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## **RESOLUTION OF THE NATIONAL COUNCIL**

### **INQUIRY INTO ALLEGATIONS OF SERIOUS MISCONDUCT BY MR TSHEPO MOTSEPE DURING HIS TENURE AS GENERAL SECRETARY OF EQUAL EDUCATION**

#### **RESOLUTION**

1. In terms of Clause 14.1 and 14.28 of Equal Education’s Constitution, the National Council (NC) hereby appoints an independent panel (“the panel”) to investigate allegations of harassment, including harassment of a sexual nature, by the former General Secretary of Equal Education, Tshepo Motsepe. Hereinafter this process is referred to as “the inquiry”.

#### **BACKGROUND**

2. On 18 April 2018 Equal Education’s Senior Management Team (SMT) became aware of accusations of sexual harassment allegedly committed by Tshepo Motsepe while the General Secretary of the movement.
3. On 24 April the NC of EE resolved to appoint an investigatory panel.
4. On 25 April Tshepo Motsepe resigned.
5. Various meetings and correspondences took place during and after this period. These may be part of what the panel looks into as part of the inquiry and therefore we will not comment on them here.

6. The NC has subsequently resolved that in the interests of transparency, accountability and fairness to all parties that a formal process should still be followed, notwithstanding Tshepo Motsepe's resignation.

#### **CORE TERMS OF REFERENCE**

7. The panel shall inquire into, make findings, report on and make recommendations concerning the following:
  - 7.1. Allegations of harassment, including sexual harassment on the part of EE's former General Secretary Tshepo Motsepe;
  - 7.2. The precise facts, circumstances and process which gave rise to the allegations against Tshepo Motsepe;
  - 7.3. Any new evidence or allegations pertaining to Tshepo Motsepe which may come to light in the course of the inquiry;
  - 7.4. Whether the allegations of harassment against Tshepo Motsepe are credible;
  - 7.5. Whether Tshepo Motsepe has breached the trust of Equal Education, its members and staff and whether his actions might be in breach of EE's Constitution, including but not limited to clauses 8.7.3., 8.7.4., or 8.7.5, policies and procedures, and / or Code of Conduct.

#### **FURTHER DIRECTIONS**

8. In conducting its work and making recommendations, the panel must consider the legal rights of all concerned, the Constitution of Equal Education, its policies, procedures, guidelines and/or codes of conduct.
9. The panel is directed to appropriately respect the wish of certain of the women concerned to give evidence confidentially (arising from their rights to privacy, dignity and security) while noting the potential wish of Tshepo Motsepe to be able to respond to specific allegations (arising from his right to a fair and legitimate process). The NC believes that the panel will determine a fair approach to balancing these and ensuring a fair process. The panel may seek input from legal or other experts in this regard.
10. The inquiry is concerned with questions of harassment, power, consent, bullying and gender-oppression, among related considerations, in the context of the workplace. It is not concerned with people's private lives nor with consenting interactions between adults.
11. To enable the panel to conduct the inquiry in a meaningful and proper way and to facilitate the gathering of evidence, the NC hereby confers powers on the panel to:



- 11.1. Identify, contact, engage, interview and/or correspond with any current or former members of Equal Education's staff, facilitator body and NC;
    - 11.1.1. The panel may approach or be approached by interested parties listed in 11.1;
    - 11.1.2. The panel may not unreasonably refuse anyone listed in 11.1 the right to an interview or to present information that is relevant to the inquiry
  - 11.2. Request an interview with staff of the Equal Education Law Centre;
  - 11.3. Invite Tshepo Motsepe to make representations about the allegations against him;
  - 11.4. Provide a draft of the report (should the panel, in its sole discretion, choose to do so) to certain affected parties, for comment, prior to finalisation;
  - 11.5. Request funding from Equal Education for expenses such as travel, accommodation and professional services;
  - 11.6. Receive logistical and technical support from Equal Education.
12. The panel does not have powers to compel any person or organisation to participate in the inquiry.
  13. The NC will, through its appointed members, deliver to the panel relevant documents and materials, including the complaint submitted to it by the SMT and EE's Constitution, policies and guidelines, prior to it beginning its work and no later than two days following the adoption of this resolution.
  14. The panel shall, upon concluding its work, submit the following three separate documents to the NC of EE:
    - 14.1. Findings. These will pertain to the issues raised in paragraph 7 (the allegations against Tshepo Motsepe).
    - 14.2. Report. This will include the findings but will further explain the method the panel followed, the names of people interviewed where consent has been provided, any difficulties it faced and anything else the panel wishes to explain in terms of these terms of reference.
    - 14.3. Additional Note. The panel may, in a note separate from its report, recommend any matter for further investigation, exploration or attention either as a stand-alone or as part of the broader assessment process described below.
  15. The panel shall submit the above to the Chairperson of the NC of Equal Education by no later than 11 June 2018.

## **BROADER ASSESSMENT PROCESS**

16. The NC of EE has resolved that the movement will commission or embark on a broader assessment process which will begin after the conclusion of this inquiry. The NC does not expect this inquiry to undertake that broader process, although it can provide pointers for it in terms of paragraph 14.3. The purpose of the broader assessment will be to review issues such as EE's policies and procedures



in regard to sexual harassment, gender, power and the organisational norms and culture, and to look at the question of supporting an affirming and healthy workplace equal to the ideals that EE stands for. This assessment may involve an independent panel conducting an assessment or may be more participatory and pedagogical in nature. The broader assessment will have its own terms of reference and possibly a different group of outside panellists or experts. The NC will begin immediately with the development of these terms of reference and the identification of independent persons to be approached to assist EE with this process so as to ensure that there is no unnecessary delay between this inquiry and the broader assessment. The NC tasks Yana van Leeve to lead the process of developing the terms of reference and identifying the required personnel.

17. This resolution is binding on successive National Councils.

#### **AMENDMENT**

18. These terms of reference, on request of the panel, may be added to, varied or amended from time to time by the NC.

#### **THE PANEL**

19. The NC hereby appoints Mercia Andrews as the chairperson and Madoda Cuphe and Clare Ballard as members of the panel. The NC is grateful to the panel for agreeing to undertake this work.
20. The chairperson will convene the panel and lead it but the panel will attempt to arrive at decisions by consensus; where this is not possible each panellist will have one equal vote.
21. The NC will appoint two of its members to act as a liaison between the National Council and the panel. The NC liaisons will be responsible for ensuring that the inquiry takes place in accordance with these terms of reference. They may not attend any interviews or have access to any confidential information provided to the panel, where consent has not been provided.
22. The NC hereby appoints Honjiswa Raba as the Secretary of the panel. The Secretary is accountable to the panel and has no input into the outcome of the inquiry but is a resource to assist the panel and the inquiry. The Secretary is directed to apply norms of confidentiality and discretion during and after the inquiry.
23. The panel, the Secretary and the NC liaisons will sign confidentiality agreements.



This resolution was adopted by the National Council on 12 May 2018 in Cape Town.

Signed:



Yoliswa Dwane  
Chairperson of Equal Education

