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SENATE

S.B. NO. 2608

RECEIVED BY: 

INTRODUCED BY SENATOR VILLAR

EXPLANATORY NOTE

The maxim "*A Public Office is a Public Trust*" carries great weight and imply sense of duty and responsibility. The higher is the office, the greater is the authority or power and the misuse or abuse of this power is not only a gross breach of trust but also a crime against the people.

Command responsibility as a concept has been clearly defined and adhered to as a doctrine under public international law especially with the creation of the International Criminal Court (ICC). Under the pertinent provisions of the Rome Statute, the ICC aims to combat impunity for war crimes, crimes against humanity and genocide. The adoption of the generally accepted principles of international law as part of the laws of the land pursuant to the Constitution makes the doctrine of command responsibility an essential part of our laws in consonance with a recognized international commitment.

The issue of human rights violations in the country has been a subject of great concern. As reported by the U.S. State Department in its 2006 report, our very own security forces have been pointed to as responsible for serious human rights abuses despite the efforts of civilian authorities specially the Commission of Human Rights to control them. In making the officers of our armed services liable for crimes committed by their subordinates with their knowledge and acquiescence shall prevent further violations of human rights and perpetration of enforced disappearances and extrajudicial killings.

The principle and practice of command responsibility must be institutionalized into our political system pursuant to the fundamental law, existing rules and the generally accepted principles of public international law. For this purpose, this bill provides for a legal basis to make government officials culpable for the acts of their subordinates and provides for a vinculum for government officials to be called to account for their acts, especially murders committed to silence political opposition and journalists.

In view of the foregoing, the passage of this bill is earnestly sought in order to address the need of our people for justice and accountability under a strong and living democracy.



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C. Subordinate - is the person or persons under the effective control of the official/superior.

Sec. 3. Scope. - This law shall apply to all employees of the government whether in the Executive, Legislative and Judicial branches, Constitutional Commissions and all government owned and controlled corporations.

Sec. 4. Application of Command Responsibility. - Any government official or superior shall be responsible for the crimes or offenses committed by their subordinates in relation to their function or office if the official or superior has knowledge that a crime will be committed or has been committed by their subordinate and, despite such knowledge, did not take any measures to prevent such commission of crimes or offense, and having learned about such crime or offense did not act to prevent and punish the offending subordinate.

Sec. 5. Responsibility of Military Commanders and Superiors. -

A. A military officer or person effectively acting as a military commander shall be criminally responsible for crimes committed by forces under their effective command and control, or effective authority and control as the case may be, as a result of their failure to exercise control properly over such forces, where:

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

B. With respect to superior and subordinate relationships not described in Section 5.A, a superior 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:

1. The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
2. The crimes concerned activities that were within the effective responsibility and control of the superior; and
3. The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution

Sec. 6. Penalties. -For violation of the acts stated in this Act, the following penalties may be imposed:

- A. Imprisonment for a specified number of years, which may not exceed a maximum of twenty (20) years; or
- B. Forfeiture of proceeds, properties and assets derived directly or indirectly from the commission of the crime, without prejudice to the rights of bona fide third parties.

Provided that, in all cases, the penalty provided shall carry with it the accessory penalty of perpetual disqualification from holding public office.

Sec. 7. *Implementing Rules and Regulations.* - Within sixty (60) days from the effectivity of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the Department of Justice, jointly with the Armed Forces of the Philippines, Philippine National Police, Civil Service Commission and the Office of the Government Corporate Counsel. The said rules and regulations shall provide for the parameters underwhich the provisions of this Act shall be enforced.

Sec. 8. *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.

Sec. 9. *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.

Sec. 10. *Effectivity Clause.* -The provisions of this Act shall take effect fifteen (15) days from its publication in the ***Official Gazette*** or in at least two (2) national newspapers of general circulation.

Approved,