

**LIFE ESIDIMENI ARBITRATION**

**HELD AT: EMOYENI CONFERENCE CENTRE, 15 JUBILEE ROAD,  
PARKTOWN, JOHANNESBURG**

**DATE: 10<sup>th</sup> OCTOBER 2017 DAY 2**

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**DAY 2 SESSION 1 – 3.**

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**BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**WITNESSES:**

**PROF. MALEGAPURU WILLIAM MAKGOBA**

**MR. LEVY MOSENOGI**

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10 October 2017

SESSION 1

**ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Ladies and gentlemen and Counsel, we are starting on our second day of hearing. And as usual we will run  
5 now from 9:30 to 16:30 or 17:00 if necessary. In the meantime will somebody call Prof Makgoba to take the witness stand, please? Advocate Hutamo, your witness is not here.

**ADV. TEBOGO HUTAMO:** My attorney is attending to see ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Will you put the mic on and come on  
10 record?

**ADV. TEBOGO HUTAMO:** I was just saying that I have spoken to my attorney and he is making arrangements to see if he can't locate him. He just went out. If he can just be given a moment.

**ARBITRATOR, JUSTICE MOSENEKE:** I am aware that your next witness is here.  
15 Well it may well be highly undesirable to break the cross-examination at this point and yet it is also important to preserve time. Is there any indication when the witness is expected to be here?

**ADV. TEBOGO HUTAMO:** I am made to understand that he is coming through into the room.

20 **ARBITRATOR, JUSTICE MOSENEKE:** As we are speaking now? To all concerned, I just want to make the point again, I would like to start on time at 9:30

on every single day. We have a lot to go through and we have to be quite dedicated about that. Professor, good morning.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Good morning.

**ARBITRATOR, JUSTICE MOSENEKE:** I have to repeat the oath. Do you swear  
5 that the evidence that you will give today will be the truth and nothing but the truth?  
Please raise your right hand and say so help me God.

**PROF MALEGAPURU WILLIAM MAKGOBA:** So help me God.

**ARBITRATOR, JUSTICE MOSENEKE:** Before I turn you over to the next counsel  
to ask questions, it is absolutely important for us to remember that today is the  
10 World Mental Health Day. It is quite an important day around the world, to  
acknowledge and recognise firstly the humanity of people who are in need of mental  
care, health care, on account of their mental state. And the world round on this day  
recognises that and remind all of us of the importance of looking after them in a way  
that restores their human dignity. So as we go through our proceedings today, let's  
15 keep that in mind, because in the end a process like this is far more important than  
simply what compensation will flow from this, it is what lessons we may derive from  
it. And I thought it is just appropriate that we remind ourselves that not only us but  
the whole world is alive to the importance of the protection (inaudible) rights of  
people who may have disabilities that may derive from the state of or from their  
20 mental state. Enough said about that, but I thought it is important to note and to  
mark that. We are going to go back to the process of cross-examination. Advocate  
Hassim, were you done with your cross-examination yesterday?

**ADV. ADILA HASSIM:** Yes, I was, Justice Moseneke.

**ARBITRATOR, JUSTICE MOSENEKE:** You were done. Thank you very much. And that then immediately moves me to Adv. Groenewald. It is your term to cross-examine.

5 **ADV. DIRK GROENEWALD:** Thank you very much Justice. Professor, thank you. As you heard, my name is Dirk Groenewald. I am representing three of the families who have lost loved ones at the Cullinan Care and Rehabilitation Centre. As a starting point I would just like to thank you on behalf of the families for the work that you've conducted and for the report that you've compiled. I think that you gave the  
10 families much hope in this process to clarify some issues and to give them some much needed information. That being said, Professor, do you have your report in front of you, the bundle?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I know the report.

**ADV. DIRK GROENEWALD:** Then it is good. I wanted to take you to Chapter 16  
15 of the report. It is at page 49. Now that chapter you deal with violations of acts, constitution, the NHA and the MHCA. On page 52 of the report you make the following summary: The expert panel, the HOSC inspectors, the Ombud and the MSC found several contraventions of the constitution, especially the Bill of Rights, the NHA, the NHAA and certain sections of the Mental Health Act contrary to  
20 fiduciary responsibilities. And then you also say the accountabilities and responsibilities vested in all these acts and codes must be followed. Now in fact you also listed four, if I am correct, four international treaties that was also violated. Is that correct?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I didn't list treaties. I said we belong, we are signatories to the treaties.

**ADV. DIRK GROENEWALD:** Yes. I just need to clarify. My purpose is solely to get clarity on certain issues.

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** That's correct.

**ADV. DIRK GROENEWALD:** I am not here to trap you or anything like that. But am I correct, sir, that your report confirmed that a number of human right violations occurred?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I can confirm that.

10 **ADV. DIRK GROENEWALD:** Yes.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I can more than confirm that.

**ADV. DIRK GROENEWALD:** You can more than confirm that.

**ARBITRATOR, JUSTICE MOSENEKE:** Shall we have that interpreted?

**INTERPRETER:** Thank you Chair. ...*Interpreting...*

15 **ADV. DIRK GROENEWALD:** Thank you. Professor, you actually go further in the report and you state there that poor planning and implementation, including the methods and degree of consultation, access to information, transportation, general treatment, etcetera of both the persons being moved from LE, as well as the family members resulted in egregious violations of the right of persons to be treated  
20 humanely and with dignity. It is quite clear that in the report you've also made a

distinction between the patients' rights that's been violated and the families' rights that's been violated. Am I correct?

**PROF MALEGAPURU WILLIAM MAKGOBA:** That's correct.

**INTERPRETER:** ...*Interpreting...*

5 **ADV. DIRK GROENEWALD:** Now Professor, I would like you to just speak freely and just explain that distinction and from your report, just explain how you experienced that these families' rights were also violated. And I see that you've made mention of the improper consultation process that was conducted and so on, but I would like you to just elaborate on how do you say and what do you mean  
10 when you say the families' rights were also violated.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Okay, let me just remind everybody that I had the opportunity to interview 73 people and some were relatives of the deceased, family members and members of the communities of the families. And what came out was really the fact that many of the families did not know where their  
15 relatives were. They did not know where their relatives were transferred. They were poorly informed about when they would be transferred. And that obviously I regarded as something... for people who stayed at Life Esidimeni, some of them for so long that it was a simple common courtesy that should have been actually offered to the relatives to say on this particular day we have decided or we have  
20 taken a decision to transfer so and so who is either your uncle or your son, we are transferring them to so and so. And again I am going to give you a very simple example and I'll go back to Rev Maboye. His son, Billy, was transferred and for almost like a year he didn't know where his son was. Until by coincident on his

birthday I think he received a call and it happened to have been his son and that is how he identified where his son was at Bophelong (Inaudible) Mine. It was just a coincidence, it was on his birthday. And that is when he said I will come and see you and that is when he went to buy this Kentucky thing that I was talking about

5 yesterday. Now that is just a simple person where you have a father who for a whole year did not know where his son is, almost. And I can say that for a number of these patients. There is another one called Makoba who, I think the sister is also here, it is not Makgoba, it is Makoba, although it sounds a little bit more attractive and easier. But you know the brother died and for maybe about two or three weeks

10 she did not know that her brother died, until she received a phone call from a NGO telling her that either they are going to bury the brother or she must come and collect the brother. And then there is Virginia Watshapela (?), the same thing. So you can see why the relatives or the families were actually not treated with, what I would call, common courtesy, human dignity and human respect that should be

15 accorded. But importantly this is embedded in our constitution, to treat people with respect is one of the pillars of our constitution and that did not occur in relation to the relatives or the family members. Now when it comes to the patients themselves, I mean it was like horror stories. You came and you heard stories like patients were transported inappropriate transports where some of them had to be

20 tied to the vehicles because the transportation was not appropriate. Some patients were transferred from LE maybe to Cullinan and then from Cullinan they will be transferred somewhere else, almost again the decision of the team that had assessed them as to where they fit. Now I think it is a requirement in mental health

that if you are going to put a mental health person somewhere, first of all you must assess the capability of the patient, what are they capable of doing intellectually and otherwise and physically. And then you must identify a suitable place that would fit their requirements. Now you can imagine when you have an assessment team at  
5 the base and it says you must go to Cullinan. And you arrive at Cullinan and you are told no, no, now you must go to Precious Angels. What informed that kind of decision and how would you classify that, because it actually contravenes the very basic essence of what is required in the assessment of a mentally ill patient. And some of them, as I say, they were transferred several times. And every time you  
10 transfer a mentally ill patient, it takes something out of them and it often takes longer to recover. And you can imagine the number of times you do that and some of them are not even aware where they are going. They don't protest, occasionally they do but generally they don't protest. And basically you are doing something against people who are so vulnerable, but as I say they are silent and quiet and  
15 whatever they are experiencing you don't know. And I just thought that was cruelty.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you Professor. Perhaps we should have an interpretation here.

**INTERPRETER:** ...*Interpreting...*

**ADV. DIRK GROENEWALD:** Thank you. Professor, in respect of the fiduciary  
20 duty, you state there that ineffective leadership and direction was lacking in the process of transfer as monitoring and control occurred post events and there was poor response towards further occurrence of deaths. Now do you mean thereby



that notwithstanding complaints and notwithstanding, you know this already being identified as a crisis, there wasn't any crisis control or lack of crisis control.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think they didn't actually realise that there was a crisis. I think you remember when Jesus Christ was on the cross  
5 and he said Father forgive them for they know not what they are doing, I think it was a situation similar to that. They did not seem to have a clue as to what they were doing, whether they were in a crisis or not. That is how I will put it. I am not a Bible reader but I used to go to Sunday School.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, Professor, I was just about to say  
10 with a string of medical and science degrees, it is refreshing to hear you call the Bible to assistance.

**PROF MALEGAPURU WILLIAM MAKGOBA:** It comes from Sunday School.

**ADV. DIRK GROENEWALD:** I am glad you remember that.

**INTERPRETER:** ...*Interpreting*...

15 **ADV. DIRK GROENEWALD:** I just note there in the same paragraph, you actually state there that the plan, the project plan was unsigned and therefore not approved by relevant authorities. Is that correct?

**PROF MALEGAPURU WILLIAM MAKGOBA:** That is the document that we were given. I never saw a signed one. And there was always a contestation whether this  
20 was a plan or it was just something that was coupled together. I think there were many people who wanted to see a plan, who would have evaluated, I think including Section 27, they never saw a plan. So there was an issue. But what for me is

important was whether you saw a plan or not, when you interrogated people to give evidence, there was such a disparity between what was happening on the ground and what would have been written in that sketch, if I may call it... I don't call it a plan, it was a sketch. So there was a huge difference between what appeared to be  
5 on paper and what was happening on the ground. And the question is, if you are looking for evidence, do you believe what is on paper or do you believe what you see and that people have experience and I chose the latter. And because I was interviewing a diverse group of people that I knew would never have caucused or gossiped together, I had to rely on their word and their evidence that they were  
10 speaking the truth.

**INTERPRETER:** ...*Interpreting...*

**PROF MALEGAPURU WILLIAM MAKGOBA:** In fact just to complete, I think Mr. Mosenogi who was supposed to be the project manager, who has given oral evidence, I think it is contained in the report. He makes the point that when he read  
15 the plan, it read like a cost analysis rather than a plan. So you bring somebody to come and actually manage a project and the person tells you that this doesn't look like a proper plan. So there were difficulties, I think, for many stakeholders about the so-called plan that appeared. But that's all I can say.

**INTERPRETER:** ...*Interpreting...*

20 **ADV. DIRK GROENEWALD:** Now Professor, from the report you can confirm that a number of the family members complained of the conditions of their loved ones. And that to some extent or in some cases there was no intervention or seeing that the patients died. At other times the State will only intervene a week or a month

later. I see from the report itself that the Ombudsman wrote in October in respect of the situation specifically at CCRC and Anchor and it took them, I think, a week and a half, two weeks to take steps there. But you can confirm that the families complained, they knew about this and they complained, not per se to the  
5 Ombudsman but to the Government and they tried to place it under their attention to say we need assistance.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think that is correct. I think the response was often, I think, not quick enough, just like I think yesterday we spoke about how financially resourced some of these NGOs were. They went to them,  
10 requested them to provide a service and did not pay them and some of them had to go and fund raising. Some of them actually supported the patients from their own money and the money of the families. And I can quote an example of Anchor. I think the person who ran Anchor is a lady who belongs to a church process and she had to go and raise money in order to support the patients that had come to her  
15 NGO. So yes, I think patients complained, the response was often very slow. But also remember that relatives actually had a relationship with Life Esidimeni. And I don't want to paint Life Esidimeni as a paradise, but they did have a common understanding between themselves and Life Esidimeni. They knew what to do and they knew who to contact and often that relationship appeared healthy. When they  
20 were told that their relatives were going to be transferred, they wanted to actually examine the places where they were going to be transferred and they were not given the opportunity to do so, to go and see where is my uncle going to be transferred. And later on, I think there was a family committee that was also

requested to go and look at these NGOs. They went about six of them and they found them woefully inadequate and that was actually reported. What was done about that, I think only God knows. But there were all these processes or signals coming from different angles about, I think the problems that were existent in the

5 NGOs that were reported. Now I do agree that in terms of the CCRC, this is a very special place, and like very special places when they succeed, they succeed very well and when they fail they fail terribly. Now you would have known that CCRC is a rehabilitation centre, it is not really classically a hospital, it is a rehabilitation centre. And it hosted three NGOs, one was called Life Disciples, the other one was

10 Siyabadinga, the other one was Anchor. And all of this, when they came, they obviously compromised the governance of that rehabilitation centre. They also compromised the human resources in that centre, because they had to be deployed. They compromised the budget of that resource centre, such that at one point or another there was a strike. You know the medical services and the health

15 services were also compromised, because they are thin on the ground and now they needed to be stretched to look after all these other people that would have been... And also, can you imagine a state institution goes and harbours a NGO within state grounds? What were the legalities that they went through? And then one of them they discovered that it has no license, but it is on their ground. So you

20 have those kinds of things.

**INTERPRETER:** ...*Interpreting...*

**ARBITRATOR, JUSTICE MOSENEKE:** You know, I know Adv. Groenewald is on a course, but this rings in my head every minute when I look at your interview and

your discussion with the MEC. I can't get to the root of it. What was she doing? What drove her in the face of all of these warnings by experts, by head of clinical departments, by families, by the very manager of the project she appointed who talks about a costing plan rather than anything else and by all of the indications  
5 around her and she still pushes through when the risk ominous, at least from your interview with her and all the objective facts around. What was it? Did she tell you what drove her so hard to want to do this that turned out so fatal?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think she never understood and again I will refer to the Bible as I have already done, that I don't think she  
10 understood the magnitude of the problem and as such I think, you know... I tried to find out what actually happened and what were the controls that she put in. And all that I could gather was, this whole thing, although she had given instructions as to what must happen, and I think that everybody realised that that is what needed to happen. Because I think when you spoke to the subordinates, they said once it was  
15 decided then they just had to implement. You know it was like, what do you call it, the charge of the light brigade.

**ARBITRATOR, JUSTICE MOSENEKE:** Ye, but why so many people at the same time without adequate resources, with so disastrous consequences, did you ever manage to put your finger on what was that pressure about?

20 **PROF MALEGAPURU WILLIAM MAKGOBA:** I don't know.

**ARBITRATOR, JUSTICE MOSENEKE:** What is it that needed so many people to be transferred so hurriedly in such an unprepared way and expectedly led to their

death? Did the MEC tell you why this was a compelling political or administrative or leadership issue that had to happen?

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, I never got that one, I have to confess. I don't have that one. It bothered me a lot but I tried in various ways but I  
5 never got an answer.

**ARBITRATOR, JUSTICE MOSENEKE:** Did she complain about the cost issues at Life Esidimeni?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, that was the rationale that was given, I think even publically. But as I say... you know when you have... and I have  
10 to give this example, because it always remind me of my father. My father always used to tell me it is very expensive to educate a child who is not bright. And his biggest advice to me was never to marry a woman who is not bright either. But the point I am trying to bring here ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And hopefully also never a man who is not  
15 bright.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Correct. But you know, I think the point I am trying to make here is, people at Life Esidimeni they were classified as patients of the State. And I cannot for the hell of me understand where you classify people under a constitution directive or principle and you think that you can maintain  
20 their life on the chip. That to me... I mean if the Auditor General had said, you know, your books are not balancing... I think any Auditor General, if any considerate person went to the Auditor General and said look I have got a group of mental ill

patients, can we organise the budget in a particular way that will allow us to look after this bill, I think auditors would be able to listen to that. But to go and choose the most vulnerable people to do your cost cutting without actually proper thoroughly interrogating, I just thought that was not appropriate of them. But to

5 think that, as I say, you can look after vulnerable people on the chip, if ever there is a lesson, we have to learn that. Because if you are going to pay R100 a day or a month at the NGOs, you know you are paying R2 000 per patient at Weskoppies. Now that is... this whole cost cutting thing has just gone out of the window. From the time they started to close the NGOs, six of them were closed even during the

10 process of investigation and they were being transferred back into hospitals like Sterkfontein and Weskoppies. And once you went there, the amount of money that you are going to pay is four or five times more than what they were paying at Life Esidimeni. So it didn't make logic why you could afford to pay that but you couldn't have just maintained it at Life Esidimeni.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And I am going to allow our esteemed interpreter to make this point, it is quite a lot and then we can hand over back to Adv. Groenewald. It is just something that worries me. I remembered it in my shower this morning, I remembered it again in my trip here... why... I mean that is the big question, why? And we have to try and get to understand that, why this was

20 a compelling public or state interest to discharge these people, deinstitutionalise them and spread them around in facilities, which on all accounts, Prof Makgoba tells us were inadequate. And we will have to come back to that point some other point.

**INTERPRETER:** ...*Interpreting...*

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Groenewald, I turn it back to you.

**ADV. DIRK GROENEWALD:** Thank you very much, Justice. Professor, we are here to get closure for the families. Now we know that these families were informed that listen here – some of them were informed – that listen here your family  
5 members or your loved ones will be transferred to this place. Some of them were shown the places or wards and said here they will be, they will be fine, they will be looked after, they will be cared for. Now we know that that didn't happen. And you would agree with me that the State lied to these family members.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I am not a lawyer and I find the  
10 usage of that word very difficult and complex. I don't know whether they lied or whether they were incompetent, I really don't know. I think there is a big difference between the two. So I am not able to really... you know lying is a deliberate intentional process and I don't think there could be such an intention. Incompetence is often subconscious and not deliberate and I think there was just  
15 general incompetence across the system. And when signals were made available, they were not read in the proper way. I think if you read my report, you will realise that I actually wrote this report in what I describe as understated English, I didn't write it in direct South African English. I had to appeal to my other linguistic abilities to say, it must have a meaning and it must create people who read it to be  
20 imaginative rather than to simply say this is this in black and white – I never wrote the report that way. So to say they lied is too strong a word. And the State, you would have to identify who constitute the State. And I wasn't investigating the State, I was investigating a project in the province.



**ARBITRATOR, JUSTICE MOSENEKE:** But were there promises that were not fulfilled?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think so. I think there were promises that were not fulfilled that were even actually I think communicated in court that we will try and provide better care or equivalent care when we take the patients from Life Esidimeni. I think that was communicated in one of the court decisions.

**ARBITRATOR, JUSTICE MOSENEKE:** Look at the deed of settlement between Section 27 and the Department.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, so those things were there. And it was often also communicated during the time when even the director of mental health were speaking to relatives that you shouldn't worry, we are going to provide fairly reasonable care when you leave Life Esidimeni.

**ARBITRATOR, JUSTICE MOSENEKE:** Sometimes when harm is caused, intent becomes irrelevant.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** You do things inappropriately, inefficiently and you don't meet your promises, harm eventuates. And the law is just impatient about that as it is about untruths or lying.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Okay.

**ADV. DIRK GROENEWALD:** I think the point that we would just like to make is that, you know the families, whether or not it was intentional or whether or not it was

not intentional, the families were misled. They were made to believe that their family members and loved ones will be fine and that was not the fact. Now I would just like to refer you to one section of your report.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Okay.

5 **ADV. DIRK GROENEWALD:** In as far as you say that well, I don't think they lied, you know. I refer to one section, you say: "The MEC, the HOD, the director of mental health and her team, the various directors of the three NGOs, Precious Angels, CCRC, Anchor, Siyabadinga, Watsega, Takalani and the other NGOs all knew they had no capacity, no competent and qualified staff to look after such  
10 patients. Vulnerable patients were thus placed into circumstances that could not preserve their lives." They knew that, they said to the families your loved ones will be fine.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I stand by that statement. Perhaps maybe to put it in gentler English I would say they were economical with the truth.

15 **INTERPRETER:** ...*Interpreting*...

**ADV. DIRK GROENEWALD:** Professor, just a further point in respect of the families. Am I correct to say that in your report, you go so far to say that the families actually endured emotional and psychological trauma.

**PROF MALEGAPURU WILLIAM MAKGOBA:** You can see that even today.

20 **ADV. DIRK GROENEWALD:** Yes.

**PROF MALEGAPURU WILLIAM MAKGOBA:** So it is not something that is endured, they are still enduring the trauma. I mean most of them here are pained

and that is why I think they have come to this process to seek closure or to seek a better understanding. And part of the reason I felt that, you know, this process would be a reasonable one to follow was because, you know, we live in a very complex world where there are many truths: the legal truth, the scientific truth, 5 Biblical truth, traditional truth, all these are truths that guide people's lives. And no single truth for an individual is adequate. We live in the milieu of those truths. One day you go and pray to your ancestors, you don't understand why you do it, but you never the less do it. The following day you go to church, you pray to God, you do it also and it is all part of you trying to explain your existence and your guidance in life 10 – that is what we all do. So this process for me was more reasonable, because people could talk to each other, could understand and I could be interrogated, like you are doing.

**ADV. DIRK GROENEWALD:** I am not interrogating you.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Okay, you can clarify things, I 15 understand that, I am just using the word. So that I think people could understand what I went through in order to compile the report that I have compiled.

**INTERPRETER:** ...*Interpreting*...

**ADV. DIRK GROENEWALD:** Thank you Professor. I would just like to get to the situation there at CCRC more specifically. Now in your report you state that 20 according to you 25 patients died at CCRC, Siyabadinga and Anchor and they were all three on the same premises, as you indicated. And you also testified that CCRC is not a NGO.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, it is not a NGO.

**ADV. DIRK GROENEWALD:** CCRC is not a NGO. So you then referred to... in the report you also make mention of the multiple transfers of the patients. And you testified yesterday that individuals that, or the patients that died at CCRC or that  
5 were transferred to Siyabadinga, they were sacrificed for the Life Esidimeni patients that needed to come to CCRC.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Correct.

**ADV. DIRK GROENEWALD:** In your report it is a bit unclear for me, because we know Siyabadinga closed down, the people were again transferred somewhere,  
10 Anchor also closed down. So were all those individuals now and patients now returned to CCRC?

**PROF MALEGAPURU WILLIAM MAKGOBA:** The patients who went to Siyabadinga from CCRC, they were CCRC patients originally. So when it closed, they would have automatically gone back to CCRC, because they are registered in  
15 the system as CCRC patients. The patients who were at Anchor, which was another NGO, when it was closed they were also registered as CCRC patients, because they were brought through that kind of a, I suppose, form of governance. So they would have gone back to CCRC. So that is why although CCRC is not a  
20 NGO, it behaved in a manner that is also not consistent with how it should behave as a rehabilitation centre. And it had this confusing management structure or corporate governance that allowed these three NGOs to exist within that, using the State resources to keep them surviving, but not following the proper legalities to

deal with that. And just to correct it, when I did my report it was indeed 26 and when I finalised it, it was exactly 29.

**ADV. DIRK GROENEWALD:** 29.

**INTERPRETER:** ...*Interpreting...*

5 **ARBITRATOR, JUSTICE MOSENEKE:** Professor, one of the... to interrupt Adv. Groenewald again – One of the things that give me little sleep, is your conclusion that the licensing was irregular, was mainly irregular, licensing of NGOs.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Now here is the question, which is related  
10 to the first question that I asked you about the MEC. Was there any pattern, was there inference that could be made in relation to choices that were made in placing mentally ill patients? In other words I am asking the question, who was favoured, which NGOs, licenced or not, tended to get numbers or large numbers of patients and therefore large amounts of money presumably... also of course the obligations.  
15 Could you sense, could you detect a pattern other than that some were licensed and most were not licensed? Or in fair, a motive or a reason for choosing particular NGOs?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I think that was very difficult for me to establish. What I did gather was that, people were called to a meeting to one  
20 of the Life Esidimeni halls and told that we have... we are going to transfer patients from Life Esidimeni and this is an opportunity to provide empowerment to people who can either modify their homes in order to accommodate patients. So that was

one thing. And I think a few people got excited because some of them already had homes, so they could extend them, or they already had NGOs, they could extend them. Some already had licenses that were given by social developments and they could change them a little bit maybe to fit mental health. Other just had houses that

5 they felt needed to be modified. The problem was, when people left there with that excitement, we never knew what was the criteria that was then used to select the ones that were preferred, there was never a clear criteria. And as I say, some were just told go home and change your home or modify and we will give you the license. Now, you don't do that with mental health. I mean you can imagine I am driving a

10 car and somebody says your disc has expired, but you can drive it and we will sort it out some other day.

**ARBITRATOR, JUSTICE MOSENEKE:** But could you detect patronage, social motivation, political motivation? Could you sense why particular NGOs would have been favoured and others not? Even if it is an empowerment project. I am just

15 trying to think through how were they chosen other than a rational independent criteria that says you have trained people, you have the facilities, you have the care necessary... or were there other considerations that were in play?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think there is a suggestion that... I mean if you were to speak to people they will tell you that most of the newly

20 established NGOs were in Tshwane, first of all. They were not randomly distributed across the province.

**ARBITRATOR, JUSTICE MOSENEKE:** That worries me. I am from Tshwane.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, I know, that is why I am a little bit careful to use it. They were for Tshwane. But also something I didn't share, because I didn't feel that maybe it was part of it... when I first requested from the MEC to give me the documents in order to prepare for my investigating, I requested  
5 her to give me all the necessary minimum documents that would help me, especially the NGOs that were used. She gave me 27 and later on I discovered there were 30. So there were three NGOs that I was not informed about and I tried to find out why were these not given to me. One of them, I am told, was fronting for another one – that one I am aware. So there was a NGO that I was not given to go  
10 and investigate because it was fronting for one of the NGOs that was registered, so it was kept away from me. And another one, of course, I was never told ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** What does fronting mean here?

**PROF MALEGAPURU WILLIAM MAKGOBA:** It means that they were accepting  
15 patients on behalf of another NGO that is registered and they were obviously sharing whatever was coming between the two. So the registered one would claim more or would claim for what they accepted and they will share it with the other one that is not registered or whatever. So there was no criteria actually for patients to be put into a place like that. That is why I had problems with the licensing process  
20 and the criteria that was used. But I never... I mean there were always rumours about that there were people in the Department that knew others in the NGOs, but I didn't feel that I am competent enough to investigate that kind of process. I had a very clear brief that I must look at the circumstances that led to death, not the

circumstances that people were either, you know, socialising with each other. I was not in that and that is not an area that I am comfortable with.

**ARBITRATOR, JUSTICE MOSENEKE:** So the real answer is, you couldn't detect any patterns that would boil down to personal preferences or patronage or political linkages or social linkages, you couldn't find that.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

**INTERPRETER:** ...*Interpreting*...

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Groenewald.

10 **ADV. DIRK GROENEWALD:** Thank you Justice. Professor, your report, there is uncertainty as to patients that were transferred to Siyabadinga and then again back to CCRC. Where did the deaths occur? Did it occur while people were still at Siyabadinga or when they returned to CCRC? So did they die at the hands of the or under the NGO or under the Department, if I can put it like that? Because I see  
15 the acting CEO said no it is actually at the CCRC.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think the 10 patients that I spoke about died at Siyabadinga. They did not die at the CCRC.

**INTERPRETER:** ...*Interpreting*...

**ADV. DIRK GROENEWALD:** Do you know when the patients were transferred  
20 back to CCRC?



**PROF MALEGAPURU WILLIAM MAKGOBA:** You see the deceased patients could not be transferred, they are deceased.

**ADV. DIRK GROENEWALD:** Ja.

**PROF MALEGAPURU WILLIAM MAKGOBA:** But later on they closed  
5 Siyabadinga. I don't have the date in my head when it was actually finally closed, because there was a dispute between CCRC, the Department and Siyabadinga and they had to close it. But I am not aware of the date.

**ADV. DIRK GROENEWALD:** Okay. On that point, Professor, we have another individual here who has died on the 3<sup>rd</sup> of August 2016. It was a patient at CCRC,  
10 he was transferred to Siyabadinga and he was then transferred back to CCRC. We have his death certificate and he is also not on the list of the deceased persons. So we would also request that the list be extended to include his name. But as indicated by Justice yesterday, we will approach you and we will provide you his details and perhaps you can just, you know, confirm that for us.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Can I just return back to this issue  
15 and maybe I'll clarify? I needed to clarify this because yesterday I was given a task of 11 patients that were brought by Section 27 and that died outside my period of investigations. And I want to put it this way – I do have a list of deceased patients up to the end of August. I have that compiled. Now of the 11 alleged or they  
20 became nine, I think, as we discovered it, there were about six that actually fell within the period that was outside my investigated period, but they are in the extended list of patients that died, so it is not that I did not have them. But there are

three that certainly left Life Esidimeni long before the controlled period, even before I started my investigations, so those will have to be excluded from the process.

**ARBITRATOR, JUSTICE MOSENEKE:** But was it before the launch of the project... I am just trying to find ...intervened.

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** Yes. the criteria that we used was that we were going to examine patients from the 1<sup>st</sup> of October 2015, anybody who was discharged before that time, would not fall within what we are doing. So some people obviously were discharged long before that and later on died during the process. So you couldn't have that kind of patient in the process. And as I say,  
10 yesterday when you gave me the 11 or when I was given the 11, I went back into my search engines and called in the verification team to look at all this 11. We found that six of them are actually in the extended list that I spoke about that it is death that occurred after the 1<sup>st</sup> of February 2017. And then there were three that were long discharged from Life Esidimeni, even before I started the project. And  
15 that is the criteria that I have been using. But I am quite happy to receive that and look at it and evaluate it again.

**ARBITRATOR, JUSTICE MOSENEKE:** Prof, let me just clear this in my own mind. What is the effective date of Gauteng Mental Health Marathon Project?

**PROF MALEGAPURU WILLIAM MAKGOBA:** The announcement ...intervened.

20 **ARBITRATOR, JUSTICE MOSENEKE:** I understand the control period that was chosen for your terms of reference.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** I am more concerned about on your investigation, when did the Gauteng Mental Health Marathon Project start?

**PROF MALEGAPURU WILLIAM MAKGOBA:** In October 2015.

**ARBITRATOR, JUSTICE MOSENEKE:** And when did your terms of reference  
5 period start?

**PROF MALEGAPURU WILLIAM MAKGOBA:** We started at that time. We actually discussed how we are going to actually, what criteria are we going to use to investigate this process and we said let's go back to when the project was actually initiated and track the people that were transferred from Life Esidimeni up until the  
10 end of the period. And it turned out that between the months of October to the month of April roughly about 16 patients were being transferred from Life Esidimeni to the various NGOs. And it was only in May and June that there was this so-called the big migration. For those of you who watch television, you remember the wildebeest migration in Masai Mara, that is what happened here. The big migration  
15 of patients took place in May and in June ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Which is after April.

**PROF MALEGAPURU WILLIAM MAKGOBA:** As I say from October 2015 to April the transfer was about, as I say, 16 patients per month were being transferred from Life Esidimeni to the various NGOs. It was almost like a controlled period of  
20 transfer and then there was a stampede in May and June. I think it was over 800 and around 500... you know those kinds of numbers.

**ARBITRATOR, JUSTICE MOSENEKE:** But people who subsequently died after what you call the stampede, were they the subject of your investigation or not?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Remember that that was the period that I was not investigating ...intervened.

5 **ARBITRATOR, JUSTICE MOSENEKE:** I follow. I mean subsequently.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Did they fall within the period of investigation?

10 **PROF MALEGAPURU WILLIAM MAKGOBA:** Yes. The list that I reported yesterday it is all the patients that died within the period of my investigation that had been agreed with the national department, my office and the office of the Gauteng Province. We agreed on a period that it will start from October and it will finish on the 1<sup>st</sup> of February because I was no longer really charged with the responsibility but I'll follow.

15 **ARBITRATOR, JUSTICE MOSENEKE:** October 2015.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes to February 2017 when I released my report.

**ARBITRATOR, JUSTICE MOSENEKE:** Right.

20 **PROF MALEGAPURU WILLIAM MAKGOBA:** So I am quite happy to get the name and as I say I do have a list of death up until the end of August. But I divide this list between my period and my mandate and just from a monitoring process

where, because I think people know that I have been following this, I still get reports ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, that will be helpful, Professor, it will still be helpful. The balance of the question becomes legal. The one question is, 5 the reach of your terms of reference, we'll tick on that box. And then the other one is, the verification of people who died and when they died and whatever details you might have, we'll still need that. We will have to go and put the septic gloves and do the hard work and see whether or not they properly fall within the remit of the arbitration and what we are doing and that may very well be a legal question and 10 less a question of time periods. So you are still that resource and the most reliable resource for us to say to us this is our finding of these other people, so they may... to go back to Adv. Groenewald's question and Adv. Hassim's question, they must give you the list what they have and you go and verify the way you know with the dates that you have. And if you could write a brief report to me rather than to them, 15 saying what is the outcome of your investigation in relation to the names they have given you, we will be most grateful for that.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I have already done it for the 11, so I can hand that one over. But the list that I gave yesterday, actually it contains the elements, the broader sheet. It contains all the elements that would be useful, I 20 think, in determining whatever you want to determine.

**ARBITRATOR, JUSTICE MOSENEKE:** And the broad sheet, just for my own clarity again, relates only to people who died within your period of your terms of reference.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes. But I do have, as I say, an extended list that goes up to the end of August, which is similar to what I presented. But I knew that anybody who died after my period of investigation, it was for my record keeping rather than for the terms of reference for the arbitration. And if that  
5 becomes needed for your own terms of reference, I am quite happy to provide it, because I have done it in that standard way.

**ARBITRATOR, JUSTICE MOSENEKE:** It is a horror discussion. You keeping a register of death.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well, I even discussed that one of  
10 the mortuaries is about 12 miles from my home and I have got a picture of that where these bodies are kept... so that is how this thing...

**ARBITRATOR, JUSTICE MOSENEKE:** Ja after... Adv. Groenewald, I am just giving you notice, I have a few questions around death certificates and post mortem reports, if any. But I will raise that once, Counsel, you've rounded up your  
15 examination.

**ADV. DIRK GROENEWALD:** Thank you very much Justice, I am almost there. I think perhaps my colleague would like to translate.

**INTERPRETER:** ...*Interpreting*...

**ADV. DIRK GROENEWALD:** Thank you. Professor, we will lead the evidence of  
20 three family members that will say that their loved ones were transferred from CCRC to Siyabadinga then back from Siyabadinga to CCRC and then two of these family members went to CCRC, they saw their loved ones, they saw the dire needs,

they saw the death in their eyes, let's put it like that. They took them to hospital and they died. My question is, you testified and you clarified that Siyabadinga closing down, Anchor closing down, all the people transferred back to CCRC, at that time CCRC had a number of patients of Life Esidimeni. So there was a huge problem  
5 with the staff and patient ratio. Could you find anything which the CEO of the CCRC did to assist with the problem? Because we are looking now at the period and we say the period that Siyabadinga was closed down was between July and August, so between July and August patients went back to CCRC. And we know that Anchor, in terms of your report, closed down end of October. So now they are  
10 sitting there with quite a number of patients. Could you find anything in your report or anything in your investigation that the CEO or the acting CEO, because there was a CEO and that CEO was suspended or we don't know what happened, then they had an acting CEO. Could you find anything that the CEO said please help me Department, please come and assist us? What did they do?

15 **PROF MALEGAPURU WILLIAM MAKGOBA:** I am going to be brief. I think they had several CEOs as you correctly record. I think the CEO that I had much interaction with was the acting CEO. She actually did appeal to the Department for help in terms ...intervened.

**ADV. DIRK GROENEWALD:** Sorry, I just want to interrupt you there. When was  
20 she appointed as the acting CEO?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I don't have that off the top of my head, but during the time of my investigation, she was the CEO, the acting one. I never met the one who had been suspended or the one who has come after. But

during the period of my investigation from about October 2016 up until I finished my investigation, it was the acting CEO that I was relating to. And she did complain about human resource issues, she complained about overcrowding and appealed, but like everything else, I think the long (inaudible) bureaucracy takes long and I don't think she got the assistance that she needed. But she tried. She identified the issues and tried to get assistance, but never got it at the time.

**ADV. DIRK GROENEWALD:** And she complained to who, the MEC?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, well they work through the MEC because she is part of the executive, ja.

10 **INTERPRETER:** ...*Interpreting*...

**ADV. DIRK GROENEWALD:** Thank you. Justice, I have four more questions.

**ARBITRATOR, JUSTICE MOSENEKE:** Four?

**ADV. DIRK GROENEWALD:** Four more.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Counsellor sense that I wonder when we are coming to an end.

**ADV. DIRK GROENEWALD:** Yes, I sense that Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

20 **ADV. DIRK GROENEWALD:** Professor, the family members will come and testify that from May, from the period that patients were transferred to Siyabadinga, and when they were later transferred back to CCRC, they weren't allowed to enter the wards, they weren't allowed to walk in the halls, they weren't allowed to take



pictures. Now you will agree with me that clearly these people were hiding the truth from the family members and they were hiding what was happening.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well you are telling me a story that I have no way of knowing whether it is truthful or not. I never received that kind of  
5 evidence. And maybe let them testify and be examined properly. I don't think I am in a position to give a yes or no answer.

**INTERPRETER:** ...*Interpreting...*

**ADV. DIRK GROENEWALD:** Professor, do you know anything of the fact that a number of NGOs actually tried to assist or assist these, how will I call it,  
10 Siyabadinga and CCRC among other Solidarity helping hand went and delivered food and clothing. There was a number of other civil organisations that provided meat and so on. Do you know of anything or can you testify anything in respect to the fact that the people will come and testify well all those donations just vanished there at CCRC?

15 **PROF MALEGAPURU WILLIAM MAKGOBA:** I cannot testify to what you are saying. The only testimony that I can give is that the lady who is in charge of Anchor, testified to the fact that she had to look for money for donations and so forth. So I don't know who she found the money from, but she had to look for money from the relatives, from friends, from various people who could donate. But I  
20 never actually met any of the donors or enquired about the donors and who was giving what and what they gave. She just said she was so cash strapped and had these patients under her care and needed to do something and that was something

she did, because in the church this is something she could get a better response from – that is all I can testify.

**ADV. DIRK GROENEWALD:** Thank you Justice. Thank you very much Professor.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you Counsel. We are going to  
5 have Legal Aid South Africa next and then followed by evidence leaders if they have any specific questions and a short re-examination from the State which has called the witness. It is 7 minutes pass... I thought I will use the time to ask three or four questions of my own and you could start immediately after tea. Will that be suitable to Counsel?

10 **ADV. LILLA CROUSE:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Professor, four questions again that will remain with you when you are gone and I thought that I should ask them now. The first is, this project is called Marathon, do we know why it is called Marathon?

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, I never found out but it looked  
15 like a sprint to me at the end.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja. The second question is, do you know or did you come to discover any examples of terminations of contracts such as happened in relation to Life Esidimeni by the Province in relation to health care?

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, I didn't. And actually I have  
20 searched through the (inaudible) in the wild, because this whole thing about the institutionalisation is invoked, if I may use that term. And I could only found two countries where this was attempted, it was in Italy and in France. And in all of them

I think they took a different route from the route that was taken here in South Africa. And at the end of the day I can only say this, it is actually more expensive to invest in the infrastructure for deinstitutionalisation than to even logical think you can use it as a cost cutting exercise. So I don't know what they had read, I think, to come to  
5 that conclusion that they can use this as a... If you look at the literature in Italy where it has now become almost like the way things are done, people are no longer in mental institutions. They are at NGOs because of the way they have structured their law, and in France. But it has been more costly to develop the community based care services before they will begin to reap the effects of what they want to  
10 achieve. And we seem to be doing it the opposite, but I will comment later on about something else that we boo-booed about in South Africa, but that is for later comment.

**ARBITRATOR, JUSTICE MOSENEKE:** You made a series of recommendations which are remedial in nature and we all know these are said in Chapter 17. How  
15 many of these were actually implemented? You see closure is... this process is part of your recommendation, so this is being implemented as you recommended. And closure is always about correcting errors of the past – that is what we are trying to do in part with this process. In regard to the balance of the recommendations, they are quite extensive. Do you know which have been followed up and are being  
20 worked on or is it just a case of in action?

**PROF MALEGAPURU WILLIAM MAKGOBA:** All of them are being followed up, all of them are being implemented and all of them are in various stages of being completed. And I meet with the two DGs regularly to get updates and to modify

things. but for example, I'll just give you a very simple example, after my recommendations about the NGOs, the Minister and the DGs and the Premier's office and the National Minister, appointed a multi-disciplinary team of 60 people, social workers, psychiatrists, nurses, to go and visit each of these NGOs to see  
5 whether actually they meet the criteria to receive license and none of them met the criteria. Now this is after my recommendations that they should not have been licensed, none of them met the criteria to be able to register as NGOs that should host mentally ill patients. They all had to correct themselves and I think they are now being reissued with new licenses. That is just one of the recommendations  
10 that has come there. And all the other legislative issues, I think the Minister is taking care of the. But all the recommendations are in one stage or another of being implemented and we have regular meetings to get some answers.

**ARBITRATOR, JUSTICE MOSENEKE:** So you find an honest and rigorous process to implement the recommendations that we find in Chapter 18.

15 **PROF MALEGAPURU WILLIAM MAKGOBA:** Yes. I think once the National Minister and the Premier got to know of what has happened... Because it seems like when this project was taking place, for example, all people that I interviewed from the National Ministry would give evidence that they were never on the loop, no advice was ever sought from the National Ministry about this project which has got  
20 implications for the rest of the country and I think most of them testified to that effect. And maybe you can take that on maybe when we see other people. So that was the situation. The Minister didn't know. The Premier was the most surprised, because in one of the evidence somebody alleged that they had taken the decision

in his office but not with him. They wrote this very typical English where you say we made the decision in the Premier's Office. So that when you read it quickly you think oh the Premier must have been there. Of course people can use my office, but I don't necessarily have to be there.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Ja.

**PROF MALEGAPURU WILLIAM MAKGOBA:** But it turned out that they were never in the Premier's office and he was never part of it. So that was, I think you call it name dropping or something like that, in a common speak.

**ARBITRATOR, JUSTICE MOSENEKE:** Wonderful. It is good to hear that it is  
10 being done rigorously. In paragraph 6 of Chapter 18, you say, corrective disciplinary action must be taken against members of the Gauteng Department of Health, and you list them by name.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** Me. S. Mashile, Mr. F. Tobane, Me. H.  
15 Jacobus, Me. S. Sinelo, Dr S Linkwane and you go on... now that I have mentioned some, I guess I have to mention all. Mr. M. Pitsi, Me. D. Masondo, Me. M. Nyatlo, Me. M. Malaza. And you go on that they ought to apply disciplinary codes and procedures applicable to them. Do you know whether that has been done?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I know that it has been done for  
20 some of them. I think I can certainly say that... I think Mr. Pitsi was the wrong person there, because he is not actually a deputy director. I think he belongs to the district and so forth, but I think that has been corrected. Me. Nyatlo is facing other

disciplinary inquiry that are taken place. But the others they have all undergone a process of disciplinary inquiry. They have all been given final written warning and they are all being counselled. And this was really the group of people who felt most fearful and therefore felt paralysed not actually to take their responsibilities correctly and that is why I rather put it as a fiduciary responsibility where you are given trust but you don't apply that trust very well on behalf of the patients.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, I am going to give our interpreter an opportunity. I have noticed that he is a very smart and competent gentleman, so I am piling it on him, but I know (vernac). But let me just finish off in this way. Of course you know these questions are directed at public accountability.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** When people have public power and they mess up, we've got to hold them accountable.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** And these questions, I am really trying to see whether the Ombud's report is being taken seriously and that is why I am asking the questions. Here follows the next question. You in paragraph 13, you recommended that all patients from Life Esidimeni, currently placed in unlawful NGOs, must be urgently removed and placed in appropriate health establishment. Has that happened?

**PROF MALEGAPURU WILLIAM MAKGOBA:** That has happened and again it has happened through a multi-disciplinary team guided by experts, which we didn't do, I

think when we were transferring them. and I think almost all patients that were in those unlawful NGOs have been taken back into safe places, except where, I think the relatives of the patients made a contrary review. But almost everybody is now in safe places. And I can also say this to this public that since that process took  
5 place and it ended up in May, only seven patients have died. I say only, because when you compare it with the rate at which people were dying. If you said to somebody, if you translate that over a 12 month period, you know, and I am talking about from May up until September, so you are talking about a period of four months, to have about two patients dying a month with that kind of condition, it  
10 would not be different from the death that occurs in the normal population. So the movement of patients from the NGOs back to hospitals has actually saved life and it is another intervention that I will talk about, I think, when I do my final analysis.

**ARBITRATOR, JUSTICE MOSENEKE:** And lastly before we go to tea, Professor, the very first recommendation was shutdown Gauteng Mental Health Marathon  
15 Project. Has it been disestablished?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Not only that, but I think the National Minister not only shut that project down, he went to all the provinces to look whether there are similar projects and there has been a report, I think, about this process to all the other provinces to see that such projects, again, fall into according  
20 to the recommendations that I made that the National Ministry must actually take a lead and be able to provide guidance. Because one of the things I found during the investigation, when I asked the MEC did you speak to the National Minister or the

National Department, she said I had no reason to do so, we have concurrent competencies.

**ARBITRATOR, JUSTICE MOSENEKE:** Says who, the MEC?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, she says they've got... it is  
5 there in the report... she has concurrent competencies, so she can do what she likes. But when it gets tough, everybody asks where was the National Minister. Nobody, you know, asks where was the MEC, everybody wants to know where was the National Minister, even though the National Minister might not have known, just as much as the Premier did not know.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Well (vernac).

**PROF MALEGAPURU WILLIAM MAKGOBA:** I have left the document, it is just a modification but I will do in accordance to what you've suggested about the list and then I'll forward it to you.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you Professor. I am going to have  
15 the translation go on and we are going to have a tea break. And when coming back, as a preview, we'll take questions from Legal Aid South Africa and followed by any questions from evidence leaders and re-examination by the State.

**INTERPRETER:** ...*Interpreting*...

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac). We are going to take the tea  
20 break now and we are going to resume at 12:00. Let me just say it again, without imposing on you, normal protocols in hearings of this nature is to allow the presiding person to leave and to come in with some level of decorum. And I am going to ask



you to observe that please. Let's not stampede out in a way that will become more difficult for us to gain access or to leave from here. As for the camera people, I have never seen somebody under my table like this. You've taken over, I don't know, 30 or 40 pictures of me. I don't know how we are going to deal with this, but  
5 the normal rule is for cameras to be sensitive to what we are doing. We are actually dealing with quite a serious matter. So if you could also give us some break of sorts, we already have, I don't know, six cameras in here, I mean these big ones and many photographers. You are welcome but just keep it in mind that you shouldn't be in our faces, please. We are adjourning. 12:00 we resume.

10 **END OF SESSION 1**

**SESSION 2**

**ARBITRATOR, JUSTICE MOSENEKE:** Obakeng. I take it the announcement has been made about simultaneous translation. Okay. Thank you. We are now going to proceed in a straight line and everybody else who needs translation, of course  
15 earpieces are available and that is the route that we will follow. It might facilitate more effective examination. Professor, you are still under your earlier oath. We are going to proceed by inviting Adv. Crouse.

**ADV. LILLA CROUSE:** Thank you Justice Moseneke. Professor, I am representing the patients that survived what you call the sketch. And I would just  
20 want to ask you some questions in relation to that. Now I need to start off by acknowledging the importance of your report.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Thank you.

**ADV. LILLA CROUSE:** You speak of a culture of fear and evasive responsibility and I must thank you for not following in that course. And I want to thank you also for cutting clean and in that clean cut we have the potential of healing wounds, so I need to thank you for that. I also want to tell you that your report came out when I  
5 was in the middle of the Life Esidimeni Frail Care fiasco, but you are not writing a report on that, because the courts came to our aid in that. But I will draw some parallels on that and ask you some questions on that. So thank you very much for your report. If I could then start by something that you've said. You've said that there were mysterious and poorly selected NGOs and Justice Moseneke touched  
10 on that and I understand the poorly selected. What do you mean by mysteriously selected NGOs?

**PROF MALEGAPURU WILLIAM MAKGOBA:** What I meant was that there was never a clear criteria that anybody could read that told me why this NGO was selected and not the other one. That is the first interpretation of the mysterious.  
15 The other was, there were already NGOs in the province and I am not sure why those were not considered, because they would have had the experience and then there were new ones that were brought into... so that was a mystery to me. But when you ask why did they introduce new ones, you know, they would say they wanted to spread the goodwill of empowerment or something like that. So for me  
20 that is how I would explain the word mystery. It was never clear to me. The criteria, we looked for the criteria, what criteria were they using that could stand the scrutiny of testing that, you know, in order for you to have a NGO, these are the things that you must fulfil – that was never clear. And it was actually confirmed by the fact that

no sooner had they appointed the NGOs and six of them were already closed even during the investigations. I mean Precious Angels closed, Siyabadinga closed, Siyabatanda closed, Wakang closed, Bophelong (inaudible) closed, you know the list goes on. And these were NGOs that had just been established in order to accommodate this project even before they were already been closed. So it tells you that if there was a criteria, it was a useless criteria, because it didn't, you know, it was not fit for the purpose that they wanted the NGOs to carry on.

**ADV. LILLA CROUSE:** Thank you Professor. If I can then move on to Chapter 10 of your report. And your heading in that or the name of that chapter is failure to listen. So I am just going to speak about that also because I had the same frustrations when dealing with the Life Esidimeni Frail Care problems in the Eastern Cape. So if I can just start on that. I am going to deal with that, but I want to start with the timelines that are before us. We have the first objection to this project already on 16 March 2015 by the South African Society of Psychiatrists, and they told the Department be careful. Do you agree with that?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I have seen a lot of correspondence and I think the sentiments is what I understood, yes.

**ADV. LILLA CROUSE:** Yes. So the March meeting with the Department was followed up again on the 22<sup>nd</sup> of June 2015 where the South African Society of Psychiatrists said, if you continue with this, there will be unintended negative and costly consequences. Now that was long before this started.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes.

**ADV. LILLA CROUSE:** That has a very serious ring of truth to it, doesn't it?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well as I say, I have gone through those documents and they are part of the information that I think allowed me to form some kind of a thinking around this project, ja.

5 **ADV. LILLA CROUSE:** Yes. Thank you Professor. Then on the 10<sup>th</sup> of March 2016 there was again a letter to the Department in which the Department was warned that there will be considerable, eminent and irreparable harm caused by their project. Do you agree with that?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I think with hindsight I have to.

10 **ADV. LILLA CROUSE:** Yes. I think there is a clear warning in both of these letters that something terrible is going to happen.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think that was constant and the psychiatrists were not the only ones or the clinical heads, there was civil society that kept on banging on the doors in various ways. And as I say for me what was said  
15 was all these people were constructive. None of them were sort of negative and anti.

**ADV. LILLA CROUSE:** Yes.

**PROF MALEGAPURU WILLIAM MAKGOBA:** They were saying let's discuss and come out with a product that we can all contribute to, because these people  
20 mattered to all of us as a country.

**ADV. LILLA CROUSE:** Yes. But it went further than this not listening. On the 13<sup>th</sup> of September the MEC was before parliament, that's 2016, isn't that so?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja that was as a response to Jack Bloom's question.

**ADV. LILLA CROUSE:** Yes and at that stage it was believed that there were 36 patients that died, but you showed that it was much more at that stage already.

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** Well let me just now emphasise. The reason why you come to that conclusion is that, when you look at the death certificates when people died, all the 82 patients that I have mentioned died before that date.

**ADV. LILLA CROUSE:** Yes.

10 **PROF MALEGAPURU WILLIAM MAKGOBA:** And in fact if my memory serves me well, the last patient who died just before that date, I think either on the 12<sup>th</sup> or the 13<sup>th</sup>, it was Sophia Molefe. Her mother was here yesterday.

**ADV. LILLA CROUSE:** Thank you Professor. But on that occasion in the legislature, the MEC said to the person that asked the questions, you are  
15 grandstanding about patient deaths, sort of dismissing what he was saying. What do you make of that?

**PROF MALEGAPURU WILLIAM MAKGOBA:** That seems to have been the trend, because even when I asked her why were the numbers low, she said because the numbers had become a political game. I mean it wasn't like I am taking  
20 responsibility let me ask you. Then I asked how come you have this low figure, when I... I actually told her what the numbers were at the time, I think it was towards the late 70s.

**ADV. LILLA CROUSE:** Yes, you said 77 at that stage.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja. And she still couldn't get it and she just kept on saying, but you know if I released such numbers, it would have been a political game. So part of me said they see this as a political football rather  
5 than something that matters, that there is real life here, real people here around whom there are families that care about them. But it was part of not listening, if I may put it that way.

**ADV. LILLA CROUSE:** If I can make two observations on that. The first is that in terms of the Mental Health Care Act, you must act in the best interest of your  
10 patient.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes, you must become an advocate.

**ADV. LILLA CROUSE:** And that didn't happen.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No.

15 **ADV. LILLA CROUSE:** And up to today that former MEC has not apologised to anybody, as far as I am aware. Are you aware of any formal apology from her?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Didn't I record something that she takes responsibility... I am not sure about the word apology, but she did admit that she takes responsibility. Apology I can't recall but responsibility I think she did  
20 admit that she takes responsibility. And I think... maybe I haven't recorded it in my report, but I would like to ...intervened.

**ADV. LILLA CROUSE:** To believe that she would.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think so. I think at the end of the day, you know, offline, you know she said to me that she can't sleep at night and this matter bothers her. Now on the one hand she couldn't sleep... in fact during the course of the investigation she wanted to know when I would finish it because  
5 she really wants to take a break. Every day something is happening and she is obviously under pressure and I said no I couldn't tell her. So somewhere there was still, if I may call it some lingering Ubuntu, if I may use the word. But why it didn't translate into proper listening and actually taking the appropriate action, I cannot answer that, as I have already indicated.

10 **ADV. LILLA CROUSE:** You see that remains my concern. If we go through the timeline it is clear, there wasn't listening. Now the similar thing happened with Life Esidimeni in the Eastern Cape where we had exactly the similar thing. Even when your report came out, nobody listened. Now my question to you is, how are we going to make sure that this does not happen again and that people will listen in  
15 future?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I mean it is a much more complex problem than I can answer as a scientist. But you know, people are socialised in different ways. Sometimes you come from a very good family and you acquire power and you start thinking that everybody must listen to you. So these things are  
20 not easy to... I cannot answer how you will make people listen again. I think it is just important that out of this tragedy some lessons will be learned, some people will change their behaviour, others might even get worse. So I think we must just understand that the signals that come out of this hit us in different ways. And

depending where we come from, we are actually going to be different people from what we used to be, whether it is in a positive sense or is neutral or negative, I can't predict that. Some people will listen, others will continue not to listen.

**ADV. LILLA CROUSE:** It seems to me when you spoke to the persons, I just forgot  
5 their names now, that issued the certificates, the first one issuing without the authority and the second one issuing ex post facto, that that didn't have... your conversation with them didn't have any effect on them doing the right thing.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, I think when I was having the conversation with them, they did realise that actually they had not done things  
10 procedurally. I think they were aware of that and that is why they went after the effect to go and visit the NGOs and actually try and remove the evidence and reissue new ones. There is actually a recording of the owner of one NGO saying to my inspectors no, no, I have got the old license here and I am not giving it to you because I am waiting for the new license to come. And she mentioned the name of  
15 the HOD that he will bring the new license but I have got the old one that I have been told is illegal. So there was an awareness and in some of the visits when the inspectors were there, they actually met people from the Department that had been sent to either try and interfere, I didn't write too much about that, but the gathering of evidence. That used to happen, so that is part of the problem.

20 **ADV. LILLA CROUSE:** But it was said nevertheless.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.



**ADV. LILLA CROUSE:** If I can just move on to another point, Professor. Some of these patients were not moved to other NGOs or hospitals, they were actually just discharged. Is that right?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, there were three routes that patients took. You were either discharged home because maybe your family took you or because they felt that you are in a reasonable state to be able to be rehabilitated at home. Or you were sent to a hospital, because I think that all that could happen to you at the time you needed, I think, urgent and maybe continuous medical attention and so forth. And then the third category was where you were sent to a NGO and there were two teams that were based at Life Esidimeni that were to assess these patients and allocate them to the appropriate or to the seemingly appropriate NGO where they could go. Again the criteria that was used was mysterious, it wasn't clear.

**ADV. LILLA CROUSE:** Can I come back to the patients that were released home?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ADV. LILLA CROUSE:** Have you perhaps looked at the discharge rate in Life Esidimeni prior to this project and in this project how did that differ?

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, I didn't examine that.

**ADV. LILLA CROUSE:** What effect, in your expert opinion, would it have on a family to receive a mental health care user back into their family without the proper training or advice?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I think it depends where you are. If you grow up in a village where there are often mentally disturbed people, they are actually... everybody gets to know that so and so is mentally disturbed but they look after them very well, so you are able to laugh with them. But I think when  
5 you start living in the townships and so forth, it depends whether the person that you are welcoming home, it is something that you really wanted to do because then you go out of your way to make sure that they are accommodated, you understand them and so forth. But if they are imposed on you, then I think it can actually disrepute the family life in a very significant way.

10 **ADV. LILLA CROUSE:** Professor, have you spoken to any family member with whom that has happened during the course of your investigation?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I haven't spoken to... I think I have spoken to one or two and ask how life has been in the family since this incident occurred. All of them have often... I think people feel that they shouldn't tell you  
15 everything in their families, so they just tell you it is okay. I mean if I come here in the morning and I say good morning how are you, most people say they are okay, but they know that they may not be okay.

**ADV. LILLA CROUSE:** Yes.

**PROF MALEGAPURU WILLIAM MAKGOBA:** But you are not going to go into that  
20 kind of detail.

**ADV. LILLA CROUSE:** Thank you Professor. I am just going to move to another point and I want to speak to you about relapse generally.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ADV. LILLA CROUSE:** Can you give me a definition of what the medical team relapse would mean with a mental health patient?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Let me try and simplify it. When a  
5 patient comes to you with signs and symptoms and you make a diagnosis, believing  
that the diagnosis is correct... they come and you give them the treatment. If the  
treatment is correct, the symptoms and the signs begin to abate, okay. Now in  
some diseases, if you maintain the therapeutic level of the treatment, the levels will  
suppress the pathology that is underlying the signs and symptoms and they will  
10 remain in remission. However, in some, many diseases, there can be a  
spontaneous relapse, which means the patient goes back into the signs and  
symptoms, not because they are not getting adequate treatment, but because I  
think the pathology has reached a critical level where it doesn't matter what you  
give them. And that often happens in mental cases and in other cases. It often  
15 doesn't mean that the treatment is inadequate, it may just mean that the pathology  
has gone to a point where another critical level has been reached where I think  
treatment needs to be re-examined. Of course there are cases where the relapse  
is precipitated by the fact that the patient's treatment has been reduced or that a  
stress factor has come into play that has demanded that a patient be given more  
20 treatment than they require, but they are still remaining on the old treatment and  
therefore the stress induces a relapse in the signs and symptoms of the patient.  
That would really be how I would explain relapse.

**ADV. LILLA CROUSE:** Could you just... you've dealt with overcrowding, cold, hunger, lack of medicine, inferior quality of care, you dealt with those.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ADV. LILLA CROUSE:** What effect would those have on a relapse of a person?

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** Well there were many incidences of relapse, because relapse is part of care. Now the first relapse I think that occurred, occurred when patients heard that they are going to leave Life Esidimeni. Some of them began to relapse there and it didn't mean that they were not getting adequate treatment, they were getting adequate treatment, but they realised that their  
10 circumstances were going to change. Some of them it became stressful for them just to know that they may be moved. So the relapse actually started as early as when they became aware that their conditions or their circumstances may change. And then when they went into the NGOs, some of them relapsed. I mean there is actually a classical description of how there was chaos at Siyabadinga, because  
15 there was no medication and the director kept on sending SMSes to the director mental health to say can you provide us with medication. Because the patients were not receiving medication and their conditions were relapsing. And there were many other instances in some of the other NGOs where actually patients relapsed and I think they are documented somewhere in the report. I can't remember. There  
20 is one of the psychiatrists in Tshwane who actually gave evidence about the level of relapse that was occurring in the NGOs post the location of the patients. But it was part... I put that as part of professional health care.

**ADV. LILLA CROUSE:** Would such a relapse have any effect on the prognosis of a patient?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well any relapse of disease has an impact on the prognosis, because of the behaviour that may be induced as part of the relapse. I mean some people may take their lives, other people may injure others during that process of relapse, they may destroy property during that... and all of those things have consequences, because they will end up in a situation that is unlike the situation before. But it does have an impact, ja.

**ADV. LILLA CROUSE:** Then you said earlier that there are multiple moves and the inhumane transportation had taken something out of the mental health care users. What did you mean by that?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well if you go through the literature, one of the cardinal recommendations about mental ill patients is that, as I have indicated before, before you transfer them, you must really assess them carefully as to what their needs are and ensure that where they are going, their needs would be catered for. And secondly that to take them to where you want to transfer them, they must be transferred in the appropriate mechanisms of transfer. The reason for this, I don't think the science is as rigorous as one would want it to be, but anecdotes and historical evidence suggest that mentally ill patients do not take stress as well as what we call normal people. It tends to overburden them... and you know if they were for example depressed, they tend to get into a deeper depression and it takes them longer to come out of it, I think trying to familiarise themselves maybe with their new environment, familiarise themselves with the

people looking after them because they didn't know them. there are all sorts of things that they may not communicate, but their behaviour will tell you that this person is not as normal as where he left to be where they are and it takes longer and it is a deeper process than I suppose in a normal person where you can ask  
5 them, why do you look unhappy or something like that. If you said to a mentally ill patient they may clap you or something.

**ADV. LILLA CROUSE:** So what you are saying, Professor, is that the stress beforehand of knowing that they are going to be moved, the stress of being moved in an inhumane way, the stress of having inadequate care, the stress of multiple  
10 transfers, the stress of people dying around you, will have a severe impact on relapse.

**PROF MALEGAPURU WILLIAM MAKGOBA:** It is both ways. I think it would have an impact on the relapse, but the relapse will also have an impact on the other people that have not relapsed, so it works both.

15 **ADV. LILLA CROUSE:** So it will be serious as well.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ADV. LILLA CROUSE:** Thank you very much. I am going to move on to the next point then. I just want to speak to you about policy. Justice Moseneke had spoken to you about the recommendations and I am not going to touch much on that, but  
20 how are we going to, through policy, make sure that this does not happen again?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I wanted to use the constitution... let me use the constitution as an example, although I should have thought a little bit

better. I mean we all know that our constitution is one of the best in the world, it is envied all over the place. But do we live up to it and what do we do when we don't live up to it? You know we feel pity for each other, we forgive each other or we try and forget. I mean we do all sorts of things that are inimical to what we are  
5 expected to do. And then sometimes we pity ourselves because we've been oppressed and we come with all kinds of excuses. So, at the moment I think this tragedy has given us an opportunity, I think, to correct the legislation and to make it more rigorous in line with the constitution. I think we have tried to recommend that the various spheres of government between the province and the national  
10 legislature is corrected. The criteria for example as I say for licensing these processes, is more rigorous and more transparent and easily monitored. Because it doesn't look like it was monitored properly in this instance. So I think those processes are underway. But at the end of the day these processes are going to be managed by people. It is the people, not the machines, but the people that are  
15 going to monitor them. And I think that is going to take time to actually change the attitude of people.

**ADV. LILLA CROUSE:** And to make sure that it is not tactless but there is a qualitative change in care.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

20 **ADV. LILLA CROUSE:** You were critical of the mental health review board in your report. How do you see their role further?

**ARBITRATOR, JUSTICE MOSENEKE:** Well the word is more (inaudible), isn't it? More (inaudible) means dead, Professor.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes, they were almost dead. And I think in the interviews they admitted that they were very preferable to the process. And also what I found very strange was that the mental review board is supposed to be the custodian, the gate keeper, the sort of like the highest advocate for these 5 mentally ill people. Now I found it very strange that they seemed to be manipulated by the people that they were supposed to provide oversight to. And I give an example where... you know I wrote directly to the mental review board asking for some piece of information that would have allowed me to understand some of the processes. And what did they do? They copied their response via the director so 10 that the director can vet what they have to tell me. And I couldn't... and when I asked them, did they actually ever see the plan of the project of this, I think in the report it says no they didn't see it. So I couldn't imagine an oversight structure that did not do its work. I don't know anybody who know the politician called Denis Healey who was a British Labour member, who used to like debating. And he once 15 said about his opposite member, he said being criticised by one of this opposite number was like being beaten by a dead sheep. Now most people know that a sheep first of all has no teeth and now if it is dead, it will even be less able to open its mouth. So that is how dead they were.

**ADV. LILLA CROUSE:** Professor, how is this going to be sorted out to make sure 20 that they play a role in future?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I understand that the MEC has advertised for a new review board, I think is looking into the terms of reference of that board so that they can play an oversight role properly. Because as I say in this



situation there were not. I think there were sort of like controlled by the officials that they were supposed to supervise.

**ADV. LILLA CROUSE:** It is not only in Gauteng that there is a problem with these boards. So I hope it will go further, the policy developing to go further. Can I then  
5 also ask you, you said it would have just been a common courtesy for the family members to be informed where their mental health care users were going to be moved to? Now I don't think anybody will differ from you on that score. In terms of the Older Persons Act, the policy documents make provision for a pre-notice, 30 days before the time, telling the family members where this person is going to be  
10 moved to and when he is going to be moved. Isn't it time to have something like this in the policy of the mental health care users as well?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well, I couldn't agree with you more but I think it is part of maybe the revisions that will take place, I suppose, that the Department will have to take care of. You know as I say, most of these things, it is  
15 not that they are not there. Sometimes they are there but they are just not being implemented.

**ADV. LILLA CROUSE:** But it just makes common sense that even if there is a policy or not that you would deal with it in that way, isn't it so?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

20 **ADV. LILLA CROUSE:** Then Justice Moseneke has asked you much about the recommendations and I am not going to repeat everything that was said. I am just

wanting to ask, are you still monitoring this process and what is your role in the process of monitoring your recommendations.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I think in terms of the Act, once I produce my report, I give it to the CEO of the OHSC and I think jointly with her we  
5 meet, I think, with the two DGs from the Premier's office and from the National Department, and we discuss, I think, the recommendations and how they are being taken forward. And as I say, I mean I can count nine meetings since I released my report that I have had.

**ADV. LILLA CROUSE:** Then just lastly, the question of capacity building. What we  
10 found also with the frail care centres is that as they close Life Esidimeni, there is not a capacity building for new patients to be accommodated. Has this been addressed with the mental health care users?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I don't know. You know, I think from this exercise, as I say there are lessons and the lessons are, we have all  
15 bought into the idea that we must deinstitutionalise and build the capacity around the deinstitutionalisation by developing community base care. Now if you really had to examine that, we are paying a lip service to that, we are not doing it. Now the bigger fear for me is that we are now talking about the NHI and the NHI is going to depend on primary health care. If the primary health care system is not being  
20 resourced and not being developed as adequately as it is, we might find ourselves facing a greater disaster than we have seen at Life Esidimeni. This is just my caution, but we have been talking about yes, let's deinstitutionalise... and we know what people mean. They mean that the primary health care system in the

communities must be properly resources, properly developed, properly capacitated and it is not going to be done on the chip, I have said. And we need, I think, we need to change our policies. Now let me maybe put it in a slightly more rigorous manner. If you are a mentally ill patient today in South Africa and you are put into a  
5 mental hospital like Weskoppies, you will be looked after properly and possibly you will live your life like every normal person. Because they have conducted a study there that if you admit patients to Weskoppies, one of the best, that you can attain your normal life. So it is the safest place to be in South Africa today if you are mentally ill. If you are mentally ill and you go to some of the NGOs in South Africa  
10 today it is like you are going to the gaols, it is as simple as that – that is the contrast. It is, you are choosing between the safest place to the most unsafest place in the country. Now the only way, if we are going to ever use the NGOs in order to deal with this concept, is to ensure that they are developed to the level of Weskoppies. Because everybody knows, even an American would want to stay at Weskoppies  
15 because they will live their normal life and they will be taken care of properly. Their studies are as clean, as robust, as proud as you can be. But if you go to the NGOs it is like you are playing a dice, it can fall in any other direction. So that is what we have done here, we played dice.

**ADV. LILLA CROUSE:** So if I understand you correctly, there is no real capacity  
20 building happening at this stage.

**PROF MALEGAPURU WILLIAM MAKGOBA:** At the NGOs?

**ADV. LILLA CROUSE:** Yes.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No.

**ADV. LILLA CROUSE:** Thank you Justice, I am finished. Thank you Professor.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Professor, all I can say about the last bit is Weskoppies would probably want to give you an award and I don't live far from Weskoppies.

5 **ADV. LILLA CROUSE:** You are safe.

**ARBITRATOR, JUSTICE MOSENEKE:** It is in Tshwane, in Pretoria. So thank you ever so much Professor and Adv. Crouse. Adv. Ngutshana, do you have any questions?

**ADV. PATRICK NGUTSHANA:** Just a few.

10 **ARBITRATOR, JUSTICE MOSENEKE:** You are not obliged to have questions.

**ADV. PATRICK NGUTSHANA:** I am sorry, Justice Moseneke, just a few for clarification and this relates to the policies and the need to... you've been asked a question on how do we use policy to ensure that this does not happen again and you had used the example of our constitution that it is rated as the best in the world and so on, but nobody seems to live in accordance with the principles that it sets out. My question is directed ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Of course nobody is a very high standard.

**ADV. PATRICK NGUTSHANA:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** I worked for 15 years trying to protect the constitution. So when you say nobody, according to me ...intervened.

**ADV. PATRICK NGUTSHANA:** No, I was going to justify it, Justice Moseneke.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well.

**ADV. PATRICK NGUTSHANA:** Nobody in relation to the incident that we are dealing with, seems to have bothered about the best written constitution in the world. And this relates to your findings specifically in page 24 of your report. You  
5 make reference to a group of 38 patients which you had assessed and amongst them there were about 11 in relation to whom the prescribed forms were complied with, that is in relation to the requirement that you must assess them first before you decide on discharging. You must also assess the institution to which you will be discharging them. Do you still recall that?

10 **PROF MALEGAPURU WILLIAM MAKGOBA:** I recall it very clearly. In fact that was the work of the mental health review board. They are the ones that ought to have done that. And it was when I requested the complete list, not the 11 that they gave me.

**ADV. PATRICK NGUTSHANA:** Yes. And this requirement, will I be correct that  
15 this is a legislative requirement?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes.

**ADV. PATRICK NGUTSHANA:** And it is referred to in the regulations in terms of the Mental Health Act. So in your analysis of the documents which had been presented to you, were you able to find that in most or in many of these patients,  
20 that statutory requirement was complied with or not complied with?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I think it was not complied with, just as I say licensing is a statutory requirement, it is a legislative requirement

and it wasn't complied with. But nevertheless, it happened in this project. So you can go for a number of issues where the law is very clear and sometimes even very sympathetic, but things were not complied with.

**ADV. PATRICK NGUTSHANA:** So apart from the fact that you had stated that the human rights of these patients was involved was violated, it is also a violation of that specific statutory requirement that there ought to be an assessment, a prior assessment before a patient is moved to a particular institution. And that particular institution must be a specific institution that would cater for that specific patient.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Yes that is statutory requirement, it is not something that you can negotiate and it didn't occur in this situation.

**ADV. PATRICK NGUTSHANA:** Yes. Then that will deal with the other thing which I had in mind. There is the document referred to as the project plan. I am not sure whether you have had sight to it in your investigations. It appears in one of the volumes, I think it is in volume 8. On page 2798 it makes a reference to the purpose of the project plan and I'll just read it for the record. And I'll just read it for the record, it says: "The purpose to facilitate smooth termination of contract between Gauteng Department of Health and Life Esidimeni for care to chronic mental health users by 31 March 2015. So I want to pause there. would I be correct that in your reference that this migration, that is between May and June, of a large number of patients that this migration was caused by that very particular fact that by 31 March 2015 the contract had already... remember the contract had already ended by that time.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, I think ...intervened.

**ADV. PATRICK NGUTSHANA:** No, no, it should be by 31 March 2016, I am sorry.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No, no, I think let me just bring a correction here. The initial plan was to complete the process of transfer by the 31<sup>st</sup> of March.

5 **ADV. PATRICK NGUTSHANA:** Ja.

**PROF MALEGAPURU WILLIAM MAKGOBA:** They realised that they couldn't actually realise that date properly and they extended it to the 30<sup>th</sup> of June. So I think there was a discussion between the Department and Life Esidimeni that no, let's extend the period of transfer. But even when they had done that, you know, I  
10 mean they extended March, it will be April, May and June, they didn't wake up until May and June. April they didn't do much. So one doesn't understand what was the purpose of extending when you are not going to be active enough to ensure that it happens at the time.

**ADV. PATRICK NGUTSHANA:** So how would you explain the reason behind this  
15 migration you referred to during May and June?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think I don't have to explain it, but I can try and narrate.

**ADV. PATRICK NGUTSHANA:** Yes.

**PROF MALEGAPURU WILLIAM MAKGOBA:** If you are involved in a legal  
20 contract and you know that the contract finishes at the end of June and you haven't done anything in April and you have about 1 300 people to move, you've got to make a plan to move them and that's why I called it the migration, like the Masai

Mara migrations, because you had to move this many people into this 27 NGOs in a rapid short of time. Because if you didn't do that then I think you are legally contracted or some consequence will happen legally. Remember you already postponed it in March, you can't go and postpone it again in June or if you did that  
5 then there will be consequences. And I think that was really the panic, there was a panic that came into the process that we need to do it, if we don't do it then what is happening.

**ADV. PATRICK NGUTSHANA:** Thank you Justice Moseneke, I don't have any further questions.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Very well. Any re-examination?

**ADV. TEBOGO HUTAMO:** Thank you Justice. Good afternoon, Professor.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Good afternoon.

**ADV. TEBOGO HUTAMO:** From yesterday you testified that the issues relating to the death of the mentally ill patients came as a big surprise to the Government at  
15 large.

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think that is correct. It did not only come as a big surprise to the Government but even to the nation. I mean the media woke up and there were protests everywhere. So it is not only Government but the country woke up to a rude awakening that they had not anticipated.

20 **ADV. TEBOGO HUTAMO:** And then it was also your evidence that it was never anticipated or it was never predicted.



**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja, not directly but you know I think as Justice Moseneke did mention that they said there were going to be dire consequences and so forth. But you know in scientific terms I feel you must try and speak accurately. You know in the Bible they use the word that people speak in  
5 forked tongues... I don't speak in forked tongues. So it was not direct, but it was implied. Now if people imply things, it means they can always escape from the truth when you actually put them against the wall. So the actual word death did not exist. And I think an expert in that field should have actually mentioned that one of the consequences would be death.

10 **ADV. TEBOGO HUTAMO:** And it is agreed that the incident was indeed unfortunate, that the incidents occurred in the manner that ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I would like you to use... Counsel, shouldn't you use not the passive voice but the active voice? It was considered, it was regarded, it was a surprise. Can we have subjects and verbs and objects?  
15 You know a simple sentence so that I know who you are talking about. It was not anticipated... now we have to say a clearer question so that your witness can be respond to it.

**ADV. TEBOGO HUTAMO:** Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay very well.

20 **ADV. TEBOGO HUTAMO:** Professor, you will recall that upon the incident having occurred, it was the National Minister of Health who started the process to uncover

the actual circumstances leading to the death of the people affected. Do you recall that?

**PROF MALEGAPURU WILLIAM MAKGOBA:** That's correct. It was the Minister but also Section 27 was involved in the process at that time.

5 **ADV. TEBOGO HUTAMO:** And the actions by the Minister was a clear demonstration that the Government on behalf of the nation was really concerned about the incidents.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well I agree with that and there are several pieces of evidence for that. It was the Minister who actually instigated his  
10 ministerial advisory committee upon hearing that there was this death, to go and investigate some of the NGOs and close them and consequences of that was to close Precious Angels. That was an intervention, because at that time already 18 patients had died out of 47 that had been transferred to Precious Angels. Now you don't require a statistician to tell you that if you have a total number of patients, 47  
15 and you have 20 of them or 18 of them die, that is a very... no hospital or no doctor who looks after a patient would think that they are doing a good job and it requires no statistics, it is common sense that there was something disastrous taking place. And I think the Minister took the appropriate action. And also I think as part of the briefing was that if I come across any NGOs that was actually a danger to people's  
20 lives, I should make sure that those are attended to urgently and that is how Anchor got closed and Bophelong got relocated, Siyabatanda got relocated, Bokang and so forth and so forth. That was really out of trying to intervene from the National Minister. Of course, as I already said, you know, because of this concurrence thing,

he had to work with the provincial structures like the HOD and so forth was always involved, but it was an intervention from the National Minister. The second point of intervention was when I finished my report, he appointed this team, multi-disciplinary team of 60 people to go and re-examine all these NGOs and to see  
5 what was the problem and so forth. And then he appointed another team to advice the relocation, so that the relocation is conducted in a manner that first of all takes account of dignity and respect. But also because it is guided by expertise, it actually takes the patients to the places where they will be looked after properly. And that is where it has happened, I think, in that process. So it was all part of  
10 intervention, yes.

**ADV. TEBOGO HUTAMO:** Will you consider the Minister's intervention as a proactive and positive move on his part in light of what had occurred?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I don't know how else I would describe it.

15 **ADV. TEBOGO HUTAMO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel, page 3 paragraph 2.1, the report makes it plain, the role of the Minister, isn't it? The Ombud writes quite clearly the intervention of the Minister, his role... 2.1, can you see that? Do you want to contest that? It looks fairly straightforward and plain. The Minister's salutary and  
20 welcome role to help unearth this difficulty. In other words I am not set whether you are pushing the witness to challenge his position or you accept that the Minister played this role which is documented not once but several ...intervened.

**ADV. TEBOGO HUTAMO:** Well I am trying to get the witness to confirm on record the steps that the Minister have taken in order to demonstrate that the Government was not sitting backwards but like steps were taken to ensure that appropriate measures are taken in order to avoid the situation becoming worse.

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** I think I have confirmed that and I have given the examples of the interventions that I thought medicated against death and also showed that when we, I think, relocate the patients, we were going to relocate them to places where they could be professionally cared for and receive proper treatment, which I believe they did not receive wherever they were before  
10 that.

**ADV. TEBOGO HUTAMO:** And what is on record is that... it cannot be disputed that prior to the finalisation of your report and subsequent to its finalisation, the government took steps to correct the situation. Will you confirm that?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I think I have already mentioned  
15 that. I think they took the steps by closing some of the NGOs already and by relocating some of them and by realising that it is appropriate, I think, to consult and talk to the families and so forth. So both the Premier and the National Minister have taken a lead as I have recommended that in order to address this issue, I think in a humane way, but in a manner that shows that we respect our constitution and we  
20 respect, I think, everybody who has been involved in this process.

**ADV. TEBOGO HUTAMO:** And you also dealt with the aspect of the monitoring process that to the extent that the controlled period was from 1 October 2015 until 1

February 2017, you were engaging with the role players in relation to the recommendations that were made pursuant to your report.

**PROF MALEGAPURU WILLIAM MAKGOBA:** No. I think maybe I may not have understood you. I think when I was doing this report I tried not to engage too much with the people. Remember, I am supposed to do this without fear, favour and prejudice and I must be independent. I tried to do that. And I didn't want people to clutter me, drop names or anything like that, I just did it. Once I had finished the report and I had taken it through the right processes, then they could come into play. But also remember that through the Act I am protected not to be interfering with them. The CEO of the OHSC takes over from me, but I can accompany him because sometimes I needed to clarify things for them. But really I am almost like a bystander but listening to the fact that things are being done and they are being done appropriately.

**ADV. TEBOGO HUTAMO:** Professor, in your report you made a number of recommendations. Can you just confirm if these recommendations are being taken seriously by the Government in order to ensure that corrective measures are being taken?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I can confirm that.

**ADV. TEBOGO HUTAMO:** Is there any aspect of the recommendation that you are not satisfied with in relation to what is expected of the Government?

**PROF MALEGAPURU WILLIAM MAKGOBA:** I wouldn't say not satisfied. I think some of the disciplinary processes in South Africa take too long for me. I don't have

the patients. You know, you suspend someone and they spend the whole year earning money sitting at home. I mean that is a common thing in South Africa and people seem to accept it, it seems to be part of the norm. So if you want to have a good time, you allow yourself to be suspended, go and stay at home and you get  
5 paid. I don't understand that and there doesn't seem to be a way in which we accelerate this process. I mean I worked in the UK where you arrive in your office, you've done something stupid or unprofessional and you are told you are fired and you go away. None of these things of going to people to toi-toi for you. But here even without toi-toing we just allow people and we say this is good labour practice  
10 and ja... and we are surprised the country is in a mess.

**ADV. TEBOGO HUTAMO:** You have mentioned that from time to time you have meetings, you have counted up to nine meetings ...intervened.

**PROF MALEGAPURU WILLIAM MAKGOBA:** About nine, ja.

**ADV. TEBOGO HUTAMO:** Nine meetings that you have had with the Director  
15 General both from the province, as well as national government.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Ja.

**ADV. TEBOGO HUTAMO:** Can you just elaborate the object of those meetings?

**PROF MALEGAPURU WILLIAM MAKGOBA:** Well there are many objects  
...intervened.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Counsel, I must just intervene here. You know, these points have been canvassed very carefully and the witness has been very good in telling us how well the Government has done. As long as you don't

undo all that. Remember we have to carefully ask the witness and he has been fair in setting out how well the government has done on remedial questions. This is your witness, so you can't quite tackle your own witness. So the witness has made the point. And I think in all fairness it must be said that prima facie my impression is

5 that the Minister and the Premier have done well. I may yet make a finding over that, but it is clear from the evidence and I have asked every single remedial step and the professor confirmed. Even our presence here is an outcome and implementation of Chapter 18. So just choose carefully how hard you want to tackle your own witness. You see he is starting to talk about other things and suspensions

10 and... It is little advice to Counsel. But very well, proceed.

**ADV. TEBOGO HUTAMO:** Thank you Justice. The intention is not to tackle the witness, except to say that emphasis has to be put on the good work done by the government in order to address these issues. And on that note the points having been well made by the witness, there shall be no further questions.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes indeed, I agree with you, where Government has done good we should say so. And I was the first to do that in my questions in favour of the State, because remedially they have done well, following on a tragedy. So in a hearing like this we have to hear about the tragedy, the horrible things and we have to hear about the remedy and those are relevant and

20 both are relevant and I think the professor has been good to point to both – how terribly it was and look what they are doing now to correct it. And a lot has been said about the Government which is good. So Counsel can rest surely.

**ADV. TEBOGO HUTAMO:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Any further questions?

**ADV. TEBOGO HUTAMO:** No further questions.

**ARBITRATOR, JUSTICE MOSENEKE:** No, none at all. Professor, we've come to the end of your visit with us. (Vernac).

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** I just wanted to thank, I think, the people that are here today, all the legal representatives. But more importantly I think I want to thank the people who participated in this process to give evidence, oral evidence, and provide the few documents that were there, civil society, the professionals and so forth. I think without them I would not have been able, I think,  
10 to write the report that I have done. And I hope I have tried to do justice, as all I was doing was to find the truth. And as I have already indicated, there are many truths, and sometimes you have to try and connect them to what you call the truth from which you make the recommendations. But I am grateful to all of you, despite the difficult questions that I have been asked. Thank you.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Well what remains... Well there comes the applause from the people you've been serving. What remains is for me to thank you for agreeing to come out and give evidence and for being exemplary. At this time and this place, call it our country, we need Ombuds like you, public protectors... right... who goes out and watch it and say it like it is without fear or  
20 favour. We want to compliment you for that.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Thank you Justice.



**ARBITRATOR, JUSTICE MOSENEKE:** If there is anything... you know your report has been accepted here wholly uncontested by all the parties here.

**PROF MALEGAPURU WILLIAM MAKGOBA:** Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac).

5 **PROF MALEGAPURU WILLIAM MAKGOBA:** (Vernac). Thanks. All the best.

**ARBITRATOR, JUSTICE MOSENEKE:** Well thank you. I shouldn't sound like a pastor. The professor sometimes sounded like a pastor, but when we do good things, often good results from there and he has done very well and we are all grateful and you are right to applaud him openly and publically. The time is 13:05.

10 Would you like to tell us about your next witness, Counsel?

**ADV. TEBOGO HUTAMO:** Thank you Justice. We have made arrangements for the Director General to be present in these proceedings. We just wanted to get an indication that over and above the witnesses that we have indicated, it has become quite important that we have managed to secure one of the role players in this project, being the project manager in the name of Mosenogi. We would like to add him on our list of witnesses.

15

**ARBITRATOR, JUSTICE MOSENEKE:** Mr. Mosenogi.

**ADV. TEBOGO HUTAMO:** Mosenogi.

**ARBITRATOR, JUSTICE MOSENEKE:** Wonderful. Ja, he was the man who really headed the Marathon Project.

20

**ADV. TEBOGO HUTAMO:** Indeed.

**ARBITRATOR, JUSTICE MOSENEKE:** That would be wonderful to hear from him.

So you are first going to call... you still have to tell me your next witness, who is your next witness?

**ADV. TEBOGO HUTAMO:** We intend to lead Mr. Mosenogi so that he can actually  
5 like give context ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And then it will be the head of the director general.

**ADV. TEBOGO HUTAMO:** The director general, because her evidence will be subsequent to all the events that had taken place. It can only like connect the  
10 process. And in that regard, I have had the opportunity to give that indication to some of my learned friends about the intention to proceed with Mr. Mosenogi before the Director General.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. That is your choice indeed, particularly of your colleagues are comfortable with that. Mr. Mosenogi is available  
15 and here.

**ADV. TEBOGO HUTAMO:** Indeed so.

**ARBITRATOR, JUSTICE MOSENEKE:** I intend to proceed up to 13:30. So I think you would have to leave him in chief and we adjourn at 13:30 and take a 45 minute break from ...intervened.

20 **ADV. ADILA HASSIM:** Justice Moseneke, I beg your pardon.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** But you made a comment that I feel duty bound to clarify that we are all comfortable with the change of order of witnesses. Our position is, at the very least I am instructed to say that while we may not object to the change in the order that has now been presented to us, we were not informed that Mr. Mosenogi was going to be called today or tomorrow at all, until this morning. And then shortly after that, not only that he will be called but that he will be called ahead of the Director General. This make it very difficult for the legal representatives to prepare for the evidence that Mr. Mosenogi will be providing and for the questions that we seek to put to Mr. Mosenogi. So I am instructed to register a very deep concern about the process and the procedure and the surprise information we get day by day and to request that this does not take place again.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Yes, Adv. Crouse.

**ADV. LILLA CROUSE:** Thank you Justice. I just need to say that I am part of the sum that was not informed formally. So it comes as news to me and I am not prepared fully, I could probably use lunch time to prepare, but I would have liked really in the interest of justice to have a little bit more time, knowing who the witness is, to prepare properly and to make sure that justice happens here.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. DIRK GROENEWALD:** Justice, we will ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Groenewald.

**ADV. DIRK GROENEWALD:** Thank you very much Justice. Justice, we will also have little time to prepare, but we will do so, so we have no objection. Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Well I was left with the impression that you talked to your colleagues and they are aware of all of this and they say they are not, or they were told on short order, short notice. When did you inform them, Counsel?

**ADV. TEBOGO HUTAMO:** I have given that indication during the tea adjournment  
5 this morning. As I have said like indeed I haven't had the opportunity to speak to Adv. Crouse, but I have spoken to the other members.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay. Let's just repeat the ground rules, they are well-known to all practitioners, right. When notice is vital, is vital for preparation. Mr. Mosenogi is mentioned many times in the report and I think your  
10 colleagues would want to prepare themselves and know what questions to pose. That just makes the proceedings smoother. On the other hand I do understand your pressures to try and get your witnesses going. But let's try and get them lined up and get your list of witnesses in a way that will just make it all easier for all of us – and that applies to me too. I would like to read specifically about a witness  
15 coming to make it more efficient and fairer for everybody. Let's talk about today, having dealt with the procedural questions. In short the answer, we shouldn't do it again, we should give each other due notice. The next question is whether there will be prejudice if he testified now beyond the right to notice. Do you perceive prejudice? Would you be hampered in your cross-examination?

**ADV. LILLA CROUSE:** Justice Moseneke, if I could after he has testified, we can  
20 take the lunch adjournment then, then I could use the lunch adjournment to prepare. And if there are issues outstanding, I will inform the court of them.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Adv. Hassim?

**ADV. ADILA HASSIM:** Justice Moseneke, I am at least somewhat familiar with this record and I will do my best to prepare on short notice. So that is my undertaking. I do appreciate that this government official is coming to testify. All we are requesting is in future further notice.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** I wouldn't say there will be prejudice, but we will put our back to it.

**ARBITRATOR, JUSTICE MOSENEKE:** It is a fair complaint and I think we have ventilated it. The next question is, will there be prejudice, in other words will you be  
10 able to examine the witness after lunch? What I would do is I will allow the witness to be led in chief and that would allow you to, and if you need a longer lunch, let's take an hour, a full hour and when we come back you might be any readier. If you are not, you know your remedy is to tell me and you'll get more time, that's correct of all counsel. Do you have any objection to this, Adv. Ngutshana?

15 **ADV. PATRICK NGUTSHANA:** No objection, Justice Moseneke.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Groenewald, you said you would be able to trot along, you will do your best.

**ADV. DIRK GROENEWALD:** We will do our best.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. We are going to lead him in  
20 chief right now and that will allow your colleagues to be able to prepare for the examination after lunch. Shall we call Mr. Mosenogi now?

**ADV. TEBOGO HUTAMO:** Thank you Justice. And I am indebted to my colleagues.

**ARBITRATOR, JUSTICE MOSENEKE:** Mr. Mosenogi, welcome. In which language do you want to testify?

5 **MR. LEVY MOSENOGI:** I am okay with English.

**ARBITRATOR, JUSTICE MOSENEKE:** You will testify in English, very well. We are going to ask you to take the customary oath, because your evidence has to be under oath. Do you want to do an affirmation or do you want to take an oath?

**MR. LEVY MOSENOGI:** Normal oath.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Normal oath.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You please do swear that the evidence you are about to give will be the truth and nothing but the truth, and if so, raise your right hand and say so help me God.

15 **MR. LEVY MOSENOGI:** So help me God.

**ARBITRATOR, JUSTICE MOSENEKE:** Will you put on record your full names and your last name, please?

**MR. LEVY MOSENOGI:** My name is Levy Molefi Mosenogi.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you for coming to testify and please  
20 be relaxed and you are going to be led in chief by Counsel for the State and after

that you will be asked questions by the rest of the advocates and I am therefore going to hand you over to Adv. Hutamo who is going to lead you. Thank you.

**MR. LEVY MOSENOGI:** Okay.

**ADV. TEBOGO HUTAMO:** Mr. Mosenogi, can you just indicate where are you  
5 currently employed?

**MR. LEVY MOSENOGI:** I am employed at Gauteng Department of Health at a provincial office.

**ADV. TEBOGO HUTAMO:** In what capacity?

**MR. LEVY MOSENOGI:** I am the Chief Director Planning, Policy and Research.

10 **ADV. TEBOGO HUTAMO:** And for how long have you been holding the position?

**MR. LEVY MOSENOGI:** I came to Gauteng in 2006 as the Chief Director Districtal (?) Services. And in 2012, I think, I became Chief Director Planning.

**ADV. TEBOGO HUTAMO:** You have been called to these proceedings to assist with regard to information relating to the death of mentally ill patients who were  
15 housed at Life Esidimeni. Can you just assist by giving your involvement in relation to the program or project which was headed by the Department?

**MR. LEVY MOSENOGI:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Just before you start your evidence. Has Mr. Mosenogi reduced any of his evidence to writing? Is there anywhere you can  
20 invite us to look or you are going to lead him only viva voce?

**ADV. TEBOGO HUTAMO:** I will be leading him orally. There is no formal statement.

**ARBITRATOR, JUSTICE MOSENEKE:** No affidavit or statement or report.

**ADV. TEBOGO HUTAMO:** No.

5 **ARBITRATOR, JUSTICE MOSENEKE:** It is not a train smash, I just wondered if there is one.

**ADV. TEBOGO HUTAMO:** There isn't one.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Oh, was it off? I have been told that... sorry... my button was off. Counsel has just confirmed that there is no  
10 prior report or affidavit or statement and that you'll be leading the witness only orally.

**ADV. TEBOGO HUTAMO:** Indeed so Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

**ADV. TEBOGO HUTAMO:** Mr. Mosenogi, there is a report which was produced by  
15 the office of the Ombudsman. Are you familiar with that report?

**MR. LEVY MOSENOGI:** Yes.

**ADV. TEBOGO HUTAMO:** The report uncovered the incidents which subsequently led to the death of mentally ill patients. Are you familiar with that?

**MR. LEVY MOSENOGI:** Yes, I have read it long time ago but I still remember  
20 some of the issues that were raised.

**ADV. TEBOGO HUTAMO:** Yes. Are you familiar with the facility, Life Esidimeni?



**MR. LEVY MOSENOGI:** The facilities, ja, that were having our patients, I am familiar with four of them.

**ADV. TEBOGO HUTAMO:** Yes. And you've just indicated that as of 2012 you were appointed as the director for planning.

5 **MR. LEVY MOSENOGI:** Yes, if I remember well.

**ADV. TEBOGO HUTAMO:** During the period of... the Ombudsman was appointed to investigate the death which occurred during the period of 1 October 2015 until 1 February 2017. Can you just assist these proceedings and give an indication with regard to the transfer of the patients that you have just referred to from Life  
10 Esidimeni to other institutions?

**MR. LEVY MOSENOGI:** Maybe I must start in the beginning, how I got involved in the project. I was appointed I think earlier in 2015 or late 2014 to head a team that was looking at the termination of Selby Park Hospital.

**ARBITRATOR, JUSTICE MOSENEKE:** You headed a team looking at?

15 **MR. LEVY MOSENOGI:** Selby Park Hospital arrangement between us and Gauteng Health.

**ARBITRATOR, JUSTICE MOSENEKE:** Looking at the termination of the arrangement between yourselves and Selby Park?

**MR. LEVY MOSENOGI:** Yes, it was a done referral where patients were taken to  
20 Selby Park because of space limitation in our facilities. So I was asked to run that team. I did run that project where we transferred most of the patients at Selby Park

to our facilities. So I was running it together with a team of CEOs and people from HR and finance.

**ARBITRATOR, JUSTICE MOSENEKE:** What was Selby Park? What kind of place was Selby Park?

5 **MR. LEVY MOSENOGI:** Selby Park is a private hospital run by Clinics. So I was asked to lead that team. So I did that successfully and people were taken to our facilities, our hospitals. So after that, in November, I think it was the 5<sup>th</sup>, because I am responsible for planning and performance management ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And what is Clinics?

10 **MR. LEVY MOSENOGI:** Clinics is a company, a private facility company that was running Selby Park on our behalf. So on the 5<sup>th</sup>, I think it was a performance review. Normally we have quarterly performance reviews in the Department. And as head of planning, I am the one responsible to making sure that we have quarterly performance, which have the executive together with all managers to present their  
15 performance for the quarter. And it is at that meeting which was held at Turban (?) Hall in CBD area, where after summarising the meeting, MEC either proposed or directed that I should help coordinate the mental health unit project on Life Esidimeni, because I have done well in terms of Selby Park.

**ADV. TEBOGO HUTAMO:** Can you please just indicate the time period when that  
20 was proposed and you can then proceed?

**MR. LEVY MOSENOGI:** It was the 5<sup>th</sup> of November 2015. At that time it was already, I think the notice has already been sent to Life Esidimeni to terminate the

contract between Gauteng Health and Life Esidimeni. So it was a proposal or a directive, but eventually it has to be formalised – that’s what was my take. So we did write documents, because it should be the accounting officer who really appoint a project manager. So I did get my appointment, I did prepare letters and  
5 nominations for everybody who can assist me with that task and they were duly sent off by the accounting officer, the HOD.

**ARBITRATOR, JUSTICE MOSENEKE:** Who signed your mandate?

**MR. LEVY MOSENOGI:** The accounting officer, the HOD, later in November.

**ARBITRATOR, JUSTICE MOSENEKE:** And who was the HOD then?

10 **MR. LEVY MOSENOGI:** It was Dr Barney Selebano.

**ARBITRATOR, JUSTICE MOSENEKE:** Doctor who?

**MR. LEVY MOSENOGI:** Dr Barney Selebano.

**ADV. TEBOGO HUTAMO:** And then you’ve just indicated that like you have set up a team.

15 **MR. LEVY MOSENOGI:** Yes, a project team.

**ADV. TEBOGO HUTAMO:** Who were the members of this team and what were their roles?

**MR. LEVY MOSENOGI:** It consisted of several senior managers together with relevant CEOs, especially of the psychiatric hospitals, Weskoppies, Sterkfontein,  
20 Cullinan and Tara. But also with the support staff, senior managers and the support staff, HR, infrastructure and finances. Why those members, it was because I

foresaw that without the support of all the senior management, it will be difficult to carry out this task. So we formed task teams around particular areas. HR because we needed to look at the staff of Life Esidimeni, especially those who were taking care of our patients there. Finance because we will need a lot of financial funds to carry out our task. Infrastructure because we needed to renovate some areas in our facilities to show that we are able to accommodate additional patients. And then the mental health unit was already working. Because the project, when I took it over, was already running.

**ADV. TEBOGO HUTAMO:** And then can you then proceed how was the project continued to be executed or implemented?

**MR. LEVY MOSENOGI:** Okay. When I took over there was a project plan that has been prepared by the relevant unit, mental health unit. So I had to just restructure it in such a way that I can be able to, together with the team, work on it. So what I did as a person, I did look at it and reduced it into a presentation kind of format, where we will be able to see the tasks of different task teams and then coordinate and then they are able to give us on a regular basis reports and then we report to the executive on a fortnightly basis.

**ARBITRATOR, JUSTICE MOSENEKE:** What reports did the task team have to give to you fortnightly?

**MR. LEVY MOSENOGI:** The progress in terms of the work that has been allocated to them. For example, the task team of mental health unit together with the clinicians had to continue to deal with the patient issues, because that one was

already established under the directorate mental health unit in terms of ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Give us examples of the issues that the mental health unit had to deal with.

5 **MR. LEVY MOSENOGI:** It was dealing with... it was their normal task. They were dealing with the admission, the discharge, the assessment of patients within Life Esidimeni. And also they were taking care of the NGOs because it was part of their normal duties to take care, to ensure that they work with the NGOs that are assisting there.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Were these clinicians working for the Provincial Department of Health or were these clinicians working for Esidimeni?

**MR. LEVY MOSENOGI:** The clinicians within that task team, were working for the Department of Health. Most of them were from our institutions like Weskoppies, Tara... most of them were clinical managers in those institutions.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes and their function was to assess what?

**MR. LEVY MOSENOGI:** To assist us with the management of patients in particular and to assess where we need them to assess individual patients.

**ARBITRATOR, JUSTICE MOSENEKE:** Management of patients when what  
20 happens? They are already at Life Esidimeni.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** They are being looked after there, but what were your clinicians' role, what did they have to do?

**MR. LEVY MOSENOGI:** To guide us and to work with us in terms of, especially when we need to move patients to different facilities, because you needed to have  
5 technical people to assist us in terms of when do we move people from one area to another – those technical details needed to be attended to. So together with the mental health team, I think they were responsible for that.

**ADV. TEBOGO HUTAMO:** And you've just mentioned that this unit had to produce a report every two weeks of the work that they have done.

10 **MR. LEVY MOSENOGI:** Yes.

**ADV. TEBOGO HUTAMO:** Through you, Justice, may I just enquire if it might be an opportune time for the lunch break, I see it is 13:30.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, it seems to me that... how long do you expect the witness?

15 **ADV. TEBOGO HUTAMO:** Well like probably for a further 10 to 15 minutes.

**ARBITRATOR, JUSTICE MOSENEKE:** 10 to 15 minutes will help, because then your colleagues would get an opportunity to prepare. So perhaps we should wait. If it is longer, then we should consider adjourning. But if you are talking up to 15 minutes, and don't feel hurried please.

20 **ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** These are important matters and an important witness. What do counsel want to do?

**ADV. LILLA CROUSE:** Justice, I would appreciate if we could finish his witness, but I am totally in the hands of yourself.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

5 **ADV. ADILA HASSIM:** Justice Moseneke, I am aware that it is not only about us but also about others who may be hungry. So I am speaking in a self-interested way to say if it was only 10 to 15 minutes, I would prefer if it continued and that will allow us to prepare.

**ARBITRATOR, JUSTICE MOSENEKE:** Sure. Counsel?

10 **ADV. PATRICK NGUTSHANA:** I am sorry, Justice Moseneke, I was looking at Hutamo.

**ARBITRATOR, JUSTICE MOSENEKE:** The business is here what we are about. Ja, okay, what should we do?

**ADV. PATRICK NGUTSHANA:** I have no objection to that, but I think knowing the witness it might, the estimation of 15 minutes it might not be correct.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Knowing the witness?

**ADV. PATRICK NGUTSHANA:** No, no, knowing the documents. I am sorry.

**ARBITRATOR, JUSTICE MOSENEKE:** Oh.

**ADV. PATRICK NGUTSHANA:** The witness might take a little bit longer.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay. Counsel?

20 **ADV. DIRK GROENEWALD:** If it is 10 to 15 minutes, Justice, we don't have difficulty but... and I don't want to dictate to my colleague here, but this witness has

quite an important role to fulfil and there is a lot of people here that wants to hear from him what happened and how it happened and I don't think it needs to be elicited by cross-examination per se. So, ja, but I will leave it to my colleague.

**ARBITRATOR, JUSTICE MOSENEKE:** In the light of what you've heard from your  
5 colleagues, what do you want to do? I mean if it is going to take the afternoon  
(inaudible), part of the reason why we are not adjourning, we are trying to  
accommodate the exigency of the preparation.

**ADV. TEBOGO HUTAMO:** Well indeed ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Or we could, if you are going to lead the  
10 witness, after leading the witness fully then counsel must decide whether in fact  
they are ready to get on with it, and if you are not, the remedy is well-known. You  
are entitled to time due to short notice to prepare for the witness. So it is not a train  
smash and we shouldn't feel hurried unduly. It is an important witness and you want  
to hear from him. I want to know a lot about all these clinicians who were in Life  
15 Esidimeni and what assessments they made. So I think the better course for us is to  
adjourn, the witness must come back and give his evidence in full and at the time  
counsel must assess. If we need to adjourn for an hour for you to consider your  
cross-examination so be it. If we take the afternoon off, I go back to my study and  
write some more interesting things. So I am in your total hands about that. But we  
20 shouldn't feel terrible that we need time to prepare properly, but we need to hear the  
evidence. Is that okay, Counsel?

**ADV. TEBOGO HUTAMO:** Thank you Justice, if we adjourn ow.



**ARBITRATOR, JUSTICE MOSENEKE:** We adjourn now and we resume at 14:15, shall we? That is 40 minutes' adjournment. Is that adequate or do you rather want to go 14:30? We'll adjourn up to 14:30, I think so, and that will also give you an opportunity to prepare a bit better. Until 14:30, we come back here at that time.

5 **ADV. TEBOGO HUTAMO:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Sure, thank you. We will adjourn.

**END OF SESSION 2**

**SESSION 3**

10 **ARBITRATOR, JUSTICE MOSENEKE:** (Vernac). Well we are going to start, shall we? Remember sir, you are still under the oath to tell the truth and nothing but the truth.

**MR. LEVY MOSENOGI:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** And we are now going to proceed. Counsel, you may continue to lead the witness.

15 **MR. TEBOGO HUTAMO:** Thank you Justice. Mr. Mosenogi, you were the project manager of the Gauteng Mental Health Marathon Project.

**MR. LEVY MOSENOGI:** Yes.

**MR. TEBOGO HUTAMO:** Yes. Can you then proceed to explain what was to be achieved through the project?

20 **MR. LEVY MOSENOGI:** The key goal was to, because of the termination notice that has been given to Life Esidimeni, it was to ensure that the patients who are

chronic patients who are in Life Esidimeni are catered for. Those who need to be at our facilities, they are taken back to our facilities. Those who are liable for discharge are discharged. And those who need to go to NGOs are taken to NGOs, non-governmental organisations. Those are the... that was the main task. But also  
5 to ensure that the facilities are ready for that. First of all that our institutions, hospitals, are able to accommodate those who need to go to the institutions. So we needed to ensure that we have space. We also needed to work with NGOs to be able to accommodate additional patients within their facilities, basically because we had a working partnership with the NGOs. I think that time, more or less about  
10 4 000 other patients were accommodated in the NGOs, so it was not a new thing in terms of NGOs.

**MR. TEBOGO HUTAMO:** And can you then proceed to give an elaboration of how this project was carried out?

**MR. LEVY MOSENOGI:** Yes, firstly after having the project team, people agreed to  
15 serve on a project team... as a project manager, I did call the first meeting where people were briefed. But before that there were issues that, because I took... in November and December there were issues raised by stakeholders who were complaining that this issue of shifting patients from Life Esidimeni is going to be problematic. So I think the first meeting that was contentious was with the  
20 stakeholders. Stakeholders are SADAG, Section 27 and all those organisations which proposed to represent the clients, the representatives of the clients. So what we have done under the leadership of the HOD, we had to meet with them ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** What do you mean clients? Your definition of clients.

**MR. LEVY MOSENOGI:** Mental health care users and their representatives. So that was the first meeting that I think that is one meeting that I attended where we  
5 met with the stakeholders under the chairmanship of the HOD. But also what I did, myself, before I took over the work, I did visit the facilities. Randfontein is a complex, so I did visit together with the team of mental health unit on individual basis, so that I am able to know what is involved. I did go to Baneng, I did go to Waverly. The second visit was with the leadership of the department ...intervened.

10 **MR. TEBOGO HUTAMO:** Mr. Mosenogi, if I can just take you back to the first meeting which you've had. You just mentioned that you had meetings with stakeholders which included organisations which were representing the mental health care users.

**MR. LEVY MOSENOGI:** Yes.

15 **MR. TEBOGO HUTAMO:** What was the situation with the family members of the users? What was your engagement?

**MR. LEVY MOSENOGI:** We had... what has happened is in terms of the engagement with the family members... in our visit with the leadership of the department to meet with family representatives in the different facilities, we did  
20 engage them in Waverly in Germiston where the MEC was part of the delegation that engaged them. We also did the same in Randfontein, unfortunately the MEC could not attend there, but we did ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** What kind of institution is Waverly?

**MR. LEVY MOSENOGI:** Waverly is a care centre, it is a Life Esidimeni Care Centre that had our patients also there, chronic patients admitted there and taken care of there. Equally Randfontein is the same Life Esidimeni Care Centre that took  
5 care of our patients. So we did go there under the leadership of my executive.

**ARBITRATOR, JUSTICE MOSENEKE:** Same as Baneng?

**MR. LEVY MOSENOGI:** And then Baneng is one different one because I ended up having to go there alone with the team because both the HOD and the MEC were not available there, so I had to lead the team there. And Baneng was more unique  
10 because it is more of intellectually disabled children who most of the time are... So in my round there, I went even to see where they sleep, how they are being treated and all those things. So it really had an impact in my observation in terms of how vulnerable they were. So basically we did visit all the facilities and the relatives ...intervened.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And was the plan also to move these children from Baneng?

**MR. LEVY MOSENOGI:** That was initially part of the plan.

**ARBITRATOR, JUSTICE MOSENEKE:** It was part of the Marathon Project to move these vulnerable children, mentally disabled, from Baneng to where? What  
20 was the plan? Where were they supposed to go?

**MR. LEVY MOSENOGI:** That was the original plan. We needed to identify where they were going to be able to be taken to. And so in the process ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** According to the plan, where were they to be taken to?

**MR. LEVY MOSENOGI:** The project had to identify the beds wherever they can be identified, either at Cullinan or other NGOs. And we only discovered that the NGO  
5 that could take persons like that was Takalani which is in Soweto in Diepkloof. But because of my visit and the impact that it had on me, I tried to avoid taking ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Why was it necessary to move these children, in your understanding of the plan?

10 **MR. LEVY MOSENOGI:** Your Honour, the termination of our association with Life Esidimeni included all the three facilities, the other one is Randfontein, it is a complex, it is two facilities in one, that's why I am saying three. So it included all those, because the contract was bounded together, it was one contract.

**ARBITRATOR, JUSTICE MOSENEKE:** Let's take one step back. Why was the  
15 contract cancelled in relation to Baneng?

**MR. LEVY MOSENOGI:** The termination of the contract included Baneng basically because it was a contract that affected the whole of Life Esidimeni. So it needed either ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay let's take a step back. You are the  
20 project manager.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Why was the contract of Life Esidimeni cancelled? We know now that it included Randfontein, Waverly and Baneng.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Why was that contract cancelled?

5 **MR. LEVY MOSENOGI:** In terms of the termination letter that was sent to Baneng, the issue that was raised was the issue of cost containment, I think, budget constraints. And also the issue of the AG issues in terms of having only renewing one contract with one provider all the time for many years ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** AG issues, what is that, auditor general issues?

**MR. LEVY MOSENOGI:** The auditor general enquiries I think. So basically those were the issues that were raised and the same when I speak of Life Selby Park, it was the same thing of ...intervened.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Okay let's summarise it again. You say it was cost containment.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** That was the one reason for not renewing ...intervened.

**MR. LEVY MOSENOGI:** The contract.

20 **ARBITRATOR, JUSTICE MOSENEKE:** The contract, yes. And the second reason was?

**MR. LEVY MOSENOGI:** The processes in terms of not one provider always having the contract, which was Life Esidimeni and not putting it to tender, which is a normal approach to these kinds of contracts.

**ARBITRATOR, JUSTICE MOSENEKE:** And by the time the contracts were  
5 cancelled, had the services been put to tender?

**MR. LEVY MOSENOGI:** No. The plan was that we must use our facilities and also the NGOs that are available. So basically that was the issue. And that is why the project has many projects inside it. We had to add the infrastructure project, which was to renovate the facilities where we can be able to take our patients to. It was  
10 run by the infrastructure together we've assisted and supported by DID Public Works and also the HR. Because the other issue that was of my concern and other departmental concern was the staff that was taken care of the patients, especially the care workers and professional nurses. So we needed to see whether we can absorb them into our facilities. And also the issue, finance was assisting us there  
15 ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** But were they not employed by Life Esidimeni?

**MR. LEVY MOSENOGI:** They were employed by Life Esidimeni, My Honour, but once there is termination of contract it means... the implication was that Life was  
20 going to close those facilities because it was the sole mandate, they were taking care of the patients.

**ARBITRATOR, JUSTICE MOSENEKE:** So since you moved the patients you actually also ...intervened.

**MR. LEVY MOSENOGI:** Affected the staff.

**ARBITRATOR, JUSTICE MOSENEKE:** Destroy the jobs at Life Esidimeni.

5 **MR. LEVY MOSENOGI:** Yes, that was the case. So basically it was a mammoth of a task, it was a difficult task.

**ARBITRATOR, JUSTICE MOSENEKE:** And people who worked at Life Esidimeni, as the contract ended, were they absorbed into other employment opportunities?

**MR. LEVY MOSENOGI:** They were retrenched and we looked for spaces for them  
10 through the HR team. We looked for spaces for them in various facilities, Weskoppies, Sterkfontein, Cullinan.

**ARBITRATOR, JUSTICE MOSENEKE:** How many people were retrenched?

**MR. LEVY MOSENOGI:** I won't have that number but mainly those who were catered for were nurses, because we needed nurses. I think mainly those are the  
15 ones that were catered for.

**ARBITRATOR, JUSTICE MOSENEKE:** No but how many were retrenched, you are the project leader.

**MR. LEVY MOSENOGI:** Am I allowed to open?

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, you are allowed.

20 **MR. LEVY MOSENOGI:** My Honour, it affected 700 healthcare workers, my estimate, those who are directly healthcare workers.



**ARBITRATOR, JUSTICE MOSENEKE:** Those are the ones affected, you mean those are the ones who were retrenched, who lost their jobs.

**MR. LEVY MOSENOGI:** I mean those who were working there, who were going to be retrenched.

5 **ARBITRATOR, JUSTICE MOSENEKE:** 700?

**MR. LEVY MOSENOGI:** Yes, it affected 700 workers.

**ARBITRATOR, JUSTICE MOSENEKE:** And how many did you help place in other jobs?

**MR. LEVY MOSENOGI:** Okay, let me check. What we did, we established the  
10 profile first through the HR task team, where we identified the professionals and  
administrative staff that needed to be looked at. And what we did, we asked  
facilities, Weskoppies, Sterkfontein and Cullinan, to identify their needs and give us  
their needs, which they did in terms of that. And then we did request finance to  
assist us in terms of that. And then we did the process of making sure that those  
15 that are able to be accommodated ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Mr. Mosenogi, the question was quite short and pointed, really.

**MR. LEVY MOSENOGI:** Yes, I don't have the ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** On your plan and your project you would  
20 have moved patients and you would have had 700 people retrenched on your  
evidence. So the question really was, did you help any people to find other jobs.

**MR. LEVY MOSENOGI:** We did accommodate others, but I don't have the exact figures.

**ARBITRATOR, JUSTICE MOSENEKE:** You have to ...intervened.

**MR. LEVY MOSENOGI:** I know, but I have to look for it, if you can give me time  
5 ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, we'll give you an adjournment at some time to look for it. Just keep it in mind.

**MR. LEVY MOSENOGI:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** There is no problem. Keep it in your mind  
10 and look at your papers and come back to us.

**MR. LEVY MOSENOGI:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel, you may proceed.

**MR. TEBOGO HUTAMO:** Thank you. Mr. Mosenogi, can you then proceed to explain how these transfers were conducted and to which institutions?

15 **MR. LEVY MOSENOGI:** Okay. Ja, the transfer of the patients?

**MR. TEBOGO HUTAMO:** Yes.

**MR. LEVY MOSENOGI:** Ja. They were transferred to our public institutions, those who needed to be transferred there. What has happened is that we had profiled them, the clinical team and mental health unit had profiled the patients in terms of  
20 their chronic state and in terms of the diagnosis in terms of which ones are, the

disease profile in terms of their abilities. So those who needed to go back to hospitals, were taken to hospitals, to Weskoppies, to Sterkfontein and to Cullinan.

**MR. TEBOGO HUTAMO:** Did you have categories of patients who were to be transferred to different institutions?

5 **MR. LEVY MOSENOGI:** Yes, we did. If you look at my first inception report that I presented at the executive, it had outlined the profiling in terms of which patients are having what diseases, so categories of diseases.

**MR. TEBOGO HUTAMO:** Can you then proceed to give an indication of the categories of those patients and where were they transferred to?

10 **MR. LEVY MOSENOGI:** It is contained in under the... what happened, if you look at the document on the mental health care users, it specified which patients were what kind of disease and at which facilities. So we were able to move them according to the NGOs that are suitable.

**ARBITRATOR, JUSTICE MOSENEKE:** Where can we find the document,  
15 Counsel, where in the record?

**MR. TEBOGO HUTAMO:** Can you check file number 8, volume 8?

**MR. LEVY MOSENOGI:** File number 8. Okay.

**MR. TEBOGO HUTAMO:** And turn to page 2854.

**MR. LEVY MOSENOGI:** Yes that was the profiling in terms of Life Esidimeni, what  
20 they were having. This is the profile in terms of the ages where they stayed the facility from 10 years downwards to one year. And some of them were categorised those who have IDs and those who don't have IDs. And then on page 2855 it was

the diagnosis in terms of the mental health care diagnosis. So basically that is what we depended upon to categorise the patients, which this work was done by the clinical team, that's the mental health care unit, which basically were more technically able to attend to this work. So I will not be able to give much more elaborate in terms of information. But the mental health care, I think, will be able to do that.

**ARBITRATOR, JUSTICE MOSENEKE:** But how were these categories used to identify who should be transferred and who not?

**MR. LEVY MOSENOGI:** Your Honour, in terms of the NGOs, there were NGOs in terms of their expertise, there were those NGOs who were only looking after children and what they call intellectually disabled children. There were those NGOs who were able to look for the frail care.

**ARBITRATOR, JUSTICE MOSENEKE:** My question is this, if one looks at age 2854.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Now we know there are people who were 10 years and more at Life Esidimeni.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And there was 532 in number.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** What would you do with that statistic? How would it help you decide what?

**MR. LEVY MOSENOGI:** The statistics was assisting the team to... because some people were not really being... they have been there for a long time and lost contact with their families. So it assisted us in terms of tracing their families to be able to make contact with their families to be informed of the anticipated closure of the  
5 facilities.

**ARBITRATOR, JUSTICE MOSENEKE:** Or look at page 2855. How would that help you to decide who goes to your public facilities and who would have to be discharged to their homes and who would be moved to NGOs?

**MR. LEVY MOSENOGI:** Your Honour, this 2855, if I recollect well, it was going to  
10 assist us in terms of determining which NGOs can take care of this kind of chronic patient. Most of... all of these patients were chronic patients who were stabilised. And then this was going to assist us to identify the NGOs that are capable of taking care of these families, of these patients. But also this profiling was assisting us in terms of the clinical team and the mental health care unit team to identify which  
15 ones are going to go back to the hospitals. So basically that is the work that mental health care unit and the clinical team were supposed to assist us with.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you Counsel.

**MR. TEBOGO HUTAMO:** Mr. Mosenogi, were you able to successfully implement the project or if there were challenges, what were the challenges in the  
20 implementation of the project?

**MR. LEVY MOSENOGI:** The project in earnest started in January and it was too short a time. I realised it was too short a time. End of March we needed to have

vacated the facilities. And as we interacted with Life and also interacted with the NGOs and getting the reports from the different task teams, I thought that it is a tall order and I raised the issues with the executive in terms of that it is a short space of time, I don't think we will be able to ...intervened.

5 **MR. TEBOGO HUTAMO:** Sorry. When you refer to the executive, who did you engage in particular?

**MR. LEVY MOSENOGI:** My HOD, Dr Barney Selebano. But when I panicked and I discovered that I am going to fail as a project manager to have moved patients. And Life Esidimeni was insisting that it has to give retrenchment notices to the  
10 employees and have to do it on time according to labour regulations. So it just gave me sleepless nights and I decided ultimately ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Why did you not say that we are not ready, extend the contract for a year, keep the people and let them keep their jobs and the day when we are ready, we will come back?

15 **MR. LEVY MOSENOGI:** Justice, I have done that. I did raise that and I did propose an alternative.

**ARBITRATOR, JUSTICE MOSENEKE:** Can you be more specific? You raised it with whom?

**MR. LEVY MOSENOGI:** I raised it first with my HOD and my team, then eventually  
20 I raised it with MEC, that evidence I did submit to the Ombuds person where I outlined that these people are vulnerable and we might not be able to meet the deadline, can we get an extension. I requested six months or a year, because I was

proposing that maybe it should be on a phased approach rather than the way we are doing it. And I also provided an alternative proposal that why can't we buy Baneng itself and also maybe procure one of the facilities, either Waverly or the Randfontein complex.

5 **ARBITRATOR, JUSTICE MOSENEKE:** How many young people were at Baneng?

**MR. LEVY MOSENOGI:** At that time I think there were 295. So that one I wanted it not to be removed, because I really feared for the worst in terms of Baneng.

**ARBITRATOR, JUSTICE MOSENEKE:** And why did it not happen? Why could your fear not be accommodated?

10 **MR. LEVY MOSENOGI:** I did get a concession, My Honour, I did get a concession from the MEC and the leadership in terms of, they did agree that in principle we must get an extension for Baneng, we must extend the contract for at least one year, which I was happy with that, because then I knew that at least I won't bother with Baneng. And then for the other two facilities, instead of getting the six months  
15 that I requested or a year that I requested, I was given an extra three months.

**ARBITRATOR, JUSTICE MOSENEKE:** Extra three months to June.

**MR. LEVY MOSENOGI:** Meaning that instead of March, it will be the end of June.

**ARBITRATOR, JUSTICE MOSENEKE:** But why? What was the urgency about?

**MR. LEVY MOSENOGI:** I think the urgency is that from my side, in my opinion, it  
20 was because they had already written to Life and terminated the contract and we will not have space for these patients if we don't do the project that I was doing. I

can't explain the urgency in terms of why did we have to close the Life Esidimeni facilities.

**ARBITRATOR, JUSTICE MOSENEKE:** But you were the leader. You were the person (vernac). You were the one who was meant to have insight into the project,  
5 who reports to your seniors and direct your juniors, right.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** That is what a leader does.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Why didn't you know what was the reason  
10 for the urgency?

**MR. LEVY MOSENOGI:** In my opinion there was no urgency. There was no urgency there. The only issue was that the decision, the policy decision has already been taken and it was being implemented.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay. Counsel.

15 **MR. TEBOGO HUTAMO:** Can you then proceed to elaborate on the ultimate outcome of the implementation of that project, what eventually occurred?

**MR. LEVY MOSENOGI:** Ultimately what had occurred, it was in terms of the infrastructure part of the project. There were spaces available... the required spaces at the facilities that were being renovated. And then also there were  
20 identified spaces at the NGOs and also some families decided to take their patients home, rather than being on a discharged basis. So at the end of June most of the patients have been moved to the facilities that had been designated.



**MR. TEBOGO HUTAMO:** Was it all of the patients relocated to those facilities?

**MR. LEVY MOSENOGI:** I can say yes, because after June there were no patients in the facilities, in the Life Esidimeni facilities.

**MR. TEBOGO HUTAMO:** Mr. Mosenogi, you will recall that the report by the  
5 Ombudsman was in relation to the deaths which occurred.

**MR. LEVY MOSENOGI:** Yes.

**MR. TEBOGO HUTAMO:** Can you just elaborate on your knowledge of what ultimately led to those deaths?

**MR. LEVY MOSENOGI:** After the project has... after patients have been moved to  
10 various facilities, we began to experience that there are problems and there are challenges. And at that time there was not a very... I mean we were all stressed in the Department, because there were problems all over. The first challenge, where I think we went wrong, was the issue of payments of subsidies to the NGOs was not well done. Most of the NGOs were not given the subsidies that they were supposed  
15 to do ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac). Why? Why would you send people out of a healthcare place like Life Esidimeni, take them to NGOs... I am sure you will be asked questions about how you selected the NGOs.

**MR. LEVY MOSENOGI:** Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And not give them money, three to four months... you have to explain that surely.

**MR. LEVY MOSENOGI:** That was ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** That was your project and how did that happen?

**MR. LEVY MOSENOGI:** There were, I think, procedural issues that were... I think maybe the project we did overlook where people needed to have, especially the  
5 new NGOs ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** We have to listen to Mr. Mosenogi, right. I know you don't like everything he says, but we have to give him the respect and listen and not hackle him, please. Thanks.

**MR. LEVY MOSENOGI:** There were processes that needed to be completed  
10 before subsidies could be transferred to individual NGOs and ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** What processes are those?

**MR. LEVY MOSENOGI:** And we lacked in that respect.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, what processes are those? Just help me understand.

**MR. LEVY MOSENOGI:** Paper processes where the service level agreement  
15 needs to be signed, accounts need... the NGOs needed to have bank accounts and all those things. And also the... our financial people needed to be up to speed with transferring of funds and I think that is where the problem was from our side.

**ARBITRATOR, JUSTICE MOSENEKE:** But why did you move the people before  
20 the systems were in place?

**MR. LEVY MOSENOGI:** That's where we really ran short. I think it was our weaknesses, Judge.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, but why were the weaknesses there?

Mr. Mosenogi, we have a very serious situation here and the consequences you know.

**MR. LEVY MOSENOGI:** Yes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** So we are trying to... and the family members who are here, they are trying to get at it to understand how it... that is why we are doing this.

**MR. LEVY MOSENOGI:** Yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And remember we know a lot about what you said to the Ombud.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** It is on paper, it is written down. I have certainly read most of it, if not all of it.

**MR. LEVY MOSENOGI:** Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE:** But I wanted to get behind your mere say so to understand. Hence my questions, what was the urgency about? Why would you cancel the agreement in any event? Why would you move people before the processes for paying money are in place? What was the big pressure on you to do what you did?

20 **MR. LEVY MOSENOGI:** As ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** You as a project manager, let's keep it there for a moment, why did you do what you did acting as a public official?

**MR. LEVY MOSENOGI:** I think, Judge, as a person... as a person and as a project manager, I don't have an excuse why we had to hurry it, because my initial thought  
5 was that it should be done in phases. But the timeframes I negotiated and those were the timeframes that I was given. And I did not realise that we will be having ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Timeframes given to you by whom?

**MR. LEVY MOSENOGI:** By the leadership in the Department.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Who in the leadership?

**MR. LEVY MOSENOGI:** The executive, the HOD and the MEC.

**ARBITRATOR, JUSTICE MOSENEKE:** What is the name of the HOD?

**MR. LEVY MOSENOGI:** Dr Selebano and Me. Qedani Mahlangu.

**ARBITRATOR, JUSTICE MOSENEKE:** So you were acting on their instructions.

15 **MR. LEVY MOSENOGI:** Yes, it was the policy decision.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**MR. TEBOGO HUTAMO:** In terms of the report by the Ombud, it is recorded that there is a number of 118 patients who died pursuant to the implementation of the project. Can you just assist this hearing as to at what stage did you learn of the  
20 occurrence of these deaths?

**MR. LEVY MOSENOGI:** I might not have an exact date, but I think soon after... I think either in July or August. And I think at that time that is when we started having reports in terms of patients have died in this and that NGO. And most of the time then the people who were asked questions, were the mental health unit. So I was  
5 basically a little out of... I don't know whether it was deliberate or what, but I was out of the picture. Most of the time the issues were raised with Dr Manamela and her team who continued to work, because it was their job. But I did get information when 36 patients were being reported on, I think we were called by the Premier to account and we did led by the MEC, went to the Premier's office to give account  
10 what has happened.

**MR. TEBOGO HUTAMO:** What account was given to the Premier?

**MR. LEVY MOSENOGI:** The mental health care unit had prepared a presentation that was read by the MEC that details the issues in terms of the deaths of people. At that time it was reported in the newspapers that it was 36, but I did get a  
15 (inaudible) from the mental health unit that it seems it is increasing. And I did raise it in the Premier's meeting when I was asked my view. Because I was not even introduced as the project manager. So I understood that maybe my work was finished. So I was just introduced as Chief Director Planning at the Premier's office. So I did try to point out that it seems that the patients are increasing in terms of the  
20 reported death. But it was pointed out that maybe the mental health unit has made a mistake, it is still statistics.

**ARBITRATOR, JUSTICE MOSENEKE:** I think you will have to speak louder so that we can hear you.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** I know you are answering questions to your counsel, but you are really talking to all of us.

**MR. LEVY MOSENOGI:** To all of you.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Starting with me, yes.

**MR. LEVY MOSENOGI:** Okay. I was saying that when I was aware that the report came saying that the deceased people have died from the media and other... I did get in touch with the mental health unit, because they were asked to prepare a report for the Premier, which we went to present to the Premier. And at that  
10 particular time I was not identified as the project manager, I was just identified as Chief Director Planning.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you know why the reports of death came from the media and not detected by your project?

**MR. LEVY MOSENOGI:** Even the project... I think the... to be honest, Judge, after  
15 the project had been finalised, I think I was not really considered to be... I think maybe it was because the project had finished. So most of the work was now being done by mental health unit, so.

**ARBITRATOR, JUSTICE MOSENEKE:** At what point was the project finished, when what had happened? We'll look at the time at a moment. How and when did  
20 the project come to an end?

**MR. LEVY MOSENOGI:** The project was supposed to end after April... after June, that was the shifting of the patients to the NGOs and other facilities. But we needed

to have a month to make sure that everything is well in terms of the facilities that we have moved patients to. But while I was still ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** The question was, when did the project end?

5 **MR. LEVY MOSENOGI:** I don't think it ended that time, because then when it was supposed to end, the patients started to die. So the expected end then had to continue, because we had to deal with the aftermath of the tragedy. So it did not really have an end point the way we anticipated.

**MR. TEBOGO HUTAMO:** Thank you, Mr. Mosenogi, no further questions.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you Counsel. Naturally I have to ask all the other counsel whether you are ready with cross-examination and if you are, again I'll start with Section 27, and that I do because of the number of deceased people that you represent and somebody start again with Section 27 with cross-examination. Are you ready?

15 **ADV. ADILA HASSIM:** I am ready, Justice Moseneke. I might be a little disjointed this time as I find my record and so on, but I am ready to proceed.

**ARBITRATOR, JUSTICE MOSENEKE:** Are you ready to proceed?

**ADV. LILLA CROUSE:** I am ready to proceed.

**ARBITRATOR, JUSTICE MOSENEKE:** You are.

20 **ADV. PATRICK NGUTSHANA:** Yes Judge.

**ARBITRATOR, JUSTICE MOSENEKE:** You are ready to proceed.

**ADV. PATRICK NGUTSHANA:** Yes Judge.

**ARBITRATOR, JUSTICE MOSENEKE:** And you are ready to proceed.

**ADV. DIRK GROENEWALD:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Let's go for it then. Adv.

5 Hassim.

**ADV. ADILA HASSIM:** Thank you. Mr. Mosenogi, thank you for being here today.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** And thank you for subjecting yourself to questions from the various parties present. My name is Adila Hassim and I represent the families of 55  
10 people who died during the period of the project. So if I may start with your appointment to lead this project. You say you were appointed to lead the project on 5 November 2015. By which time, if you can just clarify for me, the contract had been terminated already.

**MR. LEVY MOSENOGI:** Yes. On November the 5<sup>th</sup>, that was in a meeting of the  
15 performance quarterly review. I was proposed by the MEC that I must assist with the project of Life Esidimeni. Before that I was involved in another project, so I was not involved with Life Esidimeni.

**ADV. ADILA HASSIM:** Yes, but can you confirm at the point on which you began to lead the team, the contract had already been terminated?

20 **MR. LEVY MOSENOGI:** Yes, it was already terminated. It was terminated at the end of September. Actually not terminated, the notice has been given at the end of September.



**ADV. ADILA HASSIM:** Notice of termination which meant that by March 2016 all of the patients had, place for all of the patients had to be found.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** Meaning once the notice was sent in October 2015, the  
5 train had now left the station.

**MR. LEVY MOSENOGI:** Yes that was true.

**ADV. ADILA HASSIM:** So when you were appointed, you were not appointed at the beginning of this project, earlier decisions... there were obviously earlier decisions. The record shows in March 2015 the MEC had already indicated her  
10 intentions.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** You say that there were fortnightly progress reports that were provided during your management of the team. Do you have these progress reports? Were they provided regularly on a fortnightly basis?

**MR. LEVY MOSENOGI:** The intention was to provide them on a fortnightly basis. And from my perspective, most of the time they were provided, it was senior management meeting where the MEC was the chair. And the first report was provided there in terms of what we were doing which was entitled the conception of the project, the way I understood it, the way I tried to modify what I found as a  
20 project plan. So I did try and present what is there, the state of the issue and all the things that needed to be done.

**ADV. ADILA HASSIM:** Were you satisfied with those fortnightly progress reports such as they were? I mean actually that was your measure of whether things were on track... were you satisfied?

**MR. LEVY MOSENOGI:** What I did try to do and present on an honest basis was I  
5 had drafted... sorry, if we can look at one of the presentations. I drafted sort of a  
format of reporting that details will show where we are at that particular time and  
then the next report will detail how far have we moved from where we are. So we  
used basically the same format in terms of presenting to the MEC. There were  
discussions which are covered in the minutes and progress was registered. Where  
10 there was no progress, we pointed out the challenges and where there are  
problems.

**ADV. ADILA HASSIM:** If you can just repeat for us, I know you touched on it in  
your evidence in chief. When did you become aware that there was a problem, that  
you weren't going to meet the deadline?

**MR. LEVY MOSENOGI:** The first time when I was aware, I think it was when I was  
15 supposed to give the next report, I think it was the 12<sup>th</sup> of February. The first time it  
was in January after I visited the area and we have spoken to the families in various  
facilities and they raised a lot of objections which were making sense to me and we  
did talk. That is where I developed the idea that maybe we need to have an  
20 alternative to what we are doing.

**ADV. ADILA HASSIM:** Sorry, when was that and at which meeting was that where  
the concerns were raised?

**MR. LEVY MOSENOGI:** The concerns were raised at Waverly when we were together with the MEC in Germiston. And then the other concerns, it was different. The Randfontein people also did raise issues.

**ADV. ADILA HASSIM:** What date or roughly what date?

5 **MR. LEVY MOSENOGI:** It was at the initial period. Maybe I need to... the first one that... I don't know whether it is there in the evidence. On the 20<sup>th</sup> of January I did send out an email to my superiors just pointing out the progress in terms of the report and giving a summary report of development. And then I did raise some issues in terms of maybe... you don't have that.

10 **ADV. ADILA HASSIM:** We don't have that?

**MR. LEVY MOSENOGI:** Ja.

**ADV. ADILA HASSIM:** Could you maybe make it available?

**MR. LEVY MOSENOGI:** That was the initial concerns that I raised after we have met. But on the 12<sup>th</sup> of February I did raise it on an email to the MEC and the HOD.

15 **ADV. ADILA HASSIM:** Okay.

**MR. LEVY MOSENOGI:** Which was the annexure to the Ombudsman's report, which really highlighted the issues of concern and what we can do to try and address the issues.

**ADV. ADILA HASSIM:** So you would say safely from about January 2016 you  
20 registered serious concerns.

**MR. LEVY MOSENOGI:** Yes and I developed an idea of an alternative that if we can buy these facilities. And actually we did agree with the HOD that that is the best and he did ask me to get indicative figures, so that we are able to know how much it will cost, if we buy either one or two of the facilities.

5 **ADV. ADILA HASSIM:** Thank you. To move onto another topic.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** You say the reason for the termination of the contract, you gave two justifications. The first was budget, resource constraints, and the second was that the Auditor General raised a concern about the repeated renewal of the  
10 contract. Did the Auditor General require you to cancel the contract or was there any attempt to explain to the auditor General what the basis was for the repeated renewal of the contract?

**MR. LEVY MOSENOGI:** I don't think the Auditor General was approached in regard to that, but it was just stated as a fact that they did raise issues in terms of  
15 one provider all the time, renewing contracts. But I am not privy to the issue whether did anyone of us raise the issue with the Auditor General in terms of the vulnerability of the patients that are taken care of by Life. And also because there were, it was, in my understanding they were sole providers for the service. And the other issue that I need to highlight, there was... before I think people did a decision,  
20 there was a study that was done ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Who are people? Let's just be exact.

**MR. LEVY MOSENOGI:** The Department. Before they did, there was a study done under the health economics unit called, consultants called Health Advance Institute.

**ADV. ADILA HASSIM:** Yes.

5 **MR. LEVY MOSENOGI:** Who, I think, basically they were looking at the cost analysis of the contract with Life Esidimeni. And I think they were appointed because people were... Life always wanted to increase the tariffs. So we wanted to see whether is it cost effective and they did provide information in terms of that.

**ADV. ADILA HASSIM:** And did they find that it was cost effective or not?

10 **MR. LEVY MOSENOGI:** My understanding was that it was going to be expensive continuing with the contract. It was going to be expensive if we continue with the contract the way we are continuing, because every year Life wanted an increase.

**ADV. ADILA HASSIM:** That was the finding of the consultant, is that what you are saying?

**MR. LEVY MOSENOGI:** Yes, in that document, ja, if you look at that document.

15 **ADV. ADILA HASSIM:** We've tried to look at that document. We have requested it on several occasions from the Department and it hasn't been provided. If you can assist us with that we will be very grateful. It is an odd conclusion, because what the record shows is that Life Esidimeni was paid about R320 per person per day.

**MR. LEVY MOSENOGI:** Yes.

20 **ADV. ADILA HASSIM:** And the cost of accommodating the mental health care users at State facilities, State ran facilities like Weskoppies and Sterkfontein and Cullinan were more than a thousand rand in each case.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** So the idea of moving patients from one facility at the cost of R320 per person per day to other State facilities where the cost was about four times as much, it doesn't make sense.

5 **MR. LEVY MOSENOGI:** Ja, I think the Department was looking at basically utilising NGOs, because the idea was that most of the patients in Life Esidimeni they are stabilised and they can be able to live in NGOs or at home. They just needed chronic care rather than go to serious facilities. I think that was the argument.

**ADV. ADILA HASSIM:** But would you agree that if they were to be moved to a  
10 NGO, they would have to be moved to a facility that was capable of providing that chronic care that was habitable, that respected the dignity of its residents, in which food was available and in which the staff were capable of providing the services required by the residents.

**MR. LEVY MOSENOGI:** That was the intention.

15 **ADV. ADILA HASSIM:** And in your view it was possible to do that at R112 per person per day? That was the average cost of NGOs per person per day.

**MR. LEVY MOSENOGI:** Basically I think the intention was that we already had facilities that are providing that care. As I said in the beginning about 4 000 patients were already accommodated in the NGOs, my estimate. So basically it was  
20 continuing with that were we have partnership with NGOs who were delivering those services.

**ADV. ADILA HASSIM:** Okay so let's go there. You say you were just going to continue your partnership with NGOs that were already providing in the view of you and the Department, acceptable services, correct?

**MR. LEVY MOSENOGI:** Ja, we needed to ascertain for ourselves that they are  
5 providing those acceptable services.

**ADV. ADILA HASSIM:** But would you agree that a number of these NGOs were new NGOs, they didn't exist prior to the decision to terminate the contract? Would you agree with that?

**MR. LEVY MOSENOGI:** Ja, in hindsight I think I agree with that that we ended up  
10 even giving NGOs that are not experienced to do the work.

**ADV. ADILA HASSIM:** And not even licensed properly, would you agree?

**MR. LEVY MOSENOGI:** I agree.

**ARBITRATOR, JUSTICE MOSENEKE:** But why hindsight?

**MR. LEVY MOSENOGI:** Your Honour, I was working with people who are  
15 experienced technically in terms of the work that the NGOs were doing. And on a regular basis, annually, because the contracts with the NGOs were being renewed on an annual basis. And before they renewed their contract, there was an inspection that they had to do to the NGOs to ensure that they are still delivering quality services. So as a project manager, I assumed that that is the case, that  
20 even if they engage additional spaces in those NGOs, people will still look and inspect the way they have done all the time and they will be satisfied.

**ARBITRATOR, JUSTICE MOSENEKE:** People... people... people... who are they? You have a project and you have implementers. We can't talk in general terms.

**MR. LEVY MOSENOGI:** The mental health unit.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Who chose the NGOs?

**MR. LEVY MOSENOGI:** The mental health unit people, the people who were on an annual basis working with the NGOs, which is the mental health... there is a mental health directorate in the Department, which runs ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Who was the head of the mental health unit?

**MR. LEVY MOSENOGI:** The director was Dr Manamela.

**ARBITRATOR, JUSTICE MOSENEKE:** Doctor who? Manamela?

15 **MR. LEVY MOSENOGI:** Yes. So it was their regular task to ensure that they work with the NGOs and they make sure that NGOs deliver services. So that was the work that they were doing on an annual basis... on a regular basis they visited the NGOs.

**ARBITRATOR, JUSTICE MOSENEKE:** And what went wrong? If that statement is correct, what went wrong?

20 **MR. LEVY MOSENOGI:** I think what went wrong, as an opinion, I might not be an expert on this... what went wrong is that the timelines for the project were just abnormal. We could not do that in the timelines that we were given. I think that is where it went wrong.



**ARBITRATOR, JUSTICE MOSENEKE:** At that point how many years had Life Esidimeni been used for patients? I see some in excess of 10 years. And in evidence I saw somewhere a number like 30 years. Is that correct? Is that a contract that lasted...?

5 **MR. LEVY MOSENOGI:** Ja, from the briefing that I got it was that it started in 1979 it was the National Department of Health that had a relationship, the initial relationship with Life Esidimeni. And then in 1987 the relevant provinces took over.

**ARBITRATOR, JUSTICE MOSENEKE:** You were asked by Adv. Hassim why the termination and you said cost reduction. When she pressed you, you said it was  
10 less about costs and more about giving NGOs a stake, a slice of the cake. Did I understand you properly?

**MR. LEVY MOSENOGI:** No, I didn't say that Judge.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay, correct me, put it accurately.

**MR. LEVY MOSENOGI:** When I got into the project, the two issues were the main  
15 issues, the cost constraint and also the issue of the Auditor General. And it was ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Then she pressed you ...intervened.

**MR. LEVY MOSENOGI:** Life Esidimeni was just one of the other cost containment projects. The other one was Selby Park and then other smaller projects.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Then the advocate asked you questions to show that cost of retaining mental health care users in other state facilities was in excess of a thousand.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you remember your response to that?

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Your response was that yes, but the real  
5 thing was giving NGOs an opportunity to look after people.

**MR. LEVY MOSENOGI:** The NGOs were a cheaper option.

**ARBITRATOR, JUSTICE MOSENEKE:** Were a cheaper option?

**MR. LEVY MOSENOGI:** Ja, it was not really giving them opportunity, because they  
had already had the opportunity, they were taking care of other patients, chronic  
10 mental health care patients. So it was not about giving them an opportunity but it  
was about expanding the care.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay now let's get the reason again  
properly. I followed the cross-examination, but anyway. So your answer is opting  
for NGOs was a cheaper option.

15 **MR. LEVY MOSENOGI:** If patients do not need the care that... if patients needed  
just the basic care rather than intensive care that is provided for at the hospitals.

**ARBITRATOR, JUSTICE MOSENEKE:** To wrap up the point, so why do you say  
the project was necessary to find a cheaper option? To terminate Life Esidimeni  
which was a repeated contracting party?

20 **MR. LEVY MOSENOGI:** In my opinion it was to cap the escalating expenditure.

**ARBITRATOR, JUSTICE MOSENEKE:** To cap escalating expenditure.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. ADILA HASSIM:** Thank you. Mr. Mosenogi, you say that it was suitable for patients who just required basic care. But would you agree that many of these  
5 patients had suffered from... they were mental health care users and suffered from various mental health conditions, including schizophrenia, severe depression, epilepsy and so on?

**MR. LEVY MOSENOGI:** Yes, but they were at a chronic stage, they were stabilised. They were stable.

10 **ADV. ADILA HASSIM:** They were stable as a result of the care that they had been receiving and the adherence to their medication and to being in an environment in which they were comfortable. Is that correct?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** So you took the stable patients and placed them in facilities  
15 that threatened all of those three conditions to their wellbeing.

**MR. LEVY MOSENOGI:** I don't think we can generalise that, because there were NGOs taking care of chronic patients who are stable. So it is not a matter of taking them from unstable environment to another... a stable environment to an unstable environment, because as I said the NGOs are also taking care of chronic patients,  
20 mental health care patients and there are very good NGOs that are doing that.

**ADV. ADILA HASSIM:** At R112 per person per day?

**MR. LEVY MOSENOGI:** The R112 is the addition from their own... NGOs, the way they operate, they get subsidy from us, but also what they do, they also from the disability pension fund of the users, they also get money from them and then they also fundraise. So it is basically three funding sources. So the most established  
5 NGOs are able to sustain themselves, not only by the subsidy but by other additional funding.

**ADV. ADILA HASSIM:** But you say the subsidies were not paid. So, let me just take a step back. The Ombud has told us that NGOs were not given the support that were required. You yourself told us in your evidence in chief that the plan was  
10 to assist the NGOs.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** So they weren't there more or less ready and waiting with some subsidy from government, they would be able to provide these services, they needed more than that.

15 **MR. LEVY MOSENOGI:** I agree that there were delays in paying subsidies to the NGOs, that one I accept that it was something that we should not have done.

**ADV. ADILA HASSIM:** And you say they needed no further support than that, the NGOs.

**MR. LEVY MOSENOGI:** No, I did not say they did not need further support.

20 **ADV. ADILA HASSIM:** So they did need further support.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** What type of support?

**MR. LEVY MOSENOGI:** They needed the subsidy in the first place. Also they needed to be, while waiting for subsidy, maybe they needed support in terms of resources.

**ADV. ADILA HASSIM:** Did they also need any support in relation to how to deal  
5 with the particular mental health condition of the patients that they would be receiving?

**MR. LEVY MOSENOGI:** I will imagine so, especially those who were not experienced.

**ADV. ADILA HASSIM:** Did they receive that support?

10 **MR. LEVY MOSENOGI:** The mental health care unit tried to give that support, but the pressure of... I think the problem was there were many NGOs that were involved at that time. So I think the pressure was that it was too much.

**ADV. ADILA HASSIM:** And the mental health care unit, are you talking about the directorate that is headed by Dr Manamela?

15 **MR. LEVY MOSENOGI:** Ja, the departmental unit, ja.

**ADV. ADILA HASSIM:** So did Dr Manamela report to you as she was required to do, as I understand it, in these fortnightly reports? Although I would imagine that it wouldn't be restricted to that if things were... if the wheels were coming off, then you wouldn't wait two weeks to say so. But did she then inform you of this  
20 catastrophe that was about to take place, because it was so overwhelming?

**MR. LEVY MOSENOGI:** I may not remember clearly, but the challenges were always pointed out, the challenges of patients not having disability, so we try to

engage with SASSA. And those who are not having identity documents we engaged with Home Affairs to try to speed up that, so that patients who are moved to the NGOs, they will be able to reactivate their pension fund, so that the pension will also assist.

5 **ADV. ADILA HASSIM:** Ja, no I appreciate that those efforts were made in relation to Home Affairs and processing of SASSA cards. But that was not my question. My question was whether Dr Manamela informed you, as you said it was not possible to provide these other support services, because of the number of the NGOs and the need and the speed within which it had to be done. I am asking  
10 whether Dr Manamela warned you of that, informed you of this.

**MR. LEVY MOSENOGI:** I think she should have. I am not particularly remembering whether she has done that, but I think she will have pointed out issues if they were arising. I may not remember particular specific times.

**ADV. ADILA HASSIM:** Thank you. I am going to move on then. I also just want to  
15 confirm just as a follow-up to my question about the AG, the Auditor General. I just want to confirm that there was no open procurement process for the services of the NGOs.

**MR. LEVY MOSENOGI:** Not the one that I know of. But what happened, when I joined, we did have... Dr Manamela and her team had called a meeting, just before  
20 I began to run the project, I think in earnest. They did call a meeting of all the NGOs to inform them of the need to have additional beds for Life Esidimeni patients. And all the NGOs from all the districts were invited and I think they had slots to be briefed and also to see whether they can assist the Department of

additional beds. But the process of procurement of the NGO, it was a yearly event where... I don't know whether, I am not sure, but I think there was an advertisement every year for NGOs to make themselves available to take care of chronic mental health patients. And that was the process that the mental health care unit  
5 undertook on an annual basis. And also to look at their reports and to go out and inspect the facilities and to be satisfied and they will get financial reports and all those things and then sign on an annual basis, they sign a service level agreement to continue taking care of the patients.

**ARBITRATOR, JUSTICE MOSENEKE:** You talk about they should, they should,  
10 they should... did they do it?

**MR. LEVY MOSENOGI:** My Honour, it was a regular exercise.

**ARBITRATOR, JUSTICE MOSENEKE:** No, did they do that in this case?

**MR. LEVY MOSENOGI:** They have done that.

**ARBITRATOR, JUSTICE MOSENEKE:** Of the people who died and reported on  
15 by the Ombud.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Did that happen?

**MR. LEVY MOSENOGI:** It happened. There was a meeting where all NGOs were called ...intervened.

20 **ARBITRATOR, JUSTICE MOSENEKE:** I am not talking about meeting. I am talking about whether or not they went out to inspect the facilities of the NGOs to see were they appropriate for the care that might be required by mental care users,

who you and your unit had ordered should be distributed around various other places.

**MR. LEVY MOSENOGI:** My Honour, it is a normal process that they have done that.

5 **ARBITRATOR, JUSTICE MOSENEKE:** But did the inspection happen?

**MR. LEVY MOSENOGI:** It did. It is a regular ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Where do we see that?

**MR. LEVY MOSENOGI:** It is their regular duty.

**ARBITRATOR, JUSTICE MOSENEKE:** No, no, but refer me to minutes. We have  
10 been given tons of paper here. Refer me to minutes and things that show... Let me  
tell you want prompts the question, okay.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** We had Professor Makgoba, he is a  
NBCHB, he is a PHD (inaudible), name it. He is a member of the Royal College of  
15 Surgeons. He is a member of the South African College of Surgeons. He is what  
should be in the medical field, right. He says to us this morning, if you were referred  
to any of the NGOs involved here, it would be like being sent to the gallows. And if  
you went to any of the regular facilities properly resourced and people trained, you  
could live your full life, even you have chronic mental health. Is that wrong?

20 **MR. LEVY MOSENOGI:** Maybe as an example I can refer ...intervened.



**ARBITRATOR, JUSTICE MOSENEKE:** Well I want you to respond to the question that I have just put to you. Do you differ from Prof Makgoba when he says these NGOs, he went out to interview people who ran them, he went to go and look at the facilities and he concludes that they amounted to sending peoples to the death row?

5 In contrast, for instance, to the facility in Pretoria. Do you agree with him about that? Because you want to tell us that NGOs have been doing it forever, they are doing it well, inspections are done routinely and people die thereafter. So I would like you to tell us what an expert tells us, who spent a lot of time inspecting the NGOs, looking at the conditions, looking at the resources they have, looking at the  
10 level of their training in mental health care. And he concludes that it was, as we say in Pretoria, lewensgevaarlik. It was life threatening. What do you say to that?

**MR. LEVY MOSENOGI:** Your Honour, I don't think it is all the NGOs.

**ARBITRATOR, JUSTICE MOSENEKE:** We are talking about those who were involved in this project that he studied, do you disagree with him?

15 **MR. LEVY MOSENOGI:** I did go to Takalani in Diepkloof. I did visit and it is an existing NGO which had facilities that were acceptable. I did go to Anan in The Vaal and the facilities were acceptable. So my argument is that it is not all the facilities.

**ARBITRATOR, JUSTICE MOSENEKE:** Did you go to the NGOs where people  
20 died? We have a list of them here, I can read it out to you. Did you go to those?

**MR. LEVY MOSENOGI:** After the death I did go to Precious Angels.

**ARBITRATOR, JUSTICE MOSENEKE:** And was it acceptable?

**MR. LEVY MOSENOGI:** It was not acceptable.

**ARBITRATOR, JUSTICE MOSENEKE:** Then why do you know it as a matter of hindsight. Why didn't you know it before you sent people there?

**MR. LEVY MOSENOGI:** As a department, and I must say that we made mistakes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Ja that sounds a little bit better. It really sounds better, not defensive. Because we are dealing with people who have actually lost their lives in circumstances where the Ombuds report and your own department tells us the circumstances were unlawful, they were negligent, they were grossly negligent in fact in their words. So what is our debate? It was all fine,  
10 it was all right... what are you telling us?

**MR. LEVY MOSENOGI:** No, I am not saying that.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay, tell us what you think it was.

**MR. LEVY MOSENOGI:** As a project manager I know that it was an enormous responsibility on my soldiers. And I know that I was not able, as an individual, to go  
15 to all these facilities. That is why I can't say for sure that all these facilities were at the required level.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you regret that 118 and maybe 129 people died just in this one project?

**MR. LEVY MOSENOGI:** Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Do you regret that?

**MR. LEVY MOSENOGI:** My Honour, I do regret that. It should not have happened the way it has happened. And initially when I took over this job, I had misgivings but I thought maybe if it is not me, who else can do this. Especially because I myself had a brother who stayed in these kind of facilities for life and I understood  
5 ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** But why didn't you tell the MEC and the HOD we are doing the wrong thing? Why didn't you do that?

**MR. LEVY MOSENOGI:** But I did.

**ARBITRATOR, JUSTICE MOSENEKE:** We are in a hurry.

10 **MR. LEVY MOSENOGI:** I did. I did raise my concerns.

**ARBITRATOR, JUSTICE MOSENEKE:** In relation to Baneng I understand, but ...intervened.

**MR. LEVY MOSENOGI:** I did try to have another way of looking at it. But sometimes one person gets defeated.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Who defeated ...intervened.

**MR. LEVY MOSENOGI:** I won the Baneng issue, because I really did maintain my issue that it can't be.

**ARBITRATOR, JUSTICE MOSENEKE:** You did do well there, yes.

**MR. LEVY MOSENOGI:** I did win concessions on that.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, you did very well there.

**MR. LEVY MOSENOGI:** And I would have liked the other ones to be on a phased... My best option was to buy the facilities as a backup. Because I suspected that, although I didn't anticipate death, but I knew that we needed a backup. And unfortunately I was not able to get through to my superiors. Although  
5 the HOD did agree with me, but I think both of us we were not able to ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Who defeated you? You say we were defeated... who defeated?

**MR. LEVY MOSENOGI:** The system.

**ARBITRATOR, JUSTICE MOSENEKE:** The system?

10 **MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay let's describe the system a little more.

**MR. LEVY MOSENOGI:** It was tough, Judge, it was very tough.

**ARBITRATOR, JUSTICE MOSENEKE:** You know we want to hear that... the  
15 nation wants to hear what was so tough so that this doesn't happen again.

**MR. LEVY MOSENOGI:** I did raise issues.

**ARBITRATOR, JUSTICE MOSENEKE:** This is not a question of trying to make you look bad.

**MR. LEVY MOSENOGI:** Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** But we want to know so that we should not have 118 people die.

**MR. LEVY MOSENOGI:** I did raise issues. I also confronted issues, but sometimes... I expected other senior managers to assist me, but sometimes I became the lone voice. One time I was asked whether I am a spokesperson of Life Esidimeni and I had to take issue with that.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, the Ombuds does report on that. But you see, I would expect you as a project leader to tell it like it is, to tell us what happened, so that we can prevent it into the future. And we are not... anyway... Counsel.

**ADV. ADILA HASSIM:** The Ombud, Mr. Mosenogi, told us today in response to  
10 a question about whether the Government has been implementing his recommendations, that indeed the Government has been implementing recommendations, including the establishment of a team of about 60 people to visit the NGOs to see whether they meet the relevant criteria. And he says not one of them met the criteria. Are you aware of that?

15 **MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** I think you've been questioned thoroughly by Justice Moseneke on the NGOs, follow-up to my question. I am going to move on to a different topic, because part of the explanation and as we have said previously in these proceedings that explanation and the candidness of the explanation is critical  
20 to this process. so again in an attempt to get to that, to get to the bottom of this, I would like to pose the following questions to you and that is in relation to your statement that part of the plan was to move patients to our own facilities and to renovate wards that were in disuse or old. Is that correct?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** And were you convinced that that renovation would be completed by March 2016 in order to accommodate all these patients?

**MR. LEVY MOSENOGI:** As I said that the infrastructure team had appointed a project manager and we were working together with DID to renovate the facilities that are needed. I was not convinced at the end of March, because a lot of... when they were given reports, they indicated the deadlines and where they can be able to do something. But by the end of June we had sufficient, I can say sufficient spaces to move patients who needed to be moved to those facilities.

10 **ADV. ADILA HASSIM:** By the end of June 2016?

**MR. LEVY MOSENOGI:** Ja, 2016. We moved patients to Weskoppies and Sterkfontein where they managed to get some of the facilities renovated and also Cullinan.

**ADV. ADILA HASSIM:** But they were not ready by March, am I wrong?

15 **MR. LEVY MOSENOGI:** They were still in progress.

**ADV. ADILA HASSIM:** They were still in progress.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** Was that a valid concern for the families and the stakeholders that you had met, was that a valid concern? They raised many concerns and one of them was, how do you expect to have this done in time?

20 **MR. LEVY MOSENOGI:** It was a valid concern.

**ADV. ADILA HASSIM:** Are you aware of the litigation that took place in December 2015?

**MR. LEVY MOSENOGI:** The 22<sup>nd</sup> litigation case?

**ADV. ADILA HASSIM:** December 2015.

5 **MR. LEVY MOSENOGI:** Yes, I think some began the 22<sup>nd</sup> and ...intervened.

**ADV. ADILA HASSIM:** Yes, yes, yes.

**MR. LEVY MOSENOGI:** Yes, because we had an urgent meeting with the concerned stakeholders, Section 27, SADAG, and I think Mental Health Federation. We did have a meeting.

10 **ADV. ADILA HASSIM:** Those concerns were raised by the stakeholders.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** By that point would you agree that they had raised it several occasions and now they were threatening litigation and they brought their attorneys into this. Would you agree by that point that is what had happened, when  
15 you met them?

**MR. LEVY MOSENOGI:** They did raise those issues, yes.

**ADV. ADILA HASSIM:** They raised the issues, but do you agree that those were important, valid and relevant concerns?

**MR. LEVY MOSENOGI:** Yes and that is why I think the meeting concluded that we  
20 must work with them. That is why on a continual basis there was a stakeholder meeting which was supposed to be chaired by the HOD, Dr Selebano, and we had

meetings with them and representatives from those structures. And we tried to work with them on an amicable basis.

**ADV. ADILA HASSIM:** That might have been your intention, but what I am going to put to you is that there was never any intention to cooperate with the stakeholders  
5 and that in fact they were just seen as an impediment to the full speed implementation of the project. That is what I am going to put to you, but I would like to tell you why first. The response from the attorneys for the Department in relation to that December 2015 litigation, the letter is to be found, the letter from the attorneys is to be found on page 613 of the record. And in that letter ...intervened.

10 **MR. LEVY MOSENOGI:** 61?

**ADV. ADILA HASSIM:** 613.

**MR. LEVY MOSENOGI:** Page?

**ADV. ADILA HASSIM:** 613.

**MR. LEVY MOSENOGI:** 612.

15 **ADV. ADILA HASSIM:** 613.

**MR. LEVY MOSENOGI:** Ja, okay.

**ADV. ADILA HASSIM:** Did you see the letter? It is dated 14 December 2015 and the letter does several things. One thing it does in paragraph 3 is to say that... it says: “Our clients wish to record their sense of” -I don’t know how to pronounce this  
20 word – “dubiety” – their doubt basically – “to our locus standi” – to the locus standi of the stakeholders.



**MR. LEVY MOSENOGI:** Sorry, where?

**ADV. ADILA HASSIM:** Paragraph 3 on page 613.

**MR. LEVY MOSENOGI:** Paragraph 3?

**ADV. ADILA HASSIM:** Yes.

5 **MR. LEVY MOSENOGI:** Okay.

**ADV. ADILA HASSIM:** Do you see it?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** And then if you turn over the page on paragraph 5, have you found it?

10 **MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** Can you read what it says on paragraph 5?

**MR. LEVY MOSENOGI:** “Our clients have taken all reasonable steps in keeping with the various legislative prescripts of the Act to effectively provide both for the discharge and the transfer of the users. Any allegation to the contrary is either self-serving or is disingenuous.”

**ADV. ADILA HASSIM:** So, you were the head of the project at the time.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:**

**MR. LEVY MOSENOGI:** And your lawyer is saying you’ve taken all steps, reasonable steps to comply with the law and to make sure that the discharge and

transfer of users will be effectively conducted and that the allegations by the stakeholders is self-serving or disingenuous. It also says in paragraph 6: “Our clients have consulted all the health services to which users have either been discharged and/or transferred to.” Paragraph 8 it says: “The purported” – and it  
5 puts proposed way forward – “is as untenable as it is unreasonable.” The proposed way forward as I understand by the stakeholders, by their legal representatives, Section 27, was to have a curator ad litem appointed. Do you agree that that was an unreasonable proposal in the circumstances?

**MR. LEVY MOSENOGI:** At the moment I don’t think it was unreasonable.

10 **ADV. ADILA HASSIM:** It goes on to say: “Our instructions are that your client’s insistence on the suspension of the discharges are reckless and a demonstration of selective morality.” It is a very strange letter. It is a very angry letter and so it is part of trying to understand why it is that the Department so vigorously was so intent that it wouldn’t engage with the stakeholders who were raising very serious  
15 concerns. And in the court papers, I just want to make my point fully, so bear with me... it is not just about you, it is about other officials, but you were the head of the project at the time these papers were drawn, so I think it is appropriate, if you could assist us to understand it.

**MR. LEVY MOSENOGI:** Yes.

20 **ADV. ADILA HASSIM:** In the papers in this litigation at paragraph... okay so you need to look at page 112 of the record, which will be file 1.

**MR. LEVY MOSENOGI:** 11?

**ADV. ADILA HASSIM:** 112. Have you found it?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** Okay, so at 112 paragraph 43 the affidavit reads as follows:  
5 “The representatives from the Department requested that SADAG” – that is the  
depression and anxiety group, one of the stakeholders that you met with. “The  
representatives of the Department requested that SADAG puts its questions in  
writing, which it did in a letter dated 26 November 2016 and which it touched in  
these papers. The letter records a number of concerns about the closure of Life  
Esidimeni and the discharge of users to other facilities.” And indeed if you were to  
10 return to annexure CC7, all of the concerns and detail are listed there.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** But at paragraph 44 it continues: “SADAG did not receive  
a response to these questions. Dr Manamela replied to the email, to which the  
letter was attached on 26 November 2015. In doing so she forwarded an email  
15 from the MEC” – so Dr Manamela forwarded an email from the MEC – “in which the  
MEC stated the following” – and I quote what the MEC said, she says: “Hi Doctors,  
HOD, Lebete Manamela, please get our legal team to get involved in this process.  
HOD and Dr Lebete, you have to drive this process to provide leadership. These  
NGOs are dishonest” – meaning the stakeholders that they are claiming to  
20 cooperate with. “Please treat this as urgent!” And she signs off her name.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** The response by the Department to this paragraph in the founding affidavit, so their response in the answering affidavit is as follows, in relation the first paragraph that I read out, paragraph 43 in which all of the questions were posed by stakeholders and in which it was complained that no answers were  
5 forthcoming from the Department, the answering affidavit response to that paragraph in the following way, and the answering affidavit is deposed by, is it Dr Lebete or Mr. Lebete?

**MR. LEVY MOSENOGI:** Dr Lebete.

**ADV. ADILA HASSIM:** Doctor.

10 **MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** And it says the following: “I reiterate” – he says – “I reiterate that there are statutory instruments to access information held by organs of state. Urgent applications are not suited for that purpose. Annexure CC7 raises a number of questions, which do not call for an answer in these proceedings.” But in  
15 fact, those were precisely the questions that were required to be answered, not just answered to the stakeholders but those were the answers that you should have had in your possession as a project head, answers to the questions about infrastructure, about the level of care at facilities and the ability to cope, about the timeframe and so on and so on, medication and so on. So I find that startling and it bears out for  
20 me that there wasn’t an intention to cooperate. Why not provide the information? Why ask stakeholders to use their statutory instruments to access information? Is it not sufficient to write a letter?

**MR. LEVY MOSENOGI:** I don't know how to respond, because as the project manager, I think I was not part of this in terms of the answering affidavit. So this is the first time I am reading it here. So I am not able to either justify or not justify the answers that they are giving.

5 **ADV. ADILA HASSIM:** Sorry, Mr. Mosenogi, if you can turn to page 438 then of that same bundle.

**MR. LEVY MOSENOGI:** Of which one?

**ADV. ADILA HASSIM:** Page 438 of file 1.

**MR. LEVY MOSENOGI:** File 1?

10 **ADV. ADILA HASSIM:** Yes. Have you found it?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** So at page 438 of the record is a confirmatory affidavit by yourself saying that you've read the affidavit of Lebeta on behalf of the Second Respondent and confirm the contents thereof to be true and correct in so far as they  
15 relate to the Department or where it refers to me.

**MR. LEVY MOSENOGI:** Okay.

**ADV. ADILA HASSIM:** So what I am saying is that you were involved in this and you confirmed the contents of the answering affidavit, not just in relation to you, not just in relation to the information there that pertain to you, but even the information  
20 as it pertained to the Department.

**MR. LEVY MOSENOGI:** You must understand it was a long time, so many things have happened since that time, so I might not remember everything.

**ADV. ADILA HASSIM:** Are you ...intervened.

**MR. LEVY MOSENOGI:** You can't hear? Okay, I am saying these things  
5 happened in 2016, a long time ago... 2015 and 2016, so I am not able to remember everything, so I need to be prodded sometimes.

**ADV. ADILA HASSIM:** Fair enough.

**ARBITRATOR, JUSTICE MOSENEKE:** But the overarching question that Counsel is putting to you is the following: Despite warnings from a variety of stakeholders,  
10 including experts, including heads of psychiatry and including indeed people who represented families of patients, your department was head strong and very determined to go ahead with this project. Isn't that a fair comment?

**MR. LEVY MOSENOGI:** I think it is fair.

**ARBITRATOR, JUSTICE MOSENEKE:** It is fair, isn't it?

15 **MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You read what the doctors said, what the psychiatrists said, what the lawyers said, whatever their names and what their family people might be saying. Look at you going to Randfontein and the people were quite restless and unhappy. You knew all those things and your department  
20 went ahead... whatever the lawyers said, whatever the psychiatrists said, whatever the specialist caregivers said, you chose to go ahead and you went ahead. Isn't that fair?

**MR. LEVY MOSENOGI:** I agree, Justice, that we should have listened.

**ARBITRATOR, JUSTICE MOSENEKE:** And because of the decision many people died. By acting and ignoring all those warnings, it ended up with very vulnerable people, so-called stable chronic patients dying. Is it not so?

5 **MR. LEVY MOSENOGI:** It is true.

**ADV. ADILA HASSIM:** Mr. Mosenogi, my last question to you on this December 2015 litigation, on the eve of the hearing a settlement agreement was entered into between the stakeholders and the Department and the terms of that agreement... are you familiar with the general terms of that agreement? Did you have a  
10 meaningful consultative process going forward?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** Do you recall that?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** That the parties agreed we are going to talk to each other,  
15 we will consult and nothing will happen without making sure that users will receive the same level of care that they are receiving at Life Esidimeni.

**MR. LEVY MOSENOGI:** Ja, in short we agreed to work together.

**ADV. ADILA HASSIM:** Yes.

**MR. LEVY MOSENOGI:** Yes.

20 **ADV. ADILA HASSIM:** Did that meaningful consultation take place in your view?

**MR. LEVY MOSENOGI:** Initially we tried to work together from both sides. That is why the stakeholder meetings were part of the arrangement that we must continually meet together and we did try to do that. But I think in the process, there were no meeting of heads between us and the stakeholders. Maybe the blunder is  
5 that we chaired the meeting and there was a lot of tensions that came around that and I think that is why the stakeholders decided to go again to court the second time. And after the second time we never met again.

**ARBITRATOR, JUSTICE MOSENEKE:** But the cutting end of the question is, did you, even after the first settlement, did you in fact consult before you distributed  
10 people around the province or you just went ahead on your own? Did you go back to them and say to them that you were concerned about this, you went to court about this? We are about to put people on backs of trucks and take them wherever, what do you have to say about it? As our constitution requires, a responsive government... we are required to be a responsive government to concerns of  
15 people over whom we have authority. Did you go back to them and say we are going to do it, we have heard you, but we are going to do it, whatever you think?

**MR. LEVY MOSENOGI:** Your Honour, after the settlement that we will meet and work together, we continued to meet and discussed issues and debated issues. I think what made the stakeholders pull out was the issue, the debate around the  
20 discharge issues, before even the placement of patients, there was the issue of whether do we continue discharging people from Life Esidimeni. And we tried to explain that the discharge has always been taking place, it is a regular discharge, it has nothing to do with the placement of people.



**ARBITRATOR, JUSTICE MOSENEKE:** Ja, but you took the decision that whatever their views are, we are going to go ahead, isn't it so? Whatever the settlement terms were, we are going to go ahead.

**MR. LEVY MOSENOGI:** With the project?

5 **ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**MR. LEVY MOSENOGI:** I think the settlement was not curtailing the project and that is why we needed to work with them to ensure that ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** At the minimum it required of you to do what... to consult the stakeholders?

10 **MR. LEVY MOSENOGI:** To work with the stakeholders to ensure that their concerns are taken care of.

**ADV. ADILA HASSIM:** I am also asking the question because as you say the breakdown in trust then followed in early 2016. And that exactly coincided when your concerns were growing about the feasibility of the project and yet there was...  
15 yet the distrust and the... and I would... I think I must clarify, it wasn't that the stakeholders pulled out, there was nothing to pull out from. As far as I understand, the stakeholders were requesting information and were being frustrated. But be that as it may, the constitutional obligation through section 195 of the constitution lay on the government to ensure that that questions were responded to and that  
20 people's needs were responded to and that there was transparency and accountability in the process. That is partly also why I am asking this question, is that the breakdown in trust came at a time when you yourself had a growing

concern about what was going to happen. I am going to leave it there, unless you want to add anything to what I said.

**MR. LEVY MOSENOGI:** No it is fine.

**ADV. ADILA HASSIM:** Then very quickly, I am going to wrap up soon. There is  
5 just two things... maybe it is just one thing. And it is that you said that the... is it the Health Advanced Institute, the consultancy that you referred to?

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** You said that they found that it was not cost effective, it wasn't cost saving to remain at Life Esidimeni, to continue at Life Esidimeni. But in  
10 fact what the record shows, and that's at page 1394 of the record, there is a presentation, it is a duplication of a PowerPoint presentation.

**MR. LEVY MOSENOGI:** Of what, of Health Advance?

**ADV. ADILA HASSIM:** Well the cover slide has two logos, the Gauteng  
Department of Health and HAI. Are you familiar with this presentation? It was a  
15 presentation by Y. Saba (??)?

**MR. LEVY MOSENOGI:** I think it was before I joined the project, but you can ask the question.

**ADV. ADILA HASSIM:** It is just to correct maybe your recollection, because in fact what it says is the following: In general the service provided by Life Esidimeni is  
20 good value for money. And then it goes on to say there is sufficient relevant information to allow the department to make sound decisions in relation to Life

Esidimeni. So I just want to correct that in fact HAI's own report, at least this presentation seems to be from them, says that it was good value for money.

**MR. LEVY MOSENOGI:** Ja.

**ADV. ADILA HASSIM:** So then, let's just wrap it up, would you agree that this was  
5 not a cost saving measure at the project?

**MR. LEVY MOSENOGI:** It has turned out to be very expensive, in my opinion.

**ADV. ADILA HASSIM:** So not only has it not been cost saving, it actually cost the Department more than it was paying when it was with Life Esidimeni.

**MR. LEVY MOSENOGI:** Yes.

10 **ADV. ADILA HASSIM:** Is that what you are saying?

**MR. LEVY MOSENOGI:** Ja, at the moment it is very expensive, because we've gone back to Life Esidimeni that is charging much more than they were initially charging in my opinion.

**ARBITRATOR, JUSTICE MOSENEKE:** And you also went back to... did you go to  
15 other hospitals? Your first project that you did, did you go back to that same Clinics Group to ask them to take your patients back?

**MR. LEVY MOSENOGI:** Yes, the Department also did go back to Selby Park, which is the Clinics Group, to accommodate our mental health care users, they did go there back.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Why was it urgent, I know Counsel you are wrapping up, I just... Why was it urgent for the Department to save money?

You know departments run on a predictable basis, you budget ahead of time, isn't it?

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Your budgets are ahead of time, they are  
5 never retrospective. In other words ordinarily you shouldn't be broke, because you  
ought to have planned this is what I am going to spend, this is how much I am going  
to spend on people who need mental health care on cars, on blue lights, on  
holidays, on flights... you normally do this upfront, isn't it?

**MR. LEVY MOSENOGI:** Yes, actually even the Life Esidimeni places were  
10 budgeted for.

**ARBITRATOR, JUSTICE MOSENEKE:** Were budgeted upfront.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Hence the question, what had happened  
that makes the shoe to pinch so hard as to sacrifice people in order to save money?  
15 Do you know what it was and why wasn't this money within the normal budgetary  
processes?

**MR. LEVY MOSENOGI:** Your Honour, it is a very difficult question to answer from  
my side, because in hindsight it was not really that urgent.

**ARBITRATOR, JUSTICE MOSENEKE:** So you don't know why you say it was  
20 urgent, which then... I'll leave it to you, Counsel, go ahead.

**ADV. ADILA HASSIM:** Sorry Justice Moseneke, I didn't mean to interrupt.

**ARBITRATOR, JUSTICE MOSENEKE:** No, not at all, I am actually done. I have an answer which may be a complete answer, it was all irrational, it was not necessary, it was not urgent, but we did it.

**ADV. ADILA HASSIM:** But that answer is an answer in the negative. It was not  
5 needed, it was not a good idea, it was...

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** But what was it? In other words it was... if it was  
...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Please go ahead and engage the witness,  
10 yes.

**ADV. ADILA HASSIM:** Let me pose the question like the following: So we have established that it is not cost saving, right. We have established that... I would like you to confirm that you agree with me. We have established that the renovations could not have been done in time for the transfer.

15 **MR. LEVY MOSENOGI:** Yes and that is why I asked for extension.

**ADV. ADILA HASSIM:** We have also established that the patients, the mental health care users were sent to NGOs that were not appropriate.

**MR. LEVY MOSENOGI:** Some of them, not all of them.

**ADV. ADILA HASSIM:** But you earlier agreed with me when I put to you that the  
20 task team that was set up to investigate all of the NGOs found that not a single one of them met the criteria.

**MR. LEVY MOSENOGI:** What I said, and maybe just to clarify issues is that, the NGOs are taking care of many other patients outside the Life Esidimeni and they have been doing that all these years. So there are NGOs that are doing good service. But I agree that some of those NGOs were found to be wanting.

5 **ADV. ADILA HASSIM:** You have a different view from what you said earlier and from what the Ombud put to us which is that none of them met the criteria.

**MR. LEVY MOSENOGI:** The ones that were inspected by the Ombudsman. But what I want you to understand is that there are many other NGOs that are delivering those services.

10 **ADV. ADILA HASSIM:** But the 27 NGOs that were part of this?

**MR. LEVY MOSENOGI:** You are speaking of only the 27.

**ADV. ADILA HASSIM:** Absolutely only this.

**MR. LEVY MOSENOGI:** Okay.

**ADV. ADILA HASSIM:** Would you then agree with me that they were not  
15 appropriate? Meaning that they were not capable of rendering the services that were required for the residents?

**MR. LEVY MOSENOGI:** I still insist not all of them, because there are those that were continuing to deliver services. They just added additional patients.

**ADV. ADILA HASSIM:** They just added additional patients?

20 **MR. LEVY MOSENOGI:** And beds, which might have created problems for them.

**ADV. ADILA HASSIM:** Okay, so those NGOs were there a minority, most of them were appropriate, how would you put it? How many NGOs were good of the 27?

**MR. LEVY MOSENOGI:** I won't have the number off the cuff but the ones that I have seen that could be appropriate, if they had the resources, the one that I visited  
5 is Anan in Vereeniging and Takalani in Diepkloof and Bophelong next to Kalafong. Those I visited and if they had adequate resources, especially the funds, I think they were appropriate.

**ADV. ADILA HASSIM:** Okay, Mr. Mosenogi, I was hoping to actually end very soon, but now I am afraid I have to say... Takalani was one of those NGOs that was  
10 good, you say, that you visited. I am just repeating what you just said.

**MR. LEVY MOSENOGI:** That was good in terms of the facilities that were available, that I went to visit and saw.

**ADV. ADILA HASSIM:** In his report the Ombud says, and I am just going to read out what he says, he says: "75, which is about 80% of the patients died from five  
15 NGO complexes, one of them was Takalani."

**MR. LEVY MOSENOGI:** Yes, I know. I am saying that if the resources were available to them in time, the facilities still stands and still are being used.

**ADV. ADILA HASSIM:** Okay then let me move on. So some were appropriate, others were not appropriate, that you agree, those that were appropriate were  
20 overwhelmed and overloaded by the Department so that they actually then couldn't provide proper services, is that correct?

**MR. LEVY MOSENOGI:** Adequate services, yes.

**ADV. ADILA HASSIM:** That's actually a better word, adequate services. Would you agree also that some were licensed irregularly?

**MR. LEVY MOSENOGI:** Maybe I need to explain in terms of the licensing. I think irregular emanates from the issue of Dr Manamela signing the SLAs, instead of the  
5 HOD. I think that emanated from that. Because I think it was wrong from our side that we never really, that process she inherited it as a mental health director. All the licensing was done by the... it was not... from the HOD who were supposed to be signing that. I think that is the irregular part of it.

**ADV. ADILA HASSIM:** You are saying that Dr Manamela signed it when she  
10 should not have in law, is that what you are saying?

**MR. LEVY MOSENOGI:** What I am saying is that the process that was inherited by the previous... it has always been done that Dr Manamela, the director of mental health services was the signing person. So it was never rectified. It was wrong from the Department's point of view ...intervened.

15 **ADV. ADILA HASSIM:** So it was wrong.

**MR. LEVY MOSENOGI:** Because it was never rectified.

**ADV. ADILA HASSIM:** It was wrong. It might have been going on for some time, but it was wrong, you agree with that.

**MR. LEVY MOSENOGI:** It was going on for some time, even for all the other  
20 NGOs, I think. So it was something that I think... it was erroneous.



**ADV. ADILA HASSIM:** But apart from that irregularity of who should sign the certificate, would you agree that licenses were provided to NGOs, when they should not have been provided licenses?

**MR. LEVY MOSENOGI:** In that respect I will accede.

5 **ADV. ADILA HASSIM:** And you agree that, and you have said and I am just confirming and I would like you to confirm as well that subsidies were not paid to NGOs.

**MR. LEVY MOSENOGI:** I think so. I might not be right for other NGOs, but in most cases it was raised as a question... as a response. I might not be right, I might be  
10 right, but I think that was the idea why other people were not, especially the new ones, because they didn't have anything in their till to take care of patients.

**ADV. ADILA HASSIM:** So you are agreeing that subsidies were not paid.

**MR. LEVY MOSENOGI:** On time.

**ADV. ADILA HASSIM:** On time?

15 **MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** And can you confirm that some NGOs had to go to court in order to get their subsidies?

**MR. LEVY MOSENOGI:** I am not aware of that.

**ADV. ADILA HASSIM:** You are not aware of that.

20 **MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** But you did say that there were issues and including that some NGOs didn't have bank accounts.

**MR. LEVY MOSENOGI:** Yes. They have to have bank accounts for you to be able to transfer.

5 **ADV. ADILA HASSIM:** I would hope that they would have to have bank accounts... you know that in itself is a first clue that maybe they are not able to do the service. You say there was an open advertisement and there was this open process. I would have thought that the selection of the NGOs through that advertisement process would have made sure that at least they have a bank account to do  
10 business with.

**MR. LEVY MOSENOGI:** Yes. I think it was meddled up by the timelines, I think.

**ADV. ADILA HASSIM:** In addition to that, you were aware that the result of the termination of the contract was that at least 700 workers would lose their job. And I must just qualify that because you refer to 700 health care workers.

15 **MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** So what was the number in total?

**MR. LEVY MOSENOGI:** The number in total will be much more because... I don't have the figures here but they were contract people, they outsource part of the facility, the catering was outsourced, the gardening was outsourced and the security  
20 was outsourced. So basically it meant that even those contracts were going to be terminated, so it means more additional people were going to be affected.

**ADV. ADILA HASSIM:** More than 700.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** The 700 were health care workers, but other affected workers would be catering staff, gardeners, security guards and the like.

**ARBITRATOR, JUSTICE MOSENEKE:** Why didn't you care about that? Why  
5 wasn't that an important consideration for the State that not only will people be  
(inaudible) around NGOs, but that so many jobs would be lost? Why wasn't that a  
deep source of concern in a country with such high levels of unemployment?

**MR. LEVY MOSENOGI:** Your Honour, for me it was a big concern. It was a big  
pain for me to have... That is why I tried my best to ensure that a HR task team was  
10 formed to assist with making sure that we absorb people that we can... who are  
able to be absorbed. And I did try my best but it was a very difficult thing.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**MR. LEVY MOSENOGI:** It made me to have sleepless nights, because it was a  
concern to me, especially when it comes to the category of what we call care  
15 workers, people who are not really qualified and it was going to be difficult for us to  
take them ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Did your HOD and the MEC not... were  
they not concerned about this near calamity? You close an institution down, that  
institution is made of people. You might not like Life Esidimeni but hell they are  
20 trained health workers and other people, their livelihood came from there. And I  
have seen the letter of MEC saying I am terminate the contract, that all of you have

to run like headless chickens to move people in all directions. Why did you people do that? What was the justification in law let alone in human dignity for doing that?

**MR. LEVY MOSENOGI:** I did try my best to alleviate that pressure, but my best was not enough.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Do you know of any justification why... I mean... you see it boggles the mind. I sit here and I know what our constitution says, I know what the law says, Mental Health Care Act, and it is cited in many ways by the Ombud and has been breached in many ways. To boot it all, well over a thousand jobs get lost, only for people to die and for the Department to go straight  
10 back to Esidimeni and ask the patients to be taken back. Is there any explanation that is acceptable to our nation, to ourselves, why this happened?

**MR. LEVY MOSENOGI:** There is no suitable explanation in my opinion. I can't justify it.

**ADV. ADILA HASSIM:** Are you done?

15 **ARBITRATOR, JUSTICE MOSENEKE:** I am still here.

**ADV. ADILA HASSIM:** I am now closing. I just want to confirm that you would agree that these patients were in the care of the State.

**MR. LEVY MOSENOGI:** Yes.

**ADV. ADILA HASSIM:** And would you agree with the statement then that about 1  
20 700 or 1 800, it depends on when you pick your timeline, people, vulnerable mental health care users who were receiving long term care were then forcibly moved in a

manner and to places that were inadequate and in a manner that jeopardised their health and wellbeing in life.

**MR. LEVY MOSENOGI:** It did contribute to endangering their lives, moving them did contribute.

5 **ADV. ADILA HASSIM:** I have no further questions, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Counsel, I can see your mic is on. Please do speak.

**MR. TEBOGO HUTAMO:** Well I just wanted to raise an issue that was brought to our attention. In terms of the terms of reference, public statements were supposed  
10 to be done with (inaudible) and with other parties and we have become aware that there have been a number of public statements which are being made in relation to these proceedings. And in particular clause or paragraph 6.10 provides that the parties will provide one another reasonable notice of the content of any public statement relating to the ADR process prior to the making of such statement. But  
15 since yesterday like there has been quite a number of statements in different type of media, which we have not been consulted. So if we can just get clarity and direction in that.

**ARBITRATOR, JUSTICE MOSENEKE:** Can I make a suggestion that we meet tomorrow at 9:00 in the chambers and deal with the matter and if you want to make  
20 a public declaration thereafter, you are more than welcome.

**MR. TEBOGO HUTAMO:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** But it is a matter which typically is a dispute between the parties, right. It is a difference between parties about conduct. I am happy to add it now publically. Ordinarily it is a matter that conveniently be dealt with tomorrow. But if you feel strongly that you want to do it publically, 5 obviously... or let it be discussed and then you can come and put it on record tomorrow morning. Is that suitable?

**MR. TEBOGO HUTAMO:** Well we have no difficulties to resolve this aspect tomorrow morning. If the terms of the... if the condition, the terms of reference can be maintained as it is, pending such resolution, no difficulties.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, you need an interim order interdicting the other sides from... Sure, that is not reasonable. I have been given the provisions in the agreement.

**MR. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay I am starting with Section 27. You 15 can discuss the matter now, alternatively we can reserve it to discuss it in chambers tomorrow. But I don't think... we should look at the terms of our agreement and live by those terms. I don't say they have been breached, but there is a complaint that they have been breached. In the face of a complaint, I don't think we should have press releases between now until we have discussed the matter.

20 **ADV. ADILA HASSIM:** I am comfortable to advice my clients of that and to get an undertaking that there won't be press releases. The one thing I will say is that these proceedings have garnered significant media attention and we have no control

about of that, but I can give you an undertaking that my clients won't issue any press statements.

**ARBITRATOR, JUSTICE MOSENEKE:** Legal Aid South Africa.

**ADV. LILLA CROUSE:** We are happy to discuss it tomorrow morning and we won't  
5 issue any statements.

**ARBITRATOR, JUSTICE MOSENEKE:** You won't issue statements in the meantime.

**ADV. PATRICK NGUTSHANA:** We have no problem with the suggestions made that there should be an interim undertaking by Section 27 until the matter is  
10 resolved tomorrow.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. DIRK GROENEWALD:** Thank you Justice. I will have a discussion with my clients and I will give them the instruction not to issue any statements. I don't know if anything like that has been done.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. DIRK GROENEWALD:** But we can discuss it tomorrow morning.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja.

**ADV. DIRK GROENEWALD:** Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Is that suitable, Counsel?

20 **MR. TEBOGO HUTAMO:** It is in order, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Until then. Of course it is an important question to the extent that we have to remember that we are partners in resolving this matter. Yesterday I referred to the State as partners in this, so are the families. They set up committees, they have consulted with the State, they have entered into  
5 agreements and that is how we came to where we are. So it is very important that we keep the ambiance right, without losing the ability to get to the truth. But we are not... at this stage I would hope we are not opposite sides. We are trying to do precisely the same thing, get to the truth, get equitable redress and so that spirit must be kept going all the time and thank you for raising that. (Vernac). You will  
10 still be... I have just used one of the official languages of this country. (Vernac). So we will continue with examination tomorrow and please be here at 9:30 tomorrow morning, we start at 9:30.

**MR. LEVY MOSENOGI:** Justice, will I be able to make... I wanted to... I thought we are finished today because I wanted to make a closing remark.

15 **ARBITRATOR, JUSTICE MOSENEKE:** A closing statement.

**MR. LEVY MOSENOGI:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, we are going to invite you to do so certainly tomorrow.

**MR. LEVY MOSENOGI:** Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** You are still under oath, you are still under cross-examination.

**MR. LEVY MOSENOGI:** Yes.



**ARBITRATOR, JUSTICE MOSENEKE:** So at the end of your cross-examination, certainly, you will be most welcome to make a closing statement and I will certainly give you an opportunity to do so.

**MR. LEVY MOSENOGI:** Thank you.

5 **ARBITRATOR, JUSTICE MOSENEKE:** So just to give you an idea of what is going to happen tomorrow. You are going to be asked questions by Adv. Groenewald, after which you are going to be asked questions by Adv. Crouse, questions by Adv. Ngutshana and then re-examination by the advocate who started with you from the State. So there is going to be a little bit of work still to be done  
10 tomorrow. We will probably finish around 13:00, but I will ask you to be here not later than 9:30. Counsel, we meet at 9:00 tomorrow in my chambers. We shall adjourn now.

**END OF SESSION 3**