separation of investigative and adjudicative functions.
- Differentiated sentencing regime or penitentiary jurisdiction.
- Primacy of the presumption of innocence.

These standards are found both in binding international treaties and in principles and jurisprudence recognized by the UN, the Inter-American Court of Human Rights (IACtHR), the European Court of Human Rights, decisions of the UN Human Rights Committee, and other international bodies.

**Military criminal justice must respect Public International Law (PIL). This means it cannot operate without limits; it must not try civilians, nor may it adjudicate human rights violations or serious breaches of IHL against protected persons and property. International standards ensure civilian oversight, transparency, and effective justice, even within the military system.**



## 7. Military Justice within the National Legal System.

*Military criminal justice is integral to the national legal system. It holds formal legal standing—often established within the Constitution—and is subject to increasingly stringent regulations.*

*It is part of the judicial system, but with special rules. Its personnel may even belong to the Executive Branch, but their judicial functions take precedence over their administrative affiliation.*

Its operation is based on a legal order that—as noted—originates in the Constitution and extends down to specific regulations. It is also aligned with IHRL and IHL. In fact, it shares historical roots with international criminal justice, as landmark tribunals such as Nuremberg, the Far East, and Dachau were military in nature. Major international bodies, including the UN, the OAS, the African Union, and the International Criminal Court, recognize its legal validity.

Level	Content	Application to Military Criminal Justice
<b>Political Constitution</b>	Supreme domestic law; it must be aligned with IHRL standards.	Authorizes the existence of military criminal justice and defines its limits.
<b>International Instruments</b>	IHRL and IHL instruments approved and ratified by States.	Impose mandatory limits: no trials for civilians, mandatory due process, and no jurisdiction over HR violations or IHL breaches.
<b>National Laws</b>	Statutes governing justice and State structure.	Define the functioning of the judicial system, including military jurisdiction and disciplinary. In some cases, these levels may be confused.
<b>Military Criminal Code</b>	Law defining military offenses and legal procedures.	Establishes punishable conducts and the specific procedures for trials within the military sphere.
<b>Military Regulations</b>	Internal rules governing force doctrine; must comply with higher norms.	Organize daily conduct and internal discipline, but do not replace criminal or judicial laws.

## 8. Institutional Actors and Roles.

*The military criminal justice system is generally composed of military personnel and specialized officials who investigate, prosecute, try, and, where applicable, sanction members of the Armed Forces when they commit service-related offenses.*

**The main actors are:**



**Military judges and magistrates:**  
They adjudicate cases and issue rulings.



**Military prosecutors:**  
They conduct investigations and bring charges when a crime is committed.



**Military defence counsel:**  
They provide legal representation for the accused, just as in any ordinary trial.



**Military appellate courts:**  
They handle second-instance proceedings and appeals.



**High Courts of the country:**  
They may review specific cases to ensure the protection of fundamental rights and constitutional norms.

## 9. Military Courts and Composition.

*A military court is a specialized judicial body that adjudicates offenses committed by military personnel in the line of duty, in accordance with special rules (such as the Military Criminal Code, special criminal laws, etc.) and jurisdictional criteria (such as territorial competence). Its composition depends on each country's legal model, procedural system, and regional context.*

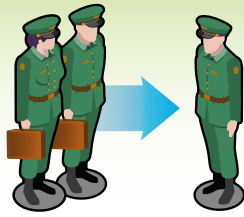
Military courts are judicial bodies composed of collegiate panels - referred to as magistrates, or ministers- and may be constituted according to jurisdictional factors at either the first or second instance, when military personnel commit a service-related offense.

They are composed of military judges with law degrees, who must be independent of the chain of command. In some countries, these courts also include civilian judges, particularly to prevent abuses or human rights violations.

There are different models of military criminal justice, depending on who holds adjudicative authority and the degree of separation between this system and the ordinary justice system. Generally, four distinct types can be identified:

1

**Pure Military System**



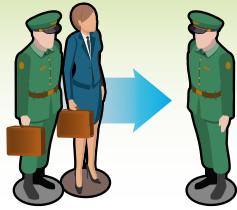
Proceedings are conducted exclusively by active military personnel, without effective civilian judicial oversight.

**Characteristics:**

- Judges and prosecutors are military personnel.
- Absence of independent judicial review.
- High degree of hierarchical subordination to military command.

2

**Mixed Military System**



Combines military personnel with specialized legal training and mechanisms for civilian review.

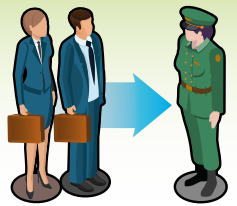
**Characteristics:**

- Military judges hold professional law degrees.
- Sentences are subject to review by civilian courts.
- Jurisdiction limited to service-related offenses.

This is the most common model in Latin America and several Western countries.

3

**Ordinary System with Specialized Competencies**



There are no permanent military courts. Civilian judges handle offenses committed by military personnel.

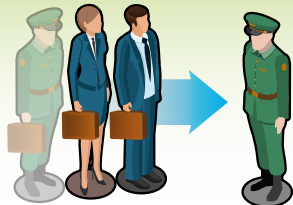
**Characteristics:**

- The entire system is civilian.
- Specialized military rules apply only to service-related acts.
- Maximum level of judicial independence.

Adopted by countries that have abolished permanent military justice.

4

**Exceptional Mixed system**



Military justice operates only under extraordinary circumstances, such as war or states of emergency.

**Characteristics:**

- Under normal conditions, cases are handled by the ordinary justice system.
- Military courts are established only on a temporary, situational basis.

Model applied in some European countries.

The composition of military courts varies by country. While some are entirely military, others incorporate both military and civilian judges. In several nations there are no longer permanent military courts, as offenses committed by military personnel are tried by ordinary courts, except in situations of international armed conflict.

Regardless of the model, judges must possess professional legal training and to act with independence and respect for human rights.

# II | MILITARY JUSTICE AND THE FIGHT AGAINST IMPUNITY

## 1. Institutional Structure and Levels of Jurisdiction.

*Military justice levels are organized hierarchically to guarantee due process, the right to appeal, and access to judicial remedies. These structures may vary by country.*

Similar to civilian justice, the system typically operates across several levels:

1. First instance: Where the investigation is conducted, charges are brought, and the trial takes place to rebut the presumption of innocence based on the principle of individual criminal responsibility.
2. Second instance: Where the initial decision is reviewed for compliance with substantive and procedural law (appeal).
3. Extraordinary instances: Where cases may be reviewed due to gross legal errors or fundamental rights violations (extraordinary remedies).

While terminology may vary, most systems follow this pattern. Examples include:

### **United States:**

- Court-martial of first instance → Court of Appeals for the Armed Forces → Supreme Court (limited review).

### **France**

- *Tribunaux des Forces Armées* → *Cour d'Appel Militaire*.

### **Mexico:**

- Military Control Court → Military Tribunal → Supreme Court in exceptional review.

### **Germany, Argentina, Costa Rica:**

- They do not have an independent military criminal justice system. All cases go directly to ordinary justice.

### **Colombia:**

- These levels are organized into military courts and tribunals, but the Supreme Court may ultimately intervene through extraordinary appeals, or the Constitutional Court in cases involving violations of fundamental rights.

As in any judicial system, the objective is to ensure the right to defence, to appeal, to use extraordinary remedies, and to receive a fair trial, even within a specialized system.

## 2. Civilian Oversight and Institutional Control.

The level of involvement or control of civilian power over military criminal justice is manifested at three fundamental levels:



### Constitutional and Legal Oversight

Civilian authority establishes the legal framework for military criminal justice through the Constitution, statutory laws, and judicial precedent.

Additionally, it establishes the limits of its jurisdiction and the mechanisms of oversight, ensuring its subordination to the constitutional order and its alignment with fundamental rights and international standards.



### Civilian Judicial Oversight

High courts (Supreme Court, Constitutional Court, and Council of State) may intervene through: constitutional review, cassation, and protection actions.

Jurisdictional conflicts arise when two judicial systems dispute who should hear a case; a higher authority then determines the competent court.

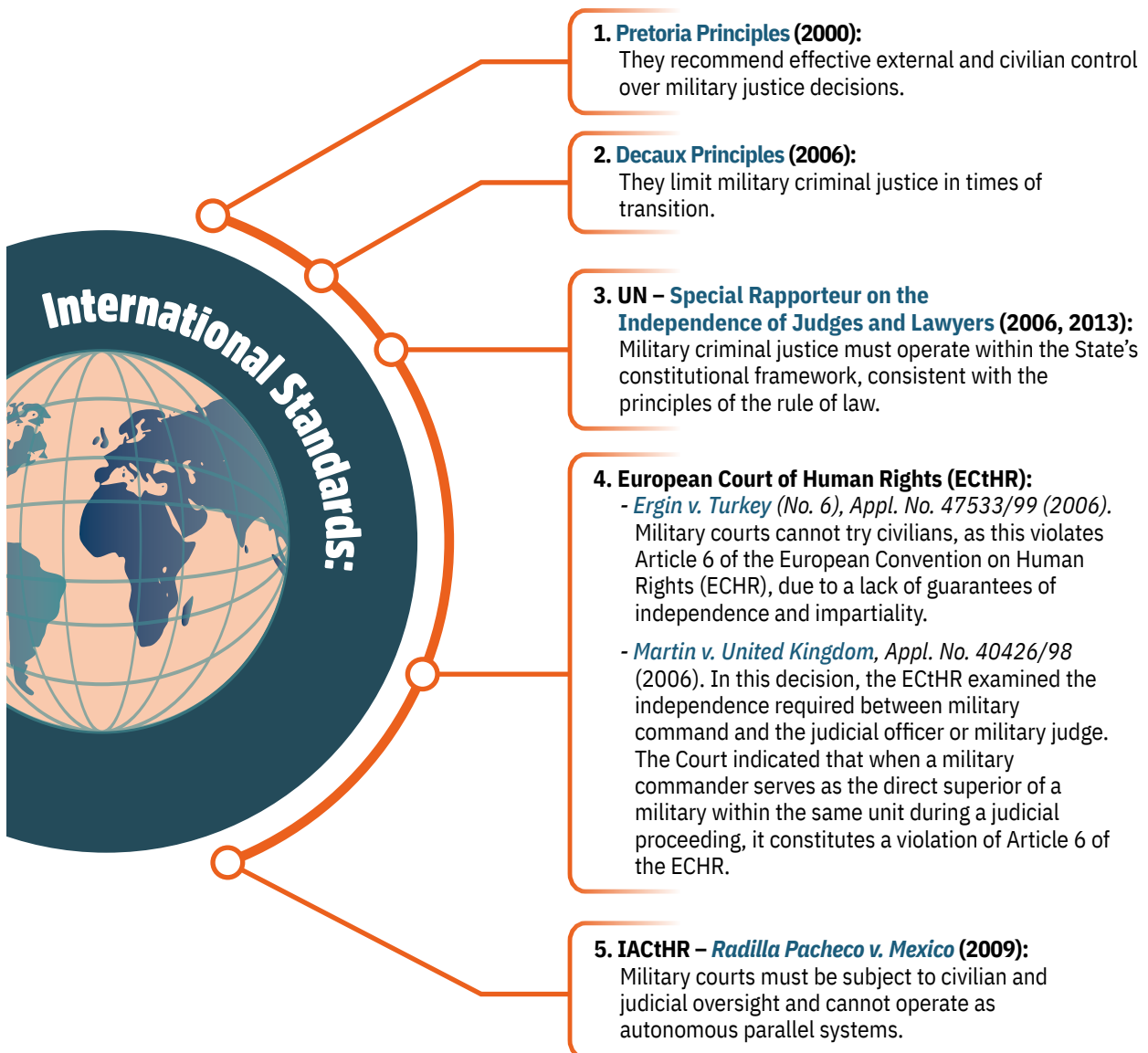


### Executive and Legislative Oversight

The President, as Supreme Commander of the Armed Forces, and Congress, as the legislative body, perform political, disciplinary, and budgetary oversight.

In many countries, the creation or reform of military criminal codes requires legislative approval. This is essential to ensure democratic oversight, legal legitimacy, and the subordination of military jurisdiction to civilian authority.

Although military criminal justice has its own rules and judges, it must remain under civilian oversight. This implies strict adherence to the Constitution, submission to the oversight of civilian judges, and operating within the framework of the rule of law. Comparative experience shows that when these checks and balances are not sufficiently robust, it can lead to weaknesses in transparency, accountability, and the effective protection of rights.



### 3. External Controls, Impartiality and Defendants’ Rights.

#### External Controls over Military Justice

The impartiality and independence of this jurisdiction must be guaranteed through mechanisms of institutional, judicial, and constitutional control, such as:

### 1. Ordinary Judicial Control:

- The Supreme Court of Justice may intervene through criminal cassation (in some cases).
- Civil prosecutors and judges may raise jurisdictional conflicts when it is disputed whether the case should be subject to ordinary or military jurisdiction.

### 2. Constitutional Control:

- Constitutional Courts or Tribunals may review cases through constitutional protection actions when a violation of fundamental rights is alleged.
- They may also declare unconstitutional norms or rulings that affect judicial guarantees.

### 3. International Control:

- Human rights courts have intervened in multiple cases to curb the abusive use of military justice in past contexts.
- Bodies such as the IACHR and the UN Human Rights Committee, along with as non-governmental organizations like Human Rights Watch, monitor and report on structural failures. These are defined as persistent system deficiencies - such as lack of independence, weak civilian oversight, limited transparency, and barriers for victims- that hinder the effective investigation and sanctioning of crimes.

### 4. Political and Administrative Control:

- Congress has the authority to modify or eliminate military jurisdiction if it becomes a source of impunity.
- The Executive branch, through the ministries responsible for Defence and Justice, may issue guidelines and propose reforms to the military justice system.

## Rights of the accused in the military justice system

According to PIL, soft law standards, and internal constitutional guarantees, these include:



In summary, accused persons have the right to:

- Be heard.
- Be assisted by legal counsel.
- Have their case reviewed by a higher court (right to appeal).
- Make use of extraordinary remedies.
- Resort to international mechanisms under the principle of subsidiarity.
- Be tried by an impartial tribunal.
- Be informed of the charges against them.
- Have adequate time and facilities to prepare their defence.
- Due process, even during states of emergency.
- Be presumed innocent until proven guilty.

Military criminal justice must operate within the rule of law. For this reason, it is subject to external oversight to ensure its impartiality. Accused persons have the right to a fair trial before an independent and impartial tribunal, to an adequate defence, and to be tried by judges with appropriate expertise in military matters (specialization).

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#### **4. Internal Controls, Impartiality and Reporting Misconduct within Military Hierarchy.**

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*Military criminal justice has internal rules aimed at ensuring the impartiality of its legal officials. However, international bodies have warned that the hierarchical relationships inherent to armed institutions may constitute risk factors for the effective reporting of irregularities, especially when there are insufficient guarantees for the protection of the complainant or a lack of external oversight mechanisms.*

*For this reason, it has become important to establish controls that separate the chain of command from the justice system.*

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Military criminal justice operates within a hierarchical institutional context, which may affect its impartiality, especially when:

- The accused person is a hierarchical superior of the complainant.
- Judges, prosecutors, or defence counsel have institutional ties or functional dependence on the accused person.
- The allegations affect the image of the unit or institution.

Therefore, different internal controls are established:

## Internal controls in place

### 1. Selection and legal training of Military Judges and Prosecutors:

- These positions must be held by individuals with a law degree, with knowledge of military criminal and procedural law.
- They are legally presumed to act with functional independence from the operational military hierarchy.

### 2. Assignment of cases by random distribution or judicial shifts (Case Allocation):

- In some countries, cases are assigned without interference from the operational chain of command.

### 3. Code of Ethics and Military Discipline:

- There are rules to sanction the use of hierarchical power for purposes of concealment or undue pressure.

### 4. Internal disciplinary oversight bodies:

- Such as a Military General Audit, which may investigate internal irregularities (internal control offices, special bodies where breaches of duties—not crimes—are investigated).

## Identified structural problems


Despite the existence of these controls, in practice challenges may persist in fully guaranteeing internal impartiality, especially in contexts where oversight mechanisms and the rule of law exhibit weaknesses. Among these problems are:

- Fear of reprisals or isolation of the complainant within the unit.
- Institutional pressure to protect the image of the Armed Forces.
- Lack of secure and confidential reporting channels.
- Appointment of judges or prosecutors without true functional autonomy.

## Institutional Good Practices to Ensure Impartiality in Military Criminal Justice

Practice	Description	Reference / Recommendation
Separation between judicial function and military command.	Judges and prosecutors must not have operational subordination to the accused person.	IACtHR (Palamara Iribarne v. Chile); Pretoria Principles (2000).
Independent selection of military judges.	Appointment based on merit (objective selection and competitive processes), with legal training and without interference from high command.	UN Special Rapporteur on the independence of judges and lawyers (2006).
Safe and confidential reporting channels.	Creation of protected mechanisms so that victims can report without fear of reprisals.	UN recommendation – Committee Against Torture (CAT).
Autonomous internal oversight (military audit).	Independent body that reviews the ethical and disciplinary conduct of judicial operators.	Colombian model (Military General Audit); practices recommended by the IACHR.
Procedural transparency and right to appeal.	Guarantee of access to appeal and external monitoring in sensitive cases by oversight bodies.	Constitutional Court of Colombia; American Convention on Human Rights.
Possibility of transfer to ordinary justice.	Allow certain cases (especially those involving human rights and IHL) to be heard by civilian judges.	IACtHR jurisprudence; reforms in Mexico, Peru, Argentina.
Training in human rights, IHL, operational law, and due process.	Ongoing training of military judges, prosecutors, and defence counsel in international standards.	Military judicial training programs (various countries); UN recommendations.

Internal impartiality is not guaranteed solely by laws, but also by real institutional mechanisms that separate hierarchy from justice, protect those who report, and ensure the independent review of the case.



**International Standards:**

- 1. Pretoria Principles (2000):**  
They establish that those serving as military judges must be legally trained, independent from the chain of command, and that the system must provide real safeguards against hierarchical subordination.
- 2. IACtHR – Palamara Iribarne v. Chile (2005):**  
It states that military hierarchy compromises judicial independence when the person acting as judge belongs to the same military body as the accused.
- 3. UN Special Rapporteur (2006, 2013):**  
Recommends fully separating military criminal justice from the operational hierarchical structure.

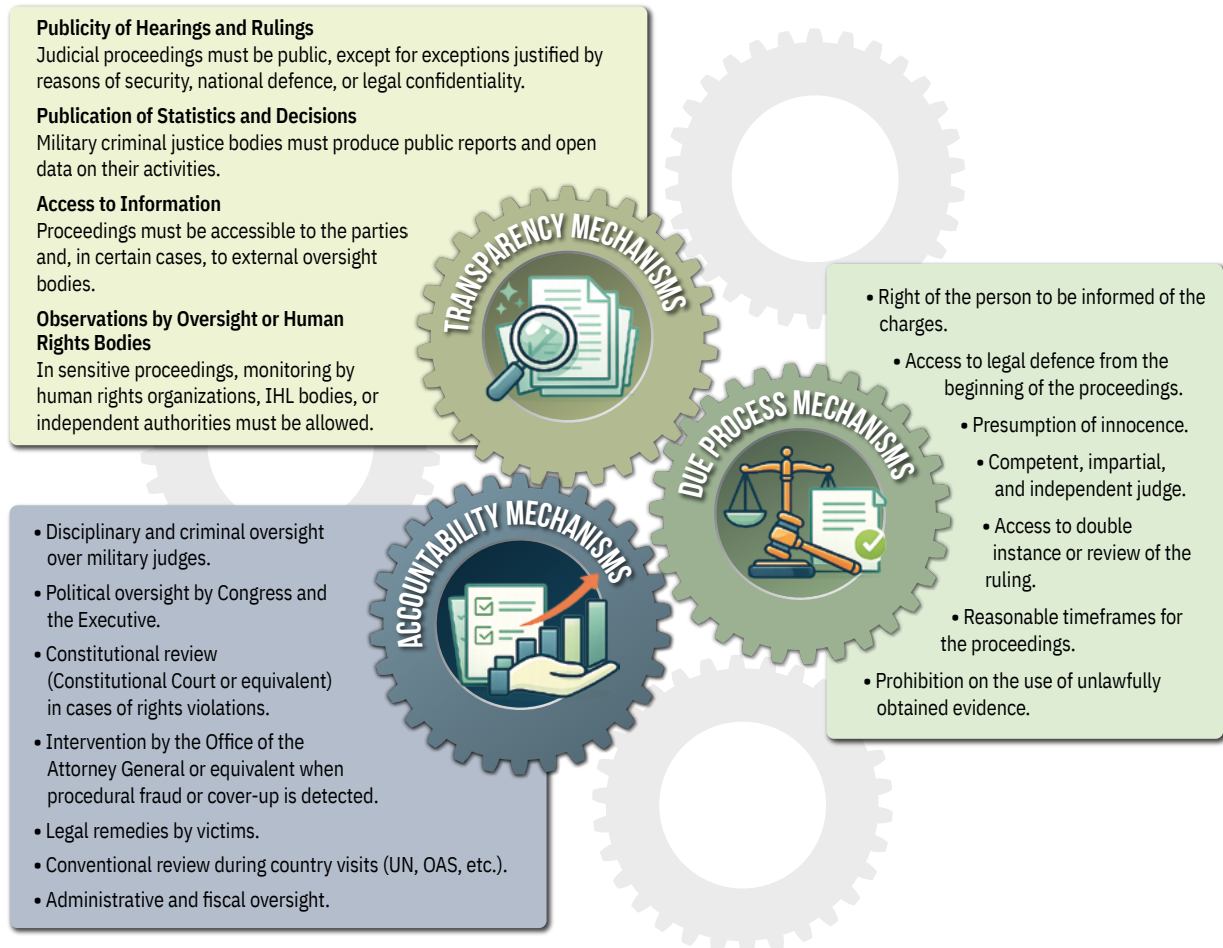
## 5. Transparency, Due Process and Accountability Frameworks.

*Military criminal justice, like any justice system, has rules to prevent it from becoming ineffective. To this end, there are mechanisms that ensure the process is fair and that those responsible are held accountable if they commit errors or conceal crimes.*

*These mechanisms include:*

- *The right to defence and to a fair trial in accordance with IHRL standards.*
- *Oversight by other civilian and judicial authorities.*
- *The obligation to publish important decisions.*
- *The possibility for citizens to report irregularities.*
- *Participation of victims.*
- *Accountability at the budgetary and administrative levels.*

Mechanisms of transparency, due process, and accountability strengthen military criminal justice as an open, reliable system aligned with the principles of the rule of law, ensuring its legitimacy and avoiding the risk of impunity.



Military criminal justice must be developed within the framework of the principles of legality, transparency, and democratic control. To this end, it is essential that it operate under effective mechanisms of access to information, public oversight, guarantees of due process, and robust accountability frameworks. These safeguards, recognized both by national legal systems and by international human rights bodies and standards, strengthen its legitimacy and ensure its function within a social and democratic rule-of-law state. Any person may have access, through specialized oversight mechanisms, to general data on the functioning of military justice, provided that the fundamental rights of the parties involved in specific cases are not affected

## 6. Investigation, Prosecution and Sentencing Functions.

*The functioning of military criminal justice follows a procedural scheme similar to that of ordinary criminal justice, adapted to the specific nature of the military context. In general terms, this system is structured in three fundamental stages:*

1



### Military Criminal Investigation

- It is the initial phase in which it is determined whether there is sufficient evidence to bring charges (impute, accuse) against a member of the Armed Forces (military, exceptionally police).
- It may be carried out by a specialized Military Prosecutor's Office, a military investigating court, or a military investigative unit, depending on the country's procedural model (inquisitorial, mixed, or adversarial) and compliance with the principles of the rule of law.
- Evidence is collected, potential witnesses are interviewed, and the possible commission of an offense allegedly committed by active-duty military personnel is established.
- This stage must observe the principles of due process, legality, impartiality, and functional independence, even within a hierarchical system.

2



### Adjudication (Military Trial Phase)

- It corresponds to the stage in which the trial takes place, following the imputation and accusation, before a military court or judge.
- In mixed or guarantee-based systems, this phase may be conducted before a collegiate tribunal with professional military judges and even with the participation of civilian judges (such as in the U.S. or France).
- The trial must respect basic guarantees:
  - Right to adequate legal defence.
  - Presumption of innocence.
  - Access to evidence and the adversarial principle (cross-examination).
  - Competent, impartial, and independent judge.
  - Access to a second instance or judicial review.

3



### Military Criminal Sanction

- If the accused person is found criminally responsible, beyond a reasonable doubt, after the remedies have been exhausted, a sanction is imposed in accordance with the Military Criminal Code or the country's special military legislation.
- Sanctions may include:
  - Deprivation of liberty (military imprisonment or in special facilities).
  - Expulsion from the Armed Forces.
  - Suspension or demotion in rank.
  - Fines or other accessory disciplinary measures, including restriction of rights.
- The sanction must be proportional, reasoned, compatible with respect for human dignity, and, where possible, carried out under civilian or mixed supervision.

- In some countries, there is a dual or mixed system, in which certain offenses (especially those related to human rights and IHL) must be handled by ordinary criminal justice, not by military justice.
- The military criminal process must guarantee legality control, the publicity of decisions, and allow the review of judgments by higher courts

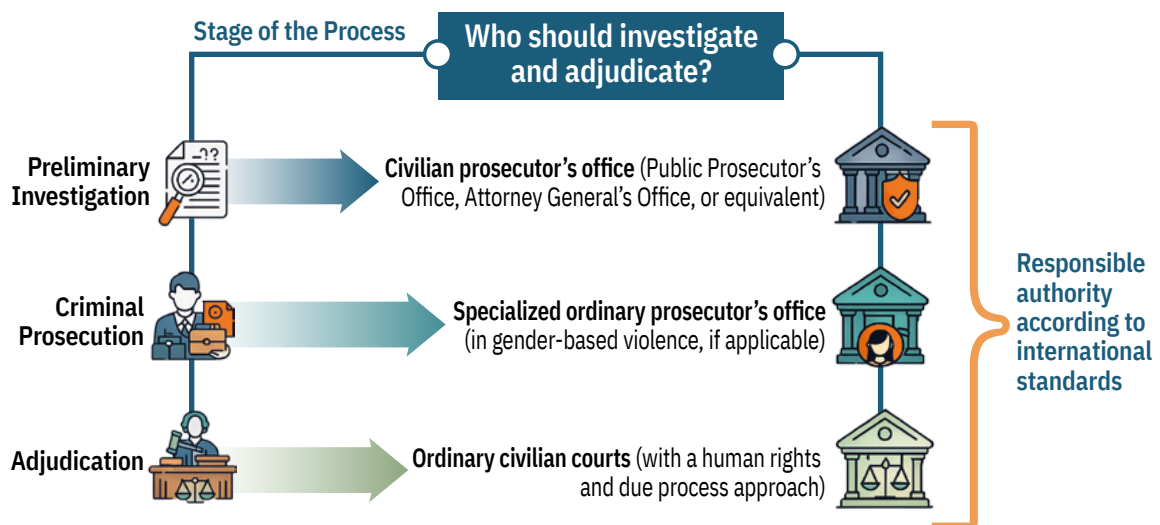
# III | SEXUAL HARASSMENT AND ABUSE IN MILITARY JUSTICE SYSTEMS

## 1. Jurisdiction over Sexual Harassment and Abuse Cases.

*Acts of sexual harassment and abuse committed by military personnel against civilians, or that constitute human rights violations, must be handled by the ordinary justice system. When they occur between members of the institution and are related to military service, they may initially trigger military criminal jurisdiction and disciplinary mechanisms without prejudice to civilian oversight and the possible transfer of the case to ordinary justice as established by law.*

Cases of sexual violence committed by military personnel must be investigated and adjudicated by civilian and ordinary courts, especially when:

- The victims are civilians.
- The offense constitutes a human rights violation or a war crime.
- The act occurred **outside strictly service-related functions**.



In a military criminal justice system aligned with human rights, cases—especially when they involve civilian victims or constitute serious violations—must be investigated and adjudicated by civilian, independent authorities with a gender perspective, in accordance with the principle of the natural judge and international standards.

Without prejudice to this, these acts also immediately trigger internal disciplinary responsibilities within the Armed Forces. In many codes of conduct and military disciplinary regimes, harassment, abuse, and sexual violence constitute serious or very serious offenses, punishable by measures such as suspension, dismissal, or loss of rank, even when the criminal process is handled by the ordinary justice system.

In this way, the institutional response to sexual violence operates under a logic of complementarity: the offense is investigated by the ordinary criminal jurisdiction, while the military institution must simultaneously carry out the corresponding disciplinary proceedings. This approach makes it possible to understand that the protection of victims and the enforcement of accountability take place within an integrated system, where civilian justice and the military disciplinary regime converge, reinforcing the principles of discipline, institutional honor, and accountability.

### **Military Codes may specifically address the issue of sexual harassment and abuse**

**When analyzing the issue, the following should be considered, in order of precedence:**

- i. What the country’s Criminal Code prescribes on the matter—if it does so.**
- ii. Whether there is any mention in the Military Justice Code or equivalent.**
- iii. Whether there are specific military disciplinary laws, their provisions, and their relationship with aforementioned codes.**

In recent decades, various military institutions have incorporated into their regulatory frameworks specific provisions related to harassment and sexual abuse, as part of processes of institutional modernization and alignment with international human rights standards. These regulations are not homogeneous, as definitions, classifications, and scopes vary according to each country’s legal system. In some cases, these behaviors are classified as crimes within the scope of military service; in others, they are regulated through disciplinary rules, protocols of action, or codes of conduct aimed at preventing and sanctioning such behaviors.

Likewise, several codes include provisions related to the prevention of abuses against civilian populations in conflict contexts, as well as rules intended to regulate command and subordinate relationships, taking into account the risks inherent in hierarchical structures. In Latin America, comparative evidence suggests that the incorporation of these issues into military justice codes and disciplinary regimes is still in development, with gradual progress in defining conduct, adopting gender-sensitive approaches, and coordinating with the civilian justice system.

## Workplace environments. Inclusion of issues of sexual harassment and abuse

### References in Military Justice and/or Disciplinary Codes

<b>Argentina</b>	Serious misconduct is defined as: a military officer who makes a sexual request, for themselves or for another person, under threat of causing service or career-related harm to the victim. And as a serious fault: sexual harassment of the superior. The military officer who, taking advantage of a situation of superiority, makes a sexual request for themselves or for another person under threat of causing service or career-related harm to the victim. (Arts. 10 and 13, Law N° 26394, <i>Código de Disciplina de las Fuerzas Armadas</i> ).
<b>Bolivia</b>	Military personnel who use armed force or influence in command or office to violate the dignity, health, liberty or property of any person for private purposes shall be liable to imprisonment from six months to one year. (Art. 200, <i>Código Penal Militar</i> , Law Decree 13321).
<b>Brazil</b>	Force someone, by violence or serious threat, to have carnal relations or to perform or allow another libidinous act to be performed with them. Perform or allow a soldier to perform a libidinous act with them in a place subject to military administration or in the exercise of a military function. (Arts. 232, 235, 238, 239, 407 and 408 <i>Código Penal Militar</i> , Decree 1.001, Last Amendment Law N° 14688).
<b>Colombia</b>	The offense shall be minor in promoting, performing, permitting or participating in sexual practices within military units, facilities or assets when performed in public, the development of the activities of the service and which thereby compromise the basic objectives of military activity and discipline. (Art. 77, <i>Código Disciplinario Militar</i> , Law N° 1862). Anyone who, during and in the course of an armed conflict, commits sexual acts by violence against a protected person shall be liable to imprisonment for ten (10) to ten and eight years and a fine. (Arts. 138, 139 <i>Código Penal Militar</i> , Law N° 1407).
<b>Dominican Republic</b>	Any conduct by a military officer which in their interpersonal relationships involves or tends to involve situations of sexual or occupational harassment, domestic violence, rape and any attack on personal integrity, although they do not fall within the scope of military disciplinary law, should be subject to the greatest possible attention when receiving complaints in this regard, and whoever receives them is obliged to act in accordance with the legal procedures in force. Considered to be moderate, concurrent misconduct: not taking action when reported sexual harassment, domestic violence, rape, among military personnel. Serious concurrent misconduct is considered: retaliating against someone who has reported sexual harassment or any other act of abuse of authority. Are considered to be breaches of morality and moderate good manners: adopting sexual expression, whether in a visual, verbal, written, corporal or other way, or displaying objects or images such as: underwear, magazines, books or multimedia with sexual content. (Art. 26, <i>Reglamento Militar Disciplinario de las Fuerzas Armadas</i> , Decree N° 2).
<b>Ecuador</b>	Military personnel who become aware of and have evidence of gender-based violence, abuse, sexual or labour harassment or criminal offenses committed by military personnel in or related to deserted acts are obliged to report to the competent authorities. Serious misconduct: committing actions that constitute harassment at work against military personnel or servants of the military institution, duly verified. Making sexual innuendo, provided it does not constitute sexual harassment. Offences: committing acts of sexual harassment or abuse against military personnel, servants or servants of the military institution, duly verified. (Art. 189, 195 sub. 38, 66, 196 sub. 14, <i>Ley Orgánica de Personal y Disciplina de las Fuerzas Armadas</i> ).
<b>Honduras</b>	Any offense is punishable if the offender abused the superiority of their sex in terms that the offended person could not defend. (Art. 7, <i>Código Militar</i> , Decree 76-06).
<b>Nicaragua</b>	Considered to be offences against morality and good manners, and shall be punishable by arrest from one day to three months: acts aimed at achieving sexual relations with staff, provided that it does not constitute an offence. (Art 231, Sub. b, <i>Código Penal Militar</i> , Law N° 566).
<b>Paraguay</b>	The offender of violent rape shall be punished by military prison for five to seven years, extending to the maximum according to the circumstances of the place and the quality of the person. The violent abduction of a woman from any state shall be punished by military prison not exceeding five years. (Art. 287 and 289, <i>Código Penal Militar</i> , Law N° 843).
<b>Peru</b>	Serious faults: making indecent insinuations, propositions, obscene gestures and/or using terms of a sexual nature or connotation (verbal or written), which are unbearable and offensive to the aggrieved. Use the position or rank to give, implicitly or explicitly, preferential treatment or benefits in exchange for sexual favors. (Annex III, <i>Ley del Régimen Disciplinario de las Fuerzas Armadas</i> , Law N° 29131).
<b>Uruguay</b>	Military offenses are defined as the offenses committed by military personnel in service, with detriment to property, domicile and other rights protected by the Ordinary Penal Code, of other military personnel, on account of or for the purpose of their service, unless it is an attack on the physical integrity, honour or personal liberty of a superior, in which case this last requirement is not required. (Art. 59, <i>Código Penal Militar</i> ).

Source: Compilation based on the legislation mentioned.

## 2. Reporting Conditions and Oversight Mechanisms.

In most legal systems, victims within the military sphere have the right to file complaints of sexual harassment and abuse before:







- Internal bodies (ethics lines, command authorities, military prosecutors).
- Disciplinary bodies.
- Civilian prosecutor's offices or Attorney General's offices.
- Ombudsman institutions.
- International human rights bodies.



In most Armed Forces around the world, the incorporation of women has been promoted. This process is usually focused on representation (the percentage of women recruited or promoted) and does not in itself guarantee an environment free from violence, harassment, or discrimination.

When female service members experience sexual harassment, abuse of power, or sexual violence, protection and sanction systems may fail for multiple reasons: hierarchy, concealment, lack of a gender perspective, and/or internal justice systems that do not prioritize victims.

## Institutional Good Practices

 <p><b>Independent Ombuds Offices for Military Personnel</b></p>	<p>Creation of autonomous bodies within the institution, with direct access to civilian authorities, to receive complaints, support victims and monitor institutional responses.</p>
 <p><b>Specialized Victim Support Units</b></p>	<p>Teams dedicated exclusively to addressing sexual violence with trained personnel and the obligation to report periodically to civilian or legislative bodies.</p>
 <p><b>Mandatory Referral to Ordinary Justice</b></p>	<p>Establishment of clear rules requiring that cases of sexual violence be investigated by civilian authorities, without prejudice to internal disciplinary sanctions.</p>
 <p><b>Internal Protocols with External Psychosocial Support</b></p>	<p>Implementation of reporting pathways with independent psychological and social support, avoiding revictimization and reducing hierarchical barriers.</p>
 <p><b>Permanent Constitutional and Judicial Oversight</b></p>	<p>Intervention of high courts or constitutional bodies to ensure that these cases are handled in accordance with human rights standards.</p>
 <p><b>Public Accountability</b></p>	<p>Periodic publication of statistics, measures adopted, and institutional progress, ensuring transparency without exposing sensitive data.</p>

Although on paper there are channels for victims to report, in reality fear, hierarchy, and the lack of effective protection can make it very difficult to break the silence. Without clear pathways, independent ombuds institutions, and real civilian oversight, reporting may become more of a risk than a solution. Strengthening institutional cultural changes, a gender perspective, victim protection, and external controls is essential to ensure justice.





### 3. Accountability and Supporting Practices.

*The availability of public, disaggregated, and verifiable records on complaints, investigations, and sanctions for offenses committed by personnel, including sexual harassment and abuse, is not common in state institutions in our countries, and armed institutions are not outside that context. This lack of transparency hinders accountability, fosters impunity, and limits access to justice. Accountability does not only depend on punishing those responsible, but also on publicly demonstrating that institutions are doing the right thing. If there is no public information, the effectiveness and fairness of the system cannot be assessed.*

In the case of defence institutions, in some countries work has begun on official reporting and the production of data. Among the pioneering cases in reporting, evaluation, recommendations and specialized offices are [Australia](#) and [Canada](#)—where reports prepared or commissioned by ministries of

defence have led to structural reforms—and the [United States](#), where figures are published annually as mandated by law. In Latin America, the most recent case is [Colombia](#).

## Good Practices to Consider

Periodic Publication of Reports	Legal Obligation of Accountability	Unified and Accessible Complaint System	Specific Institutional Structures
 <p>Preparation of mandatory annual reports with disaggregated statistics, trend analysis and institutional measures adopted.</p>	 <p>Establishment of rules requiring military authorities to submit public reports on complaints, investigations, and sanctions for sexual violence.</p>	 <p>Implementation of centralized, secure and publicly accessible platforms to report cases, with transparent follow-up and protection for whistleblowers.</p>	 <p>Creation of specialized offices, with appropriate protocols and jurisdiction.</p>

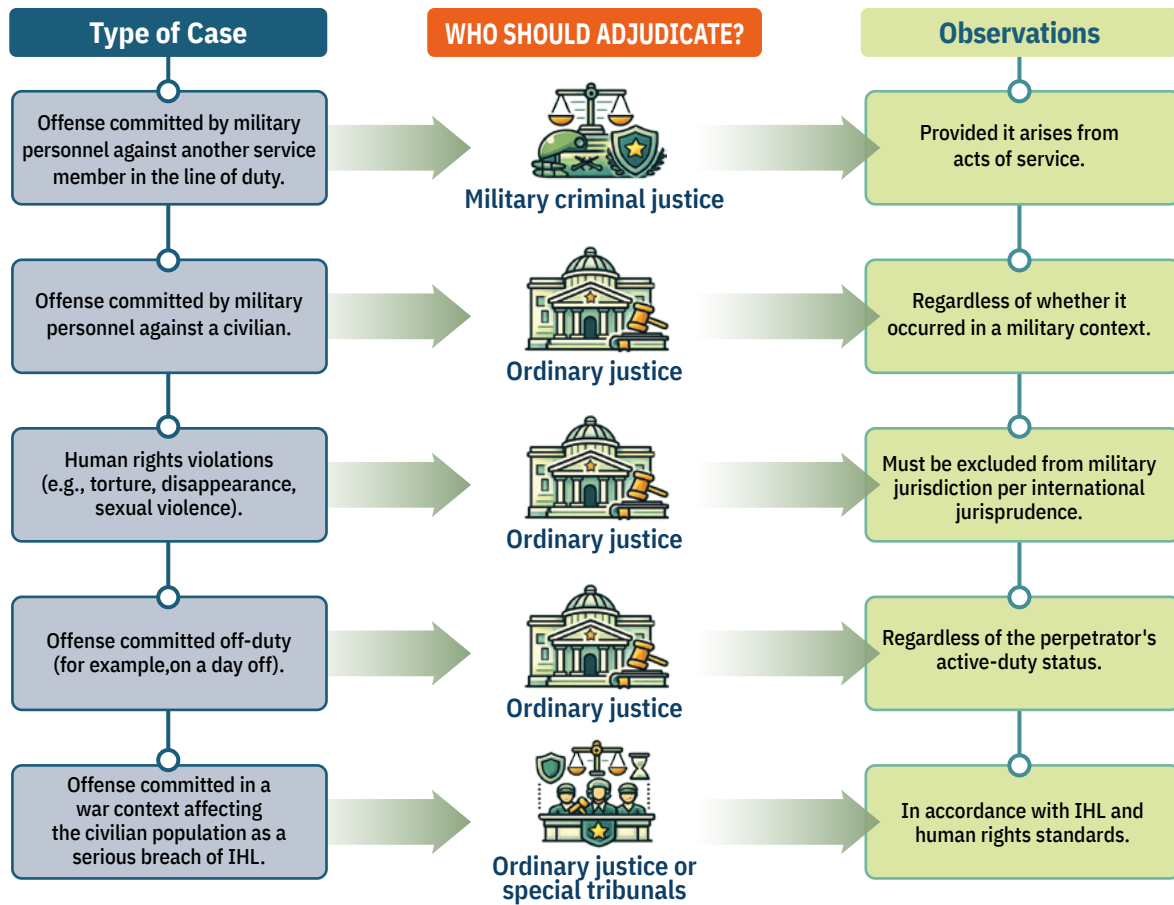
## 4. Transfer of Cases to Civilian Courts.

*In contemporary legal systems, military criminal justice has clear limits. When certain offenses affect civilian legal interests, fundamental human rights, or involve civilian victims, the case must be transferred to the ordinary justice system, which has full jurisdiction and must guarantee an impartial trial.*

This transfer also occurs when:

- The offense is not directly related to service.
- It involves human rights violations, such as torture, extrajudicial executions, sexual violence or serious breaches of IHL.
- The alleged perpetrator has acted outside the functional relationship or service.

### Situations in Which the Case is Transferred



The general rule is clear: if military personnel commit an offense outside their functions or to the detriment of civilians, or if it relates to human rights and IHL, they must be tried by ordinary courts. This principle protects the right to due process, impartiality and international standards of justice.

## 5. Sexual Exploitation and Abuse in UN Peace Operations.

*UN peacekeeping missions and other multilateral operations have been fundamental to the maintenance of international security. However, in some cases, personnel deployed in these missions have committed sexual abuses, including rape, sexual exploitation of children and trafficking, particularly in highly vulnerable contexts.*

The United Nations has developed and continues to develop extensive work on this issue, including [strategies and reports](#) by the Secretary-General, the creation of the figure of a [Special Coordinator](#), the establishment of a [Trust Fund](#), among others, a summary of which can be consulted [here](#).

The scope of the United Nations, however, has limits. When participating in a peace operation, each country signs a memorandum of understanding with the United Nations that establishes various points, including the conduct of personnel and adherence to a zero-tolerance policy. All United Nations personnel must comply with the organization's [standards of conduct](#). However, when it comes to military personnel (and police if deployed in units), issues of jurisdiction and immunity arise, the handling of which corresponds to the legal system of the contributing country. Greater knowledge of military criminal justice in each country will help advance national efforts and debates needed to combat this type of misconduct and crime.

## Structural Problems

- The UN does not have direct criminal jurisdiction over uniformed personnel.
- Lack of binding supranational mechanisms: the UN can only recommend legal actions to Member States. Each country is responsible for trying its own soldiers.
- Difficulties in investigation and effectiveness, including the collection of evidence in the field.
- Dependence on the political will of countries to open investigations or ensure accountability.
- Omission of ordinary justice: in many cases, abuses do not reach civilian or military courts.
- Repatriation without sanction: a common practice that prevents victims' access to justice.

# IV | REFLECTIONS FOR DEBATE

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## • *Military Criminal Justice: Between the Exceptional and the Necessary*

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Military criminal justice arises as a specialized system to investigate, adjudicate, and sanction offenses committed by members of the Armed Forces in the exercise of official functions. Its existence is justified by the need to maintain discipline, cohesion, and operational capacity within these institutions. However, its exceptional character in relation to the ordinary justice system requires clear limits, judicial control, adherence to human rights and respect for international standards.

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## • *Systems Are Diverse, but Principles Must Be Common*

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At the global and regional levels, military criminal justice systems present significant structural differences: from their position within the State structure, the participation of civilian or military judges, to their autonomy or subordination to civilian power. Nevertheless, all these systems must comply with universal principles: judicial independence, due process, access to justice, and accountability.

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## • *The Risk of Impunity Remains if There Are No Effective Controls*

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Although some countries have made progress in limiting the scope of military criminal jurisdiction—restricting it to strictly military offenses and excluding crimes against civilians or human rights violations—in many others there remains a legal framework that allows opacity, self-containment, and impunity. The lack of transparency, public records, external oversight, and hierarchical independence are factors that weaken its legitimacy.

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## • *Sexual Harassment and Abuse: A Structural Debt Within Institutions?*

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While the inclusion of women and historically discriminated groups in armed institutions is being promoted, dynamics of harassment, abuse, and sexual violence may persist, silenced by institutional culture, fear of reprisals, and the lack of clear reporting pathways. In several countries, cases continue to be processed within military justice itself, without a gender-sensitive approach or a human rights perspective. Impunity in these cases undermines the discourse of institutional modernization and professionalism.

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## • *Reform to Ensure Justice and Legitimacy*

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Ensuring the legitimacy of military criminal justice requires deep transformations: clearly defining its jurisdiction, excluding it from handling cases involving human rights violations or sexual violence, subjecting its decisions to external judicial control, and promoting mechanisms of oversight, transparency, and reparation. Democratic military criminal justice is not incompatible with national security; on the contrary, it strengthens it.

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# MILITARY JUSTICE

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