

LIFE ESIDIMENI ARBITRATION

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

DATE: 22nd of January 2018.

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SESSION 1 - 4

BEFORE ARBITRATOR –JUSTICE MOSENEKE

10

WITNESSES: MS. QEDANI MAHLANGU

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. We are about to start and I will ask the media to clear the gang way please, so that we can settle down and start our proceedings. Molweni, Dumelang. We have, we are going to start with arbitration proceedings which is a formal tribunal. So I really ask again as I have done many, many times [vernacular 00:05:01]. We will have no hackling, we will have no singing or response to any of the evidence that will be given, and this is so because witnesses are entitled to protection so that they can express themselves in the way that the law permits them. We are agreed it is not a rally, it is a hearing and I again ask you very respectfully that we must listen and express our unhappiness or happiness internally. That will be very helpful. Good morning Ms Mahlangu. You are welcome

MS. QEDANI MAHLANGU: Good morning Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Thank you. You are welcome in these proceedings. Please feel free. In which language do you want to testify?

MS. QEDANI MAHLANGU: Mainly in English, but probably during the cross-examination I will use the vernacular language, Zulu.

ARBITRATOR JUSTICE MOSENEKE: Zulu, okay mammie. As and when you get to a point where you would like to switch over to Zulu, just indicate to me and there will be an Interpreter available. So it is always open to you.

UNKNOWN: Can we request that we start the proceedings with prayer?

ARBITRATOR JUSTICE MOSENEKE: With a prayer? Yes. Any Council, any objections to that? No. Ms Mahlangu, do you have any objection to a prayer? Yes, it will be a short prayer father.

UNKNOWN: Thank you.

5**ARBITRATOR JUSTICE MOSENEKE:** And I know that there are Bishops from the South African Council of churches here present, so I think the clergy must decide who is going to render the prayer. So before you shoot ahead, look to your other side and you will see that there are many Bishops from the South African Council of churches.

10**UNKNOWN:** Should I ask Bishop to come up, thank you very much.

ARBITRATOR JUSTICE MOSENEKE: Shall we wait for a brief prayer and we will get on with the proceedings. Good morning Bishop Siwa.

BISHOP SIWA: Good morning Justice Moseneke and the audience. Good morning everyone. May I ask that we observe a brief moment of silence to
15accommodate all faith traditions? Let us be silent and pray in our own traditions.
*So Lord God, you have heard our prayers. We are meeting here on this holy ground, the place of tears, place of pain but also place of hope for restoration and dignity. You are God of life, even when lives has been lost. We invite your presence as God of life. You are God of justice and so we plead with you that
20justice may flow like an unending stream. You are God of dignity. So we ask that Lord, you restore our dignity, especially the dignity of the most vulnerable of society. We pray for these proceedings. Help us with your presence. Guide us*

with your presence. Heal us with your presence. Be with each and everyone who is going to participate, especially Justice Moseneke and all those who are going to testify. Bring healing to your people. Bring healing and dignity and restoration to this nation. For this we ask in your name. Amen.

5 **ARBITRATOR JUSTICE MOSENEKE:** Thank you Presiding Bishop. We are ready to proceed and we should. Do you swear that the evidence you are about to give will be the truth and nothing but the truth, and if so I ask you to raise your right hand and say so help me God.

MS. QEDANI MAHLANGU: So help me God.

10 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. I have been informed in chambers that there are legal representatives present here at your ... [inaudible]. Could they indicate themselves?

ADV. LESEGO MMUSI: Good morning Justice.

ARBITRATOR JUSTICE MOSENEKE: Good morning Counsel.

15 **ADV. LESEGO MMUSI:** My name is Lesego Musi. I am an Advocate from the ... [inaudible] group of Advocates in Sandton. I am here instructed by Mr Lebogang Rapiri from Rapiri Attorneys. We are ready to proceed. Just by way of background, we were instructed on Friday night to represent the former MEC to assist her with the preparation for these proceedings.

20 **ARBITRATOR JUSTICE MOSENEKE:** Which Friday night?

ADV. LESEGO MMUSI: This past Friday night. We did all we could. We burnt the midnight oil to get ourselves ready. We prepared a witness statement. We traversed a plethora of documentary evidence availed to us. We also need to bring to your attention Justice, that there were certain documentation that the former MEC requested from the department. She informed the evidence leaders at the time when we concluded the preparation this morning, some of that information had not come to her attention or our attention. However, we are ready to proceed and we prepared a witness statement. On top of that there are annexures that we prepared. Now for the purposes of smooth process, what we did, we got in touch with the evidence leaders over the past weekend. We met with Mr Ngutshana. Took him through the preparation. We are quite comfortable that the witness can start to lead the testimony. During the process of the proceedings, because some material is being copied in the building, we will make same available to the legal team. We have prepared an unsigned statement for the purposes of the evidence leading team so that they can get on through the process. We have prepared also similar for Justice so that he can follow. For the, for our comfort, we plead that as soon as a signed statement with the necessary annexures are ready during the course of the day that we hand same. For now we are ready to proceed. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel. You said your last name is Musi?

ADV. LESEGO MMUSI: Musi. Mmusi.

ARBITRATOR JUSTICE MOSENEKE: We have followed that. We will wait until the documentation is ready and the statement is signed, and it could be handed in as and when it is available and ready. Sadly not later than the course of today, for obvious reasons to allow your colleagues to prepare cross-examination.

5**ADV. LESEGO MUSI:** We shall indeed do so.

ARBITRATOR JUSTICE MOSENEKE: Thank you, thanks. Advocate Ngutshana?

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. The, from the explanation from my colleague is that not all of the attached annexures to the statement are available, but we will receive them during the course of the day as we
10go along, but in the meantime she will start going through her statement. That would form part of the evidence, and I see here there are a number of other copies which I will request my learned colleague to have them disseminated to our colleagues so that they may follow when she testifies or speak ... [inaudible] the statement.

15**ARBITRATOR JUSTICE MOSENEKE:** There are copies of the statement unsigned.

ADV. PATRICK NGUTSHANA: Unsigned, that is correct yes.

ARBITRATOR JUSTICE MOSENEKE: Very well, and does Ms Mahlangu have a copy in front of her?

20**MS. QEDANI MAHLANGU:** Yes. Yes Justice, I do have a copy.

ADV. PATRICK NGUTSHANA: May I request Mr Mmusi to address that issue?

ADV. LESEGO MUSI: Justice, we have the unsigned statement which was printed for the purposes of proceedings. Now for the purposes of the legal team to follow, I undertake to hand same during the course of the proceedings today. I just need to go through the final document, and make sure that the document that we hand is 5that that accords with the normal standards and practises.

ARBITRATOR JUSTICE MOSENEKE: Advocate Mmusi, you have the copies now. Are you ready to distribute them?

ADV. LESEGO MUSI: I have unsigned copy. I still need to go through it. The witness can go through her testimony. For the purposes of distribution and 10preparation and cross-examination, I would feel comfortable if I go through the statement, satisfy myself that the copy with the copy we distribute to enable them to do effective cross-examination accords with the best available practises and standards.

ARBITRATOR JUSTICE MOSENEKE: All this means you will give us an edited 15copy later. That is fine, I am going to proceed with the witness.

ADV. LESEGO MUSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: The statement is not a prerequisite to evidence.

ADV. LESEGO MUSI: Yes

20**ARBITRATOR JUSTICE MOSENEKE:** When you are ready give your colleagues copies and give me a copy, signed or unsigned. Very well?

ADV. LESEGO MUSI: Yes. Yes. Yes. We can hand the unsigned one to the Judge so that the Judge can follow.

ARBITRATOR JUSTICE MOSENEKE: Very well. What you give me, you must give to your colleagues. You know how it works.

5**ADV. LESEGO MUSI:** Yes.

ARBITRATOR JUSTICE MOSENEKE: So I cannot have something which the Advocates do not have.

ADV. LESEGO MUSI: I prefer ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Take your time.

10**ADV. LESEGO MUSI:** I prefer to hand it later.

ARBITRATOR JUSTICE MOSENEKE: Yes, when you are ready give it later okay.

ADV. LESEGO MUSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Very well, thank you. Advocate Ngutshana?

15**ADV. PATRICK NGUTSHANA:** Thank you Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Let us get on with it.

ADV. PATRICK NGUTSHANA: Yes. We will request the witness, Ms Mahlangu to start with the statement first and thereafter we shall lead her on the specifics of the statement and the evidence in general. My colleague, Ms Yina, would at a later
20stage deal with the other specific facts which came out during the proceedings.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. PATRICK NGUTSHANA: But for now I would take over and request the statement, that is request the witness to deal with the issues. Ms Mahlangu, you have now been sworn in. I understand that you have prepared a statement, but before you deal with the statement I will request you to deal with, there is one issue that came up during December. I am sure you will recall that attempts were made to have you in attendance here during the course of December or November and you were unavailable. Can you please deal with that issue? Why were you not available to assist us during November or December?

10 **MS. QEDANI MAHLANGU:** Thank you very much.

ADV. PATRICK NGUTSHANA: Could it be that you were refusing to come here deliberately or you were completely unavailable to assist us?

MS. QEDANI MAHLANGU: Thank you Counsel. My name is Qedani Doreth Mahlangu. To answer your question specifically, after I resigned from government on the 1st of February 2017, at the time I did not know what I want to do, and I applied my mind after several weeks and months and around May I applied in different universities, particularly outside of South Africa, and I got accepted and I paid for my studies and then I left beginning of August and I did inform the African National Congress leadership as you have seen in previous statements, that I was going to study for a period of a year. The master's and business administration largely specialising in global banking and doing things like ... [inaudible] and acquisition and all of that. So the commitment I had made at the time to go and

study, I did not know anything that was going to happen post my departure from government. Nobody from government indicated that there was going to be this process. If indeed there was going to be this process, how it was going to happen, was I going to be needed and if so, when? So I left under the impression that nothing was going to happen because nobody said anything to me. It was only in October I started hearing people sending messages that something is going on, people are mentioning my name. At the time, I did indicate that I am available and there was no need for me to be forced or, because I did not run away. I live in South Africa. I have a home. I have a family and everything is in South Africa, and I have no intention of living anywhere else. So I never ran away of this and of course my commitments in the UK, particularly with my studies, was with the ... [inaudible] I was registered with and in the process of doing, when I started with my MBA, particularly the module on measures and acquisition I took an interest in accounting. So I enrolled in a program for accounting and I have been doing the two programs parallel. The other programs I was attending in the evenings. The other program I was attending full time. So my being in the UK had to do with my studies in the process. So I have never run away from this and even my previous lawyers that I was working with, it was my intention to come in November. It was my intention to come in December, but through our engagement they advised me that it is best to come in January and I obliged and they met with the team at the time and they kept on informing me back and forth about this thing. So that is the intention. I have never had any intention of running away, because it is not in my nature to do so.

ADV. PATRICK NGUTSHANA: Thank you.

MS. QEDANI MAHLANGU: Thank you.

ADV. PATRICK NGUTSHANA: Thank you. Now let us get, to get back to the issues now. When were you appointed to government as an MEC for the Department of Health?

MS. QEDANI MAHLANGU: Maybe just to say that I have been an MEC from 2004.

ADV. PATRICK NGUTSHANA: From 2004.

MS. QEDANI MAHLANGU: And I have held respective portfolios. In health, I was an MEC for health in 2009 till 2010 November, end of November and I was re-deployed to economic development. From economic development to infrastructure. From infrastructure back to health in 2014. So I have been in the provincial government serving in the executive for 12 years, eight months by the time when I resigned.

ADV. PATRICK NGUTSHANA: Okay. What is your educational qualification?

MS. QEDANI MAHLANGU: I have, I finished metric in 1988.

ADV. PATRICK NGUTSHANA: Yes.

MS. QEDANI MAHLANGU: And I studied teaching, but it was just a by the way kind of thing and when I finished that, that was 1995. I studied 1993 till 1995 and I lost all my papers with the Department of Education. I do not know how and why, but ja as a result I hardly mention the teaching qualification in my CV and then I

took interest in finance and economics. I enrolled with the University of South Africa, UNISA, to start my studies towards economics and finance. One year at UNISA when I was in parliament in Cape Town. From 1998 till 2004. From UNISA then there was a collaboration between UNISA and UWC, and that program we qualified. We finished I think three years later with an advanced diploma in economics and I then later continued with UWC, the University of the Western Cape, and I have an honours in economics, and I think about 2012 if I am not mistaken I enrolled with the University of London to study masters in finance, which I finished in 2015 December. In 2016 July I went to the UK to go and attend my graduation. So I currently, those are my qualifications and inbetween I attended the short courses in Washington. The George, Washington University in the US. I went to Williams College again on short courses, and before I left the Department of Health, I had encouraged about 25 Senior Managers including the current acting HOD, Dr Kenoshi, to enrol on a program with the University of Lanchaster in the United, in the UK. Why Lanchaster, it is because Lanchaster trains, Lanchaster University trains NHS, the National Health Service Hospital Managers in the UK and also I thought that it was important for South African Health Hospital Managers to understand and to be trained in Lanchaster. So ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: In 2016, sorry to interrupt you. In 2016 when you went to graduate in London, for which degree was that?

MS. QEDANI MAHLANGU: It was for the masters in finance.

ARBITRATOR JUSTICE MOSENEKE: Masters in finance?

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you, and your current registration is for ... [interjects]

MS. QEDANI MAHLANGU: Masters in business administration in, mainly in global banking.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. QEDANI MAHLANGU: And with the London School of Business and Finance I am registered to, as I am saying it is an accounting course. It is a professional course. As I am speaking now, I am registered of course as a student with the ACCA, ACCA is Accounting or is the Association of Certified Chartered Accountants in the UK. So because I am intending to pursue, I took it as a by the way because I got interested when I was doing my majors and acquisition course. So then I decided to, I am going to pursue my studies in finishing that program, and I hope to be able to finish in three years and get the BEC in accounting.

ARBITRATOR JUSTICE MOSENEKE: So you might have, so how many degrees do you have in diplomas?

MS. QEDANI MAHLANGU: I do not know.

ARBITRATOR JUSTICE MOSENEKE: Have you ever sat down to count?

MS. QEDANI MAHLANGU: No, I think I have three at most.

ARBITRATOR JUSTICE MOSENEKE: Three diplomas.

MS. QEDANI MAHLANGU: One advanced diploma and, which is equivalent to a degree and an honours degree and a masters degree and as I am saying, when I finished my MBA of course it will be my fourth degree. My intention is to study for my PHD ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** But with your current London studies, you would then have two masters degrees, one honours ... [interjects]

MS. QEDANI MAHLANGU: Yes, ja.

ARBITRATOR JUSTICE MOSENEKE: And then you would have an advanced diploma.

10**MS. QEDANI MAHLANGU:** Yes.

ARBITRATOR JUSTICE MOSENEKE: As well as a diploma.

MS. QEDANI MAHLANGU: Yes. Absolutely, that is correct.

ARBITRATOR JUSTICE MOSENEKE: And let us just wrap it all at this stage. So you served as MEC for 12 years?

15**MS. QEDANI MAHLANGU:** For 12 years eight months to be exact.

ARBITRATOR JUSTICE MOSENEKE: 12 years, eight months. Thank you. Counsel?

ADV. PATRICK NGUTSHANA: Thank you. Let us now get to your statement. How do you prefer to do it? I think, my suggestion to you is that read it into the
20record. If reference is made to annexures, let us deal with the specific portions in

the annexures you want to rely on. Not the entire annexure. You do not have to explain the entire annexure, I think from page 1 to the last page.

MS. QEDANI MAHLANGU: Thank you.

ADV. PATRICK NGUTSHANA: Can you start from the first page?

5**MS. QEDANI MAHLANGU:** Thank you Counsel. Please bear with me when I have difficulties to, from time to time ... [interjects]

ADV. PATRICK NGUTSHANA: Feel free, feel free.

ARBITRATOR JUSTICE MOSENEKE: You have a considerable audience, so it will help. You can hear how loudly I speak. So it will help. You cannot keep it at
10that level all the time, but let it be clear enough for people in here to hear you.
Thank you.

MS. QEDANI MAHLANGU: I will do my best Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. QEDANI MAHLANGU: To meet that requirement. My voice is very soft and I
15speak very fast, but I will do my very best to slow down the tempo.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. QEDANI MAHLANGU: *“I Qedani Dorothy Mahlangu, hereby states the loss of life our country experienced following the termination of Life Esidimeni service level agreement is certainly one of the most painful ever incident in the history of
20the South African health system. The deaths of approximately 140 mental health care users is indeed painful and regrettable and I want to upfront express my*

sincere condolences to the families who lost their loved ones, following the termination of the Life Esidimeni service level agreement, including the removal of the mental health patients from Life Esidimeni health care facilities. Our health care system is meant to preserve and where humanly possible to prolong human life. In this regard, our primary role as the Department of Health then in the transfer of patients from Life Esidimeni, was to ensure that we deliver service to all the people of Gauteng. Clearly this did not go according to plan and for that I sincerely apologise. Did not go according to plan and it is indeed very unfortunate and deeply regrettable that the implementation of this project ended up with the tragic loss of life and it, and I am really sorry that innocent and vulnerable members of our society lost their loved one in that process. I hope my testimony will, at these hearings will help families to find closure and also explore consequences where it is necessary. It is important to state that the Life Esidimeni project had good intentions and I do not think anybody planned that people are going to die or people are going to be killed, and in my experience as an activist, at one point I was trained how to hold or detonate the hand grenade, how to dismantle an AK47 and all of that, and at no point did I ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Sorry, just one minute. [Vernacular 00:31:20]. We cannot wait and call a witness who we want to listen to and then go shouting. We cannot do that. [Vernacular 00:31:30]. So I ask you to keep quiet and you will have your moment through your Advocates to speak please. We have agreed. What you do not like and what you like, you have to take in and find other moments, but in the hearing again lastly the witness is entitled to some level of

dignity. So allow her to say what she says and we can find other ways of expressing that please. Ms Mahlangu.

MS. QEDANI MAHLANGU: Thank you Justice:

“Firstly the deinstitutionalisation of mental health users, in other words the reason for the project was to integrate mental health patients into communities instead of keeping them permanently institutionalised in hospitals. For far too long mental health users have been treated as social outcasts, and this took place against the accepted international practice which seek to ensure that mental health users are integrated within and or amongst society. Secondly the project was responding to various queries, previous negative audit findings of the Auditor General in respect of engagement with the officials relating to the service level agreement with Life Esidimeni. In simple terms Life Esidimeni enjoyed benefits out of contract which existed since 1979 without it being subjected to tender processes in line with the Public Finance Management Act and all its prescription and regulations, as well as the constitution Section 217 of the constitution of the Republic of South Africa. Section 217 of the constitution requires all organs of state to procure goods and services through a system which is fair, equitable, competitive, transparent and cost effective. In other words the fact that the contract enjoyed benefits of a contract which did not comply with the previous provision of the constitution. I have taken liberty to appear in these proceedings to share with this commission information relating to the Life Esidimeni, which information is within my best, my personal knowledge, because I have no been in the system since the 1st of February last year, and to the extent that I was able to remember things and to find information,

and this is what I am presenting before the commission and before you Justice Moseneke.”

ARBITRATOR JUSTICE MOSENEKE: Yes. Let me just say that this is an arbitration, it is not a commission.

5**MS. QEDANI MAHLANGU:** Sorry, my apology.

ARBITRATOR JUSTICE MOSENEKE: It does not matter. It is just important to clarify that, thank you.

MS. QEDANI MAHLANGU: *“To the members of the families that are here, the families who lost their loved ones during the implementation of this project, I am*
10*deeply sorry for your loss, and may their souls rest in peace. I know that we may not bring them back, but for what it is worth I am really, really sorry. Justice Moseneke, I wish to give an account of my involvement as the then MEC for health in relation to the implementation of the Life Esidimeni project. As a background in*
15*Executive Council responsible for health herein referred to in the Gauteng province. By virtue of my appointment I became the executive authority of the department and my duties were largely as described by legislation and the constitution and the public’s Finance Management Act and other supporting legislation, and I also had the responsibility to oversee the implementation of government policy in line with*
20*the mandate of the Department of Health. During and around that time, the department had financial constrains, and was under administration in terms of Section 18 of the Public Finance Management Act, Act 1 of 1999, the PFMA of*

which when I was in parliament this is one of the legislation we worked very hard for it to be produced to be what it is today. The cost of health care continued to escalate leading to more budgetary constraints across the budget of the Department of Health. At the Premier's Budget Committee, from now on referred to as a PBC, meeting held in November 2014, after the departmental presentations which I annexed here which is the Annexure A, the Life Esidimeni did not form part of our presentation to the Budget Committee. During this meeting the department was requested to develop a plan to reduce cost and to ensure that the departmental over expenditure was reduced. Similar instructions of course were given to all other departments as well, because of the budgetary constraint generally that the government was experiencing. In response to the PBC a directive referred to in the above paragraph, the head of department then Dr Selobano, assisted by other officials engaged in a process to develop a plan indeed to cut costs. I later received a cost presentation from the HOD, Dr Selobano which I said it is Annexure A. Dr Selobano also shared the contents of the annexure with the provincial treasury through the normal processes that officials engage, inter alia the presentation included the following but not limited to the termination or the revision of the following services. It was the Alexandra Health Care Clinic which was run by an NGO at the cost higher than what other clinics equivalent to the same size were being run. The second one was the Selby Park Clinic which was a step down facility for people who were not too well to go home, but were not too sick to stay in hospitals. The third one was Life Esidimeni. Fourth was Telkom, Vodacom, security services, long-term incapacity leave for 12 months onwards. National

health laboratory services ... [inaudible]. The laundry services, Road Accident Fund as well as stationary. One of the first cost cutting exercises to be implemented or and or terminated was the Selby Park Clinic. The department through its official implemented this proposal and finalised it in May because the contract was ending 5in May. As I said, the Selby Park Clinic attracted again like Life Esidimeni had attracted negative comments from the Auditor General in that the contract had been renewed without the department following supply chain year after year, and the AG became uncomfortable and normally if you continue with the contract persistently without following tender processes, renewing the contract, it raises query with the 10Auditor General and in subsequent years it may be expressed as a fruitful or wasteful expenditure. Something like that. I may not be expressing exactly the term what this will result in the end. The HOD assisted by other officers developed the Life Esidimeni plan, I am sure you have seen that implementation plan. In addition to the implementation plan referred to above, the officials in the department 15led by the HOD, developed and presented the plan to me. A template against which the NGO's which were to take over from Life Esidimeni will be assessed and a copy of the template is annexed as Annexure B and I am aware it is existing in some of the files that Advocate Ngutshana had shared with us."

ARBITRATOR JUSTICE MOSENEKE: Did you have to approve the plan?

20**MS. QEDANI MAHLANGU:** No, I did not have to approve the plan Justice.

ARBITRATOR JUSTICE MOSENEKE: So the HOD was the final arbiter on the plan, was it?

MS. QEDANI MAHLANGU: Yes. The responsibility of any politician is defined by legislation, and things that are of implementation nature, those are implemented, are at the discretion and in the preview of the head of the department who reports to the executing authority, whether it is a Minister or the Premier or the relevant politician in that portfolio where the person is reporting to.

ARBITRATOR JUSTICE MOSENEKE: Ja. Questions will come later. It just struck me that it is something that was not clear. The statement about, he could have, he Dr Selobano, the HOD could have continued without your consent. In other words as a matter of law ... [interjects]

10 **MS. QEDANI MAHLANGU:** Absolutely.

ARBITRATOR JUSTICE MOSENEKE: He did not need your consent.

MS. QEDANI MAHLANGU: No, not at all.

ARBITRATOR JUSTICE MOSENEKE: Very well, proceed.

MS. QEDANI MAHLANGU: *“Things that would require the executing authorities approval, those will be sent in the form of a memo signed and therefore after that once they get that approval, then it will say okay, the MEC has approved or the Minister has approved. On the basis of that the go ahead is given. Also the department also established the Life Esidimeni Implementation Committee, and again led by the HOD and the assigned respective officials. I was advised by Dr Selobano which I also accepted and relied on that prior to the termination of the Life Esidimeni contract, he sourced and obtained legal opinion which advised the department to can terminate the Life Esidimeni service level agreement. I do not*

have a copy of the legal opinion with me, but I have a reason to believe that the department has a copy of that opinion.”

ARBITRATOR JUSTICE MOSENEKE: Who sourced the legal opinion?

MS. QEDANI MAHLANGU: The head of department.

5**ARBITRATOR JUSTICE MOSENEKE:** The head of department.

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS. QEDANI MAHLANGU: *“In line with the Public Finance Management Act and other legislation, I provided guidance when I was required to do so, to do so in*
10*informal meetings held with the officials in line with the role of the executive authority where necessary. In order to ensure that implementation of, the implementation of the project, the project committee was required to meet on a weekly basis and I attended several meetings whenever I was available where I provided guidance when called upon to do so.”*

15**ARBITRATOR JUSTICE MOSENEKE:** Former MEC, there is a hand from one of the Advocates. Will you pause please? Advocate Hassim.

ADV ADILA HASSIM: My apologies Justice, but because we do not have the prepared written statement in front of us it is difficult to follow. So my request is to ask the witness to just go a little slower so that we can absorb what she is telling us.

20**ARBITRATOR JUSTICE MOSENEKE:** Okay. The request is that you do not read it like a newsreader. You know how quickly they read things.

MS. QEDANI MAHLANGU: I apologise Justice.

ARBITRATOR JUSTICE MOSENEKE: You do it more like an actor. Have you seen actors? They speak slowly and they drop every word clearly. So they are asking you to take it a little slower. The statement will be made available to Counsel, but it is a fair request that you go a little slower. Thank you.

MS. QEDANI MAHLANGU: Thank you very much Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay.

MS. QEDANI MAHLANGU: *“During the initial phase of the project I was given assurance that the Project Committee through the HOD, that the implementation of the project was on tract despite a few teething problems. Issues of concern such as shortage of food, blankets were not presented to informal meetings with the exception of the supply of medicines and at the time it was mentioned that when the mental health care users were leaving Life Esidimeni they were given a supply of medicines only for seven days, and that is the only problem that I got to understand that was raised with me at the time. When all the operational plans which included the template had been presented to me including the briefing by the HOD on the legal opinion I did not have any reason to doubt information received consistently from officials informal meetings as I said, simply because you work with people on the basis of the level of trust and when you begin to doubt the credibility of the information that you have, they give, they bring at your disposal that will not allow permit any good and cogial working environment. I never received information that the project was at risk or that implementation of the product will then threaten lives*

of patients and in general I received constant positive reports regarding the implementation of the project. I had full confidence in the Managers as well as professional expertise of the HOD and his team.”

ARBITRATOR JUSTICE MOSENEKE: Can you mention the Managers by name
5that you had confidence in?

MS. QEDANI MAHLANGU: It is just the HOD and Dr Lebete who is a DDG for clinical services. Msenogi who was I think the Chief Director for planning if I am not mistaken. Dr Manamela who is the Director for mental health and of course in the process we brought in people from the respective hospitals that are currently
10dealing with psychiatric or dealing with psychiatric patients. That will be CEO of Weskoppies, Ms Mabena. It will be the CEO of Sterkfontein, I forgot his surname. Ja, I forgot his surname.

ARBITRATOR JUSTICE MOSENEKE: That is fine.

MS. QEDANI MAHLANGU: And it will be the CEO of Cullinan Hospital as well as
15the Chief Directors of the five districts in the province because the NGO's will be located in the communities where the districts are operating and they are also coordinating the clinics. So we thought that, it was thought that it was relevant for those team members to be brought on board, so that is the team and of course the junior officials that reports to them. I may not remember all the names or have all
20their names, but I saw the list in Advocate Ngutshana's document that he sent me, that he gave to me. Some of the names are listed there.

ARBITRATOR JUSTICE MOSENEKE: The list of the project team.

MS. QEDANI MAHLANGU: The project team.

ARBITRATOR JUSTICE MOSENEKE: Yes. So in short ... [interjects]

MS. QEDANI MAHLANGU: And from time to time the CFO, we invited the CFO to meetings, particularly when I was present, because I wanted to make sure that issues relating to finance are dealt with properly and we also brought in the HR for the purposes of making sure that the staffing issues are also addressed accordingly.

ARBITRATOR JUSTICE MOSENEKE: So in short you had seen that there was a project team with competent senior and junior officials and you were happy and certain that the Life Esidimeni project was being competently handled.

MS. QEDANI MAHLANGU: Yes, absolutely Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. Very well, you may proceed with your statement.

MS. QEDANI MAHLANGU: *“During or about November 2015 I received an invitation from the office of the Premier to attend a meeting and the purpose of the meeting was to discuss the letter sent to the Premier by NEHAWU, wherein NEHAWU requested the Department of Health to absorb employees who was working at Life, at the Selby Park Clinic as well as Life Esidimeni staff as part of the exit strategy out of the two contracts that the department was terminating. The staff to be absorbed included nurses, cleaners and all people who met the government employment requirement in line with the public service regulation requirements.”*

ARBITRATOR JUSTICE MOSENEKE: And this was in August 2015?

MS. QEDANI MAHLANGU: No, no this was in November 2015.

ARBITRATOR JUSTICE MOSENEKE: Oh, November 2015. I am sorry. The Premier, that is when the Premier called you in.

5**MS. QEDANI MAHLANGU:** To a meeting yes.

ARBITRATOR JUSTICE MOSENEKE: Very well.

MS. QEDANI MAHLANGU: And there is a correspondence to that effect and I forgot to send it to my Counsel, but I will email it to him tonight and you will get it tomorrow.

10"*I requested the HOD together with one other official, I cannot remember who, to accompany me to the meeting with the Premier, because during the said meeting it was agreed that the Selby Park Clinic and Life Esidimeni staff will be absorbed in the department in line with the applicable policies and where the public service regulations applied. We also agreed that some of them would be placed in the*
15*various NGO's will be appointed to take over from the Life Esidimeni. Subsequent ... [interjects]"*

ADV. PATRICK NGUTSHANA: Before you proceed.

MS. QEDANI MAHLANGU: Sorry.

ADV. PATRICK NGUTSHANA: Do you have a list of these employees, the
20number of them?

MS. QEDANI MAHLANGU: I do not have it on top of my head. I did, I was trying to get it, but I do not have it, but I think it was close to about 700 people, workers. So but I am sure if you ask the HR department of the Department of Health they should be able to tell you who was absorbed and if that information is requested, as I said my Counsel did indicate earlier on that I could not have all the information that I needed as soon as I wanted it. Thank you.

ADV. PATRICK NGUTSHANA: Then from your recollection were these employees all absorbed or not?

MS. QEDANI MAHLANGU: As far as I remember, and this is just from the top of my head, most of them were absorbed and if I am not mistaken, okay I remember getting two or three phone calls from nurses who were absorbed from Life Esidimeni back into the department who previously were employed by the Department of Health, and they were not paid simply because that when they left the department they were blacklisted on PERSIL and their salaries could not be paid and once you are blacklisted on PERSIL the system kicks you out. So I then engaged with the relevant HR people and the HOD to look into the matter, and I seem to remember that there was a technicality in one of the categories, I cannot remember which one, which the posts were, which those people where they were in Life or Selby did not meet any of the criteria in government, and I cannot remember how that issue was resolved. As I said I do not have the documents and the relevant information before me, but majority of them were absorbed.

ADV. PATRICK NGUTSHANA: Thank you, you can proceed.

MS. QEDANI MAHLANGU: *“Subsequent to the meeting with NEHAWU I was informed that Section 27 organisation took the department to court challenging the implementation of the termination of the Life Esidimeni contract.”*

ADV. PATRICK NGUTSHANA: When would this be? I see that there is no date there.

MS. QEDANI MAHLANGU: I think it was around November, November 2015. The bulk of the things like, of course things that were like private preceding the formal starting of the project was around November, and that is why the meeting with the Premier and NEHAWU was around November. So all the smallest activities were around more or less the same time and I think the statement is written more or less in the chronological order based on the events that took place as I remember them at the time.

ARBITRATOR JUSTICE MOSENEKE: So the meeting of November 2015 where the Premier was present, were the Representatives of NEHAWU also present?

MS. QEDANI MAHLANGU: It was the Secretary General of NEHAWU. I forgot his name, and the NEHAWU leadership in Gauteng and I think ... [inaudible] to provincial leadership in the province.

ARBITRATOR JUSTICE MOSENEKE: And the HOD was also present?

MS. QEDANI MAHLANGU: Yes, the HOD was present. I did not go to meetings without the HOD and most of the instances unless it was something that happened outside of work whatever, but in many of the things, meetings I had gone to it was

with the HOD, because at the end of the day whatever transpires out of meetings, he is responsible for implementation, particular working as the executive.

ARBITRATOR JUSTICE MOSENEKE: And in that meeting the closure of Selby and Esidimeni were discussed.

5**MS. QEDANI MAHLANGU:** The invitation clearly stated that the purpose of the meeting was to discuss the closure of Life Esidimeni and Selby, as well as also to look at the issues relating to the workers.

ARBITRATOR JUSTICE MOSENEKE: And your position and that of the Premier, that of the HOD and the leaders of NEHAWU ended up in an agreement.

10**MS. QEDANI MAHLANGU:** Yes, we agreed that the HOD will work with the relevant HR team in the department to ensure that those workers are absorbed.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS. QEDANI MAHLANGU: Because no one should lose their jobs because of this. That was agreed in the meeting.

15**ARBITRATOR JUSTICE MOSENEKE:** You may proceed.

MS. QEDANI MAHLANGU: *“I want to state that the court application was never brought to my attention. To be precise, I was informed of the application only after the matter has been finalised in court. As I did not oppose the court application, though I was cited in my official capacity in the said papers. I understand that the*
20*said application was dismissed by the court.”*

ADV. PATRICK NGUTSHANA: Is that what you were informed, that it was dismissed?

MS. QEDANI MAHLANGU: Yes.

ADV. PATRICK NGUTSHANA: Okay, and who informed you if you can recollect?

5**MS. QEDANI MAHLANGU:** I think it was the HOD or Dr Lebete. I am not sure exactly.

ADV. PATRICK NGUTSHANA: Okay.

MS. QEDANI MAHLANGU: Of the exact individuals.

ADV. PATRICK NGUTSHANA: Thank you.

10**MS. QEDANI MAHLANGU:** *“In January 2016 the department was ready to meet with the families of the patients to be affected by the move from Life Esidimeni. In this regard we agreed with the HOD that I will visit Waverley to meet with the families, and if I am not mistaken the HOD was also present in that meeting when we went to Waverley, and the next day I was not going to be able to make it. There*
15*was something that I had to attend to and the HOD went to Waverley, to Randfontein the next day to meet with the families in Randfontein. During my meeting ... [interjects]*

ARBITRATOR JUSTICE MOSENEKE: The Waverley meeting was the one where the families of the patients were present.

20**MS. QEDANI MAHLANGU:** Yes, yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And it was quite an active meeting where the families expressed their views to you.

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: Is that the meeting?

5**MS. QEDANI MAHLANGU:** Yes, the families raised concerns, and out of those concerns I suggested to the families that we should, they should establish a Family Committee meeting and in that meeting I also gave them my mobile number which has been my standard practice since I took off in public office in 2012 in 2004, that any citizen has the right to contact me directly to raise any concern they have. So
10out of that meeting a Family Committee meeting was formed, and as I said I did offer, I gave them my number to be able to call me in case that there were concerns and particularly because I said to them I know sometimes officials may not do what they are supposed to be done, and where you have concerns relating to the places where your family members are going to be moved, please talk to me with the
15concern you are having at the time, and I do not remember receiving a single call out of that.

*“Once again I wish to state for the record that I was never informed of many major problems other than the teething problems relating to patient files that Life was refusing, the Life health care group was refusing to release the patient’s record and
20as a result that became really a back and forth issue between the department and the officials.”*

ARBITRATOR JUSTICE MOSENEKE: Who would ordinarily have informed you? Obviously the HOD was in charge of the move, not so from Esidimeni?

MS. QEDANI MAHLANGU: Yes. The HOD is the overall accounting officer. So he assigns the ten people who report to him. So when we have broader meeting 5 which involves me in my boardroom or in the 22nd floorboard room, then the HOD will be present when he was available. When he was not, he will put an apology and they will present, they will make the presentations. So it was mentioned in one of those meetings that indeed this was the case.

ARBITRATOR JUSTICE MOSENEKE: So when you say you were not informed of 10 the problems of the move, does it mean the HOD did not keep you abreast with involvement?

MS. QEDANI MAHLANGU: I am not sure whether he did not know himself or that junior officials did not tell him. I would not be able to speak for him, but for my part I did not know that there were problems, and ja. Let me leave it there.

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

MS. QEDANI MAHLANGU: *“Once again I wish to state on record, because I have already ... [inaudible] this point. During one of the meetings it w as reported that some patient that was reported in the formal meeting again, that some patient had arrived at Weskoppies, being relocated from the Life Esidimeni and Sterkfontein 20 with single clothing items, some with one pair, one shoe instead of having a pair of shoes, and others walked in there and they looked very malnourished in the process and I think two of them, I remember specifically from Weskoppies, on*

arrival they looked malnourished and immediately they were referred to Kalafong Hospital at the time, as it was explained in the meeting on that day.”

ADV. PATRICK NGUTSHANA: Let me understand that paragraph. That is paragraph 41.

5**MS. QEDANI MAHLANGU:** Yes.

ADV. PATRICK NGUTSHANA: So this will be patients who were transferred directly from Life Esidimeni.

MS. QEDANI MAHLANGU: Yes, to Weskoppies.

ADV. PATRICK NGUTSHANA: So upon their arrival they noticed that they are
10malnourished.

MS. QEDANI MAHLANGU: Yes.

ADV. PATRICK NGUTSHANA: Oh, I see.

MS. QEDANI MAHLANGU: *“And then the Sterkfontein team reported that the
mental health care users who were arriving from Life, they looked ungroomed, they
15were unshaven and they were looking, that they were not looked after at the time
on arrival, and Sterkfontein particularly I know, because when I visited there I found
that they had bought tracksuit with the Sterkfontein logo as part of just giving dignity
and ensuring that at least they have something decent to wear. And in one of the
interviews I had with Radio 702 wherein I made a plea for members of the public to
20assist with the donation on items such as clothing, pyjamas, tracksuits and shoes
for the benefit of the patients, and I am sure if you had to look or trace the 702*

records, you will be able to trace this information. I also wrote a letter to ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: Did you put a date to that, a month and a year when you asked for donations of the public for patients?

5**MS. QEDANI MAHLANGU:** It was either September or October. I am really not ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: Of 2016?

MS. QEDANI MAHLANGU: 2016. All of it is 2016, yes. I also wrote a letter to the CEO of Telkom asking them to consider using their CSI resources to help us to
10improve some of the things that I was concerned about, once we were aware of the challenges. I also wrote a letter to IDC, CEO also expressing and requesting them to do the same to help us to do the same.

ARBITRATOR JUSTICE MOSENEKE: Can you remember why it was necessary to beg for donations, within the Department of Health? The patients were now out
15of Life Esidimeni and they had to be looked after and fed on donations. Can you remember why you made the plea?

MS. QEDANI MAHLANGU: Justice, as I was saying a few minutes ago, that it was brought to my attention that the mental health care users did not come out of Life with the decent clothes. They came either with one set of clothes they were
20wearing when they walked out of there, and therefore the NGO's were trying to help to mobilise clothing as well as the department. I know that they bought, I found in one when I went to Cullinan on the 1st of July, I found them they have brought

blankets and all of that. So it was really about getting the society to be mobilised to say this is what I have been told and I am requesting everyone who can contribute to come to the party to contribute so that we can give them dignity in the process.

ARBITRATOR JUSTICE MOSENEKE: And what happened to state funds? Have they run out for these patients?

MS. QEDANI MAHLANGU: Justice, the Department of Health okay. When I was working there till, and I am going to talk about the period I know. There are competing needs within the budget of the department, and those needs sometimes necessitate that you ... [inaudible] at any given point in time. What do I mean by that? If there is an under spenditure in one program which may be considered that the money, you can afford to move this money from this program to the next program because there is a pressing need, you will end up doing that. So simply because of course the ... [inaudible] all of us probably aware that is on the rise and across the board, not only mental health. But the HIV challenges that we face as a country despite the fact that we are the smallest country in the world amongst many nations, but our numbers in terms of people who are HIV positive is high. So all those challenges they eat from the budget of the department. So you get to put as many people as possible into the ARV program. You have got to make sure that children get vaccination. You have got to make sure that laundries are functioning. You have got to make sure that every one of those things are working, but over and above that, that whatever rand you have you have got to spread to the extent possible that you are able not to compromise the quality of care, but in the process challenges do occur.

ARBITRATOR JUSTICE MOSENEKE: I understand that. I understand that, but once the marathon project was underway and patients were taken out of Life Esidimeni, was there no budget for that transition, for that move? That is what I mean. Why did you have to go begging for donations to these patients? Was there not an anticipated expenditure connected to the transfer?

MS. QEDANI MAHLANGU: The expenditure was made. The CFO did avail resources for things to be bought. Exactly what they bought in all of that, I would not be having those kind of specific together with the HOD, but at any given point in time I can point you exactly what did the private sector donate at Charlotte Matleke as far as I remember. What did the private sector donate at Chris Hani Baragwanath as far as I remember and all of those things, and that does not mean that government does not have money, but government needs to work with the private sector in order to compliment the little resources we have, because of the growing needs of people who want to have access to the health care system and the cost arising, the budgets are increasing and on the basis of that you really have to find challenges at any given point in time at the time. You will come to Charlotte when you do your oversights and you find women who are about to give birth and probably 50 percent of them will not be South Africans. They were not budgeted for, but they must be helped to give birth because they are already in the country. So all those things contribute to the fact that the budget get reduced. Over and above that, when doctors and nurses do their work in the normal course of their business, something will go wrong in theatre or wherever in the hospital business, and when that happens we end up with medico legal. They sue the department,

and when they sue the department and that is not budgeted for, that comes as a court order and you have to settle that court order and that is really the difficulty that we have got to juggle every single day to try and understand what do you do with the lack of budget, yet the needs are growing on a daily basis. That is the challenges we are facing. So mobilising society did not mean by any chance Justice that the department was absorbing its responsibility to cater for the mental care users. It was simply really to compliment was government was able to do at the time, and I still believe even if I am not in the system, those donations and those things are still required today. It may not be for mental health care users, it may be for other things, and if I remember very well, in 2009 we requested Discovery to donate stethoscopes and they donated them in numbers.

ARBITRATOR JUSTICE MOSENEKE: But just assure me coming back to the marathon project, assure me that there was money budgeted to anticipate costs connected with moving mental health care users from Life Esidimeni to the NGO's. Was that provided for?

MS. QEDANI MAHLANGU: I think it was provided for. I did not see the actual numbers and things, but it was provided for because when there were challenges of food and whatever the CFO intervened on several occasions when those things were brought to our attention.

ARBITRATOR JUSTICE MOSENEKE: Okay. You may proceed, thank you.

MS. QEDANI MAHLANGU: *“After the project team had completed the scoping of the project and entering into the implementation phase of the project, the process of*

moving patients to various facilities was commenced with. I must add that when the Life Esidimeni release the patients to various NGO's, they did so without releasing the patient file. I had to intervene and I do not have the letter. I did request to try and get it, which I wrote personally to the CEO of Life and requested him that we should have the patient's record and as well in that letter I was asking him to that they can, they should look at the list of occupational therapists they had so that we can tap into those. That they can be deployed ... [inaudible]. So that letter I do not have it. As I said it is with government records. So probably if the CEO would be kind enough to share the contents of that letter that I wrote him, and in that letter also I stated to him because there was no formal communication with Life about Baneng. That we are not going to cancel the Baneng contract. We will extend it for a period of two years, but the tariffs and modalities on the tariffs those will be negotiated by the relevant officials and led by the HOD."

ARBITRATOR JUSTICE MOSENEKE: Could your staff members starting from the HOD, safely transfer patients to other facilities without medical records?

MS. QEDANI MAHLANGU: As far as I know that was not supposed to happen, but it did happen.

ARBITRATOR JUSTICE MOSENEKE: Ja, but could one safely take mental health care users from where they were, let us assume Life Esidimeni refused the records, can one safely take them somewhere else and they continue to be well or in good health or at least as good as they were at Life Esidimeni?

MS. QEDANI MAHLANGU: I would not be able to answer with authority on that question Justice, because I am not a medical doctor, but with the little information I have, suggest that or I can use my practical example. When my mother gets transferred from a hospital in Mpumalanga to come to Joburg, to Charlotte for specialised treatment, her file will be with her and at any given point in time and I can relate a couple of friends would have asked me to assist them about this and this and that, and the respective teams other from Limpopo will simply say we will not release the patients if there is no confirmation of receiving doctor and the relevant information required. So that question really I cannot answer with authority, because I am not competent to deal with it.

ARBITRATOR JUSTICE MOSENEKE: Ja, but at a common sense level, I am not a doctor either. Would you not require the bed letter of the patient in order to continue with therapy at another site?

MS. QEDANI MAHLANGU: I was informed Justice that basic information was given. I do not know how basic it was, but I was informed that it was given, and as I went around, I think I went to about two or three NGO's, because there were too many to visit so we spread ourselves. But in the NGO's I went, I asked to see the files. Particularly at Masego and I asked to see the files of patients who have been there for longer compared to those who just arrived. Even then they simply told me that they did not have files of the patients. The FICA files of the patients when they left. Just to father just elaborate this point, when we after I wrote the letter to Life, we engaged the CEO of Life, some files particularly of the number of people at the time I was aware that would have died, they sent us those files in an electronic

form, and one patient file will be probably about five or six boxes. They were as thick as that so and none of the NGO's had that kind of information, and my conversation with the CEO of Life at the time, and again in one meeting I was with the HOD, in another meeting I was with Dr Lebete. Actually we met here at 5Emoyeni. The issue was about we should have access to the files, so that whoever is managing the files wherever they are post the move, because that was the thing. The meeting was in September. They should be able to have that information, but it was never forthcoming. Even the information that we took to the Ombud's person, we got it under a lot of difficulties and challenges.

10 **ARBITRATOR JUSTICE MOSENEKE**: You may proceed.

ADV. PATRICK NGUTSHANA: Before you proceed, I just want to find out. When was it when you were informed that patients were released without files?

MS. QEDANI MAHLANGU: It was, sorry.

ADV. PATRICK NGUTSHANA: And when did you intervene by writing this letter?

15 **MS. QEDANI MAHLANGU**: I wrote the letter in September, because I realised that things were not like being acted upon, but in meetings it was raised and I continuously appealed to the team as professionals. I worked with professionals. Very qualified people as far as I am concerned, and I had no doubt that the team of people I worked with they are well qualified, well suitable and they have been in the 20system longer, so they know their responsibilities and duties, and I was comfortable that they know what they are doing because they are professional, over and above everything.

ARBITRATOR JUSTICE MOSENEKE: That is September 2016?

MS. QEDANI MAHLANGU: Yes, I wrote the letter I think September October 2016. As I am saying I do not, I wish that I could have had it in front of me, but ...
[interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** On second thought now, let me see. Knowing what you know now, how many people had died in September 2016? Can you remember?

MS. QEDANI MAHLANGU: From the information I was given by the HOD through when the question was raised in the legislature, the answer it gave to the legislature
10was that there were 36 people who had died.

ARBITRATOR JUSTICE MOSENEKE: And that was in when? It was in August ...
[interjects]

MS. QEDANI MAHLANGU: Exactly on the 13th of September if I am not mistaken.

ARBITRATOR JUSTICE MOSENEKE: 13th of September.

15**MS. QEDANI MAHLANGU:** It was a Tuesday, ja.

ARBITRATOR JUSTICE MOSENEKE: So as you were pleading for records and so on, on your knowledge what number of people had died?

MS. QEDANI MAHLANGU: 36.

ARBITRATOR JUSTICE MOSENEKE: 36.

20**MS. QEDANI MAHLANGU:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay. You may proceed.

ADV. PATRICK NGUTSHANA: When was this thing raised with you?

MS. QEDANI MAHLANGU: Pardon?

ADV. PATRICK NGUTSHANA: When was this thing raised with you of the
5missing records, patients files?

MS. QEDANI MAHLANGU: I think it was raised in one or two meetings. I cannot
remember exactly the date.

ADV. PATRICK NGUTSHANA: You would not know the month or so?

MS. QEDANI MAHLANGU: No, I would not. No, I would not unless I see
10documents or whatever.

ADV. PATRICK NGUTSHANA: But it will be far from the date when you
intervened?

MS. QEDANI MAHLANGU: Hm ... [interjects]

ADV. PATRICK NGUTSHANA: Say for example it is raised in September and in
15September, during September you write the letter ... [interjects]

MS. QEDANI MAHLANGU: It could have been earlier than the time when I wrote
the letter. It could have been earlier. I am not sure exactly. It could have been
somewhere in August or so. I do not know exactly, but it was not earlier than that.

ADV. PATRICK NGUTSHANA: Oh, it was not earlier.

20**MS. QEDANI MAHLANGU:** Ja.

ADV. PATRICK NGUTSHANA: Thank you, you can proceed.

MS. QEDANI MAHLANGU: Let me just say Counsel please remember that all of these things I am saying are based on my memory and to the extent that I still remember things as much as possible.

5**ADV. PATRICK NGUTSHANA:** No, thank you. Thank you.

ARBITRATOR JUSTICE MOSENEKE: You were at the point when you requested records from the CEO of Life Esidimeni.

MS. QEDANI MAHLANGU: Yes.

ADV. PATRICK NGUTSHANA: I think now we are on paragraph 45.

10**MS. QEDANI MAHLANGU:** Ja. I am just coming to that.

“The first key challenge to be brought to my attention was the food shortage at an NGO in Cullinan and I took upon myself to visit the Cullinan facility to find out what was going on. The exact date it was the 1st of July. It was very late at night. I went there and we met with the, I walked around and how we ... [interjects]

15**ARBITRATOR JUSTICE MOSENEKE:** It will help MEC to add the year every time.

MS. QEDANI MAHLANGU: Sorry, sorry Justice.

ARBITRATOR JUSTICE MOSENEKE: The events run over several years. So in July 2016.

20**MS. QEDANI MAHLANGU:** 2016, yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS. QEDANI MAHLANGU: *“So I went to Cullinan very late in the evening, because I got concerned that these journalists kept on asking me questions about things and whatever I answer, I realised that probably I may not have the full facts before me, so we drove to Cullinan that evening and we walked around the facility. We looked at the things, and remember there is a Cullinan Hospital which has been existing I think from 1973 if I am not mistaken, and within that facility of the hospital there were wards which were renovated where the NGO’s were being accommodated. So we walked around the hospital in its entirety from where the patients, the government patients were and where the NGO was. What I picked up in that visit was the two NGO’s, one of them was called Siyabadinga and I do not know what is the other one called.”*

ADV. PATRICK NGUTSHANA: Is it not Anchor House?

MS. QEDANI MAHLANGU: Was it Anchor? Something like that. I am just not sure exactly about the name.

ADV. PATRICK NGUTSHANA: Life Disciples.

MS. QEDANI MAHLANGU: No, it is not Life Disciples. I think it was Anchor.

ADV. PATRICK NGUTSHANA: Okay.

MS. QEDANI MAHLANGU: I think so. If I am not mistaken.
“So the two NGO’s were operating there and they were managed to share a kitchen. The stove was not big enough and then I did ask the staff to intervene and

*to resource the relevant things that were of a concern to me and I was assured again that they will attend to those things, and I do know that Mrs More and Mrs Mary Grace Msimango walked with me and they intervened on the nursing, because they on the HR issues relating to the nurses. So they intervened on that
5and I do know that nurses were employed subsequent to their intervention and they took nurses as well for training and all of that. So that I do know, because they waited for me there for a couple of hours as I was going there.”*

ADV. PATRICK NGUTSHANA: What other problems were you able to find out with these NGO's, other than the stove?

10**MS. QEDANI MAHLANGU:** The stove and the cold room, that the NGO's were sharing a cold room and I think they were fighting these two NGO's and I said to them this is not about you, it is about the patients you are serving, and that because one of them was taking the department to court and I asked the officials can you please make sure that you separate, have two cold rooms for these people to exist
15in this one place, and all of that. So and I left the matters there for the relevant ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: Once you were there, is that the place you were happy mental health care users ought to be kept and looked after?

MS. QEDANI MAHLANGU: The wards were just recently refurbished Justice.
20They were new wards. The Department of Infrastructure had refurbished the wards. They looked new. What was a concern at the time was when we walked around, was overcrowding which I did raise with the official and I said but why do so many

people in here? They said these are functional patients, whatever, whatever, and then later on when I went to another NGO, I think it was post, towards the end of September if I am not mistaken, that was Precious Angel and I found some of the patients at Precious Angel which were at Cullinan and I asked but why are these 5 patients here, and I cannot remember the answer I received.

ARBITRATOR JUSTICE MOSENEKE: Did you actually go to Precious Angel physically?

MS. QEDANI MAHLANGU: Yes, I went to Precious Angel late September.

ARBITRATOR JUSTICE MOSENEKE: Yes. There will be many questions that 10 will be asked. You see how many Advocates are here. So we will get you there. This is your evidence in chief. Still going to be many, many questions. As you take a breath, do you now know how many people died? By people I mean mental health care users at Siyabadinga.

MS. QEDANI MAHLANGU: No, I am not aware specifically about Siyabadinga.

15 **ARBITRATOR JUSTICE MOSENEKE:** Do you know how many mental health care users died at Anchor Life?

MS. QEDANI MAHLANGU: I would not be Justice of the specifics per NGO's.

ARBITRATOR JUSTICE MOSENEKE: Do you know how many mental health care users died at Precious Angel?

20 **MS. QEDANI MAHLANGU:** At the time it was said that it was late September, they had said it was 18.

ARBITRATOR JUSTICE MOSENEKE: 18?

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: When you visited there?

MS. QEDANI MAHLANGU: No, no, no I think it was after my visit.

5**ARBITRATOR JUSTICE MOSENEKE:** After your visit.

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay, let us proceed.

ADV. PATRICK NGUTSHANA: Ja. Before you proceed on that, other than the overcrowding were you not informed of any other problems that these NGO's had
10like payment of subsidies, sharing of hospital space and so on?

MS. QEDANI MAHLANGU: At the 1st of July when I went to Cullinan then I was not aware of the payment problems. Again they were brought to my attention through my media liaising officer to say there are issues of payment and once I got to know about that, we then intervened. We asked the CFO to work with the
15relevant Managers, because they must feed information to I think it is covered, something I will talk about in the statement. They must feed, everybody who does business with the Gauteng government must register in the data base and the registration is done by officials relevant from a particular district and then they get registered at treasury and once they are registered, only then they get purchase
20order numbers. From there, then they get paid. So I would not really, ja. That is what I know about the payment, but once it was brought to my attention, I asked the

CFO and the HOD please can we intervene and they intervened. In our subsequent Friday mornings meetings when we were discussing finance from there onwards, I started monitoring that and it was clear that indeed the payment were being done consistently.

5 **ARBITRATOR JUSTICE MOSENEKE:** But did this brilliant project team not say MEC, we have made no arrangements for funds to flow to the NGO's? Your patients what you call rightly government patients might die?

MS. QEDANI MAHLANGU: No Justice.

ARBITRATOR JUSTICE MOSENEKE: Because NGO's are receiving no money
10 from us. Did none of them alert you to that MEC?

MS. QEDANI MAHLANGU: Justice, nobody alerted me that patients did not have food in formal meetings. The issue of food and all the challenges you are asking me about, I got to know about those through the media, and only then we intervened, and I got to know I think just in the past few days or so, that other
15 information was being brought to Dr Manamela by the NGO's, but I was not aware. I think the difficulty, as much as I considered myself very accessible to everybody who had issues, whether it is a cleaner or patient or a doctor or an intern or whatever. I encouraged for people to call me and I do remember I think, and I cannot remember exactly the dates that I went to a meeting with the Tshwane
20 NGO's and I said to them what are your challenges. What are you going through and all of that. So they did share the problems of payment, they did share the problems that they sometimes go on weeks without being paid, and again I gave

them my cell number. If the things we discussed today are not being followed through and not being implemented, please call me and of course I can only plead and plead and plead.

ARBITRATOR JUSTICE MOSENEKE: Ja.

5 **MS. QEDANI MAHLANGU:** And the minute I start like saying now I am going to procure directly, the law is, I am really violating the legislation because my duties are very specific.

ARBITRATOR JUSTICE MOSENEKE: There will be many detailed questions that will be coming very shortly. But let us leave you in your evidence in chief so that 10 you complete it, and one of those inevitably is going to be how do 143 people die, and you do not know of it. You do not know the circumstances under which they were living and they are your patients, government patients.

MS. QEDANI MAHLANGU: Okay.

ARBITRATOR JUSTICE MOSENEKE: Keep that in mind. It will be asked later. 15 Please go ahead with your evidence.

MS. QEDANI MAHLANGU: *“During the time I was totally unaware of the patients that were dying at various NGO’s and at different centres. During or about September 2016 I received a question through the legislature on the Life Esidimeni project. When the question are posed from the legislature, the procedure is that 20 such questions are sent to the MEC’s parliamentary officer who in turn sends the list of such question to the office of the HOD for assistance with answers to the question posed. He may in turn source the responses from the relevant officials in*

the department, and once the HOD receives the information required, he sends the same info to the MEC's office, and thereafter I go to the legislature and to respond to the question, based on information that has been signed off and sent to my office from the office of the HOD, source from the different people."

5 ARBITRATOR JUSTICE MOSENEKE: So the HOD would provide the facts that would be contained in your answer ... [interjects]

MS. QEDANI MAHLANGU: Yes, absolutely.

ARBITRATOR JUSTICE MOSENEKE: To the legislature.

MS. QEDANI MAHLANGU: Absolutely.

10 "I first became aware that 36 patients had passed away at various NGO's and hospitals on the evening of the 12th of September, just as I was preparing to go to the legislature, and it was very late at night and in the morning I was going to the legislature. This is happening during my preparation question and answer to the legislature which I answered on the 13th of September. This information as I said
15 was received from the office of the HOD as well as other officials who might have assisted the HOD to put the information together. On the following day I proceeded to provide responses to the question to the legislature. Less than 24 hours after providing the answers in the legislature, I contacted Professor Magoba at the Ombud's man requesting him to assist the department with investigation of the
20 causes of death of the 36 patients. I annexed hereto the transcript of my cell phone sms communication with Professor Magoba marked E. On the same day in the afternoon I had a meeting with the Minister to discuss the Nelson Mandela Children

Hospital budget. I approached the Minister requesting him because I had spoken to the Professor in the morning and he was not keen at the time when I spoke to him. When I indicated that to the Minister, the Minister said he will help me to convince the Prof to take this mandate of investigating them.”

5 **ARBITRATOR JUSTICE MOSENEKE:** This is the Minister of Health.

MS. QEDANI MAHLANGU: Yes. We had a meeting to discuss the Nelson Mandela Children Hospital and in that process before the meeting started, he asked me what is happening and I told him, and I said I called the Professor in the morning and he said, my conversation with him is part of the Annexure E. You will see I
10 called him and he responded via sms. All is contained in the Annexure E.

ADV. PATRICK NGUTSHANA: So you have a date when you approached the Minister.

MS. QEDANI MAHLANGU: Yes, it all happened on the 14th. I answered the question on the 13th. I then called the Professor on the 14th in the morning.

15 **ADV. PATRICK NGUTSHANA:** Yes.

MS. QEDANI MAHLANGU: And then he responded. We had a brief conversation and then at 10H26 to be exact, you will see from the transcript of my cell phone, he responded with his response, and then I went to the Minister to say to him I approached Prof, this is what he said to me and I am thinking of appointing
20 somebody else. The Minister said no, I will help you to convince the Professor, and then the Minister provided, spoke to the Professor and we take it from there.

ADV. PATRICK NGUTSHANA: No, it is fine. We will come to that when your annexures, all of your annexures are ready. You can proceed.

MS. QEDANI MAHLANGU: Thank you very much.

"I together with the members of staff held planning meetings with various, including the HOD, with various, with the view to constitute various teams for the purposes of visiting the NGO's. That was over a weekend. I cannot remember the exact date, which is after the, I think it was the weekend of the 16th or 17th or so, I might not be exact accurate but I think it was the 16th."

ARBITRATOR JUSTICE MOSENEKE: September 2016.

10 **MS. QEDANI MAHLANGU:** Yes, September 2016. To visit the NGO because I began to be worried that there is something that probably I may be missing on the basis of the information that I was getting.

ARBITRATOR JUSTICE MOSENEKE: And what did Dr Manamela say? I mean 36 lives have been lost in the project which started in May. It is September. So it is 15 four months on that count. We know the count was inaccurate, but on that count 36 patients had lost their lives in the project. What did she say?

MS. QEDANI MAHLANGU: The answer Justice was that the patients would have died in different hospitals. Causes of natural death, causes of death was natural and so I had no reason to doubt the information that I was given, because but what 20 exactly happened, where did these people die, what happened and then I was given that explanation, but I then took comfort ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Did she say, I am sorry to interrupt you. Did she say the causes of death of the 36 were natural causes?

MS. QEDANI MAHLANGU: Yes, because apparently the death certificate that is what they said.

5**ARBITRATOR JUSTICE MOSENEKE:** And she assured you that you do not have to worry, because these are natural deaths?

MS. QEDANI MAHLANGU: But already I had approached the, remember Justice that I answered the question on Tuesday. Wednesday already I spoke to the Professor Magoba and then the same afternoon I spoke to the Minister. So already
10I was a little bit comfortable in that something, we are going to do something about it to investigate the real cause of death and I was very sure that I was going to make sure that the department cooperates with the process so that the truth indeed can be established.

ARBITRATOR JUSTICE MOSENEKE: Did you not believe her when she said the
15deaths were caused naturally? Why did you need the Ombudsman?

MS. QEDANI MAHLANGU: But I was concerned Prof, sorry Justice. That people, 36 people died and there seems not to be a clear explanation. Precious Angel alone had 18 people, so I thought maybe let us try and satisfy ourselves and the families that indeed something did not go wrong in the process. So that was really
20about making sure that we established the facts as to exactly what happened, and that is why I thought getting someone independent to do the investigation will help to establish the facts.

ARBITRATOR JUSTICE MOSENEKE: And what did Dr Selobano say? He was the one who was reporting to you directly? What did he say about this 36 deaths? At least for starters.

MS. QEDANI MAHLANGU: No, he supported that we should go ahead with the investigation. We agreed both of us that we should proceed with the investigation.

ARBITRATOR JUSTICE MOSENEKE: Very well, proceed.

ADV. PATRICK NGUTSHANA: Before you proceed. This someone independent which you requested to assist, you are referring to Professor Magoba?

MS. QEDANI MAHLANGU: Yes.

10 **ADV. PATRICK NGUTSHANA:** And he did the investigations. That is common cause now.

MS. QEDANI MAHLANGU: Yes, yes. Absolutely Counsel.

ADV. PATRICK NGUTSHANA: And he produced a report which I assume that you have read it.

15 **MS. QEDANI MAHLANGU:** Yes Counsel.

ADV. PATRICK NGUTSHANA: And do you know what he says about the causes of death?

MS. QEDANI MAHLANGU: He said different things. That some people died of hydration and others died of malnourishment, so but okay whilst I am on this point, I need to put it on record that the documents I was requesting through you, that I submitted to Professor Magoba on behalf of the department in there it was

cases we opened from the police in order for the post mortems to be done, because I indicated to the team that it is better that nothing is hidden from this process. If there are families who have done post mortems it is okay, but if there are families who have not done it, please persuade them to get the family members that the post mortems can be done, and that time some of the family members were already buried and we, I asked Dr Lebete to be exact. To work on that because previously he was the CEO of the Gauteng Forensic Services. So to work with the laboratories to make sure that those post mortems are done. In my submission to the Ombud's person you will find those detailed cases and the case numbers in which police station they were opened at by the respective CEO's where the bodies were still located at the time, and after the cases were opened those bodies were taken directly to the either to the Pretoria forensic laboratory or some I think one or two from the west end were either done at the Hillbrow or at the Diepkloof mortuary.

ADV. PATRICK NGUTSHANA: Yes.

15 **MS. QEDANI MAHLANGU:** So that is that. So I made sure that nothing is covered from that evidence indeed and that is what I did, after I heard about this.

ADV. PATRICK NGUTSHANA: Ja. The point I wanted to canvass with you on that before you proceed, is that you accept, that is you wanted somebody else independent who is Professor Magoba to assist you and the investigations were done and you produced a report and do you accept his findings in relation to the cause of death?

MS. QEDANI MAHLANGU: Well, I am not a forensic laboratory specialist and also from the legal counsel team I was working with, they were engaging with NPA and I think the SAPS to try and get the results of the post mortems and if my memory serves me well, that information is not available as per the communication from the 5NPA or from SAPS. So I would not be in a position really to speak on authority on that matter at all.

ADV. PATRICK NGUTSHANA: No, no my focus was just limited on that. That a report was produced. You requested a report. A report was produced. It has got findings. Do you accept the report or you do not accept the report?

10**MS. QEDANI MAHLANGU:** I am no longer in government. Government has accepted the report and the report has been implemented, and I think the best people to deal with it, if you had asked me that question on the 31st before I resigned, I would have given you my answer, but my answer is neither here nor there.

15**ADV. PATRICK NGUTSHANA:** No, it is fine. Thank you, you can proceed. We are on paragraph, do you still recall the paragraph?

MS. QEDANI MAHLANGU: Ja, I think ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: You can help the witness so that we can proceed.

20**MS. QEDANI MAHLANGU:** Is it 55?

ARBITRATOR JUSTICE MOSENEKE: 55.

ADV. PATRICK NGUTSHANA: 55.

MS. QEDANI MAHLANGU: Am I right?

ADV. PATRICK NGUTSHANA: Yes, you are correct.

ARBITRATOR JUSTICE MOSENEKE: It will help me to know how many more paragraphs are there in relation to the tea break.

ADV. PATRICK NGUTSHANA: It runs to paragraph 69. Some are short, some are long, some is one sentence. I think we can take the tea adjournment.

ARBITRATOR JUSTICE MOSENEKE: It is 11H30. I think I am going to take the tea adjournment now. Ms Mahlangu, we are going to have an adjournment.

10 **MS. QEDANI MAHLANGU:** Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: From now till twelve mid day, and I require you to be back here at twelve and to take the witness stand.

MS. QEDANI MAHLANGU: Thank you very much Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you, we are adjourned.

15 **22 JANUARY 2018**

SESSION 2

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may be seated. Ms Mahlangu, you are under your previous oath to tell the truth, and nothing but the truth. Counsel.

QEDANI MAHLANGU (still under oath)

EXAMINATION BY ADV PATRICK NGUTSHANA (Continues): Thank you, Justice Moseneke. Ms Mahlangu, you were last on paragraph 55. Can we [indistinct] from there?

5**MS QEDANI MAHLANGU:** Thank you, Counsel. In Pretoria, I visited an NGO called Precious Angel. I had a conversation with the owner of the NGO after doing walkabouts, who informed me that the NGO had received no payments for two months or so from the Department.

Upon probing, I discovered the NGO was not registered with the– was not on
10the database of the Provincial Treasury and I immediately requested that the HOD and the CFO and the team from Tshwane District to work, to do the necessary– to work with the NGO with the necessary registration processes and/or documentation so that the payment– it could be– it could receive payment. All this happened in the month of September 2016.

15**ADV PATRICK NGUTSHANA:** And again on this, were you told why were these pre-arrangements – that is pre-transfer arrangements – were not done?

MS QEDANI MAHLANGU: I do not remember with the explanation to that effect but it concerned me that the NGOs and we have entrusted with mental health care users were not being fairly treated in the sense that payment was in the time. As a
20result, that would have– was having negative impact on the patient and that is why the HOD being the highest official accounting officer within the Department, I

requested him and the CFO to intervene and ensure that this is corrected with immediate effect.

ADV PATRICK NGUTSHANA: Yes, thank you. And would you agree that this non-payment of the NGOs, specifically subsidies would have a negative impact on the quality of services that they will ultimately receive?

MS QEDANI MAHLANGU: Definitely. I mean, if I – I know one of the things that NGOs do not have the ability to have a strong balance sheet like you will have in the big company or in established company like the Life Healthcare Group. So when there are challenges of consistent payment, they have nowhere else to look for or have long lifeline from the banks to be able to get money and continue the treatment. Indeed, it was a concern and I think the point you are making about whether it could have affected the quality of care, I think it did.

ADV PATRICK NGUTSHANA: Thank you. You can proceed on 56.

ARBITRATOR JUSTICE MOSENEKE: But what did the HOD say to you? You say there is no clear relation.

MS QEDANI MAHLANGU: At the time, the explanation was that – Justice, I explained earlier on that in Gauteng for any service provider to provide services in the Department and be – they must register on the Gauteng database, Gauteng government database, and then were given a purchase order number – I do not even know how it looks like but it is something that I know that it exists. Once they have a purchase order number, then they can proceed to file for invoices and when invoices are filed, only then payment can be done.

ARBITRATOR JUSTICE MOSENEKE: But your team must have known this, former MEC.

MS QEDANI MAHLANGU: Absolutely.

ARBITRATOR JUSTICE MOSENEKE: They must have known when they were planning for nearly a year that on day one, NGOs will need resources, did they not? They should have surely.

MS QEDANI MAHLANGU: Yes, Justice, they should have known and that is why I— it really concerned me a great deal when I heard that this did not happen, and hence I requested the HOD as the most senior person in the Department together with the CFO to do everything possible that this is corrected. And from there on, we then in our Friday meetings we discussed the state of finances in the department because it remained a problem throughout.

We then included the reporting on how NGOs across the board were being paid their allocation and whether they are being paid on time and if not so, what would be the problems and ensure that those are attended to immediately.

ARBITRATOR JUSTICE MOSENEKE: You know now, former MEC, from May to September through to December, many people died, and that period coincides with the four months when there was no money flowing from your department to the NGOs.

MS QEDANI MAHLANGU: Yes, now I understand it is to be the case, Justice.

ARBITRATOR JUSTICE MOSENEKE: And did Dr Manamela or Dr Selebano ever give you an account? Did they tell you why did not they plan for the core part of the transfer of patients from one location to another? There must be resources at the new place. Did they ever explain why they did not do that?

5 **MS QEDANI MAHLANGU:** I mean, the explanation, Justice, that would be given for instance— okay, let me just say this that once I got to know about problems and once we have approached the Ombuds person to help us to investigate, things became a bit difficult and intense in the Department and of course, levels of trust I think the generated to the lowest level, in particular the mental health program.

10 And I mean, that [indistinct] the Department is a huge elephant. So the specific unit concerned in dealing with this matter, to an extent that I was made aware that there were challenges within the team, amongst the team members of the mental health unit. So in relation to your question you are specifically why— what did they do or why they did not inform me that there were challenges of
15 claimants and things, I would not know exactly why that information was withheld from me simply because indeed, I know that the MECs are not supposed to be operational and we are not operational by law.

There is a clear distinction of that. If I were to interfere and start doing things that politicians are not supposed to do, I can go to jail. So those distinctions are
20 very important that officials in government, their responsibility is defined by law and that of the politicians. So I take information that is given to and explanations given to me and beyond that, I only appeal and appeal and appeal.

ARBITRATOR JUSTICE MOSENEKE: [Vernacular], I have to tell you, and you are going to get many questions on that, will be coming your way shortly, both say you instructed them to proceed with the marathon project for better for worse. They both, seated where you are seated – and you know this because of you receiving 5our transcripts – and they say you are the one who instructed them. You say you knew nothing, they did not tell you. The public is entitled to know where the truth sits surely because you are a political functionary you owe that to the public of this country.

MS QEDANI MAHLANGU: Justice, as I have said, I think– I cannot remember 10exactly which paragraph in my statement, that once we have been – when I am saying “we,” it was myself, the HOD, and relevant officials necessary to be present when the budget discussions are held with the Provincial Treasury in the budget– [Indistinct] budget committee – once those processes, we came back from that, the team that draws up the nitty-gritties of the plan in response to the– what we have 15been asked to do from the budget committee, it is an operational matter.

It is done through the HOD by the rest of the officials. Then these issues came. As I have said, I listed those items from the Alex clinic, Selby Park, Life Esidimeni, and one of those, they came as part and parcel of the process. And the annexure is here and if I may take you through that annexure, I am more than 20willing to do so to say what is it that we presented [intervenes]

ARBITRATOR JUSTICE MOSENEKE: [Indistinct] will be asked those questions. I was asking a much more narrower, overarching question. The question I was asking you was Manamela and Selebano both say you instructed them to proceed

with the marathon project. You this morning say you knew nothing about its implementation. So I invite you as a political principal, or as you were then, to explain that to us. Help us understand that. They say they were under your command. You say you knew nothing and you did not have to instruct them at all.

5 **MS QEDANI MAHLANGU:** Justice, the fact that the— as a political head, the administrative team led by the HOD, the MEC or the minister or the politician concerned is a commander, that is absolutely factual and true. Our responsibilities are defined by law, and when those responsibilities are defined by law that means the Public Finance Management Act defines what I can do and what I cannot do.

10 And the Public Finance Management also recognises that if an official or let us say— argue that if I am being instructed as an MEC by someone above me to do certain things that I do not agree with, the law protects you, be it a politician or be it an official. But if you are being instructed to do something that is illegal, something that is going to compromise services and whatever else, you are entitled to report
15 that matter or that is going to lead to over expenditure or whatever.

You are entitled to report to the auditor general and file same information to the Treasury. At any given time when the implementation progress reports were being given to me – I did say that progress reports were being given to me – so when progress report were being given to me, at no stage that there was a
20 presentation in meeting that says, “MEC, this is impossible.

It cannot happen and now we— can you please review this thing.” In actual fact, what would have happened – and the Premier or will say probably this comes

– that in the early stages, I think there is a question that I answered in the legislator November 18 if I am not mistaken – November 18, 2015 – which indicated at the time that 1700 or 2000 something, a figure like that, beds were going to be made available for– to accommodate the mental health care users from Life.

5 And where were these beds going to be found? The report, even the answer I gave to the legislator and subsequently, the Premier was asked the same information and I shared it with him because that is what I was being given. [Indistinct - cross-talking]

ARBITRATOR JUSTICE MOSENEKE: [Indistinct - cross-talking] say Dr Manamela 10and Dr Selebano told you that there will be 1700 odd beds available for the transfer. Is that what you are saying?

MS QEDANI MAHLANGU: Yes. And including, just to spec– to mention specifically, the names of the hospitals are listed there; Germiston, the old Germiston Hospital, the old Mamelodi Hospital, the old this and this and that, all of 15them are mentioned. And at the time, it was indica– the indication was that only fewer patients were going to go to the NGOs.

ARBITRATOR JUSTICE MOSENEKE: Ja, but you say, “at the time it was mentioned,” tell us who mention that. Who said to you [intervenens]

MS QEDANI MAHLANGU: In the progress meetings of– that I had with the team.

20**ARBITRATOR JUSTICE MOSENEKE:** And that is the meeting– and you brought in the Premier quite early. You say the Premier knew about this quite early. Did he understand you well?

MS QEDANI MAHLANGU: Yes, he did. In 2015, 2015.

ARBITRATOR JUSTICE MOSENEKE: Yes, was it [indistinct - cross-talking] to date.

MS QEDANI MAHLANGU: The process started in 2014/2015, right?

5**ARBITRATOR JUSTICE MOSENEKE:** So he knew that Life Esidimeni was going to be shut down?

MS QEDANI MAHLANGU: Yes, he knew and when we had a meeting with Nihau, we did not discuss anything else but where the workers were going to be placed. As I said, I forgot to send the documents to my counsel and he will submit that
10tomorrow.

ARBITRATOR JUSTICE MOSENEKE: And the HOD as well as Dr Manamela assured you and the Premier that it will be 1700 beds available for these patients.

MS QEDANI MAHLANGU: Yes, through the answers they gave to me, which I answered the question, and through the answers that were given, I sent to the
15Premier's office which were also asked from the Premier to answer and the Legislator through that process because questions can be asked from the MEC or the Premier and it can be same information. So what if the information was given to me on the question asked to the Premier, I submitted that. On the basis of that, he went to the Legislator and answered.

20**ARBITRATOR JUSTICE MOSENEKE:** All these counsel will put details you but let me say this to you. Now you know that they misled you, is that not?

MS QEDANI MAHLANGU: Yes, I am aware, Judge, Justice.

ARBITRATOR JUSTICE MOSENEKE: In other words, they lied to you and to the Premier about the project.

MS QEDANI MAHLANGU: Yes. Yes, justice.

5**ARBITRATOR JUSTICE MOSENEKE:** And because of those lies, i.e. taking many, many – the bulk of the people – to NGOs, many of those patients died.

MS QEDANI MAHLANGU: Can you please repeat your question or statement?

ARBITRATOR JUSTICE MOSENEKE: I will. I will. I want you to finish your evidence in chief. I was just struck by the fact that these two senior people,
10Selebano and Manamela, gave you and the Premier false information about the availability of places of care, in other words, which have beds [intervenes]

MS QEDANI MAHLANGU: Yes, absolutely.

ARBITRATOR JUSTICE MOSENEKE: ...and they said to you by far, the majority of people who will be moved from Life Esidimeni would be kept in– will have beds
15and will have places. Now we know it did not happen [intervenes]

MS QEDANI MAHLANGU: Absolutely.

ARBITRATOR JUSTICE MOSENEKE: ...and many people died at NGOs. I am saying that they in fact lied to you and Premier in their reports.

MS QEDANI MAHLANGU: I think that they provided inaccurate reports and on the
20basis, I had to believe that people are telling the truth because these are professionals. I am not talking about people do not know what is wrong and right.

Our people were trained in whatever profession they had qualified on. So
[intervenes]

ARBITRATOR JUSTICE MOSENEKE: Let me leave you there for now. They sat right there and said you instructed them but for your insistence, the project would not have gone on.

MS QEDANI MAHLANGU: Justice, I am not sure how– if you do not get– to get information in respective meetings that you are holding with the team which suggests that things are going okay. MEC [indistinct] placed at that time, I am no longer MEC now, says, “In this hospital, we are placing so many. The Department of infrastructure has fixed this ward. This NGO is able to take this number of patients. This person is able to take this number,” or whatever. So when you are given that information, you take comfort that these officials have done the groundwork, and then I had no reason to doubt the professional– their professional conduct and that they were not behaving in a manner that in keeping what– with the mandate of what the Department is supposed to do.

ARBITRATOR JUSTICE MOSENEKE: Just for clarity and for our record; those who reported to you in what where either reassured you, were Dr Selebano and Dr Manamela.

MS QEDANI MAHLANGU: Yes, Dr Leswabi [?], Selebano, Manamela, and– through formal meetings and we will all have a formal meetings. Manamela would make a presentation or Mr Gnocchi will make a presentation or the relevant official relating to HR or whatever, and after those discussion, okay, progress report.

Great. Then for instance, the media liaison officer will then say, “MEC, let us give progress to the public on what we are doing,” and he will go ahead and issue a media statement on the basis of what we have been given in the formal meetings of the Department.

5 I am sure those media statement are contained in the various files before the arbitration [intervenes]

ARBITRATOR JUSTICE MOSENEKE: And you know now, as we all know, they misled you.

MS QEDANI MAHLANGU: Yes, I do now [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** And they misled the Premier.

MS QEDANI MAHLANGU: Yes, I know, Justice.

ARBITRATOR JUSTICE MOSENEKE: Would you proceed?

ADV PATRICK NGUTSHANA: Thank you, Justice Moseneke. Ms Mahlangu, you can proceed at 56.

15**MS QEDANI MAHLANGU:** Okay.

“I need to mention that around the same period of September 2016, I have received several media queries regarding the exact number of deaths which had current on the Life Esidimeni project. I continued to receive more questions from
20 the media, who informed me, amongst others, the number of–

the number of the– the number had increased to 68, and I had no full information regarding these questions.

I requested Dr Lebethe to facilitate the performance and finalisation of the autopsies and to register the cases with the case numbers relating to the same.”

I think we had a meeting with the MEC for safety with the relevant official just to ensure that all the processes that department should have done, indeed it was done. And I proceed.

“Throughout the time, I was unaware of the causes of death, and I believed that the whole matter required fully investigation. Hence, I did say that I approached the ombudsperson to help us to investigate this matter. And I proceeded to convene the departmental team for planning and visitations to the various NGO, which spread– and we spread ourselves in different teams and we were joined by the ministerial team on that Saturday and Sunday.”

ARBITRATOR JUSTICE MOSENEKE: But you know, former MEC, once you then heard that 68 people had died, which you not say, “Stop the madness. Stop! We cannot continue with the project.” This is hardly halfway of the people who died, 68. Why did not you tell them, tell Selebano and Manamela to stop because this thing was not working?

MS QEDANI MAHLANGU: The placement was completed, Justice, at the time. So they were no longer any health care users at any of the Life facilities. They were either at the NGOs or at Weskoppies, Sterkfontein, or Cullinan hospital or in the respective private district hospitals where there were spare bed capacity.

5 **ARBITRATOR JUSTICE MOSENEKE:** So you say the only route then open to the mental health care users was that they would suffer or die at the NGOs. You mean you could not prevent that?

MS QEDANI MAHLANGU: No, that is not what I am saying. I continued– the visits the NGOs was about ensuring that we check everything, whether what we have
10 been reported in accordance to the tool – that has been shared, it is in one of the files – that indeed those things have been done. Where they have not been done, ensure that the team– impress upon the team to do those, follow up on those things. And it is on those places that at the visits to the NGOs they were not done once. At least, I went to a couple of them but the officials, their understanding was
15 that they would continue to visit the NGOs and improve and continue to monitor areas of improvement which

were identified in the respective NGOs which were visited – over one weekend all of them across the province.

ARBITRATOR JUSTICE MOSENEKE: If the majority of the 1700 patients or so
20 were actually placed in hospitals as the original plan was contemplated, would we have had deaths this to this extent?

MS QEDANI MAHLANGU: I would not be able to answer, Justice. I do not know.

I really– I would not be able to answer that question.

ARBITRATOR JUSTICE MOSENEKE: Okay, proceed.

MS QEDANI MAHLANGU:

5 “When we undertook the– with then undertook the visits to
various NGOs to inspect the infrastructure and to ascertain
whether or not there were adequate sleeping arrangement,
availability of medication, food, first aid kits, and to assess all
matters which needed verification in terms of the template the
10 Department had developed earlier.

The Mental Health Review Board was invited as well to join in
the visits to the different NGO. I visited an NGO in Sierman,
that is in Hammanskraal, and I was accompanied on that
weekend by Prof Freeman from the National Department of
15 Health, Janet Hunter, Dr Manamela, and other officials as well
as members of the health review board.

Amongst the items, we paid attention to in line with the
template designed after the earlier availability of the nursing
staff, security, the toilet facilities, bathrooms, dining places,
20 food, medication, and the general grounds in the NGOs
whether the mental health care users sufficient space to move
around within those NGOs.

I then gave a directive to the HOD after we finished those visits and the team to continue visiting NGOs, particularly where they were challenges, to ensure that the patients were taken care of that as well as ensuring that general compliance with legislation is adhered to.

Thereafter, I have compiled a report – because Prof Magoba gave us a deadline, I cannot remember the exact dates of when we were supposed to submit documentation for him to start the investigation. During the compilation of the report, I discovered a number of documents which I was seeing for the first time, and one of them is the Health Africa Institute report which actually I got to learn about that report much later when I was engaging with the Ombud on a continuous basis, the ombudsperson on a continuous basis.

He asked me for the high report which is called in brief “High,” and then I said to him I am not sure what he was referring to. And then he sent me what he was looking for. I then enquired from the HOD. He did not know, and I asked Dr Manamela. Indeed, he sent me the report and I did send it to the ombudsperson but I did not know until the investigation started that that kind of report existence, and it was commissioned by the Department [intervenes]:

ARBITRATOR JUSTICE MOSENEKE: And why would they keep away such a vital report from the political head?

MS QEDANI MAHLANGU: I do not know, Justice. I really do not know.

ARBITRATOR JUSTICE MOSENEKE: Do you remember the key findings of that report?

MS QEDANI MAHLANGU: Yes. I read the report, and amongst other things were the staffing issues at Life and how many staff members were looking after patients during the day as well as at night. It was the issues of medication. It was the issues of – but the other one now? But broad terms, more or less issues about patient care as well as about staffing in that kind of – set of issues.

And after I read the report once there I sent it to the ombudsperson. I get to request the HOD to consider – of course verbally – I have requested him to consider that the Department should work with the Health Africa Institute to support the NGOs so that indeed they can improve their quality, the conditions [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Ja, but what was the core finding of that report in relation to costing? The finding of services Esidimeni?

MS QEDANI MAHLANGU: The report suggested that the – what Life was – the service that Life was delivering were relatively suitable and were adequate to the – in terms from a crossing point of view but in the absence of a comparing that to any other thing, and that is what I find in the report, as I have said, with all the other issues – medication and some challenges – I would have picked up in the report.

ARBITRATOR JUSTICE MOSENEKE: Did you notice that per patient you were doing better than you other hospitals, cost per patient, yes.

MS QEDANI MAHLANGU: The mental hospitals?

ARBITRATOR JUSTICE MOSENEKE: Yes.

5**MS QEDANI MAHLANGU:** I did not do that comparison is the greatest of details.

ARBITRATOR JUSTICE MOSENEKE: Proceed.

MS QEDANI MAHLANGU:

“Such information included but not limited to the following.

10 The reports that Life was giving [indistinct] stats and covering
period before the termination of the contract to the
Department, ranging from 2010, 2011, 2012, and 2013. And
these– that statistics were also submitted them to the Ombud,
and then I did ask Adv Ngutshana to try and get me the
original or a copy, a full copy of all the things we submitted to
15 the ombudsperson in order to refresh my mind. For what it is
worth, I will briefly reflect on the part of information they were
able to trace to get from that process, and the report of the
evaluation compliance to the service standard and the
financial analyst’s report of the 2014/15.

I annexed hereto the copies relating to the records of the deaths at the Life Esidimeni for the period immediately prior to the termination of the Esidimeni service level agreement.”

ADV PATRICK NGUTSHANA: Let me intervene. They have requested you to slow down.

MS QEDANI MAHLANGU: Oh, sorry.

ADV PATRICK NGUTSHANA: Ja, the pace is too high.

MS QEDANI MAHLANGU: So I should start afresh?

ADV PATRICK NGUTSHANA: No, proceed, ja. Proceed from 66.

10 **MS QEDANI MAHLANGU:**

- “I annexed hereto the copies relating to the records of the deaths at the Life Esidimeni for the period immediately prior to the termination of the Life Esidimeni service level agreement, marked ANNEXURE D, ANNEXURE D1, D2, D3, D4, D5, D7, D8, and D9.

15 And this is to the extent of my memory on what we had submitted and what was given to me I think the last week Thursday or so, but the rest of the document in the greatest of details, I have not been able to have access to but I know that we submitted huge volumes of documents.”

20 **ADV PATRICK NGUTSHANA:** Before you move away from paragraphs, let me understand what is the purpose of the reference to this?

MS QEDANI MAHLANGU: At the time when we submitted this report to the ombudsperson, we requested him to look at the causes of death for the 36, the number 36 that we are aware of at the time but when we– when we picked up that they was formal reports from Life which was sent to the Department about death 5stats and which– I looked at those reports as we were preparing comprehensive submission to the Ombud. I was intrigued by the numbers that I saw in those statistics. Hence I thought it is important that arbitration commission should be aware of those and to look at them in the full context of what this arbitration process is to make or in one way or the other.

10**ADV PATRICK NGUTSHANA:** So what does that mean? What does it explain in brief?

ARBITRATOR JUSTICE MOSENEKE: Do the statistics suggest to you that the death rate is the same as it occurred at NGOs? Or what significance do you draw there from? This is a suggestive question, it is a leading question I am asking you 15but you do not have to follow it. What did you see is the statistics of Life Esidimeni to be telling you?

MS QEDANI MAHLANGU: The– when we looked at the statistics, and I think it is the same information in a summarised version which was shared with the Premier when we met with him – I think it was on the 15th of September if I am not mistaken 20– where the officials were simply saying to us indeed, there has been loss of life, which is regrettable, because of once people have been moved from the NGO.

And they also indicated that when at Life deaths were occurring, and these are quarterly reports, for instance and to draw reference to this to say between April 1st, which is a quarter, April 1st 2013 and 30th of June 2013, the number of people who would have died in just that quarter would have been 27. And if you look at 5 July 1st to the September 30th in 2012, the number will suggest that they were 20 people who died in that one quarter.

And again, if you look at April 1st 2013 to 30th of June 2012, the numbers suggest that they were 26 people who died during that quarter. And if you look at Septem– January 2012 to March 2012, 31st of March 2012, it suggest again that 27 10 people died but in the respective centres where Life the mental health [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Yes, one has to say, contextualise it of course, and say out of how many patients and how many institutions, is that not so?

MS QEDANI MAHLANGU: Ja, and then if you look at the 1st of October 2011 to 31st of December 2011, the numbers there would be about 17 [intervenes]

15 **ARBITRATOR JUSTICE MOSENEKE:** But out of how large a cohort? It will be statistics of the deaths in all centres of Life Esidimeni, of Life Group rather, or would it be– it is imperative for us just to find the proportion, is it not?

MS QEDANI MAHLANGU: I think– as I am saying, I was looking for the files that we sent to the Ombud with all of these numbers and as I have said, I could not get 20 that information. So I think through the Adv Ngutshana and the team, they can help us probably to get that information.

ARBITRATOR JUSTICE MOSENEKE: But the statistics you have attached, will it give us the proportionality?

MS QEDANI MAHLANGU: [Indistinct] give an indication and that is that, Justice, in the files we gave, the details were very, if I remem– my memory serves me well, 5 were very, very detail to the extend possible if we can have access to those files, I can refresh my memory for us to have that conversation about those numbers specifically but [indistinct - cross-talking]

ARBITRATOR JUSTICE MOSENEKE: But what is your take away? From the numbers as you have seen them, what are you saying?

10 **MS QEDANI MAHLANGU:** So the reason why we submitted this to the ombudsperson, and the reason why I am referring them here, we asked the ombudsperson to say, “Please compare what would have happen in Life over a period of five years whether what was happening– what would happen in the Department during the process of the move.”

15 That was the purpose of sending this so that we can look at what is abnormal about these numbers and then all of that, including looking at the causes of death and all of that. So that was the purpose really of submitting these numbers to the ombudsperson.

ARBITRATOR JUSTICE MOSENEKE: You know that the Ombud has done that 20 exercise in his report. Have you looked at it?

MS QEDANI MAHLANGU: Which, the final report?

ARBITRATOR JUSTICE MOSENEKE: The death rate *viz a vie* cohorts of patients.

He writes about that in his report. Did you see that?

MS QEDANI MAHLANGU: I cannot remember the exact paragraph or I can refer it. I can come back to that to you after lunch.

5**ARBITRATOR JUSTICE MOSENEKE:** But to wrap it up, what more information do you need to complete your evidence?

MS QEDANI MAHLANGU: I have noted it down. I can indicate it letter to the council [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Okay. No, that is fine.

10**MS QEDANI MAHLANGU:** Thank you.

ARBITRATOR JUSTICE MOSENEKE: Just proceed then.

MS QEDANI MAHLANGU: Where was I now? I beg leave to take the arbitration through the statistics, and that is what we have spoken about.

And later, I testified during the proceedings of Prof Magoba.

15 To this extend, refer the arbitration to the findings of the ombudsperson. I think that is common sense. And finally, in conclusion I want to submit that the Life Esidimeni project could have been handled better in a manner which promotes human dignity, the right to healthcare including not limited to
20 the right of life.

Once again, I want to apologise for the loss of life during the implementation of the project. I know that one life lost is too many, and I know that those lives, we cannot bring it together but for what it is worth, I sincerely apologise to all the family

5 members for the loss of your loved one.”

Thank you very much.

ARBITRATOR JUSTICE MOSENEKE: Thank you, Ms Mahlangu. What is going to happen now is a process which lawyers called cross-examination. In other words, questions are going to be put to you on a variety of aspects arising from or

10connected to your evidence. They are at least four sets of lawyers, well, three sets, four sets of lawyers who represent different interest groups as you know already. The one favourite you could do as would be to listen quite carefully to the question, and if you could try and meet and answer the question.

And if you are called upon to explain, of course you can add an explanation.

15You are going to find that it makes even your own life easier. Some people try and anticipate what the lawyer are is trying to get at and it quite complicates their lives. So listen to the question each time and to answer the question. Each of the Council will introduce themselves as they always do. Adv Hassim.

ADV PATRICK NGUTSHANA: Justice Moseneke, I think we are not done yet with

20the witness. I just want to take her through one other aspect

ARBITRATOR JUSTICE MOSENEKE: Examination in chief?

ADV PATRICK NGUTSHANA: Correct.

ARBITRATOR JUSTICE MOSENEKE: Oh, I see.

ADV PATRICK NGUTSHANA: My apology for that.

ARBITRATOR JUSTICE MOSENEKE: Okay. The witness says she is done.

ADV PATRICK NGUTSHANA: [Indistinct] according to her statement, yes, the
5prepared statement she is done.

ARBITRATOR JUSTICE MOSENEKE: You go ahead.

EXAMINATION BY ADV ADILA HASSIM (Continues): Thank you. Ms Mahlangu,
what I wanted to find out from you is in March 2015, there was a letter that was
written by the HOD, Dr Selebano, and I will share a copy with you. We will read that
10into the record. I want to compare, that is the contents of this letter, with what
subsequently occurred. Let me beg leave to hand up a copy of the letter, dated 11
March 2015.

ARBITRATOR JUSTICE MOSENEKE: Proceed, Counsel. Has the witness been
given a copy of the letter?

15**ADV PATRICK NGUTSHANA:** Yes. We marked the– that letter as ELAH126.
Under “Discussions,” there is a reference to a meeting chaired by the MEC of health
in February 2015.

The MEC advised the LE senior management on the decision
taken to reduce the LE beds, and discussed the challenge of
20 cost of continue funding contracted care and that the beds
need to be reduced as soon as possible by a further 20% by

April 2015. The Department together with LE has to develop a plan to reduce these beds.”

Let us start at this meeting of February 2015. What was the resolution of this meeting if you would still recall?

5 **MS QEDANI MAHLANGU:** So this meeting would have been with Life. Is that what my understanding is?

ADV PATRICK NGUTSHANA: Yes.

MS QEDANI MAHLANGU: I think well, the discussion would have been around the costs in the Department and– no, I do not remember the exact thing. So I do not
10 want to say things that I may not be accurate about. So ... But I remember we had a meeting with Life. The exact specifics of the discussion I really do not recall.

ADV PATRICK NGUTSHANA: So, as I see the letter, the concern, the main concern were costs which you had identified as your challenge. And the solution to the challenge was that there has to be a reduction in the bed capacity by 20%.

15 **MS QEDANI MAHLANGU:** I think the issue of the bed capacity reduction by 20%, when I was deployed in Health in 2014, as far as my memory research well, so you meet with the respective departmental unit heads, and one of the things which was mentioned – and I cannot exactly remember where, when was that mentioned – was that the 20% reduction which Life was supposed to have started implementing,
20 they were not adhering to. And the Department was raising concern each time. And on the basis of that, the– and I think– that is what I think one of the things that

was discussed in the meeting now that I am trying to remember, was discussed in that meeting and it was also the issues about the tariffs that was discussed.

So the 20% reduction was in line with the mental health strategy linked to the national policy and all of that. So when the meeting was– we had a meeting with Life was to discuss that issue and to say to Life, “This is what legislatively we are supposed to do and you are not complying to these.” As to what we finally concluded in that meeting exactly I would not be able to remember. It is 2015.

ADV PATRICK NGUTSHANA: Ja, the last sentence says:

“The Department together with LE has to develop a plan to
10 reduce this [indistinct]”

Was that plan developed?

MS QEDANI MAHLANGU: I think so.

ADV PATRICK NGUTSHANA: And what did it say about the reduction of bed capacity at LE?

15 **MS QEDANI MAHLANGU:** You see, Counsel, the– so you have this letter that talks about 20% and the production of bed by 200 per annum. The same officials would go ahead and develop a plan to submit to Treasury based on the discussion that we would have had in the budget committee to say, “This is part of what we can do from a cost containment contribution.” Clearly there is something that just does
20 not match in this process. So I am not sure exactly why they seems to be a contradiction between this letter and what finally, the very same official would have

gone ahead and to prepare a submission which we sent to Treasury officially for consider– to indicate as part of our contribution. Life would be in that list of institutions that we will review for the reasons that I have already stated in my formal statement.

5 **ADV PATRICK NGUTSHANA:** Yes. [Indistinct] that is on this is that we know that there is a policy, the national policy on mental health that deals with mental health, 2013 – 2020, and out of which you develop your own policy.

MS QEDANI MAHLANGU: Yes.

ADV PATRICK NGUTSHANA: That is 2014 – 2020. And it sets out key strategies
10 and priorities, one of which is a reduction of beds by 200 annually. So my interest is why was that policy not implemented to reduce annually. Instead, you ended up cancelling. And what I want to lead you to is when was the decision to cancel or to terminate the agreement against the background of these policies, taken?

MS QEDANI MAHLANGU: For instance, I have seen this letter for the first time.
15 Remember, it is correspondence between the HOD and the CEO of Life. I was– I am not privy to this discussion and the correspondence between the CEO of Life and the HOD of Health at the time. So whilst he is corresponding with Life about this on the other hand, he is working with the officials say, “Let us ensure that what we committed in the budget process, we are able to adhere to that.”

20 As I said, I am not sure why the would be such a parallel process that are happening and that it seems to be contradicting each other. So maybe it would be relevant to just look at the contents of the minutes if there is any of such, of this

meeting refer to with Life Esi– with the Life management and probably I can answer better if there is such record, which I do not remember seeing when I was at the Department.

ADV PATRICK NGUTSHANA: Ja, for now we do know as a fact that on 29 September 2015, Dr Selebano issued a notice, a six-month notice to terminate the agreement but in relation to when and who took the decision, he has been vague. So I want to find out from you since he had indicated that they received instructions from who, all of them, Manamela and Masenogo [?], were all consistent that instructions came from you. So what I want to find out when was that decision taken, as well to which instructions were given to [intervenés]

ARBITRATOR JUSTICE MOSENEKE: Well, there are many questions all wrapped up in one, counsel.

ADV PATRICK NGUTSHANA: Ja, sorry.

ARBITRATOR JUSTICE MOSENEKE: Let us go step by step. I mean, you want to ask the witness whether she gave the instructions or she made the decision to terminate.

ADV PATRICK NGUTSHANA: Let us start with that decision. Did you take the decision to terminate and if so, when was that decision taken? If you did not make the decision, who took the decision?

MS QEDANI MAHLANGU: Counsel, the [indistinct] government decision is never an individual decision, and I do not think it has been like that and I do not think it is going to be anything like that in the future. The process I outlined in my statement

gives the context under which, why, and how the contract came under review, alongside many, many things. So to say that a decision was Qedani Mahlangu, I think it would be misleading the public, because I outlined that we had a meeting with the Premier's budget committee.

5 We presented– you will see my original– the original presentation that I made to the budget committee – there was no Life Esidimeni in that presentation. There was no Selby it that presentation. Of course, the operational issues were included in the presentation as cost saving measures because it is a requirement, the format you are given by Treasury that when you come and present your budget request, 10 you have got to demonstrate what you are going to do to save money, from which programs because the budget is under pressure and you have got to look at where you are going to save. So let us start from there.

Then subsequent to that, when you come from the budget in the process, then the HOD works with a team to develop a plan. And they look at, “What is that 15 we can do?” And what other– and remember, whilst we are doing all of that, there is a need and a pronouncement by all of us government since 2005 if I remember, that all government departments must work towards receiving the audit reports. So bear that in mind in the background, in the back of our minds that you need to achieve clean audit reports.

20 In the same vein, you have the AG is raising concerns that you have perpetual contracts that are running without following supply chain procedures. So there is a contradiction already that you have got contracts that are running, and the more the AG raises the issues, at a later stage it is going to be said, “You spend

money on contracts and that is fruitless expenditure,” irrespective of what we spend the money.

ARBITRATOR JUSTICE MOSENEKE: Ms Mahlangu, the question was who made the decision to terminate at the Life Esidimeni contract. Can we deal with that?

5**MS QEDANI MAHLANGU:** Justice, I am explaining that the decision in government is never an individual decision. When the decision to terminate not only Life, the respect of contract, it was our collective decision as a Department after submitted to the Treasury.

ARBITRATOR JUSTICE MOSENEKE: Okay, let us start of at the top. Was the
10Premier decision?

MS QEDANI MAHLANGU: Justice, I explained that as a budget committee, the budget committee is chaired by the Premier. And when you presented to the budget committee, my presentation are here, you look at what did the Department of Health said they were going to do from a cost saving. Life Esidimeni any is not in
15our original presentation. From the budget committee there is a requirement that says, “Go back and find things in the department where you can save money.”

ARBITRATOR JUSTICE MOSENEKE: Did the HOD– okay, did you terminate the agreement or give instructions that it be terminated?

MS QEDANI MAHLANGU: I have no authority to write to anybody to terminate a
20contract.

ARBITRATOR JUSTICE MOSENEKE: Did the HOD terminate the agreement?

MS QEDANI MAHLANGU: The HOD legally formally wrote to life and indicated the Department, decision of the Department to terminate the contract.

ARBITRATOR JUSTICE MOSENEKE: Was that he is individual decision, was it a decision from a collective?

5**MS QEDANI MAHLANGU:** It was a decision of the collective.

ARBITRATOR JUSTICE MOSENEKE: And who work in the collective?

MS QEDANI MAHLANGU: It was myself, the HOD, and all of us in the— in meeting. Remember, Justice, can I please explain this [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Yes, please.

10**MS QEDANI MAHLANGU:** ...and I am going to repeat myself but it is important [indistinct - cross-talking]

ARBITRATOR JUSTICE MOSENEKE: Please, do.

MS QEDANI MAHLANGU: Because again, I want to repeat that government decision are not made by individual and I do not think it is going to be tomorrow.
15The processes I am outlining on budget and government are conceived and you go to Treasury, you seek approval on the basis [indistinct] they say, “No, we have got concerned. This is that you are not covering.” You go back and then after you looking, “Okay, this is we think we can find saving,” because not only do you have budgetary constraints but you also have the AG raising issues on the same matter.

20 So on the basis of that, and the Department, we took a collective decision to say, “These are the things we are sending to Treasury collectively.” And we did

not– there was nothing malice about all of those contracts that were implemented. And also I think is important – may I beg for your indulgence, Justice?

ARBITRATOR JUSTICE MOSENEKE: Oh, yes.

MS QEDANI MAHLANGU: But Life was implement that after the team led by the 5HOD had completed the cancellation of Selby Park contract. And again, what is Selby Park? Selby Park was a hospital contracted around I think 2003, 2002, 2003 if I am not mistaken as a step-down facility for people who were not to ill– not to ill to stay in the hospital nor not too well to go home. They needed to stay somewhere. So Selby came into being on the basis of that.

10 And while Selby was being used by government, government built to hospitals in the form of Bheki Melangeni District Hospital in Jabulani, and the new Natal Spruit, which is now at Telemogerani [?] in Voosloorus. And one of the things that the AG was raising and as one of the fruitless expenditure that the Department was attributed to based on what I am going to say, that we had hospital beds, 15district hospital beds at Bheki Melangeni as well at the Telemogerani, which were not being used yet we were paying a private company resources. And of course, the issue that contract was running, year to year are being renewed.

So the basis on all of that, as I am saying, it is Life Esidimeni, the Alex Clinic as well as Selby, all of these things taken together was really about dealing with our 20audit challenges, was dealing with the budgetary constraint that the Department continuously face – and I am not in the system but I want to believe that those challenges.

ARBITRATOR JUSTICE MOSENEKE: And who were in the collective? It was yourself, the HOD [intervenes]

MS QEDANI MAHLANGU: That collective decided on all once the team come up with all of this because the management of the department, all of us, we agreed, myself included and the HOD, all of us agreed to say, “Well, this is what we are presenting Treasury and in the following year, Treasury will factor what we have said in our budget.” And you will see in the preceding presentation that those things had been factored in the Treasury presentation.

ARBITRATOR JUSTICE MOSENEKE: And who else— once you have made the decision, let us assume for a moment you are entitled to make the decision, who was responsible for implementing it in a way that does not cause death to patients? Whose responsibility was that?

MS QEDANI MAHLANGU: All the executing responsibilities relating to policies all decisions of government reside with the head of Department and the respective officials. In this instance it would be the HOD, [indistinct] the DDG for clinical services, the chief director for clinical service as well as the mental health unit and the respective officials that might be invited where, like the crosscutting units in the Department. It would be financed by the CFO. It will be HR. It will be probably ja, legal because those— not all units have the same skills but those, they serve the Department.

ARBITRATOR JUSTICE MOSENEKE: I need the required steps for the transfer. Steps in other words to safeguard the patient's live were not taken. Who would you finger, if not the name of the capacity, the authority?

MS QEDANI MAHLANGU: May you please repeat your question?

5**ARBITRATOR JUSTICE MOSENEKE:** Let me try again. We have talked about the decision. We know it is a collective on your evidence. The next question I was asking was that who has to implement? You said it is a HOD. My third question is if the implementation is reckless and negligent and unlawful, who would you as a political principal finger?

10**MS QEDANI MAHLANGU:** I think that the respective unit dealing with the matter, in this instance the Mental Health Directorate which is responsible for the day-to-day running of the entire services relating to mental health, either be it at Life as well as monitoring and working with the district with the services that they are providing throughout– in all the clinics in the province, and reporting of course to the
15relevant hierarchy in the Department and finally to the HOD.

ARBITRATOR JUSTICE MOSENEKE: Do you have any other questions?

ADV PATRICK NGUTSHANA: Yes. In relation to that, let me refer you to a section in the National Health Act 61, 2003. I do not have a copy here but I will give you one. It is Section 25. It says:

20 “A provincial health services and general functions of the provincial departments.”

It is subsection 1.

“The relevant member of the executive council must ensure the implementation of national health policy, norms, and standards in his or her problems.”

5Would that be a reference to you?

MS QEDANI MAHLANGU: Yes, absolutely.

ADV PATRICK NGUTSHANA: So in relation to these policies you have referred to, I want to know from you how did you ensure that those policies are implemented?

MS QEDANI MAHLANGU: By work– first of all, having meetings with the HOD and
10the relevant teams; by also going on the ground and doing the work and looking at what I am being told is actually factual; and also by listening to citizens to raise concerns where they have citizens, of course members of the media. So those would be more all is the platform I traditionally used in whatever, particularly to a Department like Health and Social Development where I have had the privilege to
15serve.

So that is how you monitor policy but at no stage the expectation is the executing authority, in this instance it would be the MEC, is expected to go on the ground and started doing the things themselves because that would be in contravention with other piece of legislation, particularly the Public Finance
20Management Act.

ADV PATRICK NGUTSHANA: Yes, just to move off from this point, you have referred to the national policy. There is certain sections of the policy, I will ream them out for you, there is a document referred to as ELAH 124. I am not sure whether it is in front of you.

5**MS QEDANI MAHLANGU:** Okay.

ADV PATRICK NGUTSHANA: That they are no page numbers but when you count the pages, it must be 24 or 23. At the top it says, “By 2020...”

MS QEDANI MAHLANGU: Is that after “Vision and Mission”?

ADV PATRICK NGUTSHANA: There is a graph on– the previous page, there is–
10paragraph 7.1 “Organisation of Services.” Then there is a figure 1.1, a low high, a
low high.

MS QEDANI MAHLANGU: So what is the title, they are heading?

ADV PATRICK NGUTSHANA: It is a document. It looks like this, and then the
following page.

15**MS QEDANI MAHLANGU:** [Indistinct]

ADV PATRICK NGUTSHANA: Are you on the page now?

MS QEDANI MAHLANGU: Ja, ja.

ADV PATRICK NGUTSHANA: At the top it says, “By 2020.”

20 “1. Community mental health services will be scaled up to
match recommended national norms and it will include three

core components: a) community residential care, included assisted living and group homes; b) day care services; and c) outpatient services, including general health, outpatient services in PHC and specialist mental health support.

- 5 These committee mental health services will be developed before further downscaling of psychiatric hospital can proceed. In accordance with the Mental Healthcare Act 2002, NGOs, voluntarily, and consumer organisations will be eligible to provide and be funded for committee programs or facilities.
- 10 This includes capacity development for users, service users, their families to provide appropriate self-help and peer led services for example, as committee health workers.”

So following upon this, you developed your own provincial policy which instructed you to downscale by– in line with this, to downscale by 200 annually. And you have
15had [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Well, at some point, you will have to reformulate the question.

ADV PATRICK NGUTSHANA: Yes.

ARBITRATOR JUSTICE MOSENEKE: You have put a lot of things to the witness.

20**ADV PATRICK NGUTSHANA:** Well, do you understand that it is I have read to you?

MS QEDANI MAHLANGU: Mhm.

ADV PATRICK NGUTSHANA: Or do you want to comment on it?

MS QEDANI MAHLANGU: In one of the things I was told, and I cannot remember in which, whether it was through a media statement and I think we did included in the submission to the ombudsperson, it was indicated to me that the legislation referred to as that policy being approved, Gauteng has at the time, I had about 10,000 mental health care users in townships in the community NGOs.

ADV PATRICK NGUTSHANA: Yes.

MS QEDANI MAHLANGU: And so with that in mind, when it is said, “We currently have 10,000 mental healthcare users in respective NGOs throughout the province,” and when after the decision– we took the decision in line with all the things I have explained, when they moved away from the hospitals that were initially identified the NGO, I did not have any reason to disbelieve what I was being told against the background that already it was indicated that they was 10,000 mental health care users with in NGOs.

So as to how long, and what I was not informed of course about was how long it took to get those 10,000 mental health care users to NGO over what period of time. That I was not aware of.

ADV PATRICK NGUTSHANA: So you believed that the current NGOs that you had were better resourced to receive these patients?

MS QEDANI MAHLANGU: To the best of my ability that is what I knew, and also just to indicate that as far as I knew or what I was told at the time that out of the 25 NGOs were all the Life health care users were taken from Life to the NGOs, only of those are new. That is what I was told. The rest of them were existing NGO. The only NGO I knew which had been existed for as long as I have been [technical problem 01:04:17 - 01:04:20] development on one kind or the other, was Thakalani, which has been existing in Diepkloof for a long period of time.

Other than Thakalani, I did not know any other NGO that exist but I was assured that the NGOs that are credible, that functioning, there have been doing this work. So expanding the work and then taking additional patients or the new NGOs, it is work that already the Department has more or less got handle of the issues because of their experience of the 10,000 patients I am referring to that were already with the NGOs.

ADV PATRICK NGUTSHANA: So that would explain why you would not have produced the capacity by 200 annually. Instead, you went for the termination.

MS QEDANI MAHLANGU: It was on the basis of that information that— of course, they were questions and fights with Life, between Life and the Department. Of course, the day-to-day engagement between Life and the official, I would not be aware in the greatest details but I do know that they were issues relating to tariff increase year on year that was being requested and the Department says, “But we do not have money.”

Life says, “But you need to increase the tariffs and all of that.” So I am aware that they was like a back and forth arguments between Life and the Department about the issues relating to the budget and the affordability of the budget and all of that. So on the basis of that and with all the information available 5at my disposal, at no given point in time did I have any kind of worries up until, as I have said, the media started raising issues about food, about this and this and that. And I said, “But what is going on here?” And when this thing persist that, the question persisted, I thought, “Okay, there is something amiss.”

ARBITRATOR JUSTICE MOSENEKE: MEC, that is a long answer. That makes 10the point for short point questions. We need to know what we want from the witness at that point and the witness must give us what we need.

ADV PATRICK NGUTSHANA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Otherwise we will be here for a long time.

ADV PATRICK NGUTSHANA: Correct, Justice Moseneke.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV PATRICK NGUTSHANA: So already we have evidence from the head of NGOs in Gauteng, Ms Hannah Jacobus, who had indicated that NGOs were not ready at that time. Will that to me that you were lied to?

MS QEDANI MAHLANGU: Adv Ngutshana, you know, again I would like to repeat 20that if I am not given information, first of all, I will never turn a blind eye. In the position I held, not only at Health but in any other position, I will never turn a blind

eye on something that was going to put a patient or a person in danger. I would never– I was never going to do that. So I did not know that there were difficulties as it is now known and public knowledge about what has been said through this process.

5 **ADV PATRICK NGUTSHANA:** Thank you, Justice Moseneke. I do not have anything further.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Adv Hassim.

CROSS-EXAMINATION ADV ADILA HASSIM: Thank you, Justice Moseneke. I see that it is close to the lunch adjournment. I have two requests. One is if we
10 could adjourn at earlier than 13:30 instead of beginning for a few minutes and then returning. And the second is that we have not been provided with the statement as yet, the final statement or the annexure s that were referred to during the course of Ms Mahlangu's evidence in chief, and it makes cross-examination on that impossible and I would like to stand down until we receive those documents.

15 **ARBITRATOR JUSTICE MOSENEKE:** It is fair and your request is granted. So copies will be made available to all counsel. We do not need anything long but just assure me that it is going to happen [indistinct - cross-talking] entitled to it.

ADV LESEGO MUSI: Justice, the copies will be made available to all counsel after lunch.

20 **ARBITRATOR JUSTICE MOSENEKE:** No, during lunch.

ADV LESEGO MUSI: That is fine.

ARBITRATOR JUSTICE MOSENEKE: Okay.

ADV LESEGO MUSI: I have an issue to raise with Justice. With the former MEC led her testimony in chief, she could not go through the annexures due to their unavailability. As the way I understand the proceedings to be going, her evidence in chief has been finalised without going through the annexures in her evidence in chief. That has an element of prejudice on her part. Of course on my part, it would give us comfort

if Justice was to say that at any opportune time the former MEC would be afforded opportunity to go through those annexures because when we started, the understanding was that the opportune time the annexures would be made available. I was unaware of that we would be required to go into cross-examination without her leading her testimony on the annexures. That has an element of prejudice.

ARBITRATOR JUSTICE MOSENEKE: I do not know what prejudice you are talking about but I do not want to debate that now. Your role is very limited here. I am sure you understand.

ADV LESEGO MUSI: I understand that.

ARBITRATOR JUSTICE MOSENEKE: I think what you said and this morning may have been just about all that you could be allowed to do. The witness must submit to questions in cross-examination. With the annexures come as they come, the former MEC will have ample opportunity to refer to the annexures.

ADV LESEGO MUSI: No, but that is correct.

ARBITRATOR JUSTICE MOSENEKE: [Indistinct]. No, rest with the comfort. You will– once they are available, you find them, and the former MEC will go through them, okay. Well, we have a request from Adv Hassim. I do not sense that any council thought otherwise. Well, as we adjourn MEC, let me leave you with you are still under oath. Why did you resign? That is from your position as MEC?

MS QEDANI MAHLANGU: I need to answer now? I thought you said I answer after lunch.

ARBITRATOR JUSTICE MOSENEKE: Please speak to the mic.

MS QEDANI MAHLANGU: Should I answer now, Justice? I thought you were going to leave me with a question to answer after lunch. Maybe I misunderstood that.

ARBITRATOR JUSTICE MOSENEKE: Fine, if your request is that you want to think about it then you have got it but if you are ready to answer it now, this whole exercise about accountability, so that is going to be quite– I am sure you will be asked about that by other advocates but I want you to think about that during your lunch and prepare an answer on why did you relinquish your political office. Okay, and we make sure that we get all the advocates to get the statement so they can prepare for cross-examination at 14:30 when we resume. So we will then resume at 14:30. We are adjourned.

22 JANUARY 2018

SESSION 3

ARBITRATOR, JUSTICE MOSENEKE: Advocate Hassim?

ADV ADILA HASSIM: Thank you Justice. And thank you for the indulgence for allowing us to stand down for a little longer than expected. Before I begin, there are several LR's that need to be handed up to you Justice, that I will refer to during the course of cross-examination. And I think they have been circulated to my colleagues. Thank you. Good afternoon Ms Mahlangu.

MS MAHLANGU: Good afternoon Council.

10**ADV ADILA HASSIM:** My name is Adila Hassim and I appear with my colleague, Ms Nikki Stein, and we represent families of the deceased. I would like to begin with the report, the Ombuds report, which was released on the 1st of February 2017. Do you accept the findings of the report?

MS MAHLANGU: Thank you Council, as I said, I initiated the report, the process of 15the report being investigated and upon my resignation government accepted the report and at the moment, I cannot express a view on legal issues because I have just had a legal team working with me since Friday.

ADV ADILA HASSIM: It is not a view on legal issues. Have you read the report of the Ombud?

20**MS MAHLANGU:** Yes, I did.

ADV ADILA HASSIM: Do you agree with the contents of the report by the Ombud?

MS MAHLANGU: I commissioned the report of the Ombud's person and I think that suffices to say that I thought that things had gone horribly wrong and on the basis of that it needed to investigation to be done.

ADV ADILA HASSIM: Do you agree with the contents of the report of the Ombud?

5**MS MAHLANGU**: Government has accepted the report.

ADV ADILA HASSIM: But do you agree? Do you agree with the contents of the report of the Ombud?

MS MAHLANGU: I have, I have also expressed my sincere condolences and the fact any loss of life is regrettable and I think that is important for the purposes of this
10arbitration to really really sincerely continue to say how sorry I am. I wish I can turn the clock but it is impossible.

ADV ADILA HASSIM: Thanks. Ms Mahlangu, there would also be an opportunity for you at a later point, towards the end of your testimony to express your views and your feelings about what happened. For now, can you please answer the question
15whether you accept the findings of the report?

MS MAHLANGU: Government has accepted the report and I am no longer part of government so and I think that suffice to say...

ADV ADILA HASSIM: So in other words you do not accept?

MS MAHLANGU: I did not say that.

20**ADV ADILA HASSIM**: So do you accept it? Do you agree with the findings?

MS MAHLANGU: I have given you my answer Council.

ADV ADILA HASSIM: No actually you have not given an answer because the answer, the question calls for a yes or a no. So my question is do you accept the findings of the report of the Health Ombud?

MS MAHLANGU: In my statement, I am not sure which paragraph was that, I indicated that the loss of life is regrettable and I indicated also in my statement I am not sure exactly which paragraph that things did go wrong and maybe to answer the Justice's question to say why did I resign.

ARBITRATOR, JUSTICE MOSENEKE: You want to go there now?

MS MAHLANGU: It is not because I, there was no, I could have answered it before lunch but I thought it is important...

ARBITRATOR, JUSTICE MOSENEKE: We could do that...

ADV ADILA HASSIM: Well we are going to get...

ARBITRATOR, JUSTICE MOSENEKE: Later.

MS MAHLANGU: Okay.

15**ARBITRATOR, JUSTICE MOSENEKE:** For now, Council has questions and I would like her to continue with the cross-examination.

MS MAHLANGU: Okay. Alright.

ARBITRATOR, JUSTICE MOSENEKE: But keep the question in mind, is the big question that you have to come to at some time. But for now, let us try and make
20progress with the cross-examination.

ADV ADILA HASSIM: Justice we will get to that question very shortly. But could you please answer the question as to whether you accept the findings, whether you agree with the findings of the report?

MS MAHLANGU: I note the contents and the findings of the report and I think that suffices to say that and as person who initiated the process in the first instance and I think that is very important to indicate to this house, as I have demonstrated and in the annexure which demonstrate my conversation with Professor Malegaporie from the beginning when I first made the call to him until the very end when he finally submitted the report.

10 **ADV ADILA HASSIM:** We will get to the question of who initiated the investigation by the Ombud.

MS MAHLANGU: It is okay.

ADV ADILA HASSIM: Let me ask you this question – do you accept the findings that are made against you in the report?

15 **MS MAHLANGU:** My responsibility is defined by law. For instance, something is said in report that people were scared of me. And in terms of the Public Finance Management Act as I have stated before, before lunch or before the tea break, that the responsibilities of the executing authority which will be the politician in a particular department, I defined in government statutes whether it be the Public
20 Finance Management Act, Financial Related or the Public Service Regulations. To the extent that the legislation described my responsibility and those of the officials would have worked with me at the time, it is impossible or not appropriate for

anybody who could have protected themselves, him or herself, when so called instructions were given illegal by following the procedures to say to the Auditor General the MEC is forcing me to do this and I do not agree...

ADV ADILA HASSIM: Sorry Ms Mahlangu, that is not...

5**MS MAHLANGU**: ... the consequence.

ADV ADILA HASSIM: Sorry to interrupt, but and we can get there as well at the appropriate time but that is not the question I am asking. My question is do you agree that the Ombud made findings against you in his report?

MS MAHLANGU: Yes, he did make findings against me.

10**ADV ADILA HASSIM**: Do you agree with those findings or do you take issue?

MS MAHLANGU: I do not agree with his findings relating to me and my role because it was ja, I do not agree with his findings when it relates to me personally or in my capacity as the then MEC for Health.

ADV ADILA HASSIM: So you deny the correctness of his findings?

15**MS MAHLANGU**: Absolutely.

ADV ADILA HASSIM: Did you appeal the report?

MS MAHLANGU: No, I did not.

ADV ADILA HASSIM: Why not?

MS MAHLANGU: Because I just needed to, I thought my resignation was sufficient
20enough that I take responsibility and I am accountable which is what internationally

is done. When something goes wrong in a particular political environment, for an example, David Cameron in the United Kingdom initiates the Brexit referendum, something goes wrong according to what he was hoping the referendum will result and he decides to go and there is a plethora of examples that I can cite which really demonstrates that I was sorry enough to indicate that I could not justify to myself and to the public to remain the MEC for Health and then I decided to resign on my own volition, not being forced by anybody.

ADV ADILA HASSIM: Did you not publicly state before the report was released that you would subject yourself to accountability.

10 **MS MAHLANGU**: My resignation was subjecting myself to accountability and the fact that I am here today...

ADV ADILA HASSIM: Okay. [interjects]

MS MAHLANGU: ... by anybody demonstrate my willingness to answer...

ADV ADILA HASSIM: So you consider your resignation to be sufficient?

15 **MS MAHLANGU**: I did not say that.

ADV ADILA HASSIM: Did you state publicly before the Ombuds report was released that you would subject yourself to accountability?

MS MAHLANGU: That is why I am here before the arbitration and my understanding that...

20 **ADV ADILA HASSIM**: So your answer is yes?

MS MAHLANGU: The arbitration has been established as a result...

ADV ADILA HASSIM: Is your answer yes?

MS MAHLANGU: ...of the report that government has accepted.

ADV ADILA HASSIM: Is your answer then yes?

MS MAHLANGU: I have given you my answer Council.

5**ARBITRATOR, JUSTICE MOSENEKE**: We cannot have all of you haggle every
time you do not like an answer please. Remember we waited for long to have this
witness here so I asked you, I ask you to show patience in these proceedings. Your
Council is asking questions, let us have answers. You will not like all of the
answers, but frankly we cannot make progress as we haggle to every answer.
10Please.

ADV ADILA HASSIM: Ms Mahlangu, do you agree and I am not asking you
whether you agree with whether you have an objection to this, but do you agree that
the Ombud found that your conduct amounted to negligence?

MS MAHLANGU: The Public Finance Management Act regulates responsibilities of
15the executive and that of the administration and it will be incorrect of me to want to
take responsibility on issues that relates...

ADV ADILA HASSIM: I am just asking you a simple question.

MS MAHLANGU: ... to the administration process.

ADV ADILA HASSIM: Do you agree with me that the Ombud found your conduct
20to amount to negligence?

MS MAHLANGU: The responsibility of any executive counsel, senior counsel is determined by regulations and laws of South Africa.

ADV ADILA HASSIM: That is absolutely fine.

MS MAHLANGU: And on the basis of that I cannot take responsibility for things...

5**ADV ADILA HASSIM:** I am not asking you to take responsibility right now.

MS MAHLANGU: ... that are beyond my responsibility as a politician at the time.

ADV ADILA HASSIM: Ms Mahlangu, it would help if you answered the questions because what you are doing is you are evading answering the questions and that is just going to keep us here longer. So it is very, I am not asking you to implicate
10yourself in any way. All I am asking you to say is do you agree that a finding of the Ombud was that your conduct amounted to negligence?

MS MAHLANGU: My duties are defined by the Public Finance Management Act.

ARBITRATOR, JUSTICE MOSENEKE: Let us clear this up quickly former MEC and Council. Council do you want to put to the witness what the finding is?

15**ADV ADILA HASSIM:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: And then the next question would be does she agree with the finding. But the finding does not depend on her answer. I mean it is there in the report. Put here in front, whether she agrees with the finding.

ADV ADILA HASSIM: It is not, my question is not whether you agree with the
20finding, I will put it to you. It is simply the question which leads to a different question – but the question is whether you agree that this is in the report, that is

amounts to negligence. This is the finding by the Ombud and if you like you may refer to the report, it is at page 17 of his report.

ARBITRATOR, JUSTICE MOSENEKE: Ja, that is just my point, it is in the report so the witness does not have to say go yes or no, it is there. The real question is whether she agrees with the finding.

ADV ADILA HASSIM: The finding is as follows – the decision was irrational and totally against the fundamental principle of health care practice, that is to consciously remove a patient, let alone a frail and sickly patient, from an environment of stable professional care to an insecure environment of less quality healthcare or unpredictable and unprofessional healthcare. This decision was made despite and against professional and expert advice and warnings. This amounted to negligence. This finding the Ombud related to the conduct of Dr Manamela, Dr Selebano and yourself.

MS MAHLANGU: But it will be incorrect...

ARBITRATOR, JUSTICE MOSENEKE: MEC, former MEC just before you go there, just take it easy, apply your mind to the proposition so that we can make progress okay. A very specific question has been put to you. There is a finding about you, so just give us a response to that finding in particular. You may say I agree with it, I disagree with it and you may thereafter make an explanation. So that we can make progress okay. That is what the Ombud has found, it has been put to you by Council and you have to give us a precise answer on what is your

response to that finding against you in particular. The shorter the better, if I may offer that advice which you have not sought, but will help.

MS MAHLANGU: Thank you Justice Moseneke. Issues of, I do not agree with the Ombud when he has a finding against me that I was negligent. Reason being I am not an administrator or I was not an official. The same, it cannot be said that the same responsibilities that Dr Manamela had and that of the Head of Department can apply to me in terms of law. It is absolutely incorrect because the Public Finance Management Act and the Public Service Regulation legislation and many other regulations prescribe what is the role of an executive authority, what is the role of officials, particularly the role of the accounting officer. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Sure, thank you. Council?

ADV ADILA HASSIM: Do you agree that section 27 of the Constitution binds you as an MEC?

MS MAHLANGU: I am binded by the Constitution on many aspects that as a citizen of South Africa and I subject myself to any provision of the Constitution, but the Constitution does not say that if there is a finding about me today about negligence I should accept it as is because it will, that violate my rights as a citizen.

ARBITRATOR, JUSTICE MOSENEKE: An answer of yes would have sufficed, then you can explain further. We are all bound by the Constitution, stop. Yes is the answer. It does not implicate or incriminate anybody and then wait for the next question.

MS MAHLANGU: Okay, I am sorry Justice.

ARBITRATOR, JUSTICE MOSENEKE: No problem at all, you do not have to be sorry. I am just urging that we, look we are in a public hearing, publicly funded. We need to make progress, get to an outcome. So I am just a conductor.

MS MAHLANGU: Absolutely.

5**ARBITRATOR, JUSTICE MOSENEKE:** There will be questions and there will be answers. Questions ought to be short, answers ought to be short. So that we get to the core of the enquiry that arbitration wants to get at. Council?

ADV ADILA HASSIM: Thanks Justice. Ms Mahlangu, there will be a document in front of you that I just handed up and it is numbered LR127. Do you see it?

10**MS MAHLANGU:** 127.

ADV ADILA HASSIM: It is your resignation letter.

MS MAHLANGU: I do not have it with me. Oh okay. Oh I see that.

ADV ADILA HASSIM: And at paragraph 4 of your resignation letter you say whereas the Health Ombudsman has not found any culpability on my part for the
15unfortunate loss of lives by the patients, accepting that the de-institutionalisation of mental health patients is a sound and internationally recognised program, I want to reiterate my regret at the loss of lives associated with the transfer of patients from Life Esidimeni to the various NGO's and extend your condolences. The point is that the Health Ombud had found culpability on your part, isn't that so?

20**MS MAHLANGU:** But my statement clearly say that there has not been any culpability on my part.

ADV ADILA HASSIM: Yes, that paragraph that I read to you know from the Health Ombud's report says that it amounted to negligence and that it was irrational.

MS MAHLANGU: But I repeat again that I do not agree with that finding.

ADV ADILA HASSIM: Sorry, is that the reason why you say the Health Ombud has not found any culpability on your part?

MS MAHLANGU: I have answered Council.

ADV ADILA HASSIM: The importance of this statement is to understand what we would like to understand is what you take away from the Ombud report and the implications for you, particularly when it comes to accountability. But let us move on. In the next paragraph you say I take political accountability as the final authority in the Department and it is for that reason that you tender your resignation. What do you mean by political accountability?

MS MAHLANGU: Because I realised that things had gone horribly wrong under my leadership by having listened to all the advices being given to me by the officials. On the basis of that I thought politically let me take an account, a responsibility and resign and allow government to function and to restore the confidence that probably with this project would have led to people losing confidence in government.

ADV ADILA HASSIM: And you resigned the day before the report was released, is that right?

MS MAHLANGU: No, I resigned on the 1st of January, the 1st of February, I am sure you can see that the statement is issued on the 1st of February 2017.

ADV ADILA HASSIM: You resigned on the 1st?

MS MAHLANGU: Yes.

ADV ADILA HASSIM: Not on the 31st?

MS MAHLANGU: No.

5**ADV ADILA HASSIM**: The Premier in his statement said that you resigned on the 31st of January, is that incorrect?

MS MAHLANGU: I am sure you can go and get the letter of my resignation that I wrote to the Premier as well as to the legislator and you can, that is a, that information I am sure the Premier's office can make is available for you.

10**ADV ADILA HASSIM**: You are saying the letter was signed on the 1st of February?

MS MAHLANGU: My letter of resignation?

ADV ADILA HASSIM: Yes.

MS MAHLANGU: Yes, I signed it on the 1st of February.

ADV ADILA HASSIM: But did you agree with the Premier on the 31st of January
15that you would resign?

MS MAHLANGU: I offered to resign to the Premier by the way on the 10th of January. My brother died and subsequent to that we delayed all the action until I buried my brother to come back and deal with this issue.

ADV ADILA HASSIM: You offered to resign on the 10th of January?

20**MS MAHLANGU**: Yes.

ADV ADILA HASSIM: Why did you offer to resign then?

MS MAHLANGU: I have already explain that madam, Council.

ADV ADILA HASSIM: But that was before the Ombud's report was released.

MS MAHLANGU: But I was privy to the report.

5**ADV ADILA HASSIM**: So you offered to resign on the 10th of January?

MS MAHLANGU: Yes, but...

ADV ADILA HASSIM: And you did not meet with the Premier on the 31st of January.

MS MAHLANGU: I met with the Premier on the 10th of January, I met with the
10Premier on the 31st of January.

ADV ADILA HASSIM: And did you then tender your resignation on the 31st of January?

MS MAHLANGU: I tendered my resignation to the Premier on the 1st of January.

ADV ADILA HASSIM: On the 31st of January?

15**MS MAHLANGU**: On the 1st of January.

ARBITRATOR, JUSTICE MOSENEKE: 1st of February?

MS MAHLANGU: Oh no, 1st of February, sorry, excuse me, 1st of February 2017.

ADV ADILA HASSIM: And were you offered any payment or package in order to facilitate your resignation?

MS MAHLANGU: By who?

ADV ADILA HASSIM: By anybody in government. By the Premier?

MS MAHLANGU: But I am not sure whether that is standard practice in the first place, so I am not aware of any golden handshake if that is what you mean – I am not aware of any of that at all.

ADV ADILA HASSIM: You were not offered that?

MS MAHLANGU: No, I was not. And I am not sure why would I be offered any golden handshake in the first instance.

ADV ADILA HASSIM: Well we do not need to speculate. Your answer is you were not offered any golden handshake.

MS MAHLANGU: I was not.

ADV ADILA HASSIM: Or a sweetener in order to leave.

MS MAHLANGU: I was not. I offered to go.

ADV ADILA HASSIM: You took your last pay cheque and you left.

15 **MS MAHLANGU**: Yes, my last salary was on the 15th of January 2017.

ADV ADILA HASSIM: And then you sought to study abroad?

MS MAHLANGU: Yes.

ADV ADILA HASSIM: And it is government paying for your studies abroad?

MS MAHLANGU: Why would government pay for my studies?

ADV ADILA HASSIM: The answer is yes or no.

MS MAHLANGU: No, government is not responsible for payment for my studies.

ADV ADILA HASSIM: Are you paying for your studies abroad personally?

MS MAHLANGU: Yes, I am.

5**ADV ADILA HASSIM**: And you went to study abroad and in so doing you knew it would be difficult to reach you if you left the country, isn't that so?

MS MAHLANGU: That is absolutely incorrect Council because as I said in my statement when I left it was not a secret, probably if I knew you you would have known that I was going to leave but people who knew me or where my friends or my
10family and the leadership of the African National Congress in the province, including the Premier they knew that I had left and I sought permission because I hold an office in the African National Congress. So that was no secret that I, when I travel abroad to go and study.

ADV ADILA HASSIM: No, I am not saying it was a secret. Do you still hold an
15office with the African National Congress?

MS MAHLANGU: Yes, I do.

ADV ADILA HASSIM: And do you think that you have sufficiently accounted for the events that took place around the Life Esidimeni Termination Project?

MS MAHLANGU: I am not sure Council what do you mean by that because I see
20myself having agreed to come here to this arbitration process as part of respecting the process and what government is trying to do in finding closure and helping

families to find closure and that is what I am committed to do and I will continue to be committed to that until this matter has been fully finalised.

ADV ADILA HASSIM: We are, we do appreciate that you have now made yourself available to the proceedings. The proceedings have been delayed so that we could wait for you. Why did it take so long? Why could you not come earlier when you were requested to come earlier?

MS MAHLANGU: Council, when I did indicate in my statement that when I left South Africa beginning of August to commence with my studies I was not aware of any processes that was going to start in government. Nobody in government nor in the African National Congress said to me – this is what is going to happen on this day and that day. When I applied at the University, which I have already stated when I was presenting my statement that I applied and I was accepted and I paid for my fees and I looked for accommodation and I found that, and I made commitments to study for a X number of time in the United Kingdom. So at people who were close to me and those who are my friends and family, they knew my whereabouts and where I was. So there was no secret or any hidden agenda of me not being accessible. As I am saying, people who wanted to reach me they were always talking to me every single day.

ADV ADILA HASSIM: My question was why, when you were requested to be available for these proceedings last year you were not available and my question was why were you not available?

MS MAHLANGU: I am actually maybe through you Justice...

ARBITRATOR, JUSTICE MOSENEKE: The answer could be I was studying and I was in the United Kingdom and I could not come back, stop. [African language], just put the lead.

MS MAHLANGU: I am not Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** No Council [African language], just take it. I am here to protect you, you answer just shortly what is being said [African language]. I said to the witness in her home language that there is no point to boil and overboil. We are trying to get to the facts and the purpose is the one you have mentioned and [inaudible] that you mentioned it is try and get the truth to all these 10people about what happened. Let us just keep that in mind. You are not under fire, under attack. We want to know what happened so that we can tell the nation and family members what happened. So I ask you just to reduce your emotions please. Let us go Council.

MS MAHLANGU: Thank you Justice.

15**ARBITRATOR, JUSTICE MOSENEKE:** Okay mamie.

MS MAHLANGU: As I indicated earlier that I was in the United Kingdom for the purpose of my study and I commenced with my studies from the 5th of August and I have been continuing, I was continuing with my studies and that is why I was not available early on at the time. Actually there was nobody who made any formal 20request to me and when I kept on hearing...

ARBITRATOR, JUSTICE MOSENEKE: Just an adequate answer. Let the advocate ask you more if she want to know. You are not able to come. You have

said your reasons. That is enough and let there be more questions and we are going to make progress. Now you are going to get time to rest and listen to the question too, okay. Council?

ADV ADILA HASSIM: Thank you. Ms Mahlangu, you said that you were the 5person who initiated the investigation by the Ombud?

MS MAHLANGU: That is correct.

ADV ADILA HASSIM: And the Ombud says that it was a National Minister of Health that requested the investigation – are you saying that he was incorrect?

MS MAHLANGU: Sorry. Thank you Justice for your indulgence.

10**ARBITRATOR, JUSTICE MOSENEKE**: Yes madam.

MS MAHLANGU: I answered the question to the legislator on the 13th of February, of September, excuse my mistake, in September 2016. On the 14th of September I called the Professor Makgoba in the morning and I said to him, can you do the investigation for us? And then he said to me what happened and I said well thirty 15six people died. He asked me where did they die, I said in different...

ARBITRATOR, JUSTICE MOSENEKE: What is that?

MS MAHLANGU: Facilities.

ARBITRATOR, JUSTICE MOSENEKE: Okay, thank you.

MS MAHLANGU: And I said to him will you do the investigation, he said well I do 20not think it is necessary but ja, then we ended there. And then he...

ADV ADILA HASSIM: So just, it will be easier if we take it step by step. I put it to you that Professor Makgoba's version that is in his report is that the Minister requested the investigation. Are you saying that is not true, that in fact you initiated the investigation?

5 **MS MAHLANGU:** Yes, it is true that I initiated the investigation. And can you go...

ADV ADILA HASSIM: And in your statement...

MS MAHLANGU: Sorry.

ADV ADILA HASSIM: In your statement to us this morning at paragraph 53 of your statement, you say that you met with the Minister of Health, Doctor Matsweledi, on
10 the afternoon of 14 September – is that correct?

MS MAHLANGU: Yes, it is.

ADV ADILA HASSIM: And that you informed him that you had spoken to Professor Makgoba and that Professor Makgoba was not keen to investigate?

MS MAHLANGU: Absolutely correct.

15 **ADV ADILA HASSIM:** And then the Minister indicated that he would engage the Professor?

MS MAHLANGU: That is absolutely correct. May I, through you Council?

ARBITRATOR, JUSTICE MOSENEKE: Yes, you want to explain, yes you may. You have given the answer, and yes, you are permitted to explain.

MS MAHLANGU: On the 14th of September at 10:26 a.m. Professor Makgoba responded, this is on your annexures.

ADV ADILA HASSIM: Yes, I have it in front of me.

MS MAHLANGU: The Professor's response was read as follows – it is virtually unheard of to have thirty six deaths rapidly poisoning or an overdose of drugs could be the case. Toxicological analysis is crucial at this point. Thanks, we will wait to hear progress. [inaudible name]. Then I responded, I said...

ADV ADILA HASSIM: And what is your, what are we supposed to make of that? He said it is virtually unheard of to have thirty six deaths rapidly.

10**MS MAHLANGU:** It is because, sorry...

ADV ADILA HASSIM: I am just saying what are we supposed... You have read to us that SMS.

MS MAHLANGU: I had called him...

ADV ADILA HASSIM: And that he says poisoning or an overdose of drugs could
15be the cause.

MS MAHLANGU: I had called him earlier and I had said that also in the morning that I had called the Professor before and I ask him to do the investigation for us because of he is a Health Ombuds person. And in his response we had a very brief chat and in his response this is what he responded via an SMS and this is the
20contents of that.

ADV ADILA HASSIM: I see.

MS MAHLANGU: Of that response and further on, you will see, through you Justice...

ARBITRATOR, JUSTICE MOSENEKE: Yes certainly.

MS MAHLANGU: You will see where he says just remind the Minister to forward the letter of appointment. And then the conversation goes on and on and on, it is all in the text messages between me and the Professor.

ADV ADILA HASSIM: Yes, he says he is putting a team together to deal with this speedily. So he, and this is at 11:23 a.m.

MS MAHLANGU: That is on the 15th.

10 **ADV ADILA HASSIM:** So he was not, it does not indicate that he was not keen, and then that afternoon you spoke to the Minister, is that correct?

MS MAHLANGU: On the 14th yes. And then on the 15th then he said that he is putting a team together as you see the response from the 15th onwards.

ADV ADILA HASSIM: Yes, no, it appears that he was keen to get the team together to investigate. Wouldn't you say so?

MS MAHLANGU: I am saying it was after the Minister had spoken to him, because on the 14th in the afternoon I had spoken to the Minister when we had a meeting to discuss a different matter.

ADV ADILA HASSIM: You are saying this SMS was after he had spoken, after you had spoken to the Minister?

MS MAHLANGU: Yes.

ADV ADILA HASSIM: So why does it say 11:23, why does it say 10:26 a.m. on the 14th?

MS MAHLANGU: But the message that the Professor, that the next conversation with the Professor is on the 15th. It is not on 14th.

5**ADV ADILA HASSIM**: And you are saying that it took the Minister to persuade him?

MS MAHLANGU: Yes.

ADV ADILA HASSIM: Okay.

MS MAHLANGU: I believe so because I had requested him and at the time he was 10not keen or maybe he did not probably understand, or he did not appreciate fully of what was going on.

ADV ADILA HASSIM: What the importance was.

MS MAHLANGU: Ja.

ADV ADILA HASSIM: And you say that is what caused you to approach the 15Professor was the information that you had now received from the Department about thirty six deaths?

MS MAHLANGU: Yes, that is correct.

ADV ADILA HASSIM: And in fact there were more than thirty six deaths by 13 September, isn't that correct?

MS MAHLANGU: Now I believe that there were more than thirty six deaths, but at the time that was the number I was given officially from the Department when the question was raised to me.

ADV ADILA HASSIM: Do you know how many in fact had died by then?

5 **MS MAHLANGU:** By then I know it was thirty six, I did not know it was more than thirty six.

ADV ADILA HASSIM: No. Now do you know?

MS MAHLANGU: I heard it was more than one hundred and forty.

ADV ADILA HASSIM: No, by September 2016.

10 **MS MAHLANGU:** No, I did not know until, through you Justice, until I went to, I was engaging with Professor Makgoba through the different processes I was asking for this document and that document and we can see in the SMS's. Then he said to me do you know how many people have died and I said to him well at least the thirty six, he said there is more than thirty six people who died. Actually when you
15 answer the question of the legislator the numbers was already high. I said well there is nothing much I can do to change the numbers because what I am given is normally the procedure you get, you follow to get numbers and answer question to the legislator through the Department of...

ADV ADILA HASSIM: Right, and you say that it was the officials who provided you
20 with that information.

MS MAHLANGU: Absolutely.

ADV ADILA HASSIM: You relied on that.

MS MAHLANGU: Absolutely.

ADV ADILA HASSIM: And that was the information you gave to Parliament?

MS MAHLANGU: Yes, indeed.

5**ADV ADILA HASSIM**: Just for your information, it was eighty five deaths by that time, rather than thirty six. And you said that Dr Manamela provided you with those figures?

MS MAHLANGU: In my statement Council, you will see that I describe how the process of answering questions the [inaudible] happens, that information comes
10from the legislator through the Parliament lies an officer in the MEC's office and thereafter it is then sent to the respective officials who then source the information and bring it back to the Head of Department. He signed off the document and it comes back to me and I go to the legislature.

ADV ADILA HASSIM: Let me, let me ask you the question again, it relates to your
15evidence in chief. In your evidence in chief you said that Dr Manamela told you that these deaths were due to nature causes.

MS MAHLANGU: Yes, that is what I was told at the time.

ADV ADILA HASSIM: And did you have any doubt about that, did you have any reason to question whether the deaths were due to natural causes?

MS MAHLANGU: I did not because I am dealing with highly qualified people who have been working the Department, some of them for a long periods of time. It may not have been in Gauteng or maybe in the other provinces or in the private sector...

ARBITRATOR, JUSTICE MOSENEKE: You have answered the question – highly qualified people told you, stop.

MS MAHLANGU: Yes.

ARBITRATOR, JUSTICE MOSENEKE: That is enough. There might be other questions or explanations.

ADV ADILA HASSIM: Was it your view that these deaths were in the normal course for patients with these conditions, with these type of patients?

MS MAHLANGU: May you please repeat your question?

ADV ADILA HASSIM: Was it your view that for these type of patients, patients with psychiatric illnesses, mental healthcare users, that this was in the normal course? That that number was not unusual because of the type of patient that was involved?

15 **MS MAHLANGU**: Yes, it was said it was, it is usual to have those kinds of that, particularly looking at the period between the winter period, it will be May to July if I am not mistaken, even when we met with the Premier the Premier was also, when he asked what happened, we then had a meeting with him I think on the 15th in the afternoon and in that meeting it was indicated to the Premier that indeed mental
20 healthcare users they normally die in high numbers during this time of the year and if, I do not know whether you have got access to the media statement that the

Premier subsequently issued after the meeting he held with myself and the officials trying to explain...

ARBITRATOR, JUSTICE MOSENEKE: The [narrow?] question was did you believe that patients died of natural causes – the answer could be yes or no. And then the question will follow – that is how lawyers work. Why did you believe so? If there is no why, you move on. It is just going to save all of us time and ability to get to where we want to get to. So you believed these were deaths due to natural causes?

MS MAHLANGU: Yes Justice, I did.

10**ARBITRATOR, JUSTICE MOSENEKE:** The next question will be why. So we wait for it, it will come. Council?

ADV ADILA HASSIM: Thank you Justice. Is that why you referred us to statistics at Life Esidimeni in your evidence in chief?

MS MAHLANGU: Yes, because when we, ja.

15**ADV ADILA HASSIM:** And have you analysed that information? Have you analysed those statistics?

MS MAHLANGU: Yes. When we, okay.

ADV ADILA HASSIM: Your answer is yes?

MS MAHLANGU: Yes, we analysed those numbers yes.

20**ADV ADILA HASSIM:** And what were your key conclusions based on your analysis?

MS MAHLANGU: Based on the analysis given to me by the officials it indicated that the deaths were not unusual when you compare it with the same periods and the same numbers that were more or less happening at Life Esidimeni, particularly during that specific period of time of the year which will be winter. And as I said, that is why the same information was shared with the Premier on the 15th of September.

ADV ADILA HASSIM: So, okay, so your, so you, so it was an analysis conducted by department officials?

MS MAHLANGU: Yes.

10 **ADV ADILA HASSIM:** Who in the department?

MS MAHLANGU: Oh, who, I do not know exactly but I remember in the meeting we had with the Premier, there was a presentation, I think Head of Department was present, Doctor Manamela and the different other members of the mental healthcare team and those were brought from different hospitals.

15 **ADV ADILA HASSIM:** And do you have a copy of that analysis?

MS MAHLANGU: I do not have it Council, that is why I kept on saying that there are document, particularly that presentation we made to the Premier on that day, I do not have because it contains all of this information.

ADV ADILA HASSIM: And again you accepted that information that was provided
20 to you?

MS MAHLANGU: Yes, I did.

ADV ADILA HASSIM: As being correct?

MS MAHLANGU: Authentic, yes.

ADV ADILA HASSIM: And so you did not have any reason to have concern by the number of deaths, the thirty six, leaving aside for the moment that it was eighty five in reality, but the thirty six was what you knew, you were not concerned.

MS MAHLANGU: We, remember Council we had already spoken to the Minister and the process was unfolding of appointing of getting the Ombud to start the process of investigation. That was on the 15th of September.

ADV ADILA HASSIM: And that is because you were concerned about the number of deaths?

MS MAHLANGU: Yes, it bothered me that so many people at that particular Precious Angel because eighteen of people, eighteen of the numbers out of the thirty six would have died at Precious Angel.

ADV ADILA HASSIM: And you, and that is why you say you initiated the Ombud's investigation. I would like you to have a look at an analysis that has been done by the Ombud on the death rate and that is in LR57.

MS MAHLANGU: Pardon?

ADV ADILA HASSIM: LR57.

MS MAHLANGU: Is it in the Ombud's report?

ADV ADILA HASSIM: There should be an exhibit bundle.

ARBITRATOR, JUSTICE MOSENEKE: [inaudible], you have to give back to me.

Thank you.

MS MAHLANGU: Yes, so I have got it.

ADV ADILA HASSIM: And it is LR57. You have it, LR57?

5**MS MAHLANGU:** Yes I do Council.

ADV ADILA HASSIM: Okay. So if you could have a look at page 3 you will see a section that is headed “Summary of Statistical Analysis”. Do you see that?

MS MAHLANGU: Yes, yes.

ADV ADILA HASSIM: And then paragraph a it is stated the death rate is eight
10times higher than the general population. Do you...

MS MAHLANGU: Yeah, I see that.

ADV ADILA HASSIM: Excuse me?

MS MAHLANGU: I see.

ADV ADILA HASSIM: You see it?

15**MS MAHLANGU:** Ja.

ADV ADILA HASSIM: You would agree that that is quite startling?

MS MAHLANGU: Yes, it is stated in the report.

ADV ADILA HASSIM: I am just saying – you received information that this was not unusual.

MS MAHLANGU: Yes.

ADV ADILA HASSIM: For this type of patient. I am providing you with counter-evidence by Professor Makgoba that in fact it was unusual, in fact so unusual that it was eight times higher than the general population. You would agree that that is significant?

MS MAHLANGU: Yes, it is significant.

ADV ADILA HASSIM: And if you look at paragraph c, the risk factors for death, and he stipulates what the risk factors were and it is being transferred to an NGO as opposed to being transferred to a hospital. Then he says age was another risk factor, that is being older as opposed to being younger. And being female as opposed to being male. So, would you agree from that that the death rate was due to the way in which patients were moved?

MS MAHLANGU: I do not know, it is in the report Council. So...

ADV ADILA HASSIM: Am I just asking – do you agree that there is a correlation, there is causation between the way in which people were moved and the death?

MS MAHLANGU: Probably there is from what the, it is stated there in this, but I am...

ADV ADILA HASSIM: And there is also a link between the places to which the patients were sent and the deaths? You agree?

MS MAHLANGU: I do not know. I think there is stated in the report so I think it suffices to say that it explains the, what happened and ja.

ADV ADILA HASSIM: It is important for us and in the process of accountability and your role and your position in particular that we clarify some of this. So you have said to us that you had information that this was not unusual. What I am showing you is that in fact it was unusual. And so, I am asking whether you accept that there is a link between the manner in which patients were transferred and the places to which they were transferred and their deaths?

MS MAHLANGU: I think the Professor Council has made that link and that conclusion in relation to this.

ADV ADILA HASSIM: Yes.

10**MS MAHLANGU:** So I do not think I will be competent to answer because I did not, I was not exposed to the greatest of details of the data and I am aware that he is also worked with Stats SA when he, or can I, may I elaborate?

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MS MAHLANGU: When I met with him in one of the occasions he asked me for 15that we must submit Identity Numbers and other details relating to the patients who have died. That was also as part of assisting the process at the Stats SA and the work that he was doing. So I would not be privy really to that greatest of detail, at the models and what exactly the samples were...

ADV ADILA HASSIM: I am not asking about the models.

20**MS MAHLANGU:** ...that Stats SA would have looked into.

ADV ADILA HASSIM: I am not asking about the models. I am asking whether you accept that the death that occurred, occurred because of the manner in which patients were transferred and the places to which they were transferred?

MS MAHLANGU: To a large extent yes I think that is appropriate ja.

5**ADV ADILA HASSIM**: Thank you. And then...

ARBITRATOR, JUSTICE MOSENEKE: What is appropriate? Let us just get it clearly on record.

MS MAHLANGU: What Council is raising that probably there could be a link between the move and the...

10**ARBITRATOR, JUSTICE MOSENEKE**: What was put to you are the findings of the Ombud who says to you that there is a connection between the extent and manner of death connected with the way patients were moved and you had no means to deny that – can you?

MS MAHLANGU: I have no means to deny it Council, and...

15**ARBITRATOR, JUSTICE MOSENEKE**: And the second part would be do you accept the findings? Let us just get clear on record what you mean.

MS MAHLANGU: Yes, I accept them.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Council?

ADV ADILA HASSIM: Thank you. At page 4 of that same document, if you look at 20point 6, I mean look the first few paragraphs talk about your earlier contention that it was winter and there are more deaths in winter. The Professor disposes of that

reasoning, but the key point is in point 6 that the pattern and peak of death was 12.8 deaths per month at Life Esidimeni during those months; June, July, August; in 2014 and 2015 and that it increased to 22 deaths per month at the facilities, at the NGO's, after the move that is, following the transfer. You accept that finding?

5 **MS MAHLANGU:** Yes, it is in the report. I think...

ADV ADILA HASSIM: The point is simply and it again is reflect in the graph on the next page, that the death rate at the NGO's was far higher than the death rate at Life Esidimeni. Do you see that?

MS MAHLANGU: Ja, I can see that.

10 **ADV ADILA HASSIM:** So, the reason that it is because it was a particular type of patient does not hold true isn't that so?

MS MAHLANGU: Well, I cannot... I am not a professional in healthcare so I will not be able to say that is true or not because I would be ja.

ADV ADILA HASSIM: But do you accept the findings of the Ombud that we have
15 just looked at, this statistical analysis? Then what you said earlier that it is common for this type, or it is usual rather for this type of patient – you agree now that this was unusual even for this type of patient? This death rate.

MS MAHLANGU: From the information that the Ombus has and from what is
20 concluded, yes, this is a fact as compared to what I was told and what the Premier was told in the meeting we held with them, by the professionals concerned.

ADV ADILA HASSIM: And the information that was provided to you by your officials, was there any other information that you had, other than information that was provided to you by officials, was there any other information you had about what was happening at the NGO's?

5**MS MAHLANGU**: Like?

ADV ADILA HASSIM: When you reported to the legislature by the 13th of September, we are talking about the thirty six deaths that 13 September, that is what led you to initiate the investigation with the Ombud. You say you relied on the information that was given to you by officials, correct?

10**MS MAHLANGU**: Yes. Yes, that is absolutely correct.

ADV ADILA HASSIM: I am asking you whether you received information from any other sources, other than your officials at that, by that time?

MS MAHLANGU: Not at all.

ADV ADILA HASSIM: Did you receive any reports about problems at the NGO's?

15**MS MAHLANGU**: Once again, through you Justice, the problems at the NGO's are the ones that I had stated in my statements, the lack of food, non-payment to NGO's which resulted in lack of food and some of the problems are identified. Before then I was not aware of any other issues.

ADV ADILA HASSIM: So that information you were aware of by the time you
20reported to the legislature on 13 September?

MS MAHLANGU: Yes Council.

ADV ADILA HASSIM: And were you aware of reports of, did you receive any reports of bodies lying at funeral undertakers?

MS MAHLANGU: No, I did not. I was not aware at the time that was the case.

ADV ADILA HASSIM: And did you answer the legislature fully and were you candid when you responded to the questions on the 13th of September?

MS MAHLANGU: When I answered the questions it was on the basis of the information that I had at my disposal and to that extent I think I answered to the best of my ability.

ADV ADILA HASSIM: Did you withhold any information from the provincial legislature?

MS MAHLANGU: No, I did not.

ADV ADILA HASSIM: Can you explain then why you said the following in your interview with the Ombud. You said the following – every day I have to talk on ice or like on eggs to try to manage what you say to the legislature, what you do not say to legislature and what to, because that information is then used and obtained against you or turned against government and the province. Why did you say that?

MS MAHLANGU: The reason I said that and it is something that I said in a couple of meetings in government, that the reliability of information that you get from the Department had always bothered me, be it questions on the list of patients waiting to do an operation in this and that like the orthopaedic patients, hip replacements, joint whatever. And many many other things, so it was on the basis of that, that

whatever information you receiving you have got to be, you try your utmost best to make sure that information comes from a reliable source which is the Head of Department and on the basis of that I have trust that that information is authentic then I can go ahead and present it.

5 **ADV ADILA HASSIM**: So you are saying that you careful because you do not trust the information you get from your officials?

MS MAHLANGU: Yes, I began not trusting the information that I was getting from officials.

ADV ADILA HASSIM: So...

10 **MS MAHLANGU**: After that effect.

ADV ADILA HASSIM: Well this was in relation to your response to the legislature in September.

MS MAHLANGU: I am not sure was exactly for that question. I think I thought we were talking in general terms at the time I was having any, I went to the Ombuds
15 hearing.

ADV ADILA HASSIM: So why do you say that you have to be careful because it will be used against you, the information against you or against the government?

MS MAHLANGU: Against, I do not know. I do not remember saying against me as the person. I think what I would refer to normally is that whatever information you
20 use, sometimes is used as a political football and information that was intended for good purpose it ends up being twisted and turned in this and that direction to

achieve a political objective. It was not really a malicious intention of one kind or the other.

ADV ADILA HASSIM: You agree that the Constitutional obligation on you as a member of the provincial legislature as the MEC is to provide full information to the provincial legislature?

MS MAHLANGU: I never misled the legislature on any information. Whatever I present was truthful information I had and I was given by the Department and I take, I took the oath of my office very seriously.

ARBITRATOR, JUSTICE MOSENEKE: That allegation as not been made yet. The question was do you agree you have a duty to report faithfully to the legislature?

MS MAHLANGU: Yes Justice, I do.

ARBITRATOR, JUSTICE MOSENEKE: I am sure that is a yes. Now the next question, there might be an accusation that you did not, then you can deal with it, but for now you have the duty MEC, you must report the legislature. Okay. Council?

ADV ADILA HASSIM: And do you agree that it is your duty to, sorry that it is the legislature's duty to hold you to account for the exercise of your functions?

MS MAHLANGU: Yes, I do. Absolutely.

ADV ADILA HASSIM: And that in order to hold you and your department to account, that information is necessary?

MS MAHLANGU: Yes, I agree. May I just elaborate a small point?

ARBITRATOR, JUSTICE MOSENEKE: Yes, certainly.

MS MAHLANGU: Ever since I was an MEC or every different portfolio in Gauteng, I respected the legislature to the last day. Every committee, whether it is public accounts or committee directly where I am accountable to, I presented to the legislature, no official reported [inaudible] because I took my responsibility as accounting to the legislature very seriously. The departmental official will present to the legislature only when I was not available for one reason or the other, but at all material times I took the legislature very seriously and I accounted fully at every given, any given point in time.

ADV ADILA HASSIM: Including in your reports on Life Esidimeni?

MS MAHLANGU: On everything, as I am saying, in the past twelve years.

ADV ADILA HASSIM: You never withheld any information?

MS MAHLANGU: I do not believe so, unless I was not, information was withheld from me.

ADV ADILA HASSIM: Can you have a look at file 3? Page 1034.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Would you repeat the page again Council?

ADV ADILA HASSIM: Sorry, page 1034 Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV ADILA HASSIM: Have you found it Ms Mahlangu?

MS MAHLANGU: Which page again?

ADV ADILA HASSIM: Page 1034.

MS MAHLANGU: 1034. Yes, I found it.

5**ADV ADILA HASSIM**: And do you see that is an e-mail from section 27 to you dated the 1st of September?

MS MAHLANGU: Ja, I see there the page.

ADV ADILA HASSIM: And it says there is a letter attached for your urgent attention concerning Precious Angels Homes? And you received it because you 10say on the 1st of September – Thank you, Sasha will revert to you urgently.

MS MAHLANGU: Yes, I remember that.

ADV ADILA HASSIM: But you never responded. Why is that?

MS MAHLANGU: I responded by asking the Head of Department to look at the issues that are being raised and to also go to the NGO and look at the concerns 15that are being raised. And I am not sure exactly of the date when I went to Precious Angel.

ADV ADILA HASSIM: But you did not respond to section 27. You did not revert to section 27 as you said you would, why is that?

MS MAHLANGU: Council, the way I used to work – reverting might not necessarily 20mean that I will answer via the e-mail, I will ask probably the Head of Department or

someone else to say can you please follow through on this matter which has been raised by me. So exactly...

ADV ADILA HASSIM: So when you said we will revert you did not actually mean you will revert...

5**MS MAHLANGU**: Personally...

ADV ADILA HASSIM: ...with a response?

MS MAHLANGU: Via somebody else or by getting an action done.

ADV ADILA HASSIM: So you did not respond? You did not get back...

MS MAHLANGU: [inaudible]

10**ADV ADILA HASSIM**: ...the author of this letter?

MS MAHLANGU: I cannot remember exactly the details of that unless I have to...

ADV ADILA HASSIM: I will take you to the letter. It is exhibit LR130, it is one of those that have just been handed up. Justice, the letter was in the record but a few pages were missing hence the need for LR130. Do you have it Ms Mahlangu?

15**MS MAHLANGU**: Yes, I do have it.

ADV ADILA HASSIM: Do you need time to look it over?

MS MAHLANGU: Yes.

ADV ADILA HASSIM: Do you recall this letter?

MS MAHLANGU: Can I please read it if possible?

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV ADILA HASSIM: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Yes, while you read it I am going to adjourn for ten minutes for you to read and by the time you have read it and the cross-examination will continue. Shall we adjourn?

10

SESSION 4

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. Ms. Mahlangu, you are under your previous oath to tell the truth. Counsel.

ADV. ADILA HASSIM: Thank you Justice. Have you had the opportunity to read through the Letter?

MS. MAHLANGU: Yes, I have gone through it Counsel.

ADV. ADILA HASSIM: And you see it is a letter from the 1st of September 2016 from Section 27 and they say they write to you on behalf of SADAG, the South African Depression and Anxiety Group, The South African Federation for Mental Health and The South African Society for Psychiatrists. And they record a concern and that is in relation to the death of Virginia Makhapela. So, for the purposes of context, I need to go through the letter with you. Your attention was drawn to the fact that Ms. Makhapela, sorry, that the sister of Makhapela was informed that Ms. Makhapela would be moved to Cullinan Care Centre. Do you see that?

15 **MS. MAHLANGU:** Yes, I do.

ADV. ADILA HASSIM: But then in fact, she hadn't been moved to Cullinan Care Centre that is the hospital. She was moved to ANCA the NGO. Do you see that?

MS. MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: And then she was moved again from ANCA TO Precious Angel, do you see that?

20

MS. MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: And she dies on 15 August 2016 at Precious Angels. So, the 1st concern that was brought to you through this letter is the circumstances regarding the cause of death of Ms. Virginia Makhapela. Do you agree?

5**ARBITRATOR JUSTICE MOSENEKE:** You can't struggle about that, it's in the letter.

MS. MAHLANGU: I am not struggling Justice, I am trying to understand the question exactly.

ADV. ADILA HASSIM: Do you agree that the 1st aspect of the letter is relaying
10concerns to you about the death of Virginia Makhapela and the circumstances that lead to her death at Precious Angels?

MS. MAHLANGU: Yes.

ADV. ADILA HASSIM: And the 2nd concern in paragraph 7 of the letter is that there were 6 other bodies from Precious Angels in the funeral home where Ms.
15Makhapela's body was. Do you see that?

MS. MAHLANGU: Yes, I see that.

ADV. ADILA HASSIM: And the letter then expresses concern about the number of bodies at this funeral home. And then in paragraph 11, the request to you is an urgent indication from you as to when you are available to meet to discuss how to
20take these matters forward. The matters that had been raised earlier on in the letter. Why did you not then revert to indicate your availability to meet immediately? You

previously told us that you had given your cell phone number to the public. So you are accessible, isn't that so?

MS. MAHLANGU: Yes, indeed.

ADV. ADILA HASSIM: So, why did you not? This is quite a serious letter, isn't that so?

MS. MAHLANGU: It is Counsel, if I may Justice. I find it, I am not sure how finally this letter, other than responding to Sasha at the time, who did I ask to look at this letter and its contents so that we can get the facts about it. And I am also not sure my visit to Precious Angel was triggered by this letter or not. I am trying to remember, please bear with me, I have to try and rely on my memory and I am assuming -

ARBITRATOR JUSTICE MOSENEKE: Why did you go to Precious Angel, do you remember?

MS. MAHLANGU: I really can't remember because I don't have access to my diary at the time.

ADV. ADILA HASSIM: Okay, but you were aware of this in September and you did not revert to section 27, correct?

MS. MAHLANGU: Counsel, I am not sure exactly what action I took.

ADV. ADILA HASSIM: But you yourself did not go back to Section 27 to report back to what steps you have taken?

MS. MAHLANGU: Normally I would not go back to an organization if there are issues and ask an official relevant to take the matter forward. But in this instance, I can't remember exactly how I asked the matter to be dealt with, by who. And again, I don't know what informed my visit to Precious Angel. I just really have to refresh my memory.

ADV. ADILA HASSIM: Do you know if any of your officials got back to Section 27 on this?

MS. MAHLANGU: I am not aware, I am not sure?

ADV. ADILA HASSIM: Did you follow up with any of your officials to ask whether they had reverted to Section 27?

MS. MAHLANGU: At this moment Counsel, I am not sure how this letter – I can try and refresh my mind overnight and come back tomorrow. But at this moment I cannot give you any decent answer.

ADV. ADILA HASSIM: That answer suffices. You knew on the 1st of September about these dire circumstance derived in this letter. So, let's look at how you answer the question to the legislature. In file 3, page 1078. It is the same file that you have open at page 1078. At the bottom of the page is the parliamentary question that was put to you and there were 4 questions, 5 questions I beg your pardon. And in summary the questions were in relation to the names of the NGOs where there have been complaints about shortage of food, poor living conditions and what action has been taken to rectify this. The names of the NGOs where there have been complaints about poor medical care and what's being done about it, how many

patients have been transferred elsewhere from the 1st NGO they were placed with, how many patients have died and placed with the NGOs and finally whether you will apologize for the poor manner in which transfers to NGOs were done. You have already told us that you fully understand your constitutional obligations as the MEC and a member of the provincial legislature. Your answer to the question at paragraph 3 on the next page 1079, can you read that paragraph out loud. The paragraph starting answering your question specifically.

MS. MAHLANGU: Should I read it for the record?

ADV. ADILA HASSIM: Yes.

10**MS. MAHLANGU:** Thank you very much Madam Speaker -

ADV. ADILA HASSIM: Sorry, the paragraph beginning just answering your question specifically.

MS. MAHLANGU: Out of all the 122 NGOs that have been providing healthcare to mental health to patients throughout the years and only 8 new NGOs that were we are talking about, we only received one complaint from an NGO that was not registered properly operating at the Cullinan Rehab Centre and that the NGO has finally been dismissed. They went to court and everything and everywhere else and we have concluded our work on them.

ADV. ADILA HASSIM: What NGO was that you were referring to?

20**MS. MAHLANGU:** I think it was Siyabadinga or something like that.

ADV. ADILA HASSIM: So, why did you say that you only received one complaint, why did you not refer to the complaint about Precious Angels?

MS. MAHLANGU: But the question that I answered to the legislature was referring to the specific things that I was responding to.

5**ADV. ADILA HASSIM:** And the question was about complaints in relation to NGOs and you say you only received a complaint in relation to one NGO. But that wasn't true at the time was it?

MS. MAHLANGU: I am not sure, I am probably referring to the Section 27 email.

ADV. ADILA HASSIM: Yes, the letter that you have just read. The long letter
10about circumstances of the death of Ms. Makhapela.

MS. MAHLANGU: But, what I am saying in this answer, the question given to me saying the official response that was relating to the concerns of food and all of that was the NGO at the time I am referring to here, and it is on the basis of that, that I gave the answer to the legislature.

15**ADV. ADILA HASSIM:** So, you gave an answer to that question even though you had other information about the circumstances of NGOs and deaths. You did not provide that information to the legislature.

MS. MAHLANGU: But on the 13th of September that is when I answered the question relating to deaths to the legislature.

ADV. ADILA HASSIM: Yes, but you had a complaint in relation to Precious Angels and in relation to bodies lying in a funeral home. Did you provide that information to the legislature in your response?

MS. MAHLANGU: On the 13th of September, I answered the question to the legislature. It was pertaining to the number of deaths that was brought to my attention and that is the number that I answered. And to the fact that the numbers was given were not accurate.

ARBITRATOR JUSTICE MOSENEKE: You are talking to Counsel for cross purposes. The question is quite simple actually. You were asked, which complaints did you receive about NGOs and then you referred to the one in Cullinan. So, Counsel says to you no. But by then you received a letter and we gave you an opportunity to read. So, you had at least received a complaint about Precious Angels and about bodies lying in the morgue in Atteridgeville. So, Counsel says but why didn't you tell that to the legislature?

MS. MAHLANGU: I do not think Justice that I was dishonest in my answer to the legislature to the best of my ability, I answered the question to the legislature which was appropriate at the time and to the information given to me.

ARBITRATOR JUSTICE MOSENEKE: It's not complicated, you are written a letter, you receive it, it was shown to you, you acknowledge it and few days later, something like two weeks later, maybe longer, you go before the legislature and you answer that question in which you don't disclose that you know about the problems at Precious Angles. There is a question and you are invited to explain that.

MS. MAHLANGU: Justice, in my earlier presentation and I beg for indulgence. In my statement I indicated that whatever information I provided to the public via the questions of the legislature or through the media was on the basis of what I had known at the time. The issues raised in this letter, I did say I do not recollect – I 5recollect the email that I received as to how I got the matter to be dealt with, by who. It is something I cannot recollect at the moment. So, I would not go to the legislature and lie about information that I did not have or information private at the time. I thought it had been dealt with by the relevant officials that was asked to deal with the matter.

10**ADV. ADILA HASSIM:** So, HOD Manamela gave you the information that you put before the legislature, we know that.

MS. MAHLANGU: The HOD, via the HOD.

ADV. ADILA HASSIM: I am sorry, via the HOD. She gave you the information. And the question immediately comes and says but you have seen this letter 15yourself, why didn't you – when you were told only Cullinan – why didn't you say no, also Precious Angels, there are problems. You get the point that is where Counsel is going to.

MS. MAHLANGU: Yes Justice, I get the point but I am trying to indicate as I said earlier, I don't seem to remember very well who did I ask to deal with the Precious 20Angel letter by Section 27 and I beg for indulge that if I am able to call the department of health to try and ask for some of this information so that I will be able

to get – to remember the things. Probably tomorrow if I am able to get the information I will be able to answer.

ADV. ADILA HASSIM: Ms. Mahlangu that is not the question that I am putting to you. You were asked to in the legislature, you were asked what complaints you received. By this time you received a complaint about Precious Angels and a complaint about bodies lying in a funeral home. Why, but you did not include that in your response to the legislature. Isn't that so? You didn't include it in your response to the legislature.

MS. MAHLANGU: Again, I want to repeat Counsel, I am not sure how I asked the letter to be dealt with, by who, at the time the letter was received. I beg for your indulgence to try and – (interjects)

ADV. ADILA HASSIM: But that is not the question. We are not going to get anywhere if I ask you about A and you answer about B. You were asked what complaints you received. You referred to an NGO in Cullinan. You withheld information about Precious Angels.

MS. MAHLANGU: And why would I withhold information?

ADV. ADILA HASSIM: That is not for me to answer. But the fact is you did because by then you knew about the letter.

MS. MAHLANGU: Again, through you Justice, may I request to engage with the Department of Health through the Premiere's office and to get me to get the relevant information.

ARBITRATOR JUSTICE MOSENEKE: Yes, you are asking to defer your answer to tomorrow, the next day. Counsel, you might want to -

MS. MAHLANGU: Yes.

ADV. ADILA HASSIM: Sorry Justice, the answer, whatever the witness wishes to defer is not actually an answer to the question that I asked. The answer is that information was not provided in this response.

ARBITRATOR JUSTICE MOSENEKE: Well, I understand the witness to be saying, I seem to have given, I may have given this task to somebody to respond to the Section 27 letter. I don't remember who and how they dealt with it. But when I answered the questions, it may have still been within the department. That is what I understand her to say and she is entitled to go back and look. And you can have the question raised again tomorrow.

ADV. ADILA HASSIM: Yes, the witness may do so. But the question – sorry justice – but the question wasn't about what was done with the complaint. The question that was put to the former MEC in parliament is what complaints had been received and isn't it so Ms. Mahlangu that you did not report the complaint regarding Precious Angels.

MS. MAHLANGU: Again, may I please ask Justice through you that I may be given permission to go and look at this information and that I need to look for because I am no longer with the department of health and this occurrences were in 2016 and I really need to refresh my mind

ARBITRATOR JUSTICE MOSENEKE: Sure, I am inclined to grant the indulgence. I think you must go and look. You are going to be back here on Wednesday and Thursday and Counsel may proceed with the line of questioning again.

5 **ADV. ADILA HASSIM:** Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: But you can come back and say I gave it to Dr. Manamela, I gave it to whoever else to do what and they did what and you are at liberty to pursue it and press on her. But she says she wants to go and look and see how the process, the Section 27 letter. And it's not unreasonable to do that.

10 **ADV. ADILA HASSIM:** No, but I still think that we are at cross-purposes but we will return to it when we get more information from the witness. One of the questions that was also put to you during this hearing was how many patients had been transferred elsewhere from the 1st NGO that they were placed in to another NGO. Why did you not refer to again in your response this letter that informed you that Ms. 15 Makhapela had been transferred from one NGO to another?

MS. MAHLANGU: Counsel, my responsibilities as an executing authority are not operational. For instance, and I beg your indulgence Justice. I will not know of all the – of more than 1000s of patients that are seen in the Gauteng facilities, when the patient is moved from place XY. And I also did say in my statement at the 20 beginning of the hearings that I was surprised when I went to Cullinan on the 1st of July that I remember, when I was at Precious Angel and I found some patients whom I had seen and I recognize at Cullinan and I found them in Precious Angel.

And I got an explanation but I just didn't understand why people were being moved like that. So, it is virtually impossible for me to have known each and every move for each and every patient that was being moved from X, Y and Z when competent qualified officials were involved in the transfer.

5 **ARBITRATOR JUSTICE MOSENEKE:** But you see the cutting end of Counsel's question is you had certain information in this letter and on a subsequent day you go and report to the legislature but you don't include some of the information was in a letter whose receipt you acknowledged. And Counsel is entitled to tax you on that and say but why didn't you tell the legislature about this things. It is really where we
10 are. It is less about placement of patients. It is about candour in reporting, honesty and accuracy in reporting to parliament. It is really where she is.

MS. MAHLANGU: To the best of my abilities Justice, I reported and accounted to the legislature as honest as I could with the information given at my disposal.

ADV. ADILA HASSIM: But not all the information at your disposal. Is it your
15 understanding of your constitutional obligation that you wait for a question from parliament in order to provide information or is it that you of your own initiative must report to parliament regularly. Which of the two?

MS. MAHLANGU: Members of the executive whether national or provincial report to the legislature following the prescripts of the Public Finance Management Act.
20 There are quarterly reports, there are monthly or bi-weekly questions to the legislature and there are different forms of reporting. It depends on what report or with quarterly report which is non-financial or quarterly report which is financial and

there is certain information that is reported to the legislature on a quarterly basis and information is reported to the treasury which gets consolidated and gets taken to the legislature on a quarterly basis.

ARBITRATOR JUSTICE MOSENEKE: Well, the question is are you allowed on your own to report to the legislature outside of that quarterly cycle?

MS. MAHLANGU: Yes, you can.

ADV. ADILA HASSIM: And did you at any point report to the legislature about the information regarding Precious Angels and about the bodies lying at the funeral home?

10 **MS. MAHLANGU:** I reported to the legislature via a question which was asked specifically on the mental health project we reported to the portfolio committee of health where we account.

ADV. ADILA HASSIM: What did you report? Did you report on the specific issue?

15 **MS. MAHLANGU:** I do not remember that on the specific issue because you report on policy issues and on general operations of the department in line with the budget what the legislature approved and given the department to go and allocate those resources to different programmes.

ADV. ADILA HASSIM: So, you didn't report on those specific issues?

20 **MS. MAHLANGU:** I reported to the legislature on the specific aspect that I was meant to report to the legislature for in line with the Public Finance Act, in line with the PUBLIC Service Act and in line with the Constitution.

ADV. ADILA HASSIM: My version and I put it to you that you did not comply with your constitutional obligation in Section 133 of the constitution which requires full and regular reports. You can respond to that if you wish.

MS. MAHLANGU: Through you Counsel, I don't remember missing any meeting on the legislature where I was meant to report on any item unless I was not available, incapacitated or sick, I am in hospital or I am not in the province for one reason or the other, carrying duties in other parts of the province or outside of the province or outside of the country.

ADV. ADILA HASSIM: Well then, let us look at another response to the legislature if this one wasn't good enough. Also in File 3 and it is page 1057, your response to the legislature question. Are you there?

MS. MAHLANGU: Yes, I am.

ADV. ADILA HASSIM: Well, let us just take the table that you provide. The question to you is how many beds will be available for the patients at each hospital or the premises that you have identified? And you set out your answer in the table below it. So, you say at Veskop hospital it is 416 beds identified, Sterkfontein 230 beds, Cullinan 400 and so on. Do you see that?

MS. MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: Now, can you have a look at File 1 page 173. Do you have it?

MS. MAHLANGU: Yes, I have.

ADV. ADILA HASSIM: So, it was now written to you, SADAG now writes to you on the 26th of November 2015 and in the response they deal with the answer to the legislature and they deal with that at page 173 and they say to you that they contacted those hospitals that you referred to and which you said the beds will be available and they tell you what the response was from the hospital. And the response from Veskop hospital where you said 416 beds would be available was the following, and this as it is reflected in the letter was a response from either the hospital manager or a CEO:

The hospital is currently full, has a waiting list and has mixed wards. There is one empty ward that can accommodate 80 people but requires significant renovation.

So, that contradicts your response to the legislature that there would be 416 beds available at Veskoppies. Do you see that?

MS. MAHLANGU: Yes, I am following.

ADV. ADILA HASSIM: And in Sterkfontein the same, the hospital is currently full, significant renovation required. Cullinan you said 148 beds, Cullinan says the facility has wards that are empty but are previously closed due to health and safety concerns, would require significant renovation. Tshwane Hospital, 60 beds, the response was psychiatric patients in this facility are in general wards and there is no dedicated psychiatric wards. Management has not been informed about the potential transfer of 60 patients. Transvaal Memorial Institute, the facility caters only for paediatrics. It is a referral and outpatient facility, the response is the building is derelict, has been abandoned. Old Germiston hospital, you identified 150 beds, the response is the hospital only provides outpatients services after all patients were

moved to New Germiston Hospital due to health and safety concerns, the building is not suitable for accommodating in-patients and so on. Do, the information that you provided to the legislature on the 18th of November that we just looked at on page 1057 was not correct. Isn't that so?

5 **MS. MAHLANGU:** Through you Justice, if you remember in my statement, I can't remember which paragraph -

ARBITRATOR JUSTICE MOSENEKE: Let us start off by answering the substantive question. The information provided to the legislature and the outcome of the research by SADAG shows that the facts presented before the legislature were
10 substantially untrue. You have to first say yes by looking at them and then you have to explain what your position is. But I would like your response to that. It is a very drastic difference. What you told parliament, sorry, the legislature and what was found to be true is vastly different. Do you agree with that?

MS. MAHLANGU: Justice, yes there is a difference but may I explain. Because
15 when I answer questions, I have already explained that the questions come through the departmental officials. This information that was given to me and I also explained earlier, the same question was asked that the Premier must answer in the legislature and I provided the same information because this same information was provided by the same officials to say this is what was supposed to happen.

20 **ARBITRATOR JUSTICE MOSENEKE:** Aren't you shocked that the officials have misled you to this degree, they promised beds that did not exist. It is quite a substantial thing.

MS. MAHLANGU: Yes, I am shocked and I am disappointed.

ARBITRATOR JUSTICE MOSENEKE: But Counsel is putting to you that here you told the legislature that look here we have the beds, we are going to manage this thing properly. And evidence comes right back that shows it is untrue. So, this is what I am concerned – Counsel is concerned. I want you to deal with that. How could your HOD and whoever else and Dr. Manamela give you such patently false facts which are then put before parliament?

MS. MAHLANGU: I honestly don't know how to answer the question Justice. But information as I said, we get it through the department to answer. And I also indicated that once we were told this information. Later on, probably if you see the answers, it will indicate that more NGOs took more mental healthcare users than the process users anticipated in the initial stages.

ARBITRATOR JUSTICE MOSENEKE: But you see, Counsel is taking you to something that is right at the heart of these deaths. People ask questions and you say it is fine, we have got hospitals, they are ready and these patients will be moved to them. Only 306 will go to NGOs. No, 1700 are sent in different directions and some die. That is where the question goes and I think you want to deal with that. Blatant untruths that are placed to the legislature.

MS. MAHLANGU: At the time of me presenting the answer to the legislature justice, I was lead to believe the information is correct. And in the absence of other information from the said officials or from an authorized body or whatever, I could not have answered questions differently from what I was given.

ARBITRATOR JUSTICE MOSENEKE: Why would (inaudible 0:34:13) and Manamela lie to you so openly and make you go to a public body and report so falsely.

MS. MAHLANGU: I really don't know Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADV. ADILA HASSIM: Ms. Mahlangu, I would just like to remind you of Section 133 of the Constitution which deals with the accountability and responsibility of the NMECs. And it says that the MEC of the province is accountable, you are not accountable collectively only. You are accountable individually. That is the word that 10is used in 133 Sub 2. Individually to the legislature for the exercise of your powers and the performance of your functions. And that you must provide the legislature with full and regular reports concerning matters under your control.

MS. MAHLANGU: Yes, I agree with that. I understand the constitution fully.

ADV. ADILA HASSIM: Did you take any steps to ensure that the information that 15you are receiving was accurate?

MS. MAHLANGU: I was never given any sense of doubt that the information given to me was incorrect.

ADV. ADILA HASSIM: So, we are now in November 2015, this response was November 2015, and do you receive the information from your department officials 20and you are saying they provided you with inaccurate information with wrong data?

MS. MAHLANGU: I made that point in my statement Counsel.

ADV. ADILA HASSIM: And on the basis of that you proceeded with the project?

MS. MAHLANGU: On the basis of the information and later on changed and they included the NGOs and again through that, I had no reason to believe things were going wrong or information was incorrect.

5**ADV. ADILA HASSIM:** When you received the letter from SADAG that pointed out, the letter was addressed to you. When you received that letter that pointed out that in fact all of this that you said in this response to the legislature is not true. You did not respond, isn't that so?

MS. MAHLANGU: Counsel, with your indulgence Justice. It is not possible for any
10politician to know every correspondence that comes through your office. It is virtually impossible. And correspondence addressed to me and the HOD and to Dr. Manamela, may not be necessarily get to me in my hands directly but may be sent to my office and the office may say well, this should be directed to official XYZ and Q. For the purposes of my answer to you Counsel is that since I do not have the
15actual – all the files and things that I may have a recall what would have happened, what would have changed and when and how. I am not able to say at this point I suspected they are lying or whatever. But I did not suspect anybody to be lying because of the work that the team had done. Not the mental health but HOD would have done in other departmental activities which were successful. I had no reason
20to doubt any information given to me.

ADV. ADILA HASSIM: Did you have any reason to doubt any information that was given to you by SADAG and the other patient advocacy groups.

MS. MAHLANGU: I am trying to explain to you through you Counsel.

ADV. ADILA HASSIM: Just answer the question please. Did you have any reason to doubt the information that was now given to you on the 26th of November 2015 by SADAG and others?

5**MS. MAHLANGU:** May I answer that question, I beg your indulgence again Justice. I am going to repeat myself because it is important. It does not necessarily mean that every correspondence that is addressed to me, I get to see it every given point in time.

ADV. ADILA HASSIM: Okay, so you did not receive this, is that what you are
10saying?

MS. MAHLANGU: I am not sure whether I saw the letter or not.

ADV. ADILA HASSIM: So, your 1st answer was that you had no reason to doubt the accuracy of the information from your officials.

MS. MAHLANGU: By the department, yes.

15**ADV. ADILA HASSIM:** And now you are saying but in any event you didn't receive this letter.

MS. MAHLANGU: I am not saying I didn't receive it. I am saying Counsel, I am not sure about whether the letter I dealt with it personally or it was sent to the office and the office directed to the respective individuals in keeping with the volumes of work
20and the things I would do in the department.

ADV. ADILA HASSIM: Did you have any suspicions of SADAG and SASSOP and the other patient advocacy groups?

MS. MAHLANGU: May you repeat the question?

ADV. ADILA HASSIM: Where you suspicious of them?

5**MS. MAHLANGU:** I am not sure, why would I be suspicious of them.

ADV. ADILA HASSIM: So, the answer is you were not?

MS. MAHLANGU: I wasn't.

ADV. ADILA HASSIM: Let's have a look at ELLA 129. It's one of the documents that have been provided to you. Do you see it, ELLA129? It's an email, can you turn
10over to the 2nd page please and at the bottom of the 2nd page there is an email from SADAG specifically from Ms. Cassie Chambers sending you this letter, 26 November 2015. Do you see that?

MS. MAHLANGU: Yes, I see that.

ADV. ADILA HASSIM: And what is your response, I would like you to read out
15your response?

MS. MAHLANGU: My response?

ADV. ADILA HASSIM: Yes, your response is contained above this and it was not a response to Ms. Chambers, it was inadvertently – we will get there in another point in time. It was a response to your own officials. What do you tell them?

MS. MAHLANGU: And I ask the HOD and Dr. Lebete to work, to get involved and assume the leadership of the department because I think at the time – (interjects)

ADV. ADILA HASSIM: Why don't you just read your response, your own words at the time?

5**MS. MAHLANGU:** Okay. Dear Drs and HOD Lebete and Manamela. Please get out 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. Regardless, please treat these as urgent.

ADV. ADILA HASSIM: So, why do you tell your officials or senior management,
10HOD, Dr. Lebete, Dr. Manamela, please get our legal team to get involved in this process. These NGOs are dishonest. So, in fact you had received the letter and instead of dealing with the contents of the letter you brought in your lawyers. Isn't that so?

MS. MAHLANGU: I refer the matter to the HOD and Dr. Lebete and Dr. Manamela
15who are duly competent to deal with the issues in their - (interjects)

ADV. ADILA HASSIM: No, they weren't, maybe in your view they weren't. Maybe you didn't think so because you don't refer to them to deal with the contents of the letter. You are giving instruction. You are saying get our legal team to get involved. These NGOs are dishonest.

20**MS. MAHLANGU:** My understanding through you Justice, my understanding of the instruction would read differently if I give instruction to a team. But I don't want

to say please can you do this, I am not instructing people. I am asking them to look at the issues.

ADV. ADILA HASSIM: You ask them to get the legal team involved, to respond to civil society groups operating within mental healthcare organizations with their own expertise, patient advocacy groups. You get your officials to respond to them by saying get our lawyers because they are dishonest. That is a violation of Section 195 of the constitution, isn't it?

MS. MAHLANGU: I am not sure, why would you come to that conclusion?

ADV. ADILA HASSIM: Do you know what Section 195 imposes on you?

10 **MS. MAHLANGU:** That I am accountable and I must report on all the matters relating to my responsibility.

ADV. ADILA HASSIM: And that people must be responded to.

MS. MAHLANGU: And I endeavour to respond to each and every person where I see and deem fit that a particular individual and a particular unit should get involved.
15 I suggested as such.

ADV. ADILA HASSIM: And do you think that you complied with your obligations on accountability, being responsive to people's needs, being responsive to the public in this email.

MS. MAHLANGU: At all material times Justice I did my best to do what I was
20 expected to do at any given time.

ARBITRATOR JUSTICE MOSENEKE: Yes, but why did you dub an entity like SADAG or NGOs of that kind to be dishonest. How did you say they were?

MS. MAHLANGU: Exactly. I can't remember what could have led to that Justice. But it is important to say that I was informed by the HOD of the processes and the meeting that they were having with the respective NGOs. I am sure the minutes are also available in the process and I do know that there was a request by Section 27 for SADAG to have a meeting with me and my PA suggested an alternative date. But they subsequently met with Dr. Manamela. Probably they couldn't wait to have a meeting with me on the 1st week of December.

10 **ARBITRATOR JUSTICE MOSENEKE:** But what Counsel is putting to you is why did you resort to saying get our lawyers, show leadership, these people we are dealing with are dishonest. Why did you take that attitude?

MS. MAHLANGU: At the top of my head Justice I can't remember what we were dealing with at the moment. But I can refresh my mind.

15 **ARBITRATOR JUSTICE MOSENEKE:** I am sure, it is late in the day, we are just about to adjourn. But Counsel will round up this part and we will adjourn. But you know this case has been characterized by a surprising disregard for professionals in the field of healthcare. Do you know why that was so? The termination project, there was a deep disregard and suspicion towards NGOs that worked in the field and that
20 sort to take views that might have been different from those of your department. And then you called them dishonest. There is something there that calls for an explanation surely. What was it, why did you think there was such irritants?

MS. MAHLANGU: I really have to refresh my mind Counsel on all the issue because this probably could have been a one-liner or a two-liner response. But I just need to refresh my mind on what exactly could have been the issue here and I do not mind coming back and answering the issue tomorrow.

5**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADV. ADILA HASSIM: Justice, just before we adjourn, if I may just wrap up on this email.

ARBITRATOR JUSTICE MOSENEKE: Yes, please do so. It's fine.

ADV. ADILA HASSIM: You copied your lawyer in this response, isn't that so?

10**MS. MAHLANGU:** Yes.

ADV. ADILA HASSIM: Yes. And instead of asking your officials, why is this information that has been provided different from the information that you gave me that I then gave to the legislature, you say to them; drive the process, these NGOs are dishonest. So, you didn't ask them why they gave you different information. Isn't
15that so?

MS. MAHLANGU: I am not following you, sorry I lost you.

ADV. ADILA HASSIM: Your response to the letter from SADAG was as we have just read. What you didn't do was ask your officials why is it that I am getting this information that is different from what you told me. Isn't that so? You did not ask
20them that.

MS. MAHLANGU: Counsel. I asked the officials of the Department of Health difficult question at any given time.

ADV. ADILA HASSIM: But not at this time.

MS. MAHLANGU: But when I am assured that things are okay, I believe that they are okay unless I am proven otherwise that things are not okay. For instance, Justice through you and I am going to refer to specific examples throughout the health system because I think it is important to do so. When someone brings to my attention that in health facility, there is no medication. I wouldn't sit and tweed my finger without acting. I would rather ask the relevant official and the relevant head of the institution for us to work together to make sure that they resolve that issue and give feedback. But I am not sure why -

ADV. ADILA HASSIM: But in this case you did not do that. I am not asking what you did in other spheres.

ARBITRATOR JUSTICE MOSENEKE: But you still remember where Counsel is.

15 **MS. MAHLANGU:** Yes, I remember. It is relating to the email

ARBITRATOR JUSTICE MOSENEKE: You go to the legislature, you give them information, SADAG comes back and says we have researched it and it is totally inaccurate and untrue. Your response to SADAG letter is you copy your lawyer and you say get the lawyers going. You. HOD and Manamela and who else show leadership and as for the NGOs that is dishonest. So, Counsel says to you, why did you go that route. Why don't you say to your officials, whilst the information that you

gave me for legislature accurate? Rather you go the other route, the NGOs are dishonest. And that is what Counsel is taxing you with to explain yourself.

MS. MAHLANGU: There could have been a reason for justification for that but at this moment Justice, I do not exactly recall what could have been the circumstances which had led me to believe so or through information given to me. And at the moment I did ask for indulgence to try and really refresh my memory because these are the activities of 2014 and 2016 and all of that and so I beg for your indulgence on that point.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

10 **ADV. ADILA HASSIM:** Justice, this is an appropriate time to adjourn.

ARBITRATOR JUSTICE MOSENEKE: I think it is. As you leave again, I leave you with very much the same question which is quite substantive in my view, which is, why did you assume to the political responsibility to resign? And this is an invitation when we resume again because I want to understand what was the content of the 15 accountability that you accepted? Why did you think things had gone so wrong that you ought to fall on your sword? I am not blaming you for it. It may be that I actually admire public officials who fall on their sword. So, I am not being critical at all. So, I would like you to help us understand what was the big driver to take, assume that political accountability and what are the things that worried you that you believe 20 went wrong. It is helpful that it comes from you and your lips. So, think about it and when we resume Counsel will be busy with you. But there is a bee in my bonnet. It is buzzing. So, you go and when we meet again – we are going to adjourn until

Wednesday. We are not seating tomorrow. So, that is going to give you time to do a number of things also. We are meeting again on Wednesday at 09:30 and we are going to continue until we finish the cross-examination. Wednesday, Thursday, Friday. So, that is the time which we adjourn and I am accordingly obliged to warn you to be here present Wednesday at 09:30 to continue with the leading of your evidence. Any other Counsel have any matter to raise before we adjourn? None. We are adjourned till Wednesday at 09:30.

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