

18. OIOS posits four cases in this category:

Case "a" - the description here is incorrect. "a" informed me that she wanted to discuss matters outside the mandate of UNHCR, related to the issue of Palestinian refugees, which she wanted to talk over with me outside the office. It was not to "discuss her area of work with others". I offered her two possibilities: to meet each other in a café/restaurant or to come to my apartment. She preferred the second option. The statement is also incorrect where it reads: *"However, when she arrived, she discovered that no one else was present"*. She knew this would be the case since she had requested a one-to-one conversation on the Palestinian issues at my apartment. In my note to staff of 28 May 2004, I wrote truthfully (and protecting the staff-member in question): *"And indeed I do remember from my UNHCR experience one such case. It was in no way sexual harassment but I became aware at that time that she felt very uncomfortable. Therefore, I made an apology even in writing"*.

19. Cases "b" and "c" are for me speculation; they lack substance and supporting evidence. I have no recollection of such cases and no such person has ever drawn my attention to such a situation of discomfort as described.

20. Case "d" is not described in my note to all staff of 28 May for the simple reason that it was not about a UNHCR staff member. And beyond that, it was in no way comparable to Mrs. Brzak's allegation. Here I have no other comment other than that this was simply an invitation to sit down for a drink, which was not welcomed and declined. It had nothing to do with UNHCR and was a purely personal social encounter. Just to be accurate, I did not say "feeling alone", I said, "I am now alone" (after the long meeting and the dinner we had with a large group), referring to the fact that the first invitation for a drink was when I was still part of the group of participants of the retreat.

21. I must, however, repeat my serious reservations as to the legitimacy of this section of the report for the reasons given earlier. It is particularly troubling that in cases (b) and (c) the report can contain OIOS's interpretation of anecdotal and unsubstantiated allegations provided on the basis of anonymity (cf. paragraph 8, Rules and procedures applying to OIOS), without even statements being attached.

22. And there is another dimension to this pattern of conduct issue which OIOS chose apparently not to explore. This is the very different "pattern of conduct" that a number of UNHCR female staff urged OIOS to give attention to and which should have been examined if OIOS were really objectively interested in my pattern of conduct over the years. A series of messages started with one from Mrs. Christina Linnér, former Senior Coordinator on Refugee Children, presented to OIOS on 21 May and attached to a letter to Mr. Nair on 24 May 2004. And this was followed by other spontaneous initiatives:

- (a) Fax to Mr. Nair from Ms. Cindy Burns dated 25 May 2004;
- (b) Letter to Mr. Nair from Ms. Anita Bay-Bundegaard, Ms. Shoko Shimozawa and Ms. Carina van Eck dated 27 May 2004 (copied to the Secretary-General via Ms. Elisabeth Lindenmayer); and
- (c) Letter to the Secretary-General from Ms. Anne Dawson-Shepherd dated 1 June.

I should also like to mention that, in addition to the above colleagues, I maintain regular and professional contacts - often on a one-to-one basis - with the following other female colleagues: Wendy Chamberlin, Erika Feller, Hope Hanlan, Marjon Kamara and Pirkko Kourula. None of

them has ever indicated to me or others any cause for complaint in relation to a "pattern of conduct".

Alleged abuse of authority

23. This section of the report is stark in its allegations of "abuse" but accompanied by no real evidence of fact or justification in law. Paragraphs 46 and 47 refer to the fact that I discussed the case with my senior officials, some of whom were witnesses to the event in question. But from there the report jumps to the idea that these discussions involved putting pressure on people to influence their testimony or speak in my defence. In fact, discussions with management were designed to find the appropriate ways to protect the organisation from being enveloped in discussion of the allegations to the detriment of its mission. The investigation may not formally be required to follow all the constraints imposed by the notion of due process but surely there has to be substance behind claims as serious as these. Apart, perhaps, from libelling one staff-member with the remark that "he decided to play it safe", - a gratuitous insult based on nothing -, we read simply in paragraph 47 that "other" staff were afraid to discuss the case for fear of retaliation. This is pure supposition and seems also to suggest that OIOS did not really want to hear their views, since the investigators were so ready in a previous part of the report to offer anonymity to witnesses in return for their accounts. There are also unsupported and incorrect allegations that I sought to find out who was "cooperating with OIOS". The allegations in paragraphs 47 and 48 are again speculative or unduly general in their references to "other" staff, "other women", "many staff" and "senior manager".

24. Clearly, the leaks to the press on the allegations have damaged the interests of the parties and, of course, UNHCR. The rules to be applied to investigations by OIOS contain strict directives as to confidentiality and prohibit unauthorised disclosures. The leaks started on 18 May 2004 with an article in the New York Times referring to the complaint and reporting comments by Mrs. Brzak, albeit without mentioning her name. This was followed by a second article in the New York Times on 19 May and then two days later the media reported "four more official complaints of sexual harassment". It is confirmed by record that the media leak on Friday, 21 May about "four more" cases was reported by Mr. Bob Kroon, a Dutch Geneva-based freelance journalist. The same Mr. Kroon became very active again, in particular on 28 May, reporting on Dutch television about a telephone conversation between Mr. Nair and himself after circulation of my note to all staff.

25. Again, very early on Thursday, 3 June (European time), Mr. Kroon was the first to report that OIOS had completed its investigation. Early on Friday, 4 June, he revealed to Mr. Ron Redmond, Head of Public Information at UNHCR, that he had entertained regular contact with Mr. Nair up to 3 June. He even revealed the "human interest detail" that they practised their knowledge of Bahasa Indonesia and had mutual friends in Singapore. Mr. Nair apparently told Mr. Kroon that he had given the "final" report to the Secretary-General and described it as "rather negative" for the High Commissioner.

26. I will not speculate about those involved in the first leak to the New York Times. I consider it to be the responsibility of OIOS to look into these leaks to the media, the breach in confidentiality and the consequent damage caused to UNHCR, myself, my wife, my family and the Netherlands. I should add, however, that my attempts, as from 20 May, and following a written request by a group of field staff on 23 May to have the leaks investigated, including through the UNHCR Inspector-General, were vetoed by Mr. Nair on the grounds that to do so would affect the integrity of the OIOS activity or could be construed as an attempt to undermine their ongoing inquiries. I wrote to Mr. Nair asking for an explanation on his position and

suggesting that a refusal by OIOS to address the leaks might be construed as an attempt not to allow any efforts to end the leaks. The remarks in paragraph 48 of the report have to be read in the light of the above.

27. The note to staff of 28 May 2004 (referred to in report, paragraph 49) also has to be seen as a consequence of the leaks, which clearly put me in an impossible position vis-à-vis the staff as a whole and indeed the organisation as a whole. The confidentiality of the process had been breached and the complaint was now in the public domain. And it had furthermore become clear that the OIOS report, which we had understood was to be finalised on 24 May, would now not be completed before early June. It was my judgement that there was a real need to report to the staff on the position I was then placed in. I understood the dilemma before me and that I would have to refer to matters which were supposed to be confidential; however I considered that I had no alternative but to send the note given the state of confusion that had arisen, the speculation rife in the corridors of UNHCR and, not least, because of the wrong impression caused by the leaks and the lack of due process. The issue was affecting the capacity of the organisation to get down to work, not to speak of the reaction from the wider public vis-à-vis UNHCR. The note was an attempt to end speculation by providing the staff with an account of where the process was at that time and to address possible shortcomings in the organisation's approach to dealing with sexual harassment cases and in our awareness of the problem, including through promoting greater awareness and education of the staff. The note was in no way directed at silencing people or obstructing or influencing the investigation, and I do not believe a reading of it suggests any such intention.

28. Similarly, as encouraged by the relevant Administration Instruction, my letter to Mrs. Brzak of 26 May (referred to in a post script to the report) was a genuine and final attempt to achieve "reconciliation" through the path of informal resolution, initiated by Mr. Naveed Hussain, the former Chair of the Staff Council, as from Saturday, 22 May and reported to Mr. Nair on Monday, 24 May. It was not at all intended as an attempt to intimidate her or to "subvert" an investigation which was in progress.

29. In short, the evidence is lacking to suggest that I was attempting to subvert the investigation, influence its findings or intimidate those involved in it. Here I refer again to the burden of proof in such a case, referred to earlier.

30. Finally, in this connection, I again ask the question as to how a section of a report dealing with a complaint submitted to OIOS on a single case of alleged sexual harassment can relate to allegations of misconduct through abuse of authority. Assuming any merit in these allegations, which I deny, should there not have been a separate investigation on the basis of a separate complaint from a different source forming the subject of a separate preliminary enquiry? It seems to me that this aspect of the report is unrelated to Mrs. Brzak's complaint and that by joining the two a certain lack of clarity and confusion of roles have arisen. Indeed, paragraphs 48 and 49, and 58 show little evidence of having been written on the basis of any serious investigation.

Procedural errors and irregularities

31. Apart from the reservations expressed above as to the legitimacy in the OIOS report of the sections on Pattern of conduct and Abuse of authority, I would raise the fundamental question as to the propriety of the role of OIOS in this case. A procedure for dealing with allegations of sexual harassment is set out in ST/AI/379, referred to earlier. The Instruction encourages staff to resolve the problem by informal means and offers advice as to how this might be done. There is

also a formal investigative procedure which is described as being available where informal resolution is not appropriate or has been unsuccessful.

32. I myself continue to believe that this case should have been dealt with through the informal channel and that it is an appropriate case for such a procedure. Amicable reconciliation should always be pursued even during a formal procedure which then might be suspended. However OIOS does not seem interested in the reconciliation option, in spite of its being the preferred procedure according to the Administrative Instruction. Indeed, OIOS even seems to discredit, in its post script to the report, the reconciliation effort undertaken by Mr. Naveed Hussain, former Chair of the Staff Council and a close colleague of Mrs. Brzak, and referred to in my letter to the complainant. In short, Mr. Naveed Hussain, with the support of Mr. Yacoub El Hillo, my former Chef de Cabinet and also close to Mrs. Brzak, had proposed a meeting of "reconciliation", as they called it. Mr. Hussain explained that if there would be apologies from Mr. Blatter and myself, even when what happened was unintentional and the subject of misunderstanding, then, he believed Mrs. Brzak might accept such apologies and go for reconciliation. This possibility was brought to the knowledge of OIOS and subsequently Mr. Naveed Hussain was contacted by them. But it would not appear that OIOS encouraged such a reconciliation initiative. I was, and remain, of the view that it had to be considered as positive and in the interests of UNHCR, Mrs. Brzak and myself.

33. In order to keep this option open, I judged it important in my message to staff of 28 May to repeat Mrs. Brzak's own sentiment, as conveyed to me by Mr. Naveed Hussain. *"I ask most genuinely that we all move forward with ethical intention, civic-mindedness and respect"*. Regrettably, as stated above, OIOS seems to have distorted the intent of the personal and confidential letter I had delivered to Mrs. Brzak through Mr. Naveed Hussain in order to discredit me. Very telling in this regard is their omission to mention, in the post script to the report, that the reconciliation effort was in the first instance an initiative by Mr. Naveed Hussain, a reality which was fully known to them.

34. In any case, no informal procedure was carried out nor was it shown not to be appropriate, as required by the Administrative Instruction. This evaluation should presumably have been made by the ASG for Human Resources Management as it is to this person that a written request for an investigation is to be made (Para 8 ST/AI/379). Thus, by sending the complaint directly to OIOS, and through OIOS acting without the authority of the ASG for Human Resources Management, the preliminary stage of the process established under ST/AI/379 has seemingly been omitted; a significant flaw. In this respect, it is revealing that the preliminary enquiry by OIOS turned into a full investigation after only an interview with the complainant and "obtaining additional information" (unspecified), i.e. without any of the preliminary controls set out in the Administrative Instruction. (Report, paragraph 9). Moreover, paragraph 10 of the same Administrative Instruction requires (the mandatory "shall") that a copy of the complaint be given to the alleged offender. This has never been done in this case despite my request, documented in the report. This again has worked to my detriment since I feel I am defending myself in the dark. In fact, I was not formally informed of the investigation and its terms of reference. One wonders also whether OIOS should not have made two investigations in relation to the sexual harassment charges; one in relation to the allegations against me and another in relation to Mr. Blatter. Such a procedure would have respected to a greater degree the requirements of confidentiality in each case and may well have ensured that Mr. Blatter was not a witness and an alleged offender in the same case. Then there are the breaches in confidentiality, referred to earlier. The majority of the above-mentioned lapses are serious errors of procedure which have caused me prejudice.