

**A SUMMARY OF THE REPORT OF THE EQUAL EDUCATION APPOINTED PANEL OF ENQUIRY
TO INVESTIGATE ALLEGATIONS AGAINST DORON ISAACS AND OTHERS AND REVIEW THE
PROCEEDINGS AND OUTCOME OF THE EQUAL EDUCATION HUMAN RESOURCES
SUBCOMMITTEE HEARING OF 2011**

This summary does not contain the views of Equal Education. It is merely a summary of the Panel's report and is not a precise recordal of the views and opinions expressed by the author of the report.

INTRODUCTION

1. This document provides a summary of the majority Report of the Panel of Enquiry produced on 27 November 2019. It is intended as a companion to the report for use by Equal Education. Where relevant the processes and procedures conducted by the Panel are explained with reference to the Report.

BACKGROUND TO THE ENQUIRY

2. Doron Isaacs ("**Isaacs**") was one of the founders and former employees of Equal Education ("**EE**"), a movement working for quality and equality in South-African education.¹ Zackie Achmat ("**Achmat**") served on the Board and as the Chairperson of EE for many years ending his governance role in July 2015.
3. On 18 May 2018, the Mail and Guardian ("**the M&G**") published an article reporting that Isaacs has been accused of sexual harassment and that former senior members of EE, including Achmat, have been accused of covering his tracks. The article further reported that in 2011, Achmat, then chairperson of EE's board, had appointed a Human Resources Subcommittee ("**the Subcommittee**") to investigate the aforesaid "*rumours*." The Subcommittee cleared Isaacs unconditionally however the impartiality and process followed by the Subcommittee have subsequently been questioned. The article also alleged that Achmat was dismissive of sexual harassment allegations brought to his attention by a person of the pseudonym "Jane".
4. As a result of this and further articles published by the M&G and a complaint made by EE management, the National Council of EE decided to appoint an independent Panel, comprising of Judge Kathleen Satchwell ("**Judge Satchwell**"), as chairperson, Professor Malose Langa ("**Professor Langa**") and Professor Rashida Manjoo ("**Professor Manjoo**") to "*investigate allegations of harassment and similar misconduct against Isaacs during his tenure as Treasurer and to review the process and findings of the 2011 investigation into Isaacs' conduct*", in accordance with paragraph 10.1 of the Terms of Reference. Attorneys Cheadle Thompson and Haysom Inc. ("**CTH**") were appointed to assist EE in dealing with the relevant issues and they acted as the secretariat of the Panel. The Terms of Reference were released on 14 June 2018 by the National Council of EE.

¹ Isaacs resigned from EE in July 2015, becoming the organisation's Treasurer; a non-remunerated position.

5. The Panel was obliged, on conclusion of its inquiry, to produce a detailed written report in line with paragraph 20 of the Terms of Reference. This must include both the findings from its investigations as well as any recommendations that fall within and outside the Terms of Reference. The Report was finalised and signed by Judge Satchwell and Professor Langa on 27 November 2018. Professor Manjoo, for reasons detailed below, decided not to sign on to this report. Instead, she ultimately undertook to produce her own report. The Report issued by Judge Satchwell and Professor Langa has come to be referred to as the 'majority report' (**'the Report'**).
6. The Panel focussed on three primary issues as outlined in paragraph 12 of the Terms of Reference. These were:
 - 6.1. the investigation of any specific complaints of a sexual harassment or related misconduct, including in respect of otherwise consensual relationships, against Isaacs during his tenure as a member and office bearer of EE;
 - 6.2. the allegations regarding the 2009 incident involving "Jane" reported in the M&G on 18 May 2018, and;
 - 6.3. the review of the processes and findings of the 2011 investigation conducted by the then EE Board and the Human Resource Subcommittee.
7. A further related issue concerned investigating whether Isaacs or any other member, employee or office bearer, including Achmat, silenced or intimidated any potential complainants against Isaacs.
8. The approach taken by the Panel in investigating these issues, along with their subsequent findings, is summarised below in turn. First, it is necessary to deal with the preliminary issues raised as against the Terms of Reference.
9. All interested persons, including those who submitted statements to the Panel and those accused of wrong-doing, were legally represented by independent lawyers.
10. The nineteen people who submitted statements were represented by the Women's Legal Centre ("**the WLC**"), each of the respondents were represented by their own lawyers and the Panel was supported by a firm of attorneys, Cheadle, Thompson & Haysom Inc ("**CTH**").

CRITIQUE OF THE TERMS OF REFERENCE

11. The Report details the WLC's contention that the Panel should give no consideration to the M&G article of 18 May 2018. As such, the Panel should reject the application paragraph 12.1.1 of the Terms of Reference which requires the Panel to investigate the allegations regarding the 2009 incident.²
12. The basis for this, according to the WLC, is that the Terms of Reference give the Panel no real powers of sanction, are in effect 'toothless' and that its findings are 'without real consequence for

² At para 10.

victims'. The WLC emphasised that the Panel itself would not be able to make any legal order in terms of protection against intimidation or duress either during the proceedings or thereafter.³

13. The WLC suggested that the Panel could have been "*uniquely placed to develop and implement*" a "*victim-centred approach*". This is in light of the view, of which Judge Satchwell agreed, that the justice system is not geared towards a victim-centred approach. A victim-centred approach requires flexibility in relation to the processes embarked upon, the rules governing these processes and the end result sought. To this end the Panel sought to regulate its proceedings, in line with paragraph 14 of the Terms of Reference, in order to adopt a 'victim responsive' approach.⁴

THE M&G ARTICLE OF 18 MAY 2018

14. CTH contacted the identified reporters of the M&G article and the editor of the M&G on 18 and 20 July 2018 to inform them of the establishment of the Panel and to request them to contact the complainants and request the complainants to contact CTH. The journalists were not requested to reveal their sources. A public notice was also issued by EE on its website, Twitter and Facebook.
15. CTH received several statements which expressed various degrees of trauma, distress or concern. All complainants also requested a degree of privacy in relation to their submissions or their participation in the Enquiry. The Panel, in line with what they deemed to be a victim responsive approach, arranged for an approach to complainants that was mindful of but not focused on 'legal niceties' and that would utilise expertise in working sensitively with women regarding complaints of an allegations of sexual harassment. To this end all women who made approaches to the Panel were recommended to approach WLC. The Panel noted the invaluable contribution of the WLC in this regard, their contributions to the processes undertaken by the Panel and the sharing of their services without 'resentment or complaint'.⁵
16. Through the assistance of the WLC, 19 submissions were received some which concerned sexual harassment, some perceived racial or class bias within EE and hearsay knowledge as to the events which occurred in 2011. Sexual harassment was given a broad definition in line with EE's 'Policies and Procedures' Manual and the Code of Good Practice in the Labour Relations Act, to include 'unwelcome physical, verbal or non-verbal conduct. Submissions included:
 - 16.1. Three submissions to the effect that those persons felt that they had been manipulated into in participating in and exchanging sexual texts over the internet;
 - 16.2. three submissions concerned consensual, intimate sexual relationships which was subsequently considered to have been manipulative;

³ At para 13.

⁴ See paras 104 - 116

⁵ The reason for the co-option of the WLC to handle submissions by complainants is outlined at para 120

16.3. three submissions concerned persons who felt that persons within EE have attempted to stifle exposure of the true state of activities or organisational culture, and;

16.4. the balance of the submissions concerned issues ranging from differential treatment between staff and “Equalisers”, reception given by management and proposed community interventions.

17. The Panel noted that the 9 (nine) submissions regarding sexual harassment were not received from nine different persons as some persons experienced an overlap of complaints. The process and evaluation of the complaints is dealt with in the following section.

PARAGRAPH 12.1.2 OF THE TERMS OF REFERENCE CONCERNING ANY OTHER SPECIFIC COMPLAINTS OF SEXUAL HARRASMENT OR RELATED MISCONDUCT, INCLUDING IN RESPECT OF OTHERWISE CONSENSUAL RELATIONSHIPS, WITHIN THIS PERIOD RECEIVED BY THE PANEL IN TERMS OF THE TERMS OF REFERENCE

18. The Panel was charged with investigating complaints within the bounds of ‘sexual harassment or related misconduct’. As noted above, at least 10 (ten) of the submissions fell outside of the terms of reference and reflected unhappiness or hurt concerning the disregard of younger or so-called ‘less important people’ within EE, perceptions of racial bias, or being excluded for not being part of an ‘in group’.⁶

19. On 12 July 2018 EE published a full notice on its website advising that the Panel of Enquiry had been appointed and encouraged complainants to contact CTH for assistance to prepare a written submission to the Panel. The Panel, through Professor Manjoo, personally contacted five persons who were named in the 2011 complaint by Joey Hasson (“**Hasson**”). The Panel was aware that none of these five women had made any complaint to the Panel and that they had no knowledge of whether they wanted to participate in the Enquiry. One person responded in a state of distress that she had been approached or contacted at all, another confirmed a new email address and the Panel engaged with the others.⁷

20. Although the Terms of Reference prescribed two weeks within which complainants could submit written complaints or information, due to the sensitivities of persons who have been used or abused, the Panel was always prepared to adjust the process provided for in the Terms of Reference. Satchwell remarked that it was, in her view, correct that the Panel be less bound by time periods and less constrained by legal niceties in order to allow complainants to come forward in circumstances where they would feel safe. The deadline to submit complaints was ultimately extended some three months after the initial deadline from 26 July 2018 to 19 October 2018.⁸ Isaacs, Achmat, Ensor, Geffen, Feinberg and Adler (“**the Respondents**”) expressed concern at the lengthy delay in the process whilst their good names and reputation remained

⁶ At para 100

⁷ At para 104 and discussed further at para 106 of this summary

⁸ At para 107

challenged. They also expressed anxiety that the delay was part of a strategy to search for, solicit and encourage complainants to appear.

21. EE briefed three therapists to be available and CTH confirmed to the WLC that EE would fund up to four therapy sessions per complainant regardless of their affiliation to EE and even if the complainant wished to make use of their own therapist at an approved rate per session.
22. In accordance with paragraph 14, 15 and 18 of the Terms of Reference, confidentiality from the public was one of the principles of the investigation from the outset. Within the Enquiry itself there was always the possibility of requesting confidentiality. The Panel took the view that this was correctly so.⁹ Neither the Panel nor CTH have disclosed any confidential information completely or upon terms which required them to work in a partially confidential and partially disclosing fashion. The Panel remarked that the personal and often intimate nature of sexual harassment suggests that the usual and accepted procedures of the law of evidence require adjustment. The Panel noted that there is no intrinsic reason as to why an enquiry such as theirs should not develop traditional methods of receiving and testing evidence and seek a more transformative methodology of exposing and examining allegations of sexual harassment and other misconduct.
23. The Panel proposed alternative methods, including: information could be received in writing; the written information could be transferred to those against whom the complaints were made; the arrangement of separate hearing rooms where the respondent was not present but where the written discussion would be transmitted via video or audio to another venue; and the version of the respondent could then be presented to the complainant by video, audio or through the Panel itself¹⁰. The Panel noted that a victim-centred approach could not however operate in a vacuum devoid of regard for the principles set out in *inter alia* the Constitution of the Republic of South Africa, 1996.

The terms on which the 19 submissions were tendered

24. Paragraph 13 of the Terms of Reference required that any complaints received by the Panel should be provided to Isaacs, along with anyone else against whom a complaint was made.
25. The WLC submitted that the complainants chose not to make their submissions available to the Respondents as the complainants submitted complaints "*within a climate and environment where hostilities and influence exist that are beyond the powers of this Panel to address.*"
26. As stated above, not all 19 submissions received by the Panel concerned sexual harassment or similar misconduct and not all the submissions concerned Isaacs or Achmat or the persons involved in the 2011 Subcommittee hearing i.e. Ensor, Geffen, Feinberg and Adler.

⁹ At para 110

¹⁰ At para 113

27. Each submission contained a full paragraph that set out the terms on which the submissions were made to the Panel. Judge Satchwell chose to prepare a summary of the terms so as not to violate confidentially by quoting the document.¹¹ The terms being that:
- 27.1. the name of those who made submissions was disclosed to the Panel on 5 (five) occasions;
 - 27.2. none of the authors would allow their names, participation or any portion of their submission to be shared with Isaacs or his legal representative in any manner whatsoever;
 - 27.3. most of the authors would not appear in person at any hearing of the Enquiry, or if they did, on condition that there would be no disclosure to Isaacs or his legal representative. The authors would not subject themselves to oral evidence or be cross examined; and,
 - 27.4. the authors would not engage with the Panel on questions of clarity, or alternatively would do so as long as they are only questions of clarity and that the question were given in writing only.
28. Judge Satchwell assumed that while the submissions only referred to Isaacs, absent any confirmation from the WLC, that the restrictions applied to all parties.
29. The Panel was therefore unable to honour the undertaking in the Terms of Reference that all information or complaints relevant to the Respondents would be made available to them. Faced with this dilemma, the Panel proposed that each interested party prepare heads of argument or representations on the status of these documents; the use to which they could be put; what impact *inter alia* the Constitution may have; and other relevant considerations which could be brought to bear on how the documents could be received into evidence.¹²

The position taken by the WLC

30. The WLC prepared submissions but made it clear that these were 'for the attention of the Panel only'. Their submissions were therefore not seen by any other party, nor did the WLC meet with the Panel at the same time as the other parties. The WLC was provided with the heads of argument of the other parties.¹³
31. The WLC took the position that the Panel must exercise an inquisitorial function and that the Panel was not required to make any findings. The Panel was to assess whether or not the submissions received established a *prima facie* case that there had been wrongdoing which amounted to misconduct for purposes of EE's policies.
32. The WLC relied on the judgment of the SCA, *Chairman, Board on Tariffs and Trade and others v Brenco Inc and Others* 2001 (4) SA 511 (SCA) in arguing that it would be sufficient to make

¹¹ At para 126 onwards

¹² At para 130

¹³ At para 131

available non-confidential summaries informing the Respondents of the "gist" of the case which had to be answered.

33. The Panel however found difficulty with this as fairness could not be found in an indication of a very circumscribed "gist" of allegations, complaints or information which would be followed by full disclosure of all information at a second further stage for which no provision was made in the Terms of Reference. The existence of such a second stage was the reason for allowing non-disclosure at the preliminary stage in the *Brenco* case. It was also unclear who could compile the 'gist' and which persons would deem portion or all of such a 'gist' acceptable in terms of the conditions set.
34. The WLC pointed out that the Terms of Reference and the Enquiry should not have been based within the usual EE process as no disciplinary steps could have been taken. The Panel appreciated that EE wanted to address the allegations made in the M&G article without delay but stated that it would have been more helpful to create a less legalistic framework for addressing these issues.¹⁴ Nevertheless, the Panel tried to adapt its powers to the unique and sensitive circumstances that presented itself. Judge Satchwell also noted, as advised by the WLC, that the Panel should reflect in the Report on why the complainants chose not to make their submissions available to those about whom they made complaints.

The Panel's regard to the 'rights' of all concerned

35. The Panel acknowledged the rights of any person who would be a complainant in this matter, in accordance with the Constitution. It was also acknowledged that the Respondents have rights, including natural justice, administrative law and labour law that concern lawful, reasonable and procedurally fair processes.¹⁵
36. The Panel stated that it should adhere to the principles of natural justice, also known as procedural fairness, which requires that a person facing allegations must be put in possession of information that will give them the opportunity to meaningfully respond. The complainants in this matter indicated that they do not want their full written statements to be made available to any of the Respondents, and that they do not wish to be questioned or challenged in person by the Respondents even in the modified forms suggested.¹⁶ The Panel was of the view that if they were presented only with unsworn, untested and unchallenged written documents, then the Panel could not fulfil its function as set out in the Terms of Reference.¹⁷
37. Paragraph 17 Terms of Reference required oral hearings or failing that and with good reason, affidavits or written statements. The Panel was not provided with affidavits (sworn statements). The Panel stated that it must be offered good reason based upon objective and subjective evidence as to why procedures of open justice and fair procedure should be limited. No

¹⁴ At para 139

¹⁵ At para 114.

¹⁶ At para 113 with 142-4.

¹⁷ At para 149

opportunity was given, either to the Panel or the Respondents, to dispute that exceptional circumstances may have existed to justify a modified or adjusted process – whether involving complete confidentiality or non-disclosure of the full allegation. The degree of confidentiality and secrecy sought by the complainants extended beyond the general public to withholding all the information from those who were seen as essential to the process, being the alleged wrongdoers.

38. The Panel remarked that it 'cannot be right' that they were presented with only one option. That of absolute confidentiality for the proposed complainants coupled with absolute ignorance for the alleged wrongdoers. This in light of considering a number of options of ensuring sensitivity in the procedure adopted and safety in the process used, which was in the end not accepted by the potential complainants.¹⁸

Conclusion on the status of the submissions

39. The Panel concluded that it could not deny the Respondents access to essential information, an opportunity to respond thereto, the opportunity to dispute or test any allegation and place the Panel in a position of having no opportunity to test and evaluate either the complaint or response. The Panel held that the Respondents who were implicated in any one of the actions or inactions contained in paragraph 12 of the Terms of Reference must be properly informed of the complaint; the full details thereof and given an opportunity to test the allegations through verbal confrontation, unless subjective or objective evidence establishes that it is unfair and that the usual fair process should be modified.
40. As a result, the documents submitted by the WLC on behalf of a number of person could not be received into evidence.
41. Professor Langa, with Judge Satchwell in agreement, expressed regret that the Panel was not given an opportunity of advancing the legitimate cause of victims of sexual harassment through the full exploration of the complaints, responses thereto and the organisation and societal context of the exploitation of vulnerable persons.¹⁹

SEXUAL HARRASSMENT AND ORGANISATIONAL CULTURE

42. The WLC presented a lengthy submission to the Panel on, amongst other things, the legal framework for sexual harassment and sexual harassment per se. The Panel was unable to give due justice to this input for two reasons. First, none of the WLC representations were made available to all those involved in the Enquiry. It was felt to be unfair to accept and repeat these learnings and advice absent their debate or discussion. Second, the submissions were premised on the absolute truth of the submissions that were not received into evidence. The Panel felt it improper then to rely on the aspects of the submission that dealt with specific context or

¹⁸ This view was further elaborated on in paras 153 -154

¹⁹ At paras 161.

behaviour relating to sexual harassment.²⁰ Professor Langa also expressed concerns about the ambit given to the experience of sexual harassment and wishes to note that women must be acknowledged as equal holders of Constitutional rights and obligations.

43. The Panel acknowledged in length the prevalence of abuse, harassment, bullying and intimidation pertaining to gender in almost every organisation and institution worldwide.²¹ The Panel expressed fear that where an organisational climate is not aware of the possibility of abuse and does not take steps to ensure that this does not happen, then some persons may be abused while others take the opportunity to abuse. However, the Panel acknowledged that it is not within their capacity to address *inter alia* organisational culture. EE has stated that they have established a broader assessment process to examine the organisation's record of dealing with "mistreatment", its sexual harassment policies and procedures and the organisation's norms and culture.²²
44. The Panel was asked to investigate and pronounce on the timing and nature of the M&G article as being one part of a vendetta by certain persons or organisations against other persons (Isaacs, Achmat, Ensor) or organisations (Equal Education and/or other organisations with which the aforesaid persons are associated), which the Panel firmly agreed that it would not do as it is not within their powers as set out in the Terms of Reference.²³

PARAGRAPH 12.1.1 OF THE TERMS OF REFERENCE CONCERNING ALLEGATIONS REGARDING AN INCIDENT IN 2009 AS REPORTED IN THE M&G

45. The article references an allegation made by a female (referred to as "Jane"), who was working on a project in the activism sphere around the time the incident was said to have occurred. The article alleged that Isaacs made untoward remarks to Jane which included sexually suggestive texts. According to her, Isaacs then forced himself on her after dinner one night which resulted in her having to fight him off, which offended him. She alleged that after confiding in someone about the incident, Isaacs came to her house and threatened her by saying that if she told anyone, she would never work in activism in South Africa again. She further alleged that she responded by saying that she was not scared of his threats and it appeared as though she was the first person to stand up to him.

The process taken by the Panel

46. Isaacs gave evidence and was questioned by each member of the Panel during an oral hearing.
47. Jane indicated to the Panel that she did not want her participation to be disclosed to Isaacs or his legal representatives, that she would not provide oral evidence and would not be subject to

²⁰ At paras 163 - 164

²¹ At paras 166 - 176

²² At paras 171

²³ At paras 175 - 176

questioning from the Panel.²⁴ She was willing to answer questions but only in writing from the Panel or interested parties through her legal representative. The Panel was allowed to use information from her statement to pose questions to Isaacs while ensuring her confidentiality was protected.

48. The WLC declined an invitation by the Panel to attend and to participate in the hearing, as it would be inappropriate to do so whilst its clients were insisting on non-disclosure and limited participation. The WLC maintained that it was 'wholly inappropriate' for the Panel to investigate the incident and that 'it was ill-advised and irregular for EE to have included it in the Terms of Reference'.²⁵
49. Ultimately Jane elected not to participate in the proceedings, present her version of events, confirm or elaborate or clarify the version as presented in the M&G or challenge the version put forward by Isaacs or be challenged on her version by Isaacs.

Isaacs' Evidence

50. Isaacs' version of events may be summarised as follows: Jane was a friend of his younger brother, who he came to know in social circles in 2009; she was not involved in or associated with EE; both Jane and Isaacs were in committed relationships, but engaged initially in flirtatious and then a romantic but not sexual relationship during 2009; they agreed to meet in Kalk Bay in October 2009 to avoid revealing their flirtation to their partners; Isaacs made a booking at a guesthouse for the evening, but it was never intended that they would spend the night as they were both in committed relationships and were expected to return home; they went to the reserved room and "*began to kiss, got on the bed, kissed some more, lay down together and then decided to end the evening*".²⁶
51. Isaacs submitted that they were both concerned with the ethics of infidelity and had a fear of being caught by their partners and therefore did not have a consummated sexual relationship. He is adamant that Jane did not push him away or stop any action of any sort. He had assumed that they were of one mind on the issue and never had any disagreement or antagonism over the evening's events. According to Isaacs, they continued to be friends, but he felt that it would be too complicated to continue any romance with Jane and ended the relationship. Isaacs provided emails of 14 January 2010 as proof that they had interacted amicably after the events of October 2009.²⁷
52. Isaacs also referred to a project known as "*Open Shuhada Street*" which came to an unpleasant and unresolved juncture in 2010.²⁸ Jane was to be the filmmaker of the project and was thanked via email by Isaacs for coming on board on 30 September 2009. A transfer of money was made

²⁴ At para 29

²⁵ At para 47

²⁶ At paras 31 – 38.

²⁷ At para 40.

²⁸ At para 43.

to Jane's bank account on 10 October 2009 for this purpose. However, Jane neither produced the film nor returned the funds paid to her for the costs. Isaacs confronted her personally, used the word "*corruption*" in relation to her conduct which made her angry and said that if she behaved like this then people in civil society would not want to work with her.

53. Isaacs informed the Panel that he had never, whilst a management employee of EE, had a relationship with an "Equaliser" or staff member, but had done so with two volunteers after their stints had concluded. He also had never, whilst the Treasurer of EE, had a relationship with an EE "Equaliser" or a volunteer, but had a romance with an EE staff member in 2016. This relationship came to an end as he thought the relationship might become complicated. This staff member was contacted by the Panel who made no complaint against Isaacs.²⁹

Conclusion

54. The Panel concluded by providing reasons for why it was their opinion that Isaacs' version was highly plausible.³⁰
- 54.1. Isaacs' evidence, along with emails sent by Jane to Achmat, confirm that both of them were in committed relationships at the time and so explain the Kalk Bay excursion.
- 54.2. The Panel found it unlikely that Joey Hasson, who shared a house with Jane during 2009, would not have asked questions about 'Jane' in his complaint to Achmat in 2011.
- 54.3. The Panel found that the failure by Jane to produce the video or refund the money from donors, coupled with Isaac's accusation of corruption, could have motivated the M&G allegation.
- 54.4. Achmat provided Facebook messages between Jane and himself. These do not support unwelcome sexual interaction between Isaacs and Jane. The Panel found these messages refute the version of 'Jane' as reported in the M&G. These are further dealt with in the next section of this summary.
55. The proceedings before the Panel, including the evidence and questioning of Isaacs, was recorded and provided to both Jane and the WLC to enable Jane to respond and challenge Isaacs. Jane elected not to respond to Isaac's version or to dispute the authenticity or completeness of any documents tendered. Isaacs' versions of events was found then to be unchallenged and partially corroborated in certain significant respects.³¹

²⁹ At para 46.

³⁰ At para 50.

³¹ At paras 51 - 51

PARAGRAPH 12.1.3 OF THE TERMS OF REFERENCE CONCERNING THE SILENCING OR INTIMIDATION OF POTENTIAL COMPLAINTS AGAINST ISAACS BY ACHMAT OR ANY OTHER PERSON

56. The M&G article states that after the October 2009 incident in Kalk Bay, Jane called Achmat who according to her stated that she brought the harassment on herself because she "*wore too much make-up*". She alleges that Achmat said she was a broken person and that she needed to pull herself together. However, Achmat denies this saying that he would never tell a person that what they wear, or their make-up is responsible for how men behave toward them. According to the M&G article, Achmat's name appears repeatedly in the context of covering up Isaacs' harassment and two women, including Jane, claim that they were contacted and threatened by Achmat directly. One woman stated that there was a perspective that Achmat would intervene on Isaacs' behalf and protect him. Achmat denies threatening anyone who wished to file a complaint of sexual harassment or other misconduct but admitted to speaking firmly to people who have spread rumours or allegations of sexual or other misconduct without evidence as fact or faith.

The process taken by the Panel

57. Achmat gave evidence and responded to questioning from each member of the Panel.
58. For the reasons set out above, neither Jane nor the WLC chose to attend or participate in the hearing. Similarly, Jane did not confirm, elaborate or clarify what was reported in the M&G, tell the Panel her version of events, challenge Achmat's version or allow Achmat to hear her version and challenge or test it thereon.

Achmat's evidence

59. Achmat knew Jane since she was a child, was extremely close to her father and considered both of them to be part of a family circle.
60. The Panel primarily dealt with a bundle of 30 Facebook messages between himself and Jane, from the period 2007 to 2010. The nature of these messages is summarised as follows:³²
- 60.1. Between 1 June 2007 and shortly after November 2009 the messages mainly concern Jane attempting to contact/meet-up with Achmat who was fairly non-responsive to her approaches.
- 60.2. On 11 November 2009, approximately two weeks after the 'Kalk Bay incident', Achmat is contacted by Jane. The message mentions Isaacs, states she was reading a book 'courtesy of Doron' and makes no call for help whatsoever and no reference to any help sought as claimed in the M&G article.

³² At paras 63 - 81

- 60.3. In January and over March 2010, Jane contacts Achmat to say she is surprised and hurt by his lack of response to her 'many messages' but appreciates he is probably busy.
- 60.4. On 17 March 2010 Achmat responds in length to Jane.³³ Achmat informed the Panel that this response was due to what he felt was a break down in the relationship between himself and Jane. This was due to her failure to deliver the work on the Open Shuhada Street and that he had heard from a third-party that Jane had commented that she was 'tired of Jewish intellectuals in Equal Education'. This suggested to Achmat that she was expressing anti-Semitic and anti-intellectual views to which he was disappointed
- 60.5. Achmat states in his response: 'I fear that behind you make-up there is pain and security – do not let it stop you from earning a living. . . do not let it stop you from becoming an activist leader'.
- 60.6. On 24 March 2010 Jane responded to Achmat.³⁴ She stated she was shocked that Achmat believed the statement about 'Jewish intellectuals' to be a view she held and had always seen Achmat as an 'important rock, part of that extended family'. 'Jane' then expressed that this was a 'question one night with Yana and Richard. And was a question for discussion...' and not a statement.
- 60.7. She goes on to state that Achmat is not aware of the complexities in which this statement was taken out of context. This included personal issues between herself and Isaacs, that Isaacs had asked her to keep these private and that Jane hoped Achmat would respect this. Jane also commented that liberation as woman means 'freedom to choose' and that though she has a 'different aesthetic' from Achmat, that does not take away the pain she feels in seeing the unfairness in the world around her. She ends by telling Achmat of her future plans and stating that she was looking forward to seeing him in June.
- 60.8. Following a lack of response by Achmat, Jane again wrote to him on 13 August 2010 and 21 August 2010. She expressed her concern at no longer being Facebook friends with Achmat, hoped that no misunderstanding had caused such a big rift and finally anger at being ignored.
61. Achmat told the Panel that he assumed that the personal issues between her and Isaacs related to the incomplete job in the "*Open Shuhada Street*" project and the conversation about "*Jewish intellectuals*". Achmat explained that it was only in 2018 that he became aware that the relationship between Isaacs and Jane was more than friendship.³⁵
62. The Panel was of the view that Achmat's reference to "make-up" in his response of 17 March 2010 referred to the emotional and psychological insecurities which he was anxious lay behind her presentation of self, rather than a gendered reference to Jane's "*make-up*". At this point,

³³ The response is lengthy and is selectively quoted at para 69.

³⁴ Again this is at length and is selectively quoted at para 74.

³⁵ At para 75

Jane had not told Achmat of any untoward or distressing incident with any person, including Isaacs, therefore the Panel stated that it is difficult to see that Achmat was telling Jane that she had brought the harassment on to herself because she wore too much make-up.

63. The Panel noted from the evidence that Jane's next step was not to contact Achmat as stated in the M&G article. Jane wrote no more than she has "*personal issues*" with Isaacs which she was keeping private, she asked Achmat to respect that and made no complaint to him of sexual harassment by Isaacs as alleged in the M&G article.
64. The Panel further noted that Jane wrote to Achmat on 13 August 2010 and 21 August 2010 and expressed surprise and dismay at the lack of contact during 2010. These messages did not support her recollection as reported in the M&G that she approached Achmat for help after a disturbing sexual incident and that he brushed her off with accusations that she had brought the harassment onto herself by wearing too much make-up. Her messages expressed how she could not imagine what "*misunderstanding*" there may have been that lead to Achmat not wanting to meet with her. The Panel felt that the messages to Achmat therefore did not support her version of his abandonment after she turned to him for help.

Conclusion

65. The Panel concluded by stating that the chronology and content of the Facebook messages did not support the allegations made in the M&G article.³⁶ According to the Panel, Achmat's version of events is the only plausible version based on the information available.
66. The Panel remarked that the allegations in the M&G are not necessarily the words of Jane and she cannot be held to the truth of everything written by the journalists. Jane however elected not to respond to Achmat's version and chose not to be subjected to any form of testing of the allegations as they appear in the M&G article or to the response and denial put forward by Achmat. Achmat's version of events is unchallenged and corroborated by the correspondence exchanged between him and Jane over a period of time.

Other allegations of intimidation or silencing of potential complainants

67. The Panel notes that with reference to any other allegations of intimidation or silencing of potential complainants, Isaacs informed the Panel that Daniel Mackintosh ("**Mackintosh**") had made accusations on Facebook that Isaacs threatened to withdraw the reference which Isaacs offered Mackintosh to use in his application for clerkship at the Constitutional Court. However, Isaacs informed the Panel that he had not withdrawn the reference and it had in fact been used by Mackintosh. Mackintosh made several comments about Isaacs during his interview which caused the interviewing Judge to call Isaacs. Isaacs told the Panel that he informed the Judge

³⁶ At para 85

that Mackintosh had not done anything to embarrass the Court. Ultimately Mackintosh got the job.³⁷

68. One, Charlotte Fischer ("**Fischer**") made complaints to the M&G and to Radio 702 about the alleged attitude towards and remarks made to her by Professor Ensor. The Panel concluded that there is no substance to these allegations and she made no such complaint to the Panel.

GENERAL COMMENT ON PERSONS WHO CLAIM ANONYMITY FOR THEMSELVES BUT NAME OTHERS IN ALLEGATIONS IN THE MEDIA

69. Professor Langa was of the view that this section need not be included in the report.
70. Judge Satchwell expressed her concern and "disgust" at persons who hide behind anonymity whilst making grave and reputational destroying allegations against persons whom they freely name and shame and deny those persons the same opportunity for privacy before any investigation into the truth. This in cases were no reason is given for why these persons required or were entitled to privacy. Judge Satchwell stated that victims or survivors of harassment should not feel humiliated and their identities do not always and everywhere have to be kept a secret. The #MeToo movement is referenced as an example.³⁸
71. Judge Satchwell stated that it would have been possible to keep all the identities private in the M&G article and merely say that some women have made allegations against some men within EE. The M&G article seems an attempt to destroy good names and reputations without a hearing or a fair opportunity to confront the substance of the allegations. There is no indication that Isaacs or Achmat were given an opportunity by the M&G to provide a full response as they have now done in the Enquiry. There was no urgency to publish on events that occurred in 2009 and 2011. Judge Satchwell stated that the rush to publication without a hearing and publishing a full response was "*reminiscent of the gutter journalism of the National Party Apartheid regime*".³⁹

PARAGRAPH 12.2 OF THE TERMS OF REFERENCE CONCERNING THE REVIEW OF THE PROCESS AND FINDINGS OF THE 2011 INVESTIGATION INTO ISAACS' CONDUCT BY THE THEN EE BOARD AND THE HUMAN RESOURCES SUBCOMMITTEE

72. The Panel was directed by paragraph 12.2 of the Terms of Reference to review the process and findings of the 2011 investigation into Isaacs'. Typically a review concerns only the methods and not the results of a matter. However, the Panel felt the Terms of Reference granted them wider powers to 'look at everything again' including both the merits and processes behind the 2011 investigation. The review focussed on the actions of the then Human Resources Subcommittee and the Board of Equal Education.

³⁷ At para 87

³⁸ At para 96

³⁹ At para 98.

73. The Panel looked at a considerable amount of documentation and met with Ensor, Geffen and Feinberg on 8 August 2018, with Adler on 13 August 2018, with Hasson on 20 and 21 August 2018 and with Achmat and Isaacs on 20 August 2018. The documents provided to the Panel included documents which raised questions or opened up the 2011 investigation process to doubt or criticism. This indicated that the Panel was not presented with a censored or doctored version of events to present the 2011 proceedings in the best possible light.

Background to the 2011 Enquiry

74. During 2011 rumours began to circulate in Cape Town that there had been a romantic relationship between Isaacs, who was the EE Coordinator at the time, and an intern at EE which resulted in her withdrawing from EE. Hasson told the Panel that a group of people, some who had known each other from their time at a Jewish youth organisation (Habomin Dror) while others through their work at EE, had heard and repeated the rumours about Isaacs. Internal concerns and discussions resulted in Isaacs reporting the rumours to Achmat and asking for "*whatever measures necessary*" to be taken and for Hasson to make a full report to Achmat. The concerns raised in the rumours were translated into questions in a written submission made to Achmat.⁴⁰

75. The Panel wished to stress three aspects of the background to the 2011 investigation. First, no complaint had actually been made by any woman or man against Isaacs. The EE Policies and Procedures Manual was therefore not applicable. Second, whatever concern existed involved no more than 'rumours'. No one had come forward with anything factual, specific, detailed or solid. Third, this was an internally generated process. Internal discussions resulted in Isaacs reporting the rumours to Achmat, for 'whatever measures necessary to be taken', and for Hasson to make a full report to Achmat.⁴¹

76. Hasson submitted a lengthy document to Achmat on 8 June 2011 stating *inter alia* that he acknowledged that there was no complainant in this matter except EE, as the integrity of its leader was being questioned; he noted that Isaacs' reputation was at risk and by extension, EE's reputation too; he noted that the rumours regarding "KK" were not an isolated case and that information surfaced that he had online sexual discussions with "KR"; and it is difficult to make claims of what is professional and what is private when Isaacs is the coordinator of EE and corresponds with people wanting to work with EE in various capacities.⁴²

77. Hasson posed the following questions to be asked to Isaacs concerning the rumours as they related to five women:

77.1. Was Isaacs in contact with someone called "NV", was there an EE connection that concerned the interactions and did Isaacs engage in any behaviour that may have compromised this;

⁴⁰ The background to the hearings is at paras 184 - 189

⁴¹ At para 190

⁴² At paras 191 - 192

77.2. Isaacs spoke about "NS" assisting him as his PA at EE but the situation then changed, was there any inappropriate interaction between Isaacs and "NS" that may have caused this;

77.3. did anything happen between Isaacs and "KK", the intern working on the previous year's annual report, as she disappeared without completing the task; and,

77.4. was there any EE connection between Isaacs and someone called "TP" and whether anything happened between them that affected this development.

78. Two of the rumours were told to Hasson by "KS", Isaacs' former girlfriend. Hasson felt her objectivity was compromised as she feels that Isaacs did wrong by her. Hasson feels that Isaacs did not engage in official misconduct, but he acted in a way that leaders should not and thereby put EE at risk.

The Terms of Reference of the 2011 Enquiry

79. Achmat had spoken to Isaacs about the rumours and received what he considered to be a "*plausible explanation*".⁴³ Achmat still thought it advisable to convene the Subcommittee for them to arrange a hearing. Achmat asked Ensor, Geffen and Adler to handle the matter and suggested the following questions be posed:

79.1. whether any evidence can be provided by the people spreading the rumours that there is a connection between EE and the women concerned;

79.2. if there is such a connection, whether there is evidence that connects these women to Isaacs; and,

79.3. if the aforesaid questions are answered in the affirmative, then the rumours must be tested against the EE policy on sexual harassment and other misconduct.⁴⁴

80. Achmat cautioned the Subcommittee that: it needed to uphold the privacy of the women concerned and that of the accused; EE policy did not exist to uphold any standard of private morality in personal lives; EE would have to consider the leadership role played by Isaacs in South Africa and EE would have to consider a request for reparations made by Isaacs in the event of false allegations; and evidence of misconduct would have to be referred to the entire Board for appropriate action. Finally, Achmat added that the 'examination of rumours' was supposed to be a preliminary investigation with a final report presented to the Board. The Board would then take action should there be perceived to be any validity to the rumours.

81. Professor Langa and Judge Satchwell were critical of Achmat's reference to Isaac's contribution to the struggle for social justice as it is inappropriate and potentially trespasses on the independence of the Subcommittee. The issue of reparations was neither before the Panel nor

⁴³ Discussed at para 194 and the relevant footnote.

⁴⁴ At para 199

was it before the 2011 Subcommittee.⁴⁵ The Panel commended Achmat on being mindful of the need to protect the privacy of potential complainants.

82. The Panel heard criticism of the language used in the 2011 Terms of Reference, specifically the use of the word 'rumour'. This was dismissed as it was the exact wording and language used by Hasson, who made it clear that he had only heard 'rumours' from 'KR' and 'KS'.⁴⁶ For the same reason the Panel dismissed criticism of the exclusion of issues of private morality and personal lives. The Panel strongly questions how, as there were only 'rumours' and not allegations, the Subcommittee could examine all relationships of any nature, with any person, in any city or country of any employee.⁴⁷
83. Ensor, Geffen and Adler included Feinberg in their Panel as he was already a member of the Subcommittee. The letter by Hasson to Achmat was attached to the document convening the 2011 hearing and Isaacs responded to the questions therein in his own 14-page statement. The draft agenda indicated that on 9 June 2011 each member was sent Hasson and Isaacs' documents.

Isaacs' response to questions posed by Hasson

84. Isaacs responded to Hasson's questions by stating that he had flirted with "KK" and he acknowledged that he had transgressed a management-meeting decision not to contact anyone involved in the case, but he provided email evidence where he stated that if she was ever approached she should answer questions freely. Isaacs also acknowledged that he had learnt political lessons which could embarrass both him, and by extension, EE and that he engaged in "*risky behaviour*". Isaacs did not concede any transgression of EE policies and procedures, but he did admit to imprudent personal behaviour.⁴⁸
85. Isaacs acknowledged that: he had exchanged mutual sexual texts with "KK"; "NV" was never part of EE; "NS" never had any connection with EE; "KS" did work at EE and completed the task allocated to her and then left to complete a Master's at UCT; and "TP" had never had any EE connection. Hasson did not disagree with any portion of Isaacs' response and wrote to him indicating his relief that this was all behind them.⁴⁹
86. There is no indication that Isaacs' response was tested by the Subcommittee at the hearing or in a subsequent investigation, however the Panel was of the view that there would be nothing to test as there was no allegation of any sort against Isaacs and no *prima facie* evidence of wrongdoing against him.

⁴⁵ At para 201

⁴⁶ At para 198

⁴⁷ At para 203

⁴⁸ At para 207

⁴⁹ At para 209

87. The Subcommittee considered its first draft report on 11 June 2011 and amended it. The final report concluded that:

- 87.1. there was no evidence to support any claim or suggestion that Isaacs had an intimate relationship with an EE intern which resulted in her leaving the organisation;
- 87.2. that he used his position at EE at any time to make inappropriate or unwelcome advances toward women associated or employed at EE;
- 87.3. that any woman associated with, in the process of being associated with, or recruited by EE, ended the association on the basis of unwelcome advances by Isaacs; and,
- 87.4. in relation to intimate relations that Isaacs had with woman with no connection to EE, the Subcommittee took the view that his private life was not its concern.⁵⁰

The Subcommittee then concluded by stating that as there was no evidence of misconduct, there was no basis for any further investigation of the matter.

88. It was decided that the final report would be presented to the Board of EE and to management but not the entire staff, because as Achmat indicated, in previous disciplinary processes these had not been made public or shared. The final report was also sent to the sources of the rumours on a confidential basis, namely Mackintosh, Sack, Hasson and Rosenthal.

Charlotte Fischer

89. The report was also sent to Fischer by Ensor. On receipt, Fischer stated that she wanted to speak to Ensor telephonically. At the time of the complaint Fischer did not seem to have any complaint about who was on the Subcommittee nor did she speak to Ensor in a tone that was anything other than friendly and rather admiring.⁵¹ Fischer has since made a series of public allegations against the 2011 Enquiry and in particular Ensor.

90. The Panel was provided with email correspondence between Fischer and Ensor.

91. Ensor informed the Panel that Fischer reported in at least one phone call that she had been approached directly by three women working in some capacity for EE who had experienced sexual harassment from Isaacs. Ensor stated that she would like these women to approach her directly, in confidence, so that it could be dealt with. She also added that Hasson had submitted very full documentation to the Subcommittee, was interviewed and expressed complete confidence in the outcome. Finally, it was mentioned that Fischer had agreed that 'unsubstantiated rumour mongering' had no place in an organisation like EE'.⁵²

⁵⁰ At para 216

⁵¹ At para 224

⁵² At para 226

92. On 7th July 2011 Ensor then contacted the other members of the Subcommittee, as well as Isaacs and Achmat, stating that Fischer had indicated to her *inter alia* that the work of the Subcommittee was a sham and was particularly upset with Ensor's use of the word 'malicious' in relation to the rumours. Ensor insisted that Fischer provide the names of the persons who were she believed to have been harassed. Fischer promised to do so.
93. On 23 August 2011 Ensor reminded her that on 16 June 2011 Fischer had indicated that she would either obtain the names of three people or encourage those three people to come forward to the subcommittee with complaints regarding Isaacs. Ensor ended by stating that the matter was now closed as she failed to provide the three names as promised.⁵³
94. The Panel viewed the caution made to Fischer when she received the report to desist from "*malicious rumour mongering*" to be appropriate and in no way an attempt to stifle justifiable complaints of harassments of any sort.⁵⁴ The Panel noted that Fischer made further allegations and denunciations in a M&G article of 22 May 2018 and in an interview with Radio 702 on the same day.⁵⁵ Fischer claimed on radio to have 'testimonies, some records and even an academic thesis that someone had written in part about Isaacs' behaviour in social justice spaces'. The Panel remarked that an academic thesis is not evidence of anything and that neither the records nor testimonies were ever produced to Ensor or to the Panel.⁵⁶ Fischer further stated on radio that Ensor responded to her by stating that what she was saying amounted to slander.
95. The Panel noted that Fischer appeared to understand Ensor's remarks that she either assist with bringing women forward with complaints or cease malicious rumour mongering as shutting down the voices of the women who had complaints. The Panel concludes that this was very specifically aimed at Fischer, who was making allegations absent any proof, and so was not an attempt to control anyone else.⁵⁷
96. Fischer chose not to come forward to the Panel with the complaints she made publicly in the M&G and on Radio 702 or to challenge the version put forward by Ensor. The Panel was therefore unable to ask her to clarify her publicly stated version of events against the email correspondence provided by Ensor. Ensor confirmed to the Panel that she said to Fischer that the repetition of unsubstantiated allegations against Isaacs would amount to slander.⁵⁸ Judge Satchwell stated that she did not think this to be an incorrect understanding of the meaning of the word or the law.
97. The Panel noted that Ensor's caution to Fischer against slander also cannot be regarded as an attempt at silencing the ventilation of grievances or complaints or covering up allegations against

⁵³ At para 229

⁵⁴ At para 231

⁵⁵ At para 234

⁵⁶ At para 238

⁵⁷ At para 239

⁵⁸ At para 233

Isaacs or any other persons.⁵⁹ It merely cautioned Fischer herself against making unsubstantiated allegations. The Panel found that Ensor could not be criticised for insisting upon confidentiality between her and any complainant rather than using Fischer as an intermediary.

The existence of a conflict of interest between members of the Subcommittee and Isaacs

98. It has been addressed in the media that the members of the Subcommittee were friends of Isaacs and used their association to protect him against the allegations of sexual harassment. The Panel noted that there was nothing wrong with the co-existence of a private interest when one is required to exercise a public or official duty involving a person with whom one has that private interest. The test is not the existence of the private relationship, but rather whether it appears to or does influence the objective exercise of official duties or objective professional judgement. This Panel's conclusion on this issue is summarised below.

The Panel's conclusion on all aspects of the 2011 Enquiry Enquiry⁶⁰

99. The Panel acknowledged that there can be no doubt that each of the Subcommittee members had some connection with Isaacs. The Panel noted that the Subcommittee was not asked to make a decision regarding Isaacs or his activities, but rather to ask Hasson whether he had any evidence to place before the Subcommittee about the rumours which he had brought to the attention of Achmat. The Board noted that Achmat commented to the Panel that the Subcommittee consisted of persons of known integrity, however he did say in his directive to the Subcommittee that they may choose to examine the Terms of Reference directly or to seek the assistance of an independent, competent and mature person.⁶¹

100. The Panel noted that the Subcommittee was not populated with friends of Isaacs but was a pre-existing governance structure of the EE Board. If the Subcommittee had found *prima facie* evidence to justify taking the matter further, then it would have been handed over to an independent disciplinary enquiry. The Panel did note though that bringing in an independent outsider at the time may have prevented aspects of the 2018 Inquiry. The Panel also noted that nobody involved in the rumours, including Hasson, Fischer, Mackintosh, Sack or Rosenthal, at the time expressed any doubt as to the members of the Subcommittee.

101. The process of dealing with the rumours was concluded within less than ten days. The Panel noted that this indicated the concern of all those involved and the need to deal with the rumours without delay, but a delay may have allowed for further planning of an intervention less dependent on the presence of Hasson and involving a more nuanced approach. Speed was considered to be vital since the Chair was abroad and Hasson was going away within two days of the hearing.

⁵⁹ At para 240

⁶⁰ This is a highly condensed version of the findings on the merit and processes of the 2011 Enquiry. For the sections on the conflict of interest and process see paras 247 – 334 and for the merit see paras 335 – 391.

⁶¹ At para 260

102. The Panel was of the view that the questions posed by Hasson could not even be referred to as "rumours". Rumours are partial averments or suggestions and there is no averment of any fact which elevated those questions into rumours.⁶² There were no *prima facie* allegations against Isaacs and the Subcommittee was merely tasked with considering the relevance of the questions for EE. Only if it was found that there was substance to these questions would the matter be escalated further to the Board. The Subcommittee stated, in an email prior to the hearing, that once they had reported to Achmat and it is found that Isaacs must answer to formal charges, the Board would need to bring in someone who has no links to EE.⁶³
103. The absence of a complainant was identified as an unusual aspect of the enquiry by the Subcommittee.⁶⁴ The Terms of Reference asked for the provision of evidence by those spreading the rumours, but no such persons came forward even though Achmat and Hasson were in touch with these people. Hasson was perceived to be an intermediary, but it was unclear on whose behalf he was acting.⁶⁵ The Panel was of the view that there was no content or context which claimed to involve EE and Hasson proffered no information about the connection between the women and the organisation. Hasson had no personal knowledge of that which was raised, and he repeated hearsay from "KR" and "KS" who were themselves repeating hearsay from or about other women. It was therefore unclear to the Panel why Hasson wanted to pursue the rumours. There was also no indication that anyone wanted Hasson to be an intermediary on their behalf.
104. Hasson did not contact any of these women for their consent or approval in using their names in any capacity or for any reason. Hasson did not even ask them if they wanted to come to the hearing of the Subcommittee. Hasson also did not inform the persons from whom he learned the rumours that they had an onus to provide substance and evidence for the rumours, which Achmat requested him to provide. The Subcommittee also did not approach any of the five named women to investigate the rumours. Ensor was of the view that the Subcommittee did not do this as there was no established foundation to do so.
105. The Subcommittee members did not know the five named women, bar for Adler who knew three of them. None of the women were EE staff members, or current volunteers or interns at EE. Only "KK" and "KS" had been connected with EE in the past. It would have been difficult to approach persons with whom EE had no relationship or who may never have sought any such relationship with EE. The Subcommittee felt that contacting any of these women would have been a serious breach of their privacy. Adler was herself cautious about phoning up people to ask who had or hadn't had sex with someone. She saw this as an invasion of their private lives.⁶⁶

⁶² At para 287

⁶³ At para 289

⁶⁴ At para 290

⁶⁵ See para 295 – 302 for the Panels criticism of Hasson's role in this regard.

⁶⁶ At para 310

106. The Panel could not find a reason for why the Subcommittee could or should have contacted any one of these five women. Professor Manjoo privately approached the five women named in Hasson's submission. This was done and met with an equivocal response. One person was distressed and angry that she had been approached at all, another was unconcerned at the Panel's approach but made no complaint, another never responded and two said they were not prepared to participate in person in the current Enquiry.⁶⁷ The Panel concluded that it would seem that seven years ago the Subcommittee would not have received a different response to the Panel.
107. The Panel also noted that they were given no basis on which to believe that a duty of care existed on behalf of EE toward unknown persons. Neither the Panel nor the Subcommittee of a private organisation has a general duty of care or responsibility to every person insofar as the organisation or its staff is not connected to such persons.
108. The WLC suggested that the failure of the Subcommittee and the Chair to notify persons of the hearing concerning the rumours led to no staff, interns or volunteers coming forward.⁶⁸ However, the Panel was of the view that any staff member, intern or volunteer could use EE's policies and procedures to submit a complaint and there is no suggestion on how such a public notice would be framed as it would result in significant publicity of what were rumours. There were also several persons with knowledge of the rumours who were all in contact with Hasson and could therefore have gathered evidence so that the Subcommittee would have had something on which to recommend a disciplinary hearing.
109. The Panel refers to an email by Achmat to the Subcommittee on 11 June 2011. This email included a link to an article regarding sexting. Achmat stated that he thought it would be appropriate to send the link to the Subcommittee as he intended on broadening the understanding of the Subcommittee on this 'new sphere' of activity.⁶⁹ In Judge Satchwell's view it was most inappropriate for the Chair to intrude upon the merits of the process and he should have recused himself from any discussion leading to a finding by the Subcommittee. Professor Langa however was of a different view and stated that it showed concern by the Chair that the Subcommittee was abreast with all new developments with regards to sexual harassment and that his intervention may have been useful for the Subcommittee to address issues pertaining to sexual harassment if the issue had ever been reached. It was noted that a finding regarding sexual harassment was not included in the Subcommittee's Terms of Reference.
110. The Panel found that the Subcommittee was presented with these Terms of Reference to which they applied themselves as required. The Panel comments that the report of the Subcommittee could have been more expansive.⁷⁰ The report should have explained the three-stage process that the Terms of Reference required; that they were not intending to and did not conduct an

⁶⁷ At para 219

⁶⁸ At para 325

⁶⁹ At para 331

⁷⁰ At para 350

investigation into sexual harassment but were wanting to receive any evidence of an EE connection and thereafter a connection with Isaacs; that if this preliminary stage had resulted in any affirmative response and actual evidence from those who created and circulated the rumours only then could the matter have been taken to a disciplinary stage, such as an enquiry into sexual misconduct; that nobody came forward with evidence to take forward; and there was no need to intrude on the privacy of persons who had been named and subjected to the rumours. Perhaps only then would it have been appropriate to make the findings made in the Subcommittee's report.

111. The Panel expressed the view that Achmat, the Board and the Subcommittee should have given more careful regard to the issues raised by Hasson as a complainant on behalf of the organisation.⁷¹ In strictly confining themselves to an investigation into whether or not the EE Manual could become applicable, Achmat, the Subcommittee and the Board may have failed to have regard to the full extent of the most significant portion of Hasson's submission. The Subcommittee pointed out that the concerns surrounding Isaacs' leadership and private life was not within their Terms of Reference. The Panel is of the view that there was no reason as to why the Subcommittee could not have been more flexible in their interpretation of their Terms of Reference and they could have possibly been more open ended in their recommendations to the Board on the further action which might have been taken as regards the organisation itself.
112. What the Board and the Subcommittee may have failed to do was to consider Hasson's complaint that personal behaviour was so entangled with professional behaviour that it was having an impact upon leadership abilities and the organisation. There is also no indication that the Subcommittee or its report led to an attempt by the Board to examine the organisational culture of EE. Achmat should have considered the leadership concerns raised by Hasson and the Subcommittee should have recommended that the leadership issues be dealt with.⁷²
113. The Panel stated that it would have been advisable to have an open discussion with all members of the EE community about issues such as sexual harassment and inappropriate behaviour or other misconduct and take them through the policies and procedures and ensure that the process to submit complaints were known to all and held workshops and discussions so any misunderstanding and grievances could be ventilated in an open conversation and then hopefully resolved.
114. The Panel suggests that a spirit of organisational justice established in 2011 may have assisted in avoiding the present 2018 organisational debacle. The Panel however stated that this hindsight critique did not suggest that the Subcommittee or the Board subordinated their duty to EE. The Panel concluded that the Subcommittee could not have come to a different finding and

⁷¹ The Panel deals at length with leadership issues, personal morality and transparency within EE at paras 355 – 382.

⁷² At para 377 - 378

the Board did not interfere with the process, save for the sexting link sent to the Subcommittee by Achmat.

115. The Panel concluded that no conflict of interests existed on the part of the Subcommittee or that any member of the Subcommittee participated in any cover up of sexual harassment or other form of misconduct.⁷³ This was due to Panel itself coming to the same conclusion. Further, the Subcommittee could have come to no other conclusion than it did because no evidence was produced by any person who knew or now claims to know of the 'rumours' of sexual misconduct. There was no conflict of interest as there was never the need to weigh or balance duty against friendship or connection. The Subcommittee also made it clear that if the preliminary investigation did link the subjects of the rumours to EE and Isaacs then a disciplinary Panel, perhaps from outside the organisations, would become involved.

RESIGNATION OF PROFESSOR RASHIDA MANJOO

116. On 11 November 2018, Professor Manjoo resigned from the Panel without presenting a report or commenting on the draft report provided by Judge Satchwell, despite Professor Manjoo being asked to express her views in a report.⁷⁴

117. Professor Manjoo resigned due to complaints that the Terms of Reference are flawed. This was despite the fact that she knew of the Terms of Reference which set out the parameters of the Panellists duties when she accepted her appointment. Professor Satchwell expressed her surprise that Professor Manjoo could participate in all proceedings, know all the evidence and have the same opportunity (as had Professor Langa) to reduce her views in writing and instead choose to simply resign her appointment at the end of the process.⁷⁵

118. In tendering her resignation Professor Manjoo sent an Email to Judge Satchwell and Professor Langa.⁷⁶ She indicated that the draft report presented to her read like a judgment and did not follow a victim-responsive approach and she could therefore not associate herself with the findings therein. She dismissed the idea of a dissenting view in the final report as she disagreed with much of the content and writing a dissent would therefore be responding to the original report. She complained that the report made findings which exonerated individuals despite the Panel not discussing fully the 19 statements received (which she agreed with the other Panellists was not evidence, but which they could not pretend did not include substance worthy of attention).

119. She further took issue that the authenticity of the documents produced by Isaacs and Achmat were not tested.⁷⁷ She stated that the Panel is not a court of law and the report needed to be of

⁷³ See particularly paras 383 – 391.

⁷⁴ At paras 392 - 411

⁷⁵ At para 407

⁷⁶ Professor Manjoo's email is quoted in full at para 409.

⁷⁷ Judge Satchwell deals with the authenticity of the evidence provided by Isaacs' and Achmat at footnotes 23 on page 17 and 26 on page 19.

substantive assistance to EE. Rather, in her opinion, the report serves the interests of *inter alia* Isaacs for vindication with the Press Ombud and defamation cases against the reports and "Jane". Professor Manjoo raised that the report is not about transformative justice and that there are no real discussions on the individual, institutional or structural factors that are the cause of the violations experience.

120. Professor Manjoo subsequently, after Judge Satchwell's approaches to herself and Professor Langa, withdrew her resignation and indicated that she would write a separate report. Due to her other commitments it would not be possible for such a report to be written and made available at the same time as the report finalised by the other Panelists. Professor Manjoo was asked to provide her report to the other Panelists as they may well agree with its content and may wish to sign on to the views contained therein. She agreed to this.

121. The Panel notes that although Professor Langa does not disagree with this section of the report, he does not associate himself with the inclusion thereof in the report.

FINDINGS ON ALL ISSUES SET OUT IN THE TERMS OF REFERENCE

122. Ad paragraph 12.1.1 of the Terms of Reference: no evidence was produced to support the existence of any allegation in respect of the 2009 incident involving Isaacs, which was reported in the M&G article of 18 May 2018, and all evidence available to the Panel exonerates Isaacs from any wrongdoing with regard to such allegation.

123. Ad paragraph 12.1.2 of the Terms of Reference: no evidence or complaints were produced to support the existence of any complaints of sexual harassment or other misconduct on the part of Isaacs, therefore there is nothing before the Panel of which Isaacs needs to be exonerated.

124. Ad paragraph 12.1.3 of the Terms of Reference: no evidence was produced to support the existence of any allegation against Achmat that he silenced or intimidated or attempted to silence or intimidate any potential complainant, as was reported in the M&G article of 18 May 2018, and all evidence exonerates Achmat of any wrongdoing in this regard. Similarly, no evidence has been produced to support the existence of any allegations against Isaacs that he silenced or intimidated or attempted to silence any potential complainant as was reported in the M&G article of 18 May 2018 and all evidence available to the Panel exonerates Isaacs of any wrongdoing in this regard. There were no other complaints of attempted or completed acts of intimidation or silencing on the part of Isaacs or Achmat regarding any potential complainant and therefore there was nothing before the Panel of which Isaacs or Achmat needed to be exonerated.

125. Ad paragraph 12.2 of the Terms of Reference: the process followed by the Subcommittee, the Chair of the Board and the Board in the 2011 investigation was fair and appropriate in the circumstances and met the requirements of natural justice and proper procedure. The findings of the Subcommittee as endorsed by the Board was considered rational and correctly reflected the absence of evidence before them. No member of the Subcommittee or the Board had a conflict

of interests as no person allowed any personal knowledge of or connection to Isaacs or any other person compete against or overwhelm their duty to conduct an independent and impartial investigation in the capacity as a Subcommittee or Board member, as the case may be.

126. Ad paragraphs 20.1 – 20.4 of the Terms of Reference: the Panel made no specific recommendations to EE as an organisation on the way it should attempt to ensure a culture in which the dignity of all employees and persons associated with EE receive proper acknowledgement and respect.

127. The report was signed and dated 27 November 2018 by the drafter, Judge Satchwell, with Professor Langa, in agreement. It was agreed that the report would be presented in full to EE, the Respondents and to any person who requests a copy thereof from EE.