DEPARTMENT OF THE ARMY
HEADQUARTERS, EIGHTH ARMY
UNIT #15236
APO AP 96205-5236

REPLY TO
ATTENTION OF

EACG

0 9 DEC. 2013

MEMORANDUM FOR All Eighth Army Assigned Soldiers, Family Members and Civilian Employees

SUBJECT: Eighth Army Command Policy Letter #11, Sexual Harassment/Assault Response and Prevention (SHARP) Program

1. References:

a. Army Directive 2013-21, Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses, 7 November 2013.

b. Army Directive 2013-20, Assessing Officers and Noncommissioned Officers on Fostering Climates of Dignity and Respect and on Adhering to the Sexual Harassment/Assault Response and Prevention Program, 27 September 2013.

c. Army Directive 2011-19, Expedited Transfer or Reassignment Procedures for Victims of Sexual Assault, 03 October 2011.

d. MILPER Message 13-306, Changes to the evaluation reporting system in response to Army directive 2013-20, 22 October 2013.

e. MILPER Message 12-066, Transfer or Reassignment Procedures for Victims of Sexual Assault.

f. Army Regulation (AR) 27-10, Military Justice, 3 October 2011.

g. Army Regulation 600-20, Army Command Policy, 18 March 2008 (incorporating Rapid Action Revision, 20 September 2012).

h. Army Regulation 614-100, Officer Assignment Policies, Details, and Transfers, 10 January 2006.

i. Army Regulation 614-200, Enlisted Assignments and Utilization Management, 26 February 2009 (incorporating Rapid Action Revision 002, 11 October 2011).

j. Army Regulation 690-12, Equal Employment Opportunity and Affirmative Action, 4 March 1988.

k. DoD Directive 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," 23 January 2012.

l. DoD Instruction 6495.02, "Sexual Assault Prevention and Response (SAPR) Program Procedures," 28 March 2013.

m. Secretary of Defense Memorandum, SUBJECT: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases, 20 April 2012.

n. United States Forces Korea Regulation 600-20, Sexual Assault Prevention and Response Program, 24 October 2012.

o. United States Forces Korea Command Policy Letter #1, Zero Tolerance Policy.

p. United States Forces Korea Command Policy Letter #10, Sexual Assault Prevention and Response.

q. 8A OPORD 69-13, Responsible Conduct.

r. Commander, United States Army Pacific (USARPAC) Memorandum, SUBJECT: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Sexual Assault Offenses, 3 October 2013.

s. Commander, United States Army Pacific (USARPAC) Memorandum, SUBJECT: Collateral Misconduct by Victims of Sexual Offenses, 3 October 2013.

t. Department of the Army Guidelines and Process for Critical Command Information Requirements (CCIR) regarding Sexual Harassment and Assault Incidents, 11 October 2013.

u. Department of the Army Memorandum, SUBJECT: Office of the Judge Advocate General Policy Memorandum, #14-01, Special Victim Counsel, 1 November 13.

2. Purpose. Eighth Army provides a safe environment for all personnel assigned to or supporting this command. This policy promotes a command climate that encourages victims to report incidents of sexual harassment and sexual assault without fear, retribution, or intimidation. Soldiers are the cornerstones to our combat readiness in Korea, and providing a safe environment is essential to the successful execution of Eighth Army's mission.

3. Background.

a. AR 600-20, paragraph 7-4 states: Sexual harassment is a form of gender discrimination that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

b. AR 600-20, paragraph 8-4a states: Sexual assault is a criminal offense and is defined as intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender, spousal relationship, or age of victim. "Consent" is not deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, or coercion or when the victim is asleep, incapacitated, or unconscious.

4. Discussion.

a. Sexual harassment affects mission readiness, deters trust and interaction among individuals in the workplace, and creates a hostile working environment. Anyone is subjected to sexual harassment at anytime. Proactively promoting a program that centers on awareness, education, and prevention allows this command to eliminate incidents of sexual harassment.

b. Commanders, supervisors, and leaders at every level are responsible to provide a safe environment for those in their charge. Leaders are in the best position to mentor their subordinates in an effort to prevent incidents of sexual harassment and sexual assault before they occur. Personnel in command or supervisory positions will not use or condone such behavior to influence the career, pay, or job of a service member, family member, Department of Army Civilian, or Korean national. Leaders will inform individuals who are subjected to behavior of this nature to report it. Eighth Army leaders can make a difference by positively influencing the behavior of those in their commands.

c. Personnel in command, supervisors, and leaders at all levels must take action to eliminate risk factors for sexual harassment and sexual assault from all work areas, living quarters, and recreational facilities throughout the command. Leaders must ensure that their Soldiers and Civilian employees receive a briefing on the command's commitment to eliminate sexual harassment and sexual assault. Where prevention fails, commanders and leaders will ensure victims have access to prompt, professional, and compassionate care. All victims of sexual harassment or sexual assault are treated with dignity, fairness, and respect. Commanders, supervisors, and leaders become familiar with the Sexual Harassment/Assault Response and Prevention (SHARP) Program regulations, the duties and responsibilities of the Sexual Assault Response Coordinators (SARCs), Victim Advocates (VAs), and the Army Victim Witness (Liaison) Assistance Program (VWAP, see AR 27-10, Chapter 17).

d. The USFK Sexual Assault Hotline is the quickest way to report a sexual assault. To call the sexual assault hotline from any DSN line in Korea, dial the number "158" or to call from a commercial line, dial the number "0503-363-5700." (for callers from the Stateside: 011-82-53-470-5700). The automated message instructs the victim to press the number correlating to their assigned Area and the on-call SHARP SARC answers the telephone 24/7.

e. Service members and adult dependents of service members who are victims of sexual assault have two reporting options from which to choose. Restricted Reporting and Unrestricted Reporting.

(1) In accordance with AR 600-20, page 67, paragraph 8-4d, Unrestricted Reporting allows a Soldier, who is sexually assaulted, and desires victim advocacy, medical treatment, counseling, and an official investigation of his/her allegation to use their chain of command, law enforcement, SARC, or VA. Upon notification of a report sexual assault, the SARC is notified immediately to respond to the victim. Additionally, with the victim's consent, a Victim Advocate is assigned and the Sexual Assault Forensic Examination (SAFE) Examiner will conduct a physical exam and/or SAFE Examination, which include the collection of evidence. Details regarding the incident are limited to only those personnel who have a legitimate need to know.

(2) For Unrestricted Reporting, Criminal Investigation Division (CID)/Military Police Investigation (MPI) will include DD Form 2911, "DoD Sexual Assault Forensic Examination (SAFE) Report," in their sexual assault investigative reports if the victims select to have the SAFE done. The sexual assault investigative reports, including the DD Form 2911, are retained for 50 years from the date the sexual assault investigation is closed. If creating an electronic record, the DD Form 2911 is uploaded as part of the sexual assault investigative record. If the investigation is referred to another agency, CID/MPI will obtain disposition and final investigative reports and retain them for 50 years. Eighth Army Staff Judge Advocate conducts the final disposition of SAFE Kits consistent with service regulations.

(3) In accordance with AR 600-20, page 67, paragraph 8-4c, Restricted Reporting allows a Soldier, who is the sexual assault victim, on a confidential basis, to disclose the details of his/her assault to specifically identified individuals and receive victim advocacy, medical treatment and counseling without triggering the official investigative process. Command is not notified. Those specifically identified individuals include SARCs, VAs, Chaplains, or healthcare providers.

(4) For Restricted Reporting, a separate record retention system designed to honor and respect the Soldier's desire for confidentiality is used. The SAFE Kit, which includes the DD Form 2911, is retained for 5 years in a location designated by the Military Service concerned. The 5-year time frame will start from the date the victim signed the DD Form 2910, Victim Reporting Preferences Statement. The SARC retains a hard copy of the DD Form 2910 for 5 years from the date of the Restricted Report, consistent with DoD guidance for the storage of personally identifiable information (PII).

(5) Commanders will ensure that their SARCs comply with the requirement to at the 1-year mark of the Restricted Reporting to inquire whether the victim wishes to change their reporting option to Unrestricted. At least 30 days before the expiration of the 5-year storage period, the DoD law enforcement or Military Criminal Investigation Organization (MCIO) shall notify the installation SARC that the storage period is about to expire and confirm with the SARC that the victim has not made a request to change to Unrestricted Reporting or made a request for any personal effects.

(6) If the victim wishes not to change their Restricted Reporting option to Unrestricted Reporting, the SARC explains to the victim that the SAFE Kit, DD Form 2911, and the DD Form 2910 is retained for a total of 5 years from the time the victim signed the DD Form 2910 electing the Restricted Report and then is destroyed. The SARC emphasizes to the victim that privacy is respected without future contacts. The SARC stresses that the victim's responsibility remains with the victim from that point forward. If the victim wishes to change from a Restricted to an Unrestricted Report, she/he affirmatively contacts a SARC before the 5-year retention period elapses.

(7) The victim should keep a copy of the DD Form 2910 and the DD Form 2911 in their personal permanent records as these forms may be used by the victim in other matters with other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

5. **Expedite Transfer Request.** It is Eighth Army's policy that there is a presumption in favor of transferring or reassigning a sexual assault victim, at his/her request, following that victim's

credible report of sexual assault. A transfer or reassignment includes, but is not limited to, the victim's temporary or permanent movement to a unit within the same battalion or brigade, to a unit within the same division, to a unit on the same installation or to a unit at a different geographic location.

a. For the purpose of this policy, a report of sexual assault is credible when the commander (battalion or above), after considering all available evidence and the advice of a supporting legal advisor, concludes that there are reasonable grounds to believe that an offense constituting sexual assault is committed against the person requesting the transfer or reassignment. A credible report is limited to Unrestricted Reports of sexual assault.

b. Victims of sexual assault may not wish to remain in their current unit or organization after the sexual assault incident. Requiring them to remain in their current units when they have a desire to leave may negatively affect their safety and emotional well-being, as well as the functioning of the unit/organization. Expediting review of, and action on, a victim's request is an important component of a leader's response to a credible report of sexual assault.

c. Commanders and civilian leaders will consider requests for transfer or reassignment in an expedited manner. This policy applies to all Soldiers who report they are the victim of a sexual assault. The SHARP Program SARCs and VAs will take steps to ensure victims are informed of the policy.

d. Requests for a transfer or reassignment is in writing (DA form 4187) signed by the Soldier, Company Commander (CO) and endorsed by O-5 or higher. Victims are encouraged to include any and all of their concerns in the written request to aid the commander in understanding their needs and in making an appropriate decision. All Expedite Transfer requests are routed through Eighth Army G-1 to HRC. Eighth Army G1 SHARP office tracks all Expedite Transfer requests submitted from Korea.

e. Commanders will consider certain factors in determining whether a transfer or reassignment is appropriate and; if so, the lowest level of transfer or reassignment that meets both the needs of the victim and Eighth Army. The victim's concerns, the nature and circumstances of the offense, and operational necessity are all carefully weighed before a decision is made. Factors involving the alleged offenders are taken into account, such as the location and status (Soldier or civilian) of the alleged offender instead of the victim. Commanders will consider the status of the investigation and the potential impact of the victim's transfer or reassignment on the future disposition of the investigation. Any other pertinent circumstances or relevant factors may also be considered.

f. Commanders will take reasonable steps to prevent a transfer or reassignment from negatively impacting the victim's career. Prior to approving a request, the commander will ensure the victim is informed regarding reasonably foreseeable impacts on his/her career, the potential impact of the transfer or reassignment on the investigation and potential prosecution or initiation of other adverse actions against the alleged offender, or any other consequences. If the victim elects not to proceed with the request, he or she will withdraw the request in writing.

g. The Commanding Officer (CO) will expeditiously process a transfer request from a command or installation, or to a different location within the command or installation. The CO

will request and take into consideration the service member's input before making a decision involving a temporary or permanent transfer and the location of the transfer. If approved, the transfer orders will also include the service member's dependents.

h. The CO will approve or recommend disapproval of a service member's request for a Permanent Change Of Station (PCS), Permanent Change Of Assignment (PCA), or unit transfer within 72 hours from the time the Service Members initiated the request. The decision to approve the request is immediately forwarded to the designated activity that processes PCS, PCA, or unit transfers.

i. If the service member's transfer request is recommended for disapproval by the CO, the service member is given the opportunity to request review by the first General Officer in the chain of command of the member, or an Senior Executive Service (SES) equivalent (if applicable). The decision to approve or disapprove the request for transfer must be made within 72 hours of the victim's commander's recommendation of disapproval. If a civilian SES equivalent reviewer approves the transfer, the Secretary of the Military Department concerned will process and issue orders for the transfer.

j. If a commander cannot approve a request at his/her level of command, the victim's request is forwarded through the chain of command to the appropriate approving authority with each commander's recommendation. The commander recommending disapproval of a request will provide the reason(s) for the recommendation in writing. A victim's request is disapproved ONLY by the first General Officer in the victim's chain of command. When a victim requests transfer to another installation, the authority to disapprove that request is reserved to the Commander, U.S. Army Human Resources Command.

k. This policy does not encompass requests for transfer or reassignment following a victim's receipt of threats of bodily harm or death. Any such threat to a victim is reported immediately to the chain of command and law enforcement authorities. A victim's request under these circumstances is handled in accordance with AR 614-100, Officer Assignments Policies, Details, and Transfer, and AR 614-200, Enlisted Assignments and Utilization Management.

6. **Withholding Initial Disposition Authority under UCMJ in Sexual Offense Cases**.

a. Secretary of Defense Memorandum, Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases, dated April 20, 2012, withheld initial disposition authority from all commanders who do not possess at least Special Court-Martial Authority and who are not in the grade of O-6 or higher with respect to the following alleged offenses: (i) rape, in violation of Article 120 of the UCMJ; (ii) sexual assault, in violation of Article 120 of the UCMJ; (iii) forced sodomy, in violation of Article 125 of the UCMJ; and (iv) all attempts to commit such offenses, in violation of Article 80 of the UCMJ. Additionally, this withholding policy applies to all other alleged offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof. The Special Court-Martial Convening Authority is responsible for determining what initial action is appropriate, to include whether further action is warranted and, if so, whether the matter should be resolved by court-martial, non-judicial punishment, or adverse administrative action.

b. Effective 17 October 2013, the Commander, USARPAC extended the withholding policy to commanders in the rank of Colonel who possess Special Court-Martial Authority initial disposition authority for all alleged offenses under Articles 120, 120a, 120b, and 120c of the UCMJ as well as all attempts to commit such offenses in violation of Article 80, UCMJ. Additionally, this withholding policy applies to all other alleged offenses arising from or related to the alleged commission of such offenses, whether committed by the alleged perpetrator or the alleged victim of the offenses.

c. Any convening authority, whether a Special Court-Martial Convening Authority or a General Court-Marital Convening Authority, who addresses an issue of collateral victim misconduct, must apply Rule for Courts-Martial 306 in determining how to dispose of the matter. This rule requires commanders to independently consider the totality of the circumstances surrounding an offense, including the character and record of military service of a victim. Justice, good order, discipline, and victim needs are all weighty considerations which shape a disposition decision. Convening Authorities must exercise independent judgment and broad discretion. Among other choices, they may decide to take no disciplinary action, resort to administrative measures, or pursue UCMJ proceedings. Judge advocates are available to provide advice when making decisions.

d. As to the timing of actions, in accordance with AR 600-20, paragraph 8-5o(24), Convening Authorities must determine "how to best dispose of alleged victim collateral misconduct, to include making the decision to defer the disciplinary actions regarding such misconduct until after the final disposition of the sexual assault case." Commanders and supervisors should take into account the trauma to the victim and respond appropriately so as to encourage reporting of sexual assault and the continued cooperation of the victim. In other words, Convening Authorities also have broad discretion as to when to implement any elected disposition.

7. **Evaluation Reporting System**. In accordance with (IAW) Army Directive 2013-20, dated 27 Sep 2013, any officer or noncommissioned officer whose rating period begins after 27 Sep 2013, the following changes are included into the Evaluation Reporting System:

a. Officers and noncommissioned officers will establish goals and assess on how the rated Soldier meets the commitments of fostering climates of dignity and respect and on adhering to the principles of the sexual harassment/assault response and prevention program in their daily activities.

b. All Officers and noncommissioned officers will include goals and objectives in furtherance of the above-referenced commitments when completing DA Form 67-9-1 (Officer Evaluation Report Support Form) or DA Form 67-9-1a or DA Form 2166-8-1 (NCOER Counseling and Support Form).

c. Rating officials will comment on evaluations of the rating chain responsible for the individual, (within the sphere of influence - up to two levels above the organization) where a substantiated incident occurred, noting any incidents and explaining actions taken.

8. **Critical Command Information Requirements.** Sexual harassment and sexual assault allegations and offenses involving (1) a commander in the grade of O-6 or above, (2) SARC, VA

or other SHARP Program staff member, (3) "Curious" Cases (e.g. numerous reports of sexual assault from a single unit), or (4) High Media Attention Likely (e.g. local news report on a sexual harassment or sexual assault allegation that is feasibly picked up by a major reporting medium) must be reported within 24 hours to Eighth Army G-1, USARPAC and Department of the Army (HQDA) G-1.

9. **Prohibition of Overseas Assignments of Convicted Sex Offenders**. IAW Army Directive 2013-21, the Army prohibits the overseas assignment or reassignment of any Soldier convicted of a sex offense. Commanders will initiate the administrative separation of any Soldier convicted of a sex offense, as defined in Title 42, United States Code, section 16911 or AR 27-10, dated 3 October 2013, whose conviction did not result in a punitive discharge or dismissal. However, these Soldiers are reassigned or redeployed to a CONUS or permitted OCONUS location. The receiving commander will ensure the initiation of separation.

10. **Special Victim Counsel**. Commanders will ensure that the sexual assault victims are aware they are entitled to their own Special Victim Counsel (SVC) who will provide responsive and timely support throughout the investigation and judicial proceedings.

11. Training.

a. An essential component for sexual harassment and sexual assault prevention is the awareness training that all personnel receive upon arrival at the 1st Replacement Company Reception Center and 2d Infantry Division Warrior Reception Center.

b. Company and higher-level commanders and First Sergeants will receive SHARP desk-side briefing and training from MSC SARCs within 45 days of assuming their respective leadership roles.

c. Senior Leader's training are conducted for all commanders and senior leaders annually.

d. Commanders are responsible for the annual unit level training at every unit and staff level. The training will demonstrate the entire cycle of reporting, prevention, response, and accountability. Additionally, Commanders will conduct Department of Defense and Department of Army directed training and leader engagements.

e. Additionally, commanders and senior leaders are responsible for sexual harassment and sexual assault training at their command's newcomers briefing, holiday and safety briefings, "Under the Oak Tree" informal counselings, and during pre- and post- deployment training.

12. A copy of this policy is displayed on all official bulletin boards and circulated among all Eighth Army personnel.

13. Applicability. This policy letter applies to all Soldiers and Civilian employees assigned to Eighth Army and its Major Subordinate Commands (MSCs), invited contractors and technical representatives that provide support to Eighth Army and its MSCs, and adult dependents of the aforementioned personnel.

14. Proponent. The proponent of this policy is the Eighth Army G1 SHARP Program Office at commercial 011-822-7914-6095 or DSN 315-724-6095.

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Commanding