

LIFE ESIDIMENI ARBITRATION

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PARKTOWN, JOHANNESBURG**

DATE: 12th OCTOBER 2017 DAY 4

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DAY 4 SESSION 1 – 3.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

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WITNESSES:

ME. MALEBONA PRECIOUS MATSOSO

ME. PHINDILE BALENI

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12 October 2017

SESSION 1

ADV. TEBOGO HUTAMO: Thank you Justice. Good morning Director General Matsoso. As you are well aware, the families before you, the nation and the rest of
5 the world are waiting eagerly to find out what did the Government do in response to the recommendations made by the office of the Ombudsman. You were giving that detail yesterday. And if we may proceed the same way, so that everyone should be made aware what was required of the Government and what has been the appropriate steps which were taken by the Government in response to those
10 recommendations. If we may proceed from the document that we handed up yesterday relating to the implementation of those recommendations. If you can turn to page 5 of the document. And we will then have to deal with recommendation number 11, to the extent that some of the parties might be familiar with these recommendations, but we need to emphasise and make sure that everyone gets to
15 understand exactly what has been done in relation to which recommendation. Then if I can just read for the record recommendation 11. In light of the findings in the report, the National Department of Health must review all 27 NGOs involved in the Gauteng Marathon Project. Those that do not meet health care standards, should be deregistered, closed down and their licenses revoked in compliance with the law.
20 Can you just give your account of what the Department has done in order to make sure that this recommendation is complied with, to deal with the unfortunate events which had occurred?

ME MALEBONA PRECIOUS MATSOSO: Justice, before we could resume with the review, we first had to consult various stakeholders. But we also had to go and visit all the facilities. But given the timeframes we could only visit nine facilities. But we started with the one where most people died, which is Precious Angels. As we

5 visited the facilities, it was clear that even though Precious Angels was identified as one NGO, that they had two facilities, one in Atteridgeville and the other one in Denville. We visited even government hospitals where some of the mental health users were kept, so that we could understand. We also went to Cullinan because one of the family members expressed a concern and said she wanted her family,

10 her relative moved immediately from Cullinan. We consulted most of the people who were raising their voices against the closure of this contract, convened a meeting. The Ombud released the report on the 1st, we convened that meeting on the 3rd, we had our visits on the 2nd. The idea of having that meeting was to understand fully what steps would we have to take to avoid repeating the mistakes

15 of the past. We also asked for names of experts that could assist us with assessing the patients that were held in the NGOs. Because our view was that it was not just about reviewing and deregistering. Firstly we had to assess the status and the risks so that for those who were at risk, they could be moved immediately, even as we were reviewing the appropriateness of the facilities. So all 27 NGOs that were cited

20 in the Ombud, were assessed by this multi-disciplinary committee that was appointed by the Minister, which included psychologists, psychiatrists, occupational therapists. But we also approached family members, so that we could also get their input. And they had established a family committee and we wanted to hear from

them. So out of the 27 facilities, prior to the Ombuds report, the ministerial task team had already recommended that there be closure of some of the facilities. So by the time the report was released, there were facilities that were already closed. So out of 20 facilities there was a recommendation that 14 had to be closed and 5 patients had to be relocated to more adequate private facilities. But our focus was not just on the facilities where we were going to move mental health users and patients, but it was also to assess facilities where they were going to be moved to. So we had a team that had to go and identify facilities, appropriate facilities, where they had to be moved to. Letters had to be written to all assessed NGOs indicating 10 deficiencies that had been identified and also alerting them that they will be considered for closure at an appropriate time, when the move of mental health users began.

ADV. TEBOGO HUTAMO: Thank you. Recommendation 12 required that the National Minister of Health must with immediate effect appoint a task team to review 15 the licensing regulations and procedures to ensure they comply with the National Health Act, the Mental Health Care Act of 2002 and the norms and standards. The newly established process must ensure that the non-governmental organisation certification is done and this newly established licensing process should form the first line of protection for the mentally ill. Currently this does not seem to be the 20 case. Can you then elaborate on the steps taken by the government in response to this?

ME MALEBONA PRECIOUS MATSOSO: The provision for the licensing of facilities in terms of the Mental Health Act, it is a competence of provincial health

departments. For us to review those regulations, it would require that we not only look at the regulations that are in terms of the Mental Health Act, because there are actually four processes that are involved. The first is that before a NGO can operate, the Department of Social Development must issue them with a registration.

5 Secondly, before a NGO can operate they must have a municipality license. Thirdly, before a NGO can operate to render mental health services, if they are also going to render health services, they must have a license to render health services in terms of the National Health Act, but they must also have a license in terms of the Mental Health Act. So there are actually four key requirements. So the team that

10 we appointed had to review all of these requirements. And based on that, our advice was that for the initial phase, we had to come up with the guidelines of NGOs and these guidelines were developed and gazetted for licensing of residential and day care facilities for people with mental and/or intellectual disabilities, allowing for comment for 45 day period. But in addition, because the recommendation was

15 specific about licensing regulations, we looked at the report that was released by the law reform commission, which says there is a plethora of laws in the health sector, there are actually about 29 laws that govern the health sector. And of all those 29 laws, some of them are absolute, others actually still refer to the former homelands and some have not been repealed and others actually need to be

20 proclaimed. Now to just come up with regulations in that plethora of laws and regulations, we put a team together to start a process, because we have a specific provision in the National Health Act that deals with certificate of need, which also involved licensing. So in this whole exercise that we were involved in with the law

reform commission, we requested that we look comprehensively at these laws, but in the meantime we have got these guidelines that the NGOs should follow.

ARBITRATOR, JUSTICE MOSENEKE: But would the guidelines bind the problems?

5 **ME MALEBONA PRECIOUS MATSOSO:** At the moment the provisions to issue licenses are in terms of the Act, so it means the Act must be amended under which the regulations lie and it takes time to amend laws.

ARBITRATOR, JUSTICE MOSENEKE: Sure. But the narrower question was that the guidelines may be helpful but actually do they have legal binding force in
10 respect of the province?

ME MALEBONA PRECIOUS MATSOSO: The guidelines do not have binding legal force, but what we have established, and I also sought legal opinion that we got to look at if we have concurrent functions and we have different legislative provisions, for instance the Free State passed a law to allow them to license
15 facilities. And it is those complex provisions that could be in the National Health Act in the provincial laws that needed to be reviewed. So it would still not help us to just come up with regulations. Because if the provisions are in the Principle Act, it will still not be a solution. But we thought guidelines could actually help NGOs to help them see what the expectations were for them to be compliant.

20 **ADV. TEBOGO HUTAMO:** Thank you. The next recommendation number 13 required that all patients from Life Esidimeni currently placed in unlawful non-governmental organisations must be urgently removed and placed in appropriate

health establishments within the province where competencies to take care of their specialised needs are constantly available. This must be done within 45 days to reduce risk and save lives. Simultaneously a full assessment and costing must be undertaken. Please proceed to elaborate on the steps taken.

5 **ME MALEBONA PRECIOUS MATSOSO:** Because of the preliminary assessment that was made by the experts that were appointed by the Minister, indicated that there are about 1 250 mental health users that need to be relocated. So the first step we did was to identify task teams which I would describe as work streams. The one was a clinical work streams which would actually be involved in the actual
10 physical and clinical assessment of mental health users. The second was the logistics task team. This work streams was mainly to look at what it would entail to move people from one facility to the other. What transport was needed? What resources were needed? The third was about data and information, because we had to make sure that we were having records, proper records, and each person
15 had a patient file, because this is also what was missing in that original move. The other team was family team, a team that would help us identify family members, know exactly where they are. Because one condition was that nobody would be moved without having consulted a family member. They needed to know that they were at this place and they were going to be relocated to another facility and that
20 they had to consent. So we had all of those work streams. And we appointed a project team to oversee this. But one key thing was that because we had understood that the other project was not well executed, we had to identify a facility where people would be appointed and would be assigned and work there on a full-

time basis and not be assigned any other responsibilities. We contacted Prof Eric Boech and asked him if we could use the emergency operating centre. Now the emergency operating centre of the National Institute of Communicable Diseases. It is actually used, when we have emergencies in the country like disease outbreaks, we said can we use this facility for this purpose and they allowed us. We also asked if Treasury could allow us, at national, if we could be allowed, because we didn't have budgeted funds for this, this was a Gauteng provincial project and I asked for permission, if they could allow me to allocate about 6 million just for this move so that we could fund this project and that was granted. So the project team looked, according to the records that we had, there was about 1 712 patients that were relocated from Life Esidimeni.

ARBITRATOR, JUSTICE MOSENEKE: Do you want to repeat the number, 1 700 and?

ME MALEBONA PRECIOUS MATSOSO: 1 712.

ARBITRATOR, JUSTICE MOSENEKE: The same number as on the document.

ME MALEBONA PRECIOUS MATSOSO: Yes, that were relocated from Life Esidimeni to the NGO facilities. So during that period of the so-called Gauteng Department of Health Marathon Project, between that period a total of 820 patients were transferred. So the process that we followed was that we first sent a team of clinicians. Meaning we had to identify psychiatrists, occupational therapists to be part of the team, social workers and so on and they had to first go and assess the patients. But we also had the family members that had to contact the family members. If the family members couldn't make it, they had to stand in, look at the

facilities where the members were, but also go to a facility where they were relocated. We actually went there ourselves to witness the move, so that we are satisfied with how the move was. And we also got to experience how bad the facilities were.

5 **ARBITRATOR, JUSTICE MOSENEKE:** DG Matsoso, the numbers... let's just get that right. You talked about 1 450 patients who you had to relocate. But you say that the number of people were moved under the Marathon Project were 1 712. By simple deduction one can see that if you add those who passed on, there would be a number of people unaccounted for. Could you help me understand that?

10 **ME MALEBONA PRECIOUS MATSOSO:** 1 250 was the number of patients that were assessed in the NGO facilities. There were patients that were in the government psychiatric hospitals, meaning during this process some were moved. There were also those who were in our hospitals that were treated for other conditions other than mental health. So meaning the 1 250 is those that were
15 assessed by our teams.

ARBITRATOR, JUSTICE MOSENEKE: I see. So the number is not 1 450, it is 1 250.

ME MALEBONA PRECIOUS MATSOSO: 250.

ARBITRATOR, JUSTICE MOSENEKE: I think that is where the mistake crept in.

20 Okay thank you.

ADV. TEBOGO HUTAMO: You may proceed.

ME MALEBONA PRECIOUS MATSOSO: So during this period we asked Gauteng Department Health to (1) identify facilities where we are going to move the patients. They had to be inspected, they had to be issued with valid licenses and I had to also sign to ensure that these were the licenses that were valid and also that they

5 complied with the provisions of the Mental Health Act. They also had to sign a contract. They also had to agree with the terms, because historically the previous contract that they had, they did not have a system of monitoring the performance of Life Esidimeni providers in the past, so those measures had to be in place. So those are the conditions under which the contract had to be signed. So between

10 the period of 3rd March 2017 and 31st of May 2017 a total of 820 patients were transferred to the following facilities: clinics, Health Care Selby Park Hospital and Life Esidimeni (Baneng and Waverly) Care Centres. Now I need to explain that when our teams were going to these facilities, even though our task was to identify former Life Esidimeni mental health users, in those facilities that were risky, we

15 identified other mental health users that were not from Life Esidimeni. And it was our obligation at the time to also move them, but with the consent of the families. Meaning we move 750 of the patients from former Life Esidimeni, but in addition moved others that were none, what I would describe as non-Life Esidimeni. And there were about 70 of them that we moved. We had some family members who

20 had expressed that they did not want their family members moved but we also had some of the patients themselves who were not happy to be moved. Because for some of the family members they expressed concern, they didn't want to sign consent, because they said it has been traumatic to be moving their members and

loved ones repeatedly. They wanted a much more stable environment. Out of this number about 359 of the patients still remain in the Gauteng Department of Health Acute Psychiatry and Chronic Rehabilitation Facilities, that is in Sterkfontein, Weskoppies and Cullinan Chronic Rehabilitation Centre. So they will be transferred
5 over time to the contracted facilities, Selby and Life Esidimeni and this will only happen with the recommendation of the psychiatrists, so that they are stabilised and in a position not move. But it will also be with the consent of family members. 31 former Life Esidimeni patients still remained in 11 of the NGOs like I said earlier, six of which were not among the 27 mentioned. Meaning as we were going along, we
10 also got to know that there were other NGOs that were keeping mental health users, so we would send our inspectors to go and assess, check what the status was and if they were at risk, recommend that they were moved. Meaning we weren't even beyond the list that the Ombud had given us.

ARBITRATOR, JUSTICE MOSENEKE: But were the other patients also
15 transferred by province at some earlier time?

ME MALEBONA PRECIOUS MATSOSO: Yes, that were not part of Life Esidimeni.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ME MALEBONA PRECIOUS MATSOSO: Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** But they were also transferred... what is the word they used?

ME MALEBONA PRECIOUS MATSOSO: Relocated.

ARBITRATOR, JUSTICE MOSENEKE: Placed or relocated by province.

ME MALEBONA PRECIOUS MATSOSO: It is some NGOs that the province had relationships with where they housed people, but the conditions where they were housed, were not suitable. And we decided then even those we would move them
5 to appropriate facilities.

ARBITRATOR, JUSTICE MOSENEKE: You know, Mr. Mosenogi yesterday as part of his response was that we have always used NGOs and there are about 5 000 patients out there at NGOs and the situation is perfect there. So not everything is questionable so to speak. What were your findings?

10 **ME MALEBONA PRECIOUS MATSOSO:** Our findings were that if you look historically how the province was structured, some of the contracts were with Department of Social Development for instance. And the Department of Social Development would obviously not consider the provisions that are in the Mental Health Act or the provisions that are in the National Health Act. They will probably
15 look at their own requirements as social development. But if people are going to be rendered health services, that facility where health services are rendered, has to be in accordance with requirements for licensing health facilities. If it is for mental health, it has to be in accordance with requirements for mental health facilities. So when we sent out the teams and we got to know that there were facilities that were
20 unsuitable, we would send them to establish. But we also recommended to the Gauteng Provincial Department that both departments, Social Development and Health, had to meet as a matter of urgency, look at the list of all the NGOs and start inspecting all of them to establish whether they are suitable or not. And I have been

informed, I think, when the acting head of the department, Dr Kenoshi (?), come he will explain how many they have been able to visit, how many of those involve people. So we just made that recommendation for Gauteng to act on it.

ARBITRATOR, JUSTICE MOSENEKE: But one cannot supinely say all is fine with
5 the rest of the NGOs, other than those that received patients from Life Esidimeni. I say one cannot make a general statement that the balance of the NGOs that housed patients that needed medical mental health care were all fine and were functioning properly.

ME MALEBONA PRECIOUS MATSOSO: Yes, I think ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Can one make that generalisation?

ME MALEBONA PRECIOUS MATSOSO: Yes, Justice, I think the statement that you can make is that there are NGOS that render reasonable services, there are NGOs that are not suitable. But I think we should also be cautious so that the message is not NGOs are bad, because there are NGOs that do good work, there
15 are NGOs that are not good that should not be rendering these services. So it is for that reason that we recommended that Gauteng Health Department and Social Development meet and look at the list of all the NGOs that have been licensed or registered with them and make sure that they were suitable.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

20 **ADV. TEBOGO HUTAMO:** You may proceed.

ME MALEBONA PRECIOUS MATSOSO: 31 former Life Esidimeni still remain in those NGOs, like I said, and some family members refused that they be relocated.

They didn't want to sign consent forms. 335 of the Life Esidimeni patients were discharged directly to their homes. And there are also still 59 patients who were discharged but have not been traced. So what we were doing, we also wanted to know, like I said we wanted to account for each one. And I would like to put on
5 record that 59, we can still not say where they are and who they are. However, we can confirm that they are drawing their SASSA grants. So it is to locate the addresses and where they are. Because we went to Home Affairs and we said we want to know if they are still alive.

ARBITRATOR, JUSTICE MOSENEKE: That needs a bit of explanation. What do
10 you mean they were discharged home but have not yet been traced?

ME MALEBONA PRECIOUS MATSOSO: Meaning... remember we had 1 712. Of the 1 712 every one we were looking for on the list, we could account for. But the 59 we can't, they were not in our facilities, they were not in our hospitals, they were not in the psychiatric hospitals, they were not in the NGOs. So we had to find a way
15 of identifying them and ensure also that they were not duplicates like I indicated yesterday. And in trying to find them, we could only say they were probably out there, but we still have to find them, either find their address or a mechanism of identification.

ARBITRATOR, JUSTICE MOSENEKE: But part of what were they? The part of
20 59 were part of which category of patients?

ME MALEBONA PRECIOUS MATSOSO: They were part of 1 712.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ADV. TEBOGO HUTAMO: You may proceed.

ME MALEBONA PRECIOUS MATSOSO: So I would like to indicate that Dr Kenoshi will also explain that when the Ombud report had the number of deaths, it was up until he released his reports. But because we still asked the Gauteng
5 Department of Health to continue monitoring the patients, they will also say up to when we are moving or up until the end of September what were the number of deaths and so on. I think that they will report and Dr Kenoshi will report that.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ME MALEBONA PRECIOUS MATSOSO: Let's then move to recommendation
10 number 14 which ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Well before you do the number, the last, from October 2015 until the end of Health Ombud reporting on 1st of February 2017, 118. So that number you also agree with, subject to further work that was done afterwards.

15 **ME MALEBONA PRECIOUS MATSOSO:** Yes, that number was the Ombud's number that he announced.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ME MALEBONA PRECIOUS MATSOSO: But like I said, Justice, we also sent our team to also identify. It is the number that maybe at the time the Ombud had as at
20 the 1st. But our activities were post the report of the Ombud, because we went to mortuaries, we went to facilities, we went to our hospitals. And as we were going to

those facilities, we were identifying people who were to be linked to the family members and we also had to reconcile ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Yes, I was trying to find out from the work, national department and province deed afterwards, would the number be the same
5 as the Ombud's number?

ME MALEBONA PRECIOUS MATSOSO: No, it will be slightly more than that, it will not be more than 118.

ARBITRATOR, JUSTICE MOSENEKE: It will be slightly more than the Ombud's number.

10 **ME MALEBONA PRECIOUS MATSOSO:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: You want to venture a guess now or you want to leave it to Dr Kenoshi?

ME MALEBONA PRECIOUS MATSOSO: Dr Kenoshi will explain because ...intervened.

15 **ARBITRATOR, JUSTICE MOSENEKE:** He will deal with that?

ME MALEBONA PRECIOUS MATSOSO: Yes because he had exactly the same number.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ME MALEBONA PRECIOUS MATSOSO: The exact number.

ARBITRATOR, JUSTICE MOSENEKE: But on current work done you think probably people related to the critical period are probably more than the 118 that the Ombud had reported on.

ME MALEBONA PRECIOUS MATSOSO: Yes, they are slightly more than that.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Okay. And are there... if Dr Kenoshi is going to deal with that, that is fine, we could wait till then. Are there unaccounted deceased mental health care users that fall within the control period?

ME MALEBONA PRECIOUS MATSOSO: The number ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: In other words, are the corpses out there
10 that had not yet been fully and properly identified?

ME MALEBONA PRECIOUS MATSOSO: The number I have is seven, there are seven that I am aware of that have not been accounted for.

ARBITRATOR, JUSTICE MOSENEKE: And that probably would be, they would have passed on.

15 **ME MALEBONA PRECIOUS MATSOSO:** They have passed on, their family members must still be traced.

ARBITRATOR, JUSTICE MOSENEKE: And we are talking about corpses now, in other words there are still corpses that are yet to be identified.

ME MALEBONA PRECIOUS MATSOSO: To be identified and family members
20 traced.

ARBITRATOR, JUSTICE MOSENEKE: Traced, yes. Thank you. You may proceed DG.

ADV. TEBOGO HUTAMO: Recommendation 14 required that there is an urgent need to review the National Health Act of 2003 and the Mental Health Care Act of 2002 to harmonise and bring alignment to different spheres of government. Centralisation of certain functions and powers of the Mental Health Care Act must revert back to the National Health Minister. While schedule 4, part A of the constitution and section 3 subsection 2, section 21 subsection 1, section 25 subsections 1 and 2, sections 48 and 49 and section 90 of the National Health Care Act number 61 of 2003, recognised and define health as a concurrent competence between national and provincial government spheres. The findings and the lessons of this investigation married such a review. Furthermore, projects of high impact on the quality and reputation of the national health system and whose outcomes undermine human dignity, human wellbeing and human life must not be permitted nor be undertaken without expressed permission of the National Health Minister or his/her nominee. Are you able to deal with that?

ME MALEBONA PRECIOUS MATSOSO: I will deal with this briefly, Justice, in that we sought a legal opinion about concurrent functions and instances where the National Department of Health need to intervene when there is failure in providing services or compliances with norms and standards or when people's lives are at risk, particularly with regard to the competence that reside with the provinces. The opinion we got is that firstly if this was to be done and with regard to these areas, even though the opinion predates this event, it states that we would have to have

major changes in the National Health Act, because the National Health Act provides for the functions of the province of National Department of Health and also of municipalities. It also states that we would then have to also amend certain sections of the constitution and it may not be desirable – this is the opinion that we
5 got. But it is also an opinion that says there is a provision already that is provided for section 100 of the constitution that we could rely on. But may I just say that even with section 100, we noticed that in Limpopo it is not a straightforward thing when there are interventions when you rely on section 100, when you do not get the cooperation of the provincial teams or the executive in the province and in national
10 level do not work in partnership. It is very difficult to execute the provisions of section 100 (1) (A) and (B). So our recommendation is that we would have to look at this process of legislative review that is underway with the assistance of the law reform commission.

ARBITRATOR, JUSTICE MOSENEKE: Yes, you can do very little about that.
15 Remember at the end of the time you can engage me and I can help you.

ME MALEBONA PRECIOUS MATSOSO: Thank you very much, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Essentially the whole conundrum of the schedules and the arrangements between concurrent and national competences and how you resolve the tension between the two. The constitution tries to do that
20 and I have had something to do with that during the writing. But in the end resolution is a difficult one. You have to look at four or five things, whether in fact the law was intended to stipulate national norms and standards and whether therefore it is appropriate to trump provincial competence in favour of national

competence. So it is a very complex part of the constitution, you don't want to... none of us would want to go there. you might need, as you say, a constitutional amendment or a law that purpose to set up national norms and standards in a way that would then subject provincial legislation to national competencies. Anyway, I
5 think we should go on to the next one, because I don't think there is much you can do about that.

ADV. TEBOGO HUTAMO: Thank you Director General Matsoso. Let's proceed to recommendation 15 which stated that projects such as the Gauteng Mental Marathon Project must not in future be undertaken without a clear policy framework
10 without guidelines and without oversight mechanisms and permission from the National Health Minister. Where such policy framework exists, the National Health Minister must ensure proper oversight and compliance.

ME MALEBONA PRECIOUS MATSOSO: Yes, this is being complied with and legislation had a clear policy framework for community based services are available.
15 We do have laws, we do have policies, we do have norms and standards, but we have also gone further. We assembled a team to go to every single province to assess the services that they render, mental health services. The difficulty is if that does not happen, we have provincial executive authority, we have the National Minister, but we also have National Health Council which is established in terms of
20 the National Health Act. It is a policy making body but it also has an oversight role and an advisory role. It is a council of the Minister of Health and the MECs of Health. In general terms it is called MINMAC (?). So it is a forum that is available also for that purpose.

ARBITRATOR, JUSTICE MOSENEKE: Where does the competence sit to build facilities where mental health care is provided? Where does the capital budget sit?

ME MALEBONA PRECIOUS MATSOSO: There are two streams of funding, Justice. The primary funding is through appropriations to provincial executive and
5 this is in the form of equitable share. The other stream is through conditional grounds, but the conditional grounds are project specific. So it is actually two streams. So when it comes ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Conditional ground from the Treasury... from where?

10 **ME MALEBONA PRECIOUS MATSOSO:** Treasury through National Department of Health. But it comes with conditions that must strictly be complied with.

ARBITRATOR, JUSTICE MOSENEKE: You see, I don't think the previous witness was the appropriate to know and answer that question. When I look at the facilities, these facilities were built before 1994. Am I right?

15 **ME MALEBONA PRECIOUS MATSOSO:** Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Cullinan or Sterkfontein or Weskoppies. Well the names tell you they were built before 1994. Have we built any after 1994 for mental health care in particular? By we I mean you and me, those who have been in government.

20 **ME MALEBONA PRECIOUS MATSOSO:** Yes, I can just answer in a brief way to say that an attempt to build one – and if I were to say we... it was an absolute disaster. And this is a facility that was built in Northern Cape that consumed huge

resources and was not appropriate for mental health care. So it was a lesson for us that it should not have been done in that way. And with this provision in the Mental Health Act that we should not move towards keeping people in institutions, rather move towards community based health care, we should rather make investments in
5 our primary health care facilities, in our existing health facilities where out-patient services are appropriate. So the investment cannot be in building more facilities where people are going to be institutionalised. So that balance – and this is why the Northern Cape mental health facility that was being build, was a key concern for us and has been a subject of an investigation.

10 **ARBITRATOR, JUSTICE MOSENEKE:** But we are still using clinics, we are using Life Esidimeni, we are using... I have seen it here I your report back. And once the difficulties with community health care deinstitutionalisation route, the Department ran right back to those institutions. So the question that begs an answer is, don't we need a mix of institutions and public health care facilities?

15 **ME MALEBONA PRECIOUS MATSOSO:** Precisely we do. A balance between facilities that we call facilities for acute care for mental health and those that are for long term care. And this is the difference between your Weskoppies, your Sterkfontein, versus these other facilities that are for long term care.

ARBITRATOR, JUSTICE MOSENEKE: So the question still remains, do we need
20 facilities for acute and long term care, do we need more of it, so that we don't have the temptation to move them out of clinics, move them out of Life Esidimeni, move them...

ME MALEBONA PRECIOUS MATSOSO: Yes, we do need more of the long term care that are community based, but that integrate mental health users closer to families and closes to facilities, because I think the concern here is that you don't want them to just be kept away, locked away, they need to integrate back into
5 communities, but it has to be done properly.

ARBITRATOR, JUSTICE MOSENEKE: And in the meantime since the days of Sterkfontein and Weskoppies and Cullinan our population has almost tripled. Doesn't it follow that facilities with long term and chronic care will have to increase, even if you have the balance between public health care and institution based care?

10 **ME MALEBONA PRECIOUS MATSOSO:** Yes, we do, but our approach is a slightly different one, because we work on the basis of a normality framework and the normality framework is that even in normal facilities you must have psychiatric beds, so that you don't go back and keep people in acute care and keep them locked away from communities. So we have designed and come up with norms
15 about the number of beds in each hospital. There must be an allocated area for those who must be seen and treated for psychiatric care. So we had that breakdown per province. Meaning these current health care facilities need to be renovated, refurbished and expanded to provide for that.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

20 **ADV. TEBOGO HUTAMO:** Let's move to recommendation number 16 which records that: The investigation has clearly shown that for deinstitutionalisation to be undertaken properly, the primary and specialists multi-disciplinary teams that are community based mental health care services must be focused upon, must be

resourced and must be developed before the process is started. It will most probably require more financial and human resource investment initially for deinstitutionalisation to take route. Sufficient budget should be allocated for the implementation.

- 5 **ME MALEBONA PRECIOUS MATSOSO:** Yes. The first step we took was to establish a task team that involves experts in the field. But of note is that there are two streams of work that we initiated. (1) Was that as part of the finalisation of the National Health Insurance? The Minister identified five groups that he considered to be vulnerable groups that needed to be given urgent attention and amongst those
- 10 the mental health care users was one particular group. Meaning when the health insurance fund is created, the very first group that must benefit is mental health users, the second group is people with disabilities, the third group is women and children and the other group is older persons and the more recent group is people with cancer, because cancer has become a big problem in the country. The
- 15 second, we said whilst that is happening, we needed, what I will describe as a special purpose vehicle as a special funding just for this purpose. And we submitted that to Treasury to say can we have a special purpose vehicle so that we can cater for this category and ensure that we do not have a problem. But the idea was that that funding would be kept as a conditional grant at national level, so that if
- 20 there is a problem in the province, we must be able to intervene appropriately and timely. So we are still in discussion with Treasury, because our initial request did not get much support, because as you know we are in a very difficult physical environment, but we are also engaging Treasury on an ongoing basis. The next

one is that there has been engagements of experts, strategic meetings and also we have written the World Health Organisation. They offered to assist. They have even identified experts in the field. Because the institutionalisation as it is so tempt... I don't use that word much, I prefer to say community based health care, so
5 that it clearly shows what this is about. So we do have countries that tried this. It is a very difficult process that we need to get familiar with, we have to do it properly as a country. So we had WHO respond to say they will assist, because they are familiar with which countries have tried it where it has worked, where it has not worked, so that we do it properly.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Prof Makgoba was very cautious about the institutionalisation or home based care saying that probably only two countries in the world have managed to do this successfully and that it is filled with snares and challenges, as we saw in the Marathon Project. Taking people to homes which are not suited for the task, it could be disastrous. What do you say to that? There is a
15 policy framework, I understand. The desire to be linked and connected to families, I understand. But in fact the world has not been... aren't we doing something where the world has not succeeded much?

ME MALEBONA PRECIOUS MATSOSO: I fully agree and I would like to say upfront I am not an expert in the field. Prof Freeman is the expert and ...intervened.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Professor who?

ME MALEBONA PRECIOUS MATSOSO: Prof Freeman.

ARBITRATOR, JUSTICE MOSENEKE: Where do we find Prof Freeman?

ME MALEBONA PRECIOUS MATSOSO: He is the chief director in my department.

ARBITRATOR, JUSTICE MOSENEKE: Chief Director in your department.

ME MALEBONA PRECIOUS MATSOSO: Yes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Would he be available to talk to us if we were to ask him?

ME MALEBONA PRECIOUS MATSOSO: Yes, he would be available.

ARBITRATOR, JUSTICE MOSENEKE: He will be?

ME MALEBONA PRECIOUS MATSOSO: Yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Okay I will ask some of the support staff in my office to follow it up with you and see whether we could hear him out on this.

ME MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Okay, thank you. But you were responding and saying he is not the expert, he is the expert.

15 **ME MALEBONA PRECIOUS MATSOSO:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Will you please continue DG?

ME MALEBONA PRECIOUS MATSOSO: Thank you.

ADV. TEBOGO HUTAMO: Thank you Director General. The next recommendation is recommendation 17, which actually made us to be here, which
20 recalls that: The National Minister of Health must lead and facilitate a process jointly with the Premier of the province to contact all affected individuals and families

and enter into an alternative dispute resolution process. This recommendation is based on the low trust, anger, frustration, loss of confidence in the current leadership of the Gauteng Department of Health by many stakeholders. The National Department of Health must respond humanely and in the best interest of affected individuals, families and relatives and the nation. The process must incorporate and respect the diverse cultures and traditions of those concerned. The response must include an unconditional apology to families and relatives of deceased and alive patients who were subjected to this avoidable trauma. And as a result of the emotional and psychological trauma, the relatives have endured. Psychological counselling and support must be provided immediately. The outcome of such process should determine the way forward such as mechanism of redress and compensation. A credible prominent South African with established track record, should lead such a process.

ME MALEBONA PRECIOUS MATSOSO: Yes. Justice, this is where we are today. This ADR process is about recommendation 17. And I would like to say that through this process we have worked closely with the family committee. We have come to understand what this means. And that at this point, personally, I will unreservedly apologise for the failures that something like this should never happen again.

ADV. TEBOGO HUTAMO: Director General, I am going to refer you back to file number 4 which is before you.

ARBITRATOR, JUSTICE MOSENEKE: I think I would like to say thank you for the apology, Director General. you know my views by now, I have mentioned them in

the last few days, we do need a responsive government and we need a caring government and we need one that takes seriously Batopele notion and these responses have been hardening. I wouldn't be here if I thought government, national and provincial, were not serious about making amends and it has been a
5 journey that we have travelled together and I think it is appropriate just to say it to the nation that as a province and as national government, you've been committed and serious to make amends. Because wrongs ought to be corrected. First acknowledged and there has to be apology to vulnerable people. And those with power should be able to respond to the needs of those who don't hold power and
10 how depend on those who hold power. So the apology is welcomed and I am aware of the cooperation that you've had with families and family committee and I was part of that process that brought us to here. I just want to add my own appreciation for how province and state have behaved in trying to resolve this matter. This of course is just part of the story, we still have to go to equitable
15 redress.

ADV. TEBOGO HUTAMO: Thank you Director General. Let's proceed to the last recommendation 18 of the report in so far as it relates to the national government. Although it relates to the Gauteng review board, if you may give your responses where it reports that: The Gauteng Mental Health Review Board was found to be
20 moribund, ineffective and without authority and without independence. As a structure, each terms of reference must be clearly defined and strengthened, in line with the National Health Act and the Mental Health Care Act of 2002 and its

independence authority re-established. Are you able to make any comment in relation to this recommendation 18?

ME MALEBONA PRECIOUS MATSOSO: Yes, I will just report based on what is in the document. But Dr Kenoshi will provide details. The previous chair, as was
5 recommended by the Ombud, was placed on suspension on the 22nd of February and the inquiry commenced on the 22nd of March and the final report will be provided and Dr Kenoshi will indicate where we are with that. And a new mental health review board is being established by the province.

ARBITRATOR, JUSTICE MOSENEKE: But how does this happen, DG, though?
10 A board of 25 people, the Ombud tells us they just go dead, that is what the word moribund means, they become lifeless and don't... were they paid?

ME MALEBONA PRECIOUS MATSOSO: In fact in our investigation when we looked at documentation, firstly how they were appointed was inappropriate. The record shows that Me. Manamela also signed a contract for them to... I mean there
15 were some irregularities on how that whole system of the mental health review board operated in the province. And I think these are the things that the MEC is correcting in that she had to replace the previous board and advertise so that there are nominations for the new board. But even that appointment, they had to be regionally based. I think there needs to be five per region so that they can operate
20 optimally. So it is quite clear that this was a ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But is their function mainly supervisory?

ME MALEBONA PRECIOUS MATSOSO: Justice, it is far more than that, it is not supervisory, they have to intervene. The Mental Health Act provisions are clear, they have to intervene. It says quite clearly that even in this instance, the first group they should have intervened, is the mental health review board.

5 **ARBITRATOR, JUSTICE MOSENEKE:** So it has failed quite dismally in its duties, in its statutory duties.

ME MALEBONA PRECIOUS MATSOSO: Indeed.

ADV. TEBOGO HUTAMO: Thank you Director General. Thanks for the time that you've given to highlight the positive steps that the Government has taken in
10 response to this unfortunate tragedy. And we thank you for alerting everyone to know what steps were taken in order to ensure that this type of history does not repeat itself. Mr. Justice, there is no further questions to the witness.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel. What is going to happen now, DG, there are going to be questions posed on the evidence in chief
15 that you've given. We are going to start with Counsel from Section 27 and I think she is ready to go.

ADV. ADILA HASSIM: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Hassim.

ADV. ADILA HASSIM: Thank you Justice Moseneke, I am ready. Good morning
20 DG.

ME MALEBONA PRECIOUS MATSOSO: Morning.

ADV. ADILA HASSIM: Thank you for making yourself available to this process and I would like to thank you on behalf of the families and the stakeholders for your apology. You've seen a lot through this process, I am aware, and I know it has not been easy for you personally in the clean-up of what has happened. So thank you.

5 And in fact where I would like to begin is on the issue of clean-up and the topic that you debated with Justice Moseneke and it is in relation to the powers of the national department. While I understand the complexity and the issue of the constitutional allocation of competences between the different spheres of government, I don't understand us to be a country with a federal system of government. So maybe to

10 try to avoid the complexity of this concurrent competence, what I would rather do is use as a Launchpad for these questions the constitutional requirement of cooperative government, which is in section 41 of the constitution. And I am sure you don't know the constitution off by heart, so I am just going to refresh our memory on section 41 of the constitution and what I regard as relevant to these

15 proceedings. Section 41 says: "All spheres of government and all organs of state within each sphere, must" and then in subparagraph H says: "Must cooperate with one another in mutual trust and good faith by (1) fostering friendly relations, (2) assisting and supporting one another, (3) informing one another of and consulting one another on matters of common interest, (4) coordinating their actions and

20 legislation with one another." It is also essential that this cooperation takes place in order for us to have a coherent government. So using that then as a background, you say, is it correct that the National Department was not informed about the proposed transfer of patients from Life Esidimeni?

ME MALEBONA PRECIOUS MATSOSO: Yes, I would like to confirm that we were not informed. The first time I heard of this was through Section 27. I was formally called and this was reported by Section 27. I never had anything in writing and neither did the Minister. Meaning there was no communication in writing that this activity was going to take place.

ADV. ADILA HASSIM: Nothing in writing from the provincial department.

ME MALEBONA PRECIOUS MATSOSO: Not in writing, not in call, not informally as well, nothing. It came immediately when it was already a complaint for us to intervene from Section 27.

10 **ADV. ADILA HASSIM:** And is it correct that the National Department was not provided, after it came to your attention, is it correct that the National Department was not provided with information when you requested that information from the Provincial Department?

15 **ME MALEBONA PRECIOUS MATSOSO:** Yes. I had assigned Prof Freeman to work with the province. He sent repeatedly emails to Dr Manamela requesting the plan, requesting information, requesting details, but nothing. She did not share any kind of plans that were requested, absolutely none.

ADV. ADILA HASSIM: And it is correct in relation to Prof Freeman that you also recommended that he be included in meetings in which this project was being discussed so that he could be of assistance and provide guidance to them, being an expert in this.

ME MALEBONA PRECIOUS MATSOSO: Yes, I did that as well, I requested that he be included.

ADV. ADILA HASSIM: Is it your view that the Department, the National Department, had no power to intervene, other than making those
5 recommendations?

ME MALEBONA PRECIOUS MATSOSO: Yes. In terms of this project in particular we had no power, we couldn't stop, this is why we relied on the outcome of the court action to see whether this was a way to go, but we didn't want that either. We didn't think that it was a matter that could be resolved in the courts, it is something
10 that we should do, it is something that we should do as a Health Department, particularly for vulnerable groups, we should be responsive. So if a matter had been raised that this was not an appropriate, we are going to put people at risk, the possible response was that we had to listen. And I have seen that in the past that we, every time we get a signal that there is a problem in a province, we go and
15 consult a province, we raise the issue with them. And in the spirit of cooperate governance, we do get a response. Some provinces will respond, we'll go send a team, we have had that experience recently with KZN for instance with the cancer issue. A group of doctors in South African Medical Association, raised serious concerns about the state of cancer services in the province. I personally went
20 there, I met with the doctors, I addressed them. I also took a team with me and we got the cooperation of the province. I am just saying they responded. So it seems it is dependent on personalities at a particular point in time. We did not have that problem. But in Gauteng, I want to put it on record that the HOD responded

promptly. When I asked him that this is a problem, he agreed to meet with civil society, SADAG and Section 27, he agreed. And he even gave me feedback that they had a meeting and things were going well, that was the response.

ADV. ADILA HASSIM: Thanks, I'll come back to the HOD in a moment. But on the
5 question of national and provincial. The National Health Act is, I mean while there
may be problems with this piece of legislation, it is the framework act for health
services in our country, it is a blueprint. And in section 2 of the Act, the objects of
the Act are stipulated, including the following, it says: "The object of this act are to
10 regulate national health and to provide uniformity in respect of health services
across the nation by, amongst others, protecting, respecting, promoting and fulfilling
the rights of: (1) the people of South Africa to the progressive realisation of the
constitutional right of access to health care services, including reproductive health
care; (2) the people of South Africa to an environment that is not harmful to their
health or wellbeing; (3) the right of children to basic nutrition and basic health care
15 services contemplated in section 28 (1) (C) of the constitution; and (4) vulnerable
groups such as women, children, older persons and persons with disabilities; and
overall responsibility for health in section 3 of the Act is vested in the Minister." And
my question is, if this is the case, it seems to me that there must be some scope for
national to be able to address health services and the quality of health services,
20 particularly in relation to rights, even at the provincial level. Certainly what has
happened now is that the National Department had to intervene, you've had to
intervene in order to clear up the mess and not under section 100, which section
100 is really an emergency procedure. By the time we get to section 100 there has

been a collapse, so I would rather not go there. But I am saying the framework of the National Health Act envisages that there should be some degree of oversight by the National Department. Are you saying that the Provincial Health Department refused to cooperate and therefore acted in breach of section 41 of the constitution?

5 Would you say that they breached their constitutional obligation, not just in respect of rights of users in which we have been canvassing, but in respect of section 41 of the constitution?

ME MALEBONA PRECIOUS MATSOSO: Well I can say in terms of this particular instance, without the cooperation that we had, (1) not being informed about this
10 important project, (2) not agreeing to work with our expert who actually is the expert in the field of mental health care and he has published quite a lot and he has been central in actually coming up with a global policy on community based mental health care, that in this particular regard they were not cooperative, except that it couldn't just be an informal arrangement and engagement with the HOD. Like I said the
15 HOD responded promptly but from time to time would express a concern to say but I can't.

ADV. ADILA HASSIM: So who was not cooperating then?

ME MALEBONA PRECIOUS MATSOSO: You see I didn't, and I want to put it on record, I have communicated with the HOD, those are my counterparts in the
20 province. In the province there is an issue, the first person I engage is the head of department of health in a province and this was the person I was communicating with. But as to the involvement of Prof Mel Freeman that I requested as well, he followed up with Dr Manamela who was non-responsive.

ADV. ADILA HASSIM: You may or may not be able to answer this question and I understand the Minister will be making himself available to this, so if you can't answer it, it is fine. But did the Minister of Health contact his counterpart in the province being the MEC?

5 **ME MALEBONA PRECIOUS MATSOSO:** Well I cannot respond, because the Minister communicates with MECs from time to time and he also meets with them on a bilateral basis, sometimes as a collective through National Health Council.

ADV. ADILA HASSIM: Thank you DG. I then want to move to the HOD and your interactions then with the HOD as your counterpart. You've said that you contacted
10 the HOD when you became aware that there was possible litigation, a potential litigation in relation to this issue. And you urged him to resolve it by means of a settlement, is that right?

ME MALEBONA PRECIOUS MATSOSO: No, it was not by means of a settlement. The very first time that I was contacted by Section 27, and I want to place it on
15 record that when Mark Haywood called, he said DG it is not in our interest to be taken to government to court all the time. Is there any way that you can talk to the province to stop the termination of this contract – this was the first thing he said. And when I spoke to the HOD, my request was that they should meet. The experience I have had just working with civil society, and I would use a much
20 broader term actually that we use internationally, we say involvement of non-state actors in the delivery of health care is probably the way that the whole of global health should go. Involvement of non-state actors is involving civil society, involving communities, involving the private sector, involving labour. So meaning

government alone in the delivery of health service cannot succeed. So when I engaged... actually those were my words to say you don't go to court for things like this, please meet civil society and find a way to resolve this matter. Actually he was optimistic, he was positive, he responded positively. He even fought back to say
5 actually we have had a productive meeting. I also called Mark Haywood and he confirmed that they met, they agreed on how they were going to work, so it wasn't even necessary for me to follow-up, because I had a confirmation that that meeting took place.

ADV. ADILA HASSIM: Thank you. But you are aware that the matter then did
10 result in a settlement agreement.

ME MALEBONA PRECIOUS MATSOSO: It was a follow-up when he sent me an email informing that there was a request for an agreement, could I intervene. And the intervention that he needed from me was that, is it possible that this out of court settlement could not be a court order.

15 **ADV. ADILA HASSIM:** That is precisely the question that I want to ask you, if you can pause for a moment. Because the settlement agreement was concluded between the parties, including the provincial department. The terms of the settlement agreement seemed to be fairly clear. There was an undertaking... in fact the words that were used in the settlement agreement, if you'd like it is on page 563
20 of your record.

ME MALEBONA PRECIOUS MATSOSO: Which file?

ADV. ADILA HASSIM: Which is file 2. 563. Do you see it?

ME MALEBONA PRECIOUS MATSOSO: Yes.

ADV. ADILA HASSIM: So at paragraph 4 it says: “For avoidance of doubt, the Gauteng Department of Health shall maintain the status quo by not placing users from Life Esidimeni facilities in any other facility pending the conclusion of settlement discussions”, which in this context what it meant was meaningful consultation process. In paragraph 6 the purpose of those consultations were, it says, to reach an agreement, to reach an agreed plan by no later than 31 January 2016, guided by the constitutional imperatives on the Gauteng Department of Health and shall in the very least endeavour that users receive health and other services of no lesser quality to the services that they are currently receiving at Life Esidimeni, in order to protect, promote and fulfil their constitutional right.” What did the HOD say to you what was his reason for not wanting to make this an order of court? What was holding that back? If you agree and sign on, what was the fear of making it an order of court?

ME MALEBONA PRECIOUS MATSOSO: He said that if this had to be finalised so that the parties could start work immediately, he would be happy if this was not made an order of court. And I took it that this was a reasonable thing, I didn’t think that it was an issue. And I went back to call Section 27 to say is there a problem if this is not a court order. And on hindsight I see that perhaps this should have been the case, it should have been a court order.

ADV. ADILA HASSIM: Would you agree that the Gauteng Department (inaudible) on its agreement in the spirit of the agreement with the parties?

ME MALEBONA PRECIOUS MATSOSO: Indeed from the sequence of events, this is evident of that.

ADV. ADILA HASSIM: DG, moving along. You say you visited the facilities. Did you visit the facilities after the Ombuds report or before the Ombuds report?

5 **ME MALEBONA PRECIOUS MATSOSO:** I visited after the Ombuds report.

ADV. ADILA HASSIM: And what did you find when you visited the facilities? Or maybe making it a bit easier ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Which facilities, Counsel?

ADV. ADILA HASSIM: The 27, did you visit all 27?

10 **ME MALEBONA PRECIOUS MATSOSO:** Both myself and the DG in the office of the Premier, DG Baleni, like I said we started with Cullinan, because we wanted to understand the concern that one family member raised even during the media briefing that she wanted her family member removed immediately. So we took it upon ourselves to go immediately to go and see the Cullinan facility. And we had
15 an opportunity to meet with the staff, but we also went in to see the patients and some of the mental health users that were housed in Cullinan. We went to Precious Angels as well and we found the facility empty. In fact we struggled to even get to the facilities. In one facility it was empty but they had now changed it to be a student residence.

20 **ADV. ADILA HASSIM:** Can you describe the facility at Precious Angels?

ME MALEBONA PRECIOUS MATSOSO: It is actually two facilities, one in Atteridgeville and the other in Denville. The one in Atteridgeville we found students

there, so it means there were a few of them and they wanted to know what we wanted and soon. We explained and they said no we are students. And then even in Denville we actually found two students that were housed in both these facilities. So it was no longer a mental health facility. But if you looked at the Denville one, it
5 was not suitable whatsoever.

ARBITRATOR, JUSTICE MOSENEKE: Where were the patients? How were they removed there?

ME MALEBONA PRECIOUS MATSOSO: The facilities, remember it was the first to be closed because this is the one with the highest number.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Number of deaths.

ME MALEBONA PRECIOUS MATSOSO: Of deaths, yes.

ARBITRATOR, JUSTICE MOSENEKE: So by the time you went there, it had been closed.

ME MALEBONA PRECIOUS MATSOSO: And I want to explain closed, because it
15 was not a lock and key arrangement. It was no longer a mental health facility or a facility for housing mental health users. It was now an accommodation for students.

ADV. ADILA HASSIM: In what you observed, you said it was not suitable. In what way was it not?

ME MALEBONA PRECIOUS MATSOSO: Well the second facility in particular, it is
20 not a place, if you look at the provisions of the Mental Health Act, in fact not only Mental Health Act, R158, which is the basis on which the provinces issue licenses for health faculties, it is not a very safe environment for mental health users.

ADV. ADILA HASSIM: Why do you say that?

ME MALEBONA PRECIOUS MATSOSO: It had... how do is ay... the structural setup, the infrastructure is not suitable, let me put it like that. If it is for normal, like students for instance who were housed, it was appropriate. But mental health users
5 needed a safe environment, they need an infrastructure that is suitable. But also in terms of occupational health services, they need a place also where they can walk around and soon, they don't need to be confined, which is what community based health care is supposed to be about. So if you look at the infrastructure and the requirement, it wasn't suitable.

10 **ADV. ADILA HASSIM:** Thank you DG. If I may just take you then to the recommendation, your update on the recommendation 18. This is in relation to the Mental Health Review Board and the chair of the Mental Health Review Board, Me. D. Masondo. Is it correct that Me. Masondo had been employed by the Gauteng Department before she became the chair of the Mental Health Review Board upon
15 retirement?

ME MALEBONA PRECIOUS MATSOSO: I do not know her. I also don't know the circumstances of her appointment. I only know about Me. Masondo just based on the report of the Ombud and what has happened, her suspension... I have not gone back to investigate her background and so on, but I don't know. What I know is that
20 there was a problem, when you check records, a problem in which the Mental Health Review Board, the members were appointed, but also contracted by Me. Manamela. So there was a problem there. It was like they were appointed but also contracted, which I saw as an anomaly.

ADV. ADILA HASSIM: On that irregularity you are referring to, can I please refer you to page 1356 of the record, which is file 4? It might be file 3, 1356.

ME MALEBONA PRECIOUS MATSOSO: My file 4 starts with 1358.

ARBITRATOR, JUSTICE MOSENEKE: It is actually the end of ...intervened.

5 **ADV. ADILA HASSIM:** It might be the last document in file 3.

ARBITRATOR, JUSTICE MOSENEKE: Volume 3. Right at the end of file 3.

ME MALEBONA PRECIOUS MATSOSO: Yes, I am there.

ADV. ADILA HASSIM: That document is a news article. The publication is weekend (inaudible) and it says R14 000 fee to transport body of patient. We don't
10 need to read the entire article, but it refers to an interview with a family member of a deceased, her name is Welhemina Thejane. And she speaks about arriving at the hospital, only to be told that she should use a particular funeral undertaker in order to transport her brother. And that funeral undertaker business is called African Queens of Africa Co Op Funeral Solutions. According to the article, the allegation is
15 that this was owned by former Gauteng Health Deputy Director of Mental Health, Dumi Masonda, who is also the chair of the Mental Health Review Board. Well she wasn't deputy director at the time. And it speaks, the article continues to reflect the concern that was raised by the family member about being forced to use a particular funeral undertaker. Over the page at page 1357, the article continues to say:
20 "When contacted yesterday, Masonda told independent media that she was asked by Gauteng Health Director Magabo Manamela, to help with transportation of bodies of former Life Esidimeni patients. Me Masonda says, she is quoted as

saying: “Manamela called me and told me they were having a crisis regarding many dead bodies of mentally ill patients, which the Department was unable to transport.”

And then she said I said: “Since you have a crisis, I will assist you and arrange to transport some of the bodies. This body, Josiah’s, was the only one of the patients I
5 transported and I was paid R14 000 for that.” That is in the news article. If we can just go to the record again at page 3903, volume 10. 3903.

ARBITRATOR, JUSTICE MOSENEKE: And that should be volume?

ADV. ADILA HASSIM: Volume 10.

ARBITRATOR, JUSTICE MOSENEKE: Volume 11, I think.

10 **ADV. ADILA HASSIM:** Is it 11? My apologies. My apologies, Justice Moseneke, at this point of the record and paginating, getting close to 4 000 pages, things started to go a little array.

ARBITRATOR, JUSTICE MOSENEKE: Yes, thank you.

ADV. ADILA HASSIM: Have you found it?

15 **ME MALEBONA PRECIOUS MATSOSO:** It is 3903.

ADV. ADILA HASSIM: Yes.

ME MALEBONA PRECIOUS MATSOSO: Yes.

ADV. ADILA HASSIM: What do you see at that page?

ME MALEBONA PRECIOUS MATSOSO: Monomong Wilheminah Thejane.

20 **ADV. ADILA HASSIM:** Yes that is the correct document. What I specifically want to refer you to in that document is two pages later, so 3905, which is page 2 of the

notice of death. It is a notice of death, it is page 2. Do you see it? Immediately after the death certificate, yes. And at paragraph 12, about halfway down the page it notes the surname and name of the deceased as Daniel Charles Josiah. Do you see that? And if you turn over to page 3907 ...intervened.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Well I don't see Daniel Charles somebody... on 3906?

ADV. ADILA HASSIM: 3905.

ARBITRATOR, JUSTICE MOSENEKE: 3905.

ADV. ADILA HASSIM: And it is about halfway down the page, paragraph 12.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Oh I found it. Thank you. 3905.

ADV. ADILA HASSIM: 3905.

ARBITRATOR, JUSTICE MOSENEKE: Very well.

ADV. ADILA HASSIM: If you turn over the page and proceed to page 3907, this is still the notice of death form, but it is now dealing with the particulars of the funeral undertaker. And it notes the particulars as African Queens of Africa, do you see that? And then the stamp on that page, again about midway and on the right hand side, has the contact details for Dumi Masonda. It is very small print. Do you see it?

20 **ARBITRATOR, JUSTICE MOSENEKE:** I can see it. On the right 3907, just above the police certification stamp.

ME MALEBONA PRECIOUS MATSOSO: That's right.

ARBITRATOR, JUSTICE MOSENEKE: Is that visible to you, DG? 3907. At the top it is written driver and below that is the right thumb print seemingly and below that is African Queens of Africa.

ME MALEBONA PRECIOUS MATSOSO: Yes, I see.

5 **ARBITRATOR, JUSTICE MOSENEKE:** African Queens don't become of Africa, but these are African Queens of Africa Cooperative Funeral Solutions.

ME MALEBONA PRECIOUS MATSOSO: Yes, I can see that.

ARBITRATOR, JUSTICE MOSENEKE: And below that is the address, Malefu Street, Naledi Kwathema and then Dumu Masonda. So Counsel wanted to draw
10 your attention there. You may proceed Counsel.

ADV. ADILA HASSIM: Thank you Justice. You have located it then, DG. So what I am confirming is that the notice of death for the person who is referred to in the news article, indeed bears the stamp of African Queens of Africa with the contact details of Me. Dumu Masonda, the chair of the Mental Health Review Board. My last
15 reference to the record, before I put my question to you is at page 1419... sorry I am told it is page 1454. Oh file 4, volume 4. Page 1419.

ME MALEBONA PRECIOUS MATSOSO: 14?

ADV. ADILA HASSIM: 1419.

ME MALEBONA PRECIOUS MATSOSO: Yes.

20 **ADV. ADILA HASSIM:** Thank you. Justice Moseneke, have you located the page?

ARBITRATOR, JUSTICE MOSENEKE: I have it in front of me.

ADV. ADILA HASSIM: It is a letter from Section 27 to the new MEC, MEC Ramagoba. And it is copied to you, DG, and it is dated 8 March 2017. But the specific aspect of this letter that I would like to refer to is on page 1423 and that is paragraph 17 of the letter. Do you see it?

5 **ME MALEBONA PRECIOUS MATSOSO:** Yes.

ADV. ADILA HASSIM: It says: “We note also that Me. Masonda owns a funeral service that was engaged to transport deceased former residents of Life Esidimeni. Please indicate whether Me. Masonda is being investigated for contraventions of the law and the terms and conditions of her employment for her multiple overlapping
10 roles in the Life Esidimeni matter.” We did receive a response, I beg your pardon, Section 27 did receive a response from the MEC and that response is to be found a few pages on at page 1430. And at paragraph 7 of the letter, paragraph 7 which is on 1431... after having saying that there is corrective action being taken against Me. Masonda, paragraph 7 says: “It is important to clarify that Me. Masonda was
15 previously employed in the Department’s Health Services prior to her retirement. Following her retirement, Me. Masonda was appointed as a member of the review board.” But it doesn’t address the second part of the question and that is the ownership of this funeral service and her involvement in provision of private services to the Department while she was the chair of the Mental Health Review
20 Board. This is directly related to recommendation 18. Are you... this was copied to you, this letter. Are you aware of any further investigations in this regard?

ME MALEBONA PRECIOUS MATSOSO: Firstly let me say that I did not receive the response, I am not copied in the response, so I am seeing it for the first time. I

would request that perhaps we establish from Dr Kenoshi if there are any further investigation with regard to Me. Masonda. But like I said when we went to the province to look at the records on Mental Health Review Boards, we are not happy with the appointment of the members as Mental Health Review Board members, but
5 also the fact that they had a contract signed by Dr Manamela.

ADV. ADILA HASSIM: You say they. Was it more than just Me. Masonda?

ME MALEBONA PRECIOUS MATSOSO: Yes.

ADV. ADILA HASSIM: So it wasn't just Me. Masonda that had a contract with the Gauteng Department.

10 **ME MALEBONA PRECIOUS MATSOSO:** No, I am saying... maybe let me explain. If you are appointed to be on the Mental Health Review Board, you then have almost like a service level agreement with the province to perform certain functions. It means that you are appointed in terms of the Public Finance Management Act, so it is a different relationship. So we are querying how those two
15 were and why that kind of appointment was the case. So I am just referring to that. This other aspect I was not aware of which must be investigated as well, which was a concern that we were raising.

ADV. ADILA HASSIM: So, okay, so I understand you now. When you say you were concerned about the relationship between Me. Manamela and the signing of
20 the contracts, you mean to appoint, the appointment process of the appointment of the members of the Mental Health Review Board, rather than... I misunderstood you to mean in these kind of arrangements and this kind of an agreement where

there is an agreement between Me. Manamela, well I think the proper title is actually Dr Manamela, and Me. Masonda. So that is what I was referring to. But you are saying you are not aware of this.

ME MALEBONA PRECIOUS MATSOSO: No, this response I never was aware of, that is why I am seeing the response for the first time. But I will refer this to Dr Kenoshi, perhaps there could be other investigations, but I will refer that to raise that with Dr Kenoshi.

ADV. ADILA HASSIM: But the first letter from Section 27 was copied to you.

ME MALEBONA PRECIOUS MATSOSO: Yes, I am aware of the letter.

ADV. ADILA HASSIM: So are you aware then of that particular part of the letter that ...intervened.

ME MALEBONA PRECIOUS MATSOSO: Yes, I am aware of that, but I am not aware of the response that in the response that matter was not raised.

ADV. ADILA HASSIM: And you say Dr Kenoshi is the right person for us to take the question to.

ME MALEBONA PRECIOUS MATSOSO: Yes, but I was raising a matter that I am aware of that over and above being appointed as members of the Mental Health Review Board, there was an anomaly with regard to the separate contract that Me. Manamela entered into, it is irregular. I was just raising that aspect.

ADV. ADILA HASSIM: I understand. We will take it up further with the appropriate person. So my final set of questions then is in relation to the issue of burials, unlawful burials, bodies that have not been identified and so on. You, DG, provided

this process with a document which described the intervention by the Department in relation to the issue of tracing the deceased. The document is to be found at page 3733 of the record. I have a copy if it is easier ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I am so sorry to interrupt you, Counsel.

5 Are you getting to a new point?

ADV. ADILA HASSIM: I am getting to a new topic, yes.

ARBITRATOR, JUSTICE MOSENEKE: Are we done with Me. Masonda?

ADV. ADILA HASSIM: Well I am certainly not done with Me. Masonda, but I think there is a more appropriate witness to answer those questions.

10 **ARBITRATOR, JUSTICE MOSENEKE:** I see.

ADV. ADILA HASSIM: So I am done for now, yes, on that topic.

ARBITRATOR, JUSTICE MOSENEKE: Very well.

ADV. ADILA HASSIM: May I proceed with the next line of questions?

ARBITRATOR, JUSTICE MOSENEKE: Yes, you may.

15 **ADV. ADILA HASSIM:** Page 3733, have you located it?

ME MALEBONA PRECIOUS MATSOSO: 37?

ADV. ADILA HASSIM: 3733. I do have a copy if it would be easier for me to hand it to you.

ME MALEBONA PRECIOUS MATSOSO: Yes.

20 **ADV. ADILA HASSIM:** Do you see it?

ME MALEBONA PRECIOUS MATSOSO: Yes.

ADV. ADILA HASSIM: It is entitled: Report on tracing of the deceased from Esidimeni. And it is compiled by the National Department of Health. Do you have it, Judge Moseneke?

5 **ARBITRATOR, JUSTICE MOSENEKE:** I think, yes, I have it, 3733.

ADV. ADILA HASSIM: That's correct.

ARBITRATOR, JUSTICE MOSENEKE: I have the big and the small one, so I am well (inaudible), I think.

ADV. ADILA HASSIM: Who authored this report?

10 **ME MALEBONA PRECIOUS MATSOSO:** It is Me. Pakiso Netshidzivhane.

ADV. ADILA HASSIM: And on whose instruction did she author this report?

ME MALEBONA PRECIOUS MATSOSO: On my instruction following the work that I had initiated to visit the mortuaries to trace bodies and locate them.

ADV. ADILA HASSIM: So the report was preceded by an investigation.

15 **ME MALEBONA PRECIOUS MATSOSO:** Yes.

ADV. ADILA HASSIM: And who participated in the investigation?

ME MALEBONA PRECIOUS MATSOSO: The first was myself, Me. Netshidzivhane, Dr Modisane from the province. On the first day the MEC and Dr Kenoshi joined us when we went to the facility. And may I just say that it was
20 triggered by a testimony that was given by a family member during the family event.

ARBITRATOR, JUSTICE MOSENEKE: Are you okay, DG, or do you want us to take a short adjournment? In any event it is time for tea. It may be that you want to hold your breath. Counsel, do you want to finish your question or should I rather...?

5 **ADV. ADILA HASSIM:** There are a few questions regarding this report. It would be appropriate for us to adjourn.

ARBITRATOR, JUSTICE MOSENEKE: I just meant this question. I realise you probably have more, after which, if you are able to answer now then we will take the tea break.

10 **ME MALEBONA PRECIOUS MATSOSO:** Yes to say that it was triggered by the first testimony that was given by a family member.

ARBITRATOR, JUSTICE MOSENEKE: A testimony by a family member.

ME MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: About what? About five patients who were buried...?

15 **ME MALEBONA PRECIOUS MATSOSO:** Yes to say firstly when she asked for where her relative was, she was told that her relative was in a facility in Solsville. She originally comes from Atteridgeville. And she said she knew Solsville and Atteridgeville very well and as far as she recalled, the facility that was referred to was a butchery. And it is on those basis that I decided to do the investigation
20 myself, to go and look at this facility.

ARBITRATOR, JUSTICE MOSENEKE: Shall we stay quiet please? Yes, would you like to complete the answer and then we will take the adjournment, DG.

ME MALEBONA PRECIOUS MATSOSO: Yes. And I requested Me. Pakiso Netshidzivhane because it was on a Saturday that whatever she was doing, she stopped and go find this facility. I even requested the DG in the province to ensure that she had police escorts. And I left the family event to go and find the facility
5 myself. In fact Me. Netshidzivhane said she struggled to find the facility. And when I went there it was just a building, it didn't have a name or anything, it was completely sealed. And when we got there, we tried to locate who owned the facility and so on. There was just no information. Until we were helped by one of the constables who tried to make contact to get the owners. In fact next door to that
10 facility is a bottle store and we eventually located the owner, but she refused to come and said to us she doesn't have transport. We then said perhaps the police must go and collect her if she couldn't come to the facility. We were later joined by the MEC and Dr Kenoshi. But we told her again that we will send the police to fetch her and she subsequently agreed that she would come. When she arrived at this
15 place, she said she did not have keys, so it means we could not access the facility. And we asked her that the police would accompany her to go and find the keys. And indeed the police accompanied her, drover around, came after an hour empty handed, there were no keys. And we asked DG Baleni to ask the commissioners that that place was to be sealed, nobody leaves, nobody enters, until it could be
20 accessed by us, because we were not clear as to why she was not helpful. So the outcome was that we left around 23:00 and came back the following day. In fact the morning when we were on our way back, she had already arrived to say that they

had a burial that morning and she wanted access to her facility. So the following day the keys were available and the facility could be opened.

ADV. ADILA HASSIM: What time was that the next day or what time in the morning?

5 **ME MALEBONA PRECIOUS MATSOSO:** It was 8:00 in the morning.

ADV. ADILA HASSIM: 8:00 in the morning?

ME MALEBONA PRECIOUS MATSOSO: Yes. And when we asked her about ...intervened.

ADV. ADILA HASSIM: What was the name of the owner, do you recall?

10 **ME MALEBONA PRECIOUS MATSOSO:** SJoe, I have to recall who the owner was. Can I refer back to the records and I'll come back with the owner.

ARBITRATOR, JUSTICE MOSENEKE: You may.

ME MALEBONA PRECIOUS MATSOSO: In the morning when we asked her as to whether did she have any Life Esidimeni, former Life Esidimeni mental health
15 patients who were deceased, she said she doesn't, her services are not for South Africans, she only deals with foreigners.

ARBITRATOR, JUSTICE MOSENEKE: Did the facility turn out to be a mortuary? Once it was opened, was it a mortuary?

ME MALEBONA PRECIOUS MATSOSO: Yes, it was.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And there were deceased bodies in there.

ME MALEBONA PRECIOUS MATSOSO: There were deceased bodies, yes, nine of them, but they were not Life Esidimeni. She explained to us that the person, in fact whilst we were there we were confronted by a lawyer who said we were not to do anything, because he had to... we were supposed to have a search warrant for the client. But we just went there to get information, not to search. So what we then did, we asked DG Baleni to secure a warrant for us, but he was not... he was the lawyer for another undertaker called Put You To Rest. But it turned out that Put You To Rest was the one that was getting the bodies and asking different mortuaries to keep the bodies for them. So I then asked the team to go to Put You To Rest to get all the records, so that they could go through each record and check against our list and try and identify any of the Life Esidimeni people.

ADV. ADILA HASSIM: Thank you. Justice Moseneke, this is quite an important issue and we intent to probe it a bit further and I prefer not to do it hastily, if this would be an appropriate time to...

ARBITRATOR, JUSTICE MOSENEKE: Yes, let's take the tea break now. We will resume just shortly after 12:00. I think we are going to resume at 12 midday. We now adjourn.

END OF SESSION 1

SESSION 2

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: DG. You are under your previous oath. Counsel may you may proceed please.

ADV. ADILA HASSIM: Thank you. DG. We left off with you speaking about this
5 visit to the mortuary in Saulsville.

MS. MALEBONA PRECIOUS MATSOSO: Excuse me, I need the pages, the files are too many. I need to be reminded. I just removed them as I was going. File Number?

ADV. ADILA HASSIM: 3733 is the page number. I am advised it's Volume 10.

10 **MS. MALEBONA PRECIOUS MATSOSO:** Yes.

ADV. ADILA HASSIM: Did you enter this mortuary? Did you inspect the mortuary?

MS. MALEBONA PRECIOUS MATSOSO: Yes. I did with Dr Modisane and (Miss Natisha Devani) and we also invited our mental health, the municipal health
15 inspectors, the environmental health practitioners from the district.

ADV. ADILA HASSIM: In the report, on page 3734. You say that the owner of the mortuary indicated that the bodies were received from Put You To Rest funeral parlour? Can you tell us more about that? What is the link between Put You To Rest and this mortuary because Put You To Rest funeral parlour you also say is...
20 All of the deceased you say from Precious Angels were sent to Put You To Rest. Is that correct?

MS. MALEBONA PRECIOUS MATSOSO: Yes. It is correct.

ADV. ADILA HASSIM: Did Put You To Rest funeral parlour have storage facilities for human remains?

MS. MALEBONA PRECIOUS MATSOSO: No. They didn't.

ADV. ADILA HASSIM: But they received bodies from Precious Angels NGO?

5 **MS. MALEBONA PRECIOUS MATSOSO:** Yes. They did.

ADV. ADILA HASSIM: So where would they keep the bodies if they didn't have storage facilities?

MS. MALEBONA PRECIOUS MATSOSO: When we arrived at this mortuary, that was a former butchery, we asked the same question. In fact, when we arrived the owner of Put You To Rest came in. The lawyer of the owner of Put You To Rest, came to the facilities, the one who demanded the search warrant, and we... Then it triggered that we go to Put You To Rest because we wanted to understand how the Put You To Rest bodies ended up in this other facility. So we first checked the records in that facility we measured them against our list. And Miss Bakiso went to Put You To Rest. So they also did not agree to them accessing their facility. We had to get a search warrant on Sunday and the DG of the Province arranged with the Magistrate so that we could access the Put You To Rest facility and also we then got to know about another one called...

ADV. ADILA HASSIM: Royal Funeral Parlour

20 **MS. MALEBONA PRECIOUS MATSOSO:** Royal Funeral Parlours and we then go to know... In fact the more we went one facility the more we got to know about others and including the fact that Put You To Rest actually is originally a Limpopo funeral parlour. They didn't have facilities in Gauteng.

ADV. ADILA HASSIM: But this funeral parlour. This branch of Put You To Rest, this Gauteng Put You To Rest funeral parlour, didn't have storage facilities for bodies, but they would receive bodies.

MS. MALEBONA PRECIOUS MATSOSO: Yes.

5 **ADV. ADILA HASSIM:** Did they explain then what they did? Because they didn't have storage. Why would they receive bodies if they couldn't store them?

MS. MALEBONA PRECIOUS MATSOSO: It was precisely our concern to how did they then get a licence to render these services if they did not have a storage facility.

10 **ADV. ADILA HASSIM:** The regulations called; "Regulations Related to Management of Human Remains" requires in Regulation 10 that all facilities, and its specific, it's not just mortuary premises. It refers to: Funeral undertakers and mortuary premises" and it requires that: "All facilities used in connection with the receiving storage preparation of human remains. All those facilities on a funeral
15 undertaker's premise, all of the facilities for the storage of the remains, receiving remains, preparation of the human remains shall be located on the said premises." And then Regulation 10 goes on to specify the minimum requirements for that kind of a facility relating to the size of the facility, the hygiene, control measures, refrigeration facilities, generator facilities in the event there's a power outage and so
20 on and so on. Where anything like that present at Put You To Rest?

MS. MALEBONA PRECIOUS MATSOSO: No. It was actually precisely our concern. We also wanted to understand under what circumstances were they issued with a licence but it also triggered another investigation on our part, which we said we will raise with our mental health users on the transfer of human remains.

Like for instance, where we were at this facility, the owner said, "She only dealt with foreign bodies." And we wanted to understand how she did that because we had very strict requirements that she had to comply with. I'm just saying, every time we identify a place, went to a place there were more questions that we asked and there
5 more issues that came up for which we thought there would be perhaps investigation.

ADV. ADILA HASSIM: Did Put You To Rest have a licence to operate as a funeral undertaker?

MS. MALEBONA PRECIOUS MATSOSO: Well, Miss Bakiso wrote that, "Yes, they
10 did have a licence."

ADV. ADILA HASSIM: But are you saying that despite they had a licence they were not in compliance with the regulations?

MS. MALEBONA PRECIOUS MATSOSO: Yes. They were not in compliance. Because we still asked them questions, how could they be a Limpopo based
15 undertaker but rendering services whereby the remains were handled by other storage facilities that were not theirs?

ADV. ADILA HASSIM: Are they being investigated?

MS. MALEBONA PRECIOUS MATSOSO: Yes. We raised this with our colleagues because it was a much broader question that we asking. Like I said,
20 every time we went to a facility we had more questions to ask. Like this one of foreign bodies, it was not part of the Life Esidimeni, something that we got into by chance. Every step of the way we identified that there were things that may not have been within the provisions of the act, varies acts that governed how mortuary remains should be handled.

ADV. ADILA HASSIM: I understand from the report that Put You To Rest would send bodies to the mortuary, the converted butchery? That's where they would send the human remains?

5 **MS. MALEBONA PRECIOUS MATSOSO:** Yes. But that was not the only mortuary where they sent the human remains. This is why we wanted the full list form them of all the Life Esidimeni deceased bodies which they may have handled. So that we could go to each and every facilities where they sent them and check the records there because we wanted to verify every single step so that we had proper records and reconcile them back to the original data base of Life Esidimeni. The 1712 that I
10 referred to in my initial report when I presented.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: The human remains; the butchery; sounds ominous. You mean to the refrigeration within the butchery?

ADV. ADILA HASSIM: The mortuary, as I understand, had been a butchery in its previous life. It was a converted into a mortuary.

15 **MS. MALEBONA PRECIOUS MATSOSO:** It was previously a butchery. That is why the family member, like I recounted, the family said, "When she was given that address, her recollection, because she was familiar, she grew up in the area, she didn't know of any mortuary in the area. She knew of a butchery." That's why, immediately, I went myself to check whether it was a mortuary or not.

20 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** So we are talking about a former butchery which has refrigeration facilities?

MS. MALEBONA PRECIOUS MATSOSO: Which had, become a mortuary.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Which had become a mortuary, because human remains and butcheries conjure deep fear?

25

MS. MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Very well.

ADV. ADILA HASSIM: In fact Mr Mosenke, it's partly why I used that language. It's because there was deep fear amongst some of the family members when they
5 were informed, that this was where their loved ones were being stored and the manner in which they were... Tragedy doesn't end with the death of these individuals, it continues in the manner in which the bodies of their loved ones were handled and the respect and the dignity that was absent in the manner in which their loved ones were handled after death. And so it's for that reason that I'm
10 specifically asking about this. There are two issues: one is; the unlawfulness of the facilities and the second is; the way in which the deceased were treated. The way in which the human remains were handled and the time frames, the delays that took place in a context where in a society likes ours which is steeped in culture. There are particular requirements for the way in which we handle our deceased family
15 members.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Yes. Let's hear the witness. Let's hear her response to that.

MS. MALEBONA PRECIOUS MATSOSO: Yes. I agree. In fact this was the revelation and like I said it helped to hear the family members relate that during the
20 healing process because that on its own revealed quite a lot for us, hence our investigation. Just going to that facility exposed the activities of Put You To Rest. It also exposed the fact that there were a few other facilities that were serving as storage areas in undertakers. It helped us to do further investigation. But what we also identified is that this seemed to be more prevalent in the Tshwane District

Area. (Miss Natisha Devani) and Dr Modisane, when they went to other facilities there seemed to be normal processes because we started in Johannesburg Sedibeng and just going to Sedibeng and Johannesburg it was quite clear that for those areas, the practices were in normal provisions of the law. The problem
5 seems to be residing mainly in the Tshwane district.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Well. That gives me deep concern as you know. I was born and raised and lived in Atteridgeville, so I hear the statement, but it's a matter of very deep concern. You may proceed.

MS. MALEBONA PRECIOUS MATSOSO: Yes.

10 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** That's my home village.

ADV. ADILA HASSIM: I apologise Justice.

(Laughter)

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Please do proceed.

MS. MALEBONA PRECIOUS MATSOSO: Yes. So we then had one testimony
15 of... I obviously will not remember the name. It was an elderly person who said that she had to move from place to place looking for her relative. She had to use her pension money and the outcome was that she was told the body was in Limpopo. It is the basis on which my team had to go and see whether there were more of the Life Esidimeni deceased. Because this is where Put You To Rest was actual
20 mortuaries were, not in Tshwane. So we didn't know whether they had stopped other bodies in Limpopo. That is why (Miss Natisha Devani) had to go to Limpopo just to check the records and just verify that none of the Life Esidimeni deceased were in Limpopo.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: In Put To Rest facility, you did
25 indeed find bodies related to patients who were at Esidimeni?

MS. MALEBONA PRECIOUS MATSOSO: In Limpopo.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: I am just trying to ascertain as matter of fact. No. In Atteridgeville, did you find bodies of patients who were formally cared for at Esidimeni?

5 **MS. MALEBONA PRECIOUS MATSOSO:** There were records and in one facility they had pauper's funeral, so we asked for records so we could verify and identify the families, ensure that we could trace the families and have proper records. So what you see here is the work that we did from the day that there was a family healing process and we followed up on every case that we could.

10 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** But DG you actually found, you did find bodies which are related to Esidimeni at this Put To Rest place?

MS. MALEBONA PRECIOUS MATSOSO: Put You To Rest in Tshwane, did not have a facility, they had offices. It was a funeral parlour without storage facilities. I would say, maybe outsourced, for lack of a better word.

15 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** I am just trying to put my finger on what you ultimately found in Atteridgeville by way of deceased bodies?

MS. MALEBONA PRECIOUS MATSOSO: Yes (Miss Natisha Devani) in her account with Dr Modisane. They did identify, like I say in some of the facilities, we had to match the records of the list that we had form Life Esidimeni against the records of the storage place, these were indeed were from Life Esidimeni. So that was the exercise we were involved in. So (Miss Natisha Devani) this report is following that process just to verify because we had to make sure that that was indeed the Life Esidimeni. Whether there were already bodies, some members of the families had already taken and buried and others we had to check the records and verify that even if it was pauper's funeral, we just wanted to make sure that they were not from Life Esidimeni.

20

25

ADV. ADILA HASSIM: And you found that there were?

MS. MALEBONA PRECIOUS MATSOSO: Some of them.

ADV. ADILA HASSIM: And you say the significant number came from The
5 Precious Angels NGO?

MS. MALEBONA PRECIOUS MATSOSO: Yes.

ADV. ADILA HASSIM: Did you meet with the owner of Precious Angels?

MS. MALEBONA PRECIOUS MATSOSO: We met the mother of the owner of
Precious Angels because firstly we could not go to the two facilities and the mother
10 could not allow us. We were not able to. She was not available. We met her
mother.

ADV. ADILA HASSIM: So I think the owners name is Ethel Ncube.

MS. MALEBONA PRECIOUS MATSOSO: Yes.

ADV. ADILA HASSIM: But you haven't met with her? You saying you didn't meet
15 with her, you met with her mother?

MS. MALEBONA PRECIOUS MATSOSO: Yes. We met that person who
introduced herself as the mother, to the owner of Precious Angels.

ADV. ADILA HASSIM: I understand. This investigation and report I understand is
the complete and final report but I understand that you are continuing with the
20 process of tracing of particularly, those who were buried as paupers. Am I correct?

MS. MALEBONA PRECIOUS MATSOSO: This is the report that the National
Department of Health produced. Remember, we were working as a team between
the National Department of Health and the Provincial team led by Dr Modisane. So

Modisane continues to do his work. Like he went to the Johannesburg mortuaries to check if there were any cases; meaning any other. At some stage they also had to go to AVBOB and identify if there were any Life Esidimeni. I am just saying, its work that we did as a team that I had to say as National Department of Health, it's
5 actually not in our competence to be doing this work. This is how far we have gone and this is our report but the Provincial team will obviously have to continue.

ADV. ADILA HASSIM: I understand. So it's continuing investigation and there will be an update to all of this information as you have already provided in the recommendations will you be making available updates, further updates to the
10 implementation of the recommendations including in relation to the issue of the funeral parlours and the tracing of unknown deceased?

MS. MALEBONA PRECIOUS MATSOSO: If you look at how the recommendations of the Ombud is styled, there are recommendations that are very specific to the National Department of Health and the National Ministers, there are
15 others that are specifically for the Gauteng Department of Health and I think when Dr Kenosi comes he will give you an account and will also give the numbers and indicate how further they can go. I'm raising that because if you look at some of the things we have to do, we are providing support, we are providing assistance but you can only work this far because we also still have to support other provinces in terms
20 of mental health services.

ADV. ADILA HASSIM: I understand. DG, that brings me to the end of my questions. I see from the report that your response to this is immediate. You went to Atteridgeville, you went to Saulsville in Atteridgeville and stayed there to 11 'o
clock at night and then returned first thing the next morning and your response has
25 really been extemporally and I want to thank you for the way in which you have been handling the aftermath of this tragedy.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Before we move away. When one looks at the report, which I must say I had not read up to now. Who awarded these contracts? Was it the Municipality or was it the National Department of Health?

MS. MALEBONA PRECIOUS MATSOSO: It's the Municipality.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: To bury, to do pauper funerals?

MS. MALEBONA PRECIOUS MATSOSO: It's the Municipality.

10 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Municipality. And who would have asked the Municipality do you know?

MS. MALEBONA PRECIOUS MATSOSO: Well we did not get into those details. What we did when we went to the facility in Atteridgeville, we invited the Environmental Health Officer that was responsible for that district, to join us.

15 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** I see the list on 3738 of people buried as paupers? Have their families ever been brought into the picture again? Informed that these remains of the people have buried as paupers and where and so on? I see it's a number of varied funeral undertakers who did this. Do families know about this?

20 **MS. MALEBONA PRECIOUS MATSOSO:** Yes. This is the process that we started. This is why I was saying Justice. When we went to one facility, when we went to another, we discovered this and we were using this as a basis of saying, "Lets identify and check against Life Esidimeni, if there were Life Esidimeni." We

then go back, at least firstly verify the identity, go back, contact the family, so that we can make sure that there is a proper burial.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: So we can accept that the
5 family of Miss Saraphina Ngcobo, who was buried at Lotus by Royal Funeral
Undertakers, are aware of these details?

MS. MALEBONA PRECIOUS MATSOSO: This is why we wanted to verify that
firstly. Get details about them and then as part of this; hence our engagement with
the Family Committee and our engagement in this group was mainly to do that. If
10 you call Justice, in the Family Committee we have people who deal with those who
have passed on but also deal with survivors. So in that group we are trying to make
sure that within the Committee, they could help us also trace some of their...

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: What is the difference
between Table 10 and Table 11? Table 10 specifically referred to Page 3738.
15 Refers to: "Being buried as paupers" and the other one; "Post-mortem and Burial
Status of Life Esidimeni Deceased" but there are only seven names. So I'm trying
to understand the difference between the two tables?

MS. MALEBONA PRECIOUS MATSOSO: We had the Life Esidimeni deceased
who were buried by their family members and we also had others that the
20 undertakers just went ahead and buried them as paupers. So (Miss Natisha Devani)
and Dr Modisane were differentiating between the two, so those who are buried by
the families, we didn't have to do any follow up. But those who were paupers we
had to go back and identify their family members.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: For instance I see now, this
25 deals with post-mortems and burial status but I see post-mortems have been done

in all instances. And those who are still at the mortuary they since been handed over to their families?

MS. MALEBONA PRECIOUS MATSOSO: I will have to establish that and Dr Kenosi can give an update on that.

5 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Oh. He can give an update on that? Okay very well. Sorry I misread that, the table is much longer than I thought. Sorry. Dr Kenosi will be able to deal with these annexures and the possible update by now?

10 **MS. MALEBONA PRECIOUS MATSOSO:** Precisely because there has been ongoing work.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Okay. Thanks. Counsel.

ADV. ADILA HASSIM There are no further questions from me Justice Moseneke. Thank you DG.

15 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** I have a question from the Legal Aid South Africa Adv Nzame Skibi

ADV NZAME SKIBI: There are few but not so many Justice.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Yes. You don't have to apologise we are here to find the truth. I'm like referee but I don't play the game, I just make sure that you play within reasonable time and effectively.

20 **ADV NZAME SKIBI:** Good Afternoon Miss Matsoso.

MS. MALEBONA PRECIOUS MATSOSO: Afternoon.

ADV NZAME SKIBI: I am from the Legal Aid South Africa representing The Mandela Health Care uses from Life Esidimeni and their families who survived the Gauteng Mental Marathon Health Project which brought us to these hearings today from the recommendations of the Health Ombud. Also from our part, that we
5 appreciate your apology and on behalf of our clients and that although the families of the survivors still have some questions like my colleagues here and the chair of these proceedings. Today we are in the fourth but we're still digging deep to get the facts of what actually happened. Just a few questions, not that many. From the scope of the recommendations by the Health Ombud, did you in your action plan on
10 focus on those 18 points which were raised from the recommendations of the Health Ombud or did you go further and investigate if there were other people, more people who might have who did some wrong doings during this project?

MS. MALEBONA PRECIOUS MATSOSO: Well. The way the recommendations are provided there are some that are specific for the Gauteng Provincial Department of Health which **Dr Kenosi** will respond to. We actually focus mainly on those that
15 were for the National Department of Health but we also worked in partnership with those that were with the Provincial Health Department. Others: The Office of the Premier took leadership in and I think DG Maleni comes, she will respond to what is it they did at Provincial level to address some of the issues.

ADV NZAME SKIBI: Yes. You know for instance although it may be or not may be your terrain. Common cause, the former MEC resigned. The other two officials, including the HOD, have been suspended. Where their other officials apart from those to whom some action was taken?

MS. MALEBONA PRECIOUS MATSOSO: That will be responded to by **Dr Kenosi**

ADV NZAME SKIBI: All right, thank you. I didn't get your qualifications. I may sometimes call you Miss or Mrs whereas maybe I am demoting you. Are you a medical doctor or ...

5 **MS. MALEBONA PRECIOUS MATSOSO:** Well. My first degree is Pharmacy and then I did a post graduate Management Programme at UCT and I have a Masters in Law but I am not a lawyer.

ADV NZAME SKIBI: Yes. Thank you for that.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: You (inaudible) quite emphatically DG.

10 (laughter)

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: That's all I've been, a lawyer all my life. So I am worried about your attitude.

MS. MALEBONA PRECIOUS MATSOSO: It's not my attitude. I only studied Health Law so it's a very confined area in Law. So I can't make it..

15 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Masters in Health Law?

MS. MALEBONA PRECIOUS MATSOSO: In Health Law and Ethics. So it's very confined.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: I see. I follow. There are some good lawyers, believe you me.

20 (laughter)

ADV NZAME SKIBI: Thank you DG. Thank you. So you are a qualified medical doctor.

MS. MALEBONA PRECIOUS MATSOSO: No.

ADV NZAME SKIBI: I mean... No.

MS. MALEBONA PRECIOUS MATSOSO: I did Pharmacy yes.

ADV NZAME SKIBI: Thank you. You know that Ma'm, generally medicines are divided into different categories or different levels of health care centres that is:
5 District, Regional and Tertiary where Tertiary Hospital. Am I correct?

MS. MALEBONA PRECIOUS MATSOSO: Yes. To be more precise we've got Primary Health Care and even within the Primary Health Care level, you've got different types of facilities and then if we talking strictly about hospitals, not level of care, we have District Hospital, we've got a Regional Hospital; we've got specialised
10 hospitals which we call Health Establishment and we've got Tertiary. We also have Central Health Hospitals.

ADV NZAME SKIBI: And in addition to that, in those categories you have just mentioned, the Department further divided medicines from the so-called "Medicine Formulary" in terms of different levels of those hospitals with regards to the
15 medication where a patient may obtain medication. Am I correct?

MS. MALEBONA PRECIOUS MATSOSO: Well if you are referring to the Essentials Medicines list it is only in two levels. We've got Primary Health Care and you've got Hospital Level. Hospital can be used at various hospitals but even within that you've categorised them into Adult and Paediatric because we deal with
20 medicines for adults in a particular way and for children differently, so you have to have a prescribed way in the manner in which you've listed them in the Essentials Medicines List.

ADV NZAME SKIBI: Would a patient who has been discharged from the Mandela Health Care Facility has been discharged to go home. Can he or she obtain
25 medication at the Primary Health Care level?

MS. MALEBONA PRECIOUS MATSOSO: Yes. It's not only confined to a mental health facility. If they have a prescription they can, It's what we call repeats. If you have a repeat and you have been down referred you can collect your medicine at a lower level facility.

5 **ADV NZAME SKIBI:** But medication at lower level facilities, are they... I'm putting it this way. At the lower level do they have medication which they can obtain from...

MS. MALEBONA PRECIOUS MATSOSO: You can have in a Community Health Centre for instance which is at Primary Health Care. You can have in a Primary Health Care level. Remember the sizes of different Primary Health Care facilities differ. You've got small, medium, large and some of the large ones can be, you know, to the same size of a Community Health Centre. So it's always important in the manner in which people access medicines it has to be closer to where they live. So if they have been discharged and they have to just collect their medicines, they don't have to be assessed. It can still be at facilities closer to where they live. In fact, we've gone even beyond just confining people to accessing their medicines when they have repeats we've got a programme called Chronic Care Medical Programme where people can actually go and just collect their medicines. It doesn't necessarily have to be in our facilities. This is at peripheral points where it's closer to where they live.

20 **ADV NZAME SKIBI:** So patients who were discharged during this Marathon Project, where they were receiving medical treatment. Is it possible some did not get any medication after they were discharged?

MS. MALEBONA PRECIOUS MATSOSO: Well it's possible. If you look at how this project was executed, it's possible that they may.

25 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Why would that be so? Why is it a possibly?

MS. MALEBONA PRECIOUS MATSOSO: Well from what we heard about the recount. I mean an NGO does not store medication and they manner in which community based mental health care, like I said, Professor M??? will explain that. The manner in which it's designed, people must still have access to Primary Health
5 Care facilities. They must still have access to Outpatient Care and they still be Psycho Social Support, they must still be seen by social workers if needed. There must still be assistance programmes meaning, community based mental healthcare, it's actually not even just about medication. It's also about integration back into a
10 community services. They must still be able to be assisted so that they get back into normal life. They are able to work, so access to medicine is just one aspect and even that. Like I said the way the project was executed, if a NGO did not even understand that when people where transferred from Life Esidimeni, they had to be transferred with a clinical file and a clinical file would have included a record of what type of medication you are on. So that on its own tells you that it wasn't properly
15 executed.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Which means many patients probably went to the district service point and they had no bed letter, they had no clinical records and nobody knew what to give them?

MS. MALEBONA PRECIOUS MATSOSO: Precisely.

20 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** How would such a situation be remedied? How would they possibly manage to get clinic records?

MS. MALEBONA PRECIOUS MATSOSO: If you look at how we executed this in terms of the recommendations of the Ombud. The very first thing you do is to send your clinical team. And your clinical team is not just your medical doctor, you need
25 your Psychiatrist, you need you Psychologist, you need you Occupational Therapist so that as you prepare record, it's a comprehensive record and that's the basis on which you can then have a record compiled even as you transfer, the receiving team, clinical team have a complete record from the transferring one.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: And you know that was done in relation to the survivors of the Esidimeni tragedy?

MS. MALEBONA PRECIOUS MATSOSO: When they were transferred from the record of the Ombud and the recommendations it was clear that there were no clinical records but we started that process from scratch. We sent clinical teams. They assessed every single one. In fact we started preparing a file from the beginning, from scratch, for every single one of them.

ADV NZAME SKIBI: From the Health Ombud report, is there a report that the transportation of these patients, open vans were used to transport them. Are you aware of that?

MS. MALEBONA PRECIOUS MATSOSO: Yes. Not only did I read it in the Ombud report but personally also read the report of the Office of Health Compliance Inspectors.

ADV NZAME SKIBI: Who is that?

MS. MALEBONA PRECIOUS MATSOSO: The Office of Health Compliance Inspectors. They also had a report because they conducted the inspections on behalf of the Ombud. So I went back again to read the report. So in terms of that report, the transportation was not only inappropriate, it was unsuitable.

ADV NZAME SKIBI: Yes. So that was improper for them to use that type of a transport?

MS. MALEBONA PRECIOUS MATSOSO: It's not even the vehicle. When you transport mental health users they must be accompanied, so this is how we executed the project as part of implementation of the recommendation of the Ombud. They must be accompanied by professionals when you move them from one facility to the other. Their clinical records must be handed over. In that hand over, the two teams must meet and discuss and what was also missing is that you

must also have family members. The family members must also be contacted so that when they arrive at the facility, when they are relocated, their family members also know where they're going to be housed and where they going to be accommodated. So we did it in that way and where we could not get a family member, specifically, the Family Committee's stood in. We could ask them, "Please verify that they were happy or comfortable with the facility that was chosen."

ADV NZAME SKIBI: After the sad news were broken, you personally, you were also involved at looking at these facilities, looking for either remaining patients?

MS. MALEBONA PRECIOUS MATSOSO: Yes. I did where I could but I also relied on some of the team members both from the Province and the Department but we also made use of clinical experts and other experts that we could access.

ADV NZAME SKIBI: And the NGO called Takalani, did you get them? Takalani?

MS. MALEBONA PRECIOUS MATSOSO: Yes, from the report of the Ombud. Yes.

ADV NZAME SKIBI: Or your team members went there?

MS. MALEBONA PRECIOUS MATSOSO: My team members went there. I never got to get to Takalani.

ADV NZAME SKIBI: Because so far we have seven family members of the patients who survived through this. There could be more, we still look for more. Those six family relatives its: Anke Pietersen; Lesego Baloi,

MS. MALEBONA PRECIOUS MATSOSO: Excuse me. I can't hear.

ADV NZAME SKIBI: I'm sorry for that, I'll raise my voice. Those seven family relatives that we have so far is: Andrew Pietersen; Lesego Baloi; Refenter

Chilwane; Nomusa Hadebe; Nomalo Nkosi; Sibusiso Kakane; Noguthula Nstwane;
Modijane Maditi and Agnus Molotjwa.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Are these names of mental health users or of their families?

5 **ADV NZAME SKIBI:** Of their families.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: These are names of family members.

ADV NZAME SKIBI: That's correct. Yes.

10 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Very well. The question should now follow.

ADV NZAME SKIBI: Our instructions are from one of the family relatives, Lesego Baloi. Whom her sister, she only heard from her friend that she was transferred to Takalani. She described her condition upon which the mental ill patient, the condition that he was in. The mental ill patient is Julia Hade. According to her she
15 found her clothes torn, she was on barefoot, it was very cold in May and a rainy day in May 2016. So that condition is clearly cannot be condoned and unacceptable. Do you agree with that?

MS. MALEBONA PRECIOUS MATSOSO: I not only agree. I went to a worse facility than that, which was just as disturbing. When we went to prepare for the
20 relocation and one of that was a former horse stable.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Which one was that?

MS. MALEBONA PRECIOUS MATSOSO: In Centurion.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Do you know the name? Or you can't remember?

MS. MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Okay fine.

5 **ADV NZAME SKIBI:** Just move to second last point perhaps. In your testimony you testified yesterday, the two official where disciplinary were taken, they are yet to be reported to their professional bodies?

MS. MALEBONA PRECIOUS MATSOSO: Yes. I can confirm that.

ADV NZAME SKIBI: What is holding that to be reported?

10 **MS. MALEBONA PRECIOUS MATSOSO:** Because if we report them the professional bodies is going to say they are waiting for the outcome of the disciplinary action, so this is what **Dr Kenosi** will elaborate on because the reporting was done by Acting HOD and the current MEC and one of the things that they will report on is that they are awaiting the disciplinary hearing. In his explanation, he
15 said normally that when they've reported especially when people are subject to disciplinary hearing, the Health Profession Council or the Medicine Council always says, "Can you also get records so that you don't duplicate the investigations." So this was he had explained this.

ADV NZAME SKIBI: Any criminal charges were reported or opened? Or is there
20 nothing?

MS. MALEBONA PRECIOUS MATSOSO: DG Baleni will talk to that as well as well as the HOD, acting HOD, **Dr Kenosi**.

ADV NZAME SKIBI: The person who was in charge of this project. There was not steps taken against him?

MS. MALEBONA PRECIOUS MATSOSO: Which person?

ADV NZAME SKIBI: It was not investigated.

MS. MALEBONA PRECIOUS MATSOSO: Which person? If you look at the copy of the record, because I've got the list of all the officials that were involved. It's a long list so if you say "person" unless you call him by name--

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Are you referring to the project leader **Mr Musonogi**.

ADV NZAME SKIBI: That's correct. Yes.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Is that the person?

10 **ADV NZAME SKIBI:** Yes.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Very well.

MS. MALEBONA PRECIOUS MATSOSO: Mr Moseneke, I think **Dr Kenosi** will respond to that.

ADV NZAME SKIBI: All right. Thank you.

15 **ADV NZAME SKIBI:** Thank you Chair, there's no further.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Are you done Counsel? Very well. We are going to move onto Advocate Groenewald.

ADV. DIRK GROENEWALD: Thank you very much Justice. Director General, my name is Dirk Groenewald and I represent three of the family members who lost their loved one at Cullinan Care and Rehabilitation Centre. Now from my side I would also just like to thank you for coming and testifying at these proceedings and providing us with some clarity on what happened, how it happened and why it

happened. I would like to start off, you testified in respect of a question by Justice Moseneke as to whether or not the Department has build any new facilities for mental health users? You refer to a facility that was build in the Northern Cape and which was, I think your words were: "It was a total hazard or didn't work out" and then you decided you not going to build anymore facilities that you are going to focus more on community based healthcare. Is that correct?

MS. MALEBONA PRECIOUS MATSOSO: No. I didn't say, "We are not building." We said the Policy Environment both internationally and the WHO guidelines, is that the recommendation is that we must move towards community based mental health care particularly, for those people who need long term care.

ADV. DIRK GROENEWALD: I am just going to interrupt here. The policy guidelines what describes that we must move to community based?

MS. MALEBONA PRECIOUS MATSOSO: Is the Mental Health Policy Strategy Framework 2013 - 2020.

ADV. DIRK GROENEWALD: 2013 - 2020?

MS. MALEBONA PRECIOUS MATSOSO: Yes. We identified different areas in the kind of... Remember mental health care is a continuum of care. People don't stay in long term facilities forever. So they need to be reintegrated. If they are better they need to be reintegrated back. They get assessed, if they relapse and they need to be kept in long term facilities, so we need to make sure that it's a continuum of care.

ADV. DIRK GROENEWALD: So the Mental Health Policy of 2013 - 2020?

MS. MALEBONA PRECIOUS MATSOSO: Policy and Strategic... Policy Framework and Strategy Planning of 2013 to 2020.

ADV. DIRK GROENEWALD: Policy, Framework and Strategy?

MS. MALEBONA PRECIOUS MATSOSO: Yes.

5 **ADV. DIRK GROENEWALD:** Now to who does this policy apply?

MS. MALEBONA PRECIOUS MATSOSO: It applies to the whole country.

ADV. DIRK GROENEWALD: The whole country? National and Provincial?

MS. MALEBONA PRECIOUS MATSOSO: Mainly its implementation happens at Provincial level.

10 **ADV. DIRK GROENEWALD:** So it mainly happens at Provincial level?

MS. MALEBONA PRECIOUS MATSOSO: Yes.

ADV. DIRK GROENEWALD: You'll agree with me that this Policy or let me rephrase my question. You'll agree with me that the Gauteng Marathon Project, it's based on that policy?

15 **MS. MALEBONA PRECIOUS MATSOSO:** Well. I can't say that it's based on that policy because we did not even know that they were engaged in that project. If it was, then would have followed the procedure that we have set in place on how a project like that gets implemented.

ADV. DIRK GROENEWALD: You will agree with me that the MEC's purpose and
20 the Gauteng Department of Health purpose. They call it the "Deinstitutionalisation".
It has the same purpose and object of a community based health care system?

MS. MALEBONA PRECIOUS MATSOSO: Well the first issue we got to understand when we wanted to understand why they embarked on a project. We were told that they wanted to reduce costs. They wanted to cut down on costs, so

we don't know whether that was the aim to implement the Strategic, the Mental Health Framework, the Policy Framework or whether it was to reduce costs. Until we have had an opportunity to study that and match that against the policy we will be able to ascertain that. Because on one hand we were informed that they were
5 trying to reduce costs.

ADV. DIRK GROENEWALD: We now know they haven't reduced costs and we haven't we received the figure as of yet as what this whole tragedy in fact cost the Department and the Taxpayer but I will trust we will get to that. But the point I would just like to make Ma'm, is that I find it very difficult to believe that the Premier
10 and the HOD and somebody else, we don't know who, sat around a table and they just came up with this policy. They were informed by this Mental Health Policy Framework and Strategy. That was the bases they used for this programme.

MS. MALEBONA PRECIOUS MATSOSO: I actually disagree. I will tell you why. This is the project that was called... It was called Smith Michelle. During the
15 Apartheid days there was something called Smith Michelle, where they kept these people and black people were actually abused and what happened in 1994 with the new Constitution articulated in 1996 after the Constitution was adopted, the provinces assumed the competence looking after mental health care users. Now a number of provinces actually had a relationship with Life Esidimeni. Some of the
20 provinces ended their contracts and they did not end up with this disaster. They ended the contracts. Now if you end a contract... Eastern Cape still has a relationship with Life Esidimeni both the Health and the Social Development Sector. Limpopo does have a contract like this.

ADV. DIRK GROENEWALD: So if you say, "A contract like this?"

MS. MALEBONA PRECIOUS MATSOSO: With Life Esidimeni. Life Esidimeni, Mental Health in Eastern Cape. They do have. Now for the provinces that ended

their contract, they did not end up with this disaster so it cannot have been the result of the policy framework.

ADV. DIRK GROENEWALD: So there are other provinces that also terminated their contracts with Life Esidimeni? And they embarked on another programme or
5 process? Similar to this one but which did not ended in the same tragedy?

MS. MALEBONA PRECIOUS MATSOSO: Not in this way?

ADV. DIRK GROENEWALD: Not in this way?

MS. MALEBONA PRECIOUS MATSOSO: No.

ADV. DIRK GROENEWALD: But it's based on the same principle? Programme
10 there in the other provinces?

MS. MALEBONA PRECIOUS MATSOSO: Some of them refurbished their own facilities and then reintegrated the mental health users in their facilities. So this is why I said the Gauteng one, just was unique. And the Gauteng one we still want to understand why.

15 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Now you really saying that: National Mental Health Framework need not lead to this catastrophe?

MS. MALEBONA PRECIOUS MATSOSO: Precisely.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: If the protections and the
20 safeguards in it are followed, it need not lead to death. That is really your answer isn't it?

MS. MALEBONA PRECIOUS MATSOSO: It is indeed.

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

ADV. DIRK GROENEWALD: Thank you very much Justice. My apologies, I'm just trying to get my head around this whole project and how it was. What's the bigger picture behind it because you know say there other provinces that implemented the same project but it didn't lead to the chaos and the tragedy as happened in
5 Gauteng. And you said the recommendation by the Ombudsman is that we must actually get somebody in to assist us. And you say that we have the World Health Organisation to come and assist us because this is a difficult project but then is the project already running in South Africa?

MS. MALEBONA PRECIOUS MATSOSO: Can I differentiate between policy and
10 project. Can you clarify whether you are asking about the project or about the policy?

ADV. DIRK GROENEWALD: I am asking about the project because you just testified ,Director General, that in other provinces this project is already running.

MS. MALEBONA PRECIOUS MATSOSO: Can I correct that?

15 **ADV. DIRK GROENEWALD:** Please. Please.

MS. MALEBONA PRECIOUS MATSOSO: In the other provinces I am explaining that they had a contract with Life Esidimeni. The same way that Gauteng did. They ended the contracts with Life Esidimeni. It did not end up in this disaster. So I'm
20 saying, when we informed and when I was contacted by Section 27. They said, "Gauteng Provincial Health Department was ending a contract with Life Esidimeni." So I'm trying to say that you have provinces that had similar contracts; when they ended their contracts, we did not end up with this disaster.

ADV. DIRK GROENEWALD: I don't have facts that don't agree with your statement. What I want to know is. You testified that they followed a similar project from cancelling the project with Life Esidimeni and going on their own. They followed the same project as was followed in Gauteng but the consequences
5 weren't the same.

MS. MALEBONA PRECIOUS MATSOSO: No.

ADV. DIRK GROENEWALD: Let me rephrase that. So the way the other provinces implemented it. Their policy was different. Their policy and their project was different totally; from this one in Gauteng.

10 **MS. MALEBONA PRECIOUS MATSOSO:** Okay. I am going to differentiate a: Policy, a Project and a contract. Its three things.

ADV. DIRK GROENEWALD: Okay.

MS. MALEBONA PRECIOUS MATSOSO: You had a contract between Provincial Health Department, whether Eastern Cape; Gauteng and so on with Life Esidimeni.
15 Okay. Gauteng says they are going to end the contract with Life Esidimeni. Now we don't get to know what the purpose or their reason is. That is the first thing. So all what we requested is to say, "This contract cannot end." We are not told what the purpose is. When I intervened it was to say, "What is it that is needed?" That is the first thing. And the second, with regards to the other provinces, they also had a
20 contract with Life Esidimeni. They ended their contracts. I was never got to be told but nobody ended up in a situation where we are. The Policy Framework was a consultative process. This is how we develop policy in Government. It started with an Indaba or I would say a summit because you don't develop policy --

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: "Indaba" is an English word. It
25 is in the Oxford English Dictionary. Trust me.

MS. MALEBONA PRECIOUS MATSOSO: Thank you.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Very well.

MS. MALEBONA PRECIOUS MATSOSO: Summit and in that summit, we invited mental health experts, we invited different Government departments to say, "What should be the policy on mental health in this country?" and it's the outcome of that consultation, independent of what the contractual arrangements were. And if you allow me;. At the height of Life Esidimeni, you might have been aware that there was a headline that the MEC of Social Development in Eastern Cape wanted to end the contract and do exactly what happened. And we asked our colleagues to say, "But you can't do what Gauteng did. You just experienced this." So as I speak, Eastern Cape still has their contract in place. I'm trying to say, somebody will have to persuade me that this was an intention to implement policy. Because if it was, it can't have been because we've got a very clear procedure of how it's done. And may I hasten to say, we have held workshops in every province explaining precisely what this entail but even before that, you do an assessment of mental health services in each province before they embark on that you prepare ground. Any NGO or anybody who would like to render this service, they should have been trained, they must be resourced. So you don't wake up one day and say you are implementing a policy. It's a (inaudible) it's inappropriate. It undermines the policy.

20

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Well Counsel, you have had a long explanation.

ADV. DIRK GROENEWALD: Thank you very much Justice.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: In fact it's a one of sorts.

25 (laughter)

ADV. DIRK GROENEWALD: Indeed.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: But you go ahead with the question.

ADV. DIRK GROENEWALD: Thank you very much. Thank you very much DG for that explanation. So you say that somebody needs to persuade you that this was
5 an attempt to implement that policy? Have you made that request to the MEC? Have you asked her, “Was this now a flawed attempt of implementing the policy?”

MS. MALEBONA PRECIOUS MATSOSO: Well, I would even go further. The Mental Health Act amendment of 2002 makes provisions for community based mental health care. Now in 2002 that policy was not even in place. This policy was
10 just adopted quite recently. But the Mental Health Act and its provisions date back to 2002 and it makes provision for community based mental health.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: In principle Counsel, I could have questions around if it’s appropriate and ideal implementative setting to have community based health care. Are you contesting the wisdom of such a health care
15 plan? Then you could put it to the Witness so she can defend it or otherwise.

ADV. DIRK GROENEWALD: Justice, that’s not my purpose with my questioning. Perhaps from my following questioning we will get to that.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Very well.

ADV. DIRK GROENEWALD: Director General, you confirmed that by October
20 2015 you were already informed of concerns by some NGO's as to the consequences of the implementation of this project. If I talk about the project, I talk

about the Gauteng Marathon Project. In 2015 you approached; you testified you were approached by Section 27.

MS. MALEBONA PRECIOUS MATSOSO: To be more precise. Section 27 called to me was to me say, "Can you intervene as Gauteng not to end the contract with Life Esidimeni." So this is why I differentiate between policy, contract and project,
5 because at the time, I didn't even know of the project.

ADV. DIRK GROENEWALD: Would you say that's quite a 'piece meal' approach of dealing with the problem? Because you cannot just look at the cancellation of the contract you must also look at the consequences thereof and the policy they want to
10 implement. You know, you cannot have the piece meal approach but my question simply. You knew in October of 2015, you knew that the contract with Life Esidimeni was going to be cancelled. Yes. So you can just answer 'yes' because you have testified that already.

MS. MALEBONA PRECIOUS MATSOSO: Yes. This is what Gauteng was
15 planning to do, to end the contract.

ADV. DIRK GROENEWALD: Then you instructed Professor Freeman to intervene, to be your "watch dog", if I can put it like that from the National Department's side to say, "Just have a look there. What's going on there with the
20 Gauteng Department of Health and just see to it that whatever they doing they must be sure that's in line with policy or law, whatever?" Is that correct?

MS. MALEBONA PRECIOUS MATSOSO: It's incorrect.

ADV. DIRK GROENEWALD: Incorrect. So you didn't instruct him to go and overview or oversee?

MS. MALEBONA PRECIOUS MATSOSO: I said he must go firstly get information because the only information we had, not from Gauteng but from Section 27, was
5 that a contract was ending. We didn't have any further information; we didn't even know that it was about the plan. We didn't have any information so I can't have instructed Professor Freeman to go and facilitate something. He supposed and get that information and work with them. The very first thing I requested was could they invite him to a meeting where they could brief him and that did not happen.

10 **ADV. DIRK GROENEWALD:** Now that did not happen and what did you do about that Director General?

MS. MALEBONA PRECIOUS MATSOSO: So I spoke to the HOD, as I said. Because the first issue was about the agreement, that had to be reached. Like I
15 said, they went to court and in December there was a settlement and once the settlement was signed and the matter was agreed to. If the matter was before the courts and there's an agreement, I wasn't sure whether I still had to intervene further.

ADV. DIRK GROENEWALD: You were informed late or in the beginning of 2016
20 that they were going ahead with the plan and with the project? Your testimony where that **Dr Selebani** informed you, that they were proceeding to implement the plan.

MS. MALEBONA PRECIOUS MATSOSO: No. He informed that there was an agreement that had to be signed and I had to intervene because he didn't want this
25 to be a court order. And that was in December not beginning of 2016. It was in December of 2015.

ADV. DIRK GROENEWALD: You weren't informed that they were going ahead with the project?

MS. MALEBONA PRECIOUS MATSOSO: No. Remember in December the spirit of the agreement was that had to involve different partners in the development of the chain. That plan had to be concluded by end of January. Now you can't start
5 discussing implementation when there's no plan. So I did not have information that there was a plan then in December but an agreement that was reached in court which could not be made a court order. And that was his request.

ADV. DIRK GROENEWALD: So you had no further follow ups because you didn't
10 think it was needed.

MS. MALEBONA PRECIOUS MATSOSO: I did not have any further follow ups because January of 2016, I was the Chair of the Executive Board of the World Health Organisation so I was not in the Country at the time.

ADV. DIRK GROENEWALD: Thank you DG. If we can then just go to the
15 situation of Miss Mashlangu, the MEC. You have now presented to us the status of the recommendations made by the Ombud. Now I have just a few questions there. If you feel that you cannot answer the questions because you do not know then you can just say, "You don't know" and just inform us who the relevant person that can testify and explain it to us. You agree that Miss Mashlangu she voluntarily resigned
20 a day before the Ombudsman report was made public?

MS. MALEBONA PRECIOUS MATSOSO: Yes. It was published in the news and I also referred to it in the report.

ADV. DIRK GROENEWALD: Ma'm, I would just to get your opinion. The families that I represent, would just like to get your view and I think perhaps the public as

well. Do you feel or do think that the voluntary resignation of a individual that is implicated in the death of 118 people, do you think that is sufficient accountability and responsibility?

5 **MS. MALEBONA PRECIOUS MATSOSO:** Well it would be very difficult for me to respond but I guess that there are laws in the country and they are processes and this process of arbitration is meant to help us deal with some of these issues.

ADV. DIRK GROENEWALD: But in respect of Miss Mashlangu and especially to ensure that there is accountability from her side. Do you feel that her resignation is sufficient? Was sufficient?

10 **MS. MALEBONA PRECIOUS MATSOSO:** I take it that individually if you are a health professional you get (inaudible) there is a code of ethics that apply, you get (inaudible). There is a code of conduct, there ethics and so on. I guess even people who are political office bearers, who are appointed in particular positions, (inaudible) to serve the Republic in various ways and I would imagine that it
15 requires of us to conduct ourselves in a particular so I cannot make a judgement. I think that there are processes to determine that and in this respect this process should help us deal with that particular matter.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: But it's quite a fair question
20 though DG. Council says to you, "In a tragedy of this magnitude, in your view, is mere resignation a day or two before a devastating report about a public official is released, sufficient atone for the wrong doing that led to the death?" I think that is the question. Maybe you should confront it.

MS. MALEBONA PRECIOUS MATSOSO: Maybe to be more direct that particular
25 individual would have been here also, would have been called to at least come and present and give answers because some of the answers could not have been given by Moseneke as a junior official. Some of the questions I cannot answer myself

because that project was executed wrongfully. So it is for that reason I thought this process would assist us with that.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Okay, let's rephrase it.

MS. MALEBONA PRECIOUS MATSOSO: The second..

5 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** I'm sorry, the second?

MS. MALEBONA PRECIOUS MATSOSO: The second

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: You go ahead and finish your answer

10 **MS. MALEBONA PRECIOUS MATSOSO:** The second is that yes. If you are accountable we should be subjected to the full force of the law in this country. She has to account, she has to and I think a sign of accountability is also about an individual. If you think you (inaudible) you have to account and in my opinion I think she should firstly, be part of this process. Secondly, she should also be subjected to other legal processes.

15

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: That's a fair answer. But it had to be confronted because if I was one of the families, I'll start feeling like part of the family because I will be sitting with the families for so long. I would want to know, after 118 deaths it appears, I am not saying conclusively yet, it appears to be
20 recklessness and gross negligence. Is resignation alone, enough? I think it's a fair question to ask and I think many South African do ask that question. Do you just sign and letter and you go and that's it? Or is there more? And I think you as National Director; you are being invited to express your views. Not in a definitive

way but in a way that acknowledges the role and room for accountability by those who hold public power or exercise public power.

MS. MALEBONA PRECIOUS MATSOSO: There are probably two levels administratively within my power as a Accounting Officer, a Senior Administrative person, Senior Technical Officer, I would follow the full might of the law. At a political level, which is slightly beyond me, I think this is why I was saying that even if you have resigned as an Executive authority I'm not subject to provisions of the Public Service Act or any other because you have resigned, you can't go to parliament, I guess, to account. So the first that I responded to was that this process in itself should be one such process that helps with that accountability. The second is that; there are legal processes in this country that must also be followed.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: For instance, people would say, "You National Director, what's happening with the front of the Police and the NPA?" Because we now that the recommendation of the Ombud went that far. Is there somebody going to tell us, where are they? How far are they? What have they done around this matter? It's a common question that comes to mind to me just a citizen, not even as a arbitrator. So it's fair for counsel to ask you. Where's the NPA? The National Prosecuting Authority. Where are the South African Police Services? Are they making progress? How far are they? And what are we to expect? You might or you might not know but it's a fair question to be put to you.

MS. MALEBONA PRECIOUS MATSOSO: The DG of the Premier. DG Baleni, is coming to deal with that particular issue. She will say exactly where we are but as I said the (inaudible) has already started investigations; hence I said, legal processes will follow.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Counsel. It's back to you.

ADV. DIRK GROENEWALD: Thank you very much Justice. Director General, we are now eight months. It's now eight months since Ombudsman made his report known, presented his report. Some of these family members it's been now a year, more than a year since they have lost their loved ones. At the end of the day, you agree with me. We are here at the arbitration proceedings and we are thankful for these proceedings but the end of the day, no individual has been held accountable. Do you agree with me?

MS. MALEBONA PRECIOUS MATSOSO: I agree.

ADV. DIRK GROENEWALD: . Yes. And you agree with me that that failure. That failure, that's a hindrance, that's an obstacle for these family members to get closure. You agree with me?

MS. MALEBONA PRECIOUS MATSOSO: I agree and I am hoping this arbitration process is going to help facilitate that. It will be a catalyst for us to help bring to book those who are responsible.

ADV. DIRK GROENEWALD: Thank you. In respect of the disciplinary hearings against the HOD, and so on. You say you do not...

MS. MALEBONA PRECIOUS MATSOSO: Dr Kenosi will come in and account for that.

ADV. DIRK GROENEWALD: Will come and...

MS. MALEBONA PRECIOUS MATSOSO: Yes.

ADV. DIRK GROENEWALD: To that extent Justice, I think I am finished.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Are you done Counsel?

ADV. DIRK GROENEWALD: I think I'm done.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Thank you. I'd hope to have helped your way by now DG to go and look at The National Health Care but that's not going to happen yet you have at least two counsels. You going to have one of
5 the evidence leaders going to post some questions to you, if he has any and then there will be a re-examination in other words counsel who led you in the beginning will decide whether he has any re-examination questions which are normally clarificatory. So that is what's left. We are going to adjourn, its 1.30. We assuming at 2.30.(inaudible) from counsel, I'm going to adjourn for an hour. We adjourn.

10 **END OF SESSION 2.**

SESSION 3

ARBITRATOR, JUSTICE MOSENEKE: Shall we start? I see all the people with earphones. [Language, 0:21 – 0:28] Si biya ku luma manje. S'na xala. Bon ba getse. Siyabonga. DG, you're under your previous oath. We're going to Counsel,
15 it's your turn.

COUNSELLOR: Thank you Justice Moseneke. Just a few things to clarify. DG Matsoso, you have, our scope here is limited to assisting the families to find closure and redress. I'm sure you may have seen it from the Professor's report and to determine an equitable compensation for the families. In your characterisation of
20 how these patients, as well as the families, were treated. The one example you mentioned that you went to a worst facility which was a former stable. There was an old lady who had used her pension money, only to told that the lifeless body of

the relative is somewhere else in Limpopo. And there are a number of examples which you have mentioned and our witnesses have mentioned, of the treatment which they have received. Is this what a Health Department, run, that is a government, is this what government should be meeting out to the receiver of the services which is being provided?

MALEBONA PRECIOUS MATSOSO: Well, it runs contrary to the provisions of the National Health Act, because the National Health Act is premised on access to quality care and a description of what has happened doesn't come any close to what I would describe as minimum quality. But it goes even beyond that, I mean some of the facilities do not even meet the prescribed norms and standards of what a facility should look like in terms of Regulation 158. Most Provinces issue licenses, they license facilities, private and otherwise. In particular, 158 is about licensing of private health facilities. Those do not come anywhere near what is prescribed in Regulation 158, just in terms of infrastructure. But now if you go beyond that, and talk about the service, it's, I can't even compare. So it's about a description of the infrastructure, the environment, but also the services that are rendered.

ADV NGUTSHANA: So, in your view, firstly you had made reference to certain guidelines which you had formulated. Do those guidelines adhere with issues such as this?

MALEBONA PRECIOUS MATSOSO: No, those guidelines are only in as far as the facilities that are for, I'll describe simply, that are for NGO's. What I'm describing, I think I'll go back to what I said originally. To say when you license a facility, and it's a standard facility that renders health services, you need to comply with municipality

by-laws, you need to comply with provisions of the National Health Act and licensing arrangement, in particular Regulation 158. But you also need to comply, if it's a mental health facility, you have to comply with the provisions of the Mental Health Act. But in this particular case, [inaudible, 05:05 – 05:07], it's an addition. So I
5 would say that NGO's are not normally designed to render health services, so one would imagine that in this particular case, it was for a limited scope. It should have been for a limited scope. I think they overextended that scope.

ADV NGUTSHANA: Yes. And in relation to the service, do you have anything else in place which, in terms of policies or guidelines, which you are going to put in
10 place, or propose to be put in place?

MALEBONA PRECIOUS MATSOSO: No, we have existing guidelines. We have norms and standards for various facilities and the kind of different disciplines in the manner in which they should be designed, particularly when you design a facility, a clinic, a hospital, we've got norms and standards for those. We actually have
15 different work packages for those, but we also have norms and standards that have always applied, that should be complied with. But despite that, the Health Professions Council have different sets of regulations that regulate how professionals who render services, must conduct themselves. Now, people who render services in NGO's are not subject to those provisions. So we have laws,
20 we've got regulations, we've got guidelines, we've got norms and standards and these have been gazetted and these must be complied with.

ADV NGUTSHANA: And any oversight in place which you may have designed in terms of these policies? Do you have such, specifically in relation to your NGO's?

MALEBONA PRECIOUS MATSOSO: We have two levels. If you read the Mental Health Act, it actually prescribes that the Provincial Head of Department is the one that issues licenses, but it also goes on to describe the functions of the Head of the health establishment and in this regard, the Head of a health establishment will be
5 your CEO of a hospital. So it's very prescriptive about who does what, where and how. The functions and the roles of a Director-General for instance, would be with regard to state patients, when it comes to the Mental Health Act. But when it's with regard to the National Health Act, the scope is very specific. It mentions Director-General specifically, Head of Department specifically, but it also goes on to say
10 what the MEC's responsibilities are. The Minister of Health, it goes on to describe even for municipalities. This is the National Health Act. It's very, very clear what the definition of role is for each party.

ADV NGUTSHANA: So if there were to be an instance of an NGO failing to provide your most minimum and basic expected services, actions that must be
15 taken would be against the direct line oversight body like your DG, your junior officials, or what? Against whom action must be taken in the event that such a thing occurs?

MALEBONA PRECIOUS MATSOSO: The first thing is that, if you look at the licenses, the different spheres of government, our functions are defined. Even
20 though from a, I know the Justice earlier said we have to be careful on how we relate to the Constitution, but I just wanted to talk about this somehow to say that if

at National, you'd sort of intervene with regard to the performance of functions and service, there are actually provisions of the intergovernmental relations that apply. We cannot work outside those. In fact, it says we must not encroach or use the powers of those other spheres. So we work collaboratively as it was earlier

5 described and where norms and standards have not been complied with, and if we have to intervene, the vehicle that exist at the moment, is Section 100 of the Constitution. But we've also seen, even with Section 100, that if you do not have the cooperation of the Province, for instance, the executive, the officials, it is very difficult to implement Section 100. One recommendation that we got was that we

10 probably need like, not just Section 100, something underneath that said what the procedures should be. Justice, I'm sorry.

ARBITRATOR, JUSTICE MOSENEKE: Yes. You could make a law and I think that's what the National Health Act is, that purpose to regulate norms and standards across the length and breadth of the country. In which event, if a Province, any

15 Province, were to try and regulate the same thing, because they also have a competence, a co competence, like Health, like Education. Then, if there is a conflict between the two laws, Provincial and National, the Constitution says that we will look at whether the National Act intended to regulate the full space and to set norms and standards which apply nationally. In which event the national legislation

would trump the provincial legislation. At the same time the intergovernmental relationships and corporate governance which Counsel referred you to. So it's a little complicated thing, but in the end, if it's a real conflict between provincial and national, the national is a law that covers the space. National can trump provincial, but you're right, you don't do that lightly. You don't wake up one morning and say I'm going to manage all your hospitals. Though you could notionally have the power, if there's an act that allows you to do it. Difficult terrain, but Counsel must go on and tell us what he wants to achieve with these questions. I'm not sure where you're going? I'm not sure, I'm sure you know.

10 **ADV NGUTSHANA**:: No. You have made mention of the fact that you were informed of where cost implications were put forth as the motivation for this project. That is to terminate the Life Esidimeni contract and to de-escalate the accommodation of patients from institutions to NGO's and so on. And from your evidence, you seem to be unsure whether this is the real reason behind that. Did I
15 get it correctly?

MALEBONA PRECIOUS MATSOSO: Well, from what we've seen, it can't have been. Even if that could have been an intention, we don't think that was realized from what has happened. In fact, one cannot put a human life to a cost. If you've

lost human life, you can't say you've achieved whatever you'd intended. And I that's a huge cost that one would ever think about.

ADV NGUTSHANA: So, together with that, we have now, through the evidence of Mr. Mosenogi, discounted claims that it was urgent to implement this project, and
5 through the report of Prof. Makgoba, he discounted the fact that it could have been motivated for cost saving exercise, as you do confirm it yourself. What I want to know is that, what steps have you taken to or initiated to find out the real reasons behind the termination of this project?

MALEBONA PRECIOUS MATSOSO: Well, at this stage we had not even come to
10 that. Our main objective and priority was to implement the recommendations of the Ombud. And those recommendations were to relocate people as quickly as possible to minimise the risk. I think that has been our preoccupation. In fact, if you look, this is part of implementation of the recommendation, like us, following that and then go back. We've already started that process, because we didn't want to
15 confine this to Gauteng only in the event that we experience this in other provinces. In fact, if I recall again, through civil society, SADAC centres' information about facilities that were inappropriate in KZN, we sent our inspectors to go. But we then sent teams to go and assess every province, what the mental health services were

and based on particular technical tools that we developed, we also got again, from Section 27 indicated that somewhere in Orange Farm, there were in some church, there were some mental health users that were bound in chains. We sent inspectors again. I'm just saying that we said our view, even though we were
5 implementing the recommendations.

ADV NGUTSHANA: Outside of that?

MALEBONA PRECIOUS MATSOSO: Outside of that. We have to look at every single province and see what the status is. So we've got that report and we've gone back to provinces to say this is the status, you need to go back and take corrective
10 action. But I think a bigger picture is how do you protect vulnerable groups. Still ensure that they have quality care. So it is what I said, the Minister had done, after the National Health Insurance Policy, White Paper was published, he also pronounced that he is going to prioritise vulnerable groups, including mental health care users, as well as those with disabilities, older persons, young women, children
15 as well as those who suffer from cancer.

ADV NGUTSHANA: I thank you. So we will soon find out the real reasons behind this project?

ARBITRATOR, JUSTICE MOSENEKE: Well, before you move away. Given your seniority, and given the fact that you were very much the scavenger at the end, the person who dealt with the aftermath, just imagine a terrible war and after that, bodies and destroyed buildings and I don't know what else and what else... So you

5 had the advantage of hindsight. What was all this about? With the advantage of hindsight, what was happening? What was the project about? We're told it's not about money, what was it about? Why did the Province have to cancel that contract so precipitously? And why did they set themselves deadlines like the 30th of June, add then, in April and May, they had to, if you like, evacuate everybody? For better,

10 for worse, to places that you tell us now, all 27, did not meet the standards that the law require? Ombud had already told us that and you confirmed it today, and the question must be asked what was all this about? If not money, what? From your hindsight, you've seen the devastation, what was it about?

MALEBONA PRECIOUS MATSOSO: Well, I can't speculate, but I can only reflect

15 what one owner of an NGO where we went to observe the relocation, what he said. He has always existed as an NGO, he's always rendered services, he didn't have Life Esidimeni, mental health care patients. He's always rendered these services and he described this as an enterprise.

ARBITRATOR, JUSTICE MOSENEKE: Described it as a what?

MALEBONA PRECIOUS MATSOSO: As an enterprise. And I've been wondering how do you describe what I see as a health service, as an enterprise. And I'm hoping that this is not what all this was about, I'm hoping not.

5 **ARBITRATOR, JUSTICE MOSENEKE**: The doctor who signed all these licenses, which turn out to be all legally unacceptable, invalid. The evidence suggests which I had today that, she now was part of a process to give contracts to people to remove the dead bodies. Should we make anything out of that?

MALEBONA PRECIOUS MATSOSO: This is why I say I'm hoping they did not
10 execute this as a business project, because this is not what health is about. Health is not a commodity of trade, health is about looking after people. It's about care.

ARBITRATOR, JUSTICE MOSENEKE: And the person who exercise control and oversight, what is the body called, referred to recommendations?

MALEBONA PRECIOUS MATSOSO: Mental Health Review Board?

15 **ARBITRATOR, JUSTICE MOSENEKE**: Yes. Turns out herself to be a mortuary operator. She does nothing about what clearly is a tragedy and it turns out that

she's moving bodies around and gets a contract from the HOD. Was it HOD? No, the Head of the Mental Health Unit.

MALEBONA PRECIOUS MATSOSO: Dr. Manhamela, yes.

ARBITRATOR, JUSTICE MOSENEKE: Yes. What should we make of that? I'm
5 puzzled by these pieces of evidence as I wonder what this project was about.

MALEBONA PRECIOUS MATSOSO: Well, seeing that the SAU has been alerted,
I think it's a matter that requires investigation from various state entities, because it
cannot be that it's not only conflict of interest, but it's also an illegal activity.
Because the provisions of the Public Service Act do not allow that those who render
10 services, those who are employed in government, can also be involved in business
activities.

ARBITRATOR, JUSTICE MOSENEKE: But DG, you are indeed discounting the
motive on the part of Province to save money. It wasn't that, you say, is it?

MALEBONA PRECIOUS MATSOSO: No, I'm, even if that was the case, what I've
15 seen in the manner in which the project was executed, it can't just stop with saving
money. This man that owned that owned Shamah House [?, 23:28], I hope I'm
right, I can't remember the NGO, but it's an NGO that existed before. And when we
were taking people away, he said: "This is an enterprise. If you are going to close

us down”, you know, I don’t know what will it mean. So I say I’m hoping that this project was not viewed in that manner that, let’s give them the benefit of the doubt, that it was about saving costs.

ARBITRATOR, JUSTICE MOSENEKE: Well, the NGO could have viewed it that way, that charging per person per day who they would have to look after. But I’m interested in public officials. People like you and me, who worked for the State. What were they doing? Because at some point we have to try and get to, that’s why I keep on asking it to so many witnesses. It does leave me a little sleepless. I mean what are so pressing about changing the lives of so many people radically you heard that in the process, many jobs were destroyed. You heard the evidence and you know that. What are so pressing that we do so many unlawful acts and if not unlawful, heartless acts. Uncaring acts.

MALEBONA PRECIOUS MATSOSO: I’m hoping that the designers and those who conceptualise this, would perhaps be able to clarify. I’m not in a position to even explain. I mean from what I’ve seen, what I’ve experienced, it’s inexplicable.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, re-examination? I’m sorry, you were still busy. I beg your pardon Adv Ngutshana. I interrupted you, but please go ahead.

ADV NGUTSHANA: No, I think that was my last question. Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Sure. Counsel Hutamo, your turn.

ADV TEBOGO HUTAMO: Thank you Justice. Director-General, we thank you for the explanation that you gave to the families before you, to the entire nation and the world, with regards to the immediate response that the government has taken in on that you address and deal with the unfortunate and tragic events which this country had to experience. And it is on that note that I will not try and add more than what you have said. The explanation has been of great assistance for everyone to understand exactly what has been done, and on that basis, I will not ask any further questions in re-examination. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: DG, any closing remark you want to make, because I'm just about to release you from that chair as a witness. Is there anything else that you might care to say?

MALEBONA PRECIOUS MATSOSO: Yes, just one thing. That I've said earlier that health services are not just the competence of government, it's about non-state actors, but it's also about beneficiaries. The users of our services. If civil society has identified something, we must listen and respond. I've witnessed it, and I've learnt.

ARBITRATOR, JUSTICE MOSENEKE: Re a leboha Mme, ke tsamayeng hantle, ke re la leboha. [Language, 28:20 – 28:24] Okay Ma'am, thank you.

Counsel for the State, your next witness please?

ADV TEBOGO HUTAMO: Thank you Justice. The next witness will be Director-
5 General Phindile Baleni.

ARBITRATOR, JUSTICE MOSENEKE: While we're waiting for the witness to
come, I would like to, I trust that Counsel will be aware that we're having a running
record of the evidence. The first day came out and required my office to assist with
corrections of part of the transcription, and so on. But we expect that there would
10 be a daily running record and if this were to be useful to Counsel, take advantage of
that. It is supplied electronically on most mornings and obviously the easier cause
is for you to print it if and when you want to print it. And that will facilitate, I think,
cross examination and preparation for future witnesses. So do get in touch with
Obakeng of my office, who receives the electronic daily record and it can then be
15 disseminated at a time that you may agree on.

ADV TEBOGO HUTAMO: Thank you Justice. May I just take this opportunity to
give an indication that the list of the witnesses on behalf of the State has been
revised and it has been circulated to the parties. I also need to highlight at this point

in time that, after this witness, the State will call the acting Head of Department of the Province of Gauteng, who is Dr. Kenoshi.

ARBITRATOR, JUSTICE MOSENEKE: DG, that is the chair. Yes Counsel, you may complete the point you're making?

5 **ADV TEBOGO HUTAMO**: I wanted to give an indication that after this witness, there is another witness who has been added to the list which has been revised and circulated to the other parties. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Very well, thank you. Director-General in the Office of the Premier, would you please tell me whether you'll like to take the
10 conventional oath, or an affirmation?

PHINDILE BALENI: Justice, the conventional oath is perfect.

ARBITRATOR, JUSTICE MOSENEKE: The evidence you are about to give, must be the truth, and the truth only, and if so, please raise your right hand and say 'So help me God'.

15 **PHINDILE BALENI**: So help me God.

ARBITRATOR, JUSTICE MOSENEKE: DG, I'd ask you just to put your full names on record, after which Counsel for the State would lead your evidence.

PHINDILE BALENI: Thank you. My name is Phindile Baleni, Director-General in the Office of the Premier, Gauteng.

ARBITRATOR, JUSTICE MOSENEKE: Thank you DG. Counsel?

ADV TEBOGO HUTAMO: May you please just give an indication from what period
5 were you employed as the Director-General in the Office of the Premier?

ARBITRATOR, JUSTICE MOSENEKE: DG, I want to urge you to switch on your mic and keep it on all the time. It will be easier that way.

PHINDILE BALENI: Okay. I have been Director-General in the Office of the Premier since March 2015.

10 **ADV TEBOGO HUTAMO**: Director, these proceedings are pursuant to the report of the Office of the Ombudsman, which is part of the record in file 1 of the record. If you can just look for File number 1. You will note the title of the report that it relates to the death of mentally ill patients. Are you familiar with the report?

PHINDILE BALENI: Yes Counsel, I am.

15 **ADV TEBOGO HUTAMO**: Can you just assist these proceedings with regards to your account of at what stage did you get involved pursuant to the events arising from the report?

PHINDILE BALENI: I got involved on the day that the Ombuds released his report on the 1st of February, when the Premier appointed me to work jointly with the Director-General of the Department of Health, Miss Matsoso, to head the remedial and implementation work of these recommendations.

5 **ADV TEBOGO HUTAMO**: And the recommendations, if you look at the report, appear at page 58, the paginate 58 it will be hand written at the top of the document. Those are the recommendations which you were tasked to attend to together with the Director-General of the National Department?

PHINDILE BALENI: Yes Counsel.

10 **ADV TEBOGO HUTAMO**: Thank you. The National Director has already presented her testimony before these proceedings with regard to what the government has done in response to these recommendations. What we request you to do, so that the family members which are before you, the nation and the entire world, may understand what has actually been done in response thereto.

15 And your role will only be limited to those aspects which would fall within your area from the Province' side and I will only refer you to those aspects which the National Director was not able to comprehensively deal with them. There is a report relating to the implementation, which has been presented before these proceedings and I

would like to make reference to that report, so that we can be able to deal with the appropriate responses which the nation is eagerly awaiting to hear from you. And in that regard, may I please refer you to page 1 of the report on the implementation.

And in particular paragraph 2, where it is recorded that the Premier of the Gauteng

5 Province must, in line with the findings herein, consider the suitability of Member of the Executive Council, Gedane Dorothy Mahlangu, to continue in her role as the Member of the Executive Council for Health. Can you just clarify to this hearing, as the person from the Office of the Premier, what steps have been taken in relation to this recommendation and you'll note that the report on your right hand side, there's
10 a column for the status of what has actually been attended to. Can you then proceed in your response?

PHINDILE BALENI: Thank you Counsel. The report records that Mrs. Mahlangu voluntarily resigned her position on the 31st of January and the report was released on the 1st of February. And as the cabinet secretary I would have received
15 instructions to prepare for the swearing in of a newly appointed MEC, MEC Ramakgopa, who was sworn in on the 6th of February 2017.

ADV TEBOGO HUTAMO: In light of the resignation of the former Member of the Executive Council, do you know if there are any institutions which could be making any attempt to take action pursuant to this report?

PHINDILE BALENI: At this point in time I am not aware of that, Counsel. We are,
5 however, working with the police on the investigations of all the deaths that arose as a result of the Gauteng Mental Health Marathon Project, and one can only assume that once the police have reached conclusions about the people who are responsible, that they would be charged.

ADV TEBOGO HUTAMO: Thank you. I think that might be an opportunity for me
10 to refer you to the other recommendation appearing at page 3.

ARBITRATOR, JUSTICE MOSENEKE: Before you move away from there. We've heard the answer about the police. Can you provide us with any detail? Do you have an idea how far they are? We're going towards a year now ever since this incident, isn't it?

15 **PHINDILE BALENI**: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Do you have any idea, does your office, officially, heard how far they are?

PHINDILE BALENI: Yes Justice. Without attempting to be a spokesperson of the SAPS, we have worked very closely with Provincial Commissioner, who has designated one of her Deputy Commissioners to attend to this matter, spearheaded team that's going to investigate these cases and that's the Deputy Commissioner,

5 General Motsepe. We have also worked very closely with the NPA, in the form of the Director of Public Prosecutions, Gauteng North, who has dedicated his Deputy to also supervise the prosecutors who are working on this matter. We hold monthly meetings with them to coordinate, to ensure that where they need further information from the State, that is facilitated and expedited. At the last meeting we

10 had with them, the information we had is the following: That the police have opened 76 enquiry files and these files relate to all the report that they have received about people who have died pursuant to the process. On top of that, there are 35 that have been opened as dockets which means that there is more information, the body is known, the family is known, there's some aspects that are still outstanding,

15 however the information the police gave us was these are in an advanced stage of investigation. And those are between the police and the NPA.

ARBITRATOR, JUSTICE MOSENEKE: So inquiry files would be what, the preliminary stage, before actual dockets are opened?

PHINDILE BALENI: That's what the police have explained to us, Justice.

ARBITRATOR, JUSTICE MOSENEKE: And they are aware now that there were 118 deaths. So 35 would be a third of the job.

PHINDILE BALENI: They are aware, Justice, we are on their case all the time. We
5 also are not happy with the pace, but we believe that they're doing the best they can
and they've appointed 8 investigators on this matter and we suspect it's quite a
generous allocation of resources on the matters.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Lastly, how do the families
come to know of this progress into the future? I have the luxury of asking you the
10 questions, but how are the families going to know what progress has been done
going into the future?

PHINDILE BALENI: In implementing these recommendations we have, as a State,
sought to work very closely with the families. There is a family committee that was
formed as a result of The Mental Health Marathon Project, however, the Premiers'
15 Office has created a direct line to the family committee together with their
representatives and we have regularly held meetings with them and at those
meetings, we've dealt with various aspects of the implementation of these
recommendations. Particularly when we started moving closer to the arbitration

becoming a reality, we were reporting on these aspects. We will continue to hold those meetings and give reports to the family committee. However, when the family committee meets with the rest of the families, it is something they do, also, from time to time, and there's a specific venue that's become quite convenient for us to

5 hold these meetings, as the Office of the Premier, we attend those meetings and we do give progress on the matters that are under implementation.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Counsel?

COUNSELLOR: Thank you Justice. I wanted to refer you to recommendation 8 and the Justice has already asked questions relating to that recommendation. Is

10 there anything that you'd like to add in relation to recommendation number 8, which provides that the Ombud fully support the ongoing South African Police Service and the forensic investigation underway. The findings and outcomes of this investigations must be shared with appropriate agencies, so that appropriate action, where deemed justified, can be taken. I know that like you have made responses,

15 you may add some other information if you have not covered in the response from the Justice.

PHINDILE BALENI: The only addition is that we will continue to report to the Ombuds, as progress is being achieved. The ultimate intention here is that we

should get to a point where inquests are held and determinations are made as to whether or not somebody's responsible for the death and how people died. And all of that will have to be given to the Ombuds, because he did say he supports these and there's a recommendation that talks about us reporting to him until the matter

5 has been concluded.

ADV TEBOGO HUTAMO: Thank you, Director-General, there are no further questions in examination.

ARBITRATOR, JUSTICE MOSENEKE: Will one of our Counsel, the schedule at the back [?,46:23], recommendations specifically directed at the Gauteng

10 Department of Health?

ADV TEBOGO HUTAMO: As I have indicated Justice, the State will be calling the acting Head of the Department. Those aspects are within his province and he would be able to deal with them comprehensively. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: I follow, thank you. Counsel, it's your turn.

15 **ADV TEBOGO HUTAMO:** I'll be very brief, Justice Moseneke. Good afternoon, Ma'am. Are you at all involved in the disciplinary processes that are to take place against official in the Gauteng Department? That would be in relation to recommendation 3?

PHINDILE BALENI: Counsel, the employment incidents of Heads of Department resort under the Premier. So, to the extent that the former Head of Department has to face disciplinary hearings, that is driven by the Office of the Premier and yes, I am involved in that matter. I become indirectly involved with the disciplinary
5 recommendation number 4, Director Manhamela, because we took a decision to join those proceedings, those disciplinary proceedings, given that they arise out of the same facts. But for the direct authority of the discipline of Director Manhamela, that would be the acting Head of Department of Health, including for those other recommendations of officials in the Department of Health.

10 **ADV TEBOGO HUTAMO**: Are there any other actions that are being taken against those two officials, apart from disciplinary proceedings?

PHINDILE BALENI: Counsel, to the extent that you possibly are looking at the recommendation 5 that talks about referring the findings against Dr. Manhamela and Dr. Selebano, to their respective professional bodies, we are aware of that
15 recommendation. However, we took a position that we should finish the disciplinary processes and then refer to the professional councils once the disciplinary proceedings have been finalised.

ADV TEBOGO HUTAMO: And other than the HPCSA, there aren't any investigations in relation to those two officials?

PHINDILE BALENI: Not that I'm aware of other than the fact that the SAU is also investigating this matter. The Human Rights Commission is also investigating the matter. SAPS is, so to the extent that they would be implicated, they would be investigated thereunder. But I can also add that the disciplinary proceedings, at the moment, they are suspended pending the appeal against the findings of the Ombuds, both Dr. Selebano, the former HOD and Director Manhamela have filed appeals. So we have started the proceedings, they were suspended, the charge sheets were served. We are ready to, the proceedings were served but were postponed to give them an opportunity to finalise their appeal. So we are ready to go with the proceedings once the appeal tribunal that the Minister has set up, finalises those matters.

ADV TEBOGO HUTAMO: Thank you. In the meantime, in the interim, are they on suspension, with or without pay?

PHINDILE BALENI: They are on suspension, in accordance with the code applicable to public servants. You suspend people with pay until you have reached

finality on their disciplinary, so they were both suspended on the 8th of February 2017.

ADV TEBOGO HUTAMO: In respect of the former MEC, we've heard from, we've seen it from, in fact the day of the release of the report on 1st February 2017, when
5 it was first announced, that the MEC had resigned, and it, I must say it came as quite a big surprise to many people after all of the drama, after all of the battles, after all of the defensive posture from the former MEC. That all of a sudden there was a resignation and that resignation was timed to be the day before the release of the report. Was the former MEC paid?

10 **PHINDILE BALENI**: A salary?

ADV TEBOGO HUTAMO: When she resigned, was there an agreement, was there any form of financial arrangement that eased her exit?

PHINDILE BALENI: I do not have knowledge of that. However, Members of the Executive Council are political appointees, appointed in accordance with the
15 Constitution, and the Constitution says when they resign, that's it, their authority and their term of office ends when they leave office.

ADV TEBOGO HUTAMO: Yes, their authority will end when they leave office, but my question, you don't know the answer. Do you know who would know the answer to the question?

ARBITRATOR, JUSTICE MOSENEKE: You want to know whether there was a
5 sweetener package [?, 52:18] when she left, is it?

ADV TEBOGO HUTAMO: That's the question, yes. And in what amount?

ARBITRATOR, JUSTICE MOSENEKE: Yes. DG, do you know the answer?

PHINDILE BALENI: I do not know the answer. They are paid, the salaries of political office bearers are paid by Treasury and I can double-check with Treasury if
10 there was any special amount that was paid. However, she, as an MEC, would have accounted to the Premier and that would be the person with direct knowledge.

ARBITRATOR, JUSTICE MOSENEKE: But Counsel could be more rigorous, you could say: Why did she resign? Was she pushed? Did she jump? Was she paid a sweetener? I mean these are the possibilities. So the question really goes to there.
15 How did it happen?

PHINDILE BALENI: That's where that Chinese Wall exists between Administrators and politicians, so that was a matter that was managed politically by the Premier,

and the Party to which they belong. And I cannot say much about it. I wasn't party to that.

ADV TEBOGO HUTAMO: You don't know why she resigned?

PHINDILE BALENI: I can guess why she resigned, but that wouldn't be good
5 enough for this session. So I'd rather say for sure as to why she resigned, I cannot say because that's a matter that was managed politically between the Premier and the political party.

ADV TEBOGO HUTAMO: So there were discussions between the Premier and the MEC, before her resignation?

10 **PHINDILE BALENI**: Ma'am, I can only assume that that would have been the case.

ADV TEBOGO HUTAMO: And just to confirm. You're not, you don't know whether there was a sweetener?

PHINDILE BALENI: I do not know.

COUNSELLOR: On the question of her authority. Yes, she doesn't have authority
15 now that she's no longer in that office, but does that mean she no longer has any responsibility, public responsibility, to be accountable for the actions and for her decisions during the time when she was in office?

PHINDILE BALENI: She remains accountable I suspect, for decisions and actions during her tenure.

COUNSELLOR: Will the Office of the Premier be holding her accountable? And if so, how?

5 **PHINDILE BALENI**: We will be holding her accountable, so once the investigations of the police have come out and it becomes necessary for her to be brought back to come and testify or face charges, we will assist the police in whatever way we can to make sure that she is brought back to come and account.

ADV TEBOGO HUTAMO: Has the Office of the Premier requested her presence in
10 these proceedings? Has she been, has there been any communication with her to say that she is requested to attend and provide evidence at these proceedings?

PHINDILE BALENI: No, she wasn't requested to come and attend. And the reason was that she cannot come and represent government when she behaved in a manner that doesn't align, that doesn't fit with how government would have
15 treated this matter and how it wants to relate to the world post this matter. She was the one who committed all the wrongs, she's out of the system, in a sense she was perceived as a potentially hostile witness and therefor she was not called to come

and represent government. Because it was felt she wouldn't represent government properly.

ADV TEBOGO HUTAMO: Do you think she should be here? You know, it's one thing to say that you don't want to call her, but do you think she should be here?

5 **PHINDILE BALENI**: Yes. I do believe that she should be here.

ADV TEBOGO HUTAMO: Are there any... She's a senior member, I mean as you said, the political appointments and their administrative appointments and there's a Chinese Wall in the way people are dealt with. But she was a representative of government, she wasn't just a member of a political party for the time that she held
10 the office of MEC, but I accept your answer. My question though, in relation to that, is whether there are any disciplinary proceedings or investigations in her political movement. In the political party?

PHINDILE BALENI: Counsel, I'm not aware of that. I'm not aware if there are any.

ADV TEBOGO HUTAMO: And just to confirm you say that the correct person to
15 pose a question to regarding the reasons for MEC Mahlangu's resignation and for the conditions under which that took place, is the Premier? Directly?

PHINDILE BALENI: Yes, Counsel.

ADV TEBOGO HUTAMO: And he will be coming to these hearings? Is that right?

PHINDILE BALENI: He will be, yes.

ADV TEBOGO HUTAMO: Thank you, Ms Baleni.

PHINDILE BALENI: Thank you.

5 [Audio cut, 59:00]

UNKNOWN SPEAKER [COUNSELLOR] [59:02]: Relevant Department

MALEBONA PRECIOUS MATSOSO: The Premier would be alerted during a process of determining budgets, which is called the Premier's Budget Council, and it those sessions that happen once a year. In fact, as we speak, we are having those
10 sessions and that's where issues of cost cutting and budgeting are finalised.

ADV. NZAME SKIBI: In the briefings about the budget of 2015 for the following year, which was going to be 2016, there was no issues about the Life Esidimeni contract that will not be extended? The following year which was going to be the end of March 2016?

15 **PHINDILE BALENI**: No, there was no issue raised around cost cutting that would include termination of contracts where services such as these are provided. And on Life Esidimeni specifically, no.

ADV. NZAME SKIBI: You've already mentioned that your office became aware of, when was your office became aware of what transpired actually, after this?

PHINDILE BALENI: I can state when we got aware. The question this side was when did you get involved.

5 **ADV. NZAME SKIBI**: Let me put it that way. When did you become aware?

PHINDILE BALENI: I became aware of this matter after a response by former MEC Mahlangu to a question that was asked in the legislature by a member of the DA. And this was in September, in fact, as we were preparing and one looked for the date specifically, I think the response was provided on the 13th of September, 2016.

10 Wherein she stated a number of 36 people who had died as a result of the Marathon Project.

[1:00:59.3]

ADV. TEBOGO HUTAMO: We heard from the previous witness, DG from Health that once even a society organisation contacted her office around October, if I'm not
15 mistaken, October 2015. There was nothing communicated to your office regarding that?

PHINDILE BALENI: No Counsel, nothing was communicated.

ADV. NZAME SKIBI: Again in December 22nd, the very same year. There was even a court case where the Department of Health it falls under the Ombud of the National Department of Health. So the Office of Premier, again regarding that case was never or never became aware of it?

5 **ARBITRATOR, JUSTICE MOSENEKE:** Well there are at least three questions there. I think you want to break them. Does the Provincial Department of Health fall under the National Department, that's the one question? The second is: the activities of the national office are the activities we are aware of? At two of questions can be asked in that broken up way. Please go ahead so the witness can
10 give you effective answers.

ADV. NZAME SKIBI: Thank you Justice Moseneke. Let me ask directly. The case which was in the High Court in, December 2015. The Office of the Premier, was there at any stage when it became aware that there are issues that were raised regarding the intended closure of one of the mental health facility in his Province?

15 Was there anything that came to his office?

PHINDILE BALENI: Nothing came to our office. We did not see the court case and it's certainly a point were are not proud about because once matters get court

the Premiers Office should be involved and informed however in this particular instance we were not.

ADV. NZAME SKIBI: Interestingly, the officials under the Department of the Premier of the Province they were in court but nothing was communicated to his
5 office at all, regarding that piece.

PHINDILE BALENI: Not as far I'm aware. I did not personally come aware of the case.

ADV. NZAME SKIBI: Thank you. As much as we appreciate the stance taken by the Government regarding this matter there is issue about proactiveness in this
10 matter definitely proactiveness was really necessary on behalf of the State. There was a ticking bomb which was about to explode at any time but it's very strange the Office of the Premier, for some reason that we did not know was not made aware of any... Can you comment about that?

PHINDILE BALENI: Unacceptable as that is, it is the truth. We have also gone
15 and done some soul searching about how could we have been missed by such a massive and a tragic situation until it became so involved and so tragic.

ADV. NZAME SKIBI: Are there any measures that you can state perhaps if you can because I know you. You've got other principles and other... Are there any

measured we can be assured that to their families of the survivors, who's relatives are still in these public mental institution nothing of this tragic will never happen to them?

PHINDILE BALENI: We have put up a few measures to ensure that we up our
5 proactive mechanisms of being to pick up problems that exist in department in
general in Gauteng given that the Premiers Office bares the responsibility of co-
ordination of the work of the Departments but in relation to mental health specifically
two things have been done. The Department of Health reports at every Executive
Council Meeting now on progress in that area and how they're performing in the
10 area. Secondly, The Premier is in the process of putting together an Advisory
Council on mental health so that he is also got a second layer of assurance. There
is the normal Mental Health Review Board that is established under the Act by the
department to assist the MEC. However, the Premiers is establishing another
committee so he can then be assured and be advised by specialists as to how
15 Gauteng is doing and the management of mental health in general.

ADV. NZAME SKIBI: Thank you. I have no further questions.

ARBITRATOR, JUSTICE MOSENEKE: Thank you ever so much. Should we move
on then to Advocate Groenewald?

COUNSELLOR: Just Moseneke can I beg your indulgence?

ARBITRATOR, JUSTICE MOSENEKE: Yes.

COUNSELLOR: And it relates to a question that my colleague put to DG Baleni which has an answer and it's not the answer that was provided by the witness and
5 it's on the record and may I refer to it with your permission.

ARBITRATOR, JUSTICE MOSENEKE: Yes. Certainly

COUNSELLOR: Its in relation to the litigation against the Government, let's say
on. The December 2015 litigation and it was in fact brought to the attention of The
Premier in 2015 and The Premier was more over sighted in those proceedings. The
10 Premier was the fourth respondent. Would you like me to refer you? Let me do so.
It's Page 91 of file one. That's the Notice of Motion and The Premier is sited as
fourth respondent. Can you confirm that?

PHINDILE BALENI: Yes. I can confirm that counsel.

COUNSELLOR: If you turn to page 398 of the same file, do you see the Notice of
15 Intention to Oppose?

PHINDILE BALENI: Yes. I do see in Counsel.

COUNSELLOR: And if you read the Notice of Intention to Oppose, the legal representatives designated there who are; Xabeshe Madlanga Incorporated give notice that the First, Second and Fourth respondent will be opposing the application. The fourth respondent being the Premier. Do you still maintain that
5 you were not aware of this litigation at the time?

PHINDILE BALENI: I still maintain that I wasn't aware of it. If possible I can check with the legal team from the Premier's Office if they give instructions to Xabeshe Attorneys to respond. But personally I wasn't aware.

COUNSELLOR: As you know it, at this point in time, you are not aware of an
10 instruction was given "To Oppose" by the Premiers Office?

PHINDILE BALENI: Yes Ma'm. Yes Counsellor.

COUNSELLOR: And who would know if there was an instruction given? Because it would take an instruction before you could draw up a notice like this.

PHINDILE BALENI: The head of the State Law Advisory Services would know if
15 such an instruction was given. I can check with them and make sure and give this arbitration that response. That's how we issue instructions.

COUNSELLOR: Would it be possible for you to get that answer as to whether there was an instruction? And if there was an instruction, from whom and why it is that the Premiers Office saw fit to oppose the application and also given then, apart from the opposition, if you could answer why the fact that this litigation brought the issues to the knowledge of the Premier, why nothing took place at that point ,from the Office of the Premier?

PHINDILE BALENI: Justice, I would have to go and verify this. I cannot answer it. I was not cited in the sense that I didn't see these papers. I would have to double check with my legal team around this area.

10 **COUNSELLOR:** Thanks. If we could have those answers those five questions.

ARBITRATOR, JUSTICE MOSENEKE: And what is on page 419? Counsel?

Page 18 & 19

COUNSELLOR: They're' a part of answering affidavit in the same litigation which had been provided by Mr Labethe.

15 **ARBITRATOR, JUSTICE MOSENEKE:** But look at 419, it's a Notice to Abide.

COUNSELLOR: 419?

ARBITRATOR, JUSTICE MOSENEKE: 4-1-9. Well it might be old pagination, 419. Go to 508. In present pagination, it's a double pagination. Can you see?

COUNSELLOR: Yes. I do see that. Page 509.

ARBITRATOR, JUSTICE MOSENEKE: 509

5 **COUNSELLOR:** This litigation is... It's the same litigation.

ARBITRATOR, JUSTICE MOSENEKE: On top of the papers in the application. I am just drawing attention. The one says: "The Premier will oppose" the other say, "The Premier will abide". But both are ???? Instruction. It doesn't take the point away but I don't what that means. Or the Notice to Abide means?

10 **COUNSELLOR:** It's signed by the Attorneys for the first, second and fourth respondent. So it doesn't make because the text of the notice simply says, "Notice to abide by the decision of the court."

ARBITRATOR, JUSTICE MOSENEKE: .And at the bottom is says of course. "Attorneys for the fourth respondent" I'm just following up on your questions.

15 **COUNSELLOR:** Yes. In understand. Certainly we know that there was no intention on behalf of the first and second respondent to "Abide." Be preceded with

litigation right until the doorsteps of court. So perhaps if we could get clarity on what the meaning of that notice is too. I can't make sense of it myself.

ARBITRATOR, JUSTICE MOSENEKE: (inaudible)

PHINDILE BALENI: Yes. I did Justice. I can see it but again the response
5 would be I am not aware that we gave instructions to these people to represent the
Premiers Office. I have to go and do my homework and come back.

ARBITRATOR, JUSTICE MOSENEKE: And you going to get the time because
we won't be done with you by the time we adjourn. So you will have time for the
homework.

10 **COUNSELLOR:** If I may point out also one other peculiarity and that is the Notice
of Intention to Oppose. It's signed as being received on the 21st December. The
print is very unclear.

ARBITRATOR, JUSTICE MOSENEKE: You're back to page 91 are you?

COUNSELLOR: Yes. It's on page 398, Notice of Intention to Oppose. It's dated
15 on the 20th of December 2015 and the Notice to Abide appears to be 21st
December 2015 and that can't be right.

ARBITRATOR, JUSTICE MOSENEKE: That's pretty confusing. The one opposes, the one abides. Anyway it struck me and I thought I would draw attention to it.

COUNSELLOR: Thank you. I appreciate it.

5 **ARBITRATOR, JUSTICE MOSENEKE:** But it doesn't the fact that there was some ??? and there will be an explanation whether Premier looks at these papers and whether he was aware, actually aware. But it's something that the DG will have to tell us tomorrow. The point remains good.

COUNSELLOR: That's all thank you.

10 **ARBITRATOR, JUSTICE MOSENEKE:** You've have a second bout so you owe one to your colleagues. All of them. Because we normally have one bout accept, you are leading the witness.

COUNSELLOR: I fully understand. I couldn't contain my tongue on that response.

15 **ARBITRATOR, JUSTICE MOSENEKE:** You don't owe me, you owe all your colleagues.(inaudible) Very well. You done Mr S... with your cross examination.

Mr S Yes.

ARBITRATOR, JUSTICE MOSENEKE: And that gets us to move on to Mr Groenewald. It was your turn when we were interrupted.

G Thank you very much Justice. Miss P. I have just a few questions for you. For the sake of the family members here; in your opinion what's the options of the Premier when he has a MEC that contravenes the law on something that is not legitimate, not fair. What is the options of the Premier? What can a Premier do to such an MEC?

PHINDILE BALENI: He's got the option firing them, disappointing them in that way. Diss-appoint not disappointing. So if an MEC does not oblige the law, not oblige the commitments of the Premier and his pasture and in this case perhaps, when I was saying the former MEC could not have been called. The Premier does not associate himself with the manner in which this project was executed. Right from the planning through its implementation and therefore because he disagreed with it. We did not see our way clear to inviting her here as a witness but as I say, she must still come here and account for herself. So one of the options is definitely to fire and to then report to the various structures which such instances have to be reported and in this case, I think the Premier has made it clear that he would want this matter investigated thoroughly by all agencies. He is the one who signed the

letter to the SIU requesting them to come in and investigate anybody, everybody who was involved, who's accountable, who's responsible, who's terminally or otherwise responsible. They must be investigated and further steps be taken against them. There is another instance in Gauteng where the MEC did something
5 the Premier did not agree with. The person was taken out, reported to the integrity commissioner and they are no longer an MEC.

G In the respect of the HOD and Dr Monamela. Their disciplinary actions have been suspended and you are waiting the outcome of their appeal against the Ombudsman's report?

10 **PHINDILE BALENI**: Yes Counsellor.

G Again, just for the sake of the family members that are here. I would just like to find out what can the outcome of that appeal be? Does that mean that the Ombudsman reports and some of the recommendations are nullified, scrapped, amended?

15 **???** I find the question to be unfair to the witness about what she thinks of what the outcome might be. It's a matter which is not in her capacity to make that determination. She can only rely on the outcome when it its made. So for this

witness to be pushed or answers sort in relations to matters which did not follow within her capacity. It will really be unreasonable to expect an answer.

G Justice. Just to perhaps clarify my question. I'm not asking the witness to preempt the outcome of the appeal. I'm just asking what the possible consequences of that outcome is. So with the outcome of the appeal might that possible be that the Ombudsman's report is amended. I mean, that's quite extreme or that some of the recommendations be nullified and say, "Well, we are not going to do this."

ARBITRATOR, JUSTICE MOSENEKE: Can we start with some detail about this (inaudible). I understand your point. If you reformulate your question it might be good but as it stands its open to objection. (inaudible). What I thought you might want to ??? what is the nature of the appeal (inaudible)

G Before whom is the appeal currently? Considering the appeal?

PHINDILE BALENI: The appeal is before, former Judge Ngoepe who was constituted as a tribunal by Minister Moladesdi under a section in the National Health Act or the Act in terms in which the Health Ombud is established provides for a review of the decisions of the Ombud and the former HOD and together with a few other people have revoked their right to appeal to the findings of the Ombud.

G They are three in total that have appealed?

PHINDILE BALENI: My information. There are three officials plus an NGO that have filed appeals. Now in respect what is there appeal? Do you know against of the totality of the report or just the findings in respect of themselves?

PHINDILE BALENI: I haven't seen those papers. Those papers were filed
5 directly with the Tribunal that the Minister established.

G Do you know that Tribunal, that considers the Appeal? Do you know what's the power of that Tribunal. What possible outcomes can they deliver and give.

PHINDILE BALENI: The powers of that Tribunal are written in the Act and I didn't look at the Act before I came in here. But I think its Section 81 of the act under
10 which the Ombud is established. The powers of the Minister and of the Tribunal are clearly stipulated therein.

G So there's and outcome and there might be consequences or there might be... Let's not further speculate on that. We will provide the evidence on that. You now suspend the disciplinary action pending the outcome of that appeal. WE all know
15 that outcome would only relate, will only be in respect of the Ombudsman's report and its findings or whatever it is they are appealing against. Will you agree with me that the disciplinary action that you will institute against these individuals. It might be based on the Ombudsman's report but it cannot solely rely on the Ombudsman's

report. The employer will have to do its own investigation, formulate a bundle of documents, provide the employee with the charge sheet and then provide the evidence that shows that that employee contravened Act, code of conducts and so on. And then the chairperson will make a finding and that finding can be dismissal.

5 Would be guilty or not guilty, irrespective of the Ombudsman's report. You agree with me?

PHINDILE BALENI: I agree with you Counsel.

G Now why then Ma'm are their disciplinary actions suspended?

PHINDILE BALENI: The disciplinary action has not been suspended it is
10 postponed.

G Suspended? Postponed?

PHINDILE BALENI: It is postponed. The charge sheet was formulated definitely quite independent of the Ombud findings precisely because we were aware of that possibly. However, we took advice from our counsel in that matter and we know
15 that the Labour Law Jurisprudence tends to favour the employee or the weak one. The issues of fairness that often considered and the fairness in those cases are perceived differently from other cases. The fear we had was to power ahead with a disciplinary and lose the case on a technicality where somebody has committed

such a grave wrong that needs to be dealt with and dealt with comprehensively. It was a call that we made and we believe that it was a call on rational grounds. We proceeded as fast as we could to ensure that we start the disciplinary case. The report of the Ombud came out on the 1st February on the 8th February, the
5 individuals were suspended. The notices were served on them and they were out of the offices and out of the system. Charge sheets have been served on time in accordance to the Code of Conduct of Public Servants and everything has been done on time. It was just a question of fairness. Do you proceed to power ahead, risk losing a good case on a technicality?

10 G Ma'm consideration of fairness. Fairness towards these two employees or three employees. Behind me sitting family members of 118 people . Where's the fairness towards them? Where's the accountability? Where's the responsibility? And I would close off on this subject to say that there is no basis in law for you to have postponed the disciplinary action. You can proceed and I submit that you
15 must proceed because these two individuals Ma'm has caused anguish, pain, sorrow. I mean the evidence is quite clear but they played a central role in this whole process. In respect of those individuals: number 6 of the recommendations. Once again, this is just to get clarity and questions that's been asked by the family members. You can just give your opinion. Here we have again, people that played

a central role in this programme, yet they get a final written warning. Is that fair? Is that Justice?

PHINDILE BALENI: Dr Kenosi will deal with recommendation in detail however, I sat in a meeting at which we were informed that the Executive Authority is not happy with these functions and therefore is taking them to Labour Court for review. And this is precisely because we do not believe that these people should be treated with kid gloves.

G Well, that is very good news Ma'm. I must be honest with you that's in fact what the Department is going to do, we would definitely... It's very good news for the families. It's just a technical issue therein perhaps I hope my mathematics is correct there. I think there were nine people identified by the Ombudsman. You indicate that four of the six cases that are proceeding. It seems to me that it's not quite clear what happened to the previous CEO of CCRC. It's also not quite clear of what happened to the previous Acting CEO of CCRS. Do you know what happened to them.

PHINDILE BALENI: Justice, with your permission, can I not respond to this question. Dr Kenoshi is the one who is dealing with this matter, the acting head of the Department of Health. He can talk...

ARBITRATOR, JUSTICE MOSENEKE: It's a legitimate answer. The witness defers to someone who has direct knowledge on the matter.

G We have no problem with that Justice.

ARBITRATOR, JUSTICE MOSENEKE: Very well.

5 G Ma'm you testified that you have a direct line to the SAPS and the Deputy Provincial Commissioner and so on. You are indirectly involved in the investigation by the SAPS. You get briefed by them and so on?

PHINDILE BALENI: Yes, we do get briefed.

G Do you know whether or not the SAPS has taken a warning statement or
10 statement from the Mrs Mashlangu, the previous MEC or Dr Selabana or Dr Manamela?

PHINDILE BALENI: Again, I'm being asked to speak on behalf of another authority. The update I get from the meetings we've had is they still haven't interviewed those people.

15 G They still haven't....

PHINDILE BALENI: Interviewed.

G Interviewed them?

PHINDILE BALENI: Yes?

G Thank you Justice. No more questions. Thank you. Thank you Ma'm

M DG you still have one more counsel but you have me. I have a number of questions about numbers. Numbers are going to matter here. This case, in the end,

5 will also be about actable re-dress. We need to know a lot about, retraction about who would be entitled to actable re-dress. If you say to me Dr Kenoshi will do it.

That's fine. Let me ask the questions each by each and you can respond to everyone of them and if you can't we can ask him. (1) The number of the Ombud of 118. What do you say about that? What is the level of that procedure?

10 **PHINDILE BALENI:** The level of procedure with that number, as far as I'm aware Justice up to the 1st February that is the number of deaths that the Ombud was able to verify.

ARBITRATOR, JUSTICE MOSENEKE: When the Ombud testified. Counsel for Section 27 put him that, hat 11 deceased people who were at Esidimeni, who were 15 not on the schedule that the Ombud gave us. What do we do with that? Are we 118 or are we 129?

PHINDILE BALENI: Again Justice. Can I back to defer that to Dr Kenoshi because I know that he's got an explanation that has been given in various meetings.

ARBITRATOR, JUSTICE MOSENEKE: He will be able to do that?

PHINDILE BALENI: Yes. However, I think the principle is everybody who was affected by this project must be treated fairly and re-dressed therefore if records have to amended to include those who were genuinely left out that should
5 happened.

ARBITRATOR, JUSTICE MOSENEKE: We have evidence before us that there are still 7 corpses of people, mental healthcare uses which have not been identified or linked to families. How do they stack up with 118 or 129?

PHINDILE BALENI: Again it's a matter that I would rather Dr Kenoshi responds to.
10 My information is that the Department Health gave us the numbers it included those bodies. Its bodies that have not been claimed by their families, however some of them there are names and he can even tell you which parts of Gauteng they came from.

ARBITRATOR, JUSTICE MOSENEKE: You mean they have been accounted for,
15 they have been identified but only families... But you say you deferred to him? He rather comes in and gives us the details.

PHINDILE BALENI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Let's move onto some more numbers.

The post-mortem schedule lists people far much fewer than 118 or 129. What should I make of that? Why is that so and what does it mean?

PHINDILE BALENI: Justice, the reasons for that is that for a number of
5 instances the people who died were buried without families asking for post-mortems or even buried by the NGO's without the knowledge of families without post-mortems being asked for. So possibly where we have to get the causes of death and people were buried before without the families knowing and or families feel those people must be exhumed, that might be indicated.

10 **ARBITRATOR, JUSTICE MOSENEKE:** You see, the number is low and it has some significance. And here is a significance (Inaudible) significance. If you look at the report and the number... Let me take you to the 11 paragraph dealing with SAPC and SSAPS. They have opened only 35 dockets.

PHINDILE BALENI: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And yet 118 people have passed on. So the question must be; Do they have post-mortem reports to be able to prove death? And why are the dockets only 35 when the deaths are at least 118?

PHINDILE BALENI: Justice, the best explanation that's possibly on the table is that in some instances the people have been buried and they were buried without post-mortems being done.

ARBITRATOR, JUSTICE MOSENEKE: (inaudible) We have identified them.

5 **PHINDILE BALENI:** We have identified them?

ARBITRATOR, JUSTICE MOSENEKE: Those who have been buried without post-mortem examinations have nonetheless been identified.

PHINDILE BALENI: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: In those circumstances, how does one
10 prove death?

PHINDILE BALENI: From the information that we gathered we have received notices or death notices have been found in the records in some of the mortuaries and some forms completed by medical offices but full on post-mortem reports.

ARBITRATOR, JUSTICE MOSENEKE: In every case that there was a burial, there
15 would at least be a burial order with details of the person who had died?

PHINDILE BALENI: That's the information that I have Justice.

ARBITRATOR, JUSTICE MOSENEKE: And that was how the identity was certain?

PHINDILE BALENI: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: and Dr Kenoshi will be able to help with
5 that.

PHINDILE BALENI: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Let's move on to something else. How many survivors are there? And who are they?

PHINDILE BALENI: Justice. I think this another one....

10 **ARBITRATOR, JUSTICE MOSENEKE:** This is basic number crunching.

PHINDILE BALENI: I know Justice but it's a matter again I would rather leave to Dr Kenoshi because between Dr Kenoshi and DG Matsoso they drove the process of relocation of patients. Dr DG Matsoso did phase one and Dr Kenoshi did phase two. So they have the numbers.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And at DG Matsoso said, "Well Dr Kenoshi, okay."

PHINDILE BALENI: Yes

ARBITRATOR, JUSTICE MOSENEKE: You also say Dr Kenoshi?

PHINDILE BALENI: I am saying Dr Kenoshi Justice.

ARBITRATOR, JUSTICE MOSENEKE: And its plain DG we need to know the numbers of survivors and who are they?

5 **PHINDILE BALENI:** Yes. We have seen numbers but as I say I would rather Dr Kenoshi comes here and shows you how works from 1712, that was discharged to where we are now which should be basically those who are left, those who were deceased should add up to the number who were discharged....

ARBITRATOR, JUSTICE MOSENEKE: Who would know the number of the
10 additional rents that were paid...? Sorry this is out of the Marathon Project. Is there anybody in your department or within province who can say what the financial costs have been? And in which respect.

PHINDILE BALENI: Yes. the Department of Health should be able to do that
Justice. So actually HOD, Dr Kenoshi but the Treasury can also be invited to come
15 here if that's needed.

ARBITRATOR, JUSTICE MOSENEKE: To calculate the costs of the aftermath of the Marathon... And that will be from the point it was ordered to stop in other words when the report came out?

PHINDILE BALENI: Yes. That Dr Kenoshi is able to give you Justice.

5 **ARBITRATOR, JUSTICE MOSENEKE:** And that's besides the cost connected and related to this process.

PHINDILE BALENI: Yes

ARBITRATOR, JUSTICE MOSENEKE: Well I put you the numbers that are worrying me. They continue to worry me. What's left is one Advocate and your
10 own advocate. So it may be that we could help you away, its 20 past four. Counsel, it's your turn? I was just worried that I couldn't put mu numbers to this witness and she goes away and I forget about them, being an old man so... I have done my bit.

Counsellor? Thank you Justice Moseneke, we had questions about those
15 numbers but Advocate Yina will take over.

NONHLANHLA YINA: Thank you Justice. Good afternoon DG

ARBITRATOR, JUSTICE MOSENEKE: I would like you to put your name of record please.

ADV NONHLANHLA YINA: Thank you Justice. I am Nonhlanhla Yina. I am one of the evidence leaders. Thank you. DG, part of the healing process is to get
5 clear and logic explanations for the families.

PHINDILE BALENI: Yes.

ADV NONHLANHLA YINA: My questions will relate to the knowledge. You answered to one my learned friends that you only became aware of this in
September 2016. Is that correct?

10 **PHINDILE BALENI:** Yes Counsel.

Y If I may refer you to page 164 of Volume 1 Justice. That would be the termination of contract between the Department of Health and Life Esidimeni. Now if you have regard to page 166. The date that appears on the notice is 29 September 2015. Can you see that.

15 **PHINDILE BALENI:** . Yes. I can see that Counsel.

ADV NONHLANHLA YINA: So you are telling this Tribunal that you only became aware of this project a year after the contract was terminated?

PHINDILE BALENI: Yes Counsel. That's what I'm saying and that's because the
Premiers Office doesn't get involved with procurement decisions of Departments.
??? is clear about that.

ADV NONHLANHLA YINA: If you could also go to page 167 of the same
5 bundle. Do you recognise that document?

PHINDILE BALENI: I see it now for the first time. Yes.

ADV NONHLANHLA YINA: Can you explain what is that document?

PHINDILE BALENI: The document is headed, "Gauteng Health Terminates Life
Healthcare Esidimeni Contract" It's got a South African flag and it looks like it comes
10 from a Government website.

ADV NONHLANHLA YINA: You don't get to receive those communications. It
looks like a newsletter. Just above where it says "Gauteng Health Terminates Life
Healthcare Esidimeni Contract". It says, "Home Newsroom Media Statement" That's
a media statement. You didn't get it?

15 **PHINDILE BALENI:** I didn't get it.'

ADV NONHLANHLA YINA: DO you usually get media statements from the
province?

PHINDILE BALENI: No

ADV NONHLANHLA YINA: Isn't it strange that your office, The Office of the Premier, and the Gauteng Department of Health Office are both situated in Johannesburg and a project that attracted the attention of the whole world, doesn't
5 come to the attention of the Premier, for the whole year. Isn't that strange? Do you wish to comment?

PHINDILE BALENI: Unfortunate as that is Counsel. Those are the facts. We can't mislead families and pretend got information earlier. We got the information, at least on my part, September 2016.

10 **ADV NONHLANHLA YINA:** Now can you tell this Tribunal if the Office of the Premier does exercise some oversight over the Gauteng Provincial Department of Health? If at all?

PHINDILE BALENI: Yes. Some oversight.

ADV NONHLANHLA YINA: In what form?

15 **PHINDILE BALENI:** The form takes Exco Factor Reports that are files quarterly by the Departments with the Department of Monitoring and Evaluation of the Provincial Department.

ADV NONHLANHLA YINA: So are you telling this Arbitration that during the period of September 2015 up to September 2016 you did not have those quarterly meetings in the form of reporting? This project was not brought to the attention of the Premier in the form of those quarterly meetings?

5 **PHINDILE BALENI:** The project was not Ma'm. The one report that the Premier's office got was at the Executive Council Legotsa of February 2016 and it was part of a report by the Department of Health on the turnaround strategy and all that was reported on mental health is proceeding well, its supported by specialists and patients are kept in state institutions and its a small paragraph in a report that
10 they presented at the Exco Legotsa. Specifically on Life Esidimeni, there wasn't anything about the termination of the contract.

ARBITRATOR, JUSTICE MOSENEKE: Is it Exco Legotsa of the Province?

PHINDILE BALENI: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Of the ruling party of the Province.

15 **PHINDILE BALENI:** Of the province, this is the Executive Council Legotsa

ARBITRATOR, JUSTICE MOSENEKE: Executive Council of... Okay.

PHINDILE BALENI: In February 2016

ADV NONHLANHLA YINA: Thank you Justice. Surely the Gauteng Department of Health the did actually require budget for this project. That also didn't come to the attention of the Premier?

PHINDILE BALENI: Ma'm, the line item on mental health would have been in
5 the ordinary budget of the Department of Health as one of the programmes mental health but not specifities of Life Esidimeni contract termination. We need more money. No that did not come through.

ADV NONHLANHLA YINA: But you agree that that is quite strange. This was a huge project. It was the first of its own kind in the whole nation. It is quite strange
10 that the Premier didn't know about it for a period of one year. It is quite strange. Do you agree?

PHINDILE BALENI: I agree Ma'm.

ADV NONHLANHLA YINA: Now as part of your accounting purposes. Did you get the details, that is now after you had acquired the knowledge that is you as the
15 Office of the Premier. Did you get the details of the budget that was allocated for this project?

PHINDILE BALENI: We got a broad report around the project of Life Esidimeni.

In fact the first explanation about cost savings came after they were followed up based on the response they gave to legislator.

ADV NONHLANHLA YINA: Do you still have those figures?

5 **PHINDILE BALENI:** From the top of my head. No.

ADV NONHLANHLA YINA: When can we get them?

PHINDILE BALENI: I have to come back tomorrow so I will get them and bring them tomorrow.

ADV NONHLANHLA YINA: I suppose you wouldn't know how much was used
10 on the budget on the amount that would have been allocated for this project? If the whole amount of was used on an x amount was used. You wouldn't know at this stage?

PHINDILE BALENI: No

ADV NONHLANHLA YINA: You wouldn't also know how much was allocated to
15 each NGO?

PHINDILE BALENI: No.

ADV NONHLANHLA YINA: Maybe as you take your notes you can consider also taking those facts as well how much was given to each NGO and how much was left, if any of the budgeted amount and how much saved in relation to what was being paid at Life Esidimeni

5 **ARBITRATOR, JUSTICE MOSENEKE:** Are we talking about how much was budgeted for NGO's or how much was spent?

ADV NONHLANHLA YINA: How much was budgeted for the Mental Health Marathon Project, Justice. How much was spent on each NGO and how much was allocated for each NGO.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Let's take a few steps Counsel. Is there ordinarily a budget for a Provincial Department of Health?

PHINDILE BALENI: Yes Justice. There is.

ARBITRATOR, JUSTICE MOSENEKE: And that budget will be discreet in other words seperated and ??? from the budget from the budget of the Premier and of
15 other Departments?

PHINDILE BALENI: Yes Justice, that's the case.

ARBITRATOR, JUSTICE MOSENEKE: And is the budget accessible with the
5 ??? that the Counsel is keen on ? Is that budget accessible?

ADV NONHLANHLA YINA: Yes, it is accessible Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes, because I would also like to see
5 that and see what had the Department budgeted, not as a line item in the overall, on
departmental allocation but the detailed breakdown of what the department was all
about financially. Okay. It may be that the budget was a hopeless deficit and they
thought if you slashed Esidimeni and a few other things here, the budget would
come okay again. That's were counsel is going and it's a legitimate question. Can
10 we see the budget of the Department of Health. You must chose the period
Counsel. 2014 - 2015 or 2015 -2016?

ADV NONHLANHLA YINA: It will be 2015 - 2016.

ARBITRATOR, JUSTICE MOSENEKE: 2015 - 2016 ?

ADV NONHLANHLA YINA: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Very well continue with your questions.

ADV NONHLANHLA YINA: That will be all for now Justice. I suppose it will
depend on the answers that you'll get on the budget. And I think of importance is for

DG to tell us how much was saved in relation in what was being paid at Esidimeni because the evidence before this Arbitration is that the cost was a factor that was considered for this project.

ARBITRATOR, JUSTICE MOSENEKE: Sure. By looking at the budget we would
5 know, we can test that assertion against what actually was available to the
Department. I think it's a good point. Well the DG can cause the budgets to be
given to us without having called again. Do you agree with that? And if the
documentation require further exploration of course, she can be recalled or the
financial officer can be called. Very Well. Well that gets us then back to you
10 Counsel but before you do because I know you going to let your witness go and I
have a few large questions to ask as always at this time which really is. The first
DG can rest peacefully that there is going to be rigorous pursuit of disciplinary
procedures against those who have offended, who have breached the law, who
have breeched duties in our Constitution and breeched of just human decency.
15 Can we rest assured that you the Premier and you and other are going to pursuit
this.

PHINDILE BALENI: Justice, I assure you we will persue this, we pursue this
very vigorously. There will be no settlements.

ARBITRATOR, JUSTICE MOSENEKE: Because that is quite important. The warnings that we saw to which Advocate Groenewald referred you to are quite disheartening. If you put a scale of 118 deaths here and a disciplinary hearing, people plead guilty and they get a written warning and they continue with their post.

5 It's something of concern as Counsel raised it with you. We not going to that territory are we because the public generally doesn't consider that to be adequate accountability by public officials in particular.

I agree with you Counsel, Justice and we support the MEC's referral to the Labour Court for review of these sanctions.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Before us there has been speculation about why the Marathon Project was embarked upon? You have been to the war zone. You have been one of those cleaning up. Why was it embarked upon? To achieve what? I know that inference, I know that you were not the planner. But Law works with inferences, we look at all the facts and try and find a rational
15 conclusion consistent with the collection of facts. Well in France you say we ought to make or that you have made.

PHINDILE BALENI: The Justice the inference we draw as the Premiers Office is that this was ill advised, should not have been done, we haven't even achieved

what we as the Department of Health set out to achieve. It was handled in such an inhumane manner. It should just not have been done. I sadly sit here and I cannot in my head rationalise what is it we sort to achieve. We claimed institutionalisation, we institutionalised inobsure institutions. We claimed cost saving, the amount spent ultimately is much higher than cost that could have been saved and were saved if anywhere. It is just one of those that says when we do our work as Government officials, we must remember that we are dealing human lives, we must treat human lives with the respect and the dignity that the Constitution awards and we must take ourselves a little bit more seriously than we have demonstrated in the way this project was implemented.

ARBITRATOR, JUSTICE MOSENEKE: Have you come to know which was the real purpose. There seems to be two things the Ombud talked about. The Institutionalisation, in other resorting to public healthcare and the end being costs. Is any of those two purposes a valid purpose? Was it validity implemented here?

PHINDILE BALENI: Justice, I cannot see that based on the fact. If you look at the costs. In the end more costs were spent. Where can anybody be looked after at anything less than 320 which already is very lean. The facts do not bare out the

Departments intention of saving costs. I haven't seen any numbers that show a business that clearly demonstrates a possible cost savings.

ARBITRATOR, JUSTICE MOSENEKE: Is that what the Ombud told us that the Department spends at existing state institutions per patient is much higher what
5 they spend at Esidimeni. That challenges the notion that this was a cost saving. Because Government was spending more in any event at Weskoppies, at Sterkfontein and Cullinan and so on. Do you have any comments about that?

I agree with that observation Justice. The only comment is that I have is that I'm advised that acute care, which is what those hospitals are slightly more expensive
10 than rehabilitative centres. However, rather spend money looking after people who need the service than say you are saving money than risk lives in the manner that we have risk lived here. And the concept of constitutinalisation it just as DG Matsoso says, "Its not in the policy document." It's about community based care for those people with mental disabilities or intellectual disabilities. If you are going to do
15 that, there are clear steps stipulated in the National Policy in the Act. None of that seems to have been present in this instance. Where people were put into facilities which are essentially institutions still. So deinstitutionalise into other institutions, in this particular instance even more difficult to access for the families without making

sure that those institutions they've got capacity to look after these patients. On top of it you do not transfer funds in time for these newly established institutions. This project can never be defended on any rational grounds.

ARBITRATOR, JUSTICE MOSENEKE: And the urgency DG. What was it about?

5 Why was urgency such a big thing in this project?

PHINDILE BALENI: I was unable to glean what the urgency was about Justice from the documents that were submitted from the way it was implemented, from where we are sitting. It's not quite possible to see so even if there was an Auditor General Finding, the Auditor General often gives you time. An Auditor General
10 never instructs you to go compromise service delivery for costs. He says you are given x amount of money, manage it effectively. If it had been brought to our attention that this potential cost saving that would compromise service delivery, we could never have agreed with it. We would never have agreed with it.

ARBITRATOR, JUSTICE MOSENEKE: Yes. Well now we come to the point
15 where you won't be recalled tomorrow, I think we have come to the end of the road. But I turn it over to you. You are entitled to say what you want to say. We know the Premier is still coming and the Minister of National, Department of Health and you are basically an executive. Do you want to say anything else you are welcome.

PHINDILE BALENI: Thank you Justice. I would like to take this opportunity to apologise to the families that were in this unfortunate incident. The loss of life was not called for was not necessary. The inconvenience, the pain and the suffering was not justified. As an official of Gauteng Government, I am not proud of our record
5 and our performance in this project. We hope that you will find it within your hearts to forgive us for the mistake. We have tried on discovering that this thing has happened to make sure we make good were we mis stepped. Mis step we did in a bad way, in a tragic way and we would hope that you would be able to forgive us for this. Thank you.

10 **ARBITRATOR, JUSTICE MOSENEKE:** DG, Thank you and I know and I just want to say from my part you role, I have worked with you a bit in preparation of this process and you have been very dedicated and I know you are at the height of your sincerity. But thank you for the work you have done and we must continue to work. We can't say ??? and put but ???? you last. We cannot do that, but I know you are
15 committed. You have been working very hard around these issues. You are excused.

PHINDILE BALENI: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Perhaps of course your work is not over, you are going to work quite hard with the determination and the compensation is fixed, you are the one who is going to find the money right? And make sure the money is available.

5 **PHINDILE BALENI:** I will make sure that it is available and ????

ARBITRATOR, JUSTICE MOSENEKE: Very well. Thank you.

We are going to resume as always tomorrow at 9.30 am. We adjourn now.

END OF SESSION 3.