

IPS 1-12 Volunteer/Trainee Sexual Misconduct

Effective Date: July 3, 2019

Responsible Offices: Office of Sexual Assault Risk Reduction and Response, Office of the General Counsel, Office of Global Operations, Office of Safety and Security, Office of Health Services, and Office of Victim Advocacy

Supersedes: 07/01/13

Issuance Memo (07/01/2013)

Issuance Memo (07/03/2019)

IPS 1-12 *Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct*

1.0 Authority

22 U.S.C. §2504(a).

2.0 Purpose

- (a) This policy covers Sexual Misconduct (as defined in paragraph 3.0 below) by Volunteers and Trainees. Sexual Misconduct comprises a broad range of behavior that will not be tolerated in the Peace Corps. The Peace Corps is committed to providing an environment free from Sexual Misconduct.
- (b) The procedures for handling complaints of Sexual Misconduct by Volunteers or Trainees are set out in the *IPS 1-12 Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct*. Those procedures are designed to promote prompt reporting of all types of Sexual Misconduct by Volunteers and Trainees and to provide for a timely and fair resolution of Sexual Misconduct complaints.

3.0 Definitions

For purposes of this policy:

- (a) ***Sexual Misconduct*** means Rape, Aggravated Sexual Assault, Non-Aggravated Sexual Assault, Sexual Exploitation, or Stalking. Sexual Misconduct can occur between strangers or acquaintances (including people involved in an intimate or sexual relationship and people related by blood or marriage). Sexual Misconduct can be committed by men or by women and it can occur between people of the same sex or of different sexes.
- (b) ***Effective Consent*** means words or actions that show an affirmative, knowing, and voluntary agreement to engage in mutually agreed-upon activity.

- (1) **Withdrawal and Scope:** Effective Consent applies to a specific agreed upon activity. Consent to one form of sexual contact does not equal consent to any other form of sexual contact. Effective Consent is absent when the sexual contact in question exceeds the scope of the agreed upon sexual contact. Effective Consent can be withdrawn at any time.
- (2) Effective Consent cannot be gained:
 - (i) By force. Force means violence, physical force, threat, intimidation or coercion;
 - (ii) By ignoring or acting in spite of the objections of another (unless those objections have been knowingly and voluntarily withdrawn);
 - (iii) By pressuring another into an activity; or
 - (iv) By taking advantage of the Incapacitation of another if the accused knows, or a sober, reasonable person in position of the accused should have known, of such Incapacitation.
- (c) ***Incapacitation*** and ***Incapacitated*** mean the physical or mental inability to make informed, rational decisions to engage in sexual activity.
 - (1) Types of Incapacitation are as follows:
 - (i) Use of alcohol or drugs, whether voluntary or involuntary, that inhibits a person's decision making capacity, awareness of consequences, or ability to make informed judgments.
 - (A) The impact of alcohol and drugs varies from person to person. A person does not have to be intoxicated or drunk to be considered Incapacitated.
 - (B) Rather, Incapacitation is determined by a person's inability to fully understand the "who, what, where, why, or how" of the situation or activity.
 - (ii) A state of sleep, unconsciousness, or lack of awareness that sexual activity is occurring.
 - (2) Because Incapacitation may be difficult to discern Volunteers and Trainees are strongly encouraged, when in doubt, to assume that another person is Incapacitated and therefore unable to give Effective Consent.
 - (3) Being intoxicated, drunk or under the influence of drugs is not a defense to a complaint of Sexual Misconduct under this policy.

- (d) **Rape** means (i) any penetration or attempted penetration of the vagina or anus by a penis, tongue, finger or inanimate object that occurs without Effective Consent, or (ii) any contact between the mouth of one person and the genitals or anus of another person that occurs without Effective Consent. (See the definition of “Rape” in MS 243 *Responding to Sexual Assault*)
- (e) **Aggravated Sexual Assault** means the (i) deliberate touching, either directly or through clothing, of a person's genitalia, anus, groin, breast, inner thigh or buttocks (“intimate parts”) without Effective Consent; or (ii) causing a person to touch or contact, either directly or through clothing, another person’s genitalia, anus, groin, breast, inner thigh or buttocks without Effective Consent; or (iii) deliberately kissing or disrobing a person without Effective Consent, or (iv) attempts to carry out any of those acts; with (v) the use of force. (See the definition of “Aggravated Sexual Assault” in MS 243 *Responding to Sexual Assault*)
- (f) **Non-Aggravated Sexual Assault** means the (i) deliberate touching, either directly or through clothing, of a person's genitalia, anus, groin, breast, inner thigh or buttocks (“intimate parts”) without Effective Consent, or (ii) causing a person to touch or contact, either directly or through clothing, another person’s genitalia, anus, groin, breast, inner thigh or buttocks without Effective Consent; or (iii) deliberately kissing or disrobing a person without Effective Consent, or (iv) attempts to carry out any of those acts, (v) without the use of force. (See the definition of “Non-Aggravated Sexual Assault” in MS 243 *Responding to Sexual Assault*)
- (g) **Sexual Exploitation** means taking sexual advantage of another person without Effective Consent for one’s own benefit, or the benefit of a third party. Includes, without limitation:
- (1) causing or attempting to cause the Incapacitation of another person in order to engage in a sexual activity with such other person;
 - (2) causing the prostitution of another person;
 - (3) recording, photographing or sharing images of private sexual activity or the intimate parts of another person;
 - (4) engaging in voyeurism (which is defined as watching another person engaging in private sexual activity or exposed intimate parts under circumstances that would reasonably lead to an expectation of privacy);
 - (5) allowing third parties to observe private sexual acts; or
 - (6) knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.
- (h) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others or (ii) suffer substantial emotional distress. A “course of conduct” means threatening behavior

composed of more than one act across a period of time, however short, demonstrating a continuity of purpose. This behavior can include repeatedly maintaining unwanted visual or physical proximity to a person; conveying oral or written threats, implicitly threatening conduct, or any combination of these directed at or toward a person; or directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about a person.

- (i) *V/T* means Volunteer or Trainee.

4.0 Sexual Misconduct Policy

Sexual Misconduct by a V/T violates Peace Corps policy. A V/T who is found to have engaged in Sexual Misconduct, whether against another V/T or any other person, shall be subject to appropriate disciplinary action, as detailed in *IPS 1-12 Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct*.

If the Sexual Misconduct complaint involves Rape, Aggravated-Sexual Assault, and/or Non-Aggravated Sexual Assault, MS 243 *Responding to Sexual Assault*, is also applicable. The reporting V/T shall be offered all reporting options and services available under MS 243 *Responding to Sexual Assault*, if they have not yet been offered at the time of the report of Sexual Misconduct.

In cases of Sexual Misconduct that involves a Rape, Aggravated-Sexual Assault, and/or Non-Aggravated Sexual Assault, this policy may only be invoked if the report is designated a Standard Report pursuant to MS 243 *Responding to Sexual Assault*.

5.0 Complaints of Sexual Misconduct

5.1 Procedures for Handling Complaints by V/Ts

- (a) Any current or former V/T may report Sexual Misconduct concerning another V/T to Peace Corps. However, the Peace Corps can only take administrative action against the accused V/T if the reporting V/T was serving at the time of the Sexual Misconduct, and the accused V/T continues to serve as a V/T at the time the complaint is brought.
- (b) If the reporting V/T was serving at the time of the Sexual Misconduct, and the accused V/T continues to serve as a V/T at the time the complaint is brought, a complaint of Sexual Misconduct shall be handled in accordance with the *IPS 1-12 Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct*. If the accused V/T is no longer in service when the complaint is brought, Peace Corps will keep a record of the complaint. If the reporting V/T was not serving at the time of the Sexual Misconduct, but the accused V/T continues to serve, see Section 5.2 below.
- (c) So long as the accused continues to serve as a V/T, there is no time limit for making a report of Sexual Misconduct. Nevertheless, V/Ts are encouraged to report Sexual Misconduct immediately in order to maximize the Peace Corps' ability to obtain evidence and conduct a thorough, impartial and reliable investigation. Failure to promptly report

Sexual Misconduct may result in the loss of relevant evidence and witness testimony and may impair the Peace Corps' ability to enforce this policy.

- (d) Once a report of Sexual Misconduct has been made by a current or former V/T, Peace Corps will take timely and appropriate action, in accordance with this policy and the Procedures.
- (e) Peace Corps will not take any formal disciplinary action against an accused V/T unless the accused V/T is found to have engaged in Sexual Misconduct in accordance with the IPS 1-12 *Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct*. However, Peace Corps will take any interim measures, in accordance with the Procedures, it deems necessary to safeguard the privacy, safety and/or well-being of Volunteers or others. Additionally, nothing in this policy or the Procedures precludes a Country Director from taking disciplinary against an accused V/T for misconduct other than Sexual Misconduct.

5.2 Procedures for Handling Complaints by Non-Volunteer/Trainees

Any complaint of Sexual Misconduct brought against a V/T by a non-V/T, including a complaint brought by a Peace Corps staff member shall be handled in accordance with MS 204 *Volunteer Conduct*, and MS 284 *Early Termination of Service*, and reported to the Office of Inspector General (OIG) pursuant to MS 861 *Office of Inspector General*.

5.3 No Retaliation

- (a) It is a violation of Peace Corps policy for any V/T or staff member to:
 - (1) retaliate against any V/T bringing a complaint of Sexual Misconduct;
 - (2) retaliate against any other person cooperating in the investigation of, or testifying as a witness to, any allegation of Sexual Misconduct; or
 - (3) retaliate against any V/T accused of Sexual Misconduct.

For purposes of this policy, the terms "retaliate" and "retaliation" include intimidation, threats, harassment, unwarranted invasion of privacy or other adverse action threatened or taken against any such V/T or other person. However, the terms "retaliate" and "retaliation" do not include action taken in accordance with this policy and the IPS 1-12 *Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct* against a V/T who is found to have engaged in Sexual Misconduct or otherwise violated this policy or the IPS 1-12 *Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct*. Retaliation may result in disciplinary action independent of any disciplinary action taken in response to the underlying allegations of Sexual Misconduct.

- (b) Nothing in this policy shall preclude the Peace Corps from taking appropriate disciplinary action against a V/T who provides false information under this policy with the knowledge that it was false or with willful disregard for its truth or falsity. However, the absence of a

finding under this policy that a V/T engaged in Sexual Misconduct does not by itself mean that the V/T who brought the complaint provided false information.

5.4 Criminal and Other Investigations

- (a) Sexual Misconduct violates Peace Corps policy and may also violate criminal and other laws of the U.S. or the local jurisdiction in which the Sexual Misconduct took place. The bringing of a complaint of Sexual Misconduct and the handling of such complaint under the IPS 1-12 *Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct* are independent of any criminal or other investigation or proceeding.
- (b) A V/T is entitled to report Sexual Misconduct directly to OIG, and to relevant law enforcement agencies regardless of whether that V/T has brought a complaint of Sexual Misconduct under this policy.
- (c) Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations or reports are not determinative of whether Sexual Misconduct has occurred for purposes of this policy. Conduct may constitute Sexual Misconduct under this policy even if OIG, law enforcement agencies or other relevant authorities lack sufficient evidence of a crime and/or do not move forward with a criminal prosecution or if there is an acquittal of the accused in criminal proceedings.
- (d) No failure of the Peace Corps to follow any of the procedures contained in the IPS 1-12 *Procedures for Handling Complaints of Volunteer/Trainee Sexual Misconduct* will be a defense to a criminal prosecution.

6.0 Procedures

Procedures implementing this Interim Policy Statement must be developed under the direction and guidance of the Director for the Office of Sexual Assault Risk Reduction and Response, and must be approved by the Office of Global Operations, Office of Safety and Security, Office of Victim Advocacy, Office of Health Services, and Office of the General Counsel, and are subject to the final review and approval of the Office of Sexual Assault Risk Reduction and Response.

7.0 Effective Date

- (a) The effective date of this policy is the date of issuance.
- (b) Within two years following the effective date of the IPS 1-12 policy and procedures, the Peace Corps will engage in a collaborative review of the policy and procedures to ensure consistency with best practices in the field of sexual assault, and to ensure the policy and procedures are meeting the needs of Volunteers/Trainees and relevant agency stakeholders.