

35. It is also a particularly egregious error when, in disregard of OIOS's own rules (cited earlier), the procedure followed has in effect reversed the burden of proof to my serious prejudice.

36. I also take strong exception, as already stated, to the tendency of the report to hastily reach conclusions not based on evidence and to frame them through tendentious remarks and OIOS's own accounts of the views of anonymous persons. The report manifests a lack of professionalism, fairness and impartiality in its compilation.

Conclusion

37. Allow me to end by referring to the Recommendations in the OIOS report. I believe that Recommendation No. 1 reflects the general trend of laxity manifested throughout the report, both in terms of reasoning and legal procedure, when it refers to "unwanted touching", rather than sexual harassment. For the rest, even ignoring the procedural flaws, there is such a lack of evidence in relation to the two charges of misconduct that I trust that you will decide that the case be closed under the provisions of paragraph 11 (a) of ST/AI/379.

38. Since it is my view the report is seriously flawed, I could obviously not support Recommendation No. 3. Moreover, the recommendation, as with a lot of the report, pays scant attention to my interests and makes no reference to my reply to the report, equally part of the record. And I doubt that circulating material relating to this case to UNHCR staff would help the organisation move on.

39. With respect to Recommendation No. 5, may I respectfully quote from what I wrote in my message to staff on 28 May.

I am very disturbed by the fact that, in such cases, the concerned staff members may not always be able to receive the kind of advice which would allow them to have their complaints and concerns addressed promptly and in an effective way. It is every colleague's right to consult and to receive counselling and advice. However, the mechanisms we have in place may not be fully effective. To avoid unnecessary time lags in the future, UNHCR needs guidelines which include a clear definition of the elements of sexual harassment, illustrative examples of inappropriate behaviour and guidance on actions to be taken. I believe that if such guidelines had been available and followed in the case under investigation, the misunderstanding could have been clarified and the present situation avoided. I am consulting with some staff on how to use the very hard lessons of this experience positively, in order to ensure that staff members, in the future, are able to receive compassionate and professional assistance in a timely manner. I have therefore asked Joyce Mends-Cole, who has worked on gender equality and gender balance issues for some time, to look into this dimension, with a particular emphasis on learning lessons for the future.

Ruud Lubbers
21 June 2004

Mr. M. van der Stoel
 SV 's-Gravenhage,

2517

I received the OIOS report regarding your alleged misconduct and abuse of authority at UNHCR and other relevant information regarding these questions.

Sexual harassment has to be considered as a serious form of misconduct. In an international organisation like the UNHCR, disciplinary steps against persons found guilty of sexual harassment, in very serious cases even dismissal, are therefore appropriate. Moreover, the victims need help. In this connection I note that in the note you sent to the UNHCR staff on 28 May you underlined the need "to ensure that staff members, in the future, are able to receive compassionate and professional assistance in a timely manner".

On the other hand, there is also the need to ensure that the procedural rights of the alleged offender will be fully respected, that the investigation is objective and impartial and that a person will only be considered guilty of sexual harassment when there is solid and convincing evidence to support this conclusion. It is against this background that I have analysed the OIOS report regarding your case. I have come to the following conclusions :

1. On 3 June the Secretary-General sent you the OIOS report on its investigations. In his cover letter he refers to the procedures set out in the Administrative Instruction regarding Procedures for Dealing with Sexual Harassment St/AI/379 of 29 October 1992 which is clearly applicable in this case. Article 10 of this Administrative Instruction states i.a. that the alleged offender shall receive a copy of the complaint. In refusing to provide you with this document, OIOS clearly violated the Administrative Instruction by informing you that "pursuant to its own mandate, terms of reference and investigative protocols, there is no requirement to provide copies of complaints". Acting in this way, OIOS has acted against the universally accepted principle that a defendant has the right to know in so many words what he is accused of.
- As the accused person in this case, you were certainly entitled to receive full information regarding the OIOS terms of reference and investigative protocols. But OIOS failed to do this, thereby violating one of the most essential principles of correct procedure in cases like this.
- In this regard it is noteworthy that it is not clear from the report whether OIOS considers itself bound by the Administrative Instruction. And, if not, what its terms of reference are.