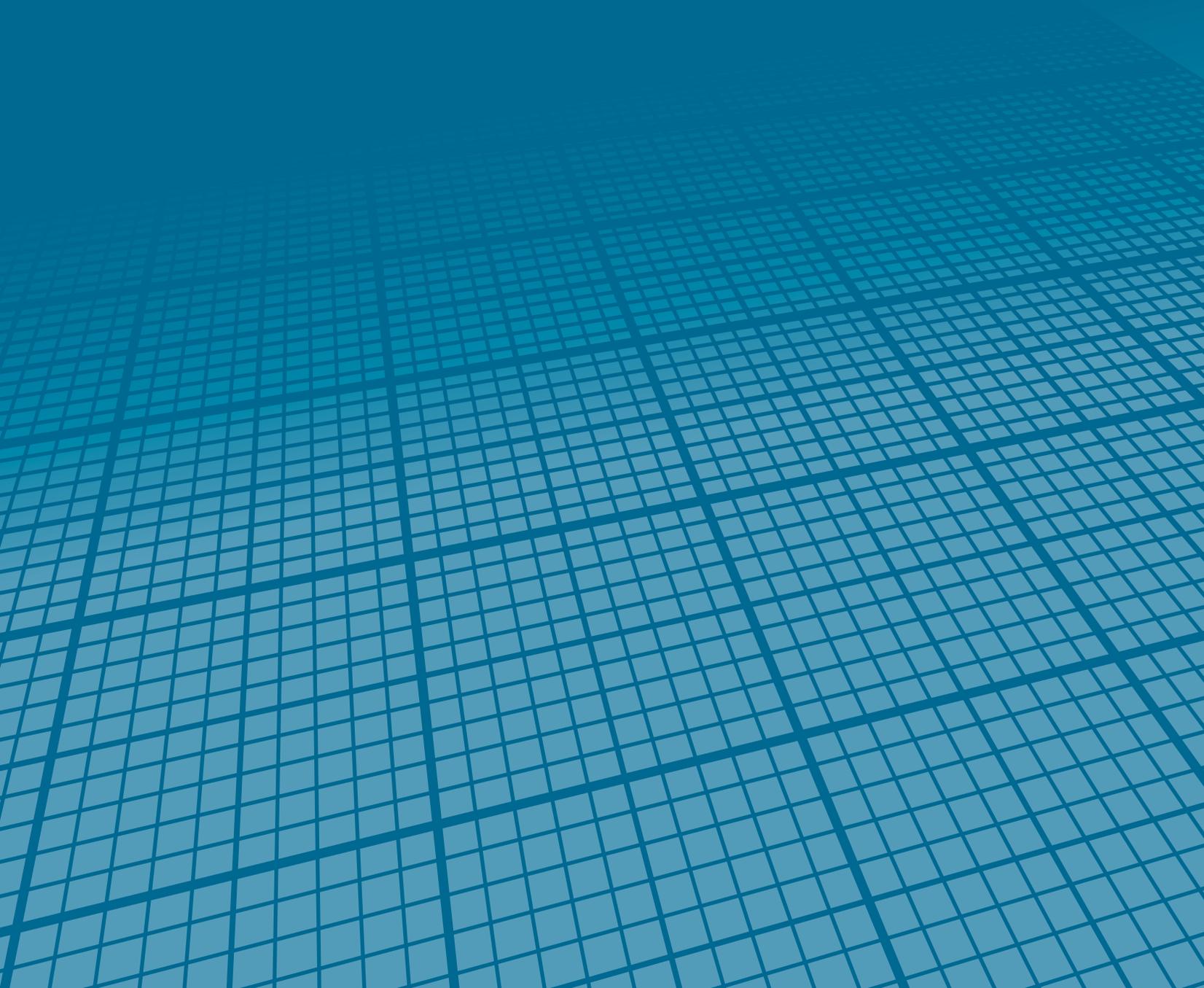


Chapter 1:

# The Legal Framework



## What do Constitutions define?

Argentina (1853, Last reform 1994)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b>                      Commander-in-Chief of the Armed Forces (Sec.99, sub. 12).                      Declare war with the approval of Congress (Sec. 99, sub. 15) and the state of siege in case of external attacks, for a limited period of time, with the approval of the Senate (Sec. 99, sub. 16).                      Appoint senior officers with the approval of the Senate (Sec. 99, sub. 13).                      Arrange, organize and deploy the Armed Forces (Sec. 99, sub. 14)</p> <p><b>Powers of Congress:</b>                      Approve the declaration of war (Sec. 75, sub. 25) and the declaration of state of siege in case of external attacks (Sec. 61).                      Authorize the president to make peace (Sec. 75, sub. 25).                      Authorize the entry of foreign troops to the national territory and allow the deployment of national troops outside the country (Sec. 75, sub. 28).                      Establish the Armed Forces (Sec. 75, sub. 27).                      The Chamber of Deputies has the law-making initiative on raising revenues and the recruitment of troops (Sec. 52).                      Organize and govern the Armed Forces (Sec. 75, sub. 27).                      Levy direct taxes for a certain amount of time, in all the territory of the Nation, as long as the defence, common security and State general welfare policies so require (Sec. 75, sub. 2).                      Approve or dismiss treaties entered into with other nations and with international organizations, as well as the concordats with the Holy See (Sec. 75, sub. 22).</p>	<p>No reference.</p>
Bolivia (2008)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b>                      Provide the security and defence of the Nation (Sec. 172, sub. 16).                      Appoint and dismiss the Commander-in-Chief of the Armed Forces and the Chiefs of the Army, the Air Force and Navy. (Sec. 172, sub. 17).                      Recommend to the Plurinational Legislative Assembly the promotions to Army General, Air Force General, Major General and Brigadier General; Admiral, Vice-Admiral and Rear-Admiral (Sec. 172, sub. 19).                      Exercise the powers as Capitán General (Commander) of the Armed Forces and make use of them for the defence of the State, its independence and territorial integrity (Sec. 172, sub. 25).                      The Executive shall have direct access to information on budgeted and executed expenses of the Armed Forces through the appropriate Ministry (Sec. 321, sub. 5).</p> <p><b>Powers of the Plurinational Legislative Assembly<sup>1</sup> :</b>                      Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Sec. 158, sub. 1, 21 and 22).                      Approve in each legislature the military strength to be maintained in times of peace (Sec. 159, sub.10).                      Ratify promotions proposed by the Executive to Army General, Air Force General, Major General and Brigadier General; Admiral, Vice-Admiral, Rear-Admiral and Bolivian Police General (Sec. 160, sub. 8).</p> <p><b>Supreme Defence Council of the Plurinational State :</b>                      Makeup, organization and powers established by law, presided over by the Capitán General of the Armed Forces (Sec. 248).</p>	<p><b>The Armed Forces:</b>                      They are composed of the Command-in-Chief, the Bolivian Army, Air Force and Navy (Sec. 243).                      Mission: defend and maintain national independence, security and stability of the State and the national honor and sovereignty; secure the rule of the Political Constitution, guarantee the stability of the legally-established Government and participate in the overall development of the country (Sec.244).                      Organization: Relying on hierarchy and discipline principles. The Armed Forces are to be obedient, non-deliberating, and subject to the laws and military regulations. As an institutional body, the Armed Forces shall not carry out any political action; individually, the members of the Armed Forces are entitled to exercise their citizen rights under the terms established by Law (Sec. 245). Active members of the Armed Forces shall not be eligible for public office at elections, unless they have previously resigned at least three months before the election day (Sec. 238, sub. 4).                      The Armed Forces report to the President of the Nation and follow his/her orders on administrative matters, through the Minister of Defence and, on technical matters, through the Commander-in-chief of the Armed Forces (Sec. 246, sub. 1).                      In the case of war, operations shall be headed by the Commander-in-Chief of the Armed Forces. (Sec. 246, sub. 2).                      No foreign citizen shall be appointed to any command or administrative position in the Armed Forces without prior authorization by the Capitán General of the Armed Forces (Sec. 247, sub. 1).                      Promotions in the Armed Forces shall be determined by law (Sec. 250).                      In case of international war, the Bolivian Police Force shall report to the Command-in-chief of the Armed Forces for the duration of the conflict (Sec. 254).                      The Armed Forces' fundamental duty is to secure the defence, security and control of the border security areas. The Armed Forces shall participate in overall sustainable development policies for these areas and shall ensure their permanent physical presence there (Sec. 263).</p>
Brazil (1988. Last reform 2014)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b>                      Initiate laws, on its own, to establish or modify the number of regular military members, rule over members of the military, their justice system, promotions, stability, assignment of positions, remuneration, reform, and transfer to the reserve (Sec. 61, sub. 1).                      Order the state of defence and state of siege (Sec. 84, sub. 9).                      Supreme Commander of the Armed Forces (Sec 84, sub. 13).                      Appoint the Chiefs of the Armed Forces, and promote general officers (Sec. 84, sub. 13).                      Convene and preside over meetings of the Council of the Republic and the National Defence Council (Sec. 84, sub. 18).                      Declare war with the approval of the Congress, in the event of a foreign aggression (Sec. 84, sub. 19).                      Make peace, with the approval of the Congress (Sec. 84, sub. 20).                      Allow the entry of foreign troops (Sec. 84, sub. 22).</p>	<p><b>The Armed Forces:</b>                      The Armed Forces are a national permanent, regular and non-political institution, organized on the bases of hierarchy and discipline They are composed of the Navy, the Army and the Air Force (Sec. 142).                      Mission: defend the Motherland and guarantee constitutional powers as well as, on the latter initiative, law and order (Sec.142).                      Service member incorporation, age limits, rights, obligations, remuneration, prerogatives and other special situations of military members, given the nature of their activities, including duties under international commitments and war shall all be determined by law (Sec.142).                      The members of the military on active duty are not entitled to join labor unions or go on strike; neither can they join a political party (Sec. 142, sub. 4); they shall not be candidates at elections (Sec. 14, sub. 8), habeas corpus does not apply to military disciplinary punishment (Sec. 142, sub. 2).                      Military service is compulsory in accordance with the law (Sec. 143).                      Military justice: it shall be incumbent upon the Military Courts to try and judge</p>

<sup>1</sup> Asamblea Legislativa Plurinacional.

## Brazil

**Powers of the Congress:**

Determine and modify the strength of the Armed Forces (Sec. 48, sub. 3).  
 Authorize the President to declare war, make peace and approve the deployment of troops (Sec. 49, sub. 2).  
 Approve the state of defence and federal intervention (Sec. 49, sub. 4).

**Council of the Republic<sup>2</sup>:**

It is the President's higher consultation body (Sec. 90).  
 Expresses position on federal intervention, state of war and state of siege (Sec. 90, sub. 1).

**National Defence Council<sup>3</sup>:**

It is the President's consultation body on issues related to national sovereignty and the defence of the democratic State (Sec. 91).  
 Expresses its position on war declaration and peace settlement (Sec. 91, sub. 1); declaration of the state of defence, state of siege and federal intervention (Sec. 91, sub. 2).  
 Proposes the criteria and conditions for the use of areas which are key to the security of the national territory, and expresses opinion on its effective use, especially on border zones and those associated with the preservation and exploitation of natural resources of any kind (Sec. 91, sub. 3).

military crimes defined by law. Military justice organization, operation and competence shall be determined by law (Sec. 124).

## Chile (1980. Last reform 2014)

## Leading Political Procedures

**Powers of the President:**

Maintain external security (Sec. 24).  
 Appoint and remove the Commanders-in-Chief of the Army, the Navy and the Air Force (Sec. 32, sub. 16; Sec. 105).  
 Appoint, promote and remove officers (Sec. 32, sub. 16).  
 Arrange, organize and deploy the Armed Forces depending on national security needs (Sec. 32, sub. 17).  
 Supreme Chief of the Armed Forces in times of war (Sec. 32, sub. 18). Declare war once the pertinent law has been adopted, and after hearing the National Defence Council (Sec. 32, sub. 19).  
 Order payments not authorized by law to meet the pressing needs derived from external aggressions, internal conflict and serious harm or danger to national security (Sec. 32, sub. 20). Declare the state of assembly in case of external war, with the approval of the National Congress (Sec. 40).  
 The President has the legal initiative to establish the air, land and sea forces, and the ones for the entry and deployment of troops (Sec. 65; Sec. 63, sub. 13).

**Powers of Congress:**

Indict (only Representatives) and judge (only Senators) Generals and Admirals (Sec. 52, sub. 2, d; Sec. 53, sub. 1).  
 Approve or dismiss international treaties introduced by the President in order to be ratified (Sec. 54, sub. 1).  
 The Chamber of Deputies (Lower House) has the lawmaking initiative regarding recruitment matters (Sec. 65).

**National Security Council<sup>4</sup>:**

Advise the President on national security (Sec. 106).

## Military Instrument

**The Armed Forces:**

Composed of the Army, the Navy and the Air Force (Sec. 101).  
 Mission: defend the Motherland (Sec. 101); safeguard the public order during elections (Sec. 18).  
 The members of the military on active duty cannot be elected Deputies or Senators unless they resign and retire during the year preceding the election (Sec. 57, sub. 10).  
 Depend on the National Ministry of Defence, they are essential to the national security, they are obedient, non deliberant, professional and disciplined, and follow a hierarchical order (Sec. 101).  
 Incorporation to the Armed Forces is performed through their own schools, except in the case of professional scales and civilian personnel (Sec. 102).  
 Obligatory military service (Sec. 22).  
 Appointments, promotions, retirement of officers, ranks, incorporation, social security, seniority, command succession and budget are determined by constitutional organic law (Sec. 105).  
 The right to a legal defence, in the administrative and disciplinary spheres, shall be governed by the relevant regulations of the respective bylaws (Sec. 19, sub 3).

## Colombia (1991. Last reform 2014)

## Leading Political Procedures

**Powers of the President:**

Supreme Commander of the Armed Forces (Sec. 189, sub. 3).  
 Conducts operations when deemed necessary (Sec. 189, sub. 5).  
 Provide to external security (Sec. 189, sub. 6).  
 Declare war with the approval of the Senate, except in case of foreign aggression and accord peace, informing Congress (Sec. 189, sub. 6).  
 Allow, when the Senate is in recess, with the approval of the State Council, the transit of foreign troops through the territory of the Republic (Sec. 189, sub. 7).

**Powers of Congress:**

Dictate general rules with objectives and criteria to establish wage levels and social benefits for the military (Sec. 150, sub. 19, e).  
 Approve the appointment of senior officers (Sec. 173, sub. 2).  
 Approve the entry of foreign troops (Sec. 173, sub. 4). Approve the declaration of war (Sec. 173, sub. 5).

**State Council<sup>5</sup>:**

Act as the supreme advisory body of the Government in administration matters. In case of foreign troops' transit through the national territory, and of stay or transit of foreign warships or combat aircraft in national waters or airspace, the government shall first take the advice of the State Council (Sec. 237, sub. 3).

## Military Instrument

**The Military Forces<sup>6</sup>:**

The Military Forces comprise the Army, the Navy and the Air Force (Sec. 217).  
 Mission: defend the sovereignty, independence, integrity of the nation's territory and constitutional order (Sec. 217).  
 The members of the military on active duty are not entitled to join labor unions (Sec. 39), vote, make petitions except on issues related to their service, or to participate in political activities and debates (Sec. 219). The Commanders of the Military Forces cannot be elected President before one year following their previous position (Sec. 197).  
 In case of a manifest violation of a constitutional rule to the disadvantage of any person, the responsibility shall fall exclusively on the superior who has issued the order (Sec. 91).  
 Professional, cultural and social promotion systems for members of the public force shall be determined by law. The fundamentals of democracy and human rights shall be taught during the professional training phase (Sec. 222).  
 Military justice for military crimes (Sec. 221, Sec. 250), civilians may not be tried by the Martial Law (Sec. 213).

## Costa Rica (1949, Last reform 2011)

## Leading Political Procedures

**Powers of the Legislative Assembly**

Approve or dismiss international agreements, public treaties and concordats. Public treaties and international agreements that assign or transfer certain powers to a community legal order in order to achieve regional and common objectives require the approval of the Legislative Assembly, through a vote of no less than two-thirds of its members.

## Military Instrument

The Army is abolished as a permanent institution. The police forces necessary for the monitoring and maintenance of public order are provided for. The organization of military forces will be only permitted through continental agreement or for the purpose of national defence; in either case they shall always be subordinate to the civil power: they may not deliberate or make statements or representations individually or collectively (Sec. 12).

<sup>2</sup> *Conselho da República.*

<sup>3</sup> *Conselho de Defesa Nacional.*

<sup>4</sup> *Consejo de Seguridad Nacional.*

<sup>5</sup> *Consejo de Estado.*

<sup>6</sup> Denomination used in the constitutional text.

Costa Rica

Protocols of lesser range derived from public treaties or international agreements approved by the Assembly do not require legislative approval when such instruments expressly authorize such derivation.  
Approve or disapprove the entry of foreign troops onto national territory and permission for warships or planes to stay at ports and airfields.  
Authorize the Executive to declare a state of national defence and to make peace. (Sec. 121, sub. 4,5 and 6)

**Powers of the President:**

Supreme Commander of the Public Forces (Sec. 139, sub. 3)  
The following are duties and powers that correspond jointly to the President and respective Government Minister: Appoint and remove members of the Public Force, employees and officials who hold positions of trust, and others determined, in very specific cases, by the Civil Service Law.  
Maintain the order and peace of the Nation; take the necessary measures to safeguard public freedoms.  
Preside over the Republic's international relations.  
Employ the Public Force to maintain the country's order, defence and security.

**Government Council:**

Composed of the President of the Republic and Ministers, it is under the primary authority of the Presidency and exercises the following function: request the Legislature to declare a state of national defence and authorization to decree military recruitment, organize the army, and negotiate peace (Sec. 147, sub. 1).

Serving members of the military cannot be elected as deputies or run as candidates. (Sec. 109, sub. 5)

**Cuba (1976. Last reform 1992)**

**Leading Political Procedures**

**Powers of the National Assembly of People's Power<sup>7</sup>:**

Approve the general foreign and domestic policy guidelines (Sec. 75, sub. h).  
Declare the state of war in case of military aggression and approve peace treaties (Sec. 75, sub. i).

**Powers of the State Council<sup>8</sup>:**

Decree general mobilization when required for the defence of the country and assume the powers assigned to the National Assembly by the Constitution to declare war in case of aggression or make peace, when this Assembly is in recess or cannot be summoned with the necessary celerity and security conditions. (Sec. 90, sub. f).

**Powers of the President of the State Council and Head of State:**

Preside over the National Defence Council (Sec. 93, sub. h).

**Powers of the Council of Ministers<sup>9</sup>:**

Provide for national defence, maintenance of internal order and security, and the protection of human life and assets in case of natural disasters. (Sec. 98, sub. ch).

**National Defence Council<sup>10</sup>:**

Convened and prepared in times of peace to lead the country under state-of-war conditions, during war, general mobilization or state of emergency. (Sec. 101).

**Local Bodies of the People's Power<sup>11</sup> :**

The Province and Municipal Assemblies of the People's Power are responsible for reinforcing the defensive capacity of the country (Sec. 105 and Sec. 106, sub. m).  
The Defence Councils of the Provinces, Municipalities and Defence Zones are created and prepared in times of peace to lead their respective territories in a state of war, during the war, general mobilization or state of emergency, based on a general defence plan and the role and responsibilities of the army's military councils (Sec. 119).

**Military Instrument**

**Revolutionary Armed Forces<sup>12</sup>:**

The members of the Revolutionary Armed Forces and other armed organizations have the right to vote and be elected as any Cuban citizen (Sec. 134).

**Dominican Republic (2010. Last reform 2013)**

**Leading Political Procedures**

**Powers of the President:**

Direct foreign and domestic policies and conduct civilian and military administration. Supreme authority of the Armed Forces (Sec. 128).  
Appoint or dismiss members of the military jurisdiction (Sec. 128, sub. 1, c).  
Enter into and sign international treaties or conventions and submit them for approval to the National Congress (Sec. 128, sub. 1, d).  
Decide on all issues related to the Armed Forces; lead the Armed forces directly or through the relevant ministry, always maintaining the supreme command thereof. Establish their strength and make use of the Armed forces to perform public service duties (Sec. 128, sub. 1, e).  
Take the necessary measures to provide and ensure the legitimate defence of the Nation, while informing the National Congress of any rules adopted (Sec. 128, sub. 1, f). Declare the states of exception if the National Congress were not in session (Sec. 128, sub. 1, g).  
Decide on anything related to the military zones (Sec. 128, sub. 1, i).

**Powers of the Congress:**

Authorize (Senate) the presence of foreign troops to perform military exercises in the territory of the Republic, under the request of the President of the Republic, provided there is no previous agreement (Sec. 80, sub. 6), and approve and disapprove the deployment of national troops outside the country in peace missions authorized by international organizations (Sec. 80, sub. 7).

**Military Instrument**

**The Armed Forces:**

The Armed Forces are responsible for the Nation's defence (Sec. 252).  
Their mission is to defend the independence and sovereignty of the Nation, the integrity of its geographical spaces, the Constitution and the institutions of the Republic (Sec. 252, sub. 1).  
Their nature shall be essentially defensive (Sec. 259).  
They shall intervene, as ordered by the President of the Republic, in programs intended to promote the social and economic development of the country, mitigate disasters or public catastrophe situations, and provide assistance to the National Police to maintain or restore public order in exceptional cases (Sec. 252, sub. 2).  
They are essentially obedient to the civil power, are not affiliated to any political party and are not entitled to deliberate under any circumstance (Sec. 252, sub. 3).  
The members of the military on active duty cannot run for President or Vice-President unless they have retired at least three years before the election (Sec. 123, sub. 4).  
The Armed Forces shall be responsible for the custody, supervision and control of all weapons, ammunitions and other military supplies, as well as war material and equipment, entering the country or produced by the national industry, subject to the restrictions established by law (Sec. 252).  
No discrimination shall be exerted in the admission, appointment, promotion and retirement of Armed Forces members, in accordance with their organic law and other complementary laws (Sec. 253).

<sup>7</sup> Asamblea Nacional del Poder Popular.

<sup>8</sup> Consejo de Estado.

<sup>9</sup> Consejo de Ministros.

<sup>10</sup> Consejo de Defensa Nacional.

<sup>11</sup> Órganos locales del poder Popular.

<sup>12</sup> Fuerzas Armadas Revolucionarias

Declare the state of national defence (Sec. 93, sub. 1, f). Determine, under the request of the President of the Republic, the creation of permanent public security or defence corps composed of members of the Armed Forces and the National Police, subordinated to the ministry or institution of the sphere of their respective competences in accordance with the law (Sec. 261).

**National Security and Defence Council<sup>13</sup>:**

Advise the President of the Republic on the design of national security and defence policies and strategies and on any other matter requested by the President. The Executive shall regulate its make-up and operation (Sec. 258).

The military jurisdiction shall only have competence to try military infractions determined by the relevant laws. The Armed Forces shall have a military discipline regime applicable to those offenses that do not constitute an infraction under the military criminal justice system (Sec. 254).

**Ecuador (2008, Last reform 2011)**

**Leading Political Procedures**

**Powers of the President:**

Exercise the highest authority of the Armed Forces and appoint the military senior staff (Sec. 147, sub. 16).

Assume the political direction of the national defence (Sec. 147, sub. 17).

Decree the state of exception in all or part of the national territory in case of aggression, international or internal armed conflict, grave internal unrest, public catastrophe or natural disaster (Sec. 164).

Once the state of exception is declared, the President shall be entitled to make use of the Armed Forces and the National Police and summon the whole or part of the reserved forces, as well as personnel of other institutions, for active service (Sec. 165, sub. 6).

**Powers of the National Assembly<sup>14</sup>:**

Approve or reject international treaties when appropriate (Sec. 120, sub. 8).

The ratification or rejection of international treaties shall require prior approval of the National Assembly if: 1. They are related to territorial or border matters. 2. They establish any political or military alliance (Sec. 419).

**Military Instrument**

**Armed Forces:**

Mission: defence of territorial sovereignty and integrity (Sec. 158).

The Armed Forces and the National Police are institutions designed to protect citizens' human rights, liberties and guarantees. The members of the Armed Forces shall be trained in accordance with the fundamental principles of democracy and human rights, and shall respect the dignity and rights of the people (Sec. 158).

They shall be obedient and non-deliberating and shall comply with their mission under strict observance of the civilian control and the Constitution. The Armed Forces senior leadership shall be responsible for their orders. Obedience to orders issued by senior officers of the Armed Forces shall not relieve subordinates from their responsibility (Sec. 159).

Voting shall not be compulsory for members of the Armed Forces (Sec. 62, sub. 2). Members of the force on active duty cannot be candidates for elections subject to popular vote nor ministers of State (Sec. 113, sub. 8 and Sec. 152, sub. 3).

The recruitment of candidates to the armed forces shall not be based on discrimination. The members of the Armed Forces shall be subject to the specific laws regulating their rights and obligations, as well as their system of promotions based on merit and gender equality criteria. Their stability and professionalization shall be guaranteed (Sec. 160).

Civil and military service is voluntary and shall be carried out under the respect of citizens' rights and diversity. All kinds of forced recruitment are forbidden (Sec. 161). The Armed Forces shall only be allowed to participate in economic activities related to the national defence and shall provide their resources to support national development in accordance with the law. Their reserves shall be organized based on the needs for the compliance of their duties. The State shall allocate the necessary resources for their equipment, training and education (Sec. 162).

Military barracks are not places authorized for the custody of civil population (Sec. 203, sub. 1).

The members of the Armed Forces shall make a sworn statement of their assets prior to any promotion or retirement (Sec. 231).

The Armed Forces shall have a special social security regime in accordance with the law; their social security entities shall form part of the integral public health network and the social security system (Sec. 370).

Disciplinary arrests of military members shall be conducted in accordance with the law (Sec. 77).

The members of the Armed Forces shall be tried by the Judiciary Branch bodies; in the case of crimes committed while at a specific mission, they shall be tried by courts specialized in military matters, which form part of the same Judiciary Branch. Disciplinary offenses shall be tried by the competent bodies established by law (Sec. 160). Under the principle of jurisdictional unit, Armed Force members shall be tried by the ordinary justice system (Sec. 188).

**El Salvador (1983, Last reform 2012)**

**Leading Political Procedures**

**Powers of the President:**

General Commander of the Armed Force (Sec. 157).

Maintain intact the sovereignty and integrity of the territory (Sec. 168, sub. 2). Sign treaties and international concordats, subjecting them to the Legislative Assembly (Sec. 168, sub. 4).

Report on what the Assembly requires, except in the case of secret military plans (Sec. 168, sub. 7).

Organize, maintain and arrange the Armed Forces, confer military ranks in accordance with the law (Sec. 168, sub. 11).

Summon the Armed Force for the defence of national sovereignty and exceptionally, if no other means rest for the maintenance of internal peace, for the public security and tranquillity of the State (Sec. 168, sub. 12).

Direct war and accord peace treaties with the approval of the Assembly (Sec. 168, sub. 13).

Determine the number of active troops of the Armed Forces on an annual basis (Sec. 168, sub. 19).

**Powers of the Legislative Assembly<sup>15</sup>:**

In case of invasion, legally declared war or public calamity, the Assembly shall impose obligatory loans if ordinary public taxes are not enough to cover the costs (Sec. 131, sub. 6).

Declare war and ratify peace (Sec. 135, sub. 25).

Approve or dismiss the transit of foreign troops on the national territory, (Sec. 135, sub. 29).

**Executive Body on the Branch of Defence and Public Security<sup>16</sup>:**

Determine the number of troops annually according to the needs of the service (Sec. 213).

**Military Instrument**

**The Armed Force<sup>17</sup>:**

It is a permanent institution at the service of the Nation. It is obedient, professional, apolitical and non-deliberating (Sec. 211).

Its mission is to defend the sovereignty of the State and the integrity of the territory. The main government branches, the Legislative, the Executive and the Judiciary, may use the Armed Forces to enforce any resolutions adopted within their respective jurisdictions, to ensure full compliance with the Constitution. The Armed Force shall cooperate with efforts of public benefit assigned by the Executive Power and shall help the people in case of a national disaster (Sec. 212).

The Armed Force is obliged to cooperate with the special commissions of the Legislative Assembly (Sec. 132).

It is part of the Executive branch and it is subordinated to the authority of the President as General Commander in chief. Its structure, legal system, doctrine, organization and operation are determined by law, rules and special regulations the President adopts (Sec. 213).

The military professional career and promotions are strictly based on rank and in accordance with the law (Sec. 214).

Military service is obligatory (Sec. 215).

The members of the military on active duty cannot be part of any political party, or be candidates for elections. They can only be elected President three years after they retire (Sec. 82; Sec. 127; Sec. 152). They have no right to unionize. (Sec. 47).

Military justice jurisdiction: purely military crimes and offenses (Sec. 216).

<sup>13</sup> Consejo de Seguridad y Defensa Nacional.

<sup>14</sup> Asamblea Nacional

<sup>15</sup> Asamblea Legislativa.

<sup>16</sup> Órgano Ejecutivo en el Ramo de Defensa y Seguridad Pública.

<sup>17</sup> Denomination used in the constitutional text.

Guatemala (1985, Last reform 1993)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> General Commander of the Army (Sec. 182, 183 and 246). Give orders via the general officer or colonel or his equivalent at the Navy, who serves as Minister of National Defence (Sec. 246). Provide for the defence and security of the Nation (Sec. 183, sub. b). Confer promotions, decorations, military honors and extraordinary pensions (Sec. 246, sub. b). Decree the mobilization and demobilization of troops (Sec. 246 sub. a).</p> <p><b>Powers of the Congress:</b> Declare war and sign peace treaties (Sec. 171, sub. f). Approve the transit of foreign troops on the national territory and the sojourn of foreign military (Sec. 172, sub. a). Approve treaties which affect or may affect the security of the State or conclude a state of war (Sec. 172, sub. b). The Army depends on the Congress if the President continues in the position once the constitutional period has come to an end and is not recognized by the Congress (Sec. 165, sub. g). The ministers of State are not obliged to come forward to the Congress to answer questions related to diplomatic issues or pending military operations (Sec. 166).</p>	<p><b>The Army<sup>18</sup>:</b> It is unique and indivisible, essentially professional, apolitical, obedient and non deliberant. It is composed of the land, air and maritime forces. Organization: hierarchy, based on the principles of discipline and obedience (Sec. 244). It is regulated by the Constitution, its Statutory Law and other military laws and regulations (Sec. 250). They are not obliged to carry out illegal orders or those which involve committing a crime (Sec. 156). Mission: maintain independence, sovereignty and the honor of Guatemala, the integrity of the territory and internal and external peace and security (Sec. 244); cooperate in emergency situations or public calamity (Sec. 249). To be an officer it is required to be a native Guatemalan citizen and not have adopted any foreign nationality at any time (Sec. 247). The members of the military on active duty cannot be elected Deputies (Sec. 164, sub. f) or President, only if they were discharged or retired five years before taking office (Sec. 186, sub. e), they are not entitled to vote or to make political or collective petitions (Sec. 248). The military courts shall acknowledge the crimes or offenses committed by the members of the Guatemalan Army (Sec. 219).</p>
Haiti (1987)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> Guarantor of the independence and territorial integrity of the Nation (Sec. 138). Head of the Armed Forces, although never commands them in person (Sec. 143). Negotiates and signs international treaties, conventions and agreements and presents them to the National Assembly for ratification (Sec. 139). Declare war, and negotiate and sign peace treaties with the approval of the National Assembly (Sec.140). With the approval of the Senate, the President appoints, by decree issued by the Council of Ministers, the Commander in Chief of the Armed Forces and Commander in Chief of the Police (Sec. 141).</p> <p><b>Powers of the Prime Minister:</b> Together with the President of the Republic, is responsible for national defence (Sec. 159, sub. 1).</p> <p><b>Powers of the National Assembly<sup>19</sup>:</b> Ratify any decision to declare war, when all efforts at conciliation have failed; approve or reject international treaties and agreements. Decide when a state of siege should be declared, and, together with the Executive, order the suspension of constitutional guarantees and decide on any request to renew this measure (Sec. 98, sub.3).</p>	<p><b>The Armed Forces</b> The "Public Forces" are composed of two distinct bodies: a. The Armed Forces of Haiti, and b. The Police Forces. No other armed body may exist in the national territory. All members of the police and armed forces shall take an oath of loyalty and respect for the Constitution and the flag at the time of their enlistment (Sec. 263, sub. 1 and 2). The Armed Forces of Haiti were created to guarantee the security and territorial integrity of the Republic (Sec. 264). The functions of the Armed Forces are: a. to defend the country in case of war; b. protect the country against any foreign threats; c. ensure the surveillance of land, sea and air borders; d. to assist the police at the request of the Executive when the former is unable to handle the situation; e. assist the Nation in the event of a natural disaster; f. in addition to their regular duties, the Armed Forces may be assigned to development work (Sec. 266). They are apolitical. Members cannot be part of any political group or party, and must demonstrate the strictest neutrality. Members of the Armed Forces exercise their right to vote under the Constitution (Sec. 265). Military personnel on active service may not be appointed to any public office, except temporarily for the provision of specialized services. To be a candidate for elected office, military personnel on active service must be inactive or retired one year prior to the publication of the electoral decree. The military career is a profession. Its hierarchical structure, conditions of enlistment, ranks, promotions, demotions, and removals are determined by the regulations of the Armed Forces. Military personnel are under the jurisdiction of a military court only for offenses and crimes committed in wartime or for disciplinary violations. They cannot be dismissed, placed on inactive service, placed on half pay, or removed prematurely without their consent. If such consent is not given, the individual may appeal to the relevant court authority. The state must provide benefits to military personnel of all ranks, fully guaranteeing their physical security (Sec. 267). In the framework of compulsory civilian service for both sexes, the Armed Forces are involved in the organization and supervision of this service. Military service is compulsory for all Haitians over the age of eighteen years. The law provides for the procurement procedure, duration and regulations for the implementation of these services (Sec. 268).</p>
Honduras (1982, Last reform 2014)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> General Commander of the Armed Forces, exercises the Command-in-Chief (Sec. 245, sub. 16; Sec. 277). Maintain the peace and external security; repel external attacks or aggression (Sec. 245, sub. 4), adopt measures for the defence of the Republic (Sec. 245, sub. 16). Declare war and make peace if the Congress is in recess (Sec. 245, sub. 17). Sign international treaties and agreements of a military nature, regarding the territory and sovereignty with the consent of the Congress (Sec. 245, sub. 13). Allow the transit of foreign troops on the national territory and the deployment of national troops outside the country with the approval of the Congress (Sec. 245, sub. 43 and 44). Confer military ranks (second lieutenant to captain) suggested by the Secretary of National Defence (Sec. 245, sub. 36; Sec. 290). Ensure that the Armed Forces are apolitical, essentially professional, obedient and non deliberant (Sec. 245, sub. 37).</p>	<p><b>The Armed Forces:</b> They are permanent, apolitical, professional, obedient and non deliberant (Sec. 272). They are composed of the High Command, the Army, the Air Force, the Navy, the Public Security Force and other organizations determined by the Statutory Law (Sec. 273). Their operation is regulated by the Statutory Law, laws and regulations (Sec. 274). The orders given by the President of the Republic shall be abided by and executed respecting the Constitution of the Republic and the principles of lawfulness, discipline and military professionalism (Sec. 278). The members of the military are not obliged to carry out illegal orders or those that involve committing a crime (Sec. 323). They are instituted to defend the territorial integrity and sovereignty of the Republic, maintain the peace, public order and the rule of the Constitution, the principles of free suffrage and alternation of the Presidency of the Republic (Sec. 272), cooperate with the National Police in the maintenance of public order (Sec. 272); and with State Secretariats, municipalities and other institutions, at their or the President's request, in public security, literacy, education, agriculture, environmental protection, transport, communications, health and land</p>

<sup>18</sup> Denomination used in the constitutional text.

<sup>19</sup> Denomination used in the constitutional text

Honduras

**Powers of the Congress:**  
 Declare war (Sec. 205, sub. 28).  
 Make peace (Sec. 205, sub. 28).  
 Confer military ranks (from major to general) suggested by the Executive Power (Sec. 205, sub. 24; Sec. 290).  
 Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Sec. 205, sub. 26 and 27).  
 Determine the number of permanent troops (Sec. 205, sub. 25).  
 Authorize reception of foreign military missions of assistance or technical cooperation in Honduras (Sec. 205, sub. 29).

**Secretary of State in the National Defence Dispatch<sup>20</sup>:**  
 The Secretary shall be appointed and removed freely by the President of the Republic (Sec. 280).

**National Defence and Security Council<sup>21</sup>:**  
 Creation (Sec. 287).  
 Organization and operation determined by law (Sec. 287).

**Board of Commanders of the Armed Forces<sup>22</sup>:**  
 It is the consulting body for all the matters related to the Armed Forces. It rules over issues of its competence and acts as a Superior tribunal of the Armed Forces on matters which shall be subject to its knowledge. The Statutory Law of the Armed Forces and its Regulations rule over its operation (Sec. 285).  
 It is composed of the Chairman of the Joint Chief of Staff, the General Inspector and the Commanders of each Force (Sec. 286).

**Joint Chief of Staff of the Armed Forces<sup>23</sup>:**  
 The Chairman of the Joint Chief of Staff is selected and removed freely by the President among the members of the Board of Commanders (Sec. 280).  
 The Joint Chiefs of Staff is the superior technical body of consultation, planning, coordination and supervision, which depends on the Secretary of National Defence; its tasks are assigned by the Statutory Law of the Armed Forces (Sec. 283).  
 It shall issue a statement previous to conferring the promotions to the officers (Sec. 290).

reform. Guidelines emanating directly from the President are also functions and duties of the Military Police of Public Order.  
 They participate in international peacekeeping missions; provide logistical and technical support in communications and transport; in the fight against drug trafficking; collaborate through the provision of personnel and resources in response to natural disasters and emergency situations; as well as in programs to protect and conserve the ecosystem, in the academic education and technical training of its members and others in the national interest. Cooperate with public security institutions at the request of the Security Secretariat, to combat terrorism, arms trafficking and organized crime, as well as in the protection of the powers of the State and the Electoral Tribunal, at their request, for their installation and operation.  
 The Military Police of Public Order (MPOP) form part of the Armed Forces, and their duties and obligations are set out in their Special Law. Municipalities, areas under the special regime of Employment and Economic Development Zones (EEDZ), and other State agencies may, in special circumstances, request the President of the Republic to order the Armed Forces to participate in public security and crime reduction tasks through the Military Police of Public Order or other bodies (Sec. 274).  
 Promotions strictly determined by law (Sec. 290).  
 Appointments and removal of the members of the military, related with the administrative order, shall be granted in accordance with the Law of Public Administration. In the operative area, appointments and removals shall be conferred by the Chairman of the Joint Chief of Staff, in accordance with the organic structure of the Armed Forces, the Statutory Law, and other legal regulations, including the personnel of troops and auxiliaries (Sec. 282).  
 Voluntary military service (Sec. 276 and 288).  
 The members of the military on active duty are not entitled to vote (Sec. 37), and they shall be eligible in the cases not prohibited by the law (Sec. 37). They cannot be elected Deputies prior to six months after they retire (Sec. 199, sub. 4 and 6) or twelve months in case they are running for President (Sec. 240, sub. 2, 3 and 4).  
 National Defence College: it is the highest house of studies for the Armed Forces. It trains selected military and civilian personnel, so they take part in the national strategic planning (Sec. 289).  
 Institute of Military Social Security: for the protection, welfare and social security of all the members of the military, presided by the Chairman of the Joint Chief of Staff, shall operate in accordance with the specific Law (Sec. 291).  
 For defence and national security reasons, the territory shall be divided in military regions commanded by a Chief of Military Region. Their organization and operation shall be in accordance with the Statutory Law of the Armed Forces (Sec. 284).  
 Military justice for military crimes and offences (Sec. 90 and Sec. 91).  
 A special law shall regulate the operation of military courts (Sec. 275).

Mexico (1917, Last reform 2014)

Leading Political Procedures

**Powers of the President:**  
 Appoint and dismiss Colonels and other senior officers with the Senate's approval (Sec. 89, sub. 4) and the rest of the officers according to the law (Sec. 89, sub. 5).  
 Declare war with the approval of the Congress (Sec. 89, sub. 8).  
 Preserve national security and make use of the permanent Armed Forces and the National Guard to safeguard the security and external defence (Sec. 89, sub. 6) and the National Guard (Sec. 89, sub. 7).  
 Direct foreign policy and sign international agreements (Sec. 89, sub. 10).

**Powers of the Congress:**  
 The Chamber of Deputies has the legal initiative on recruitment of troops (Sec. 72, sub. h).  
 Declare war in view of the information submitted by the Executive Power (Sec. 73, sub. 12).  
 Raise and maintain the Armed institutions and regulate their organization and service (Sec. 73, sub. 14).  
 Enact laws on national security (Sec. 73, sub. 29, m).  
 Approve (Senate) international treaties and conventions subscribed by the Executive Power, as well as conclude, denounce, suspend, modify, amend, withdraw reserves and formulate interpretations (Sec. 76, sub. 1).  
 Approve the appointment of senior officers (Sec. 76, sub. 2; Sec. 89, sub. 4).  
 Approve the transit of foreign troops on the national territory and the deployment of national troops outside the country, and the sojourn of squadrons of other powers in Mexican waters (Sec. 76, sub. 3).

Military Instrument

**The Armed Force<sup>24</sup>:**  
 It is required to be a Mexican citizen by birth to join the Army in times of peace or the Navy and Air Force at all times, and to be appointed to any position or perform any assignment in these forces (Sec. 32).  
 The armed forces are composed of the Army, the Navy and the Air Force (Sec. 73, sub. 14).  
 Members of the military cannot be elected Deputies unless they retire ninety days before the election (Sec. 55, sub. 4) or six months in case of the President (Sec. 82, sub. 5).  
 In times of peace, no military authority may perform any functions other than those that are directly connected with military discipline (Sec.129).  
 Crimes and offenses against military discipline shall be tried by military courts; however, under no circumstances and for no reason shall military courts extend their jurisdiction over persons who are not members of the Army (Sec. 13).

<sup>20</sup> *Secretario de Estado en el Despacho de Defensa Nacional.*

<sup>21</sup> *Consejo Nacional de Defensa y Seguridad.*

<sup>22</sup> *Consejo Superior de las Fuerzas Armadas.*

<sup>23</sup> *Jefe del Estado Mayor Conjunto de las Fuerzas Armadas.*

<sup>24</sup> Denomination used in the constitutional text.

Nicaragua (1986, Last reform 2014)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> Supreme Commander of the Army (Sec. 95 and 144). In exceptional cases can the President, in a Council of Ministers, order the intervention of the Nicaraguan Army to support the National Police, when the stability of the Republic is threatened by serious internal disorder, calamities or natural disasters (Sec. 92). Direct international relations of the Republic. Negotiate, celebrate and sign treaties, pacts, agreements or the like to be approved by the National Assembly (Sec. 150, sub. 8).</p> <p><b>Powers of the National Assembly<sup>25</sup>:</b> Approve the deployment of national troops outside the country (Sec. 138, sub. 26) and the entry of foreign troops only for humanitarian purposes (Sec. 92). Approve or dismiss international agreements celebrated with countries or organizations subject to International Law (Sec. 138, sub. 12).</p>	<p><b>The Army<sup>26</sup>:</b> Mission: to defend national sovereignty, independence and territorial integrity (Sec. 92). It is a national institution of professional character, unaffiliated with any political party, apolitical, obedient and non-deliberant. Members of the Army should receive permanent patriotic and civic education and be trained in international human rights law (Sec. 93). Organization, structures, activities, ranks, promotions, retirements and everything related to its operational development is specified in the law (Sec. 94). The Army is strictly subject to the Political Constitution, to which it respects and obeys, and is subject to civil authority as exercised by the President. No other armed bodies may exist in the national territory, or military ranks other than those specified by law (Sec. 95). Members of the Army are able to temporarily occupy positions within the Executive for reasons of national security when the Nation's supreme interests dictate it. In this case the individual will be under commission of external service for all legal purposes. (Sec. 95). Bodies of the Army are prohibited from engaging in activities of political espionage (Sec. 96). They cannot perform party-political activities or hold a position in political organizations; they cannot stand for public office if they have not left their active military post at least a year prior to the elections (Sec. 94); they cannot be Ministers, Deputy Ministers, Presidents or Directors of government or autonomous entities, Ambassadors (Sec. 152), magistrates of justice (Sec. 161, sub. 6) or of the Supreme Electoral Council (Sec. 171, sub. d). In the last two cases they must leave their post twelve months prior to the elections. There is no obligatory military service, and all kinds of forced recruitment into the Army or the Police are forbidden (Sec. 96). Crimes and offenses of strictly military nature committed by members of the Army come under the jurisdiction of Military Tribunals. Common crimes and offenses committed by the military are under the jurisdiction of common courts. In no case will civilians be subject to the decisions of military courts (Sec. 93). For the purpose of national security: a) in no case is it permissible to establish systems that alter or affect national communication systems; b) points of communication for purposes of national defence within the national territory should be under the ownership of the State; c) radio and satellite spectrums are owned by the State and must be regulated by the regulatory body (Sec. 92).</p>
Panama (1972, Last reform 2004)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> To ensure the preservation of public order (Sec. 183). To head foreign relations; conclude international treaties and agreements, which will be submitted for consideration to the Legislature; and accredit and receive diplomatic and consular agents. Confer promotion to members of police services according to the police career and applicable legal provisions (Sec. 184).</p> <p><b>Powers of the National Assembly<sup>27</sup>:</b> Approve or reject, prior to their ratification, international treaties and agreements made by the Executive. Declare war and empower the Executive to make peace (Sec. 159).</p> <p><b>Government Council:</b> It is the meeting of the President, who presides it along with the Vice President of the Republic and State Ministers (Sec. 199). Its functions include, under the collective responsibility of all its members, decreeing states of emergency and the suspension of relevant constitutional provisions (Sec. 200, sub. 5).</p>	<p>The Republic of Panama shall have no army. All Panamanians are obliged to take up arms to defend national independence and the territorial integrity of the State. For the preservation of public order, for the protection of life, honour and property of those under the jurisdiction of the State, and for the prevention of criminal offenses, the Law shall organize the necessary police services, with separate controls and career. In the face of foreign aggression, special police services may be temporarily organized by law for the protection of the Republic's borders and jurisdictional territory. The President is the chief of all the services established; and as agents of the State these shall be subordinate to the civil power and therefore abide by orders issued by national, provincial or municipal authorities in the exercise of its statutory functions (Sec. 130). The police services have no deliberative function and may not make political statements or representations in individual or collective form. They may not become involved in partisan politics, other than in exercising their right to vote (Sec. 131).</p>
Paraguay (1992)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> Commander-in-Chief of the Armed Forces (Sec. 238, sub. 9). Adopt the necessary measures for the national defence (Sec. 238, sub. 9). Declare the state of national defence, in case of external aggression, with the approval of the Congress (Sec. 238, sub. 7). Make peace with the approval of the Congress (Sec. 238, sub. 7). Appoint senior officers of the public force (Sec. 238, sub. 9). Issue military regulations and arrange, organize and distribute the Armed Forces (Sec. 238, sub. 9).</p> <p><b>Powers of the Congress:</b> Approve or dismiss international treaties (Sec. 141 and Sec. 202, sub. 9). Approve the appointment of senior officers (Senate) (Sec. 224, sub. 2). Authorize the entry of foreign troops to the territory of the Republic and allow the deployment of national armed forces outside the country, except in cases where this is required for courtesy reasons. (Sec. 183 sub.3). Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Senate) (Sec. 224, sub. 5).</p>	<p><b>The Armed Forces:</b> They are a permanent, professional, non deliberant and obedient institution, subordinated to the powers of the State, to the provisions of the Constitution, and to the law (Sec. 173). Mission: safeguard the territorial integrity and defend the legitimately constituted authorities (Sec. 173). The members of the military on active duty will conform their actions to the laws and regulations. Military service is compulsory and must be based on full respect of human dignity. In times of peace, it will not exceed twelve months (Sec. 129). They cannot be affiliated to any political party or movement or engage in any type of political activity (Sec. 173); they cannot be elected President or Vice President, except for those who retire at least one year prior to the day of election (Sec. 235, sub. 7). Police or military personnel on active duty cannot be candidates for senators or deputies (Sec. 197). Military courts will hear only crimes and offences of a military nature, committed by military personnel on active duty. Their decisions can be overturned by courts of law (Sec. 174). Only in cases of an armed international conflict can military courts have jurisdiction over civilians and retired military personnel (Sec. 174).</p>

<sup>25</sup>Asamblea Nacional.<sup>26</sup>Denomination used in the constitutional text.<sup>27</sup>Denomination used in the constitutional text.

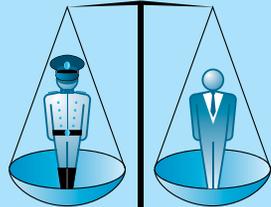
Peru (1993, Last reform 2009)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> Ensure external security (Sec. 118, sub. 4). Preside the national defence system; organize, deploy and arrange the Armed Forces (Sec. 118, sub. 14). Adopt the necessary measures to ensure the defence of the Republic, the integrity of the territory and the sovereignty of the State (Sec. 118, sub. 15). Declare war and accord peace with the approval of the Congress (Sec. 118, sub. 16). Authorize Peruvians to serve in a foreign army (Sec. 118, sub. 23). Supreme Commander of the Armed Forces (Sec. 164 and Sec. 167). Grant promotions to Generals and Admirals (Sec. 172). Determine the number of troops (Sec. 172). Declare the state of siege in case of invasion, foreign or civil war, in accordance with the Council of Ministries (Sec. 137). Sign international treaties on national defence (Sec. 56, sub. 3).</p> <p><b>Powers of the Congress:</b> Approve international treaties on national defence (Sec. 56, sub. 3). Have the troops available as requested by the President of the Congress (Sec. 98). Approve the entry of foreign troops to the national territory as long as it does not affect the national sovereignty in any way (Sec. 102, sub. 8). Approve the declaration of war and the signing of peace treaties (Sec. 118, sub. 16).</p>	<p><b>The Armed Forces:</b> The Armed Forces are composed of the Army, the Navy and the Air Force (Sec. 165). Mission: guarantee the independence, sovereignty and territorial integrity, to take control of the internal order in state of emergency if so provided by the President (Sec. 165). The respective laws and regulations determine the organization, functions, specialization, training, use and discipline (Sec. 168). They are non deliberant and are subordinated to the constitutional power (Sec. 169). The ethical and civic training and the teaching of the Constitution and human rights are compulsory both in the civilian and military education process. (Sec. 14). The members of the military are not entitled to make collective petitions (Sec. 2, sub. 20). They cannot run for elections or perform political activities while on active duty (Sec. 34); to set up unions or go on strike (Sec. 42). Members of the Armed Forces on active duty cannot be elected members of Parliament unless they have retired six (6) months prior to the election (Sec. 91, sub. 4). They may not enter the floor of Congress without authorization from its President (Sec. 98). They can be ministers of State (Sec. 124). The law allocates funds for the logistical requirements of the Armed Forces (Sec. 170). The Armed Forces and the National Police participate in the social and economic development of the country, and in civil defence according to the law (Sec. 171). Military justice is established for the Armed Forces and the National Police (Sec. 139, sub. 1). Military courts may have jurisdiction over civilians in the cases of treason and terrorism (Sec. 173).</p>
Uruguay (1967. Last reform 2004)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> Maintain and defend external security (Sec. 168, sub. 1). Command the Armed Forces (Sec. 168, sub. 2). Provide military posts and confer promotions, Grant retirements and manage pensions for civil and military employees in accordance with the law (Sec. 168, sub. 3, 9 and 11). Order to break off relations and, based on a prior resolution by the General Assembly, declare war if arbitration or other peaceful means have not been effective to avert a war (Sec. 168, sub. 16). Take prompt security measures in serious unexpected events of external attack or internal unrest, upon informing the General Assembly (Sec. 168, sub. 17). Enter into and sign treaties, which shall later be ratified with the approval of the Legislative Branch (Sec. 168, sub. 20).</p> <p><b>Powers of the General Assembly<sup>28</sup>:</b> Declare war and approve peace treaties (Sec. 85, sub. 7). Approve the appointment of senior officers (Sec. 168, sub. 11). Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Sec. 85, sub. 11 y 12). Approve the number of Armed Forces personnel (Sec. 85, Sub. 8). Establish militia regulations and determine time and number of recruitment (Sec. 85, sub. 15).</p>	<p><b>The Armed Forces:</b> The members of the military are regulated by special laws (Sec. 59, sub. A). Members of the military on active duty cannot have a position in the government, form part of commissions or political parties, subscribe to party manifests, authorize the use of their name and execute any other public or private political act, except voting (Sec. 77, sub. 4). They cannot run for the election of Representatives (Sec. 91, sub. 2; Sec. 92), Senators (Sec. 100) or for President (Sec. 171) unless they resign and retire at least three months before the election. Military justice for military crimes in state of war. Common crimes committed by members of the Armed Forces in times of peace, wherever they are committed, shall be subject to ordinary justice (Sec. 253).</p>
Venezuela (1999)	
Leading Political Procedures	Military Instrument
<p><b>Powers of the President:</b> Commander-in-Chief of the National Armed Force. Exercise the highest authority (Sec. 236, sub. 5) and the supreme command (Sub. 236, sub. 6). Establish the armed forces strength (Sec. 236, sub. 5). Promote officers starting at the rank of colonel or naval captain and appoint them to the positions exclusively reserved to them (Sec. 236, sub. 6). Convene and preside over meetings of the National Defence Council (Sec. 236, sub. 23). The President of the Republic, in a Council of Ministers, can declare the state of exception (Sec. 337). The President can declare the state of internal or external emergency in case of internal or external conflict seriously endangering the security of the Nation, its citizens or institutions (Sec. 338).</p> <p><b>Powers of the National Assembly<sup>29</sup>:</b> Authorize the operation of military missions abroad or foreign military missions within the country (Sec. 187, sub. 11). Approve any international treaties or agreements signed by the National Executive (Sec. 187, sub. 18).</p> <p><b>National Defence Council<sup>30</sup>:</b> It is the highest consultative body for planning and advising the Public Authority on matters related to the integral defence of the Nation, its sovereignty and the integrity of its geographical space and it establishes the strategic concept of the Nation. It is presided over by the President and includes the Vice President, the President of the National Assembly, the Chairman of the Supreme Tribunal of Justice, the Chairman of the Republican Moral Council, and the Ministers of Defence, Internal Security, Foreign Affairs and Planning, and other whose participation may be deemed appropriate (Sec. 323).</p>	<p><b>The National Armed Force<sup>31</sup>:</b> It is an essentially professional institution, with no political orientation, organized by the State, at the exclusive service of the Nation. It is founded on discipline, obedience and subordination. The National Armed Force is composed of the Army, the Navy, the Air Force and the National Guard its mission is to guarantee the independence and sovereignty of the Nation and ensure the integrity of its geographical space, through military defence, cooperation in the maintenance of internal order, and active participation in national development (Sec. 328). Their essential responsibility is the planning, execution and control of military operations, as required to ensure the defence of the Nation. The National Guard shall cooperate in the development of these operations and shall have as basic responsibility that of conducting operations as required maintaining internal order within the country. The National Armed Force shall carry out activities of administrative policing and criminal investigation as provided by law (Sec.329). Members of the military on active duty can vote. They are not allowed to run for elections, or to participate in propaganda, militancy or proselytizing (Sec. 330). It shall regulate and control, in accordance with the pertinent legislation, the manufacture, importing, exporting, storage, transit, registration, control, inspection, trade, possession and use of weapons, ammunition and explosives (Sec. 324). Military promotions shall be effective in accordance with merit, hierarchy and vacancies. They are the exclusive prerogative of National Armed Forces in accordance with the corresponding law (Sec. 331). Military justice for military crimes, its judges shall be elected by competitive procedures (Sec. 261). The General Controller of the National Armed Forces: monitors, controls and audits revenues, expenses and property allocated to the National Armed Force and their dependencies; it shall be under the responsibility of the General Controller of the Armed Forces, appointed by means of a competitive process (Sec. 291).</p>

<sup>28</sup> Asamblea General.<sup>29</sup> Asamblea Nacional.<sup>30</sup> Fuerza Armada Nacional.<sup>31</sup> Consejo de Defensa de la Nación.

Source: Compilation based on the Constitution of each country.

## Military Criminal Justice Systems

### Mixed Model



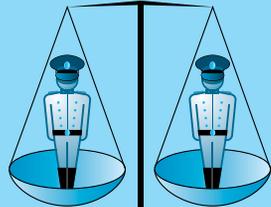
Civilians participate in the system through Supreme Courts, which are the highest appeal body.

**55%**  
of countries in the region have adopted this system.

### In addition to jurisdiction over active military personnel, they also hold jurisdiction over:

- Chile\*:** retired military personnel; civilian personnel from the armed forces, police, or other security forces.
- Colombia:** police or members of other security forces.
- Dominican Republic:** police or members of other security forces.
- El Salvador, Honduras, Nicaragua:** only military personnel.
- Guatemala:** retired military personnel or personnel from the police or other security forces.
- Uruguay:** retired military personnel.
- Venezuela:** retired military personnel, civilian personnel from the Armed Forces, civilians not related to defence, and police or members of other security forces.

### Military Model

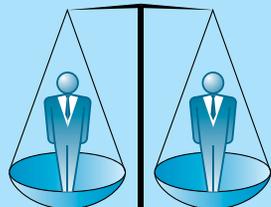


Courts are composed of members of the Armed Forces only.

**53%**  
of countries in the region have adopted this system.

- Bolivia and Brazil:** retired military personnel, civilian personnel from the Armed Forces, civilians not related to defence and police or members of other security forces.
- Cuba:** police or members of other security forces.
- Mexico\*\*, Paraguay and Peru:** only military personnel.

### Civilian Model



Courts responsible for trying military crimes are composed of civilians only. The military justice system is within the civil criminal system.

Only  
**2**  
countries in the region have adopted this system.

In **Argentina** military jurisdiction was repealed by Law N° 26394, while in **Ecuador** it was amended by the Political Constitution of the Republic. From these frameworks it is established that all offenses committed by military personnel will be tried within common courts.

In **Haiti** the Constitution states that military courts hold jurisdiction in the case of conflict between military personnel or in a situation of war; although they may not try civilians. In situations where crimes are committed against civilians, it is the common courts that hold jurisdiction.

\* In May 2014, the Constitutional Court declared unconstitutional several provisions of the Military Justice Code in a case involving the crime of grievous bodily harm against a civilian.

\*\* In June 2014, reform to military justice was published in the Official Newspaper. Among other things, it contains the competences of civil tribunals to preside over the trials of military personnel that commit crimes of a civil nature against civilians.

**Source:** Compilation based on the following laws: *Ley que deroga el Código de Justicia Militar, aprueba modificaciones al Código Penal y al Código Procesal Penal de la Nación, aprueba instrucciones para la población civil en tiempo de guerra y otros conflictos armados, el Código de Disciplina de las Fuerzas Armadas y la organización del servicio de justicia conjunto de las Fuerzas Armadas* (N° 26394 – 2008/08/26) (Argentina). *Decreto Ley de organización judicial militar y el Código Penal Militar* (Decree Law N° 13321 – 1976/04/02) (Bolivia). *Código Penal Militar* (Decree Law N° 1001 – 1969/10/21. Last reform: Ley N° 12432 – 2011/06/30) and *Ley de organización judicial militar* (N° 8457 – 1992/09/04. Last reform: Law N° 10445 – 2002/05/07) (Brazil). *Código de justicia militar* (Decree Law N° 806 – 1925/12/23. Last reform: Law N° 20477 – 2010/12/30) (Chile). *Código penal militar* (Law N° 1407 – 2010/08/17) (Colombia). *Ley procesal penal militar* (N° 6 – 1977/08/08) and the *Ley de los delitos militares* (N° 22 – 1979/02/15) (Cuba). *Código de justicia de las Fuerzas Armadas* (Law N° 3483 – 1953/02/13. Last reform: Law N° 278-04 -2004/08/13) (Dominican Republic). *Constitución Política and Ley reformatoria al Código Penal para la tipificación de los delitos cometidos en el servicio militar y policial* (2010/05/19) (Ecuador). *Código de justicia militar* (DL N° 562 – 1964/05/29. Last reform: DL N° 368 – 1992/11/27) (El Salvador). *Código militar* (Decree N° 214 – 1878/09/15. Last reform: Decree N°41-96 – 1996/07/10) (Guatemala). *Constitución Política* (Haiti). *Código penal militar* (Decree N° 76 – 1906/03/01. Last reform: Decree N° 47– 1937/01/22) (Honduras). *Código de justicia militar* (DNL N° 005 – 1933/08/31. Last reform: DOF 2012/04/09) (Mexico). *Código penal militar* (Law N° 566 – 2006/01/05) (Nicaragua). *Código penal militar* (Law N° 843 – 1980/12/19) (Paraguay). *Código Penal Militar Policial* (DL N° 1094 – 2010/09/01) (Peru). *Códigos Militares* (Decree Law N° 10326 – 1943/01/28) and *Ley marco de defensa nacional* (N° 18650 – 2010/03/08. Last reform: Law N° 18896 – 2012/05/10) (Uruguay). *Código orgánico de justicia militar* (GO N° 5263 – 1998/09/17) (Venezuela).