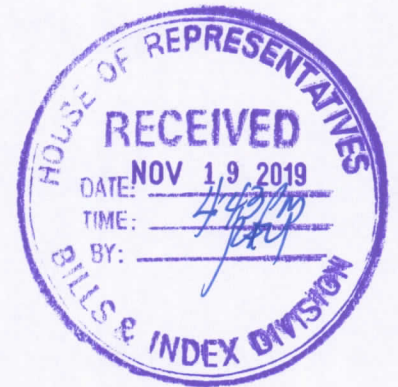


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 5552



Introduced by
BAYAN MUNA Representatives CARLOS ISAGANI T. ZARATE,
FERDINAND R. GAITE and EUFEMIA C. CULLAMAT

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. Despite the 27,000 drug suspects killed, as claimed by the civil society and media groups, or the 6,000 suspects killed, as admitted by the Philippine National Police (PNP), under the Duterte administration's campaign against drugs, only the perpetrators of the murder of Kian Lloyd delos Santos has so far been punished by the law.¹ Also, according to rights watchdog Karapatan, there are 250 cases of extrajudicial killings and 392 frustrated extrajudicial killings under the Duterte administration alone, apart from the extrajudicial killings related to drugs. Meanwhile, since the presidency of the late dictator Ferdinand Marcos in 1965, and, up to the present administration of President Duterte, there are more than 1,890 victims of enforced disappearance; yet their families remain 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:

¹ <https://www.philstar.com/headlines/2019/07/19/1936097/revised-drug-war-death-toll-thousand-less-previous-figure>
<https://news.mb.com.ph/2019/07/18/human-rights-groups-kin-of-ejk-victims-calls-on-government-to-stop-abusive-acts/>

1 *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without*
2 *distinction of any kind, such as race, colour, sex, language, religion, political or other*
3 *opinion, national or social origin, property, birth or other status.*
4

5 Specifically, the government is obligated under Section 2 of the International Covenant on
6 Civil and Political rights in this wise:
7

8 *2. x x x each State Party to the present Covenant undertakes to take the necessary steps, x x x*
9 *, to adopt such laws or other measures as may be necessary to give effect*
10 *to the rights recognized in the present Covenant.*
11

12 *3. Each State Party to the present Covenant undertakes:*
13

14 *a. To ensure that any person whose rights or freedoms as herein recognized are violated*
15 *shall have an effective remedy, notwithstanding that the violation has been committed by*
16 *persons **acting in an official capacity**;*
17

18 Military involvement in extrajudicial killings was already established in the past. For
19 example, the Melo Commission released a report submitted to the then Arroyo
20 administration linking state security forces to the murder of militants and recommended
21 that military officials, notably retired Major General Jovito Palparan, be held liable under
22 the principle of command responsibility for killings in their areas of assignment. Even UN
23 Special Rapporteur Phillip Alston in his report on extrajudicial summary or arbitrary
24 executions in the Philippines said that the counter-insurgency program of the Philippine
25 Government has led to the numerous cases of extrajudicial killings of activists. Despite this,
26 not one case was ever solved, and the killings continue.
27

28 A more recent case is the series of extrajudicial killings in Negros. Since the intensified red-
29 tagging and vilification on members of progressive groups, mass organizations and critics
30 of the government, and, the implementation of Memorandum Order No. 32, there is a
31 disturbing rise in the recorded number of human rights violations, particularly the killings
32 of human rights workers and farmers in the regions and provinces stated in the
33 memorandum. Defend Negros Movement recorded a total of 87 individuals killed since
34 2017, wherein 15 were killed between July 23 and 28 this year. Among those killed were a
35 lawyer, a school principal, a Department of Education division chief and even a one-year-
36 old boy.² The relatives and neighbors of the victims and the witnesses pointed out the
37 uniformed military and police as the perpetrators of the killings. As a matter of fact, the
38 PNP even branded the killings of 14 farmers and habal-habal drivers and the arrest of 12
39 others as a legitimate operation under the second wave of Oplan Sauron, a joint police-
40 military operations. The killings occurred pre-dawn in Canlaon City and the town of Sta.
41 Catalina in Negros, without the raiding team members presenting any search warrant to
42 the victims and the members of their family.

² <https://www.philstar.com/headlines/2019/07/31/1939464/negros-oriental-top-cop-sacked-amid-series-killings-province>

1
2 One of the major reasons for this state of impunity is the lack of accountability and
3 prosecution of military commanders for the acts of their subordinates despite widespread
4 charges of the responsibility of many of their officers and personnel. This lack of
5 accountability on the part of military commanders and superiors is what this bill on
6 command responsibility seeks to address.

7
8 The concept of command responsibility is not alien to the Philippine notion of justice and
9 accountability. In 1945, the infamous General Tomoyuki Yamashita was charged and
10 convicted with unlawfully disregarding and failing to discharge his duty as a commander to
11 control the acts of members of his command by permitting them to commit war crimes in
12 the Philippines. His case has since become a precedent regarding the command
13 responsibility for war crimes and is known as the Yamashita Standard.

14
15 In fact, the Philippines ratified the Additional Protocol II to the Geneva Conventions
16 which expressly requires under Article 86 (2) that the fact that a breach of the convention
17 or of the Protocol was committed by a subordinate does not absolve his superiors from
18 penal or disciplinary responsibility, as the case may be, if they knew, or had information
19 which should have enabled them to conclude in the circumstances at the time, that he was
20 committing or was going to commit such a breach and if they did not take all feasible
21 measures within their power to prevent or repress the breach.

22
23 Admittedly, the difficulty of applying command responsibility in criminal prosecution in the
24 Philippines stems from the fact that there is no Philippine law on the matter.

25
26 This bill was first filed in the 15th Congress by Bayan Muna Reps. Teddy Casino and Neri
27 Colmenares in response to the grievous unresolved extrajudicial killings in the aftermath of
28 the Arroyo administration.

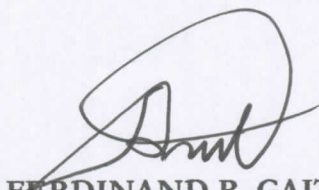
29
30 However, the continuing extrajudicial killings and impunity makes this bill significant today.
31 It is high time for Congress to contribute in efforts to stem the escalating human rights
32 violation by enacting a law that will ensure accountability on the part of military officers by
33 penalizing their acts or omission in preventing, if not punishing, human rights offenses by
34 their subordinates.

35
36 Hence, we earnestly urge the passage of this bill into law.

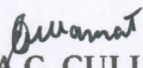
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39 *Approved,*

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45 **REP. CARLOS ISAGANI T. ZARATE**
Bayan Muna Partylist

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REP. FERDINAND R. GAITE
Bayan Muna Partylist



REP. EUFEMIA C. CULLAMAT
Bayan Muna Partylist

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3 Quezon City

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15

16
17 **AN ACT**
18 **PUNISHING MILITARY COMMANDERS OR SUPERIORS FOR CRIMES**
19 **OR OFFENSES COMMITTED BY THEIR SUBORDINATES UNDER THE**
20 **PRINCIPLE OF COMMAND RESPONSIBILITY**
21

22
23 *Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*
24

25 **Section 1. Title.** – This Act shall be known as the **Command Responsibility Act.**
26

27 **Section 2. Policy.** – It shall be the policy of the State to:
28

- 29 a. Ensure obedience to the Constitutional principle that civilian authority is, at all
30 times, supreme over the military; that the Armed Forces of the Philippines is the
31 protector of the people; and that public officers and employees must at all times be
32 accountable to the people.
33 b. Uphold the policy that the State values the dignity of every human person and
34 guarantees full respect for human rights.
35 c. Address impunity by making military commanders or superiors accountable for the
36 acts of their subordinates under the principle of Command Responsibility.
37

38 **Section. 3. Definition of Terms.** – For purposes of this Act, the following terms shall
39 mean:
40

- 41 a. **Command Responsibility.** – is the criminal responsibility of a military commander
42 or superior for a crime or offense committed by a subordinate under his or her
43 effective command and control if the commander or superior knew or under the
44 circumstances should have known that the subordinate committed, was committing

1 or about to commit such crime or offense and he or she failed to take all the
2 necessary and reasonable measures to prevent or repress such acts, or submit the
3 matter to competent authorities for investigation and prosecution, as the case may
4 be.

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

19
20 **Section 4. *Scope.*** – This law shall apply to all military commanders or superiors of the
21 AFP including those commanding its civilian agents or paramilitary forces established or
22 employed by the AFP. Provided, that nothing in this act shall be construed as holding a
23 commander or superior criminally liable for personal crimes committed by a subordinate.

24
25 **Section 5. *Direct Liability.*** – Any person, including the military commander or superior
26 himself or herself, who actually participated in any crime or offense in any manner, either
27 by planning, instigating, ordering, committing, aiding, abetting or otherwise, giving rise to
28 liability under this Act, shall continue to be separately liable for the crime committed under
29 existing laws.

30
31 **Section 6. *Responsibility of a Military Commander or Superior.*** –

- 32
33 a. It is the responsibility of military commanders or superiors to properly command,
34 control and supervise their subordinates. A military commander or superior is
35 responsible for the proper performance by his or her subordinates of their duties.
36 He or she has completed and overall responsibility for all activities within his or her
37 unit or of those under his or her effective command and control, and is therefore
38 responsible for everything his or her unit or subordinate does or does not do. It is
39 the duty of a military commander or superior to give clear and concise orders within
40 the bounds of the law and ensure that the same is properly understood by his or her
41 subordinates.
- 42 b. Any person acting as a military commander or superior shall be criminally liable for
43 crimes committed by a subordinate under his or her command and control, where
44 the commander or superior knew or should have known that the subordinate
45 committed, was committing or about to commit such acts and he or she failed to

1 take all necessary and reasonable measures to prevent or repress such acts, or to
2 punish the perpetrators or submit the matter to competent authorities for
3 investigation and prosecution, as the case may be.

- 4 c. Other superior officers or those higher in the chain of command of the immediate
5 military commander or superior, including the commander-in-chief, of the
6 subordinate who committed, was committing or is about to commit a crime, shall
7 be criminally responsible for crimes committed by subordinates under his or her
8 effective authority and control, as a result of his or her failure to exercise control
9 properly over such subordinates, where:

10 a. The superior either knew, or disregarded information which clearly
11 indicated, that the subordinates committed, were committing or about to
12 commit such crimes. Complaints in the Commission on Human Rights,
13 courts or complaints submitted to the AFP and reports of the media or
14 other government agencies shall form part of the information referred to in
15 this Act;

16 b. The crimes concerned activities that were within the effective responsibility
17 and control of the superior; and

18 c. The superior failed to take all necessary and reasonable measures to prevent
19 or repress their commission or to submit the matter to the competent
20 authorities for investigation and prosecution.

21
22 **Section 7. *Presumption of Knowledge.*** – A military commander or superior is presumed
23 to have knowledge of the crime committed by his or her subordinate when any of the
24 following circumstances are present:

25
26 a. The same crime is committed by his or her subordinates two or more times in one
27 year, whether or not the said offenses were committed by the same subordinate;

28 b. Crimes, whether or not the same, are repeatedly committed by his or her
29 subordinates during the course of his or her career as a military commander or
30 superior.

31 c. When the crime committed by the subordinate is pursuant to a policy being
32 implemented by the commander or superior whether or not said policy is in writing;
33 and

34 d. When the crime is committed in compliance with the order of the commander or
35 superior, albeit only the intended result was manifested to the subordinate.

36
37 **Section 8. *Penalties.*** – For acts provided under Sections 6 (b) and (c), the following
38 penalties shall be imposed:

- 39
40 a. Imprisonment for at least ten (10) years up to life imprisonment. **Provided**, that the
41 Court in the determination of the appropriate term for imprisonment, shall consider
42 the gravity of the crime committed by the subordinate, the extent of the military
43 commander's or superior's own personal involvement in said crime or the
44 seriousness of the failure to perform his or her responsibilities. **Provided further**,
45 that if the crime was committed by the subordinate through the behest or command

1 of the commander or superior, the maximum penalty of life imprisonment shall be
2 imposed;

3 b. A fine of at least One Hundred Thousand Pesos (P100,000.00); or both fine and
4 imprisonment, at the discretion of the court;

5 c. Forfeiture of proceeds, property and assets derived directly or indirectly from the
6 crime committed by the subordinate, if any, without prejudice to the rights of the
7 private offended party;

8 d. Perpetual disqualification from holding public office; and

9 e. Loss of all retirement and separation benefits from the Government, if any.

10
11 **Section 9. *Prescription.*** – The offense of command responsibility under this Act shall not
12 prescribe.

13
14 **Section 10. *Separability Clause.*** – If any part, section or provision of this Act shall be
15 held invalid or unconstitutional, the other provisions shall not be affected thereby.

16
17 **Section 11. *Repealing Clause.*** – All other acts, laws, executive orders, presidential
18 issuances, rules and regulations or any part thereof which are inconsistent herewith are
19 hereby deemed repealed or modified accordingly.

20
21 **Section 12. *Effectivity Clause.*** – The provisions of this Act shall take effect fifteen (15)
22 days from its publication in at least two (2) national newspapers of general circulation.

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24
25 *Approved,*