

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session
HOUSE BILL NO. 4948

Introduced by Representatives NERI JAVIER COLMENARES,
TEDDY A. CASIÑO, RAFAEL V. MARIANO, ANTONIO L. TINIO,
LUZVIMINDA C. ILAGAN, EMERENCIANA A. DE JESUS
and RAYMOND V. PALATINO

**AN ACT PUNISHING MILITARY COMMANDERS OR SUPERIORS
FOR CRIMES OR OFFENSES COMMITTED BY THEIR
SUBORDINATES UNDER THE PRINCIPLE OF
COMMAND RESPONSIBILITY**

EXPLANATORY NOTE

If there is one word that describes the state of human rights in the Philippines today—it is impunity. There were 1,206 deaths by extra judicial killing under the Arroyo Administration according to the 2010 Year-end Report on the Human Rights Situation by the Human Rights group Karapatan. Under the new administration, the killings continue with already 44 cases – that brought about the record of 4-5 political killings in a month. But not one suspect has been convicted. Also since 2001, there have been 211 victims of enforced disappearance, with their families still in the dark as to the fate or whereabouts of their loved ones.

The Philippine government is obligated under the Universal Declaration of Human Rights to defend, protect and promote the human rights of all persons. Section 2 of the said instrument provides that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Specifically, the government is obligated under Section 2 of the International Covenant on Civil and Political rights in this wise:

2. x x x each State Party to the present Covenant undertakes to take the necessary steps, x x x , to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

In November 2007 United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions released his report saying that the counter-insurgency program of the Philippine Government has led to the numerous cases of extrajudicial killings of activists.

Then former President Gloria Macapagal Arroyo created the Melo Commission, that established military involvement in extrajudicial killings when it released a report submitted to Arroyo, linking state security forces to the murder of militants. It also recommended that military officials, notably retired Major General Jovito Palparan, be held liable under the principle of command responsibility for killings in their areas of assignment.

Despite these, not one case was ever solved, and the killings continue.

One of the major reasons for this state of impunity is the lack of accountability and prosecution of military commanders for the acts of their subordinates despite widespread charges of the responsibility of many of their officers and personnel. This lack of accountability on the part of military commanders and superiors is what this bill on command responsibility seeks to address.

The concept of command responsibility is not alien to the Philippine notion of justice and accountability. In 1945, the infamous General Tomoyuki Yamashita was charged and convicted with unlawfully disregarding and failing to discharge his duty as a commander to control the acts of members of his command by permitting them to commit war crimes in the Philippines. His case has since become a precedent regarding the command responsibility for war crimes and is known as the Yamashita Standard.

In fact, the Philippines ratified the Additional Protocol II to the Geneva Conventions which expressly requires under Article 86(2) that the fact that a breach of the convention or of the Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Admittedly, the difficulty of applying command responsibility in criminal prosecution in the Philippines stems from the fact that there is no Philippine law on the matter.

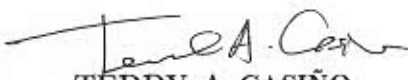
It is high time for Congress to contribute in efforts to stem the escalating human rights violation by enacting a law that will ensure accountability on the part of military officers by penalizing their acts or omission in preventing, if not punishing, human rights offenses by their subordinates.

Hence, we earnestly urge the passage of this bill into law.

Approved,



NERI JAVIER COLMENARES
Bayan Muna Party-List



TEDDY A. CASIO
Bayan Muna Party-List



ANTONIO L. TINIO
ACT Teachers Party



RAFAEL V. MARIANO
Anakpawis Party-List



LUZVIMINDA C. ILAGAN
Gabriela Women's Party



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RAYMOND V. PALATINO
Kabataan Party-List

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THE PRINCIPLE OF COMMAND RESPONSIBILITY**

Section 1. Title. – This Act shall be known as the “Command Responsibility Act of 2011.”

Section 2. Policy. – It shall be the policy of the State to:

- (a) Ensure obedience to the Constitutional principle that civilian authority is, at all times, supreme over the military; that the Armed Forces of the Philippines is the protector of the people; and that public officers and employees must at all times be accountable to the people.
- (b) Uphold the policy that the State values the dignity of every human person and guarantees full respect for human rights.
- (c) Address impunity by making military commanders or superiors accountable for the acts of their subordinates under the principle of Command Responsibility.

Section. 3. Definition of Terms. – For purposes of this Act, the following terms shall mean:

- (a) Command Responsibility – is the criminal responsibility of a military commander or superior for a crime or offense committed by a subordinate under his or her effective command and control if the commander or superior knew or under the circumstances should have known that the subordinate committed, was committing or about to commit such crime or offense and he or she failed to take all the necessary and reasonable measures to prevent or repress such acts, or submit the matter to competent authorities for investigation and prosecution, as the case may be.

- (b) **Military Commander or Superior** – is a person who has effective powers of command and control over the actions of units or paramilitary units of the Armed Forces of the Philippines (AFP) or its personnel including its civilian agents. The command and control may be de jure or de facto and the commander or superior may be military or civilian and shall include other government officials who actually exercise such powers.
- (c) **Subordinate** – is the military or paramilitary unit or individual persons, including civilian agents, under the effective command and control of the military commander or superior.
- (d) **Civilian Agent** – is a person who is not a member of the AFP or any of its paramilitary units but whose services are utilized by it in the conduct of operations, whether or not such services are paid for.
- (e) **Personal Crime** – is a crime committed by a subordinate which is totally unrelated to his being a member of the military, paramilitary, or as a civilian agent of the AFP.

Section 4. Scope. – This law shall apply to all military commanders or superiors of the AFP including those commanding its civilian agents or paramilitary forces established or employed by the AFP. Provided, that nothing in this act shall be construed as holding a commander or superior criminally liable for personal crimes committed by a subordinate.

Section 5. Direct Liability. – Any person, including the military commander or superior himself or herself, who actually participated in any crime or offense in any manner, either by planning, instigating, ordering, committing, aiding, abetting or otherwise, giving rise to liability under this Act, shall continue to be separately liable for the crime committed under existing laws.

Section 6. Responsibility of a Military Commander or Superior. –

- (a) It is the responsibility of military commanders or superiors to properly command, control and supervise their subordinates. A military commander or superior is responsible for the proper performance by his or her subordinates of their duties. He or she has complete and overall responsibility for all activities within his or her unit or of those under his or her effective command and control, and is therefore responsible for everything his or her unit or subordinate does or does not do. It is the duty of a military commander or superior to give clear and concise orders within the bounds of the law and insure that the same is properly understood by his or her subordinates.
- (b) Any person acting as a military commander or superior shall be criminally liable for crimes committed by a subordinate under his or her command and control, where the commander or superior knew or should have known that the subordinate committed, was committing or about to commit such acts and he or she failed to take all necessary and reasonable measures to prevent or repress such acts, or to punish the perpetrators or submit the matter to competent authorities for investigation and prosecution, as the case may be.
- (c) Other superior officers or those higher in the chain of command of the immediate military commander or superior, including the commander-in-chief, of the

subordinate who committed, was committing or is about to commit a crime, shall be criminally responsible for crimes committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- a. The superior either knew, or disregarded information which clearly indicated, that the subordinates committed, were committing or about to commit such crimes. Complaints in the Commission on Human Rights, courts or complaints submitted to the AFP and reports of the media or other government agencies shall form part of the information referred to in this Act;
- b. The crimes concerned activities that were within the effective responsibility and control of the superior; and
- c. The superior failed to take all necessary and reasonable measures to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Section 7. Presumption of Knowledge. – A military commander or superior is presumed to have knowledge of the crime committed by his or her subordinate when any of the following circumstances are present:

- (a) The same crime is committed by his or her subordinates two or more times in one year, whether or not the said offenses were committed by the same subordinate;
- (b) Crimes, whether or not the same, are repeatedly committed by his or her subordinates during the course of his or her career as a military commander or superior.
- (c) When the crime committed by the subordinate is pursuant to a policy being implemented by the commander or superior whether or not said policy is in writing; and
- (d) When the crime is committed in compliance with the order of the commander or superior, albeit only the intended result was manifested to the subordinate.

Section 8. Penalties. – For acts provided under Sections 6 (b) and (c), the following penalties shall be imposed:

- a) Imprisonment for at least ten (10) years up to life imprisonment. **Provided**, that the Court in the determination of the appropriate term for imprisonment, shall consider the gravity of the crime committed by the subordinate, the extent of the military commander's or superior's own personal involvement in said crime or the seriousness of the failure to perform his or her responsibilities. **Provided further**, that if the crime was committed by the subordinate through the behest or command of the commander or superior, the maximum penalty of life imprisonment shall be imposed;
- b) A fine of at least One Hundred Thousand Pesos (P100,000.00); or both fine and imprisonment, at the discretion of the court;

- c) Forfeiture of proceeds, property and assets derived directly or indirectly from the crime committed by the subordinate, if any, without prejudice to the rights of the private offended party;
- d) Perpetual disqualification from holding public office; and
- e) Loss of all retirement and separation benefits from the Government, if any.

Section 9. Prescription. – The offense of command responsibility under this Act shall not prescribe.

Section 10. Separability Clause. – If any part, section or provision of this Act shall be held invalid or unconstitutional, the other provisions shall not be affected thereby.

Section 11. Repealing Clause. – All other acts, laws, executive orders, presidential issuances, rules and regulations or any part thereof which are inconsistent herewith are hereby deemed repealed or modified accordingly.

Section 12. Effectivity Clause. – The provisions of this Act shall take effect fifteen (15) days from its publication in at least two (2) national newspapers of general circulation.

Approved,