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**CONTINUED PARAMILITARISM AND ITS  
IMPLICATIONS ON THE GRP'S COMPLIANCE  
WITH ITS CARHRIHL MANDATE:**

*Situating CAFGUs in the Legal Framework of  
Human Rights and Humanitarian Law*

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**RYAN HARTZELL C. BALISACAN**

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HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW**

*Ryan Hartzell C. Balisacan\**

**Prefatory**

In a study made by Kit Collier, a security and strategic studies scholar, at the close of the 20<sup>th</sup> century, it has been determined that of the existing 168 nations in the world at present, 127 have organized and maintained paramilitary forces and other allied units. From a handful of paramilitaries engaged in primarily auxiliary and military support efforts, the world has steadily seen a marked and progressive increase in these paramilitaries’ numbers and a corresponding increase in their duties and responsibilities within the political and administrative schema of the armed forces establishment. This is so much so that the aggregate military manpower of some of the largest military powers in the world – like China, India, and Russia – is already composed of up to one-third to one-half paramilitary forces. The ten countries reported to have the largest paramilitary force – China, India, Pakistan, Italy, Egypt, Turkey, Indonesia, North Korea and Algeria – have since 1966 doubled or tripled the relative importance of their paramilitaries vis-à-vis their country’s total military strength. As Sunil Dasgupta, the leading expert in paramilitary studies, observes, the total ratio of government forces per total population in Asian countries has risen steadily in recent years, from Thailand’s 29 percent to Sri Lanka’s 81 percent. Indeed, China, with a paramilitary force 1.1 million strong, is considered today as the paramilitary “superpower” of the world.

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In examining the phenomenon of paramilitarism across the world, it is important to take into consideration not only the conditions that cause it to exist, but more importantly the conditions and causes that make it thrive and maintain its ever-expanding niche in almost every nation's national security framework. Why are paramilitary forces created, in the first place? Why do they expand both in sheer number and in the substantiality of their bearing in the conduct of a state's security and peace-keeping obligation? Is there a human rights dimension to the establishment and continued maintenance of paramilitary forces? How do we situate paramilitary forces in the Philippine legal context? How does the existence of Philippine paramilitary forces, called the Citizen Armed Force Geographical Units bear on the overriding commitment of the Philippine state to respect, protect, and promote human rights and international humanitarian law, both as a matter of general state obligation and as a particular mandate that it has assumed under the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law ("CARHRIHL") with the National Democratic Front?

This paper will explore the different dimensions of paramilitarism, internationally as a contextual backdrop and Philippines-specific as a chief line of inquiry, and consider how it affects the ability and of the Government of the Republic of the Philippines ("GRP") to comply with its mandate under CARHRIHL. Particularly, this paper will examine how the continued failure to disband the CAGFU and revamp existing state policies on paramilitarism can be measured against the universally-accepted standards of human rights and international humanitarian law whose obligatory prescriptions are deemed binding upon the Philippine state both under international law and by explicit subscription via the CARHRIHL. Ultimately, this paper will be forwarding proposals and recommendations as to how the issue of paramilitarism can be brought to the fore of the CARHRIHL implementation dialogues and how the government and the community can be most effectively engaged in the campaign to advance the precepts of human rights and international humanitarian law by minimizing incidents of abuse perpetrated by the defense establishment, both regular and paramilitary.

## The political theory of paramilitarism

The term “paramilitary” is an abbreviation of the phrase “parallel military” which describes its nature as an entity – it is not part of the formal or regular military establishment but exists alongside it. The relationship between the two, however, is never absolutely disjunctive. All over the world, paramilitaries are regarded as an extension of the defense machinery and never an independent body. Indeed, as the State has the exclusive prerogative to wield monopolistic power in the legitimate use of force, the existence of an entity with the capacity to employ coercive means outside of the ambit of governmental regulation and control cannot be countenanced. Paramilitaries are therefore very much a part of the defense establishment, and always subject to its supervision and control, although the levels to which these are exercised, and to what extent, vary across states.

Dasgupta provides a taxonomy of the different species of paramilitary forces, and the distinguishing criterion used is the extent to which the state government allows them to operate with relative independence and latitude. Dasgupta denominated the distinguishing criterion as “degree of delegation”, which refers directly to the degree of delegation of power by the State, a reflection of the proposition that paramilitaries can operate autonomously only insofar as the State pleases to allow them. Dasgupta lists five classifications of paramilitaries in his typology, and describes each one in this wise:

1. *Special operations forces* exist under military or police commands, but usually in separate groups, which gives them greater operational independence.
2. *Security intelligence agencies* are separated from the regular military, but combine physical capacity with intelligence gathering powers, potentially making them the most susceptible instrument of authoritarian abuses.

3. *Constabularies* are formally outside the military command and usually under ministries of security or interior. They could be of general or specific use, such as in counterinsurgency, border security, or riot control.
4. *Military companies* are private, but depend on state contracts and, contrary to most expectations, adhere well to their mandate. Privatized military companies do not claim public authority that other paramilitaries might as public institutions.
5. Lastly, *citizen militias* are organized by the states or elements within states, but operate autonomously; they differ from authoritarian militias, which are not so much armed forces as rather instruments of social control of their members. With citizen militias, states empower reliable groups, ensure long-term commitment to policy goals, and distance themselves from the resulting violence. The loose agency relationship carries the risks of loss of control. Militias have been known to become renegades to assert interests different from those of their states. Consequently, militias represent the greatest danger to the quick erosion of the state's monopoly over the use of force.

The origin and advent of paramilitary forces can be traced to largely political roots, rather than military exigency. The “parallel” nature of paramilitary forces relative to the regular military can be attributed to the fact that although precursors of modern paramilitary units pursue largely military objectives, they are, compared to their formal counterparts, less trained, less equipped, highly fragmented, frequently reorganized, and politically (rather than professionally and meritoriously) recruited. In short, they are the less expensive and more expedient alternative to the formation of regular military forces in the pursuit of the same political goals.

As a consequence of this, authoritarian and autocratic regimes have historically maintained paramilitary forces in order to swiftly and effectively gain wide geographical control over an entire territory and secure the partisan interests of the regime without having to discharge the heavy financial and logistical burdens associated with a structured and streamlined military force. There is thus born the paramilitary force as a political entity – one which owes loyalty to partisan political interests and which wields instruments of force, coercion and violence, with the consent of the state, without undergoing the requisite training and education that should have served as the best and only safeguard against undue abuse and improper exercise of military power.

After the collapse of most major dictatorships and autocracies in the world, remnants of the paramilitary entities still subsist. The reason behind this persistence is the fact that although the need to subdue as wide a segment of the populace as possible is less urgent in fledgling and even more in established democracies, war and violence still forms an integral part of every state's political agenda. Whereas in the context of a one-person rule, "state security" is largely defined as the perpetuation and aggrandizement of the prevailing regime, in emergent democracies, security partakes of one of the most fundamental prerogatives, if not rights, of the state – the inherent instinct of self-defense.

Security establishments are integral in the over-all schema of government, and the only points of divergence across countries is the level by which such states are exposed to peril, both from within and without. Every country, by default, is subject to assault by another. Every country, also by default, has the ability to breed its own class of dissidents, insurgents, rebels, and secessionists depending only on the levels of its peoples' satisfaction and discontent with their political and economic lives. There is therefore the perpetual need to maintain security institutions and establishments to defend the existence of the state against external and internal foes. For as long as this primordial necessity subsists, there will always be room to accommodate paramilitary entities, chiefly because of the facility with which they can be formed, the flexibility of their deployment and mobilization, and the

economy by which their operations can be funded and sustained, compared to their counterparts in the regular forces.

However, as Dasgupta explains, modern governance theory and practice have already kept pace with the evolution and development of contemporary political tendencies. The propensity for war among and between states has steadily declined, with the political community of nations' widespread recognition that the devastation brought by war has become more and more expensive and irreversible as to become counter-intuitive and counter-productive. There is therefore a gradual but significant shift in the mindset of government planners and policy-makers from one which treats military objectives as inextricably intertwined with the political pursuits of the state, to one which views war and force as simply one of many instruments to achieve political ends. In the former scenario, war and peace are simultaneous concerns, and the objectives of both are definitely not mutually exclusive. In the latter scenario, there is a clear delineation between the objectives of the state in times of peace (political stability, economic progress, social cohesion) that do not, as a general rule, contemplate the employment of the methods of warfare, the latter being reserved only for those exceptional circumstances when the country goes to war with other countries or when internal strife threatens security and stability from within.

From here, therefore, one can clearly see that at least in theory, modern political developments have led to the relegation of paramilitary entities to a status of relative insignificance: first, they are there simply because they are inexpensive to maintain and, after all, they are needed only for those instances of external and internal threat, which should supposedly be few and far in between, and second, even if they continue to exist, they are kept under effective political control, because the peacetime objectives of the state are pursued through non-military means.

The obvious problem lies, however, with the fact that the modern tendencies for subsuming military to political objectives can oftentimes overtake the practical feasibility of

actually implementing them on the ground. There may be a universal acceptance of the theory that political ends are best achieved through non-military means, but, when tested in the crucible of practice, for such a theory to hold, one must proceed from the assumption that, first, the military-paramilitary complex is a professional establishment, and second, that the state is well-formed and strong.

There is no better context in which these twin assumptions can be proven wrong than in developing countries. In developing countries, there is a clear economic incentive to invest in paramilitary forces than in regular ones. For a financially strapped country (ridden by corruption, needless to say), the least expensive alternatives are always the best options. As a result, the military-paramilitary complex cannot be fully professionalized because not all of its members are given the proper intellectual and material preparation needed to embark on a career in the security establishment. In the case of paramilitaries, they are able to wield arms within their respective territorial jurisdictions without full awareness of their responsibilities as adjuncts of the state's defense machinery, and without consciousness of their position in the over-all framework of national security. For them, their paramilitary status is nothing but a source of political power in their communities and much-needed income for their families. In this set-up, political control over the security institution is undermined, if not defeated, and so the theory that peacetime means of achieving state goals must temper methods of force and violence is already invalidated, primarily because of lack of professionalism in the military-paramilitary establishment.

There is also a lack of professionalism when the military-paramilitary complex is captured by the ruling powers for their self-gain and self-perpetuation. While, as discussed above, there has already been a steep decline in the existence of authoritarian and autocratic regimes which first bred our modern-day conception of paramilitary entities, it did not completely erase the vestiges ill-conceived notions of governance. Whereas before, paramilitary presence in strategic geographic locations are maintained to subdue anti-government elements and to protect against foreign incursions, most developing countries

today use paramilitary forces either to perpetrate corrupt practices or to maintain enclaves of political influence in local communities. These objectives may be a little less demanding and massive than in the case of authoritarian regimes, but the overriding impact of the continued use of paramilitary forces in this manner hampers the professionalization of the military-paramilitary complex because its elements, rather than regarding the political leaders as their control and supervision officers, treat them as patrons and influence-peddlers. As a result, the desired insulation of the security establishment from the political machinery of government, as should have been the case when the military-paramilitary complex is professional, is not achieved. The State, in a developing country scenario, does pursue its peacetime goals through largely political and non-military means ostensibly, but, concurrently, it undertakes illicit political activities in tandem with, invariably, paramilitary and, in some cases, military elements.

Most importantly, the ideal relationship of political leaders controlling military elements is not achieved in a weak state, as most developing countries can be classified. Weak states are those whose machineries of governance are captured by personalities and are hostage to values extraneous to the formal processes as established in the law. They are the states whose socio-politico-economic lives are constantly shifting according to the whims and caprices of ruling powers; whose institutions have not, in themselves, transcended the domination and control of political forces, and who have not acquired an existence and *modus operandi* independent of those who lead them at any given time. Without this capacity, states are not able to function in a stable and developmental manner, because setbacks are brought about for every regime and administration change. In this fluid and volatile governance structure, there persists the necessity of the ruling power to utilize force (which should ideally be reserved for legitimate uses in times of internal and external conflict and security threat) either to fill in the gaps of governance that the formal structures and institutions cannot accomplish or to take advantage of those gaps and points of weaknesses to gain material and political benefits and perquisites. As such, the security establishment is necessarily merged in the workings of the political branches, rather than being insulated

therefrom as a mere instrument of last resort for dire defense and security threats. The prominence of the military-paramilitary complex is therefore encouraged, instead of being kept at bay.

By way of summation and restatement, the political theory of paramilitarism as we know it today consists of the following points of observation:

*First*, paramilitarism was conceived because of the need of authoritarian and autocratic, as well as war powers, to consolidate power and maintain themselves against internal and external threats. Paramilitary units were formed because of the inherent ease and facility with which they can be created, financed, and deployed, as compared to their counterparts in the regular and formal defense establishment.

*Second*, despite the advent of democratization, paramilitary units were still maintained because national security and self-defense cannot totally be obliterated from the agenda of governance of every state. For as long as the state should desire to perpetuate itself for the benefit of its citizens, there should always be a defensive force ready and able to protect it. Paramilitaries subsist because it makes good economic sense not to commit a large part of state resources to the maintenance of a regular force when the employment of irregular forces would very well suffice and still achieve the same goals with less expense.

*Third*, the paramilitaries should ideally be subsumed under close political control and supervision. The modern political tendency is to treat the goals of the state as largely neutral and value-free pursuits that do not need the buttressing effect of force. As such, there is a realization and recognition of the importance of insulating the defense establishment from the workings of the political structure which pursue peacetime objectives. The military-paramilitary complex must be maintained but only for the purpose of responding to dire security exigencies, both internal and external, if and when they arise. Otherwise, it should be kept separate from the political branches as much as possible.

*Fourth*, the ideal relationship between the peacetime and wartime components of government is undermined when applied in the context of developing countries, of which the Philippines is a part. The desired mutual exclusivity of political and military pursuits is defeated because of the proliferation of unprofessional paramilitaries in the defense establishment who are ill-equipped training-wise to undertake the sensitive functions of peacekeeping and security maintenance. Because paramilitaries are not career professionals, they are more prone to being captured by ruling political influences for the satisfaction of illicit political goals. Also, since developing countries' institutions are weak, they provide occasion for numerous gaps in governance that may be filled by the use of force and violence. The weakness of institutions is taken advantage of so that corruption and other unlawful practices can be perpetrated through the employment of force. Local communities become enclaves of political influence and power through the support of paramilitaries. This anomaly cannot be checked and corrected by the political machinery, however, because, the state being weak, it has no capacity to induce its institutions to perform their avowed accountability functions if such institutions are captured by political forces. In this context, therefore, it is easy to see that paramilitaries in developing countries are regarded as adjuncts of the state's political departments and who, consequently, are prone to being manipulated to perform activities according to the ruling power's desires. This scenario is obviously an undesirable state because it creates gaps in the governance structure and blurs the political-military boundary.

### **The status of paramilitaries in international humanitarian law**

International humanitarian law is that branch of public international law that deals with the conduct of hostilities and the treatment of special classes of individuals before, during and after such hostilities. It proceeds from the recognition of the fact that war, though undesirable, is, in certain contexts and in view of political pragmatics, always a possibility. The task of international humanitarian law is therefore to ensure that even

though war may inevitably break at some point, it should not be conducted in such a manner as to sanction an unreasonable departure from the basic standards of humanity (like causing unnecessary suffering to already-wounded combatants), and with such undue abandon as to indiscriminately inflict injury upon innocents caught in the crossfire (like civilians, particularly women, children, the disabled, and other vulnerable groups) and other sectors working for the amelioration of the sick and the wounded during battle (like medical and religious personnel, and persons bringing humanitarian aid like food and medicine).

The general rules in the conduct of hostilities are first embodied in the Law of The Hague (formerly referred to as the laws of war), restated, reformulated and/or supplemented by succeeding Geneva Conventions and Additional Protocols. Incidentally, the body of international law relating to international humanitarian law currently enjoys the most universal acceptance (as evidenced by the number of state signatories) as compared to any other treaty or convention. This is no mean feat as international law, by its nature, is binding only upon states if they so choose to be bound thereto. This is because in the present international legal order, all states are considered equal and sovereign in their own right and within their respective territories in the absence of a central world government. The United Nations, notably, is a mere voluntary association of states and while it can authorize certain sanctions against erring members for meritorious reasons, it does not make it a supra-government with powers employable against sovereign states.

States, therefore, assent to treaties and conventions on a piece-meal basis, and can, in theory, abrogate even those which they already approved because there is no world police to enforce their liabilities. There are, however, certain norms of conduct that the international community of nations have already deemed absolutely deplorable, and nations have also recognized the need to conduct themselves in a manner depicting good faith compliance with voluntarily-assumed obligations. In light of these principles, therefore, international law can be said to be enforceable purely through the collective moral authority of the community of states, and a state can only suffer non-compliance therewith to the extent that it can risk

ostracism in the world order. It is in this context that international humanitarian law operates, and the number of signatories to the Geneva Conventions and the Protocols is evidence that at least in theory, states invariably recognize the obligatory nature and character of the international law governing the conduct of hostilities.

The scope of international humanitarian law is not confined to international armed conflicts as was traditionally conceived; it also covers situations of non-international armed conflicts or internal strife as embodied in the Second Protocol.

In international humanitarian law, paramilitaries are considered part of the conduct of hostilities. In Section 1, Chapter 1, Article 1 of the Hague Law, the regulations with regard to the conduct of hostilities have been made expressly applicable not only to the regular army but also to paramilitaries, described in the text of the law as “militia and volunteer corps”, which shall be included in the denomination “army” in the case of countries where such militia and volunteer corps themselves constitute the army. This express provision on the status of paramilitaries is of far-reaching effect. The fact that paramilitaries, despite their informal establishment and sometimes amorphous structure (especially when compared to the regular forces’ rigid chain of command), is subject to the same rules in the conduct of hostilities will ensure that there will be no impunity when it comes to violations of the laws of war simply on account of the irregular status of the combatant forces. Otherwise, there will be a great incentive for the irregularization of armies and other military components to vest them with virtual immunity from the duties and responsibilities attached to the lawful conduct of hostilities. Among others, the consequence of this status of paramilitaries is that they would have to comply with the provisions of the Law of The Hague regarding the treatment of prisoners of war (especially with regard to humane treatment and the prohibition against dispossession), as well as the treatment of spies, the provisions of the Geneva Convention on the obligation of belligerents with regard to the sick and the wounded, and the provisions of the First and Second Protocols with regard to the general protection of civilians and civilian objects against the effects of hostilities.

In the event of non-compliance with these prescriptions of international humanitarian law, violators, despite their status as paramilitaries, may be prosecuted either by domestic courts or the International Criminal Court. Under Article 25 of the Statute of the International Criminal Court (popularly known as the “Rome Statute”), the principle of individual criminal responsibility is enunciated, which means that acts amounting to war crimes, crimes against humanity, and violations of the laws of war committed by persons can be prosecuted individually. Under the category of “war crimes”, the Statute provides serious or grave breaches of the laws of war (as embodied in the Geneva Conventions and the Additional Protocols) as war crimes. It is therefore irrelevant that the persons who committed such crimes did so while part of a regular or an irregular force. Article 25 in fact makes it punishable for persons not only to take a direct part in the commission of the offense but also to contribute to the commission of the same. As stated earlier, this standard of culpability is equally applicable to paramilitaries:

“In accordance with [the Rome] Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the [International Criminal] Court if that person:

- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
- (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.”

The provisions of the Hague Convention, the Geneva Conventions, and the Additional Protocols, however, are not the only sources of rules and laws with regard to the conduct of hostilities. The First Protocol to the Geneva Convention provides in its Article 1, Paragraph 2 that: “in cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the

principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.” This clause has come to be known as the Martens Clause, perhaps the most foundational rule in the entire *corpus* of international humanitarian law. It was named after Fyodor Fyodorovich Martens who, back in 1899, spoke before the Hague Peace Conferences as the delegate of Russia and said: “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.”

The Martens Clause refers to an independent and immutable body of laws and norms by which standards of conduct during hostilities can be measured and protection of civilian populations can find legal basis even in the absence of a specific rule or law to that effect. Paramilitaries, therefore, are also bound by the prescriptions found in custom, humanity, and public conscience in their engagement in war and other hostilities. They cannot be excused from according humane treatment to civilian populations and to prisoners of war on the basis of their non-exposure to the vagaries of international humanitarian law. Even for their class of combatants, the community of nations acknowledges that there is an intuitive source of humanity that every person should be bound to, and which as a consequence defines the permissible limits of the conduct of hostilities. Being integral to human nature and discoverable even by mere instinct, such standards are deemed binding and obligatory to all persons engaged in war, including, undisputedly, paramilitaries.

Lastly, under international law, states themselves can be held liable and accountable for breaches of obligations under treaty or under customary norms of international law. The Articles of State Responsibility define the scope of every state’s duty to comply with international legal obligations. A state can seek compensation for damages it suffered against a state which has committed an internationally wrongful act; in turn, there is an

internationally wrongful act when conduct that is attributable to the state has been committed or omitted in breach of an international obligation by that state. Under this definition, the more relevant segment is the prerequisite of attribution. Attribution under international law refers to the susceptibility of a particular conduct to be traced back to the state in such manner and to such an extent that such act can already be considered an act of the state, regardless of whether it has expressly or tacitly authorized or ratified the same.

As a general rule, conduct is attributable to the state when it is done or omitted to be done by an official agent of the state. An official agent is one clothed with apparent and incidental powers to carry out a mandate directly given by the state. The executive, legislative, and judicial departments of the government are already considered agents of the state. Also, persons or entities empowered by the law of the state to exercise elements of the governmental authority are also considered agents of the state under international law. Such a rule applies to paramilitaries. The maintenance of national defense and security is indubitably an element of governmental authority, lodged with the executive department of government and exercised, as in the case of the Philippines, by a defense establishment headed by a civilian political appointee with cabinet rank. The heads of the different armed force services also have deputies and under them the various elements of the regular and informal military. As such, the operations of paramilitaries clearly fall within the ambit of state authority (in fact, even if the entity is private in nature but is suffered to perform governmental functions, its acts can still be attributed to the state). As a consequence, the state shall always take responsibility for the acts of its paramilitaries, on pain of being held liable under international law for internationally wrongful acts arising from their acts or omissions.

### **CARHRIHL and the GRP's mandates thereunder**

In the next section, the “paramilitary entity” that has been discussed extensively *supra* will be given a less amorphous image. One must not lose sight of the theoretical context of

paramilitaries as provided above – how they started, what causes them to subsist within the defense establishment, their ideal and actual locus in the political scheme of governance (both in theory and in practice), their status in international humanitarian law, and the extent to which states can be held liable for the conduct of the paramilitary forces that they created. Hereafter, these conceptual tools will help in understanding the legal and policy implications of the continued paramilitarist tendencies of the Philippine government, as exemplified in the Citizen Armed Force Geographical Units (“CAFGUs”) (*It will be noted that in many writings, and indeed in some laws, CAFGUs have been referred to as Citizens Armed Forces Geographical Units, but the nomenclature to be used for purposes of this paper is the one given by the law which created the CAFGU – Executive Order No. 264*), the Philippines’ very own paramilitary entity. Moreover, such legal and policy implications pertaining to the continued failure of the government to demobilize the CAFGUs will be examined in light of the mandates incumbent upon the GRP by virtue of the express provisions of the CARHRIHL.

The CARHRIHL is a document containing both hortatory (statement of ideals) and admonitory (fixing mandates and obligations) provisions applicable and binding on the GRP and the NDF. It sprang from the Joint Declaration signed by the parties in September 1992 in The Hague where they both committed to enter into peace talks to usher in the conclusion of the decades-old communist struggle. Aside from the more immediate need to end hostilities and dispose active belligerent forces, the Joint Declaration also laid down as talking points the institution of political and constitutional reforms, social and economic reforms, and issues of human rights and international humanitarian law. This final item on the agenda of the peace talks is the subject of the CARHRIHL.

Signed on 16 March 1998 in The Hague, CARHRIHL spells out its objectives as follows: (1) To guarantee the protection of human rights to all Filipinos under all circumstances, especially the workers, peasants, and other poor people; (2) To affirm and apply the principles of international humanitarian law to protect the civilian population and individual civilians, as well as persons who do not take direct part or who have ceased to take

part in the armed hostilities, including persons deprived of their liberty for reasons related to the armed conflict; (3) To establish effective mechanisms and measures for realizing, monitoring, verifying, and ensuring compliance with the provisions of this Agreement; and (4) To pave the way for comprehensive agreements on economic, social, and political reforms that will ensure the attainment of a just and lasting peace. The document, on first notice, however, can easily be dismissed as a superfluity, a mere restatement of already-existing principles and norms. It lists down 27 fundamental human rights and freedoms, as well as 27 general principles recognized under international humanitarian law. These human rights and principles of international humanitarian law, as summarized and classified, are as follows:

## **I. HUMAN RIGHTS**

### *A. Civil and Political Rights*

1. The right to life
2. The right to liberty
3. The right to be secure in their persons, houses, papers & effects
4. Freedom of thought and expression, of beliefs and practices
5. The right to free speech, press, association, assembly and association
6. The right to privacy of communication and correspondence
7. The right to mobility within or outside the country.
8. Right to information on matters of public concerns & access to records and papers pertaining to acts of persons in authority
9. The right to universal suffrage
10. The right to seek justice for violations of human rights including compensation, restitutions and rehabilitation
11. The right to substantive and procedural due process
12. The right to equal protection of the law

13. The right not to be subjected to physical or mental torture, solitary confinement, rape, sexual abuse, cruel or degrading treatment, detention and punishment
14. The right not to be held in involuntary servitude or to perform forced or compulsory labor
15. The right not to be subjected to forced evacuation, economic blockades, indiscriminate bombings, gunfire and use of landmines

*B. Economic, Social and Cultural Rights*

1. Right to own a property and means of production obtained through land reform and honest mean and to use such means for the common good
2. The right to gainful employment, to work and equal pay, to form unions, to strike and to participate in the policy and decision-making processes affecting their rights and interests
3. Free and universal elementary and secondary education, basic services and health care
4. Right to engage in scientific research, inventions, literary and artistic creation and other cultural pursuits
5. To form marital unions, & found a family

*C. Rights of particular sectors*

1. Equal rights of women
2. The rights of children and the disabled to protection, care and home; against all forms of abuse, exploitation and oppression
3. Rights of the minority communities to autonomy and ancestral lands and natural resources; & equal representation in economic, political and social life and institutions

4. The GRP shall respect basic workers' rights guaranteed by the International Labor Convention on Freedom of Association & Protection of the Right to Organize & the standards of the International Labor Organization
5. The GRP shall respect the basic rights of peasants to land tenure and land reform; the rights of IPs in public domains; the rights of the fisherfolk to fish in the waters of the Philippines

*D. Other rights*

1. Protection of lives and properties against incursions from mining, real estate, logging, tourism & other similar projects
2. The right to self determination of the Filipino nation
3. The inherent and inalienable right of the people to establish a just, democratic and peaceful society

**B. INTERNATIONAL HUMANITARIAN LAW**

1. Civilians should be distinguished from combatants, and their life and property protected.
2. Human rights violations especially of the right to life, against physical or mental torture, ill treatment, revenge, and hostage taking are not allowed.
3. Forced evacuation, internal displacement, zoning, arson, bulldozing are not allowed.
4. Indiscriminate bombings, shooting, use of landmines are prohibited.
5. Civilians must be protected against the danger due to the presence of military camps
6. Protection should be given to all regardless of race, color, belief, sex, class or other criteria.

7. The wounded and the sick (their collection and care), and vulnerable sectors like women and children are to be given special protection
8. Forced evacuation, zoning/concentration of residents unless demanded by safety concerns, destruction of livelihood are not allowed.
9. Government should review policies that cause internal displacement and all its consequences like loss of livelihood.
10. IDPs have the right to return to their places of origin and livelihood, to ask for government assistance to be able to recover losses and return to normal.
11. Children should not be involved in the armed conflict.
12. The rights of children to protection, care and home; against all forms of abuse, exploitation and oppression
13. The parties must provide information on the identity, reason for detention, & condition of the detained person.
14. Parties are responsible of the care and safety of detained persons in their custody
15. Forceful extraction of information other than the person's identity is not allowed.
16. The parties must provide protection, and safe passages to relief/medical personnel and their equipment
17. The symbols of the ICRC must not be misused. Those who have surrendered should not be killed; combatants become non-combatant/out-of-combat once they show intent to surrender and are given protection as "prisoners of war"
18. Combatants who are no longer fighting because they are sick, have been wounded, shipwrecked, fallen from aircraft, or distressed are considered out-of-combat and enjoy protection as civilians
19. Health, religious and other humanitarian organizations & personnel enjoy protected status

20. Schools, religious establishments, projects & programs for the community welfare, cultural sites and historical monuments may not be the object of attack.
21. The remains of the dead due to the armed conflict or in detention, should be respected and given decent burial.
22. Their return to their family should not be blocked or prevented.
23. Conflict parties should exert all efforts to recover the dead.
24. Review policies and practices on the creation of the CAFGUs, CVOs, and similar groups
25. Prohibit support/consent for paramilitary groups like armed religious cults, private armies of businessmen and land owners, and private security firms used against workers and farmers
26. Prohibit participation of civilians and civilian officials in military operations
27. Reduce military expenditure and give priority to social, economic, development and cultural programs

The above rights and principles, however, are already embodied in the 1987 Constitution, in the Universal Declaration of Human Rights (as well as its protocols – the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights), and in the Geneva Conventions (as well as its Second Protocol). In fact, Part II, Article 4 of the Agreement explicitly recognized that such rights and principles are also embodied in “the instruments signed by the Philippines and deemed to be mutually applicable and acceptable by both Parties”. And so, if one is to examine the intrinsic value of CARHRIHL, one will not find its enumeration of rights and principles particularly useful, because notwithstanding their inclusion or non-inclusion in the document, they would still have been binding on the GRP and the NDF as a matter of domestic constitutional and international law. The revolutionary contribution of the CARHRIHL lies in its other provisions like the following:

1. The recognition in Part I, Article 3 of the document that there is a need for a comprehensive accord on human rights and international humanitarian law “based on realities of violations of human rights and the principles of international humanitarian law”. This article, found in CARHRIHL’s Declaration of Principles, represents one of the rare instances where the Philippine government and the NDF have acknowledged that human rights abuses and violations of the laws of war have indeed been committed in the past. This acknowledgement is reiterated in Part II, Article 1 where the Agreement again recognizes that its existence owes much to the “concrete conditions of the Filipino people concerning violations of human rights and the principles of international humanitarian law”.
2. The Agreement is also monumental because it expressly recognized that human rights abuses have indeed been perpetrated during the martial law era. CARHRIHL also provides in Part III, Article 5 that the GRP is committed to support the victims and heirs of victims during the martial law regime to be compensated either through the judgment of the American and Swiss foreign courts or by way of settlement; in any case, the GRP binds itself to see to it that whatever reparations may be had by the victims and their heirs, it shall be the quickest and most direct possible.
3. CARHRIHL also mandates the government to review all pending cases of political detainees and prisoners, in light of the ruling of the Philippine Supreme Court in the *People v. Hernandez* and *People v. Geronimo* cases.
4. There is also a rare admonition against the government on account of several laws, decrees and executive issuances that have been explicitly characterized in Part III, Article 7 of the Agreement as “repressive”. Going by CARHRIHL,

the GRP should undertake to review the policies behind these laws and even refrain from invoking them if it would mean circumventing or contravening the objectives of the Agreement. Some of these repressive laws include the restrictions on the right to peaceful assembly, the mandatory reporting requirement addressed to physicians who treat patients with gunshot wounds, the law allowing food blockades and the proposed law establishing the national identification system.

5. The same goes with decisional rules established in jurisprudence with regard to warrantless arrests, warrantless searches, and the criminalization of political offenses, among others. The Agreement expressly recognized that the rulings in the cases which established these doctrines should be subjected to “appropriate remedies” that should be adopted by the GRP. In the meantime, the government should refrain from invoking these doctrines if doing so would defeat the principles underlying the CARHRIHL.
6. Under the “international humanitarian law” part of the Agreement, the GRP is also charged with the mandate of reviewing and reforming laws, programs, projects, campaigns, and practices that cause or allow the forcible evacuation and reconcentration of civilians, the emergence and increase of internally displaced families and communities and the destruction of the lives and property of the civilian population on account of hostilities.
7. The Agreement also provides a mechanism for the monitoring and enforcement of the undertakings of the Parties thereunder. Part V of the CARHRIHL establishes the Joint Monitoring Committee composed of three representatives each from both Parties, two human rights organization members each for both Parties to act as observers and to serve at the pleasure of the nominating Party, to be headed by co-chairpersons representing both

Parties. The task of the Joint Monitoring Committee is to receive complaints, order investigations, and issue recommendations with regard to reported violations of the provisions of the Agreement, invariably human rights abuses and violations of the laws applicable during hostilities.

*What provisions of the Agreement, then, tackle the mandate of the GRP with regard to CAFGUs?*

At the outset, it is important to point out that all the provisions of the Geneva Conventions and the Protocols thereto are deemed incorporated into the CARHRIHL by express provision in Part II, Article 4 which state that “the universally applicable principles and standards of human rights and of humanitarian law contemplated in this Agreement include those embodied in the instruments signed by the Philippines...” As such, all the rules applicable to the lawful conduct of hostilities, including those which define the status of paramilitaries in international law and those which delineate the responsibility of states for the acts of paramilitaries which they have created and maintained, complement and supplement by reference the object and spirit of the Agreement as contemplated by the Parties to the CARHRIHL.

Going by this initial premise, it is easy to arrive at the proposition that CAFGUs are the Philippines government’s charges and responsibilities. Whatever acts may be committed by paramilitary operatives under the auspices of the CAFGU are deemed sanctioned by the State. This proposition gains heavier gravity when one considers that the respect for human rights and international humanitarian law sought to be pursued by the CARHRIHL is binding on the GRP and the NDF, as well as all the agents acting under their authority. It should never be lost sight of that by virtue of international humanitarian law which *ipso jure* is incorporated in the CARHRIHL, violations of human rights and of principles of international humanitarian law committed by paramilitary CAFGUs can be attributed to the State, and so every such violation are also deemed committed by the GRP itself. The entire

CARHRIHL is therefore relevant to CAFGUs themselves because, as part of the state's defense establishment, the mandates laid down therein are equally applicable to them.

Part IV, Article 3 of the Agreement enumerates acts “which are and shall remain prohibited at any time and in any place whatsoever with respect to [civilians, combatants who have surrendered, combatants placed hors de combat, persons deprived of liberty by reason of armed hostilities, and the relatives and representatives of such persons].” Among these acts contemplated are those stated in Paragraph 8. In Paragraph 8, the Agreement makes it unlawful to maintain, support, and tolerate paramilitary groups “such as armed religious fanatical groups, vigilante groups, private armed groups of businessmen, landlords, and politicians, and private security agencies which are being used in land and labor disputes”. While this paragraph refers to the enumerated classes of persons as “paramilitary”, by the character and nature of the groups identified, it can be seen that what the Agreement contemplates is in the nature of “private armies” and armed groups employing extra-legal means for private interests. This paragraph may not expressly be making allusions to CAFGUs, but, arguably, if CAFGUs undertake activities or allow themselves to be used for the furtherance of objectives equivalent to those enumerated, then the prohibition would apply and such activities can be deemed a violation of the spirit and intent of the CARHRIHL.

Paragraph 9 prohibits allowing civilians and civilian officials in military field operations and campaigns. This provision is a restatement of the intuitive notion that the undertaking of armed operations requiring military skills and training cannot be entrusted to civilians who have not acquired the formal discipline of staging a field operation. CAFGUs fall under this category, and Paragraph 9 is explicit when it refers not only to “civilians” but also to “civilian officials”. This can only mean that the presence of a structured command like that in the case of CAFGUs and the level of responsibility entrusted to the CAFGU operatives do not make any difference: the prohibition seeks to address the anomalous situation where military offensives are participated in by individuals not trained in combat. In

such cases, the lives of the civilians who took part in the field operations will be imperiled. Further, their lack of training and expertise will render them liable to commit errors that would, in turn, imperil the lives of the members of the community and might prejudice the lawful and proper prosecution of the armed hostilities. This provision is particularly targeted toward Civilian Volunteer Organizations (“CVOs”) which are organized as a paramilitary force counting as members the citizens in the communities. Although, in some dire circumstances and when so warranted by the level of security threats, citizens can, by law, be asked to render services in defense of the state, they should not be allowed to do so by way of directly participating in the field operations of the military on account of their lack of training.

The provision most relevant to CAFGUs in the Agreement is Part IV, Article 8, which states that the GRP shall continue to “review its policy or practice of creating, maintaining, supporting, or allowing paramilitary forces like the Civilian Armed Forces Geographical Units (CAFGUs) and Civilian Volunteers’ Organizations (CVOs) or any other similar groups”. Going by the tenor of this provision, it can be readily seen that the Parties to the CARHRIHL contemplated that the continued presence of CAFGUs is a matter of state policy that needs serious re-examination. For this, there can be no other inference that can be drawn but that the continued presence and proliferation of paramilitary entities are inconsistent with the very spirit and objective of the Agreement, i.e., respect for human rights and the principles of international humanitarian law. It is therefore a mandate incumbent on the GRP to progressively reconfigure its policy and gradually work towards the demobilization of the CAFGUs on account of their being inconsistent with the lawful conduct of hostilities. To conclude otherwise would be illogical and unreasonable: what else would the parties have contemplated by mandating a review of the policy regarding CAFGUs if there are no complications with its operations and very existence in the first place, at least as far as human rights and international humanitarian law are concerned?

## **The evolving legal framework of paramilitarism in the Philippines**

The paramilitary entity known today as the CAFGU started out as an outfit with 37, 360 elements in 1988. It has steadily gained strength as far as membership is concerned, with the peak recruitment of 75, 461 being reached in 1992. During the time of President Ramos, the membership experienced a steady decline, reaching a low of 32, 748 up until the first two years of President Estrada's administration in 2000. From then on, the numbers again rose, until as of last count in 2007, the numbers have reached another relatively high mark at 61, 148. These elements are those formally attached to the Armed Force of the Philippines with the designation "CAFGU Active Auxiliary" ("CAA"). This designation sets apart those formally deemed incorporated in the military hierarchy and their counterparts who are working as CAFGUs on a purely voluntary basis and in the concept of a purely civilian volunteer.

CAAs attached to the Armed Forces are organized into separate Infantry Divisions composed of a number of companies. Statistics prepared by researcher Purple S. Romero from ABS-CBN/ Newsbreak reveals that the largest concentration of CAAs in the country can be found in the Western Mindanao region (also the base of the AFP Southern Command), where the CAA 1<sup>st</sup> Division composed of 87 companies are staffed by 10, 103 CAAs. Also in Mindanao are the second and third largest CAA Infantry Divisions – 7, 706 CAA elements in Eastern Mindanao (Compostela Valley, the Davao Provinces, Sarangani and South Cotabato) and 7, 189 CAAs in Northern Mindanao (Misamis Oriental, Agusan Provinces, Surigao Provinces, Bukidnon, and Lanao Del Norte). Central Mindanao (North Cotabato, Sultan Kudarat, and Maguindanao) follows closely with 7, 187 CAA elements organized into 65 companies that make up the 6<sup>th</sup> Infantry Division. Twenty CAA companies are assigned in Basilan, staffed by 2, 400 CAFGUs.

In Northern Luzon, which includes the Ilocos, Cagayan, and Cordillera Regions, there are 52 CAA companies with 5, 448 elements. In Central Luzon, the 7<sup>th</sup> Infantry

Division has 30 companies manned by 3, 049 CAAs, and this makes up the smallest CAFGU contingency in the country. In the Southern Tagalog region, known widely as a hotbed of communist insurgency, there are 44 CAA companies composed of 5, 180 elements (with 15 companies concentrated in Quezon Province). In the Bicol Region, 4, 434 CAAs are on active duty with the 9<sup>th</sup> Infantry Division.

There are 46 CAA companies in the Western and Central Visayas, which make up the CAA 3<sup>rd</sup> Infantry Division, and it has 5, 208 CAAs on active duty. Eastern Visayas, home to the 8<sup>th</sup> Infantry Division, has 3, 215 CAA elements.

Where did all these numbers originate? How is this 61,000-strong armed collectivity governed, supervised, and controlled under the law? Who is accountable for its elements' conduct, and on what legal moorings are the standards of such conduct anchored?

#### Precursor of the paramilitary entity in the Philippines

The CAFGUs that we know today find their ancestral lineage in another paramilitary entity named the Integrated Civilian Home Defense Forces (“CHDF”). Created by virtue of Presidential Decree No. 1016, issued by then President Marcos in 22 September 1976, the CHDF was envisioned to be the civilian volunteer front liners in the maintenance of peace and order at the grassroots and community levels. The CHDF was to be controlled and supervised policy-wise by the Department of National Defense and operations and training-wise by the Armed Forces. This entity was created according to the constitutional duty to render aid and service to the country in times of security threats (Article V, Section 1 of the 1973 Constitution then in force) and what President Marcos classified as the “right of citizens, singly or collectively, to self-defense”. The mandate of the CHDF is clear: it is to provide security to the respective communities of their elements, help protect the lives and

properties of the people against lawless elements, and assist in the law enforcement agencies' peace-and-order maintenance duties.

Under the CHDF Law, the formation of CHDF units in the province, municipality, city, or barangay, will be justified whenever there threats of subversion, insurgency, rebellion, criminality, and/ or disorder. The units will be composed of able-bodied civilian volunteers, guards and watchmen of private and government security agencies, special security forces already administered by the AFP, provincial guards, and civilians with license to hold firearms. The units will be supervised by their respective local government officials, who should all act in close coordination with the AFP commanders in the area as well as receive orders of deployment, mobilization, and employment from the armed forces and the defense departments in general.

The CHDF Law was amended in 15 November 1977 through Presidential Decree No. 1242. The amendment was directed at Section 4 of the Law, which specifies the measures by which elements of the CHDF units will be recruited and screened. Under the former law, screening of potential members shall be undertaken by Provincial Commanders, in consultation with the local government leaders, and recommended to the Chief of the Philippine Constabulary for appointment. Under the amendment, the same screening, recruitment, and appointment process was followed, but an exception was carved out: in areas which the Defense Secretary may identify "when the situation warrants", screening shall be done by the military commander, in consultation with the local government leaders, and recommended for appointment to the Commander of the Unified Command of the Armed Forces or the Commander of any of the Major Services.

Historically, the CHDFs under President Marcos gained nothing less than infamy and notoriety. The civilian paramilitaries, once appointed, began to wield such power and influence in their respective communities that it was not long before human rights abuses and violations of the laws of war were reported *en masse*. The very ambiguity and

amorphousness of the language of the law, let alone the standards for its implementation, created many opportunities for the abuse and misuse of force. The creation of CHDF contingencies in the communities was in itself an exercise in abuse of power. By and large, contingencies were created in areas where there are pockets of political opposition, and such was justified under the generic rubric of “threats of criminality and/ or disorder”. Oppositionists were quickly labeled by the national administration as enemies of the state for being insurgents and rebels; this the CHDF elements on the ground quickly took a cue from. The need to saturate the rural areas with military force cannot be actualized with the limited staffing resources of the armed forces back then, especially in relation to the enormity of the political opposition to the dictatorship. There therefore arose the need to recruit willing and able volunteers to act as agents of the dictator in obliterating opposition. In exchange, the government gave them a virtual license to employ force when necessary without clear parameters on what “assistance to the law enforcement agencies” would entail. As a result, the rural areas were suffocated by armed CHDF elements who effected arrests, executions, and countless other human rights abuses without due process of law. As the dictator which empowered them was considered the law back then, CHDF paramilitaries also acted in every respect as extensions and agents of that illimitable power.

Adeptly tweaking legal principles to his advantage, President Marcos invoked the constitutional duty to defend the state as one of the justifications for the creation of the country’s first formal paramilitary entity. This duty, however, presupposes a threat to security so large and so insurmountable that the regular forces trained for the purpose of defending the state can no longer mount a viable front and had to resort to the conscription of all able-bodied citizens. Note should be taken that the constitutional duty to render service is for the benefit of the state and not the government. The state is threatened only by a foreign power poised to occupy the country, or when a massive entity is about to topple the state to establish another. The government is not the state; the former is but an instrumentality for the actualization of the will of the latter. Opposition to the incumbent government has for its objective the institution of reforms or, at the extreme, the assumption of another leader

into office. This is not the same threat contemplated by the Framers of the Constitution when they enshrined the constitutional duty to defend the state in that document. The prerequisite must always be an insurmountable force that would induce all reasonable assumptions that citizens are already desperately needed to augment the regular forces; this is not the situation when the CHDF Law speaks of “maintenance of peace and order”, because such function can ably be undertaken by the regular forces unless lawlessness descend to massive and unmanageable levels.

Under the National Defense Act of the Philippines (Commonwealth Act No. 1), “the preservation of the state is the obligation of all citizens” (Section 2-a). National defense as contemplated in the Act is pertinent to cases of threatened or actual aggression (Section 2-e). The Act mandates the compulsory military training of all able-bodied men known as the Reserve Officers Training Corps (ROTC) Units. This framework has since changed, as will be discussed *infra*, but the main premise of tapping the citizens to be part of the defense establishment in the country still remains – such a measure should not be employed to supplant the duties of duly-trained law enforcement and military bodies. The involvement of citizens in the employment of force under the auspices of the state should still be guided by the principles of imminence and the gravity of the security threat. In short, engaging paramilitary entities should be a measure of last resort, and their status should be that of “reserve” elements which, by definition, should remain inactive and on “stand-by” until and unless instances of aggression and other analogous grave and imminent perils directed against the state should arise. Paramilitaries, even under the National Defense Act framework, are not expected to be on active duty absent such grave and imminent peril, and are definitely not expected to fill the role of complementary, irregular or “shadow” law enforcement elements performing similar functions without the requisite formal training and preparation for doing so.

It is also misleading that the CHDF Law vests legitimacy on the paramilitaries by invoking the “right to single or collective self-defense”. The doctrine of self-defense is

relevant in civil and criminal law, and it is available only when the individual's life or property is in imminent danger of being injured such that the law can reasonably allow him/her to take necessary and proportionate measures to preserve such life and property. In these contexts, waiting for the aid and succor of the law enforcement agencies would already be unreasonable and contrary to the basic instinct of self-preservation. The context, however, is different under the CHDF Law. The law speaks of the maintenance of peace and order and the prevention of lawlessness. This is a *general condition or state of the community* and not the irresistible and imminent force contemplated by the doctrine of self-defense. There must be the element of imminence before the self-defense doctrine can be invoked, and it would be highly absurd and inconsistent to use it against a threat that is generic, continuing, and long-term.

Also, the concept of collective self-defense is a concept relevant only in international law, and it partakes of the right of *nations* in one given strategic geographical location to act in concert against a threat to the security of any one of them, on the presupposition that insecurity in one area would necessarily result in insecurity in others. It has never been applied by analogy to communities, especially when, as in the case of the CHDF Law, the threat contemplated originates from the community members themselves. In short, what the CHDF Law wants is to arm the civilians in the community and empower them to apprehend insurgents, rebels and subversives in the area; this is a far departure from the notion of collective self-defense under the law.

### The current legal framework

The abuses committed by the CHDF elements were not lost on the people, particularly the Aquino government which assumed power after the abbreviation of the Marcos dictatorship. The 1987 Constitution, which was adopted and promulgated with the desire to correct the martial law errors of the past, expressly provided in Article XVIII,

Section 24 that “[p]rivate armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces not consistent with the citizen armed force established in this Constitution, shall be dissolved or, where appropriate, converted into the regular force.” This provision signaled the disbandment of the CHDF and the express illegalization of all other paramilitary forces similar to it. However, the same provision also expressly sanctioned the creation of a “citizen armed force” which was also expounded on elsewhere in the Constitution: in Article XVI, Section 4 of the Constitution, it was provided that “[t]he Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law. It shall keep a regular force necessary for the security of the State.” (emphasis supplied) This provision has become the basis for the continued paramilitarism in the country – by merely reclassifying paramilitaries as a “citizen armed force”, but performing largely similar functions. The term “citizen armed force” has been interpreted to mean that civilians, being part of the default armed force of the country, can at any time be called to serve for the military in defense of the country.

The provisions above-quoted on the establishment of the citizen armed force and the demobilization and dismantlement of the CHDF were proposed during the 1986 Constitutional Convention by the Committee on General Provisions Chaired by Commissioner Rosario Braid. Notably, the original wording of the provision, as proposed on the floor of the Convention, reads:

- (a) The Armed Forces of the Philippines shall be a citizen armed force composed of able-bodied citizens of the Philippines who shall undergo military training as may be provided by law. It shall keep a regular force necessary for the security of the State.

(b) The citizen armed force shall have a corps of trained officers and men on active duty status as may be necessary to train, service, and keep it in reasonable preparedness at all times.

(c) The citizen armed force may be employed for the internal security of the State as may be provided for by law.

As originally proposed, the vision of the Framers is for the Armed Forces of the Philippines itself to be the citizen armed force of the country. It only means that the Armed Forces shall come from the ranks of Filipinos and shall owe its allegiance to the Filipino people. The mention of a “citizen armed force” apart from the “regular force” both in the proposal and in the final adopted version was sought to be clarified by then Commissioner Guingona. In response, Commissioner De Castro expounded:

“When we talk of the citizen armed force, we are talking of the whole Armed Forces of the Philippines. When we talk of the regular force [...] this is only a necessary force to fight insurgency in our country. If there will be no more insurgency should our President be successful in talking with the NPAs and the NDF and Mr. Misuari, then this regular force shall eventually be reduced considerably and then our appropriations shall be concentrated in building up a citizen armed force. When we talk of a citizen armed force, we are talking of the citizen armed force of the army, the navy and the air force.” (Records of the Constitutional Commission)

Commissioner De Castro further explained that the citizen armed force “are really the trainees, the ROTCs, who are being trained by a cadre of regular officers and enlisted men”. In short, when the Constitution says that there shall be a citizens armed force, it merely means that all able-bodied citizens shall receive military training in preparation for the

event that their services shall be needed in the defense of the state. These citizens shall be on reserve status and shall not be required to perform military functions in the mean time. In fact, as Commissioner De Castro clarifies, “we do not give guns to the members of the reserved force because it is also dangerous under the circumstances here in our country. We put these in storage we call mobilization centers in many places in the Philippines [which shall be accessed only when the reserve forces are called to active duty]”.

There is also ample evidence from the proceedings of the Constitutional Convention that the Framers themselves are concerned that untrained and unskilled individuals will be tasked to perform military functions. Responding to the suggestion that the police be integrated with the armed forces, Commissioner Natividad replied adamantly:

“... [T]hat will be very tragic for the nation because that is precisely what we are avoiding to integrate the military with the police [...] All over the world there is a postulate that the police force is civilian in nature because the police is created to service the people, to prevent crime and to help them protect life and property. The army, the military is an agent of force to fight in defense of the country. Their training is completely different, Mr. Presiding Officer. We train the military to fight; we train the police to serve. The police is under the Civil Service Law; the military is under the Articles of War. We train the army with weapons and tactics and develop in them the instinct to kill lest they be killed. We train the police to follow the law. We teach them criminal law, criminal procedure, the Bill of Rights, the rights of the accused, ballistics, et cetera.” (Records of the Constitutional Convention)

The Framers clearly intended that military operations be confined to military personnel trained in the area. If the Framers clearly disagreed that police forces cannot be on the same footing with the military, the former being of civilian character, how much more equating civilian volunteers to military personnel? The concern of the Framers were raised

repeatedly on the floor of the Convention, and the responses elicited from the sponsors of the provisions above-quoted all point to the unanimous view that paramilitaries cannot be created to counter internal security threats. Faced with a shortage of staff, the Armed Forces can call to active duty all the reserve officers and elements which have been duly trained and awaiting deployment. This measure will suffice, and it will still be consistent with the principle of a citizen armed force. This, however, and it should be emphasized clearly, is always a measure of last resort and shall be employed only when circumstances become so dire that the professional armed forces can no longer provide all necessary security needs. This certainly does not justify the creation of a parallel military unit that performs shadow functions of the armed forces on a regular and continuing basis. Otherwise, this would amount to the “paramilitary forces” outlawed by the Constitution. Commissioner Sarmiento observes:

“I think this section will bar the creation of paramilitary troops or forces in the future. Our experience in the past and up to the present is that these forces do not contribute to the peace and order situation in our country. It is actually a liability. Many complaints are being raised about the existence of these forces. The mere mention of paramilitary shows that they will always be second class forces.

Considering that we have these sections on the armed forces and the citizen armed force, I think they will be sufficient enough to counteract any threat against national security in the future.”

Commissioner De Castro also maintains that although the fight against insurgency is a matter of paramount importance for the state’ security, still there is a need to explore other options for pursuing it apart from the creation of paramilitary forces:

“If I were a member of the Armed Forces of the Philippines and I have this provision disallowing me to use paramilitary forces and other armed groups, particularly in the campaign against insurgency, the first thing I would do is to request for additional funds to increase our regular force and at the same time request for more funds so that our citizen armed force may be used in the campaign against insurgency. We cannot allow ourselves to be at the mercy of our enemy. We must do everything within our means to protect this country. With this kind of provision, certainly, it is dismissing or dismantling our civilian home defense forces but their dismantling should not allow our armed forces to have more room for additional means with which to fight insurgency.”

As to leave no doubt that the Framers intended that a paramilitary entity like the CHDF will not be revived again, even if under a new name, the interpellations between Commissioner De Castro and Commissioner Garcia are instructive:

“MR. DE CASTRO: Suppose after we pass this the President changes its name, therefore, our Constitution is no longer applicable because the CHDF has been dismantled.

MR. GARCIA: If the President creates a different force to meet a different problem, it is a different entity. The point I am trying to make is that historically we have been burdened with the paramilitary force which has operated under the cloak of legality and legitimacy and therefore has created havoc in the countryside. We are trying to meet a historical problem that is why it is in the Transitory Provisions. The President or Congress can in fact create other forces to meet other problems with new manpower, with a different orientation and different direction. That is fine. We are meeting a particular historical problem, that is all.

MR. DE CASTRO: So if the CHDF is dismantled and another name is given in its place, will the Commissioner have no objection?

MR. GARCIA: I will have an objection if it violates the spirit of this provision. If they create a completely new force, it is a different story. But if they simply change the name, then it violates the Constitution.”

On 15 July 1987, shortly after the 1987 Constitution was ratified by the people in a plebiscite, President Aquino issued Executive Order No. 275 which ordered the gradual and orderly dissolution of the CHDF within 180 days. Qualified personnel from the disbanded paramilitary groups was given privileged status in the hiring of new government employees, including in the Armed Forces, and those found to be bona fide members of authorized paramilitary units were given a separation pay equivalent to two months’ allowance.

Ten days after, on 25 July 1987, President Aquino issued Executive Order No. 264, which is the parent law of the CAFGU. The Order constituted the Armed Forces as a citizen armed force as contemplated in the Constitution and authorized the Secretary of Defense to organize the citizen armed force into geographical units (hence the term CAFGU) which shall be composed of all “able-bodied citizens” who have all been designated by the Order as Reservists. The CAFGU owes its existence to the provision of the order which states that “[a]ll reservists in a particular locality shall be organized into reserve geographical units subject to call and mobilization as the need arises, individually or as a unit. Reservists called to active duty shall serve with the regular troops as part of the standing force. The Secretary of National Defense shall prescribe and implement a continuing program of recruitment and training for the Citizen Armed Force to enable it to respond to all types of threats to national security.” (Section 1)

Further, however, the Order also decreed that if military necessity requires it:

“...the Citizens Armed Force may be called or mobilized to complement the operations of the regular force of the Armed Forces of the Philippines or to support the regular force formations or units. For this purpose, Active Auxiliary Units which shall be part of the Citizen Armed Force Geographical Units, may be utilized, to be constituted out of volunteers to be screened in consultation with the local executives and civic/business leaders. These Active Auxiliary Units shall mean a degree of activation of military reservists short of full active duty status. They shall not be vested with law-enforcement or police functions.” (Section 4)

The provision authorized the recruitment of paramilitaries to “complement” the operations of the regular Armed Forces. This has become a primary bone of contention in the enforcement of the constitutional provision regarding the establishment of a citizen armed force. The provision of the Constitution disbanding paramilitary units, as amply supported by documentation of the Constitutional Convention quoted above, clearly contemplate that in no instance shall paramilitary units be constituted to perform military functions, be it chiefly or complementarily. The danger sought to be avoided is for a civilian individual to be vested with quasi-military powers despite lack of training, because it is in these instances that opportunities for abuse and violations of human rights present themselves.

The Active Auxiliary Units of the CAFGU (“CAA”), as created by the Order, is akin to the CHDF of the martial law era, albeit with a different name, because they serve as a standing force (not a reserve force, as contemplated in the Constitution) that regularly participates in the conduct of military functions (not in extraordinary circumstances where the State can legitimately call its citizens to render military service in its defense) without the proper training. As can be attested to by history and experience, this opening is enough to

usher in another onslaught of abuse by the CAFGUs, notwithstanding the rather diluted admonition of Section 4 of the Order that “they shall not be vested with law-enforcement or police functions”. In reality, this is exactly what has happened – the State sanctioning the formation of a paramilitary unit that has exercised, on a regular and not extraordinary basis as contemplated in the law, military and law enforcement powers in their respective communities.

That the CAA elements created under EO 264 are allowed to directly be involved in military operations as a complementary force despite the absence of an imminent and grave peril to the national security is belied by the eventual passage of the Reservist Act (Republic Act No. 7077) in 1991. Under Section 2 of the law it was stated: “It is the policy of the State to maintain a standing force or regular military force in times of peace consonant to its adequate and actual needs for the security of the State but which may be rapidly expanded by the well-disciplined Citizen Armed Force in the event of war, invasion, or rebellion.” It would appear that the concept of a reserve force contemplated in the Reservist Act is the one more consistent with the intention of the Framers of the Constitution which proposed the provisions quoted at the start of this section. CAFGUs, and other paramilitary groups for that matter, are not intended to be standing forces but reserve forces that will be called to active duty only in the event of dire need to defend the sovereignty of the state and the integrity of the national territory.

True, under Section 13 of the said law, the Ready Reserve may be called to active duty not only in times of war and other national emergency, but the exception carved out by the said provision still falls squarely within the category of perils and security threats that are analogous to war or national emergency. In Section 13, it was stipulated that “the Ready Reserve...shall be subject to call at any time to augment the regular armed force of the AFP not only in times of war or national emergency but also to meet local emergencies arising from calamities, disasters, and threats to peace, order, security, and stability in any locality,

including the need to provide assistance in relief and rescue work and other civil assistance activities.” The instances enumerated all occupy the same league.

The terms “peace, order, security and stability” should not be interpreted out of context and independent of the terms with which they were associated by express enumeration. Under the law, there is a doctrine called *noscitur asociis* which mandates that in reading the provisions of law, words should not be given a signification that would result in an interpretation that detaches them from the particular context in which they were mentioned, as based on the character and import of the words with which they were associated in the plain text of the law. There is also a doctrine called *eiusdem generis* which mandates that an enumeration of terms in a given sequence should be deemed as exclusive in nature and that the enumeration *as a whole* must be interpreted as forming a unified intent; as such, the words in the enumeration should not be interpreted singly or autonomously.

Going by these doctrines of statutory construction, it can hardly be argued that “peace, order, security and stability” could be deemed to include the common “peace, order, security and stability” that is the business of the regular law enforcement forces as to justify the creation of a paramilitary force engaged in complementing the operations of the military on a continuing and regular basis. “Peace, order, security and stability” was used in the law in the context of “local emergencies” and were in fact lumped together with disasters and other immediate needs for humanitarian aid and succor. In short, these terms do not contemplate a continuing concern but sporadic, extraordinary and episodic incidents partaking of a grave, cataclysmic and imminent character. The stand-by force contemplated by the law and the Constitution should respond only to such immediate exigencies. The extraordinary nature of these exigencies runs inconsistent and inconsonant with the idea of a standing, complementary auxiliary force attached to the military as provided in EO 264.

This is, however, where things currently stand: we know for a fact that based on the intention of the Framers of the Constitution, paramilitary forces are to be disbanded and

never revived. These paramilitary forces as contemplated by the Constitutional Convention would cover any entity given quasi-military status and functions without the proper training. Under the present scheme of the law, all citizens are deemed part of the citizen armed force by default and may be called to active duty in defense of the state when dire security threats and other grave and imminent perils arise. Training and preparation for such incidents are to be given the civilian reserve forces. Before, under the Reservist Act, military training is compulsory among male students at all tertiary institutions of learning, but this was made optional under Republic Act 9163 or the National Service Training Program Act which included civic welfare training and literacy training as part of the options available to male *and female* college students aside from the military component. However, it is clear that unless the circumstances of grave and imminent peril actually transpire, these reserve forces composed of Filipino citizens who are able-bodied and who have received basic training must remain as they are – reserve forces – and should not be allowed to perform military or even quasi-military functions on a complementary and regular basis. This, however, has been modified by EO 264 when it authorized the creation of the CAA.

The CAA is currently accorded the status of reservists on active duty under the Reservist Act and constitute their own companies and infantry divisions. Operationally, they are attached to Philippine Army Infantry Battalions composed of regular military elements also called “Cadre Battalions”. CAAs report for duty to the commanders of these cadre battalions and perform functions which “complement” the activities of the military in their area, invariably counter-insurgency and maintenance of peace and order. The CAAs and their cadre battalions report directly to the Armed Forces of the Philippines Deputy Chief of Staff for Reservist and Reserve Force Development. The CAAs form part of the totality of the Reserve Force of the Armed Forces (which include ROTC graduates, ex-servicemen and retired officers of the AFP, recognized World War II guerillas, etc.) which are jointly administered operationally by the Deputy Chief of Staff for Reservist and Reserve Force Development (J8), the Major Services Reserve Command, and the AFP Reserve Command.

The CAA elements are issued small firearms like M-14 or M-16 rifles and receive a monthly stipend of P 2,700.

As a consequence of the fact that CAAs are considered on active duty, they are subject to military discipline under the Articles of War (Commonwealth Act No. 408), as also stipulated in Section 5 of EO 264. The Articles of War is a comprehensive document dealing with the requisites or proper conduct and deportment applicable to all elements of the Armed Forces. The Articles provide for the mechanism of a court martial to try and decide cases brought against alleged perpetrators of war offenses or those whose conduct is unbecoming “an officer and a gentleman”.

### **The Way Forward: CAFGUs, paramilitarism, and CARHRIHL**

In 2002, a report written by Merliza Makinano revealed that CAFGU, especially in the early 1990s, heavily recruited children and teenagers into their fold in many rural areas. The reasons given by the children were varied, but most of them primarily attribute the fact of their joining the ranks of CAFGU to economic hardship.

In a statement issued by the Commission on Human Rights on 23 March 2000, it was pointed out that lack of training on the part of the CAFGU elements contribute to the tendency that they will be committing abuses and violations of human rights during their tours of duty in their localities. In fact, as the Commission points out, 853 cases of murder, execution, torture, disappearance, illegal arrest, and detention were filed with it at the time the statement was released, all of them against around 1,070 members of the CAFGU.

In 2002, United Nations Special Rapporteur Rodolfo Stavenhagen prepared a report on the human rights situations in indigenous cultural communities in the country and found that one of the chief causes for the violations of indigenous peoples’ rights is the

phenomenon of development aggression – the practice of encouraging economic activities in ancestral domains and other indigenous cultural communities without the peoples’ free, prior and informed consent. In the context of development aggression, indigenous peoples who attempt to mount a viable opposition to the destructive and intrusive projects were often countered by brute military force in the form of human rights abuses like arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, and rape. In all these unlawful activities designed to subdue local opposition to the development project, CAFGUs figured prominently and victims of human rights abuses testify that the violence inflicted upon them were often preceded by unjustified allegations by CAFGUs of their affiliation with insurgent groups.

While the Defense Undersecretary reported to the Special Rapporteur upon inquiry that CAFGUs are treated as mere reserve forces who carry out military duties only sparingly and only “as the need arises”, members of indigenous cultural communities belie such a contention, and reported contrarily that CAFGUs in their areas are not regularly trained military personnel but elements empowered to carry and use arms for the purpose of controlling the social and political life of their communities. In the end, the Stavenhagen Report recommended that irregular armed forces and other paramilitary units in the indigenous cultural communities be demobilized or withdrawn, because their continued presence in the area represents a threat to the human rights of indigenous peoples.

The presence of reports such as these in the public records provide ample evidence that CAFGUs have been living up to the fear of the Framers of the Constitution with regard to the pernicious effects of the state’s formation of a paramilitary entity exercising quasi-military functions on a permanent and regular basis at the local communities. The logic of the premise laid down by the Framers more than twenty years ago still rings valid and sound: an untrained armed group let loose in the countryside will always augur well for the creation of little pockets and strongholds of coercive power and influence in the rural areas. Little kingdoms will be established and maintained by individuals whose lack of education and

training in the proper conduct of military life will invest them with the false sense of power that inevitably breeds contempt towards the legal order. In such a chaotic context, human rights and the principles of international humanitarian law can hardly be expected to be accorded proper respect and observance.

It is clear under the prevailing circumstances that the very existence of CAFGUs in the rural areas resulted from a misapprehension and misinterpretation of the law, as well as the failure to ascertain the objectives and intentions of the Constitution when it mandated that a “citizen armed force” shall be created and that all citizens are required to render military duty when called upon by the state in order to defend its sovereignty and integrity. The illegalization of paramilitary units, which was mandated along with the demobilization and dissolution of the erstwhile CHDF, contemplated a complete halt to the deleterious practice of the state in recruiting civilians for military duty, arming them, and allowing them to serve as “fillers” in the gaps created by lack of military and police personnel capable of maintaining law and order in far-flung areas and in areas designated as hotbeds of insurgency. The extraordinary power of the state to call its citizens to defend it during instances of grave and imminent peril is simply inconsistent with the idea that civilians, in the meantime and on a regular basis, can be tasked to perform quasi-military functions to respond to a concern as general and as continuing as maintenance of peace and order.

However, even assuming without necessarily conceding that the law creating the CAFGUs and the CAAs does not violate any legal precept and that the current framework for the regulation of paramilitaries within the Armed Forces establishment is valid under the law, history and practice would still point to the undeniable fact that the continued existence and deployment of CAFGUs have provided opportunity for human rights abuses to be committed. Reports and complaints received by the Commission on Human Rights indicate substantially that human rights abuses proliferate in areas saturated by force, both military and paramilitary. In a regime where power is reposed upon those who are unprepared to

wield it, inevitable errors in judgment and abuses of discretion arise, causing injury and suffering to innocent bystanders.

When the continued paramilitarism in the countryside is examined in light of the GRP's mandates under CARHRIHL, it becomes apparent that the objectives sought to be subserved by the Agreement – respect for human rights and international humanitarian law – will always be imperiled and threatened. As earlier discussed, the violations being reported to the Commission on Human Rights allegedly committed by CAFGUs inevitably result from the twin maladies that beset the orderly insulation of the military from the political affairs of the country – an unprofessional defense establishment and a weak state. Because of these two complications, CAFGUs are liable to be captured by parochial interests, political and ideological forces, and even private interests (i.e., warlords, landowners, politicians) to be used for illicit purposes. It is this vulnerability that makes paramilitaries, particularly in the developing countries, susceptible to degenerating into a group of armed renegades owing allegiance to no law within their little enclaves. In turn, it is this susceptibility that renders the GRP incapable of complying with its mandates under CARHRIHL *while at the same time* insisting on the continued operation of the CAFGU paramilitary unit.

*What are the points of intervention for groups and individuals interested in making the CARHRIHL work?*

*First*, there is a need to actively campaign for the demobilization and dissolution of CAFGUs at all fronts of law and policy-making. This is the most effective solution to ensure that human rights abuses and violations of international humanitarian law will no longer be committed by paramilitaries. Lawmakers must be convinced that continued paramilitarism is conceptually and practically inconsistent with respect for human rights.

*Second*, there is a need to orient local communities regarding their human rights and basic rights in the context of armed hostilities. Communities must be taught how to assert their rights in the different forums for redress and how to take advantage of the grievance procedures under the law to exact accountability from erring paramilitaries. Assisting communities in being pro-active and in being self-sufficient in the protection of their rights is the best antidote to the saturation of force that they are currently experiencing from both military and paramilitary quarters. Any such educative measure, however, must take into account the peculiar circumstances of every case and locality (e.g., CAFGUs may be brazen in their conduct in one area because they enjoy the patronage of influential local leaders, etc.) so that the most appropriate and effective remedies available under the circumstances may be identified.

*Third*, there must be a conscious effort to identify the primary causes that account for the continued and successful recruitment of CAFGUs in an area. Economic factors may inevitably crop up, as well as the general desire to gain some leverage in terms of protecting one's family from equally armed forces from either the government or the rebel front. In short, the continued viability of CAFGUs might be not only a function of the state policy tolerating (or encouraging) it but also of the necessities, paucity of options, and exigencies of the people residing in the community. Once the root cause for CAFGU membership is identified, it can then be targeted through the most appropriate and effective means possible (e.g., livelihood enhancement, education, tempering of the political influence of a local political in the area through appropriate channels).

*Fourth*, the CAHRIHL must be elevated to mainstream collective consciousness. Educative measures and information campaigns among concerned sectors will strengthen and consolidate the monitoring and feedback mechanism inherent in every measure that purports to impose upon the government a number of positive commitments and obligations. The seeming lack of interest on the part of the GRP to comply fully with its CARHRIHL mandates may be partly due to the general view that it can hardly be held

accountable and exposed to scrutiny and critique for a commitment that not too many people may know about. The duty to progressively review state policies on paramilitarism is but a small segment of the entire GRP mandate under CARHRIHL, but compliance therewith can be demanded with more facility if more sectors actually clamor for it on the basis of their intimate knowledge and understanding of the express obligation imposed upon the GRP to do so.

The only way forward for the GRP is to immediately move to demobilize and eventually dissolve CAFGUs. The task of complying with its CARHRIHL mandates is in itself a mammoth one as respects the regular armed forces (which, needless to say, have also been charged with human rights violations for the longest time); matters will not be made any less difficult by the fact that the GRP would also have to account for the conduct of its paramilitaries, which, under international law, it is bound to do. The GRP must proceed from the almost intuitive proposition that an irregular armed force lacking the discipline and training of a professional military will more often than not be a liability in the general campaign to respect, protect, and promote human rights. When it comes to matters of power, force, and the legitimate use of violence, all manner of safeguards must be employed to temper the inherent attraction of human beings to the dictates of superiority and dominance. A legal order that does not provide such safeguards will be liable to expose its citizens to abuse and victimization.

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