

FOURTEENTH CONGRESS OF THE)
 REPUBLIC OF THE PHILIPPINES)
 First Regular Session)

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Introduced by Senator M. A. Madrigal

EXPLANATORY NOTE

On 16-17 July 2007, the Supreme Court initiated a landmark summit on extrajudicial killings and enforced disappearances attended by representatives from all three branches of the government, the diplomatic corps as well as representatives from civil society. Alongside the top brass of the military-police establishment was the participation of militant organizations like "Karapatan" which heretofore had snubbed official investigatory bodies like the Melo Commission, accusing these of partiality and lack of independence.

Spearheaded by Chief Justice Reynato Puno, the summit elevates the High Court from an erstwhile reactive role of passive arbiter to active intervenor and unifying force in the national crisis on human rights.

The recognition by majority of the summit participants of the politically-motivated nature of the summary killings and enforced disappearances in terms of the background of the victims, the methods used and the direct involvement or acquiescence of State agents in their commission is a significant step in pinpointing and defining official responsibility for such blatant offenses that have gone beyond the realm of simply being "unexplained killings." Earlier, in response to the UN Special Rapporteur's report on extrajudicial executions, the Supreme Court had assigned several regional trial courts as special courts to hear and try these cases.

Surely enough, the repeated involvement or implication of accused and suspected soldiers or subordinates in the rampant, country-wide and systematic cases of extrajudicial killings and enforced disappearances could not have transpired without their superiors ordering or at the very least knowing or encouraging these acts. Not one suspected perpetrator of any of the 871 summary killings and 180 enforced disappearances of political activists since January 2001 has been arrested, tried and convicted. This climate of impunity has fostered the thinking that the unabated bloody pattern targeting leftist activists stems from an official state policy that has placed murderous wrongdoers beyond the reach of the law.

To address the problem, high on the Supreme Court summit's list of priority recommendations for "wholistic solutions" is the passage of a law punishing superior officers for the acts of subordinate members or other persons subject to their control under the principle of command responsibility.

This will create a legal duty on the part of commanding officers to take the necessary measures to prevent human right violations and to punish the perpetrators thereof. This is in line with the Chief Justice's thrust to strengthen the rule of law by making legal procedures "more helpful to the victims, more forceful against the suspected perpetrators, and more demanding of State agents to solve and prevent such crimes."

The doctrine of command responsibility has long become part of customary international law. It has since been continuously refined and expanded in many jurisdictions, especially with the creation of the International Criminal Court to combat impunity for war crimes, crimes against humanity and genocide. While the Philippines has yet to ratify the ICC treaty, it however adopts the generally accepted principles of international law as part of the laws of the land, which makes the doctrine of command responsibility an essential part of the country's domestic law.

The Additional Protocol I of the Geneva Convention states thus: "The fact that a breach of the Conventions or this Protocol was committed by a subordinate does not absolve his superiors from responsibility if they knew, or had information which should have enabled them to conclude in the circumstances at the time that he was committing or about to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach." Further, the International Criminal Tribunal for the former Yugoslavia Article 7(3) establishes that crimes committed by a subordinate do not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

Domestically, Executive Order 226 issued by President Fidel V. Ramos on 17 February 1995 states that, "Any (AFP) officer shall be held accountable for neglect of duty under the doctrine of command responsibility, if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during or immediately after its commission."

The principle of command responsibility was first applied in the country in the wartime case of *Yamashita vs. Styer* (G.R. No. L-129, 19 December 1945). However, the principle has subsequently disappeared in Philippine jurisprudence even if it remains much wanting in the prosecution of criminal cases.

This bill seeks to address this deficiency.

The bill provides for a legal basis to make superior officials culpable for the acts of their subordinates under the doctrine of command responsibility. It upholds the ethos of responsible leadership and accountability – that government officials must be called to account for their acts, especially murders of political activists and journalists in their jurisdictions, instead of hiding behind the cloak of due process

to avoid criminal responsibility. It seeks to integrate the principle and practice of command responsibility into our justice and political systems, in harmony with existing laws and international law.


The immediate passage of this bill is highly encouraged in order to address the problem of extra-judicial killings in the Philippines and for the strict protection and enforcement of constitutional rights- which first and foremost is the right to life.


M. A. MADRIGAL

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5 S E N A T E

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11 AN ACT
12 PUNISHING GOVERNMENT OFFICIALS OR SUPERIORS
13 FOR CRIMES OR OFFENSES COMMITTED BY THEIR SUBORDINATES
14 UNDER THE PRINCIPLE OF COMMAND RESPONSIBILITY
15

16
17
18 **Section 1. Title.** – This Act shall be known as the “Command Responsibility Act of
19 2007.”

20
21 **Sec. 2. Policy.** – It shall be the policy of the State:

- 22 A. To uphold the Constitutional principle that public office is a public trust;
- 23
- 24
- 25 B. To implement the basic Constitutional premise that public employees must
26 at all times be accountable to the people, serve them with utmost
27 responsibility, integrity, loyalty and efficiency, and act with patriotism and
28 justice; and
- 29
- 30 C. To make public officials and superiors accountable for the acts of their
31 subordinates under the principle of Command Responsibility.
- 32

33 **Sec. 3. Definition of Terms.** – The following terms shall mean:

- 34
- 35 A. **Command Responsibility** – is the responsibility of an official or superior for
36 crimes or offenses committed by their subordinates subject to their effective
37 control or supervision or which their subordinates were about to commit or
38 have committed, and such official or superior did not take measures to
39 prevent such commission of crimes or offenses, or having learned about
40 such crimes or offenses did not act to prevent and punish the offending
41 subordinates.
- 42
- 43 B. **Official/Superior** – is the person who has actual powers to exercise effective
44 control over the actions of their subordinates considering their position,
45 their capacity to issue orders, the procedure for appointment; and the tasks
46 that their subordinates are performing; and that they have the material
47 ability to prevent and punish criminal acts of their subordinates. The control
48 may be *de jure* or *de facto* and the official/superior may be military or civilian.

1
2 C. Subordinate – is the person or persons under the effective control of the
3 official/superior.
4

5 **Sec. 4. Scope.** – This law shall apply to all employees of the government whether in
6 the executive, legislative and judicial branches and all their agencies and
7 instrumentalities as well as in all Constitutional Commissions.
8

9 **Sec. 5. Application of Command Responsibility.** – Any government official or
10 superior shall be responsible for the crimes or offenses committed by their
11 subordinates if the official or superior has knowledge that a crime will be
12 committed or has been committed by their subordinate and, despite such
13 knowledge, did not take any measures to prevent such commission of crimes or
14 offense, and having learned about such crime or offense did not act to prevent and
15 punish the offending subordinate.
16

17 **Sec. 6. Responsibility of Military Commanders and Superiors.** –
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19 A. A military officer or person effectively acting as a military commander shall
20 be criminally responsible for crimes committed by forces under their
21 effective command and control, or effective authority and control as the case
22 may be, as a result of their failure to exercise control properly over such
23 forces, where:
24

- 25 1. That military commander or person either knew or, owing to the
26 circumstances at the time, should have known that the forces were
27 committing or about to commit such crimes; and
28
- 29 2. That military commander or person failed to take all necessary and
30 reasonable measures within his or her power to prevent or repress their
31 commission or to submit the matter to the competent authorities for
32 investigation and prosecution.
33

34 B. With respect to superior and subordinate relationships not described in
35 Section 5.A, a superior shall be criminally responsible for crimes committed
36 by subordinates under his or her effective authority and control, as a result
37 of his or her failure to exercise control properly over such subordinates,
38 where:
39

- 40 1. The superior either knew, or consciously disregarded information which
41 clearly indicated, that the subordinates were committing or about to
42 commit such crimes;
43
- 44 2. The crimes concerned activities that were within the effective
45 responsibility and control of the superior; and
46
- 47 3. The superior failed to take all necessary and reasonable measures within
48 his or her power to prevent or repress their commission or to submit the

1 matter to the competent authorities for investigation and prosecution

2
3 **Sec 7. Presumption of Knowledge.** – A government official or superior is presumed
4 to have knowledge of the crime committed by his or her subordinates when any of
5 the following circumstances are present:

6
7 A. When the same crime was committed by his or her subordinates two or
8 more times in one year, whether or not the said offenses were committed by
9 the same subordinate;

10
11 B. When the crime committed by the subordinate was pursuant to a policy
12 being implemented by the official or superior whether or not said policy is
13 in writing; and

14
15 C. When the crime was committed in compliance with the order of the
16 superior, albeit only the intended result was manifested to the subordinate.
17

18 **Sec. 8. Penalties.** – For violation of the acts stated in Sections 4 and 5, the following
19 penalties may be imposed:

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21 A. Imprisonment for a specified number of years, which may not exceed a
22 maximum of thirty (30) years; or

23
24 B. A term of life imprisonment when justified by the extreme gravity of the
25 crime and the individual circumstances of the convicted person.
26

27 In addition to imprisonment, the Court may impose:

28
29 C. A fine; or

30
31 D. Forfeiture of proceeds, property and assets derived directly or indirectly
32 from that crime, without prejudice to the rights of bona fide third parties.
33

34 In all cases, the penalty provided shall carry with it the accessory penalty of
35 perpetual disqualification from holding public office.
36

37 **Sec. 9. Separability Clause.** – If any part, section or provision of this Act shall be
38 held invalid or unconstitutional, the other provisions shall not be affected thereby.
39

40 **Sec. 10. Repealing Clause.** – All other acts, laws, executive orders, presidential
41 issuances, rules and regulations or any part thereof which are inconsistent
42 herewith are hereby deemed repealed or modified accordingly.
43

44 **Sec. 11. Effectivity Clause.** – The provisions of this Act shall take effect fifteen (15)
45 days from its publication in the *Official Gazette* or in at least two (2) national
46 newspapers of general circulation.
47

48 **Approved,**
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