

TO: BHAM & DAHYA ATTORNEYS

ATT: Mr. Y BHAM

**IN RE: INVESTIGATION INTO THE ALLEGED SEXUAL HARASSMENT
BY MR M DESAI AGAINST PROFESSORS SANG HEA KIL,
[REDACTED] AND MS [REDACTED] ON
21 MARCH 2019, AT SIPS RESTAURANT IN MELVILLE,
JOHANNESBURG.**

INVESTIGATION REPORT

Prepared by:

ADV SMANGA SETHENE

SANDTON CHAMBERS

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A. INTRODUCTION

1. Mr Muhammad Desai (Mr Desai) is the National Director of the BDS-SA, having been so appointed effective from 1 January 2014, and his employment contract with the BDS-SA subsists. Mr Desai (33) stands accused of sexual harassment allegedly visited upon three international academics, Prof Sang Hea Kil, Prof [REDACTED] and Ms [REDACTED] [REDACTED] who were guests of the Afro-Middle East Centre (AMEC) which held an international conference on 18-19 March 2019¹, followed by the study tour on 20-24 March 2019, in Johannesburg.
2. Prof Sang Hea Kil (Prof Kil)(45), is an Associate Professor in the Justice Studies Department at San José State University in the United State of America (USA) and is a Palestinian Rights Activist. She is a scholar-activist whose research focuses on the criminalisation of immigrants, media analysis of militarisation of the border, and the discourse of whiteness and the nation². Prof Kil alleges that on the night of 21 March 2019, following the end of the study tour and at Sips restaurant in Melville, Johannesburg, she was sexually harassed by Mr Desai who touched her shoulders in a light massage. According to Prof Kil's statement(s), she did not rebuke Mr Desai, let alone inform him that the alleged touch on her shoulder(s) constituted sexual harassment.

¹ The conference was held at University of Johannesburg.

² As cited from the conference material obtained from AMEC.

3. Prof [REDACTED] (Prof [REDACTED]), is a visiting assistant professor and [REDACTED] on [REDACTED] and decolonial thought³ [REDACTED]. Prof [REDACTED] alleges that on the night of 21 March 2019, at Sips restaurant Melville, Johannesburg, she was sexually harassed by Mr Desai who hugged her. According to Prof [REDACTED]'s statement, she did not rebuke Mr Desai, let alone inform him that his conduct constituted sexual harassment

4. Ms [REDACTED] (Ms [REDACTED]) is a [REDACTED]. She is a former lecturer at [REDACTED] and worked for a [REDACTED] as a research specialist working on [REDACTED], the [REDACTED] and [REDACTED]⁴. Ms [REDACTED] alleges that on 21 March 2019, at Sips restaurant Melville, Johannesburg, she was sexually harassed by Mr Desai who hugged her and ran his fingers through her hair. According to Ms [REDACTED]'s statement, she did not rebuke Mr Desai but she laughed awkwardly.

5. For ease of reference, I shall collectively refer to Prof Kil, Prof [REDACTED] and Ms [REDACTED] as the complainants. Where I need to be specific, I shall refer to each individually.

³ As cited from the conference material obtained from AMEC.

⁴ As cited from the conference material obtained from AMEC.

6. Mr Desai denies all the allegations proffered against him by the complainants.
7. In terms of the BDS-SA's Harassment and Bullying Policy, adopted in August 2017, which covers sexual harassment, I am asked to investigate the allegations proffered against Mr Desai and furnish the BDS-SA with recommendations on whether the allegations merit disciplinary proceedings to be initiated against Mr Desai.
8. I was furnished with the following documents to assist me with the investigation:
 - 8.1. Constitution of BDS-SA;
 - 8.2. Employment Contract between DBS-SA and Mr Desai;
 - 8.3. BDS-SA Harassment and Bullying Policy (August 2017);
 - 8.4. Statement by Prof Kil dated 24 March 2019;
 - 8.5. Updated statement by Prof Kil published on FaceBook (FaceBook posting-posted on 30 March 2019);
 - 8.6. Statement of Prof [REDACTED];
 - 8.7. Statement of Ms [REDACTED];
 - 8.8. Statement by [REDACTED] (witness testimonial);
 - 8.9. Statement by Mr Desai;
 - 8.10. Statement by Mr Rashaad Dadoo (witness testimonial);
 - 8.11. Status of Charges; and

8.12. BDS Disciplinary Policy and Disciplinary Code.

9. Consistent with the doctrine of audi alteram partem rule, I considered it apt to verify from the parties as to whether they stood by their statements and if ever they wished to add anything further. Prof Kil, the main complainant, responded on 20 May 2019, by way of an email, stating that she confirmed her statements and stood by them.
10. In my considered opinion, an interview with Mr Desai was prudent to verify certain aspects covered in the complainants' statements that he did not address in his statement. According to the complainants, Mr Rashaad Dadoo (Mr Dadoo) was in the company of Mr Desai on the night in question. In this regard, I interviewed Mr Dadoo. Both Misters Desai and Dadoo confirmed that they deposed to the statements referred in par 8 and they stood by them. I individually interviewed them on 15 May 2019 in my Chambers.
11. As stated above, the complainants were guests of AMEC and as such, I considered it prudent to interview the Executive Director of AMEC, Mr Na'eem Jeenah (Mr Jeenah). Prior to the interview conducted on 20 May 2019, with Mr Jeenah, he requested to be joined by his two colleagues as they could assist with additional information in this matter. I accepted the request and Ms Mahlatse Mpya (Ms Mpya) and Ms Matshidiso Motsoeneng (Ms Motsoeneng) joined the interview.

12. Lest I forget, I recorded all the interviews held with Mr Desai, Mr Dadoo and Mr Jeenah and requested the said interviewees to do the same through their smart phones. They did. With Mr Jeenah, Ms Motsoeneng's smart phone was used to record the interview.

13. Following the interview with Mr Jeenah, later on the same day on or around 19:30, I attended to Sips restaurant and interviewed Ms Dimakatso Sibanda (Ms Sibanda), the waitress who was on duty on 21 March 2019. I also telephonically interviewed the owner of Sips restaurant, Mr Sifiso Mota (Mr Mota). I did not record the interviews with Ms Sibanda and Mr Mota as they were very short.

14. In this investigation report, I wish to deal with the following:
 - 14.1. The statements of the complainants and their witness;
 - 14.2. The statement of Mr Desai and his witness;
 - 14.3. The interview with AMEC;
 - 14.6. The interview with Ms Sibanda;
 - 14.7. The telephonic interview with Mr Mota;
 - 14.8. The analysis of the statements;
 - 14.9. BDS-SA Harassment and Bullying policy;
 - 14.10. Law on sexual harassment; and
 - 14.11. Conclusion/Recommendations.

B. THE STATEMENTS OF THE COMPLAINANTS**i) Prof Kil**

15. Prof Kil has two statements. There is a statement dated 24 March 2019, signed in Johannesburg and the undated Facebook posting. The latter, contains details that are not covered in the former.
16. Prof Kil in the main, states that on the night in question she and other persons who were part of the study tour hosted by AMEC, went out for dinner at Sips restaurant at the end of the said tour. On their way to the restaurant, they encountered what seemed like a group from the BDS-SA who engaged her and her group in a lot of enthusiastic high-fives for their recognisable Palestinian t-shirts and keffiyehs.
17. Shortly after they arrived at the restaurant, Misters Desai and Dadoo crushed at their table. According to Prof Kil, Mr Desai was deeply drunk and very loud and annoying.
18. Thereafter, Prof Kil says they were joined by another small group from the “Teaching in Palestine” who arrived led by Prof. Rabab Ibrahim Abdulhadi (Prof Rabab), her husband Mr Jaime and other professors named [REDACTED], [REDACTED] and [REDACTED].

19. According to Prof Kil, there were many smokers in the “Teaching Palestine” group who decided to take the pavement/sidewalk seating. Mr Desai left the table at which Prof Kil was seated to go greet Prof Rabab given her stature in the Palestinian movement.
20. Mr Desai returned to the table at which Prof Kil was seated and began getting louder, more annoying and closer to Prof Kil. At that point, Prof Kil told one Lara that she was going to get a cigarette presumably from the one member of the “Teaching Palestine” group just to get away from Mr Desai. Prof Kil went further to ask Lara that upon her return they must switch seats to avoid sitting next to Mr Desai.
21. As Prof Kil was smoking, the habit she says she quit 15 years ago, Mr Desai followed her and again started annoying her. Prof Kil says Mr Desai at that point continuously used sloppy high-fives as a way to get closer to her and that conduct irritated her.
22. When Prof Kil resumed her sitting position as agreed with Lara, Mr Desai, took an empty seat and put it next to Prof Kil. Mr Desai’s action was met with a protest from Stephan and Lara and they asked Mr Desai to return to the chair he previously used.
23. Prof Kil then changed to a table where Prof Rabab and others were seated hoping that given Prof Raba’s stature in the Palestinian movement, her move would provide her shelter from Mr Desai’s harassing and damaging

behaviour. At that juncture, Prof Kil says she literally forced herself to sit between Prof Rabab and her husband Jaime and told them that she needed help with this sexual harasser, Mr Desai. Within few minutes, she felt two hands touch her shoulders in a light massage. She assumed it was Lara trying to smooth her from the stressful situation. But when she looked back, she saw Mr Desai. She froze until the hands were off her. When she looked back again, Lara was behind her. Prof Kil supposes that Lara used her body to block Mr Desai from further molesting her. She then asked Lara if Mr Desai was gone. Prof Kil says a few moments later, Lara said Mr Dadoo seemed to have realised Mr Desai's inappropriate behaviour and was able to steer Mr Desai out of the restaurant.

24. Prof Kil's statement which she refers to as an updated statement was posted on the FaceBook on 30 March 2019 entitled: **"The Indivisibility of Justice and a Demand for the End of Gendered, Sexualized Violence and Oppression against Women"**.

25. In this FaceBook posting, Prof Kil states that on the following night, 22 March 2019, she returned to the restaurant and coincidentally, she came across Mr Dadoo who was passing by. Prof Kil alleges that Mr Dadoo attempted to apologise repeatedly for Mr Desai's behaviour towards her and Prof Kil told Mr Dadoo that she only needed an apology from Mr Dadoo's boss. According to Prof Kil, Mr Dadoo told her that Mr Desai, was untouchable and the Board of Directors of the BDS-SA was hundred percent behind Mr Desai in all things.

26. Prof Kil says she has encountered men such as Mr Desai in her activist community in the USA and she has a term for such men: Mackivist. In Prof Kil's definition, Mackivists are men who mack women in the patterned manner and use their social justice networks in power positions to exploit women not only for labour but for their own sexual gratification.
27. Prof Kil in her statement also states that at some point she said the following to Mr Desai:

“I told him at one point that I was old enough to be his biological parent and point blank told him my age was 46 [I am 45 but will turn 46 this year]. He said he was 33 and suggested that my age was no problem. I told him that I was not interested in people who were much younger than I. His interest did not wane and only increased.”

28. On 23 March 2019, AMEC planned a panel discussion for the solidarity movement. Mr Desai was invited to participate in the same discussion. It was at this panel discussion that Prof Kil had envisaged to confront Mr Desai about his inappropriate behaviour on the night of 21 March 2019. The contemplated confrontation was according to Prof Kil, a way she was going to get justice and at that stage, she had not considered to file charges against Mr Desai. Her contention not to file charges against another person of color has a different meaning in the USA than in South Africa and could possibly undermine her coalition work that is critical of racialized police brutality and the racism of the prison industrial complex. Upon realizing Mr Desai's intentions to avoid responsibility for his behaviour given that she

was an international visitor and leaving in few days, she considered to file charges against Mr Desai.

29. Before Prof Kil left South Africa, she filed criminal charges against Mr Desai.

30. On the morning of 23 March 2019, Mr Desai did not attend the solidarity panel discussion but later in the afternoon, he did.

31. Prof Kil in her statement states that their demands were shared with Mr Desai and three members of the BDS-SA Board of Directors. The demands are the following:

- “1. An urgent, immediate and unconditional apology by Muhammad to the three women he disrespected and violated that night, including myself (the complainants).
2. The institution of a commission of inquiry into allegations of harassment/gender-based violence against Muhammed Desai, with the following parameters:
 - a. The commission must be appointed by 1 April 2019;
 - b. The terms of reference for the commission must be drafted by 1 April 2019;
 - c. The commission will have one month to complete its work, and will be expected to present a report to the

BDS-South Africa board and the complainants (and their representatives in South Africa) by 1 May 2019;

- d. The commission will be appointed through, and will adopt, a victim-centered approach in which the complainants will have a voice in both the terms of reference for the commission as well as the choice of the panelists who will be on the commission;
 - e. The persons to be appointed to the commission and its terms of reference will be decided on jointly by the BDS-South Africa Board and the representatives of the complainants in South Africa.
3. Muhammad Desai must immediately be suspended from all positions and functions in BDS-South Africa until investigations are completed.
4. While investigations are ongoing, Muhammad Desai will not speak on behalf of BDS-South Africa or comment publicly in any way about the Palestinian struggle or the Palestinian people or perform any other function related to Palestine.

These demands are non-negotiable.”

ii) Prof [REDACTED]

32. Prof [REDACTED] statement is dated 31st of March 2019. She states that on the night in question and upon her arrival at the restaurant Mr Desai approached her and Ms [REDACTED] and [REDACTED]. Mr Desai was inebriated according to Prof [REDACTED]. Mr Desai abruptly introduced himself as Muhammed and immediately leaned in for a hug. She says she was caught off-guard by the hug as she did not give verbal consent or offer any gesture from her body that a hug was welcomed. She felt the hug was imposed on her and she found it invasive. After the hug, Mr Desai proceeded to hug Ms [REDACTED] and ran his fingers through her hair. At this juncture, Prof [REDACTED] gave Ms [REDACTED] a look that established the inappropriateness of Mr Desai's actions. When Mr Desai approached Prof [REDACTED], the male colleague, who did not lean forward for a hug but extended his hand out for a handshake. To Prof [REDACTED], that conduct, shaking hands with a male and hugging females, signalled to her that Mr Desai respected the bodily integrity and boundaries of men but not of women.
33. Prof [REDACTED] says she also witnessed another incident involving another participant, Prof Kil. Prof [REDACTED] says she was approached by Prof Kil at her table and Prof Kil asked for a cigarette. Prof Kil indicated that Mr Desai was bothering her and acting in predatory like behaviour. Prof Kil left Prof [REDACTED]'s table and seated herself between two of their colleagues. Prof Kil had articulated to Prof [REDACTED] a strong feeling of

discomfort that Mr Desai was following her. Prof Kil stated that she was thinking about a “safe exit plan”. It was at this point that Prof ██████ realised the seriousness of Mr Desai’s behaviour and that Prof Kil was not safe.

34. At the end of her statement, Prof ██████ states that she hopes that this complaint of sexual harassment will be taken seriously and that the demands put forward from the “Teaching Palestine” delegation will be met.

III) MS ██████

35. Ms ██████ says on the night in question they were approached by a man later identified as Mohammed Desai. Mr Desai seemed to recognise Prof Rabab and after greeting her, he greeted the rest. Mr Desai was according to Ms ██████ jubilant and appeared to have been drinking before proceeding to greet them. Ms ██████ states that Mr Desai put his hands through her hair and on her face before giving Ms ██████ a near-bear hug. This made Ms ██████ very uncomfortable despite her awkward laughter. Mr Desai proceeded to do this similar bear-hug to her colleague, Prof ██████.
36. About 10 to 15 minutes later, Prof Kil approached Ms ██████’s table asking for a cigarette. Ms ██████ states that she was struck by Prof Kil’s asking for a cigarette as Prof Kil had mentioned earlier

in the week that she had quit smoking more than 10 years ago. Prof Kil stated to Ms [REDACTED] that Mr Desai was “**annoying**” and that she needed to get away from him. Almost two minutes later, Mr Desai followed Prof Kil outside and jokingly asking what was going on. About 10 to 15 minutes later, Prof Kil returned to Ms [REDACTED]’s table and asked Prof Rabab and her husband if she could wedge herself in between them with a sense of urgency. According to Ms [REDACTED], Prof Kil stated that Mr Desai “**wouldn’t leave**” her alone and that Mr Desai was acting ‘**predatorial**’. Given what Ms [REDACTED] witnessed and felt, she deemed Mr Desai’s behaviour as sexual harassment and would like this serious issue resolved with utmost justice as the behaviour was unacceptable.

IV) WITNESS IN SUPPORT OF THE COMPLAINANTS

37. Prof [REDACTED] is an assistant visiting professor at [REDACTED] University, [REDACTED]. He confirms that he was in the company of Prof [REDACTED] and Ms [REDACTED] and he saw a young man who was later introduced to him as Mohammed Desai. Mr Desai greeted Prof Rabab, whom he seemed to know. Mr Desai was according to Prof [REDACTED] appearing clearly drunk.
38. Mr Desai then approached Prof [REDACTED] and Ms [REDACTED] and hugged and kissed them on their cheeks with an extremely friendly behaviour. With Ms [REDACTED], Prof [REDACTED] states that Mr Desai

caressed Ms [REDACTED]'s head. Prof [REDACTED] states that Mr Desai greeted him with restraint. Prof [REDACTED] says he immediately went to Prof [REDACTED] and Ms [REDACTED] and expressed his surprise about the way in which they were greeted since Mr Desai was a stranger to them.

39. Prof [REDACTED] states that at some point, Prof Kil came to their table and asked for a cigarette. Prof Kil left and later came back to ask that he sit in between Prof Rabab and her husband. According to Prof [REDACTED], Prof Kil looked anxious and asked to remain with them even though an informal meeting was taking place. The meeting continued and at some point Prof Kil left their table.

C. STATEMENT OF MR DESAI

40. Mr Desai confirms in his statement dated 5 April 2019, that on the night in question he and Mr Dadoo met persons who donned Palestinian regalia and t-shirts written "Free Palestine". They exchanged greetings and acknowledged each address, and support for Palestine.
41. Later they met the same persons at a small restaurant called Sips and were invited by Prof. Stephen Sheehi (Prof Sheehi), an American-Lebanese academic and his wife Dr. Lara Sheehi who were sitting with Prof Kil and Mr Parker Breza. Mr Desai states that they accepted the invitation extended to them by Prof Sheehi. Later, another group arrived at the restaurant and Mr Desai recognised two people who were part of the

group, being Prof Rabab and her husband Jamie Verve and he hugged them. They both responded warmly to his hug. He also hugged other persons who were with Prof Rabab, that is Prof [REDACTED] and Ms [REDACTED]. In this regard, Mr Desai states that he hugged all the people both men and women and did not sense any discomfort on the part of anyone at the time of the hug and afterwards.

42. Mr Desai denies that his conduct on the night in question could reasonably be construed as unwanted attention or sexual harassment.
43. Mr Desai confirms that he sat next to Prof Kil in the company of men and women engaging in various conversations and debates.
44. Further, Mr Desai states that in a meeting of 23 March 2019, the solidarity panel discussion which according to him was attended by approximately 30 to 35 people, Prof Kil conceded that she never once informed him that during the night in question that she was uncomfortable with his behaviour. Prof Kil, according to Mr Desai, did not at any stage during the conversations and/or debates, let alone at any time when Mr Desai left the restaurant that she was uncomfortable with his alleged conduct.
45. Mr Desai states that before he left the restaurant he greeted everyone and went over to Prof Kil's table and tapped her left shoulder to get her attention that he was leaving.

46. On the 23 March 2019, Mr Desai called Ms Mpya of AMEC asking if the meeting was still taking place. Ms Mpya confirmed it was and would commence at 11am at AMEC offices.
47. Following the telephone conversation with Ms Mpya, Mr Desai says he received call from Mr Dadoo who wanted to speak to him urgently. At this juncture, Mr Desai called Ms Mpya again and told her that something had come up and he was unable to attend the meeting that morning.
48. Mr Desai states that when he met Mr Dadoo, he had left his cell-phone in his car. After their discussions with Mr Dadoo, and upon returning to his car, he noticed two missed calls from Ms Mpya and Ms Mpya had left a voice note at 10:26. He listened to the voice note.
49. In it Ms Mpya indicated that she wanted to inform Mr Desai that Prof Kil was uncomfortable with Mr Desai and she wanted to raise her discomfort in the solidarity meeting.
50. At approximately 12:54, some members of the Board of the BDS-SA received a letter from the director of AMEC, Mr Jeenah demanding an urgent meeting to discuss the allegations of sexual harassment against Mr. Desai.
51. Mr Jeenah's letter stated the following:

“ Dear Board members of BDS-SA

I write to inform you as board members of BDS-SA, with a matter that is of grave concern. As a result of this, will request an urgent meeting with your full report today, Saturday 23 March, at our offices sometime this afternoon or evening.

As you might know, the Afro-Middle East Centre hosted a conference earlier this week on Palestine, followed by a study tour for a group of aging following guests that we here.

On Thursday night, some members of the group ran into Mohammed Desai and another BDS-SA staffer in Melville. Three of the women have complained that they were harassed by Mohammed and have labelled him a predator. Some of the other members of the group were witnesses to these events.

We are asking for an urgent meeting with your board. We want to address this urgent an critical issue, and allow the women who have asked to discuss this matter with you directly. They also want the opportunity to confront Mohammed directly with the accusations, in your presence.

As you can understand, we take this matter extremely seriously. At least one of the women concerned would be laying a charge at the police. We are providing this opportunity to you to hear the victims directly, allowing you to also then deal with this matter in a way that best serves BDS-SA and the Palestine Solidarity movement.

Please call me as soon as possible to confirm a time for the meeting. Our guests are flying out tomorrow and thus a meeting today is urgent and crucial.

na'eem”

52. The meeting to discuss the allegations of sexual harassment on 23 March 2019, was duly held at AMEC offices and was chaired by Mr Jeenah.
53. In the said meeting, Mr Desai alleges that Prof Kil made several disparaging accusations against him and the organization he works for-the

BDS-SA. Further, Prof Kil confirmed that she was also at some point in the evening joking with Mr. Desai.

54. Mr Desai states that in Prof Kil's FaceBook posting, it is alleged that on the night in question Prof Kil intimated to several people that she was been harassed. In response to this, Mr Desai states that no person ever informed him that on the night in question he sexually harassed Prof Kil.

i) WITNESS

55. Mr Dadoo is a 22 year old full-time law student and a volunteer at the BDS-SA. In his statement dated 26 March 2019, he confirms that on the night in question he was in the company of Mr Desai and whilst walking south on 7th Avenue, Melville, they met a group of two men and two women. He says someone was wearing Palestine regalia (Palestinian scarves and T-shirts that read Palestine). They greeted one another and acknowledged their support for Palestine. They parted ways.
56. Later that night, as they were walking past Sips restaurant, they met the same group again and jovially commenced conversations. Mr Dadoo says they were invited to join the group and throughout the conversation he was offered chips by Prof Kil who was sitting on his right side.
57. Mr Dadoo further states that at some point Mr. Desai briefly went outside and came back. He witnessed nothing untoward as alleged against Mr.

Desai. He does not consider Mr. Desai's conduct as predatory or sexually inappropriate.

58. Prior leaving the restaurant, Mr Dadoo states that he exchanged details with a man who was wearing a "Free Palestine" t-shirt, Mr Beeza.
59. On Friday 22nd March 2019, Mr Dadoo says he was walking on the side walk past Sips the restaurant at 22h00 and he noticed Prof Kil. He greeted Prof Kil who was sitting alone drinking wine. Prof Kil, responded to Mr Dadoo's greeting and said "I actually wanted to speak to you about something".
60. Mr Dadoo took a seat next to Prof Kil and was told that Mr Desai is a sexual predator. Prof Kil allegedly told Mr Dadoo that Mr Desai touched her shoulder without her permission. Realising the expression of shock on the face of Mr Dadoo, Mr Dadoo alleges that Prof Kil said the following:

" It was not anywhere private, not on my legs, boots but, either way, who the hell is he to touch me on my shoulder without my permission."
61. According to Mr Dadoo, Prof Kil did not mention that Mr Desai massaged her.

62. Mr Dadoo denies ever stating that the Board of BDS-SA was controlled by Mr. Desai. He has not met all the board members to come to that conclusion as alleged by Prof Kil.

D. INTERVIEW WITH AMEC

63. I attended to AMEC offices and interviewed Mr Jeenah on 20 May 2019 at 10:45 and left at 12:45. As stated above, the interview with Mr Jeenah was recorded and he was accompanied by Ms Mpya and Ms Motsoeneng, and the latter stated she was the researcher at AMEC.
64. I asked Mr Jeenah when was he informed of the alleged sexual harassment incident and he stated that it was brought to his attention on the morning of 22 March 2019 by Ms Motsoeneng.
65. On the same morning, he had a meeting with Prof Kil who informed him of the same incident. I asked him what did Prof Kil say. Prof Kil, according to Mr Jeenah told him that she and others met Misters Desai and Dadoo earlier before they met for the second time at Sips. Prof Kil told Mr Jeenah that Misters Desai and Dadoo hugged them. Ms Mpya and Ms Motsoeneng stated that Prof Kil told them they exchanged high-fives. Mr Jeenah insisted that Prof Kil said they hugged.

66. Mr Jeenah asked Prof Kil what she would like see to happen, to which Prof Kil said she wanted an apology from Mr Desai and would like to confront Mr Desai on 23 March 2019, in the solidarity meeting.
67. Mr Jeenah confirmed that the outing that evening was not part of the AMEC programme. In this regard, I was furnished with a copy of the conference and study tour programmes with the biographical details of the speakers at the conference.
68. Mr Jeenah further confirmed that he addressed a letter to the Board of the BDS-SA regarding the allegations of sexual harassment. Mr Bram Hanekom, a BDS-SA board member attended the meeting in the late afternoon of 23 March 2019. Mr Jeenah chaired the meeting.
69. The complainants were afforded an opportunity to state their case. They did. In response, Mr Desai stated that he is unable to respond to the allegations and would do so formally in a legally established platform.
70. On 24 March 2019, Mr Jeenah took Prof Kil to Brixton Police station to lay charges of sexual harassment against Mr Desai. I asked for the update of the case in question. Mr Jeenah informed me that to date, the police have done nothing about the case and Prof Kil has appointed lawyers based in Cape Town to make follow ups.

71. I must mention that on or around 16:45-17:00 on 20 May 2019, Mr Jeenah was interviewed by Ms Joanne Joseph of Radio 702. Coincidentally, I was tuned in. The interview was about the update on the alleged sexual harassment by Mr Desai against the complainants. Mr Jeenah informed Radio 702 that the BDS-SA has done nothing on the issue and it was concerning.
72. Mr Jeenah did not inform Radio 702 that early on the day, I interviewed him and his two colleagues at his offices. Instead, he stated in the interview that “there is someone appointed to look into this issue from a labour law perspective”.
73. I must state that Mr Jeenah had been helpful in informing the complainants that I was appointed to conduct the investigation and duly forwarded to them my contact details. He deliberately omitted this in his radio interview.
74. Prof Kil and Prof ██████████ reverted to Mr Jeenah stating that they would cooperate. In this regard, Mr Jeenah forwarded to me emails to that effect.
75. On 20 May 2019 at 16:49, Prof Kil responded to me directly and stated that she stands by her statement. She attached the same statement published on 30 March 2019 on FaceBook.

E. INTERVIEW WITH MS SIBANDA

76. On 20 May 2019, at 19:25, I attended to Sips and Ms Sibanda informed me she was on duty on the night in question. According to Ms Sibanda, she did notice any patron who behaved in any inappropriate manner or who was being rude to another patron. Given the size of the restaurant, any inappropriate behaviour would have been noticed.
77. Ms Sibanda further informed me that to date or on the said night, no person complained to the owner of the restaurant or to any staff member about any incident of sexual harassment or an inappropriate behaviour.
78. As a policy, Ms Sibanda stated to me that whenever a patron misbehaves or becomes a nuisance to other patrons, they always ask the misbehaving patron to leave the restaurant.

F. INTERVIEW WITH MR MOTA

79. After the interview with Ms Sibanda, I requested to be furnished with Mr Mota's mobile number. I called Mr Mota.
80. Mr Mota confirmed that he is the owner of the restaurant. He was startled that such a serious incident allegedly took place at his restaurant and he did not know anything about.

81. Mr Mota confirmed that as a policy, any misbehaving patron causing any discomfort to another patron would be asked to leave. To date, Mr Mota informed me that there is no person who has reported the alleged incident to him or to any of his staff members.

G. ANALYSIS OF THE STATEMENTS

82. As stated above, Prof Kil deposed to two statements. On 20 May 2019, by way of an email correspondence, she confirmed that she is a deponent to the statements and she stood by them.
83. The FaceBook statement is more detailed and contains allegations not alleged in the statement of 24 March 2019.
84. Prof Kil, allegedly tormented by a sexual predator, Mackivist, sexual molester, sexual harasser being Mr Desai, wanted a mere apology from her tormentor and not justice through law. On the morning of 22 March 2019, in her meeting with Mr Jeenah, Prof Kil informed Mr Jeenah that she needed an apology from her tormentor. In the FaceBook statement, Prof Kil states that on the night of 22 March 2019, whilst she was at Sips, she saw Mr Dadoo and during their conversation, she told Mr Dadoo that all she required was an apology from her tormentor. The very first demand as proposed in the meeting of 23 March 2019, is an unconditional apology from Mr Desai. The other two complainants associated themselves with the demands as articulated by Prof Kil.

85. It is not clear why Prof Kil, a consummate Palestinian activist, who has encountered Mackivists before in the USA and in her activism community could not sternly inform Mr Desai to refrain and desist from what she considered to be an inappropriate predatory sexual behaviour.
86. It is not clear why during the cause of the alleged predatory behaviour by Mr Desai did Prof Kil intimate to Mr Desai that she is old enough to be his biological mother and did not prefer men younger. Was Prof Kil being flirtatious with Mr Desai? Could it be that Mr Desai interpreted Prof Kil's remarks to be inviting? In her own words, Prof Kil in her FaceBook statement states the following:

“I told him at one point that I was old enough to be his biological parent and point blank told him my age was 46 [I am 45 but will turn 46 this year]. He said he was 33 and suggested that my age was no problem. I told him that I was not interested in people who were much younger than I. His interest did not wane and only increased.”

87. It is not clear why Prof Kil, on the night of the incident did she not bring to the attention of the officials at Sips that Mr Desai was behaving inappropriately. Why did Prof Kil not insist that police be called at the restaurant to arrest a sexual predator/harasser?
88. According to the statements of Prof [REDACTED], Ms [REDACTED] and Prof [REDACTED], Prof Kil told them that Mr Desai was “**annoying her, he**

could not leave her alone and he was bothering her”. Why did Prof Kil not tell other complainants or any persons at the restaurant that she was being sexually harassed?

89. Prof Kil states that present at Sips was one of the respected activists within the Palestinian movement, Prof Rabab and Mr Desai seemed to know her and her husband. Prof Kil did not according to her statement ever once approached Prof Rabab to have her rebuke Mr Desai given Prof Rabab's stature in the community.
90. The following night, 22 March 2019, Prof Kil was back at Sips, a place at which she was allegedly sexually harassed and tormented. Only on 24 March 2019, accompanied by Mr Jeenah, Prof Kil attended to Brixton Police station to lay charges of sexual harassment.
91. With respect to Prof [REDACTED] and Ms [REDACTED], Prof [REDACTED] says he witnessed Mr Desai hug and kiss them on their cheeks with an extremely friendly behaviour. Neither Prof [REDACTED] nor Ms [REDACTED] makes any mention of the kisses on their cheeks in their statements.
92. Both Prof [REDACTED] and Ms [REDACTED] admit in their statements that none of them resisted the hug given to them by Mr Desai. They never communicated any displeasure to Mr Desai during or after the hugs. Ms [REDACTED] awkwardly laughed after the hug and after her face and

hair were touched by Mr Desai. These complainants both starred at each other signalling their discomfort with Mr Desai's hugs and after such reflection, none of them communicated their displeasure to Mr Desai.

93. Mr Jeenah and her colleagues did nothing to corroborate any allegations by the complainants.
94. In the circumstances, the said allegations of sexual harassment against Mr Desai by the three complainants cannot be sustained given the apparent contradictions in their statements and that of their witness.
95. Mr Desai admits he had consumed alcohol on the night in question and during the alleged incident. However, he denies ever sexually harassing any of the complainants. He contends that during the alleged incidents of sexual harassment, none of the complainants communicated her discomfort to him during or after the hugs and/or high-fives.
96. Mr Desai states that before he left, he tapped Prof Kil's shoulder seeking her attention to alert her that he was leaving after their conversation. Mr Desai only learnt on the morning of 23 March 2019 that he allegedly sexually harassed the complainants.
97. Mr Dadoo's statement does not contradict Mr Desai's statement. On the following night 22 March 2019, whilst passing at Sips, he was invited by

Prof Kil for a discussion. It is at that point Mr Dadoo was informed of the allegations by Prof Kil. Prof Kil wanted an apology from Mr Desai.

H. BDS-SA HARASSMENT AND BULLYING POLICY

98. The misconduct of an employee of the BDS-SA is not only confined to the offices of the BDS-SA in terms of clause 1.10 of the policy. It includes hotels, restaurants, vehicles, conferences, training/education facilities, and any other location where the employees in the course of work are working, visiting or traveling.
99. In terms of any breach of the policy by an employee will result in the disciplinary action. The policy is applicable to all employees of BDS-SA including its National Director, Mr Desai.
100. In terms of clause 4.2.3 of the policy, an investigation will be carried out as quickly as possible should a complaint of misconduct be received.
101. As evinced above, Mr Desai's attendance at the restaurant was not within the cause and scope of his work. There was no invitation extended to Mr Desai to attend a dinner by AMEC on behalf of BDS-SA. There is no power relationship between Mr Desai and the complainants.
102. In the circumstances, the complaint against Mr Desai does not constitute a workplace misconduct.

I. LAW ON SEXUAL HARASSMENT

103. The 1998 Code of good Practice on the Handling of Sexual Harassment Cases in the Workplace (“the Code”) and its 2005 Amended Code ought to be considered by any employer when dealing with a case of sexual harassment.

104. In terms of Item 3 of the 1998 Code, sexual harassment is defined as:

“1. ...an unwanted conduct of sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

2. Sexual attention becomes sexual harassment if:

(a) the behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or

(b) the recipient had made it clear that the behaviour is regarded as unacceptable; and/or

(c) the perpetrator shall have known that the behaviour is regarded as unacceptable.”

105. For the sake of prolixity, I need not traverse the entire code. For the purposes of this report, Item 3 suffices.

106. The Labour Appeal Court, in **Motsamai v Everite Building Products (Pty) Ltd**⁵ had this to say when dealing with an appeal on sexual harassment:

“Sexual harassment is the most heinous misconduct that plagues a workplace; not only is it demeaning to the victim, it undermines the dignity, integrity and self-worth of the employee harassed. The harshness of the wrong is compounded when the victim suffers it at the hands of his/her supervisor. Sexual harassment goes to the root of one’s being and must therefore be viewed from the point of a victim: how does he/she perceive it, and whether or not the perception is reasonable...”

107. Our courts have zero tolerance on sexual harassment. Employers such as the BDS-SA must also have a zero tolerance to this heinous misconduct irrespective of who is involved.

J. CONCLUSION/RECOMMENDATIONS

108. Whenever the allegations of sexual harassment are made, irrespective of who is involved, they must be attended to expeditiously without fear or favour.
109. It has taken the BDS-SA two months to attend to these serious allegations. The Board of BDS-SA should ensure that urgency in dealing with serious allegations in future must never be compromised. With the passage of time and if the allegations are not dealt with expeditiously, the victim, the alleged

⁵ [2011] 2 BLLR 144 (LAC) at para 20

perpetrator and the organisation itself, are put in a state of suspended animation until a due process is finalised. This should never happen.

110. In the conspectus of the above, I find that there is no rational basis in law to take any disciplinary action against Mr Desai. The allegations against Mr Desai premised on all the statements of the complainants, their witness and Mr Jeenah's interview cannot be sustained and are unfounded.

111. Without delay (whether the Board of BDS-SA accepts this report or not), the BDS-SA must publish this report on its website and email it to complainants, AMEC and its stakeholders.

DATED AT CASABLANCA ON THIS 24TH DAY THE OF MAY 2019.

SETHENE S
Chambers, Sandton