

13 December 2018

Response to the findings of Equal Education’s Independent Inquiry into Doron Isaacs’ conduct and matters related to it.

In May 2018 Equal Education (EE) established an independent Inquiry to investigate historical allegations of sexual harassment by its co-founder, Mr. Doron Isaacs, and their alleged cover-up in 2011 by the organisation’s then board, led by Mr. Zackie Achmat. The ‘Isaacs Inquiry’ tasked retired High Court judge Kathy Satchwell, academic Dr Malose Langa and former UN Special Rapporteur on Violence Against Women, Prof. Rashida Manjoo, with investigating these allegations, as well as reflecting on the organisation’s internal mechanisms to respond to such matters. Nineteen complainants came forward, and were represented by public interest law firm, the Women’s Legal Centre (WLC). The release of Prof. Manjoo’s findings on December 11th, in a separate report to an earlier one authored by Judge Satchwell and Dr Langa (released November 28th), marks the completion of this Inquiry’s work.

As a donor to Equal Education (2009 – 2015), its sister organisation Equal Education Law Centre (2016 to date), an invested partner of South African civil society organisations working to advance social justice, and an organisation committed to realising gender justice as a core objective, the Heinrich Boell Foundation contributed to covering the costs of the Inquiry. We believe that its establishment, its work and its findings – alongside the deliberations it inspired – constitute important milestones and lessons for the country’s social justice sector in its efforts to address its own internal sexist attitudes and behaviours. The Women’s Legal Centre has also been an important HBF partner for many years.

Through its work, the Isaacs Inquiry surfaced a critical public deliberation regarding the adequacy of adversarial and narrowly legalistic approaches in providing justice to sexual harassment survivors. The Inquiry’s findings, set out in the Manjoo and the Satchwell/ Langa reports, make it clear that processes that narrowly aim to make findings of innocence or guilt (and that as such must adhere to principles of ‘natural justice’¹) are neither helpful in enabling survivors to feel heard, nor in facilitating the transformation of problematic yet collectively held norms.

This conclusion is most evident in the consequence of Judge Satchwell’s and Dr Langa’s insistence on strict adherence to ‘natural justice’: their report *ignored all 19 submissions* made to the panel because the complainants insisted on anonymity, a condition that entailed that the full complaints could not be shared

¹ The right to a fair hearing, and specifically in this case, the right of the accused to have full access to the detailed accusations made against them.

with the accused². While apprehension regarding the departure from accepted natural justice procedures is generally understandable, those interested in genuine justice should be equally concerned with the reality that in the absence of such protection, complainants would not have come forward at all. What sort of justice would that be? It is important to clarify that the complainants *did not* insist that their accounts could not be questioned or tested. The panelists had the opportunity to submit questions to complainants through their lawyers, as well as formulate questions based on the complaints to the accused, so long as those would be phrased to protect the complainants' identities from being established. It is also important to clarify that as a civil exercise, the Inquiry's panel had no powers to affect legal, financial or criminal consequences of any kind for the accused, or indeed, even make pronouncements on guilt or innocence.

The cost exacted by the decision to ignore all 19 complaints is laid bare in Prof. Manjoo's report, which summarises the generalised substance of the complaints, one by one. While not naming an accused or making findings regarding guilt or innocence, they paint a devastating picture of the organisational culture at the time, one in which repeated sexual conquest was enabled through intimidation and the abuse of social capital and professional seniority. The cost of ignoring the 19 submissions is the unnecessary demonisation of the complainants, the missed opportunity of unearthing and naming problematic behaviours and collective norms, and the inability to make any recommendations to EE on how their organisation can be improved – because apparently no complaints were ever made. Furthermore, some of the language used in the Satchwell/Langa report must be unequivocally condemned. Comparing the anonymous complaints to Apartheid era police dirty tricks is so devoid of context it is absurd, and the authors' claim that "true" victims 'do not feel shame' is contrary to well documented realities. The authors' expression of "disgust" towards the anonymous complainants is especially disturbing.

The complainants argued that their anonymity was necessary to avoid reprisals by the accused and their networks. That this was a legitimate concern became evident even before the TORs for the Inquiry were finalised. Individuals and organisations with significant social, political and/or financial capital attempted to ensure that the TORs would be designed to ensure fairness to those accused – not the survivors. One donor even withdrew its funding from the Inquiry because it considered the final TORs to be unfair to the accused, placing an inordinate burden on EE's current leadership, who is young, black and female. The interventions made by such powerful stakeholders reveal how, more than two decades after the fall of the apartheid regime, even in South Africa's social justice sector, some remain more concerned with fairness towards economically privileged and extensively networked white men, than fairness to the women hurt. To suggest that the proceedings were biased against the accused in such a context is to

² Complainants were fearful that the specific nature of their accounts would render them recognisable.

explicitly argue for the maintenance of a bias against the complainants who through this process cannot and have not sought legal, criminal or financial remedies.

Apparent efforts to use ‘lawfare’ to protect the reputations of the accused since the commencement of the Inquiry’s work gives further credence to the complainants’ fears. We find the issuing of legal threats to the Inquiry’s panel and the WLC by some of the accused, in an apparent effort to protect their reputations, to be deeply problematic and a direct assault on efforts aimed at transformation. These are destructive to the civil society sector as a whole.

Patriarchy is described as the monopolisation of social, economic and legal systems to ensure the power and comfort of men, and white men in particular. In being all of the above, patriarchy also entails the monopolisation of truth. Truth is more than facts: it is their selection, prioritisation and interpretation. Truth is, at heart, a political construct with consequences for who will be believed, and whose voice and experience matters. Transforming our society to one that is just requires us to believe women and value their experience. This also entails the recognition of the limitations of legal procedures and principles – and their necessary adjustment. Further, a transformative social justice practice cannot be one where women’s rights to safety, dignity and being heard are casually traded away for legal, strategic or any other forms of skills, expertise or capital, no matter how valuable these resources are.

As the Heinrich Boell Foundation our position is clear: we believe survivors. We believe that both the reluctance to report, as well as the dismal conviction rate in sexual misconduct related matters will not be addressed without the transformation of legal and judicial *processes* – not only their outcomes.

We would like to register our appreciation to all stakeholders involved in this important undertaking. The complainants, for their bravery; Equal Education’s 2018 management for the principled leadership they have demonstrated in their handling of this matter, and their commitment to seeing justice for complainants, despite the enormous toll that has been exacted on them both individually and institutionally. We believe that their conduct and leadership establishes benchmarks that future transformation efforts in the civil society sector must meet; The Women’s Legal Centre for their immense efforts, and uncompromising and transformative use of the law and the TORs of the Inquiry to exact genuine justice. While we appreciate the work of the panel as a whole, we specifically thank Prof Manjoo for valuing the voices and experiences of the complainants. Collectively, these efforts bear important lessons for further transformation within South Africa’s social justice sector, and a deepened understanding of what victim-centred approaches require and should look like. The responsibility to ensure such approaches in the future, is upon all of us: civil society, donor organisations, and the public alike.