

LIFE ESIDIMENI ARBITRATION

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

DATE: 30TH OF JANUARY 2018

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SESSION 1 – 4.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

10

WITNESSES:

MS BARBARA CREECY.

PREMIER MANEMOLLA DAVID MAKHURA

Contents

15	SESSION 1.....	2
	SESSION 2.....	2
	SESSION 3.....	44
	SESSION 4.....	84

20

SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Good morning to you all. Ms Creecy, good morning to you.

25 **MS BARBARA CREECY**: Good Morning Justice.

ARBITRATOR JUSTICE MOSENEKE: You are most welcome. Before we start with the evidence, is there anything that Counsel would like to draw to my attention? No, Advocate Hutamo I presume you are going to lead the witness, are you?

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

ARBITRATOR JUSTICE MOSENEKE: Okay very well.

ADV TEBOGO HUTAMO: Morning to you Justice.

ARBITRATOR JUSTICE MOSENEKE: Good morning to you indeed. In which language do you want to testify?

35 **MS BARBARA CREECY**: In English Justice.

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

MS BARBARA CREECY: So help me God.

40 **ARBITRATOR JUSTICE MOSENEKE**: Advocate Hutamo?

ADV TEBOGO HUTAMO: Thank you, good morning MEC Creecy.

MS BARBARA CREECY: Good morning.

ADV TEBOGO HUTAMO: Can you just state, for the record, which portfolio within the Gauteng government are you responsible for?

45**MS BARBARA CREECY**: I am the MEC for Finance in Gauteng Provincial government.

ADV TEBOGO HUTAMO: Ms Creecy we would like to get your assistance with regard to the issues which have been referred to these proceedings through the recommendations of the Health Ombud pertaining to the Department of Health in
50its implementation of a project which had become known to be the Marathon Project. We would like you to assist with regards to the issues relating to finance, not necessarily the execution or implementation of that project, so the questions which will be presented to you, will require you just to assist us, how would the Treasury, which is under your portfolio, was involved throughout the
55process.

We have exchanged documents with the legal representatives who are participating in this process and I am going to take you through or refer you to those documents so that you can assist in this regard. As you have stated that you are responsible for finance within the province, can you just give a broad
60outline in terms of how budget processes are being planned within the province for each financial year?

ARBITRATOR JUSTICE MOSENEKE: Counsel let me just interrupt you. I want to know when were you appointed MEC for Finance?

MS BARBARA CREECY: I was appointed after the 2014 National and
65Provincial elections, I think it was May 2014.

ARBITRATOR JUSTICE MOSENEKE: When was the inception of your appointment?

MS BARBARA CREECY: I don't have-

ARBITRATOR JUSTICE MOSENEKE: When were you first appointed MEC for
70Finance?

MS BARBARA CREECY: I don't have the exact date with me Justice, but it was- I have served as MEC for Finance throughout this 5th term of administration.

ARBITRATOR JUSTICE MOSENEKE: We will have to put some years to that.
75We would like to hear how many years were you in your position when the Marathon Project happened, so it's important to understand your date of appointment to now.

MS BARBARA CREECY: Justice I will get that information for you and submit it under oath, but it was May 2014.

80**ARBITRATOR JUSTICE MOSENEKE:** And during the Marathon Project, were you MEC for Finance?

MS BARBARA CREECY: Yes I was.

ARBITRATOR JUSTICE MOSENEKE: Very well Counsel?

MS BARBARA CREECY: I have served in this portfolio from the time of my
85appointment in 2014 until today.

ARBITRATOR JUSTICE MOSENEKE: 2014 to now, thank you, Counsel?

ADV TEBOGO HUTAMO: Thank you. I had requested that you should proceed to give an elaboration of budget processes for every financial year during the period as your position as the MEC for Finance and as I've indicated earlier on, 90you may make reference to the documents which we have exchanged and they are numbered and referred to as ELAH's and it will be ELAH Number 156 if you can refer to that document and then give us an explanation of how that process unfolds until the budget is presented.

MS BARBARA CREECY: Justice if I may refer to the Power Point presentation 95ELAH 156 Page 8, has a graphic overview of the provincial budget process and what is important to explain to the hearing, is that the provincial budget process is a year-long process and the provincial budget day for the current year financial year, would be in March and from April, that is when the budget process for the following financial year, would begin and that budget process normally begins 100with an executive council retreat where priorities for the following financial year would be agreed upon by the Premier and all the MEC's responsible for different departments.

From May until August, it would be the time when each and every department would be involved in planning and budgeting, so this is when departments would 105say we have been given these priorities by the Premier, how do we allocate financial resources to the different priorities? It is also important to say Justice that departments have different statutory responsibilities and those statutory responsibilities continue regardless of the particular priorities that a Premier might want to emphasise for that particular year.

110 So the detail of the construction of any provincial budget would be done by the particular department themselves and they would make allocations to different programmes. In August, departments would make their first, what we call, medium term expenditure framework submissions and those would be the budgets for a period of 3 years, a 3 year projection.

115 There is then another executive council retreat. It will normally take place in September and at that executive council retreat, different departments might want to raise issues in relation either to political priorities, departmental priorities, or spending pressures that they might face.

ARBITRATOR JUSTICE MOSENEKE: Just before you move on, of your total budget, at what point, did you decide what allocation would go to a particular department, for example, Health? When and how do you decide what percentage or portion of the budget of the total provincial budget, is allocated say to Department of Health?

MS BARBARA CREECY: Justice, government works on 3 year projections and those projections are guided by National Treasury, by Provincial Treasury and also as I have explained, by the executive council in terms of political priorities. I think what is important to say, is that in any one financial year, there would not be major variations in terms of budget allocations. I think that what we all understand is that in government terms, a variation of more than 5%, will have unintended consequences in any particular financial year.

Now, the Gauteng provincial government receives-

ARBITRATOR JUSTICE MOSENEKE: And that means the allocation wouldn't be any more than 5% more or 5% less? I just want to check if my understanding is correct.

135 **MS BARBARA CREECY**: Generally what one would see in government budgets, is that there would always be a cost of living increase, because obviously the salary bill and goods and services bill would increase according to inflation, but you may find a situation where within a programme, resources are shifted in order that a new priority can be accommodated, so you might find that
140 there is a micro shifting of budget to accommodate a new priority, but if you look at the overall budget, you are not going to see major shifts from year to year.

ARBITRATOR JUSTICE MOSENEKE: And by and large, the shift would by and large be, within the 5% perimeter, is that what you're saying?

MS BARBARA CREECY: Yes Justice.

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

MS BARBARA CREECY: So Justice, what you can see from this diagram, is that the first submissions would be made by departments to Provincial Treasury in August. There would then be the second-

ARBITRATOR JUSTICE MOSENEKE: I'm sorry you will have to take me to the
150 diagram? I was looking at the slide presentation?

MS BARBARA CREECY: It's slide presentation Page 8.

ARBITRATOR JUSTICE MOSENEKE: Thank you. I've got that, thank you.

MS BARBARA CREECY: So what you would see is that departments would make their first submissions in August. There would then be a second executive

155council retreat and I think that that retreat would really be wanting to look, as I've
already explained, at any issues that might have arisen in the process of
departmental budgeting and then, in September, there would be something that
we would call the M Tech hearings and those are detailed bi-lateral's that are
held between Treasury officials and officials of different government
160departments.

Now I'm saying officials because they do not involve the political heads. It would
be the accounting offices, so the Head of Treasury would meet the accounting
officers and the financial teams of each and every department.

In October, is when the Premier's budget council will sit and I will later in my
165testimony Justice, explain what the Premier's budget council does, because it is
relevant to this hearing. Then in November, there would be the adjustment
budget and this is a time when departments, if departments are facing extreme
financial pressures in the current financial year, there would be adjustments that
would be done at that time. It can also be a situation where departments can
170shift funding from areas where they are under-spending to areas of greater
priority.

ARBITRATOR JUSTICE MOSENEKE: The current financial year? I thought
the budget process was always projected to a year ahead, so what happens
then in November?

175**MS BARBARA CREECY:** Justice we are always working concurrently with the
current financial year and the following financial year, so those processes
happen simultaneously, because we do want to give departments an opportunity
in November, to say to us, we're in trouble, we need extra money, or we are

under-spending here, we would like to shift the resources there, while we
180continue with preparing the budget for the following financial year, which would
only be tabled in the provincial legislature in March.

ARBITRATOR JUSTICE MOSENEKE: I follow.

MS BARBARA CREECY: So the third round of submissions by departments,
would then be submitted in November/December after the adjustment budget
185and there would then be a final Premier's budget council that would look at the
final allocations to departments in February and that would be prior to budget
day which is normally in the first week of March.

ARBITRATOR JUSTICE MOSENEKE: Then the final submissions reflected in
the slide, would be prospective, would be about the-

190**MS BARBARA CREECY**: It would be about saying this is the actual allocations
to departments, but in a sense Justice, that meeting is usually a formality,
because you can see that considerable work has been done in the whole year
leading up to that.

ADV TEBOGO HUTAMO: Thank you. You have made it clear that the final
195allocation to various departments occurs during the period of February according
to your testimony. Can you just assist us to give us an indication, who has the
ultimate or the primary responsibility for budgeting between your portfolio and
various departments and in this particular case like we refer to the Health
Department?

200**MS BARBARA CREECY**: Well I think what is important to say, is that the
priorities are determined by the executive council legotla, or by any policy
decisions that might have been taken by the executive council during the course

of the year, but the actual allocations are done by departments themselves and there are these M Tech hearings, that is where I think the heavy lifting happens and that is the interface between provincial treasury and provincial government departments.

ARBITRATOR JUSTICE MOSENEKE: Who ordinarily would attend the executive legotla?

MS BARBARA CREECY: The executive council normally is attended by the Premier and all the MEC's and the executive council legotla, is attended by all MEC's and all heads of department.

ARBITRATOR JUSTICE MOSENEKE: So executive council legotla would be the political principles only?

MS BARBARA CREECY: The executive council legotla would be the political principles, plus the accounting officers, the heads of department.

ARBITRATOR JUSTICE MOSENEKE: But would the executive council sometimes meet not in the legotla setting?

MS BARBARA CREECY: Yes Justice, the executive council meets on a monthly cycle and that executive council is attended by the Premier and MEC's and the Director General of our province.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV TEBOGO HUTAMO: Thank you. Let's just deal with the years during which you were appointed to the position and in particular, can you just assist us to get an idea of what was the government's approach during the period of 2014 relating to matters of budget?

ARBITRATOR JUSTICE MOSENEKE: Again Counsel I am coming in a little late, but it's still not clear in my own mind, how the internal allocation of a department occurs and what impact does the executive council have, or the budgetary process has on the internal allocation of a department? For instance, 230how does it happen that the Department of Health would choose what money to use for which project?

MS BARBARA CREECY: Justice the way that I could attempt to explain this, is first of all, as I said, the Department always works on a 3 year cycle, so after the election when the 5th administration comes into office, they will find a budget 235cycle in existence, so when you are appointed as the new MEC, you will find that medium term expenditure framework already in existence in your department. Your duty as an incoming MEC is to explain to your department at a departmental strategic session, that would normally happen between May and August of any financial year, to explain what is, the thinking, of the Premier and 240what is the thinking of the executive council about political priorities.

You would understand I'm sure Justice from previous testimony, that we have in Gauteng, what Premier Makhura terms our 10 pillar programme of transformation, modernisation and re-industrialisation, so as an MEC, my tasks is to take that 10 pillar programme to my department and to explain to my 245department which sections of that 10 pillar programme are of relevance to my department and what programmes we would expect to see in place.

But as I explained to you and Justice I am sure you will understand, I have never been an MEC of Health, but I have been the MEC of Education and Education is

a department where there would be lots of statutory services, so if in the 2009-2502014-

ARBITRATOR JUSTICE MOSENEKE: I understand where you're going and you are anticipating the debate about who decided whether or not to spend any money on Life Esidimeni. For a moment, at a high level, I would like you to help me understand, who decides on the line items within a department?

255**MS BARBARA CREECY:** The department itself. In the end, the head of finance of any department is the accounting officer and that is the head of department. The Public Finance Management Act defines the head of department as the person responsible for the finances in a department.

ARBITRATOR JUSTICE MOSENEKE: I understand that, but at a budgetary 260level, when they decide they are going to spend only X amount, say on equipment in hospitals, that line item, at what level in the process, is it decided? That allocation, how high up or where is it settled?

MS BARBARA CREECY: My understanding of the internal departmental processes is that every director and chief director, would be responsible for 265constructing their budgets and sending them up to the Chief Financial Officer, who would then be putting together the macro budget. So your directors, chief directors and deputy director generals, would ultimately be responsible for budgeting in their particular area of responsibility, or should I say for constructing that budget and of course, there would be everybody down the chain, would be 270also submitting into that process because in any particular area, there would be different people responsible.

ARBITRATOR JUSTICE MOSENEKE: The same concern can be turned around- I am looking at a slide on Page 8 of ELAH156, by the time you reach the PBC in February for final allocation, what kind of detail would be before the PBC? Would the PBC know whether or not you are going to spend more on wheelchairs or not? Would it know, or would it see that you are going to spend more or less on hospitals, more or less on salaries of doctors?

MS BARBARA CREECY: By February Justice, the primary decisions that would be being made in February, would be about how to allocate any surplus that might exist, any additional money that we might have accrued as a result of our own revenue raising initiatives, or as a result of allocations from National Treasury.

I think the place where we would be looking at the macro budgets would be at the PBC in October, that is where the Premier's budget council would be looking at the budgets, but generally, provincial budgets are constructed in terms of programmes and so, they would really be dealing even in October, with macro allocations.

ARBITRATOR JUSTICE MOSENEKE: In October, would you be seeing the micro allocations or not at the PBC?

MS BARBARA CREECY: Well Justice in my testimony, I will explain to you what was presented before the PBC in terms of Life Esidimeni.

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

ADV TEBOGO HUTAMO: Thank you. I was still asking you the question about the Treasury's approach relating to budget allocations during the period of 2014 and I put this question to you with reference- the document is ELAH153?

MS BARBARA CREECY: This document ELAH153, is the speech which I presented in the Gauteng provincial legislature on the 20th of November 2014 and it's what we call the medium term budget policy statement and the purpose of that particular statement, is not to talk about allocations for the 2014/2015 300financial year, but it is to talk about what is the economic situation and the fiscal situation that the province is facing and as a consequence of that, what will be the approach of provincial government to funding the 2014/2015 budget.

It's also a time when I will announce the adjustment budget for the current financial year and in that particular situation, sorry I am confusing the hearing, 305the adjustment budget that I would have announced on the 20th of November 2014, would be the adjustment budget for the 2014/2015 financial year and the policies that I would be announcing, would be the policies that would guide the 2015/2016 financial year.

ARBITRATOR JUSTICE MOSENEKE: You would announce an adjustment of 310the numbers for 2015?

MS BARBARA CREECY: 2014/2015.

ARBITRATOR JUSTICE MOSENEKE: 2014/2015, but the policies would be directed at?

MS BARBARA CREECY: 2015/2016.

315**ARBITRATOR JUSTICE MOSENEKE:** 2015/2016?

MS BARBARA CREECY: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay.

ADV TEBOGO HUTAMO: And then when were the main budget allocations?

MS BARBARA CREECY: The main budget allocations would have occurred in 320 March and I think that if my memory serves me correctly, yes, I made the main budget presentation on the 3rd of March 2015.

ADV TEBOGO HUTAMO: Can you please refer to ELAH154? Can you take us through the main aspects?

MS BARBARA CREECY: So in this budget presentation, this is the first 325 financial year after National Treasury had indicated to the Gauteng provincial government that over the 3 year medium term expenditure framework, starting in the 2015/2016 financial year, there would be a decrease in the allocation of the equitable share of 1.3 billion Rand.

Now what I indicated in that budget, was I said very clearly, that in order to 330 accommodate this 3 year cut of 1.3 billion Rand, we are not talking about austerity measures and there would be 4 aspects to our financial approach. The first would be to reduce spending on non-core goods and services and fight corruption. The second would be to look for ways to increase own revenue and alternative funding sources.

335 The third and I think this is very important for this hearing, to maintain spending on quality social services and lastly, to increase expenditure on infrastructure with the intention of creating work and giving the expression to the Premier's programme of transformation, modernisation and re-industrialisation.

ARBITRATOR JUSTICE MOSENEKE: Where are you reading from MEC? You 340 are reading from which Exhibit?

MS BARBARA CREECY: ELAH154 and Page 7.

ARBITRATOR JUSTICE MOSENEKE: I've got that, thank you.

MS BARBARA CREECY: Then on Page 8, I specifically outline in the budget, our cost reduction targets on non-core areas and I spell out what the targets are
345and what the non-core areas are and I think Justice, it's important to say that the provision of health services, education services and social services, as well as housing, are core areas of provision for the Gauteng provincial government.

So when we talk about cost reduction on non-core areas, we are referring to venues and facilities. By venues and facilities, we mean for public events.
350Travel and subsistence, the target was 1.5%, the target for venues and facilities was 21%, communication 7%, catering 9% and catering we are referring to catering at government functions, advertising 0.5% and administration fees 25%.

So those were the actual targets. I then go on in the course of the speech Justice, if we can move on to Page 20, where I deal specifically with the
355Department of Health budget and what I explain there, is that over the past 2 years, the Department of Health had been under Section 18 administration of the Public Finance Management Act, so it means the Provincial Treasury, from 2013/2014 up until I think it was May 2015, had been administering the finances of the Department of Health in the province.

360**ARBITRATOR JUSTICE MOSENEKE:** Why? What had happened?

MS BARBARA CREECY: Because Justice, there had been a problem that began from 2009/2010 of what we call accruals and this is a problem of invoices from one financial year that are not paid within the prescription of 30 days, but in the case of health, these accruals were not paid for several years and by 2012,
365when the Department of Health was placed under Section 18 administration and

at that time Justice, I was not the MEC for Finance, I was the MEC of Education, but I can say for the record, that at that time, when it was placed under administration, it was to deal with the accruals which by the 2012 year, were in the region of 4½ billion Rand.

370 **ARBITRATOR JUSTICE MOSENEKE**: Who were the creditors in relation to these accruals? In rough and ready terms, who were owed the amount of R4.5 billion?

MS BARBARA CREECY: It would have been service providers and those service providers would primarily be service providers that would be providing 375 our central hospitals, the central hospitals, the teaching hospitals and the provincial hospitals with goods and services.

ARBITRATOR JUSTICE MOSENEKE: And who made the decision to place the Department under Section 18 administration?

MS BARBARA CREECY: Premier Nomvulo Makanyane.

380 **ARBITRATOR JUSTICE MOSENEKE**: And how did the Department emerge from that administration?

MS BARBARA CREECY: So what happened during the course of that administration, is that while Treasury was administering the Department, they began by doing an analysis where are these accruals and where is the over- 385 spending happening and as I explained Justice, the identification and the locus of the problem was the central hospitals and the provincial hospitals and when Treasury did an analysis of what was causing the problem, what we found, was that there were management problems in those hospitals, but there were also financial management problems that related to the management of supply chain.

390 So what had happened, my predecessor MEC Mandla Nkomfe, had appointed PricewaterhouseCoopers to lead the intervention in the Department of Health and what they had done, is that they had worked on the hospital management in these central hospitals.

They had established standard cost centres in those hospitals, they had 395 transformed the supply chain management environment, they had introduced standard long term contracts for things like linen, food, medicines and other medical consumables. They had set up a hospital management framework and they had also done a lot of work on the finance and financial management in those central hospitals.

400 The result of that, was that by the time I made this budget speech on the 3rd of March 2015, we were in the process of winding up that particular intervention and concluding that intervention and handing the Health Department back to the head of department and the MEC.

ARBITRATOR JUSTICE MOSENEKE: Were the accruals cleared?

405 **MS BARBARA CREECY**: The accruals had been considerably reduced Justice, so at that point, under central hospital services, at the end of the 2014/2015 financial year, the accruals in the central hospital services, would have been in the region of R718 million, but much of that money would have been current.

ARBITRATOR JUSTICE MOSENEKE: Do we know, could you in the process 410 of trying to resolve this, determine what happened to the money which was supposed to be paid to service providers? In other words, what was wrong with the supply management chain?

MS BARBARA CREECY: I think that there were 2 things that were wrong Justice. The first thing that was wrong, was that in the central hospitals themselves, the management was not clear what their budget was and was not clear that it was their responsibility to spend within the context of their budget.

So what happened in those central hospitals, was that medical personnel would order whatever they wanted to order and they would not check when they made those orders, whether there were supplies of that particular good or service in the medical supply depot. They would also not check whether they had budget to order that particular medical consumable and that is why we put in the transversal contracts, so that there could be greater control over the process of ordering consumables.

ARBITRATOR JUSTICE MOSENEKE: So in simple language, they issued contracts for supply of hospital consumables against money they did not have? Is that what you're saying?

MS BARBARA CREECY: Yes Justice, over a period of many years, in excess of money that they had, or Justice, they didn't check what was in the stores- it was easier just to order something new and get it delivered than to go and check what was in the stores.

ARBITRATOR JUSTICE MOSENEKE: Was anybody help culpable for a R4.5 billion over-run over the years? Could you point to some administrators who would allow an over-run in a financial miss-management of that magnitude?

MS BARBARA CREECY: Justice I would not be in a position to give you details of that. I was not the MEC of Finance at that time, I was not the MEC of Health. I know what, were, the key areas of intervention and what went wrong.

ARBITRATOR JUSTICE MOSENEKE: Of course Ms Creecy, the importance of this enquiry, does not escape you right?

MS BARBARA CREECY: Yes Justice.

440**ARBITRATOR JUSTICE MOSENEKE**: We are next to 2015 and the Department of Health decides we don't have enough money to look after mental healthcare users, so you have to look back and say what went wrong and then you find that in fact the Department was under administration and the decision was preceded by considerable miss-management.

445**MS BARBARA CREECY**: Justice what I can say to you, is that while provincial Treasury was administering that department, we were able to fix the problem without cutting core services and we were able to fix the problem because we understood at the end of the day, that it was a management problem, not a financial problem, or should I say it manifested as a financial problem, but the
450roots were in the interface between head office and those central provincial hospitals and the way they were being managed.

ARBITRATOR JUSTICE MOSENEKE: But was anybody that was my question initially, ever held accountable for the financial miss-management that led to the Section 18 administration? Do you know of anybody whose head rolled for that?

455**MS BARBARA CREECY**: Off the top of my head, I don't have that information Justice, I don't know what disciplinary hearings would have taken place.

ARBITRATOR JUSTICE MOSENEKE: You may proceed?

ADV TEBOGO HUTAMO: Thank you. You were still busy dealing with the aspects relating to cost reduction targets with reference to ELAH154. You were

460 outlining the matters which were considered to be non-core and in respect of
which it was necessary to reduce those costs?

MS BARBARA CREECY: Yes Justice, I am now on Page 20 and I do give
some detail there on the fact that the Department of Health by this point, was
complying with all of the audit findings and that we were confident at that point,
465 that our efforts towards strengthening the health system's effectiveness, will
result in improvements in service delivery.

For that reason, in that financial year, 2015/2016, we increased the health
budget by R496 million, this would have been the provincial contribution for
amongst other things, medical supplies and medicines and overall, in that
470 financial year, the Department had an allocation of R34 billion which increases to
R39 billion in the outer year.

So what we can see, is between 2014/2015 and 2015/2016 which is the budget
that we are addressing here, the Department of Health budget was not cut
Justice, it went up from R31.4 billion to R34 billion.

475 **ADV TEBOGO HUTAMO:** Thank you. In line with your effort to ensure that
core services are being rendered and looking at the budget increase during the
period of 2015 and 2016, did this trend of increasing the budget for the
Department of Health, continue?

MS BARBARA CREECY: Yes Justice I would like to refer you to ELAH157,
480 which is a spreadsheet on the Department of Health's finances and what you
can see there, is that every year, from 2014/2015 up until the current financial
year, the budget has increased and what we are showing you there, is what was
the main appropriation, in other words, what did we do in March of each year.

Then the adjusted appropriation, so what did we do in November of each year in
485the adjustment appropriation and then we also show you expenditure, so that is
actual against budget.

What you will see is that, I have already said from 2014/2015 to 2015/2016, the
budget increased from R31.4 billion to R34.1 billion. 2016/2017, the budget
increased from R35.3 to R37.6 and 2017/2018 which is the current financial
490year, the budget has increased from R37.6 to R40.2. Obviously the current
financial year is still ongoing, so we can't show you actual outcomes.

ARBITRATOR JUSTICE MOSENEKE: So the notion that there ought to be a
cut on core services, was totally foreign to your financial planning and budgeting
was it?

495**MS BARBARA CREECY:** Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: The assertion that there was massive
pressure from Treasury, national and provincial, to reduce expenditure on core
services, is false?

MS BARBARA CREECY: Yes Justice. The pressure was on non-core
500services.

ARBITRATOR JUSTICE MOSENEKE: We will come back to that. Also the
importance of that point, does not escape you either.

MS BARBARA CREECY: No Justice.

ARBITRATOR JUSTICE MOSENEKE: Up to now, the evidence has been cut
505costs on mental healthcare users, because the State doesn't have money to

fund their care. That's what Dr Manamela says, that's what Dr Selebano said, and that's what former MEC Mahlangu said. Is there any truth in that assertion?

MS BARBARA CREECY: Justice I would like to take you through the budget for mental health services and I will show you the figures. I think that you can then
510 draw your own conclusions from the figures.

ARBITRATOR JUSTICE MOSENEKE: I am going to wait until you do that. Counsel you may, proceed? Thank you for ELAH157, I have seen the numbers and their progression.

ADV TEBOGO HUTAMO: Thank you MEC. As you have dealt with this aspect
515 relating to the Department, the Department's budget being increased over a period of time, I would like you to assist and deal with the question that the Justice has just raised with specific reference to the budget for mental health and if you can just go ahead and deal with that with reference to ELAH160?

MS BARBARA CREECY: Thank you very much. Justice ELAH160 is the
520 mental health services budget and expenditure for the period 2013/2014 up until the current financial year and what we have done in Treasury, is we have brought together all the different areas in the budget where we fund mental healthcare services and psychiatric services.

So you will see there, that we are dealing with psychiatric hospitals, Life
525 Esidimeni, mental health's non-profit institutions, mental health district services and then the total. Now, overall Justice, what we are showing you, is what was the original budget, so if I can start with 2013/2014, the original budget was R1.1 billion. The adjusted budget was R1073 billion and the actual expenditure was

R1011 billion and in that financial year, there was an under-expenditure of R62 530million.

The following year 2014/2015, the budget was R1.161 and the adjusted budget was R1.190 and the actual expenditure was R1.237 and there was an over-expenditure in the 2014/2015 year of R47 million.

If we can then, move, to the 2015/2016 financial year?

535 **ARBITRATOR JUSTICE MOSENEKE**: But before you do, Life Esidimeni line item, reflects no reduction in actual expenditure, it was nil adjustment?

MS BARBARA CREECY: That's correct and in fact Justice-

ADVOCATE ADILA HASSIM: Sorry to intervene, we were only provided with the document a couple of hours ago. Could I please just ask the witness to 540repeat what she said, because we were scrambling to follow and I don't want to miss anything? I am sorry for the intervention, if we can just go through the document a bit slowly so that we can digest it?

ARBITRATOR JUSTICE MOSENEKE: Yes, would you just want to repeat that?

MS BARBARA CREECY: I apologise to counsel for the late production of this. 545We only found out on Friday that you would be interested in this information and it was quite a task to assemble it, because the information was in different budget heads. So this information begins in the 2013/2014 financial year and this is before my time, but we thought it was relevant to show you trends because this is when 2013/2014, the Department was still under the 550administration of provincial Treasury.

So what you see there is the budget that was allocated, was R1.156 billion. The adjusted budget was R1073 billion and the actual expenditure was R1011 billion and there was an under-expenditure in that financial year of R62 million.

The following year, which is 2014/2015, the budget was R1.161 billion. It was 555adjusted upwards in November to R1.190 billion. The actual expenditure was R1.237 billion and in that financial year, there was an over-expenditure of R47 million.

We now move to the next financial year and 2015/2016, I think is one of the controversial years and what you will see there, Justice, is that in 2015/2016, the 560over-expenditure of the previous financial year, is taken into account in the overall balance, so these services received R1.268 billion in the original budget. It is adjusted upwards in November to R1.289. The actual expenditure is R1.228, so there is an under-expenditure of R60 million.

ARBITRATOR JUSTICE MOSENEKE: And in relation to Life Esidimeni, there 565was an under-expenditure of R29 million? Do I read it correctly?

MS BARBARA CREECY: That's correct.

ARBITRATOR JUSTICE MOSENEKE: R29.2 million, under-expenditure.

MS BARBARA CREECY: That's correct Justice. In the following year which is the 2016/2017 financial year, the overall budget for mental health services, was 570R1.350, so it's up again from the previous year. The adjusted budget is slightly down, it's R1.290 and the actual expenditure is R1.279 and there is an under-expenditure of R11 million.

I think if you read the Life Esidimeni line, what you can see, is that there is a reduction of the Life Esidimeni budget, but there is money going elsewhere, so overall in terms of mental health services, there was no decrease from the side of provincial government in terms of mental health services.

ARBITRATOR JUSTICE MOSENEKE: But what were they then doing? What is this all about Ms Creecy?

MS BARBARA CREECY: I can't say Justice.

580**ARBITRATOR JUSTICE MOSENEKE:** But why would they shut down a facility when the numbers show that there was more than enough money to look after mental healthcare users, not generally, even at Life Esidimeni? What was all this about? Do you know? Can you make sense of this?

MS BARBARA CREECY: I don't know Justice. I can only present you the 585figures.

ARBITRATOR JUSTICE MOSENEKE: Okay let's see, let's go slowly. Do the figures suggest to you that there was any need to shut down a facility that abruptly on the grounds of finance at least?

MS BARBARA CREECY: Justice I would like to answer that question when I 590present to you what was told to us in the Premier's budget council? I am still coming there.

ARBITRATOR JUSTICE MOSENEKE: Okay let's defer it to then. Very well you can go on?

ADV TEBOGO HUTAMO: Thank you.

595 **MS BARBARA CREECY**: Just for the record Justice, if I can complete the story, in the current financial year, the budget for mental health services, if R1.412 billion. It has been adjusted to R1.413 and as of December, we had spent R1.136 billion, so I don't really want to go into the variance because you would understand that December is not the end of the financial year.

600 **ARBITRATOR JUSTICE MOSENEKE**: But those actuals would include actuals related to re-absorbing survivors from the Marathon Project isn't it so?

MS BARBARA CREECY: Yes Justice, if you look under the item of Life Esidimeni, you would see that the expenditure there is R142 million and it's up from what was the original projection and my understanding would be because 605 there would be patients that would have been re-absorbed.

ADV TEBOGO HUTAMO: You have previously dealt with the need to reduce costs and you gave much detail about that. Can you just assist this hearing what actually informed that policy decision with reference to ELAH149?

MS BARBARA CREECY: Justice ELAH149 is the government gazette number 61010058 of 15 November 2013 and this government gazette regulates cost cutting by all provincial departments and their accounting officers and what this gazette says and it's quite a long document, I am not going to go through it in the interests of time, but what it says, is that from the 1st of January 2014, the cost containment measures that must be implemented by all accounting officers, all 615 heads of department, whether at national or provincial level, it's consultants, travel and subsistence, expenses relating to catering and events, arrangements related to debit and credit cards and containment of the wage bill.

ARBITRATOR JUSTICE MOSENEKE: On which page of the gazette do I find all that?

620**MS BARBARA CREECY**: It's from Page 2, Page 2 would be consultants and travel and subsistence, it's Item 4, so 4.1 would be consultants, 4.6 travel and subsistence, it would then go on, on Page 4, 4.23 expenses relating to catering and events. It would then go onto Page 5, 4.27 arrangements related to debit and credit cards and lastly, the issue of-

625**ARBITRATOR JUSTICE MOSENEKE**: That is pretty confusing I must say. I think we need to start again. I have before me, ELAH149. On its cover, its government gazette 37042 of the 15th of November 2013?

MS BARBARA CREECY: That's correct.

ARBITRATOR JUSTICE MOSENEKE: And if you turn it over, I can see it is 630signed by the Minister of Finance Pravin Gordhan and then there is a schedule, so the numbering you refer to, is that the numbering of the schedule?

MS BARBARA CREECY: No if we can go after the schedule.

ARBITRATOR JUSTICE MOSENEKE: Or what appears to be a circular on cost containment?

635**MS BARBARA CREECY**: Yes it's the national Treasury instruction note.

ARBITRATOR JUSTICE MOSENEKE: So the numbers refer to that one?

MS BARBARA CREECY: Yes my apologies.

ARBITRATOR JUSTICE MOSENEKE: Let's start all over again then. Then we are looking at the circular on cost containment measures. What do you say is
640 relevant and important for us to look at?

MS BARBARA CREECY: Page 2, it lists the items that are targeted for cost containment and 4.1, it is engagement of consultants. Then we go further down that same page 4.6, travel and subsistence. There is lots of detail on travel and subsistence on Page 3 and half of Page 4 and then, we go to expenses related
645 to catering and events 4.23. Lastly, on Page 5, 4.27 arrangements related to debit and credit cards.

So these measures Justice are all about the guidelines that national Treasury gave all of us as to where we were to cut costs.

ARBITRATOR JUSTICE MOSENEKE: We were told repeatedly, that the cost
650 containment in relation to Life Esidimeni, was demanded by national Treasury and the guidelines point in a different direction.

MS BARBARA CREECY: Justice I can only show you what binds us as departments in terms of the government gazette and Treasury regulations.

ARBITRATOR JUSTICE MOSENEKE: But is there any part in this that would
655 justify the assertion that the MEC and Dr Manamela and Dr Selebano that they were constrained to cut expenditure towards Life Esidimeni because Treasury demanded it or demanded of them to save costs?

MS BARBARA CREECY: What Treasury demanded, was that we save money on consultants, travel and subsistence, expenses relating to catering and events
660 and arrangements related to debit and credit cards and that is what national Treasury has been monitoring in each and every department since this circular

came into effect on the 1st of January 2014. It is also monitored Justice by the Auditor General.

ARBITRATOR JUSTICE MOSENEKE: Well I know you seem to be scrumming away from saying your colleagues were blatantly wrong in telling us that they were obliged by Treasury to cut costs on patients? Can that just justified?

MS BARBARA CREECY: Treasury has never demanded that any department cut core services.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

670 **ADV TEBOGO HUTAMO**: MEC, earlier on, you have taken us through ELAH156 with regard to budget processes. Can you just assist to give us an indication what did the Department of Health present before the Premier budget committee, but before doing so, please just explain how is the Premier's budget committee composed and what is its objective?

675 **MS BARBARA CREECY**: Justice with respect, before I answer that question, because it relates to the issue that you were asking me about what instructions have Treasury given to departments, provincial Treasury. I have requested permission and have received permission to de-classify an executive council document. It's ELAH155. Subject Gauteng Provincial Government-

680 **ARBITRATOR JUSTICE MOSENEKE**: And we're not committing any crime by looking at it secret, are we?

MS BARBARA CREECY: No Justice you can look at it freely.

ARBITRATOR JUSTICE MOSENEKE: Okay.

MS BARBARA CREECY: Justice the date of this executive council memo is the 68522nd of July 2015 and the subject of this memo, is Gauteng Provincial Government own revenue generation strategy and cost containment.

Now you will recall Justice that in my budget speech of the 3rd of March 2015, I had-

ARBITRATOR JUSTICE MOSENEKE: Is this the minute of the meeting? What 690is it?

MS BARBARA CREECY: This is what we call an executive council memorandum and it is the decision that we asked the executive council to make on revenue generation and cost containment.

ARBITRATOR JUSTICE MOSENEKE: And that was on the 22nd of July 2015?

695**MS BARBARA CREECY**: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS BARBARA CREECY: Now Justice because overall, government budgets were facing constraints and because overall, we were aware as provincial government that there was a high level for demand on our services, you will 700recall that in my budget presentation of 2015 March 2015, I indicated that we wanted to try and do two things. The first was to increase our own revenue, it is only 5% of our budget, but in tough financial times, it is significant and secondly, what we had indicated at that time, was that he had set specific targets on containing costs.

705This document sets out how we intended to raise revenue and I'm not going to go into it because it's very long and technical and not necessarily the subject of

this investigation, but I think it's important because it shows the commitment we were making in a situation where we were facing cuts from national Treasury to [inaudible] the complexities that our own departments were facing by doing
710 everything in our power to improve our own revenue generation.

Then what it does is that it makes a decision of the executive council, those cost containment measures that I mentioned in my budget speech, so if there is a decision of the executive council, then it's not just what the MEC of Finance feels like saying in public. It is what binds members of the executive council and their
715 departments and that is why we took it to the executive council because we said this is where we want to contain costs.

ARBITRATOR JUSTICE MOSENEKE: Was Ms Mahlangu MEC then for Health present at this meeting?

MS BARBARA CREECY: She was Justice.

720 **ARBITRATOR JUSTICE MOSENEKE**: And did she raise descent to the decision of the strategy contemplated in ELAH155?

MS BARBARA CREECY: I don't remember MEC Mahlangu raising any descent on this matter. I know that where there were concerns on this memo, it really related to the issues of travel and subsistence and that really Justice, was about
725 the different types of operations that different departments are involved in.

So if I can make an example for you, if you have a blanket ban on travel of more than 100 kilometres per month for all government employees, where you have agricultural extension offices in one day, those agricultural extension offices would have travelled 100 kilometres and then for the rest of the month, they will
730 not be able to do their work. So what we were trying to show colleagues is that

we are setting targets here, but it's up to departments to show us how they will save money in terms of those targets. So that was the purpose of this memorandum.

ARBITRATOR JUSTICE MOSENEKE: Page 10, at the bottom thereof, seems
735to speak to implementation of cost containment measures. What is of
significance there?

MS BARBARA CREECY: Do you want me to read the section "managing public
sector expenditure", involves balancing, a range of competing priorities. A better
mix between personnel, capital and goods and services spending is needed and
740also requires a conscientious effort to ensure that all expenditure categories are
properly costed and to improve the link between budgeting and planning. The
prevailing economic conditions outlined elsewhere and the importance of
protecting the provision of essential services and boosting infrastructure
spending, make it incumbent on the Gauteng provincial government to re-visit
745the composition of the provincial government.

ARBITRATOR JUSTICE MOSENEKE: Now that's my point. I mean the
document talks to the importance of protecting the provision of essential services
and one of your former colleagues comes before this arbitration and says that it
was the decision of the Premier's budget council, that she made or her
750department may reduce expenditure on healthcare and in particular, on mental
healthcare.

MS BARBARA CREECY: Justice perhaps it's a good time for us to go to what
was presented to the Premier's budget council and what the Premier's budget
council said about what was presented to it.

755 **ARBITRATOR JUSTICE MOSENEKE**: Ja you certainly should go there some
time. I need to understand ELAH155 and its importance in your evidence, so I
invite you to draw my attention to those parts that you require me to read? That
is the one part that seems to be obvious. The next paragraph talks about non-
core. You don't have to read it line by line. You can read or explain whatever is
760 convenient, so that we understand what was said about essential services and
what was said about non-core items.

MS BARBARA CREECY: I think Justice what this paragraph says, is in keeping
with the spirit of cost containment, particularly with regard to non-core items.
The Gauteng provincial Treasury, has drafted a cost containment circular to all
765 provincial departments based on a similar national Treasury instruction, outlining
in detail the areas in which expenditure is to be curtailed and the necessary
control measures are instituted that ensure that all expenditure incurred, is
necessary, appropriate, paid promptly and subsequently reported on.

The circular then goes into detail when we talk about administrative fees what do
770 we mean. When we talk about communication, what do we mean and then, on
Page 12 Justice, we specifically talk about there is a table there, Table 5, on
Page 12 and what Table 5 does, is it lists the items that are targeted for cost
containment and it lists for each year, for each item, what we expect provincial
government as a whole, to save.

775 Those items are operating payments, travel and subsistence, communication,
consumables, venues and facilities, catering and departmental activities,
administration fees and entertainment and the overall target for the whole of
provincial government, not for the Department of Health, for the whole of

provincial government, is to cut 10% off non-core spending in the 2016/2017 financial year to realise R158 million worth of saving. So this is our target for cost cutting on non-core items over a 3 year period.

ARBITRATOR JUSTICE MOSENEKE: So what was this obsession about? What was this whole mantra about shutting down Life Esidimeni, to achieve what, to save what?

785 **MS BARBARA CREECY:** I don't know Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV TEBOGO HUTAMO: Thank you MEC. You were still to deal with the composition and the purpose of the Premier budget committee.

MS BARBARA CREECY: Thank you very much Counsel, Justice I am dealing with ELAH150 and it's the terms of reference for the establishment of the Premier's budget committee and there is a word document, but there is also Power Point and although the pages are not numbered, if we use the title page as 1, 2, 3, I would like to turn to Slide 4 in the Power Point and it's entitled roles and responsibilities.

795 **ARBITRATOR JUSTICE MOSENEKE:** Which slide shall we look at?

MS BARBARA CREECY: If you count the title page of the slides as 1, it is Slide 4 and it is entitled Roles and Responsibilities.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS BARBARA CREECY: So it says there, the Premier's budget council will make final budget allocations for priorities and pressure points and I want to emphasise this issue of pressure points, because I have explained to you Justice

that even in tough financial situations, the Department of Health has received additional money in every budget and every adjustment and that is relevant to this enquiry, because if at any stage we had been told we can't fund statutory 805 services, please give us more money, that could have been taken into consideration.

Engagement on budgetary issues on an ongoing basis, as well as significant improvement on resource allocation, re-orientating expenditure away from consumption towards investment, in other words, infrastructure and then there is 810 stuff about infrastructure delivery, so making sure Justice it's not relevant to this enquiry, but the reason why it's there, is because historically, a number of provincial departments have underspent on their infrastructure budgets and the infrastructure is obviously very important in terms of job creation, so the budget committee would be scrutinising spending on infrastructure budgets and trying to 815 ensure there was efficiencies.

Ongoing assessment on the utilisation of provincial resources and explore creative and dynamic approaches to expedite infrastructure delivery and job creation.

ARBITRATOR JUSTICE MOSENEKE: So when an MEC has a pinch, a 820 financial pinch on her shoe, this would be the place to come isn't it?

MS BARBARA CREECY: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And that ordinarily ought to be reported to the Premier's budget council which engaged budgetary issues on an ongoing basis and would also focus on resource allocation processes?

825 **MS BARBARA CREECY:** Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: So if Life Esidimeni was a real financial burden and it was going to break the dam walls, would this be the place where that would have to be reported?

MS BARBARA CREECY: Yes Justice.

830 **ARBITRATOR JUSTICE MOSENEKE**: And this is the place where the allocations and adjustments would then be considered and perhaps approved?

MS BARBARA CREECY: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well. MEC Mahlangu claims that this is where she raised the strains and stresses of her department, financial
835 strains and stresses.

MS BARBARA CREECY: Justice I am going to show you her presentation.

ARBITRATOR JUSTICE MOSENEKE: You are going to come and show us her presentation at that meeting?

MS BARBARA CREECY: Yes Justice.

840 **ARBITRATOR JUSTICE MOSENEKE**: Very well, again we wait.

ADV TEBOGO HUTAMO: Can you then proceed to indicate if- did this council, hold any meeting with government departments and if so, when was this meeting held and what were the issues?

MS BARBARA CREECY: I think it's important Justice just to say to you, from
845 the side of the executive authorities, in other words, the MEC's, who was a member of this council, I think it's relevant, so the budget council is chaired by the Premier, Premier David Makhura and the members of the budget council are

myself as the MEC for Treasury and then the heads of the clusters in their capacity as heads of clusters, so MEC Lebogang Mahile is the chair of the economic cluster, so he was a member of the budget council.

MEC Ismail Vadi is the chair of the governance cluster, so he was there in that capacity and MEC Mahlangu herself, as chair of the social cluster, was a member of the budget committee in that capacity.

ARBITRATOR JUSTICE MOSENEKE: As head of the social cluster?

MS BARBARA CREECY: Yes. Now perhaps it's important to share with you Justice, why was the budget council created in that way and the reason it was created in that way, was that obviously, I would be the custodian of provincial finances, but each of the chairpersons would be representing the interests of their particular clusters, so if there budget shortfalls in the social cluster, it would be up to the social cluster chair to be saying no, you can't be switching all the money to the economic cluster, what about education, what about health.

If the priority was to improve economic performance, MEC Mahile would be saying what about the economic department, so it was constructed in that way so that the different interest groups within provincial cabinet, had a voice in the decision making process.

So the first meeting of the Premier's budget council, was on the 11th and the 13th of November 2014 and at that meeting, there was a request made to the MEC of Health to return to that meeting and although you do not have this document Justice, this is the letter which I wrote to the MEC of Health which I will read.

"Dear MEC Mahlangu, thank you for your input. Let me take this opportunity to thank you and so on. Subsequent to the meeting, it was decided that your

department should come back to the PBC with feedback on the following. One, the health and provincial Treasury to provide a progress report on the intervention and indicate what is outstanding and what still needs to be done.

875Two, the Department should demonstrate decisions being taken on their budget and share the quantification of their cost containment and three, the Department should demonstrate clearly, areas where there were direct resources if there were additional resources, so we're saying if we've got more money to give you, where would, you like it.

880**ARBITRATOR JUSTICE MOSENEKE**: Would you repeat the date of that letter again?

MS BARBARA CREECY: I can get you the signed copy of this letter. This letter is an unsigned copy. So I think we would want to submit it to you together with any other information you would want.

885**ARBITRATOR JUSTICE MOSENEKE**: Very well, once it is available, we will provisionally admit it, but Counsel will have to see it so that they can pose questions, so Advocate Hutamo would you arrange that it gets copied and made available to all your colleagues and we shall name it ELAH how much?

ADV TEBOGO HUTAMO: ELAH162.

890**ARBITRATOR JUSTICE MOSENEKE**: ELAH162, very well, that is provisionally admitted and the signed copy can be made available later. You may proceed?

ADV TEBOGO HUTAMO: You were still dealing with the first meeting of the Premier's budget council and whilst you are still on that point, earlier on you testified with reference to ELAH149 in relation to the memo or the directive from

895National Treasury, which required the departments to take measures for cost reduction and can you please refer to ELAH151 in relation to the Gauteng provincial government's effort in making sure that guidelines were made in relation to those issues?

MS BARBARA CREECY: So Justice I have already explained in terms of the 900National Treasury gazette which is ELAH149, because we are now talking about November 2014 and so we are bound by at this stage, we are bound by the provincial government gazette ELAH149. I have already explained to the proceedings, the non-core items that were targeted for cost containment, so when we asked the Department to present on cost containment, it was in relation 905to Circular 149, because all of us were expected to contain our costs.

You would also see that the first item was about the health intervention, so it's also about progress in containing spending in the central hospitals on goods and services in line with the provincial Treasury intervention in that regard.

ARBITRATOR JUSTICE MOSENEKE: Before you move on, I am a little bit 910confused. What is ELAH151?

MS BARBARA CREECY: Okay that's the document I want to move onto Justice.

ARBITRATOR JUSTICE MOSENEKE: Oh very well.

MS BARBARA CREECY: ELAH151 is the presentation that was made by the 915Department of Health on the 26th of November 2014 when they returned as requested by my letter ELAH162 to the Premier's budget council.

ARBITRATOR JUSTICE MOSENEKE: So this is a presentation from the Department of Health?

MS BARBARA CREECY: Yes Justice.

920**ARBITRATOR JUSTICE MOSENEKE:** Who at the meeting, made the presentation?

MS BARBARA CREECY: The MEC would have given an initial overview and the details of the presentation would have been made by the head of department.

925**ARBITRATOR JUSTICE MOSENEKE:** Yes and who was it then?

MS BARBARA CREECY: Doctor Selebano.

ARBITRATOR JUSTICE MOSENEKE: Dr Selebano and the MEC would have done the introductory overhead comments and remarks about the presentation?

MS BARBARA CREECY: That is normally how it works Justice.

930**ARBITRATOR JUSTICE MOSENEKE:** Very well, you may continue.

MS BARBARA CREECY: Thank you Justice, so we're now working on document 151 and you will see that the first issue that they refer to, is cost containment and they talk about litigation against the Department, they talk about Selby Park and Alexander Clinic and then on Page 3, Slide 6, they refer
935specifically to Life Esidimeni and I want to read what this presentation says.

It says "20% of the 251 per annum currently paid to Life Esidimeni, the original contract was signed with the National Department of Health on the 1st of August 1979 and they talk about 50.2 million saving and then under risks, they say that

departmental institutions may not have adequate capacity to absorb patients
940from Life Esidimeni facilities.

Now our understanding of this presentation was that the intention was to gradually close down services offered by this facility and our understanding of 20%, was that 20% per annum as it says and I suppose one can assume from that, we're talking about a 5 year project and that the intention was to absorb
945these patients into departmental institutions. It doesn't say into NGO's, it says departmental institutions.

Now Justice I would then- it then goes on, on the different cost saving-

ARBITRATOR JUSTICE MOSENEKE: Well before you walk away from there, I just want to understand those entries, so the plan was to save R50 million a year
950over a period on a basis of R250 million, is that a correct understanding?

MS BARBARA CREECY: Well if we go back to the presentation I did on the budget for Life Esidimeni, I think I would have to just check, but I think the budget was R265 million if I'm correct.

ARBITRATOR JUSTICE MOSENEKE: Yes here they have it as R251 million
955anyway.

MS BARBARA CREECY: Well yes. Sorry in 2014/2015, the budget was R251 million and in 2015/2016, it was R265 million, so at that time, the budget was R251 million.

ARBITRATOR JUSTICE MOSENEKE: Yes and if I understand the entry, they
960say then they were paying R251 million to Life Esidimeni and they would want to save 20% of that number per annum and then they add that the contract was

signed with the National Department of Health in August 1979 and they then drop a number 50.2 million as the saving anticipated.

MS BARBARA CREECY: Yes Justice.

965**ARBITRATOR JUSTICE MOSENEKE**: Now immediately thereafter, there is a column on risks. What does that speak to? Does it mean departmental institutions may not have adequate capacity to absorb patients from Life Esidimeni?

MS BARBARA CREECY: Our understanding of this presentation, was that the 970MEC wanted to provide the same key that was being provided by Life Esidimeni in state institutions over a period of time and that the success or failure or ability to implement and the Department's ability to implement this project, would depend on availability of beds in state institutions, so that was our understanding.

975**ARBITRATOR JUSTICE MOSENEKE**: Is there any mention or could we infer the mention of NGO's from that presentation?

MS BARBARA CREECY: There was no mention of non-governmental organisations in this presentation.

ARBITRATOR JUSTICE MOSENEKE: And who would have drawn attention to 980this risk that there very well may be insufficient beds at departmental institutions?

MS BARBARA CREECY: Justice I do not remember who drew attention to it, but it was there and I understanding was not that if the beds didn't exist in government institutions, patients would be put elsewhere. Our understanding

985 was we may not be able to do this because there won't be beds available, that was our understanding.

ARBITRATOR JUSTICE MOSENEKE: And the budget numbers you showed us reflected no reduction. In the subsequent financial year, they seem to reflect an increase. Could you help us understand that?

990 **MS BARBARA CREECY**: Well what I said when I made that presentation, is that you will see that money moves from one institution to another, but the total amount of money that is spent on mental health services in fact increases in the 2016/2017 financial year, it's not decreased.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

995 **ADV TEBOGO HUTAMO**: Thank you. Whilst you were dealing with the presentation made by the Department of Health, can you then take us through what has been the outcome of that meeting?

MS BARBARA CREECY: I will do that Counsel. I would just like to draw the Commission's attention to the documentation from Slide 8 onwards and Slide 8
1000 onwards is priority areas if additional money is available. So the Department and you will see there are various things there, electronic patient records, archiving, reducing waiting times, laundries, equipment, so there are different budget heads there, but nowhere there, does it say that we are not able to provide services for psychiatric patients or for mental health services and we
1005 specifically asked them where do you need additional money and we did indeed give them additional money.

Justice if I may proceed with your permission to the minutes of the Premier's budget council and it's ELAH152, Page 2 of the minutes, so the Department has

suggested that they will re-prioritise and they will move patients from Life
1010 Esidimeni to departmental facilities and the Premier's budget council says the
Department should ensure that the re-prioritisation does not affect the quality of
services.

So we are saying to them, if you want to transfer patients from Life Esidimeni to
State institutions, you can do that, but you cannot diminish the quality of
1015 services.

If you think that we can do this more cost effectively in-house that's fine in
departmental institutions, but the Department should ensure that the re-
prioritisation does not affect the quality of services.

ARBITRATOR JUSTICE MOSENEKE: And do you know that just about the
1020 time when it was drawn, the contract, I hope my memory serves me well, that
Life Esidimeni was cancelled?

MS BARBARA CREECY: I think Justice that the Life Esidimeni contract, the
letter that Mr Selebano wrote was the 29th of September 2015.

ARBITRATOR JUSTICE MOSENEKE: We are at 2014.

1025 **MS BARBARA CREECY:** Yes this is November 2014 this is when the
Department indicated to us that they wanted to transfer patients to departmental
facilities.

ARBITRATOR JUSTICE MOSENEKE: Sorry yes it's a year later.

MS BARBARA CREECY: 9 months, 10 months later.

1030 **ARBITRATOR JUSTICE MOSENEKE:** Cancellation is 10 months later, thank
you for the correction.

ADV TEBOGO HUTAMO: You were dealing with your understanding of the Department of Health's measures to cut or reduce costs and according to your understanding, was that there was going to be a bed capacity reduction of 20%
1035over a period of time and now we know that that was not followed through. The patients were not sent to the institutions as indicated to you at the Premier budget council meeting. We have already had the evidence that in fact, the patients were sent to the non-governmental organisations. Do you have any knowledge about the appointment of those NGO's with regard to the provision of
1040services to the Department, whether was there any supply chain process which was followed in their allocation?

MS BARBARA CREECY: Justice again, I would want to apologise to Counsel, because we only this morning, submitted a document ELAH161 and ELAH161, my understanding Justice was that last week, you had asked a question, did the
1045budget follow the transfer and we spent time in the course of yesterday trying to answer that question Justice.

ADV TEBOGO HUTAMO: Justice if I can just interrupt the witness. In light of what she has said about the presentation of this document, I find it appropriate that we take the adjournment at this time for Tea and you also allow my learned
1050friends to be able to go through the document when we resume.

ARBITRATOR JUSTICE MOSENEKE: That is a wise suggestion Counsel. We will take the Tea adjournment now and we will resume at 12:00 and you are requested to be here present at 12:00 when we resume MEC thank you.

SESSION 2

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. MEC
Creecy you are still under your oath to tell the truth and nothing but the truth.

MS. BARBARA CREECY: Yes Justice.

1060 **ARBITRATOR JUSTICE MOSENEKE**: Counsel.

(background taking – vernacular)

ADV NGUTSHANA: My apologies Justice. MEC before the adjournment you were
about to deal with the question relating to whether the NGO's into which the mental
health care users were transferred to, whether... were they selected through a
1065 tender process but before... in conjunction with that, as you will be dealing with that
question, I would like to refer you to... if someone can assist you to locate 53 of the
documents which are before these proceedings. And then if you may turn to page
1059.

MS. BARBARA CREECY: Yes Counsel.

1070 **ADV NGUTSHANA**: You may then proceed to deal with the question relating to the
NGO's.

MS. BARBARA CREECY: Thank you Counsel. Justice the question has been put
to this enquiry as to whether or not the NGO's that were selected by the Department
of Health, whether that process was done through a tender process. And what I
1075 would want to explain Justice, is that the money for psychiatric services has always
been classified as a transfer to 'not for profit' institutions.

So what that meant at that particular time, was that if the Department of
Health wanted to transfer money to any particular 'not for profit' institution, they

would need to complete something the treasury calls an entity maintenance form
1080and submit that entity maintenance form to the Gauteng Provincial Treasury in order
for treasury to facilitate payment. Now the work completing that entity maintenance
form would be by the relevant department. So the relevant department could select
institutions, complete the entity maintenance form and then give that entity
maintenance form to provincial treasury for payment purposes.

1085 Now Justice that is how these NGO's were dealt with: so Provincial Treasury
was given a list of NGO's that it needed to pay. What I did, when I understood that
you had to wanted to understand whether the money followed the patients, was that
I took the list of NGO's that was put in the public domain by MEC Mahlangu and
that list is on page 1060 of the record of these proceedings and we then, over the
1090course of the weekend at yesterday ran that list against the treasury data base
and....

ARBITRATOR JUSTICE MOSENEKE: Ja, 1060 would be file 3 of the record before
the arbitration. Yes you can proceed.

MS. BARBARA CREECY: What we found out is that of these NGO's that are listed
1095here, here were three that did not receive any payment. And the three that did not
receive any payment are Mashimong(?), Omegloko(?) and Rabafeni(?). All other
NGO's that received payment, the list of what they were paid, the dates on which
they were paid and the total payments that were made to them is in ELLA161 and
that is the document that I was apologising to Counsel for submitting only this
1100morning. And there you can see each of these NGO's with the exception of those

three. And the total amount of money that was transferred to all of these NGO's in the course of the 2016 / 2017 financial year was R47 531 997.97.

ARBITRATOR JUSTICE MOSENEKE: Just take a step or two back: how does and institution a 'no for profit institution' qualify to receive support from the
1105department?

MS. BARBARA CREECY: Justice I would not be *au fait* with the details but my understanding is that all NGO's have to first of all be registered with the Department of Social Development so they have to have a, what in the old days we used to call a welfare number. And my understanding is that there might also be other
1110regulatory environments if an NGO were offering specialised services.

ARBITRATOR JUSTICE MOSENEKE: Like mental health care?

MS. BARBARA CREECY: As I say Justice, I don't know the details of that, but that is my understanding and my understanding and I am afraid because of the difficulty we had in sourcing this information for the commission, unfortunately I did not come
1115here today with an entity maintenance form because that is no longer the way in which we deal with non-governmental organisations.

It has now changed and we didn't have time to go back into the records but with your permission, we will submit an entity maintenance form so that the commission can understand what information the Provincial Treasury requires
1120before they would pay a non-governmental organisation.

ARBITRATOR JUSTICE MOSENEKE: Was there any limits as to amounts to 'not for profit' entities that provincial treasury is permitted to pay?

MS. BARBARA CREECY: Well I think one of the things that all non-governmental organisations would have to have is a business plan and a Service Level Agreement. So I don't think that there is necessarily a limit on how much money Life Esidimeni itself was a 'not for profit' institution and the sum of money was considerable but the point is that there was a Service Level Agreement that spelt out exactly what services had to be provided in return for the finances that would be provided.

1130 **ARBITRATOR JUSTICE MOSENEKE:** A quick flip over takes me to Precious Angels and the schedule suggests that it received R1 061 000.00 is that it?

MS. BARBARA CREECY: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: And one flips over to Siyabitanda(?). There are many Siyabitanda entries there. Which one would be relevant to mental health care, do you know?

MS. BARBARA CREECY: My understanding Justice is that all these, all these payments were for mental health care.

ARBITRATOR JUSTICE MOSENEKE: Okay and for instance R2 988 559.00 is opposite Sharma House. Is that what they would've received through this project?

1140 **MS. BARBARA CREECY:** According to our data base of payment, that is the records we would have Justice.

ARBITRATOR JUSTICE MOSENEKE: The amount paid to Takalani, what would that number be? It looks like it might have been small?

MS. BARBARA CREECY: There appear to be two amounts there, R6 000 000.00 and R32 000 000.00.

ARBITRATOR JUSTICE MOSENEKE: I beg your pardon those are not thousands those are millions. I beg your pardon.

MS. BARBARA CREECY: My apology I am wrong, it's fifty... sorry my apology I am wrong its R56 000.00 and R32 000.00.

1150 **ARBITRATOR JUSTICE MOSENEKE:** Oh.

MS. BARBARA CREECY: Yes, my apology.

ARBITRATOR JUSTICE MOSENEKE: So my initial remark is quite correct that appears, or let me... (intervenes)

MS. BARBARA CREECY: I don't have details Justice of what that would have
1155 been for. It's just the figures that I was able extract from the system.

ARBITRATOR JUSTICE MOSENEKE: And Sharma House, what would be the correct number there?

MS. BARBARA CREECY: So that is R2 988 559.00.

ARBITRATOR JUSTICE MOSENEKE: And there is a place called Mosego that
1160 seems to have receive R13 000 000.00, R13 000 508.00.

MS. BARBARA CREECY: That's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: And again that would've been for as you said already mental health care.

MS. BARBARA CREECY: Justice I, I can't say exactly what these, these figures
1165 were for but what I can show you is the payments that were made to the institutions listed on page 1060 and the dates on which those payments were made.

ARBITRATOR JUSTICE MOSENEKE: And Sharma House would be R2 988 000.00.

MS. BARBARA CREECY: As you said Justice.

1170**ARBITRATOR JUSTICE MOSENEKE**: Yes. Are there any numbers for
Sebodingwe, a place called Sebodingwe?

MS. BARBARA CREECY: We could only find Siyabitanda. And in... on page
1060 it is listed as Siybitanda so we didn't look for Sebodingwe.

ARBITRATOR JUSTICE MOSENEKE: Counsel. Just before counsel continues,
1175would it have been a provincial treasury requirement that a Service Level
Agreement would be entered into only with properly licensed 'not for profit' entities?
Would they pay whether the entities were properly licensed under the Mental Health
Care Act or not?

MS. BARBARA CREECY: My understanding is no, but I would request Justice that
1180we find, we go through our records and we find the entity maintenance form and
submit as evidence so that you can understand all of the regulatory requirements.

ARBITRATOR JUSTICE MOSENEKE: No, that's fine we have been there, I think
Counsel you may continue.

ADV NGUTSHANA: Thank you Justice. Justice those would be the questions in
1185chief, there will be no further questions to the witness, thank you MEC for assisting
us.

MS. BARBARA CREECY: Thank you.

ARBITRATOR JUSTICE MOSENEKE: We are going to have four sets of Counsel
who are going to asking questions MEC Creecy, starting with Counsel who
1190represents the most claimants, Advocate Hassim.

ADV ADILA HASSIM: Thank you Justice. Good morning MEC or good afternoon MEC Creecy.

MS. BARBARA CREECY: Good afternoon.

ADV ADILA HASSIM: My name is Adile Hassim and I appear with my colleague
1195 Advocate Steyn and we represent families of the deceased. I want to begin by
thanking you for making yourself available for his arbitration: it is important as you
know, that we understand exactly what took place and that we are able to get to the
truth as to circumstances that led to these deaths. So thank you for making yourself
available. I

1200 would like to begin by... you've provided a number of documents to us
yesterday, and you have gone through them today and I have noted what you've
said and I had noted it before you began to testify that there is a theme(?) in the
documents which is, that despite the need to be, to impose cross-containment
measures, there is to be no reduction in the delivery of poor services and certainly
1205 by poor services we would include fundamental rights relating to health services
and the right to health: and that in the course of managing the budget one was to
maintain spending on quality services and that this is, and was never about
austerity measures, which is a whole different kettle of fish. I understand that... am I
understanding that correctly that's what I pick up... (intervenes)

1210 **MS. BARBARA CREECY:** (Inaudible).

ADV ADILA HASSIM: So there was never, let alone an instruction to cut costs,
one could say that, if you want to use the word 'instruction' with the opposite which
is 'don't cut on poor services' would that be accurate?

MS. BARBARA CREECY: I think that what you will see in all of the
1215pronouncements that I've made as MEC of Finance and when I speak, I speak on
behalf of the provincial government that we want to maintain spending particularly
on social services, even in tough financial times. Because we understand how
many people in our province are dependent on state social services of one form or
another for their wellbeing.

1220**ADV ADILA HASSIM:** It's also a constitutional obligation on the state not to take
away services that are already being provided that would infringe a fundamental
right.

MS. BARBARA CREECY: That's correct Ma'am.

ADV ADILA HASSIM: So... and the other thing that... the other theme that has
1225emerged from the documents you provided to us is that the total health budget, over
the last relevant few years has increased.

MS. BARBARA CREECY: Yes Ma'am.

ADV ADILA HASSIM: And in fact in your budget speech of March 2015 you said
the intention is to expand basic services to citizens.

1230**MS. BARBARA CREECY:** Yes Ma'am there are 250 000 people that immigrate
into our province every year and our intention is as much as possible, to
accommodate those people in all of our institutions and that obviously means that
our services have to increase.

ADV ADILA HASSIM: Yes. So you referred us to the presentation by the
1235Department of Health in which... to the Premier's Budget Council in which the
department describes their plans for cost containment and for others things, for

revenue enhancement and the priority areas if additional resources are available.

And I just would like to clarify this, this presentation made by the former MEC for Heath

1240 **MS. BARBARA CREECY**: Ma'am the way the Premier's Budget Council works is that MEC's usually do introductory remarks, and then their heads of department will do the presentation, but I think that the fact that the MEC is present is ownership of that presentation.

ADV ADILA HASSIM: And the Premier's Budget Council is made up of a
1245 particular layer of executive authority and so while HoD would be responsible, it doesn't mean that the MEC would not be responsible for that presentation, isn't that so?

MS. BARBARA CREECY: That's correct Ma'am.

ADV ADILA HASSIM: And as part of their cost containment, they began by
1250 litigation against the department and I would like to return to that in a moment, but the real issue obviously is where they cut Esidimeni and they also say they are going to contain costs on Selby Park Clinic and Alexandra Health Centre. Why would it be necessary for them to contain costs in those areas which involve for services?

1255 **MS. BARBARA CREECY**: My understanding Ma'am is that they were talking about providing the same services in a different way and that those services would not be outsourced, they would be in sourced and in Alexandra Clinic my understanding is that they were... and I am not a health professional here, but my understanding is

that it would be... they were transforming that clinic into what they called a
1260 community health care centre.

So it's providing the same service in a different form that is how it was
presented to the Premier's Budget Council.

ADV ADILA HASSIM: And even if it were to be absorbing and providing the same
services with the department, was the MEC or the HoD... did you ask the MEC or
1265 the HoD whether it would be cost effective to do that?

MS. BARBARA CREECY: Ma'am the focus of discussion on that issue was not on
cost effectiveness it was on quality of service and you will see in the minutes that
what we were saying is that if you want to do this, you must... and you believe that
you can do it more cost effectively in-house, you must provide the same quality of
1270 service. So we were not interrogating savings there, we were interrogating quality
of service.

ADV ADILA HASSIM: The reason why I am asking because it's about the
numbers that they put to you which is to say how much money would be saved in
the process and in fact what we know, what evidence has been led in this hearing
1275 so far, is that the move of patients from Esidimeni to departmental institutions, to the
provincial hospitals would cost up to six times as much as they were paying at
Esidimeni. So they could've been, even at the point in time in which the
presentation was made, it could not have been true, it wasn't true that there would
be that saving.

1280 **MS. BARBARA CREECY:** As I said Ma'am I am not a health professional so I
would not be in a position to know what the relevant cost of providing services at

different levels in the health system was. The key concern of the Premier's Budget Council was that there should not be deterioration in the condition of services provided.

1285 **ADV ADILA HASSIM**: No, I understand that. The question is more about if there are cost containment measures and we are not going to core(?) services, we don't want to undermine, destabilise the provision of poor services. The department chooses core services, their reasoning is: we doing it because we cannot compromise the quality and we can save money: that was your understanding.

1290 **MS. BARBARA CREECY**: Our understanding was that the department told us that they can provide the same service in a state institution and we said yes, you can provide that service in a state institution as long as you do not compromise the quality of the service.

ADV ADILA HASSIM: So in the presentation there is a reference to the risk that
1295 the departmental institutions would not have the capacity to absorb the patients. Was there discussion about the risk and whether they would be mitigation of that risk or that they would have a plan in place so that no move would happen until they were satisfied that there was place for patients?

MS. BARBARA CREECY: Our understanding in the presentation at the time of the
1300 presentation was that they were saying they may not be able to save that money because there may not be places available in government institutions and therefore they would continue with the status quo: that was our understanding at the time.

ADV ADILA HASSIM: In other words once... what was presented was this is a potential area of saving.

1305 **MS. BARBARA CREECY:** That's correct Ma'am and our response was you had better make sure that the quality of service does not deteriorate.

ADV ADILA HASSIM: Once these plans are presented to the Premier's Budget Council is there any follow up or oversight over the expenditure and budgeting of the department from provincial treasury or from the PVC?

1310 **MS. BARBARA CREECY:** Every month, ever quarter in the Executive Council there is a report on quarterly spending by departments and it's a, it's a high level presentation and it would indicate spending trends over or under-spending on different programs.

ADV ADILA HASSIM: And in those quarterly meetings would there be discussion
1315 about in-year spending and pressures and risks?

MS. BARBARA CREECY: Yes Ma'am the main focus of those meetings would be on two recurrent areas of risk. The one would be over spending on personnel and the other would be under-spending on infrastructure. And those discussions tend to focus on those issues.

1320 **ADV ADILA HASSIM:** But it not limited to those issues is it?

MS. BARBARA CREECY: It's not limited to those issues, there could be other issues that would come up but it would not be going into the details of sub-programs, it would be looking at the global quantities for departments under what we call 'economic classification', so personnel, infrastructure, goods and services.

1325 **ADV ADILA HASSIM:** Well personnel was an issue that arose because of the termination of the contract that required absorption of staff, I would like to return to

that as well in a second, but was that placed on the table by the MEC in any of those meetings, the quarterly meetings, by the former MEC, my apologies?

MS. BARBARA CREECY: The issue of the absorption of the Life Esidimeni staff was placed on a... not necessarily in those quarterly meetings, but there was a time when after the decision had been taken to terminate the contract and we now talking November 2015 when the MEC indicated that those staff would be absorbed, 359, I may not remember the exact figure and I apologise for that and the amount involved was R46 700 000.00 as far as I remember.

1335 That was the cost and that cost, those staff members were absorbed by the department and that cost was carried by the Health Department. But it was not, it was not an issue at that time that came into those quarterly meetings.

ADV ADILA HASSIM: It's relevant because what cost savings can be made as a result of the decision to terminate would have had to factor in the employment of more people within the department wouldn't you say?

MS. BARBARA CREECY: Well Ma'am I think what I have explained is that the presentation that was made to us suggested a gradual process of transfer into state institutions. There was no presentation at that point, on the staffing implications but because the concept of... I forget Justice, marathon, marathon project.

1345 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS. BARBARA CREECY: But the first time that... (intervenes)

ARBITRATOR JUSTICE MOSENEKE: (inaudible) becomes pretty fast and starts running to try and win a prize, if one converted it and calls it marathon.

MS. BARBARA CREECY: I must say that Justice that was not a term that was
1350ever presented in the 2014 Premier's Budget Council and in fact Justice I did do
some cross checking and this is, I am sure a matter of record of the enquiry but it
pertains to these parliamentary questions and what was released into the public
domain. And in the course of 2015 the... until very late in 2015 the impression in
the public domain was still being created, that these patients were being transferred
1355to state institutions.

ADV ADILA HASSIM: And that, that's correct that was the... those were the
responses from the former MEC to the public and to the Provincial Legislature. And
you are saying that that was consistent with what you were being told.

MS. BARBARA CREECY: Yes, I mean we didn't have another discussion: after
1360the Premier's Budget Council there wasn't another discussion on the matter but I
am myself a member of the Provincial Legislature so I would have seen those
questions and it would only be later that the red flags started to appear.

ADV ADILA HASSIM: What we do know as you've already testified, is that the
Department of Health was under financial pressure because of... which is not a
1365budget allocation pressure but because of internal financial mismanagement.

MS. BARBARA CREECY: And also Ma'am because of the influx, the population
influx into our province.

ADV ADILA HASSIM: So not financial mismanagement?

MS. BARBARA CREECY: There were I did explain to you, or to the commission
1370that we had placed the department under administration because of concerns
regarding financial mismanagement but if I may Ma'am, just share with you that in

March 2015 which is I think a very relevant date, at that point the accruals the total accruals for the department at that point were a R156 000 000.00 down from R1.54 billion a year before.

1375 So at that point in time our focus as Provincial Treasury was on maintenance and making sure that the department came out of administration. There were no alarm bells ringing at that point in time, yes, we were saying to the department be prudent and we saying to all provincial departments, be prudent, these are tough financial times.

1380 **ADV ADILA HASSIM:** Let's go to the accruals.

MS. BARBARA CREECY: Yes Ma'am.

ADV ADILA HASSIM: Because... and the reason the accruals are relevant is because what money was available and not available and to probe the response by the department that money was not available. We've handed in an EXHIBIT called

1385 ELLE158

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: And the last page of that document is an extract from the annual report for the Department of Health for 2016 / 2017 and its page 276 of the report.

1390 **MS. BARBARA CREECY:** Yes Ma'am.

ADV ADILA HASSIM: And it's the extract of the annual report, the financial statements that are relevant to the accruals and what we see is that the department ended the 2015 / 2016 year with a billion rand of accruals, well two actually.

MS. BARBARA CREECY: I can't... oh.

1395 **ADV ADILA HASSIM:** The 2015 / 2016 year.

MS. BARBARA CREECY: This 1924.

ADV ADILA HASSIM: That's it yes.

MS. BARBARA CREECY: Okay.

ADV ADILA HASSIM: And for payables not recognised it was R2.848 that was
1400 2015 / 2016. And then we look at 2016/ 2017 and the accruals are down to
R366 million and payables not recognised R6.6 billion. So the total by the end of
2016/ 2017 as reflected here is almost R7 billion. Am I reading that correctly?

MS. BARBARA CREECY: Well Ma'am I would suggest that you just look at the
columns to the left of that R6.6 billion figure and you would have accruals within 30
1405 days and then accruals 30 days plus. Now the accruals we would be concerned
about as Provincial Treasury would be the accruals 30 days plus. Because every
department will have current accruals because you may not be... you may not get
your invoices by the time of the end of the financial year.

So everybody would be... we would be concerned about your long term
1410 accruals not your current accruals. It's an accounting issue but I hope you
understand the point that I making.

ADV ADILA HASSIM: Well I am just trying to (inaudible) establish that what I am
reading is consistent with the way you understand what I am reading before we go
further.

1415 **MS. BARBARA CREECY:** Yes.

ADV ADILA HASSIM: That that's what I am doing at this point.

MS. BARBARA CREECY: Yes Ma'am

ADV ADILA HASSIM: Thank you. So what we are talking about when we talking about accruals is payment for goods and services that have not yet been made, but
1420where the goods and services have been received.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: And those goods and services would've been budgeted for, isn't that so?

MS. BARBARA CREECY: We hope so.

1425**ADV ADILA HASSIM:** They would have been budgeted, well if they were not budgeted then we have got a different problem. But it's not as if they were spending on items here that were not part of the budget. What I am saying is that these are accruals for goods and services and this important for the record because there are a lot of people who won't understand if I just talk in jargon, so I am just
1430breaking it down and if I am wrong then you can correct me. Good and services that were received but for which there was no payment.

MS. BARBARA CREECY: That's correct Ma'am.

ADV ADILA HASSIM: And the concerning amount would be those that are beyond 30 days.

1435**MS. BARBARA CREECY:** Yes Ma'am.

ADV ADILA HASSIM: And that is in the region of R3.7 billion.

MS. BARBARA CREECY: Yes Ma'am.

ARBITRATOR JUSTICE MOSENEKE: But it may be isn't it counsel that some or MEC that some of the purchases and outstanding liabilities or accruals would have
1440been in respect of goods and services that were beyond budget. Is that so or not?

MS. BARBARA CREECY: Well I think... (intervenes)

ARBITRATOR JUSTICE MOSENEKE: Because it must always be on budgeted amounts.

MS. BARBARA CREECY: Well I think that if you land up at the end of a financial
1445year with R4 billion worth of accruals that are outside of the thirty days then that is a
signal that you've then got to start ask questions about what is going on there.

ARBITRATOR JUSTICE MOSENEKE: Ja, I am just trying to understand your
response to Counsel's proposition that the accruals will inevitably arise from
budgeted expenditure. Services or goods, services rendered or goods supplied for
1450which the department had not paid. Is that what accrual would mean?

MS. BARBARA CREECY: That's is what accrual means in accounting terms.

ARBITRATOR JUSTICE MOSENEKE: Ja, thank you.

ADV ADILA HASSIM: So this amount of accrual that we are looking at what signal
does sent to you and how does it compare with the previous years? Is it going up
1455or is it going down?

MS. BARBARA CREECY: It has gone up Ma'am. Because in the year that we are
all concerned about which is the year when the decision was made to cut costs,
there accruals were a R156 000 000.00.

ADV ADILA HASSIM: Million.

1460**MS. BARBARA CREECY**: Yes, R156 000 000.00 as at March 2015. So at that
point obviously we were all advising caution, we were all advising restraint, we were
all advising adherence to the cost containment regime and I have explained what

that regime was. But we were not in a mindset that said there is a crisis in health we can't pay our bills.

1465 **ARBITRATOR JUSTICE MOSENEKE**: But what you say is the common reason for not paying bills? Why would any department run up debts up to R4.5 billion and these are budgeted items and not pay for them? What typically would be reason for that?

MS. BARBARA CREECY: Well Justice we have subsequently because I think it's 1470a matter of public record that we now have a new treasury intervention that began at the beginning of last year, 2017 into the finances of the Department of Health and we obviously have done an analysis on what is causing this problem and once again, what we can see Justice is over-spending on the goods and services budget by the central hospitals. So the problem that occurred prior to 2014 is reoccurring, 1475 has reoccurred.

ARBITRATOR JUSTICE MOSENEKE: Overspending would mean what, would mean these hospitals would they... procuring goods and services beyond the limits of their budget?

MS. BARBARA CREECY: That is correct Justice.

1480 **ARBITRATOR JUSTICE MOSENEKE**: But for budgeted items.

MS. BARBARA CREECY: Well I suppose the issue would be, what have of those items have been budgeted for.

ARBITRATOR JUSTICE MOSENEKE: And who would grant these contracts for goods and services? At what point in the system would somebody approve 1485 expenditure by hospitals?

MS. BARBARA CREECY: I indicated to you in my earlier evidence Justice that we had put in place what we call 'transversal contracts' that would include for medical consumables and so there would be purchasing against those contracts and again, it is the same problem that we had before, that there is not tight enough financial
1490 management in the central hospitals and there aren't adequate... there isn't adequate communication between what is going on in the chief financial officer in the provincial health department and these central hospitals.

ARBITRATOR JUSTICE MOSENEKE: Counsel. You might find more joy over that.

1495 **ADV ADILA HASSIM**: You say that there is a new intervention, I you referring to intervention under Section 18 of the PFMA?

MS. BARBARA CREECY: It is not yet a Section 18 intervention, Premier Makhura appointed a cabinet sub-committee which I chair, the MEC for Health and the MEC for Human Settlements sit on that cabinet sub-committee and we have a range of
1500 interventions that would include financial management, supply chain, human resource management as well as other issues pertaining to management, particularly in relation to the central hospitals where the overspending is occurring.

ADV ADILA HASSIM: Would it include disciplinary enquiries?

MS. BARBARA CREECY: Well if it could be shown that people have breached the
1505 Public Finance Management Act.

ADV ADILA HASSIM: So just to understand the picture that there was an intervention which was a Section 18 intervention which ended in... (intervenes)

MS. BARBARA CREECY: 2015.

ADV ADILA HASSIM: ...2015

1510**MS. BARBARA CREECY:** The problem reoccurs.

ADV ADILA HASSIM: That's right and now there is a need to go back and look at what's going on.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: The problem of accruals takes place at the same time as
1515the Esidimeni project, termination is underway.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: And we trying to understand what is going and just one...
before I move off on the accruals, these figures that we are looking at here from the
annual financial statements, does that include what interest would be owing on this
1520liability?

MS. BARBARA CREECY: No, I don't think so Ma'am.

ADV ADILA HASSIM: So it would be the figure as we have just looked at...
(intervenes)

MS. BARBARA CREECY: This would be the accumulative invoices that are in the
1525system but haven't been paid. If there were penalties, that would be... (intervenes)

ADV ADILA HASSIM: It would be over and above...

MS. BARBARA CREECY: It would be additional, yes Ma'am.

ADV ADILA HASSIM: ... and a penalty would depend on how long it's overdue,
how long the payment was overdue.

1530**MS. BARBARA CREECY:** I would think so Ma'am.

ARBITRATOR JUSTICE MOSENEKE: Sorry counsel to interrupt you again sorry, and where would the money go to, I mean the money which is meant to pay the accrued indebtedness?

MS. BARBARA CREECY: No I don't think, I don't think we saying... when we say 1535 that there are unpaid invoices, I don't think that we are saying money has gone astray, I think what we saying is that if your budget says you can have 5 bottles of water and you buy 10 then for the extra 5 you going to have accruals. It doesn't mean that you miss appropriated the money for the first fund. I don't know if that helps Justice.

1540 **ARBITRATOR JUSTICE MOSENEKE:** Ja, it means you would have run up indebtedness which was beyond your budget. Does it mean that? In other words you bought items against which no money was set aside.

MS. BARBARA CREECY: Yes, I mean I think that in the work that we have done over many years in the Department of Health, we have found a number of issues. 1545 One issue is just the length of time that it used to take for an invoice to move from a hospital to provincial treasury and that's why we have introduced all kinds of reforms such as for example online invoicing.

So the Provincial Treasury can get the invoices direct and then call health and say to them we've got an invoice here did you receive the goods, can we pay it. 1550 So I think that it a complex process of demand for services in the central hospitals exceeding the goods and services that are available, and I think that's it's contributed to by lack of financial controls and in adequate management.

ARBITRATOR JUSTICE MOSENEKE: Let me put it the other way round, where did the R4.5 million come from to pay accruals?

1555**MS. BARBARA CREECY:** Well what has to happen in the new financial year is that those invoices have to be paid from the new financial year's budget and that is not good management practice because if you spend this year's budget on last year's invoices what happens to this year's invoices?

ARBITRATOR JUSTICE MOSENEKE: Counsel.

1560**ADV ADILA HASSIM:** Thank you Justice. I am just trying to understand it, we have looked at other parts of the annual reports and in that same EXHIBIT that is before and my apologies Justice and to you MEC Creecy that the pages are not paginated, but the page I would like to now refer to is page 124 of the 2016 / 2017 Annual Report and it's a few pages before the one that we were just looking at.

1565**ARBITRATOR JUSTICE MOSENEKE:** And this ELLA...?

ADV ADILA HASSIM: 158.

ARBITRATOR JUSTICE MOSENEKE: 158 or 159? 158.

ADV ADILA HASSIM: So it's page 124.

MS. BARBARA CREECY: Yes Ma'am.

1570**ADV ADILA HASSIM:** And in fact the page before that would be page 123 and that's just included so that we understand the context that these are under the SCOPA resolutions.

MS. BARBARA CREECY: Yes Ma'am.

ADV ADILA HASSIM: The development aspect that I would like to refer to is
1575resolution number 3.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: And that relates to the department needing to implement proper control measures and it says 'to ensure that there are no further over-commitments' that is now the word for overspending.

1580 **MS. BARBARA CREECY:** Yes, I suppose in layman's terms.

ADV ADILA HASSIM: And to provide the committee with a progress report detailing compliance with these measures and then the measures are on the next column.

MS. BARBARA CREECY: Yes.

1585 **ADV ADILA HASSIM:** Would it be correct to say that these are the reasons that the accruals eventuate? For example, a recommendation that budget confirmations are to be done prior to procurement, means make sure you've got the money before you send.

MS. BARBARA CREECY: This... so the recommendation would be what SCOPA
1590 said and these would be the responses of the Department of Health to SCOPA's instruction. So yes, the department would be saying that it is important to check that you have the money before you spend.

ADV ADILA HASSIM: Yes. So the department itself recognises that this is what the problem is.

1595 **MS. BARBARA CREECY:** Yes.

ADV ADILA HASSIM: We need to check that there is money available before we spend it, for one. They give other responses which are to use early warning systems. The next is that filling of posts must be in accordance with an approved

post plan. There must be a plan to develop and manage infrastructure,
1600infrastructure issues that cause over-commitment. That the department has to
intensify implementation of efficiency measures and so on and so on including
consequent management for failure to comply with proper controls. .. Now what is...
all of this is of course very troubling because it speaks it tells us a picture, gives a
picture of what was happening with money in the department and one of the
1605identified concerns, identified by the department itself was that posts should be filled
in accordance with an approved plan. And we know as we have heard earlier, that
there were a certain number of staff from Esidimeni that had to be absorbed.

We also know from one of the documents you've provided which was in your
ELLA155, the minutes of the meeting, or the memo from the meeting of the
1610Executive Council where there was a concern about the provincial wage bill. And in
that context, of there already being a concern, overall with the provincial wage bill,
and specifically with unfunded personnel costs: Would the absorption of the staff
from Life Esidimeni have been planned and in accordance with an existing post
establishment?

1615MS. BARBARA CREECY: I don't know counsel. All I know is that in November
2015 a decision was taken that those staff have to be absorbed and their salaries
must be funded.

ADV ADILA HASSIM: And you say that that number of staff that were absorbed
was around 350 / 360?

1620MS. BARBARA CREECY: Something like that, yes.

ADV ADILA HASSIM: And you don't know whether that was planned or whether these were just additional posts, additional to the post establishment.

MS. BARBARA CREECY: Well I think they, I mean I know that subsequently they were additional to the establishment.

1625**ADV ADILA HASSIM**: And one of the concerns raised in the Executive Council meeting was a caution to avoid that additional...?

MS. BARBARA CREECY: No we didn't raise that issue in the Budget Committee, what we said in the Budget Committee is that we must make sure that the level of service doesn't deteriorate.

1630**ADV ADILA HASSIM**: Now I am referring ELLA155.

MS. BARBARA CREECY: Oh yes. I think that...

ADV ADILA HASSIM: We can go there... (intervenes)

MS. BARBARA CREECY: No, no I am with you now counsel, yes, I think that what we were sensitising departments to, was that it's very important to maintain a
1635balance between the way the budget for wages and the budget for everything else. Because otherwise what happens is that wages will overtake all other forms of spending. So you won't be able to provide medicines, you know there is the famous anecdote, that there was a time in the Eastern Cape when the budget for personnel in the education department was so great that they had to ask teachers to remain at
1640home because if they bought a piece of chalk the department would overspend.

So I think what we were saying to departments is, it's not... and there are many documents which we won't go into now where I talk about the fact that the priority must be to fill professional posts: Doctors, nurses, teachers. And I think

that's the substance of that cabinet memo that we don't want to be saying don't
1645employ teachers, don't employ doctors, don't employ nurses. But what we would
want to be cautioning against is absorbing staff or appointing staff. I think in the
case of Life Esidimeni we didn't, we didn't have a choice. We had to absorb the
staff but I think that in general we were cautioning departments about taking
unbudgeted, unplanned for decisions.

1650**ADV ADILA HASSIM:** Yes, and that is really is what my question is about. Did the
appointment process for those staff follow proper administrative and financial
controls?

MS. BARBARA CREECY: The appointment process may have done in other
words, it was legal to pay them but I think that you concerns... (intervenes)

1655**ADV ADILA HASSIM:** I mean the decision to appoint.

MS. BARBARA CREECY: ...were they going into existing vacancies on the
departmental
organogram, no I don't think they were.

ADV ADILA HASSIM: They were not. You don't think they were because again, I
1660am just relating it back your document and the discussion on the provincial wage bill
which starts at page 13, Justice of ELLA155? And that this would mean... this
would be unusual won't it to be employ 350 / 360 people in one go.

MS. BARBARA CREECY: Well it, as I said it was an unplanned for necessity
because there was not at the time when we had taken the decision, an
1665understanding that we were closing all Life Esidimeni facilities and moving all
patients out.

ADV ADILA HASSIM: It was an unplanned for necessity but the necessity was created by the department itself.

MS. BARBARA CREECY: It would appear that way.

1670 **ADV ADILA HASSIM:** It wasn't something that would have been necessary if they remained employed at the cost of someone else rather than at the cost of government.

MS. BARBARA CREECY: Yes Ma'am.

1675 **ADV ADILA HASSIM:** In the same context, in the same vain we are talking about spending and the department and what money was available and what not and they refrain that money wasn't available. At page 126 which is just the next page over... that we were just looking at, 126 of the Annual Report in item 8, which is also a response by the department to SCOPA...

MS. BARBARA CREECY: Sorry Ma'am I next page is 165.

1680 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV ADILA HASSIM: Just before 165.

MS. BARBARA CREECY: I don't have a page in between Ma'am.

ARBITRATOR JUSTICE MOSENEKE: Mine to jumps from 124 to 165.

ADV ADILA HASSIM: My apologies Justice. Do you have it, thanks.

1685 **MS. BARBARA CREECY:** Thank you.

ADV ADILA HASSIM: This is the item that discusses irregular expenditure and can you just tell us what the amount of irregular expenditure had been referred to SIU according to the department?

MS. BARBARA CREECY: According to this document Ma'am it's R1 602
1690540 878.00.

ADV ADILA HASSIM: So that's about R1.6 billion.

MS. BARBARA CREECY: Yes Ma'am.

ADV ADILA HASSIM: And can you explain the definition of irregular expenditure?

MS. BARBARA CREECY: Irregular expenditure means that goods and services
1695have been procured without following the regulations laid down for supply chain in
the Public Finance Management Act. So it can mean that a procurement is
procedurally incorrect, it can also mean that there is suspicion that there was
wrongdoing in the procurement but that is not necessarily the case.

ADV ADILA HASSIM: But it would have been at the very least, expenditure that
1700was not compliant with the law?

MS. BARBARA CREECY: With the supply chain regulations Ma'am.

ADV ADILA HASSIM: And that was about R1.6 billion. Now... so far we looking at
a picture of money that is not accounted for or overspending, there is irregular
expenditure. This is happening in the context of a National Treasury instruction that
1705imposes cost containment measures and that would be the National Treasury
instructions number one that you referred us to, that was still applicable at this time.
Can we just look at that National Treasury instruction one more time?

ARBITRATOR JUSTICE MOSENEKE: Just before you go there counsel please, I
can't want to understand what the R5 billion is about. You have asked questions
1710about the R1.6 billion. What are the other two items? Irregular expenditure relating

to the extension of security contracts: R 291.6 million and 232 cases of irregular expenditure all assumingly amounting to R5 billion rand. What is that?

ADV ADILA HASSIM: Sorry Justice amount to R6.9 billion.

ARBITRATOR JUSTICE MOSENEKE: I beg your pardon?

1715 **ADV ADILA HASSIM**: R6.9 billion is the total irregular expenditure.

ARBITRATOR JUSTICE MOSENEKE: Well the total yes, I was just referring to individual items, yes thank you Counsel. And is that the question you were asking I thought you were asking amount R1.6 billion or you asking about... (intervenes)

ADV ADILA HASSIM: I am asking about the entire.. (intervenes)

1720 **ARBITRATOR JUSTICE MOSENEKE**:amount?

ADV ADILA HASSIM: ... of irregular expenditure which is quite large.

ARBITRATOR JUSTICE MOSENEKE: Yes and that is R6.9 billion which was supposed to be referred to as SIU for investigation. Is that your understanding MEC?

1725 **MS. BARBARA CREECY**: Justice if we look at the next paragraph under the total there of R6.9 billion it says: 'Irregular expenditure to the value of R6.9 billion dating back to 2010 / 2011 has been assessed and broken down into the following categories'. Now I think just to assist the enquiry, when the Auditor General decides that expenditure is irregular, there is a procedure that has to be followed by 1730a department.

So the first thing that has to happen is that there must be an investigation into what happened and what caused the irregular expenditure and that investigation can be an in-house investigation, they can use the forensic

investigation services of Provincial Treasury or the department can outsource a
1735private consultant to do that investigation. When the investigation comes back
there will be recommendations. My assumption is that on the R1.6 billion the
investigation would have come back and said, there appears to be criminal activity
here, this case must reported to the South African Police Services.

But there might also be a recommendation that says this expenditure
1740occurred because supply chain regulations were not followed and relevant officials
must be disciplined. Once you have done that, you will then apply, once you have
implemented the recommendations you then apply to National Treasury for
condonation and National Treasury will condone irregular expenditure provided,
obviously if there is criminal activity, if there criminal investigations pending they will
1745not condone that expenditure, but if there is... if officials are required to be
sanctioned, once that sanctioning has happened National Treasury will condone the
expenditure.

Now one of the interactions that we have had as Provincial Treasury with
the Department of Health repeatedly is to say them, that where you are not facing
1750criminal investigations, implement the recommendations of the investigation that
you have done, sanction the officials and then go to National Treasury and ask for
codonation so that it comes off the books, you clean up the books. So this is a
situation where... and it's a sore point between Provincial Treasury and the
Department of Health that they have not been speedy enough in previous years in
1755applying what is required of them in order that they get condonation for irregular
expenditure.

ARBITRATOR JUSTICE MOSENEKE: Let put it in simply words. SCOPA is concerned and raises the issues set out in item 8 on page 126 to which counsel referred us. And the response of the department... am I reading this well, is that
1760yes, we have R6.9 billion of irregular expenditure and it's broken down as follows.
Am I correct to understand that R1.6 is irregular expenditure that we have referred to the police, SIU's ('Special Investigating Unit') irregular expenditure in relation to security contracts must be review our procedures there R1 291 million and R5 billion made up of two 232 cases: these have to be sent back to HoD for action
1765and to report on action he would've taken.

Are those the... firstly is that the total of irregular expenditure and are those breakdowns of the department to furnished to SCOPA, which I presume is the sub-committee of the Legislature?

MS. BARBARA CREECY: It is the sub-committee Legislature Justice. I don't have
1770any independent information here in front of me other than what is here on irregular expenditure at this point in time but I can say to you that Provincial Treasury is concerned about irregular expenditure across provincial government and in the Department of Health in particular and what we are concerned about is that there is procedure that must be followed and this, well we don't have page 127 of this so
1775maybe there is more detail but from what is in front of us, I would want to know for each one of those 232 cases, was it investigated, what were the recommendations, did you implement the recommendations, did you apply to National Treasury for condonement?

ARBITRATOR JUSTICE MOSENEKE: You see counsel, counsel has no doubt
1780studied the document, he referred us to that page, will come with more questions.

Immediately what pops up in my mind MEC is with struggling with 250 / 260 million
contracts of Life Esidimeni and just about the same period R1.6 billion of irregular
expenditure is reported on which has to be referred to the police. So if this did not
happen, Life Esidimeni would be a small part of the concern of the Health
1785Department wouldn't it be? Absent, irregular expenditure... (intervenes)

MS. BARBARA CREECY: Justice...

ARBITRATOR JUSTICE MOSENEKE: ...at that number... (intervenes)

MS. BARBARA CREECY: I think that both issues are cause for concern but I don't
think that they are linked, except... (intervenes)

1790**ARBITRATOR JUSTICE MOSENEKE:** Help me understand.

MS. BARBARA CREECY: Irregular expenditure does not necessarily mean that
the money has gone astray. The money may well have been used for what it was
intended to be used for but the problem is that the supply chain regulations in
procuring the service provider to provide that service were not followed according to
1795the letter of the supply chain regulations.

So you can see there, there is a National Security Contract and there may
well be security services being supplied but the issue is.. and I don't know what the
issue is in this particular instance, but it could be did it go through the relevant
competitive service... so competitive bidding process. So it does not mean that the
1800money has gone astray, it doesn't mean that the money flew out the door, or it was
stolen?

ARBITRATOR JUSTICE MOSENEKE: What does it mean?

MS. BARBARA CREECY: It can mean that and you can see here that R1.6 billion is being investigated by the police but on the evidence that we have here in front of
1805 us what it probably means is that the supply chain processes were not correctly followed.

ARBITRATOR JUSTICE MOSENEKE: When irregular expenditure is hide(?) off to be investigated by the police would it be merely non-compliance with supply chain regulations or would it suggest more?

1810 **MS. BARBARA CREECY**: It can suggest more. But I am saying to you that of the R6.9 billion we don't have further details as what is involved but I think Justice what it speaks to is an ongoing concern around financial management, that's what it speaks to.

ARBITRATOR JUSTICE MOSENEKE: Let me tell you what it might also speak to.
1815 Is the determination to save R250 million on Life Esidimeni and we can debate whether in fact they would save that and shut it down, against possibly criminal irregular expenditure which deserves to be referred to the police. You see no connection there, is there no connection?

MS. BARBARA CREECY: Justice whether there was misappropriation of the Life
1820 Esidimeni money or not, I don't know. All I have been able to show you is what was budgeted for what was spent and what was transferred to the NGO's. If you are saying to me do I have a concern about the overall financial management of the Health Department my answer is yes.

ARBITRATOR JUSTICE MOSENEKE: You see the whole case and you will hear
1825 more about it, the whole case of the MEC of Selebano or Manemela is we had
pressure. We had little money and we had to shutdown Life Esidimeni but when
one looks at this (inaudible) there was irregular expenditure of R1.6 billion which
was worthy of being referred to the police aside the R6.9 billion. It makes me sit up
and say was this genuine cost cutting measures, what are we dealing with? What
1830 was it and you sitting next to the numbers and I thought you might help.

MS. BARBARA CREECY: Justice this irregular expenditure as you can see goes
back to 2010 / 2011 which pre-dates the events that we are concerned about. I can
only, I can only speak on the numbers that I have presented before you.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

1835 **ADV ADILA HASSIM:** Thank you Justice. Thanks MEC I mean the fact that it
goes back a few years before this that it pre-dates the Esidimeni termination and
that decision is of no comfort to us because what it tells us is that there was a
problem, a very serious problem of financial mismanagement and to be candid with
you, where I am going is to show that there is actually a real mess in the
1840 Department of Health when it comes to the management of money and when it
comes to adhering to procedures, complying with the law and particularly when it
comes to issues like supply chain management and the PFMA.

It is important because when you don't comply, it often means that the
services are more expensive. So if you didn't comply because you didn't follow
1845 tender procedures, the chances are you paying more than you would have if you
went through the proper processes and all of that is relevant to the answer that we

have received from the department that they were doing their best. And for them to make decisions about money in the way they did with Esidimeni is of deep concern to up when there is this very deep rooted mess. You say you intervened as
1850treasury, ended that in 2015 but the problem came back.

So it didn't help and so what is going wrong and how are to... and what our concern is apart from understanding what happened at Esidimeni is that this must never happen again. And for it not to happen again it means that this has to be cleaned up and that people who are responsible must be gotten rid of within the law
1855obviously.

(Applause in the background)

ADV ADILA HASSIM: But that's the reason why I am referring to this, the irregular expenditure is here from the Annual Financial Statements and as we can see at least R1.6 was deemed worthy billion, billion was deemed worthy for SIU
1860investigations so that... I just want to be candid with where I am going and why I am asking these questions. Justice I should have also said at the outset that the full Annual Financial Statements and Annual Report, we haven't... we do have it available and the reason we didn't put the whole document in is, because it's almost 300 pages and we didn't want to burden this hearing with more pages, but it is
1865available and we can make it... we can hand it to you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV ADILA HASSIM: At a convenient time. But the extracts are the extracts that we thought needed to be brought to your attention.

ARBITRATOR JUSTICE MOSENEKE: And were they provided by yourselves?

1870 **ADV ADILA HASSIM:** That is correct, that was provided by Section 27.

ARBITRATOR JUSTICE MOSENEKE: Um.

ADV ADILA HASSIM: So in the context of all of this and what I am calling a mess, where I was going with the treasury instruction and the cost containment measures and I would like to just refer to that document, the National Treasury Instruction and specifically paragraph 4.

MS. BARBARA CREECY: On page 2 of 8 Ma'am?

ADV ADILA HASSIM: That's correct, yes. Sorry my page 2 of 8 is not here: if you could just bear with me for one moment, Justice. And first of all what's important is that the instruction says that it mandatory in 3.1.

1880 **MS. BARBARA CREECY:** Yes Ma'am.

ADV ADILA HASSIM: It's mandatory for accounting officers of the departments to implement the cost containment measures referred to in paragraph 4.

MS. BARBARA CREECY: Yes Ma'am.

ADV ADILA HASSIM: And the first cost containment measure in paragraph 4 is engagement of consultants and it is self evident, there are strict guidelines for engagement of consultants and then importantly consultants should not be used unless there is a gap(?) analysis that's been undertaken that shows that there isn't capacity otherwise within the government to provide that service.

So what we have and still sticking with ELLA158 then: we were looking at page 126 which we had to hand to you and then the next page is 165 of the 2016 / 2017 Annual Report for the department. And under item 3.15 is the utilisation of consultants.

MS. BARBARA CREECY: Yes Ma'am.

ADV ADILA HASSIM: And we see that with the table 3.15 point 1: we are looking
1895at consultants that we used during the period 1 April 2016 to 31 March 2017 and it
stipulates the consultants that we used in that period of time. What I really am
concerned with is the next page, because we are looking here at the period
September to December 2015 in that first table.

And what we see from that table is the employment of a consultant: BMGI
1900consultants for a period of 12 weeks for R13 million and it says for the
comprehensive diagnostic of Chris Hani Bara and then the line below that: legal
audit of all department and mental litigation the consultants Gotcha Mahlangu
Incorporated(?) and Engulwa Makalu Incorporated(?) and for a duration of ten
months the cost to the department was R59 million.

1905**ARBITRATOR JUSTICE MOSENEKE**: Yoh.

ADV ADILA HASSIM: That's R59 million for ten months, R59.1 million but let's
say R60 million to make it easier which is R6 million and a month to the attorneys or
R300 00.00 rand per day.

ARBITRATOR JUSTICE MOSENEKE: Are those attorneys? Yes of course...
1910(intervenens)

ADV ADILA HASSIM: Yes they are.

ARBITRATOR JUSTICE MOSENEKE: Tabesha Masanga Inc(?)

ADV ADILA HASSIM: Yes. So they are paying R300 000.00 per day, the
department to attorneys for this work presumably because it can't be done within
1915the department, the legal advisors that are employed within the department and

whatever other staff can't do it. We also see in the table below, unfortunately their table numbering is not very helpful because it's again referred to as 3.15.1 but what I am looking at is for the period January to March 2015 and you have... and this is specifically in relation to the accruals that a consultant S-a-i-c-a SAICA was
1920 contracted to address revenue accruals and accurate reporting for the financial years 2015 / 2016 there were employed for seven months at a cost of R6 million. We also know that... (intervenes)

ARBITRATOR JUSTICE MOSENEKE: I am sorry counsel I take it MEC you are following the references...

1925 **MS. BARBARA CREECY**: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And you will reply at the appropriate time. Continue Counsel.

ADV ADILA HASSIM: Do interrupt me if I am... if you are not following or if I am... (intervenes)

1930 **MS. BARBARA CREECY**: No I with you.

ADV ADILA HASSIM: Or if I am being inaccurate in my presentation.

So 2015 /2016 SAICA comes, we coming to help clean up the accruals and so for seven months R6 million but we also know that the problem wasn't fixed because the accruals went up. So it wasn't... whatever they came to do, it wasn't effective.
1935 And then we see in the table below again SAICA is employed but now there contract is extended for two years at a cost of R69 million.

ARBITRATOR JUSTICE MOSENEKE: What is the full name of SAICA?

MS. BARBARA CREECY: The South African Institute of Chartered Accountants.

ADV ADILA HASSIM: We also see Mackenzie, they are contracted for a
1940workshop on 6 and 7 October 2016, so for two days... and they charge R435 000.00
for two days. The department... in the context of cost containment, in the context of
National Treasury instruction were spending many millions on consultancy. I want
to know what you say to that.

MS. BARBARA CREECY: I would not want to try and justify it Ma'am.

1945**ADV ADILA HASSIM:** Would you agree that if we just take the one I mean there
are many examples I have referred to but at least for attorneys R300 000.00 a day
seems outrageous.

MS. BARBARA CREECY: The only comment, as I said, I would not want to try and
justify the use of consultants, whether from the point of view that they were
1950necessary to do the work or that their services were cost effective because I don't
have any information with me about why were required or how they were procured,
whether they were procured in a (inaudible) manner so I wouldn't want to comment
on that. I would not want to try justify this.

ADV ADILA HASSIM: in other words what we are seeing is that contrary to what
1955you referred us to earlier in the documents you provided and in the Budget
Presentations about exercising prudence with every rand that is budgeted for and
spent these figures paint a very different picture.

MS. BARBARA CREECY: I think the only issue that we would need to look at is
whether there were any comments and I don't know because I haven't checked.
1960Whether in their audit findings or whether in National Treasury oversight there were
any irregularities that were picked up we would need to check that. We would also

need to check whether year to year there was the necessary decrease in the use of consultants. But on the face of it Ma'am, I would not think that these core services as we would have discussed earlier.

1965 **ADV ADILA HASSIM:** The R60 million that was paid for example just to the one contractor R60 million was paid to the private... the attorneys in ten months is more than the saving that the department hoped to make through the termination of the Esidimeni contract, do you agree?

MS. BARBARA CREECY: Yes Ma'am.

1970 **ADV ADILA HASSIM:** Now the department gave us three reasons for the termination of the contract. Justice I have just noticed the time.

ARBITRATOR JUSTICE MOSENEKE: Yes, I noticed. Who are BMGI consultants, would you know? Who did work at Chris Baragwanath Hospital, a diagnostics for R13 million in twelve months.

1975 **ADV ADILA HASSIM:** Twelve weeks.

ARBITRATOR JUSTICE MOSENEKE: Twelve weeks. I beg your pardon.

ADV ADILA HASSIM: It's over a million rand a week.

MS. BARBARA CREECY: I don't know who they are Justice and I mean that, the procurement of all of these services would have been the responsibility of the
1980 accounting officer.

ARBITRATOR JUSTICE MOSENEKE: But Counsel put it to you and you must agree this is head-on in conflict with the circular from Minister Pravin Gordhan that you read to us earlier. Consultant were high on his list, don't do it.

MS. BARBARA CREECY: Indeed Justice.

1985ARBITRATOR JUSTICE MOSENEKE: Don't pay money to consultants.

MS. BARBARA CREECY: Indeed.

ARBITRATOR JUSTICE MOSENEKE: And after the circular this happens and Life Esidimeni gets shut down.

MS. BARBARA CREECY: Yes Justice.

1990ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel I... it is indeed time to adjourn. We will resume at 2:30 and MEC you will be required to be here at 2:30 when we resume. We are adjourned.

[PROCEEDINGS ARE ADJOURNED]

1995 **SESSION 3**

ARBITRATOR JUSTICE MOSENEKE: What happened to the Young camera woman who fell this morning, is she okay? There is no reply. I must presume that she is fine, not so? MEC, you are still under your previous oath to tell the truth.

MS. BARBARA CREECY: Yes Justice.

2000 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. Counsel?

ADV TEBOGO HUTAMO: Justice, before we proceed with the witness, I just wanted to make mention of the fact that as previously arranged the premier of the province is present to take the stand, and from what has been discussed last week that we need to make use of these two days for the four witnesses. I will urge or
2005 request that we deal with the real issues without much more detail so that like we can be able to accommodate all the witnesses. I am saying this without wanting to sound that I am limiting cross-examination of my learned friends.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV TEBOGO HUTAMO: Thank you.

2010 **ARBITRATOR JUSTICE MOSENEKE:** Yes. We have to reach the premier today and finish his evidence so that we can wrap up tomorrow. So you make a good point. Counsel, you may proceed.

ADV ADILA HASSIM: Thank you Justice. I would like to think that I am dealing with the real issues. I am mindful of time, but I would like to get through what I have
2015 been instructed to do.

ARBITRATOR JUSTICE MOSENEKE: Yes. I am not inferring that insinuation Counsel. I hope Advocate Hutamo does not mean that, that you are not dealing with the issues. I think you have raised very important points and I hope that is not the reference to you, your cross-examination. Please proceed.

2020**ADV ADILA HASSIM:** Thank you Justice. MEC, we were before the adjournment I started talking about the reasons for the decision. So one of the reasons ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: Excuse me, I am sorry to interrupt. Aviwe, could you find my glasses please. Thank you. Thanks, you may proceed.

2025**ADV ADILA HASSIM:** And one of the issues is something that we have been discussing all morning and that is a question of budget and availability of money. No matter how much we probed the officials, that was the answer. It is played like a trump card, and once government tells you that there is no money then there is nothing you can do, but this morning we have dispatched that that argument, the
2030two other, sorry that reasoning from the department, but there are two other reasons that were provided. One of which was that the Auditor General raised a concern about the length of the contract with Esidimeni which dates back to 1979 and that that was one of the reasons for the termination was to respond to the Auditor General's concern. Before I go any further, I would just like to know
2035whether you are aware of that concern, whether that was something that was discussed with treasury and what your view is on that.

MS. BARBARA CREECY: Madam, I would not have been preview to discussions that might have taken place between officials of the Auditor General's office and the department, but because I was aware that this information had been put before the
2040 inquiry last week, I checked the management letters from 2014, 15 sorry 2013,14 up to the end of the last financial year 16,17. Now those documents are not public documents, but I got the provincial accountant general to check those management letters for me. Each one of those letters is an encyclopaedia in its own right. She could not find any reference to the Life Esidimeni contract in the management
2045 letters that were given to the department. If it was an audit query of significance, my expectation is that it would be in those management letters. So I am not saying it may not have been raised in conversations, but it is not in the management letters, and the management letters are what guides us as treasury and also provincial departments as to what issues they must address in subsequent financial
2050 years.

ADV ADILA HASSIM: And you are saying certainly if it was serious it would be in writing. It would not be in a conversation, a concern such as this.

MS. BARBARA CREECY: It ought to be in the management letters madam.

ADV ADILA HASSIM: Thank you. So we have not been provided with any
2055 evidence in the same way that you have not been able to find it, other than the say so of the officials who have come here that that happened, that that concern was raised, but let us assume that it was raised. Would the solution to that be to terminate the contract and then enter into agreements with a range of other entities

without a tender process? Would it address the concern assuming that that was the
2060concern of the Auditor General?

MS. BARBARA CREECY: Well, I suppose one might also want to consider would
there have been other ways of solving the problem. In government, there are and
by the way this is not, it is not, it does not I did clarify to the Justice that this falls
under transfers to not for profit institutions, but let us say for example that the
2065department valued the services that Life Esidimeni was providing and in the
department's view these were unique services that could not be provided by other
people, it is possible in terms of the public finance management act to argue that
these are unique services and nobody else provides them and you need to stay with
your existing service provider. So all I am saying to you madam is that it was not a
2070problem that could only be solved in one way.

ADV ADILA HASSIM: Thank you. That answers my question. On the question of
transfers to non profit organisations, can there be payments to non profit
organisations or contracts and engagements with non profit organisations without a
tender process?

2075**MS. BARBARA CREECY:** Yes madam, because it does not fall under what is
known as the goods and services budget. It falls under the transfers budget and the
social sector departments all transfer money to non governmental organisations.
The key thing that they need to put before treasury is are these organisations
following whatever regulatory environment is required and what is the service level
2080agreement that exists. What services are going to be provided at what cost, and
there would also need to be the development of a business plan. So you would

need to say I want, I need patient beds, I need this kind of patient bed, these kind of services and I want to recruit non governmental organisations to fulfil these services and then there would have to be service level agreements with each one of those.

2085 **ADV ADILA HASSIM:** And we know that that was not the case here. But just on the question of tendering. Even in the amounts that we are talking about here, the millions that had to be paid, for that matter Esidimeni as an NPO.

MS. BARBARA CREECY: It would not go out. It is a transfer, because it is not for profit institution. What would go out to tender would be goods and services where 2090 the assumption is that the institution is making a profit.

ADV ADILA HASSIM: So if it is making a profit, that would be the test.

MS. BARBARA CREECY: That is, yes.

ADV ADILA HASSIM: And not the amount of money.

MS. BARBARA CREECY: Yes.

2095 **ADV ADILA HASSIM:** So you could pay 250 million on the understanding that it is a non profit organisation.

MS. BARBARA CREECY: Yes, and provided you have a business case and a service level agreement that spells out exactly what services you are receiving.

ADV ADILA HASSIM: The third reason, I am moving off the Auditor General and 2100 just the circumstances around that, and no evidence as I said has been put up to substantiate that claim. The third reason was de-institutionalisation. The policy of de-institutionalisation, and for the purposes of the discussion between you and me I

would like to look at the budget and how it makes sense in relation to this reason of de-institutionalisation. So if I could refer you to ... [interjects]

2105 **MS. BARBARA CREECY:** Madam, can I say something before we go into the budget issue?

ADV ADILA HASSIM: Yes.

MS. BARBARA CREECY: You see, if there is a policy change in the way in which you are providing services, that policy change must serve before the executive
2110 council. There was no policy change that was tabled before the executive council in relation to the de-institutionalisation of patients. So if what you were saying to us which is what we understood, I have got a contract, I can provide the same service more cheaply if I do it in-house. That does not have to go before the executive council, but if what you are saying is I have a contract, I want to do something else,
2115 because the contract as I understand the Life Esidimeni contract, we are talking about patients with chronic conditions that needed care on a permanent basis. De-institutionalisation in my understanding and I am not a health professional, is that people would be managed in their own homes. Now my, I think it is very important to say to you that no policy was brought to the executive council on this matter prior
2120 to its serving on the budget committee. The budget committee does not have the power to take policy change decisions, and I think part of the reason Justice that I spent a lot of time explaining the budget process, was to explain to this inquiry that policy decisions must be taken in the executive council, they must be taken in the executive council Legotla, but they do not get taken in budget processes. That is
2125 what I would respectfully call policy change by stelts, and it is possible that that is

what we are dealing with in this instance. But it is very important to say to you madam that there was no conscious decision taken by the Gauteng Provincial government to implement a policy of de-institutionalisation.

ADV ADILA HASSIM: What we also know in any event is that the reason the de-
2130 institutionalisation reason cannot sit together with the reason that was provided before the budget committee which is that they would be taken into provincial hospitals, because that contradicts de-institutionalisation. So the two cannot sit side by side. They would have to pick one, which they were unable to do, but ...
[interjects]

2135 **ARBITRATOR JUSTICE MOSENEKE:** You shake your head MEC. You agree with that, not so?

MS. BARBARA CREECY: I agree with you madam.

ARBITRATOR JUSTICE MOSENEKE: Ja.

ADV ADILA HASSIM: If the policy were, I hear what you say about the policy
2140 change, but even if they were to come back and say no, it was not a policy change, it was policy already there, it was an administrative decision that was taken. Even if they were to say that does not help them, because administrative justice act then requires particular processes where they make a decision where the rights of the public are affected.

2145 **MS. BARBARA CREECY:** Indeed.

ADV ADILA HASSIM: Thank you, but let us look at the budget, because if and again it is you know a charitable interpretation. If we say that there was some attempt to strengthen community services and de-institutionalise at the same time, the numbers should show that that is happening. For example you are cutting down
2150 Esidimeni, you say it is de-institutionalisation. We know that the de-institutionalisation policy says the money must follow the patient, and what I want to test with you is whether the money followed the patient, and to do that I would like you to have a look at, in ELAH159, the very last page of 159.

MS. BARBARA CREECY: It says audited outcomes.

2155 **ADV ADILA HASSIM:** That is right.

MS. BARBARA CREECY: Yes madam.

ADV ADILA HASSIM: This is a table that all of the pages preceding this page, support the figures that are in this table, so it is basically a summary of what are in the preceding pages in this exhibit. Drawn from the annual financial statements, the
2160 audited financial statements, and what I want to refer to, is if you look down the table, to community based services, that is for mental health NPO's.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: Starting 2012, 13.

MS. BARBARA CREECY: Yes.

2165 **ADV ADILA HASSIM:** The appropriation was 266 million.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: And then in 2013,14 it goes down to 86 million.

MS. BARBARA CREECY: Yes.

ADV ADILA HASSIM: And then it starts to rise a little to 110 and you can see the 2170percentage rise there just for our convenience. So the first thing is, that is important is that when we are in 2016, 17 we are looking at 142 million roughly, which is still not back up to the level that we were in, in 2012, 2013. So that is not consistent with the policy of strengthening community based services.

MS. BARBARA CREECY: Yes.

2175**ADV ADILA HASSIM:** Because if you were to strengthen community based services, more money would be flowing in the direction of community based services. Does that make sense to you?

MS. BARBARA CREECY: On the face of it I would agree with you madam. I mean we would need to check whether there is any other factor, but on the face of it 2180I would agree with you madam.

ADV ADILA HASSIM: And if we look at the Esidimeni allocation which is just above the community based services and the numbers are the same as in the document ELAH160 you provided. We see the decrease particularly 14,15 to 15,16 and 16,17. Drastic reduction but the increase that happens in the community base 2185service is minimal.

MS. BARBARA CREECY: Yes madam.

ADV ADILA HASSIM: Would it be correct for me to say that this suggests that the money is not following the patient into the community?

MS. BARBARA CREECY: Madam, can we just look at the Life Esidimeni because
2190 I think you and I have different figures for 16,17.

ARBITRATOR JUSTICE MOSENEKE: I presume Counsel you are reading from page 15 of ELAH159?

ADV ADILA HASSIM: Yes, but I am happy to look at ELAH160, the table provided by the MEC if that helps.

2195 **ARBITRATOR JUSTICE MOSENEKE:** Ja.

MS. BARBARA CREECY: So Counsel, I think we have slightly different figures there. So for 15,16 the actual expenditure on Life Esidimeni was 198 million.

ADV ADILA HASSIM: Yes.

MS. BARBARA CREECY: And for 16,17 the actual expenditure according to our
2200 figures was 83 million. So there is a bigger decrease than your figures show, but never the less, what we are not seeing is that decrease translating directly into the line above, being community based services.

ADV ADILA HASSIM: Sorry, just to clarify my figures are not the actual expenditure, but the appropriation.

2205 **MS. BARBARA CREECY:** Alright, and even on ... [interjects]

ADV ADILA HASSIM: Which is the same as yours.

MS. BARBARA CREECY: And even on the appropriation we would agree with you on 15,16 but not on 16,17.

ADV ADILA HASSIM: The adjusted budget 74932.

2210 **MS. BARBARA CREECY:** And you have got for 17 you have got 216992.

ADV ADILA HASSIM: For 16,17.

MS. BARBARA CREECY: Yes madam.

ADV ADILA HASSIM: Are we looking at the same, no we have got 74932.

MS. BARBARA CREECY: I am obviously looking at the wrong line. Okay, I am
2215 with you now.

ARBITRATOR JUSTICE MOSENEKE: I thought Counsel we are now, I am also lost.

MS. BARBARA CREECY: I am with you now. I am with you now.

ARBITRATOR JUSTICE MOSENEKE: So we ... [inaudible] and see where we
2220 are. I thought you started by asking questions related to ELAH159.

ADV ADILA HASSIM: Yes, I ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: And in particular page 15.

ADV ADILA HASSIM: Page 15, yes.

ARBITRATOR JUSTICE MOSENEKE: Which purpose to represent audited
2225 outcomes.

ADV ADILA HASSIM: Yes.

ARBITRATOR JUSTICE MOSENEKE: So that presumably would be more reliable.

ADV ADILA HASSIM: Yes.

2230**ARBITRATOR JUSTICE MOSENEKE:** Even in these days of KPMG. So what, I mean ... [interjects]

ADV ADILA HASSIM: Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Are we looking at the Esidimeni line?

ADV ADILA HASSIM: We are looking at two things. We are looking at the
2235Esidimeni part of the table, which is headed subsidy, chronic, psych care, Life Esidimeni in brackets.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV ADILA HASSIM: And then we are comparing that to the item below it, community based services, mental health NPO's.

2240**ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV ADILA HASSIM: And what I am trying to do is to show that the drastic reduction on the one hand in Esidimeni does not correspond to a commensurate increase in the community services.

ARBITRATOR JUSTICE MOSENEKE: Yes. You do not see the same number.
2245You see 142 million against a reduction from 228 million to 74.9 million.

ADV ADILA HASSIM: Correct.

ARBITRATOR JUSTICE MOSENEKE: That is the point you are making.

ADV ADILA HASSIM: Correct.

ARBITRATOR JUSTICE MOSENEKE: What is your response MEC?

2250**MS. BARBARA CREECY:** No, I am together with Counsel now and I agree with
Counsel, and I would want to say further Counsel that if you have to look at where
did the money go, given the fact that the global figures remain more or less the
same, you can see that there is an increase in psychiatric mental hospitals and it
would therefore support your argument that if there is a policy of de-
2255institutionalisation it is not reflected in the budget.

ADV ADILA HASSIM: Yes, thank you.

ARBITRATOR JUSTICE MOSENEKE: So where did the money go to? You
suggest MEC the money went where?

MS. BARBARA CREECY: Counsel, I am back on ELAH160.

2260**ARBITRATOR JUSTICE MOSENEKE:** Oh, you are back on ELAH160. I am
looking at 159, and I ask you to look at that.

MS. BARBARA CREECY: Yes. Provincial hospital services, is it there, is it on
your table Counsel?

ARBITRATOR JUSTICE MOSENEKE: On page 15 of ELAH159.

2265**ADV ADILA HASSIM:** The provincial hospital is in ... [interjects]

MS. BARBARA CREECY: Provincial hospitals yes.

ADV ADILA HASSIM: Sub program 4.3, and that is not expenditure those figures. Again just to clarify that is the appropriation.

MS. BARBARA CREECY: So it is, the figures are not the same Counsel, but it
2270 makes the, I think it makes the same point that Counsel is making. If you look at program for provincial hospitals, you can see there that the budget climbs from 956 million in 12,13 to one billion and 28 million ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. BARBARA CREECY: In 16,17. So it makes the same point that Counsel is
2275 making.

ADV ADILA HASSIM: Would you agree that even then it does not correspond, the reduction in Esidimeni does not, even the increase at the provincial hospital is not equivalent to the reduction in Esidimeni?

MS. BARBARA CREECY: Yes Counsel.

2280 **ADV ADILA HASSIM:** Thank you. So then that puts page to the third argument provided by the department that de-institutionalisation was reason and that de-institutionalisation took place in accordance with the policy.

MS. BARBARA CREECY: Yes Counsel.

ADV ADILA HASSIM: I just want to now look at 161, ELAH161 that you provided
2285 us with this morning, because that tells us a little bit about where money went, and what I want to point out is that there are several NGO's that were of particular

concern in this project, and at least three of them, and I have not had time to do a very detailed reconciliation, a very thorough reconciliation but there is an NGO called Anchor, and NGO called Siyabadinga and an NGO called Bopelong, and 2290none of these are reflected in this ELAH161.

MS. BARBARA CREECY: That is correct Counsel.

ADV ADILA HASSIM: And that is because, can you explain that?

MS. BARBARA CREECY: Counsel, you will recall that what I did and maybe it was an inadequate process, was that I took the list of NGO's that was provided by 2295the MEC for Health in her parliamentary question reply, and that is the document we refer to in I think it is file 3, page 1060.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. BARBARA CREECY: Because working over the weekend, I had to improvise and say what list of NGO's was put in the public domain, were there payments 2300made to those NGO's. So if you give me additional names of NGO's I will check on the system whether any payments were made to those NGO's and we will submit I think there is other evidence I do need to submit to you. I will submit it together with that.

ADV ADILA HASSIM: Thank you MEC. We would appreciate getting the figures 2305on the additional NGO's, because things changed after that parliamentary answer.

MS. BARBARA CREECY: Counsel, can I just get the names again?

ADV ADILA HASSIM: It is Anchor.

MS. BARBARA CREECY: Anchor, yes.

ADV ADILA HASSIM: Siyabadinga and Bopelong.

2310**MS. BARBARA CREECY:** Yes. Thank you.

ADV ADILA HASSIM: Sorry, there are two more. Rebafeni.

MS. BARBARA CREECY: We could not find any, we checked Rebafeni and we could not find any evidence of payments.

ADV ADILA HASSIM: Of payments.

2315**MS. BARBARA CREECY:** To Rebafeni.

ADV ADILA HASSIM: And to Obutle Ben Kosi.

MS. BARBARA CREECY: No. We did not check that one. Obutle?

ADV ADILA HASSIM: Ben Kosi.

MS. BARBARA CREECY: The three that we have that we could not find any
2320evidence of payment is Mashimong, Omachluko and Rabafeni.

ADV ADILA HASSIM: Thank you, and then finally on this exhibit, Shama House. Shame House payments were made between August 2016 and March 2017 in the amount of about three million.

MS. BARBARA CREECY: That is the evidence we found.

2325**ADV ADILA HASSIM:** The, and I see it goes up until 9 March 2017.

MS. BARBARA CREECY: Yes madam.

ADV ADILA HASSIM: That would obviously mean, you see Shama House apart from many of these other NGO's, Shama House was one of those NGO's that did not have a licence as of July 2016. 21 July 2016. There was no licence at Shama House, there was no nursing staff, the patients did not have enough food and it was ja, there is an audit report which has shown us that, that was the state of Shama House at 21 July and what, I am correct to assume I would like to know, is that if payments were continuing until March 2017, that Shama House had not been shut down by that point obviously.

2335 **MS. BARBARA CREECY:** I cannot answer that madam, I do not know. But what I know is that this is the record of payments that were made.

ADV ADILA HASSIM: That payments went up to 9 March 2017 and nothing beyond that?

MS. BARBARA CREECY: No madam and they only started on the 26th of August 2016.

ADV ADILA HASSIM: Yes. That is also consistent with the evidence that we have in the hearing. My final question MEC ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Just before you leave the schedule. Mosego home based care, it would probably be the third page from the beginning of this.

MS. BARBARA CREECY: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Received a hooping 13.5 million.

MS. BARBARA CREECY: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel, I do not quite remember
2350evidence on this particular NGO.

ADV ADILA HASSIM: It is the sister of Takalani. It is the sister NGO.

ARBITRATOR JUSTICE MOSENEKE: Was the sister, is the twin one to Takalani.

ADV ADILA HASSIM: And it is where one of our clients, Marie Carlitz, her
husband passed away at Mosego.

2355**ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV ADILA HASSIM: Freddie Calitz.

ARBITRATOR JUSTICE MOSENEKE: Ja, we have got that evidence somewhere
... [interjects]

ADV ADILA HASSIM: Yes.

2360**ARBITRATOR JUSTICE MOSENEKE:** Ja, in the direction of Krugersdorp.

ADV ADILA HASSIM: Yes, that is right.

ARBITRATOR JUSTICE MOSENEKE: And they were paid 13.5 million. Of
course you would not know much about that would you, MEC?

MS. BARBARA CREECY: As I said Justice, this is evidence of payments that we
2365found on the system. What the payments were for, I do not know.

ARBITRATOR JUSTICE MOSENEKE: And if one adds up these amounts, have
they been added up? It is 47.5 million.

MS. BARBARA CREECY: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Does it have any relationship with the
2370audited number which appears to be nearly 74 million, which you and Advocate
Hassim debated not so long ago? In other words when you look at the annual
report of the province, and you look at the amount that was supposed to be spent
on NGO's the 74.932 million is there any connection ... [interjects]

MS. BARBARA CREECY: Justice, the 74 ... [interjects]

2375**ARBITRATOR JUSTICE MOSENEKE:** Your schedule in 161 and what we see on
page 15 of ELAH159?

MS. BARBARA CREECY: Justice, the schedule, the 74.9 million was what was
spent at Life Esidimeni. Not on the NGO's.

ARBITRATOR JUSTICE MOSENEKE: Not on the NGO's.

2380**MS. BARBARA CREECY:** Altogether what was spent on the NGO's in 16,17 was
142 million.

ARBITRATOR JUSTICE MOSENEKE: 142 million, yes.

MS. BARBARA CREECY: But my assumption is that there are NGO's that are
catering for mental health services that are not part of these ones that are under
2385controversy. That there are other services being provided in the system.

ARBITRATOR JUSTICE MOSENEKE: But were not part of the marathon project
and the closure of Esidimeni.

MS. BARBARA CREECY: That is my assumption.

ARBITRATOR JUSTICE MOSENEKE: I see. Okay.

2390**MS. BARBARA CREECY:** But I do not have evidence on that.

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may proceed Counsel, thanks.

ADV ADILA HASSIM: My last question is again in relation to your budget speech in March of 2015 and at page 18 of that speech you spoke about the activist
2395government. As an activist government that the provincial government and you understand that citizens do not want to be passive recipients of services. That they want to be active in implementing solutions. Knowing what you now know about the circumstances of this tragedy, do you agree that the families were not heard?

MS. BARBARA CREECY: Yes madam.

2400**ADV ADILA HASSIM:** And if you are not aware then feel free to say so. Would you agree that the psychiatrists who also should be active in implementing solutions, their very solemn warnings were not heard?

MS. BARBARA CREECY: It would appear, that would appear to be the case madam.

2405**ADV ADILA HASSIM:** I do not need you to say, to respond, but what we have been able to establish through the hearings is that a number of other NGO's in the field SADA, the depressiveion and anxiety group, South African Federation of Mental Health were not, were also not heard. In fact were dismissed when their concerns were raised. This is what I would like you to respond to, this question. Within the

2410ambit of your role and your position, your leadership role, would you be prepared to consider measures to ensure that that does not happen again, that consistent with your remark in the budget speech that as an activist government we need to listen and include the recipients of the services in the implementation of services and service delivery. Would you be prepared to consider measures to ensure that that, 2415what has taken place in this tragedy, does not happen again?

ADV. PATRICK NGUTSHANA: Justice, the witness is being asked to give answers to matters which are outside her scope of responsibility being treasury. The matters which are being referred to are in particular reference to the Department of Health. It will be unfair to expect an answer from the witness.

2420**ARBITRATOR JUSTICE MOSENEKE:** I hear the objection. It may be good, Counsel.

ADV ADILA HASSIM: Justice, I am referring specifically to the budget speech by the MEC, and the issue of involving citizens is something that the provincial government should own as a hole. It is not about one portfolio or the other. I am 2425not suggesting that the witness was responsible for all of the issues ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Ja, I am inclined to think Counsel should proceed really. It is a matter which can be canvassed with the premier, it can be canvassed with, her scope was quite clear when she was called. It was about the numbers and the finances, and I would want to add Counsel to get onto the next 2430question.

ADV ADILA HASSIM: In that case Justice, I have no further questions.

ARBITRATOR JUSTICE MOSENEKE: Okay, thank you.

ADV ADILA HASSIM: Thank you MEC Creecy.

MS. BARBARA CREECY: Thank you.

2435 **ARBITRATOR JUSTICE MOSENEKE:** Thank you Counsel. Advocate Crouse.

ADV. LILLA CROUSE: Thank you Justice. MEC Creecy, my name is Lila Crouse.

I act together with ... [inaudible] and we act for the survivors of this project. My learned friend have covered quite a substantial part, I will try my best not to repeat it. Can I just ask you perhaps it is also prudent that I apologise at this stage. I

2440 objected vehemently to your coming here, but I am glad that you are here, because you helped us a lot. So thank you for being here.

MS. BARBARA CREECY: Thank you madam.

ADV. LILLA CROUSE: Can I just ask you, we have gone through the reasons that

the department gave for closing Life Esidimeni, and for killing and harming these

2445 people. If it was not for the reasons they have given, for what reason did this happen?

MS. BARBARA CREECY: Madam, my understanding is that the purpose of this inquiry is to establish that.

ADV. LILLA CROUSE: That is why we are asking you. Do you have any thoughts

2450 on it?

MS. BARBARA CREECY: It is a series of events that fills me with shame madam, but as to why it took place I do not know.

ADV. LILLA CROUSE: Could there have been any person higher up in the hierarchy of government that ordered this?

2455**MS. BARBARA CREECY:** I do not know madam.

ADV. LILLA CROUSE: You were not aware of that?

MS. BARBARA CREECY: No madam.

ADV. LILLA CROUSE: The reason I am putting this to you is at about the same time in the Eastern Cape the Life Esidimeni centres were also under threat to be
2460closed by social development. Have you heard about that?

MS. BARBARA CREECY: No madam.

ADV. LILLA CROUSE: So you have not heard the name of Life Esidimeni in government circles thrown around?

MS. BARBARA CREECY: Prior to these hearings madam, the only thing that I
2465was aware of is that there is a Life Esidimeni substance abuse rehabilitation facility in Randfontein.

ADV. LILLA CROUSE: Ja, and that was a court case where you were involved. Is that not so?

MS. BARBARA CREECY: I am not aware that I was involved in a Randfontein
2470court case. I am aware that there is a different set of issues which gets termed Life Esidimeni but actually does not have anything to do with Life Esidimeni.

ADV. LILLA CROUSE: There was some issue not being paid over to somebody.

MS. BARBARA CREECY: Yes.

ADV. LILLA CROUSE: And I see the honourable Justice has mentioned in the
2475 case that it must be forwarded to him by the Judge.

MS. BARBARA CREECY: Yes.

ADV. LILLA CROUSE: Yes.

MS. BARBARA CREECY: I am aware that there has been a judgment in that case
yesterday I think, but I have not seen it.

2480 **ADV. LILLA CROUSE:** Can I just, your power point that you shared with us, that
the MEC for Health had shared that at the budget meeting, the MEC had also
provided us with that document, and I have asked her questions on that and my
reading of it was similar to your reading of it. But she denied that it could ever have
meant that it would only have been a 20 percent reduction.

2485 **MS. BARBARA CREECY:** Well, I suppose she should have said what she meant
in her presentation.

ADV. LILLA CROUSE: You see, shortly thereafter the head of the department
wrote a letter to Life Esidimeni saying that there is a 20 percent reduction. So I
think the head of the department also understood it that way. It is a logical
2490 conclusion that one would make from that power point. You would agree with that?

MS. BARBARA CREECY: It was the interpretation that we understood at the time
madam.

ADV. LILLA CROUSE: One of the officials said that the placement of Life Esidimeni personnel was termed the premier's project. Have you heard that word
2495before?

MS. BARBARA CREECY: No madam.

ADV. LILLA CROUSE: When did the staff that need to be taken up by the department, the staff from Life Esidimeni, when did that first come to your knowledge?

2500**MS. BARBARA CREECY:** On the 5th of November 2015 madam.

ADV. LILLA CROUSE: And the idea was?

MS. BARBARA CREECY: That they should be absorbed into the department.

ADV. LILLA CROUSE: This has been a very expensive exercise for the department. You would agree, the whole arbitration. Are you aware of that?

2505**MS. BARBARA CREECY:** Madam, I do not know justice has a price tag.

ADV. LILLA CROUSE: Yes, but it would have been less expensive if Life Esidimeni was not closed, because we would not have had this. Would you agree?

MS. BARBARA CREECY: Madam, I think given the terrible tragic loss of human life, that is what we should be focussed on. Not whether it cost more money or less
2510money.

ADV. LILLA CROUSE: You see, it will be relevant if the Life Esidimeni was closed because of financial constraints. Then the cost of any remedies will have an important effect on that. Would you not agree?

MS. BARBARA CREECY: I am sorry, I do not understand the question?

2515 **ADV. LILLA CROUSE:** Maybe I should just put it a little bit clearer. What I am saying is if this was really a cost curtailment exercise, then it did not work, because it is costing a lot at the moment.

MS. BARBARA CREECY: There is no evidence that there was ever an intention to save money through this project, and I think that I have shown in the budget that I
2520 tabled on the budget for mental health, that there is no evidence that there was cost cutting on the mental health budget, and I dispute the suggestion that this was a cost cutting exercise.

ADV. LILLA CROUSE: Yes. We hear you and objectively I, we have already agreed with you before you came here, because all the objective evidence point the
2525 other way. That is not what I am fighting with. We have evidence under oath to say it was and that is what I am putting to you. So if that was, if cost curtailment was a reason it backfired. That is the only thing that I am putting to you.

MS. BARBARA CREECY: Yes madam.

ADV. LILLA CROUSE: Thank you. There is just something that is bothering me
2530 and this is the second last question that I put to you. I see on the papers the CFO of the Department of Health is also a Mr Mahlangu. Is he related to the MEC at all?

MS. BARBARA CREECY: Not to my knowledge.

ADV. LILLA CROUSE: Okay, thank you and then just the last question. I have it on my papers that in February 2017 Anchor had received their last payment. So

2535 there should be a record of their payment. It was on the 27th of February was the last payment to them. Could the court just give me a moment Justice?

ARBITRATOR JUSTICE MOSENEKE: Yes, certainly.

ADV. LILLA CROUSE: Thank you Justice, that is all questions we have. Thank you MEC.

2540 **MS. BARBARA CREECY:** Thank you.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Ngutshana?

ADV. NONTLANTLA YINA: Thank you Justice. I will be asking the questions in cross-examination. Justice, before I do that I would like to hand up a copy of the judgment. I will explain the reason why it is necessary to do so, and ... [interjects]

2545 **ARBITRATOR JUSTICE MOSENEKE:** The judgment that saw the light of the day this morning, that one?

ADV. NONTLANTLA YINA: That is the one Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. NONTLANTLA YINA: It will be ELAH163. Copies have been circulated to
2550 my learned friends.

ARBITRATOR JUSTICE MOSENEKE: Somebody must write to Judge ... [inaudible] and say that the judgment came to my attention as required by his order, but I am sure somebody in my office will do that and write back. The register that the judgment has reached me and has reached Counsel in this hearing.

2555 **ADV. NONTLANTLA YINA:** It has been circulated to my learned friends. I do confirm.

ARBITRATOR JUSTICE MOSENEKE: Very well.

ADV. NONTLANTLA YINA: Justice, the reason I am handing it up, it appears on the order which is on page 62 ad 63 of the judgment.

2560 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV. NONTLANTLA YINA: He indicated that the register is ... [inaudible] to forward a copy of this judgment to the responsible senior official or head of the secretariat of order 3D, former Deputy Judge Chief Justice Moseneke in his capacity as the Arbitrator in the Life Esidimeni alternative dispute resolution proceedings being held at Emoyeni conference centre. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Hm. Yes, you may proceed. Thank you.

ADV. NONTLANTLA YINA: Thank you Justice. Good afternoon MEC Creecy.

MS. BARBARA CREECY: Good afternoon.

ADV. NONTLANTLA YINA: My name is Nontlantla Yina, I am one of the evidence leaders. I will be referring you to some parts of the judgment in so far as they are relevant to these proceedings. I noted that you were an intervening party in those proceedings. Am I correct?

MS. BARBARA CREECY: Provincial treasury, yes.

ADV. NONTLANTLA YINA: Thank you. Madam, it is common cause that by June 25752016 the Gauteng Department of Health had removed the mental health care users from Life Esidimeni, except for Baneng Facility. Am I correct?

MS. BARBARA CREECY: Sorry madam, can you repeat what you said?

ADV. NONTLANTLA YINA: It is common cause that by June 2016 the Gauteng Department of Health had removed mental health care users from Life Esidimeni 2580facilities to the various NGO's except for Baneng.

MS. BARBARA CREECY: I do not have direct knowledge of that madam, but if you say that that is the case I accept what you are saying.

ADV. NONTLANTLA YINA: Thank you. I would like to refer you to page 44 of the document that I just handed up to you. The second paragraph on that page of the 2585judgment confirms that immediately after the removal of the mental health care users from Life Esidimeni, the Department of Social Services took over the facility. Do you know anything about that?

MS. BARBARA CREECY: Yes, I am aware of that.

ADV. NONTLANTLA YINA: Yes. Now I think the point that Judge ... [inaudible] 2590wants to make there is that for instance the evidence that was led before this tribunal, was that one of the reasons the Gauteng Department of Health removed patients from Life Esidimeni is because they found it costly. You are aware of that? They found it to be expensive.

MS. BARBARA CREECY: I am aware that they have claimed that, yes.

2595 **ADV. NONTLANTLA YINA:** Yes. Now the dilemma is that on the same month that they have closed Life Esidimeni, a department from the same province takes over the facility and uses it. The question then is that how is it that it was costly for the Department of Health and then it is now not costly for the Department of Social Services. Do you wish to comment on that?

2600 **MS. BARBARA CREECY:** Madam, I cannot comment on that. I think I have said to you that I am not convinced that this process was a cost saving exercise.

ADV. NONTLANTLA YINA: Thank you, and then the second point that he makes in his judgment, in particular on page 52, if you could just go to page 52. Is that the other reason that was provided to this arbitration was that the tender procurement
2605 processes were not followed and that was the reason the Department of Health decided to terminate the contract with Life Esidimeni, yet when Social Development took over, also it did not follow the procurement policies.

MS. BARBARA CREECY: Madam, I have already explained to this inquiry that the budget for Life Esidimeni and the same budget that was later transferred to
2610 NGO's was not under the goods and services budget. It was under the budget for non profit institutions and therefore it was a transfer and that transfer would be dependant on a business plan and a memorandum of understanding that this particular institution would be providing a set of services for government. So I think we have, I have already explained at length that in the perusal that provincial
2615 treasury has done, of the management letters of the Auditor General, we found no evidence that the Auditor General was concerned about supply chain processes in relation to the tender of Life Esidimeni.

ADV. NONTLANTLA YINA: Indeed. In actual fact Dr Manamela herself stated that when the services of the NGO's who subsequently took over the mental health care users who were procured, the procurement policies were not followed and she said the reason for that is because they were non profit organisations. So the same reason then would apply to Life Esidimeni. That is what you are saying in essence.

MS. BARBARA CREECY: Yes madam.

ADV. NONTLANTLA YINA: Therefore you are discounting the fact that it was because non procurement policies were not followed, that it was terminated. You are discounting that reason.

MS. BARBARA CREECY: Madam, I could not find any evidence in the management letters from 2013, 14 up to the present time, that the Auditor General was concerned about that particular contract.

2630 **ADV NONTLANTLA YINA:** Thank you Justice, that will be all from our side.

ARBITRATOR JUSTICE MOSENEKE: Yes. But it is a bit unfair of course to refer you to a judgment which was issued hot out of the oven.

MS. BARBARA CREECY: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: It is a bit unfair, but we look at the judgment quite tightly and I think it is available before the parties. The hair raising thing there appears to be social development taking money and paying it to a not for profit organisation, and later suing to try and recover the money, and you must ask why was it necessary to use a ... [inaudible] in public funds.

MS. BARBARA CREECY: Subsequent to this incident Justice, the Gauteng
2640 provincial government has outlawed the use of ... [inaudible] because what we
understand is that the reason why there is a regulatory environment around how
NGO's can be paid, is in order to protect the public purse, and that if one is
bypassing that regulatory environment by using ... [inaudible], then obviously you
put the public purse at risk.

2645 **ARBITRATOR JUSTICE MOSENEKE:** Was this a scheme to let money flow to
these NGO's in ways that we now know could not be regulated?

MS. BARBARA CREECY: Well, I first of all I would like to read the judgment.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. BARBARA CREECY: Because I think this is an important case, but we have
2650 our own internal disciplinary process in relation to that, and that disciplinary process
is still ongoing as we speak.

ARBITRATOR JUSTICE MOSENEKE: Advocate Groenewald.

ADV. DIRK GROENEWALD: Thank you very much Justice. I do not think we are
going to be too long. Good afternoon MEC. My name is Dirk Groenewald.

2655 **MS. BARBARA CREECY:** Good afternoon.

ADV. DIRK GROENEWALD: I represent four of the family members who lost a
loved one. MEC, I would just like to confirm did I hear you correct to say that you
knew of the absorption of the Life Esidimeni staff in November 2014?

MS. BARBARA CREECY: 2015 sir.

2660 **ADV. DIRK GROENEWALD:** November 2015?

MS. BARBARA CREECY: 5th of November 2015 sir.

ADV. DIRK GROENEWALD: How did you learn about that?

MS. BARBARA CREECY: There was a meeting which I attended with premier Makhura, the MEC for health and organised labour.

2665 **ADV. DIRK GROENEWALD:** What was the purpose of that meeting?

MS. BARBARA CREECY: The purpose was to discuss the absorption of those staff.

ADV. DIRK GROENEWALD: Okay. And what were you informed? Was Life Esidimeni to be closed down?

2670 **MS. BARBARA CREECY:** I think that was the first time sir when I became fully conscious of what had transpired.

ADV. DIRK GROENEWALD: What do you mean by that madam? Were you informed that Life Esidimeni was going to be closed down, and that the Department of Health had to absorb all the staff?

2675 **MS. BARBARA CREECY:** That is correct sir.

ADV. DIRK GROENEWALD: So you and you said the premier knew on the 5th of November 2015?

MS. BARBARA CREECY: I said we attended a meeting where the absorption of the staff was discussed.

2680 **ADV. DIRK GROENEWALD:** Well madam, and the reason was because Life Esidimeni was going to be closed down.

MS. BARBARA CREECY: That is correct.

ADV. DIRK GROENEWALD: That is correct. So did you confront the MEC at that point in time and said listen here, but this is contrary to the budget that you presented to us and it is contrary to what you suggested to us that you are going to do. Did you confront her about it?

MS. BARBARA CREECY: That is not my role.

ADV. DIRK GROENEWALD: It is not your role.

MS. BARBARA CREECY: She is my colleague, I am not her boss.

2690 **ADV. DIRK GROENEWALD:** But it was not in line with the budget that she presented.

MS. BARBARA CREECY: In that meeting on the 5th of November, one still had the impression that these patients were being transferred to state institutions, and that is why the staff would be useful to the provincial department, because they would assist in those state institutions.

ADV. DIRK GROENEWALD: So are you telling us that you knew Life Esidimeni is going to be closed down in totality but all of those staff were going to be absorbed in our provincial hospitals?

MS. BARBARA CREECY: Yes sir.

2700**ADV. DIRK GROENEWALD:** And just if I understand you correctly, the Department of Health for which period were they under administration?

MS. BARBARA CREECY: It was from 2013 until 2015.

ADV. DIRK GROENEWALD: 2013 to 2015.

MS. BARBARA CREECY: Yes. In fact I think it started in 2012. I will have to get
2705you the exact dates.

ADV. DIRK GROENEWALD: Okay. Just to recap madam, you are presented with a budget by the department. At the end of 2014. They say to you that they are going to save money on a core function. That was contrary to the national policy at that time in respect of cost saving. You agree?

2710**MS. BARBARA CREECY:** They did not say, what they said to us was that they were going to provide the same service in state facilities, and they believed that because they were in-sourcing the service, they would be able to provide that service more affordably and our response to them was you had better make sure that you provide the same quality of service.

2715**ADV. DIRK GROENEWALD:** But the long and the short of the presentation was we are going to save money by doing something that is, doing something against the national policy. We are going to save money by looking at a contract with Life Esidimeni which involves a core function. That is the point.

MS. BARBARA CREECY: What they said to us sir, was that they were going to
2720 in-source that service. They did not say to us that they were abolishing a core
service.

ADV. DIRK GROENEWALD: Is it not so madam that you should have confronted
them and say listen here, we have stressed the point that our money saving
program, our cost savings, should not be focussed on core functions, and you are
2725 focussing here on a core function. Why are you doing this?

MS. BARBARA CREECY: That is precisely sir why we said to them that if you
think you can provide the same service in-house, you had better provide the same
level of service.

ARBITRATOR JUSTICE MOSENEKE: I think by now you are bound by the
2730 answer, Counsel.

ADV. DIRK GROENEWALD: Thank you very much Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. I think the answer is quite clear
actually. It is, we will do it in-house and if we do we will save 50 million.

ADV. DIRK GROENEWALD: And at the end of the next year you know that that is
2735 not going to work because you are going to have to now take over the 47 million
plus minus staff component, salary component of Life Esidimeni.

MS. BARBARA CREECY: That is correct.

ADV. DIRK GROENEWALD: That is correct. Did you at any point in time raise the
concern ... [interjects]

2740 **MS. BARBARA CREECY:** What concern sir?

ADV. DIRK GROENEWALD: Well, this concern madam, they are not following what they said they were going to do and you know about it. So all I am asking you in this period 2014 to 2015, did you raise a concern and if so, with whom did you raise that concern, to say that the Department of Life, Department of Health is now
2745 terminating the contract with Life Esidimeni, they are not following the program or the project as they explained to us.

MS. BARBARA CREECY: Sir, even in the meeting in 2015 the impression was created that these patients were going to provincial hospitals.

ADV. DIRK GROENEWALD: Yes madam, but they are now, they said to you we
2750 are only going to reduce the beds by 20 percent. That is what they told you end of 2014. Now end of 2015 they tell you we are going to close it down in totality.

MS. BARBARA CREECY: That is correct sir.

ADV. DIRK GROENEWALD: And my question is have you raised a concern to say listen here, but this was not what you tabled in 2014 to us what you are going to do.

2755 **MS. BARBARA CREECY:** Sir, in that meeting they were still creating the impression to us that these patients were being transferred to provincial hospitals.

ADV. DIRK GROENEWALD: So you did not query it madam?

MS. BARBARA CREECY: No sir.

ADV. DIRK GROENEWALD: Right. Then just with regards to the issue of
2760 accountability, you will agree with me that we do not know exactly what is the figure

now. What you have presented to us is 47 million rand that has been paid to NGO's in respect of the Gauteng marathon project.

MS. BARBARA CREECY: In terms of the NGO's that I checked over the weekend, yes sir. That, those were the amounts involved.

2765**ADV. DIRK GROENEWALD:** But we know that that is going to be much more than that, because there is still a few NGO's that we need to check and see how much they receive.

MS. BARBARA CREECY: Yes, I think it is three NGO's sir.

ADV. DIRK GROENEWALD: Would you agree that this is an irregular
2770expenditure?

MS. BARBARA CREECY: Why sir?

ADV. DIRK GROENEWALD: Well, 143 people died madam. We have paid money to people that could not provide the service and 143 people died.

ARBITRATOR JUSTICE MOSENEKE: So what is the question to the witness?

2775**ADV. DIRK GROENEWALD:** The question is Justice would she agree that it was irregular expenditure?

ARBITRATOR JUSTICE MOSENEKE: I see, thank you.

MS. BARBARA CREECY: I would agree sir that this was an irregular practice.

ADV. DIRK GROENEWALD: Irregular.

2780 **MS. BARBARA CREECY:** But in the government definition of irregular expenditure, I am not sure that you would be correct in your assertion.

ADV. DIRK GROENEWALD: Thank you very much Justice, no further questions.

ARBITRATOR JUSTICE MOSENEKE: Yes. It might have been fruitless expenditure Counsel.

2785 **ADV. DIRK GROENEWALD:** Fruitless, definitely Justice.

ARBITRATOR JUSTICE MOSENEKE: I think that is the term that you, maybe you would have got it somewhere. Money, state money used but produced no fruits. It is a fruitless expenditure. If anything it produced death. Very well. Any re-examination?

2790 **ADV TEBOGO HUTAMO:** Thank you Justice. There are no questions in re-examination.

ARBITRATOR JUSTICE MOSENEKE: MEC Creecy, I would like to take the opportunity to thank you. Take now the time, the weekend to prepare the documentation. Much of it prima facie controverts a lot of the yarns or stories we
2795 have been told about why the project was embarked upon. The numbers are very helpful, and leave us with deep discomfort, but explain some parts of our wonder about this project and why it was done, because its consequences are so dire and so shameful. But thank you for coming. It was helpful and necessary. We have a practice here where we allow every witness, as you would know by now, to say her
2800 bit at the end of her evidence. Is there anything you would like at this stage to say?

MS. BARBARA CREECY: Justice, I would like to take this opportunity if I may through you to address the families who are here. What I want to say to you is that in different capacities since 1994 I have served the Gauteng government and I have always been proud of being a member of the Gauteng provincial administration in 2805the broader sense of the word. The testimony of suffering and cruelty that I listened to in the course of these hearings has never left me, and it filled me with a very deep sense of shame that I was part of this government when this terrible tragedy happened. If as a result of my testimony today you feel that there are things which I should have done as the MEC of finance and which I did not do, I apologise to you 2810deeply and sincerely. I understand that your primary task is to mourn your loved ones and to come to terms in what way that you can with the tragedy that has befallen you. What I pray is that one day you will forgive us for whatever part we may have played. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Again, thank you MEC Creecy. We are 2815going to move on to our next witness for the day and i think it will be appropriate that we take a short break so that arrangements can be made to have the premier here and then we will continue with that hearing. The break, again thank you MEC, the break will be very brief. After which we will proceed straight ahead. We are adjourned.

2820

ADV. DIRK GROENEWALD:

30 January 2018

SESSION 4

2825 **ARBITRATOR, JUSTICE MOSENEKE:** Premier, good afternoon to you, sir.

PREMIER MANEMOLLA DAVID MAKHURA: Good afternoon, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Would you put your full names on record?

Before you are sworn in, I just want to have your full names put on record. If you would just read your name into the mic.

2830 **PREMIER MANEMOLLA DAVID MAKHURA:** Manemolla David Makhura.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Do you swear that the evidence... let me ask you firstly, in which language do you want to give your evidence?

PREMIER MANEMOLLA DAVID MAKHURA: In English is okay.

2835 **ARBITRATOR, JUSTICE MOSENEKE:** In English, yes, very well. Do you swear that the evidence you are about to give will be the truth and nothing but the truth and if so, please raise your right hand and say so help me God.

PREMIER MANEMOLLA DAVID MAKHURA: So help me God.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Counsel Hutamo.

2840 **ADV. TEBOGO HUTAMO:** Thank you Justice. Good afternoon Premier.

PREMIER MANEMOLLA DAVID MAKHURA: Good afternoon Counsel.

ADV. TEBOGO HUTAMO: You've been called before these proceedings pursuant to the recommendations of the Health Ombud in relation to the circumstances which led to the death of the mental health care patients.

2845**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. TEBOGO HUTAMO: The parties have agreed, the legal representatives have agreed the terms of reference in terms of which these proceedings have to be conducted. And in that agreement it was agreed amongst the parties that you would be coming through these proceedings as the Premier of Gauteng to offer an
2850apology to those who have been affected by the tragedy which had been uncovered in the report by the Ombud. As we understand that your role is to proffer such an apology, we will not limit you to the apology. The legal representatives may require to pose certain questions emanating from this tragedy and we take no issue with that approach. But for the purposes of these proceedings, I will allow you to deal
2855with matters which are within your knowledge with regard to tragedy which is subject to these proceedings and I will allow you to address those matters and further questions will be put to you.

PREMIER MANEMOLLA DAVID MAKHURA: Thank you, Justice. (Vernac).

ARBITRATOR, JUSTICE MOSENEKE: Let's see if we have an interpreter in the
2860Sesotho language. I think we have, Premier. Can we have the interpreter come through, please?

PREMIER MANEMOLLA DAVID MAKHURA: Justice, I can interchange ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I think you are quite entitled to.

2865**PREMIER MANEMOLLA DAVID MAKHURA:** I can interchange with English,
Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes, you are entitled to use just about any
official language.

PREMIER MANEMOLLA DAVID MAKHURA: To save time... What I was saying,
2870Justice, was that I would like to convey my greetings to the families of the deceased
and the survivors of the Life Esidimeni tragedy who are here today. I am here today
as the Premier of Gauteng Province to come here as the head of government in this
province, not only to come and offer my apology, because I am accountable to the
people of our province. I will like to apologise once more as I have done a few
2875times when we have interacted with members of the family, because an apology
can never be enough, you have suffered. We, as the Gauteng Provincial
Government, are responsible for the pain and suffering of losing 143 mental health
care patients and users in our province. So I would like to say as the head of
government in this province, since the start of this process I have myself followed
2880very closely all the witnesses who have come here and I know and I have seen that
from the point of view of where you are as families, you have heard very little about
what happened and why and a lot of blame shifting. You have heard a lot of
excuses but very little about what happened and why. And I know that until you
know what happened and why you will not be able to heal. And I want to repeat
2885that there can be no justice without the truth. So I am here to apologise once more,
but to also answer questions about what I knew and of those things that I knew,

what did I do as the head of government in the province. Because I can't pass the buck. As the head of government in the province, the buck stops with me. The constitution of our republic, section 125 vests executive authority in the province, in 2890 the premier, who must exercise that authority together with an executive council, made up of members of the executive council, MEC's. The constitution also emphasis that we are collectively and individually accountable. So whenever there is mention of accountability it can't only be collective, it must also be individual accountability. And I am here also to account as per the constitution, especially 2895 section 132 which emphasis collective and individual accountability. We know that apologising doesn't mean a lot of there is no truth. And, Justice, I hope at the end of my testimony and the testimony of MEC Chrissie, MEC Ramokgopa and Minister Motsoaledi, the families will come closer to the truth. And if there is no truth here, Justice, I will, as I have said, when we had the healing ceremony in 2017, I will work 2900 with the families to pursue the truth elsewhere and justice elsewhere. I am ready to answer if there are any questions, because the carelessness and brutality that we have seen perpetrated against the mentally ill patients in our province, does not represent in any way who we are as the executive council, it doesn't represent me either, but it happened under my watch. I am ready. I apologise because it 2905 happened under my watch. I apologise because it happened when I am the head of government here. I apologise because there are certain things that I could possibly have done. I am ready.

ARBITRATOR, JUSTICE MOSENEKE: Premier, thank you. Counsel.

ADV. TEBOGO HUTAMO: Thank you Premier. We have come to know of the
2910actual number of the deaths of the mental health care users through these
proceedings and as I have said through the recommendations through the Health
Ombud. And the objective obviously is to uncover the truth in order to assist the
families to reach or find closure in relation to the pain that they had to endure. What
the families and the country at large would like to know is, there has been mention
2915of your office or your position or yourself as the Premier with regard to the
implementation of what had come to be known as the Marathon Project. The
families are anxious, want to know exactly what it is that you have known and at
what stage. And I would like to give you that opportunity to be able to assist these
families by giving an account with reference to a timeline, explaining exactly what
2920did you know of matters relating to Life Esidimeni and ultimately the Marathon
Project, which resulted in the deaths of the patients.

PREMIER MANEMOLLA DAVID MAKHURA: Thank you, Justice. Let me start by
saying that I became the Premier of Gauteng Province on the 21st of May 2014 after
the national and general elections in our country and subsequently appointed the
2925executive council. The matters under consideration at the arbitration process came
to my attention through the premier's budget council. And I would assume if I am
right, Justice, that MEC Chrissie has canvassed fully what the role of that council is.

ARBITRATOR, JUSTICE MOSENEKE: Yes, she has.

PREMIER MANEMOLLA DAVID MAKHURA: In December... in November 2014
2930the budget council meeting, which was convened by myself at which the
Department of Health tabled its first presentation in the way our budget process

works and our budget process works essentially on the basis of the technical processes before, which culminate in the budget council which I chair. Half the time it is chaired by me and half the time it is chaired by MEC Chrissie. The budget council seeks to help our provincial treasury to put together a budget, because putting together a budget is one of the executive functions of MEC Chrissie from the Public Finance Management Act. She puts together a budget but she needs to make sure that the entire administration participates in that. The budget is put together on the basis of the priorities of our administration. Every department comes before the budget council to present its case basically and often that case is about, in addition to this, the things that have always been done, the basic minimum things that they have always been doing, if there is money and I always ask the question to departments when they come. The departments come there led by the MEC and I think it is very important, the budget council from departments, every delegation from the department is led by the MEC and in that delegation there is the HOD. And essentially it is often the senior management team of the department – and maybe this is an additional point that I would like to add. So the MEC comes, explains what they have gone through as the department and any member of the delegation can present their presentation in there. And it is in there that the department, the issues were canvassed here, especially by MEC Chrissie, the department tabled its document, which I know that the arbitration process has had an opportunity to look through that. And the subsequent budget processes and all of them, I have gone through all of them, kept coming to the same conclusion from particularly all our social departments to say to them firstly we are not cutting

2955 budgets and even if things may become difficult, we must provide core services,
basic services, and that is recorded. The PBC at all times – and I am certain that
there was no contradiction at any point, at the end always says make sure that your
constitutional functions are not compromised of providing core services. That being
the case and this 2014 budget meeting was followed by several of them coming to
2960 the same issues, same conclusion and I don't have to belay that point that every
time an issue would arise, we would go back to if you want to re-prioritise it can't be
about cutting services. And I have also publically stated this point during the state
of the province address in 2017 that that is our attitude. The matter of interest to
the arbitration process is Life Esidimeni. It is important to understand that the
2965 Department has always brought to, at the very beginning that is in 2014, there are
contracts that they want to review, that they are reviewing and they mentioned
amongst them in subsequent engagements, Selby Hospital, which is a step down
facility and Life Esidimeni. Their contracts they want to review so that they can look
at how to provide these services in a way consistent with what they think they are
2970 now capable of doing. And I want to emphasise that the issue of cost as an
overwriting issue was never the issue. To the best of my understanding, the
Department would have made this point that over time they have additional
facilities, they have additional beds, they have new hospitals. And, Justice, I can
say to you that in that reassurance not only once, a few times, they would have not
2975 emphasised cost, that there are contracts that they think they can review, because
they can provide those services at a high quality level differently. And I want to
emphasise that in the Gauteng Provincial Government, as the Premier I don't

discuss which service provider a department appoints. I discuss the priorities of this administration, its program, through the executive council, through the Executive
2980 Counsel Legotla (spelling), followed by the state of the province address, followed by the budget that says this is where we want to go. Departments go into their own internal processes, they do the contract management, the Premier's Office doesn't make decisions on contracts. Of course let me qualify this that the contracts in the Premier's Office that the DG in the office, the DG as the accounting authority and
2985 the senior management team will make those decisions. Having said that, Justice, so the public... the premier's budget council (PBC) message was not confusing at all, it was clear at all times. Followed by that, in November... on the 5th of November 2015, so apart from the PBC process, so where else did I encounter the issue of these contracts, at the meeting convened by me, attended by MEC
2990 Chrissie... So what MEC Chrissie may have said to you about the meeting with NEHAWU, she was in that meeting and the former MEC for Health, MEC Mahlangu, the HOD then who has resigned, Dr Selebano, were then senior officials in my office, were in that meeting with NEHAWU. NEHAWU wrote a letter, that letter did not come to me but... and I will explain the system in my office, when something
2995 comes into the office through correspondence that has to do with the department, the first people who are immediately notified is the relevant department. If it is a matter that has to do with the department, it is the relevant department. And subsequent to that, the administration team sends a letter of NEHAWU to the department, but the union leadership in the province also sent me a SMS asking for
3000 an urgent meeting. The letter would have gone into my office, but they sent me a

SMS and I convened the meeting. The meeting was attended by the General Secretary of NEHAWU, Mr. Socke (?), and the delegation from the province. In that meeting they tabled three issues, in the meeting of the 5th of November. The first issue that they tabled was that Selby contract has been terminated and there are 3005 workers who have lost their jobs – that's the step down facility. At that time it was terminated already and they would like to discuss that. The second issue they raised was that they know that Life Esidimeni contract will be terminated from their interaction with the department and that it is in that meeting that... so not that I didn't know about and in my state of the province address I make this point, that 3010 there was an intention on the Department to review contracts. But it is in that... that I knew, because they said there is a way that they are going to provide these services through internal capacity. In that meeting it was brought to my attention that, because they were there, that a letter has already been communicated to Life Esidimeni. It is correct that out of that discussion... of the third item the union was, 3015 the union had put on the table was the future of private health care in Gauteng. NEHAWU is, I need to declare here, Justice, that NEHAWU is a union from which I came from, I used to be a deputy general secretary of the union, so I also know their own policy positions very well, I must declare that, that it is not like it was discovered somewhere else. I was an education secretary of the union, I used to 3020 train shop stewards there and I became the deputy general secretary a few years before I became the premier. So I also know their position, their attitude to the issue of private health care institutions and public health care institutions. The key thing on that day was they, so they have said there is already a contract terminated,

there are workers who lost their jobs, there is another one that is going to be
3025terminated, workers will lose their jobs, but they also want to discuss the issue of
policy. At the beginning of the meeting I gave the opportunity to the MEC to brief us
and the MEC said that she has been engaging together with the HOD, the unions,
with regard to the intention to in-source. And I know that this word in-source has
been used a few times. The intention to bring into the public sector, because
3030according to her the Department is capable of providing quality services not only to
the mental health care users, but because Selby was a step down facility, that there
is additional capacity. And she said she and the HOD had been engaging with the
union and they basically don't understand also why the union is panicking, they
have been engaging ...intervened.

3035ADV. TEBOGO HUTAMO: Premier, from what you've just been testifying on, like
you have indicated that the meeting was on the 5th of November 2015.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. TEBOGO HUTAMO: Can you just clarify the point whether from your
evidence, you have mentioned that NEHAWU has raised concerns that through its
3040interaction with the Department, they were informed that the contract was going to
be terminated... Can you just clarify if you were fully aware that in fact the contract
was already terminated at that time?

PREMIER MANEMOLLA DAVID MAKHURA: I did say, Counsel, that it is only at
that point at the meeting of the 5th that... what I knew was the discussions that the
3045Department has brought to those previous meetings to indicate their intentions. But

the union made it very stuck, I mean the union puts things like that, a decision has already been taken, Life Esidimeni has informed us that the Department has actually served them with the letter that the contract – and that is the letter of the 29th of September or 27th of September. So it is only at that time. Justice, the 3050 conclusion of the meeting on Selby, Selby was an issue that was a done deal already. The Department had driven, bringing those patients who were in Selby into the establishment and the only key issue at that time was the remaining ones who were in Life Esidimeni. And the reassurance from the Department was that... essentially they were saying this issue of in-sourcing and coming from the unions 3055 myself, I kept asking the Department, does NEHAWU know what you are doing is to bring this service into the public sector and that you have the capacity to provide that service. The Department said yes we have been so... MEC Chrissie's right... that reassurance took place there again that we have the capacity to provide this service in-house, we will be able to. So the next important thing ...intervened.

3060 **ARBITRATOR, JUSTICE MOSENEKE:** Well the reassurance was provided by?

PREMIER MANEMOLLA DAVID MAKHURA: The MEC and the HOD.

ARBITRATOR, JUSTICE MOSENEKE: The MEC and the HOD.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, they were the most senior officials.

3065 **ARBITRATOR, JUSTICE MOSENEKE:** MEC Mahlangu and HOD?

PREMIER MANEMOLLA DAVID MAKHURA: Dr Selebano.

ARBITRATOR, JUSTICE MOSENEKE: Dr Selebano. Thank you.

PREMIER MANEMOLLA DAVID MAKHURA: They were the most senior officials representing the Department at that time.

3070**ARBITRATOR, JUSTICE MOSENEKE:** And the assurance was that they would take them to existing provincial facilities.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

PREMIER MANEMOLLA DAVID MAKHURA: And there is an addition, Justice,
3075that in some of those PBC meetings they added that they were working with the Department of Infrastructure Development to also improve some of their community health centres that they will be ready and I want to emphasise. So in the meeting with NEHAWU there was no issue about the NGOs as it was in the earlier meeting with... the very first meeting in 2014 of November. And I certainly would know that
3080NEHAWU would have taken a lot of issues with that. apart from the fact that I myself, as I have said in the state of the province address, once the issue of NGOs came, I would have worried a lot about their capacity versus not compromising service, unless if it were the existing ones, which were already providing good quality service. They would have had to reassure me at that time.

3085**ARBITRATOR, JUSTICE MOSENEKE:** Because taking mental health care to NGOs would certainly compromise jobs, wouldn't it?

PREMIER MANEMOLLA DAVID MAKHURA: Yes, especially if those hospitals were closing down, certainly. So we were... the first primary concern was about the quality continuity, what you would call business continuity in another language. The quality of service that the Department would be able to provide, that reassurance was there. And secondly in the light that they are going to move the patients, the mental health care users into different institutions, they would definitely need additional staffing. And that is how the issue of the exact number, the 300 and something... I may not be that accurate, maybe 374 or 377, especially from Life, that is where the issue of this... the possibility of absorbing those workers into the new service that is going to be provided in-house was not unrealistic. The conclusion of the meeting on that issue, I was chairing the meeting, was that the MEC and Dr Selebano would continue – because they were saying we have no problem with NEHAWU, we don't know Premier why you should be coming in – that was also a reassurance to me. We will continue to meet with NEHAWU. The issue of which ones we can absorb, will also be based on their skills and the requirements in the in-house service that we are going to provide. The conclusion of the meeting was not an instruction, it was that they have been working well, that is the assurance they gave to me, they are going to discuss to see. And then NEHAWU said they will provide the full list of those workers and they are willing to subject them to an assessment of which ones will be able to meet what requirements.

ARBITRATOR, JUSTICE MOSENEKE: We know now, Premier, that none of all that happened.

PREMIER MANEMOLLA DAVID MAKHURA: Certainly Justice.

3110 **ARBITRATOR, JUSTICE MOSENEKE:** The MEC, HOD, head of mental health care, went straight ahead after those assurances, they shutdown Life Esidimeni, the workers lost their jobs, they shunted out the patients from there in a massive hurry and deep inhumanity. So the promises they made to the premier's budget council and subsequently to you and other colleagues in the executive council were
3115 breached almost immediately after the meeting of the 5th of November.

PREMIER MANEMOLLA DAVID MAKHURA: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: And one would sit and wonder what to make of that.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, Justice, that was not to be the
3120 case.

ARBITRATOR, JUSTICE MOSENEKE: And what would have moved the MEC to go out there and do the direct opposite of in-house institutionalisation if there was the distaste for private health care, but that did not happen. People were parcelled out to NGOs.

3125 **PREMIER MANEMOLLA DAVID MAKHURA:** Justice, that is a very important question. I can move to the next timeline where I asked them that question and that is unfortunately as an after affect when people have already died. And at that time we had the Health Ombud, who I have a great deal of respect for, Prof Makgoba, that is why it was not a difficulty for me to accept his report without reservation. I
3130 have a great deal of respect for him, that is why he says... So by the 14th of September I convened a meeting with the MEC, the HOD and a team that came

from the mental health directorate. And this comes... the 14th is important because on the 13th the MEC answered a question in the legislature and that is when she said there are 36 mental health care users who have passed on in the NGOs, who 3135 have not only passed on, who have passed on in the NGOs. And I convened that meeting the following day. I wasn't in the legislature on the 13th, Justice. I do, amongst the many things I do is an outreach program to go to factories and go to communities as part of solving problems. I was in the factory in the Vaal meeting with the private sector as I always do, and my spokesperson Pumla came to me to 3140 say there has just been an answer in the legislature, the MEC says that 36 people have died. And I phoned the MEC and I said we meet tomorrow, I want to meet you with your team to explain what has happened with the death – that is the 14th of September... now 2016.

ARBITRATOR, JUSTICE MOSENEKE: And that is 2016.

3145 **PREMIER MANEMOLLA DAVID MAKHURA:** Ja and that is as an after affect.

ARBITRATOR, JUSTICE MOSENEKE: Ja.

PREMIER MANEMOLLA DAVID MAKHURA: So there are two questions I asked in the meeting. The first one is the one that you have raised. Firstly I said to them how many people have died and secondly how did they die. It was out of that 3150 discussion it is clear and this matter is canvassed well by Prof Makgoba in his report that even in that meeting – and I have a report that should... Justice, should you be interested in that report I will give it to you, where they table all the numbers of deaths and they say overtime people have... at this point they also tried to canvas

with the Health Ombud and he didn't buy the story, I must say that... That people
3155 have been dying at Life Esidimeni and the numbers have been huge even there and
the quality of service there has not been good. And then the second thing
after ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: In fact, Premier, they were saying people
die.

3160 **PREMIER MANEMOLLA DAVID MAKHURA:** Ja, it was ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: They were saying this was natural
causes ...intervened.

PREMIER MANEMOLLA DAVID MAKHURA: It is normal.

ARBITRATOR, JUSTICE MOSENEKE: It is normal.

3165 **PREMIER MANEMOLLA DAVID MAKHURA:** Yes, normal.

ARBITRATOR, JUSTICE MOSENEKE: People die and Dr Manamela came and
told us that, people die. MEC Mahlangu came and told us in her evidence in chief
people die in mental health care, almost like it was normal.

PREMIER MANEMOLLA DAVID MAKHURA: Yes that was normalising that sad
3170 situation. So they put together all these numbers. There were also professionals
there. I must say that the chairperson of the Mental Health Review Board, Me.
Masondo, was in the meeting. And I think when she came here and she said that
the premier was in those meetings of the Marathon Project, she was confusing
herself or trying to confuse you and mislead people here. That was the meeting of

3175the 14th of September I was in when I was wanting answers from them, how many
people died, how did they die, she was in the meeting. And I can say that she was
amongst the people who gave an explanation that we now know that it is not the
truth, that they were actually... So in response, because I can't go into the numbers,
they were not sure, and that record is there. In response to how did people die, and
3180I say how did they die in NGOs... If they died in the hospitals and these government
facilities, which is where you said when you are moving the services to, we would
really be worried that it means that the quality of care you promised you could
provide in-house, it was not there. But it is worse still people died in the NGOs that
now we know they were not only unready and ill-equipped, but they were also
3185unlawfully operating. So I asked them that question. And this is where the issue of
the Mental Health Care Act implementation comes for the first time, on the 14th of
September, they say they were under pressure to implement. Now there was the
story that they were under pressure from treasury on the budget and I know in all
those meetings – and MEC Chrissie has canvassed that point – that was not the
3190case. There was another story in that meeting, now they were under pressure from
National Health Department to implement what is said, what is called
deinstitutionalisation. So that is when I was asking, but in NGOs... they said but the
Mental Health Care Act doesn't allow us, we couldn't take people into our health
establishments, because people must be, because deinstitutionalisation, it will work
3195against deinstitutionalisation, which... So in the quest of the truth, the families are
not the only ones who have been trying to get the truth and it takes a bit longer to
get behind those things and then find out... So they were saying they were under

pressure and MEC Chrissie has made the point correctly that if it was the implementation of the National Government Policy, all the MECs in Gauteng come back to the executive council. If there is a national policy that we must implement which has new cost implications for us ...intervened.

ADV. TEBOGO HUTAMO: Premier, is there any way in which you could have monitored the affairs of the Department of Health in order to avert the tragedy from occurring?

3205**PREMIER MANEMOLLA DAVID MAKHURA:** Counsel, may I conclude just one part of my testimony, which is important before I come to that?

ADV. TEBOGO HUTAMO: Yes.

PREMIER MANEMOLLA DAVID MAKHURA: And to deal with this issue that for the arbitration process is important about... I'll come back to the issue that you are raising. That because deinstitutionalisation is one of the three reasons that are given. The first one was pressures, budget pressures, the second one was the AG's report. MEC Chrissie dealt with the first one and the second one competently. She didn't quite know much about this one, but... I would know because out of that interaction I said okay so they are saying... they were doing something, so I can understand that they... but... okay... MEC, why didn't you come and report? But out of that meeting, you know when you say you are implementing national policy and you are under pressure, it is a very important issue. I am the premier of only a province, so I must check. I subsequently interacted with Minister Motsoaledi, firstly over the phone, and then we subsequently met to establish... firstly to talk about

3220 what has happened regarding death and he briefed me, his immediate interventions immediately he heard about death, because he and me heard about death the same day, after the 13th on answering the questions in legislature. In my discussion with the Minister he briefed me about... the Minister was travelling, he has already made interventions just before he left. He briefed me about the appointment of the

3225 mental, the advisory mental, the ministerial advisory council that was intervening to go to the institutions. Secondly the appointment of Prof Makgoba as the Health Ombud, who was already there to investigate the matter. I must say that in the meeting the MEC did say that she had tried to ask Prof Makgoba to investigate, she said she had tried, but he was not willing and she came here and I have no way of

3230 knowing until I spoke to the Minister and the Minister said he has already appointed Prof Makgoba. So two things were done. And throughout that I would talk to the Minister and all the urgent interventions, now that we know that 36 people have died, what else can we do, Minister, and how do I make sure that the Department pays ball in the province, doesn't undermine what the Minister was trying to do.

3235 And, Justice, between that time and December the Minister and I engaged a lot, including meeting a few times, no less than three times but speaking over the phone a lot. And our first primary concern was to say, what can we do to save lives now that we know. There is an investigation underway and the Minister said this whole issue of implementation of the mental health care actually it is the 2013/2014

3240 strategic plan and policy framework said the way that the Department has gone about it, is wrong, but the Health Ombud is investigating. We will know the full answers. But he already said the way they have gone about it is wrong, but the

Health Ombud is investigating it as well. And the Health Ombud came out and he said – in fact he uses these words that they selectively interpreted and 3245 misrepresented and contravened that strategic ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Policy framework.

PREMIER MANEMOLLA DAVID MAKHURA: Policy framework and strategic plan. Now in my capacity, I am not a health care specialist nor am I a premier who has served as a MEC before. When there is something I don't understand, my second 3250 opinion on health policy is always Minister Motsoaledi. I work very closely with him, as I do with many ministers, especially if there is reference to national policy.

ARBITRATOR, JUSTICE MOSENEKE: At the meeting of the 14th of September following on the announcement in the legislature, did MEC Mahlangu say why didn't she curb all this, why didn't she stop all this? Because you were concerned, you 3255 wanted to know how did they die... how did they die and end up in NGOs. What did she say?

PREMIER MANEMOLLA DAVID MAKHURA: Justice, let me add that when I explained this, I know that at all cost I want to say that anyone who does something wrong below me, I am still fully responsible. But this was the explanation, it was not 3260 only her but Dr Selebano that they... the explanation on the NGOs was just the mental health care review and from thereon, from that meeting I ordered them, it was before I spoke to Minister Motsoaledi, that all the places where people are in these places, the NGOs which was not the original idea, let's do something so that there is no more loss of life. At that time I said let's do something urgently to make

3265sure that we remove people in inappropriate NGOs, but I hadn't spoken to Minister
Motsoaledi yet and once I spoke to him, I was satisfied that there were already
interventions and I didn't want a situation where they work this way and the
Minister's advisory council works this way. I, also from there brought in our DG, Me.
Phindile Baleni, that everything that we are going to try and do, we must also
3270coordinate with ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But ...intervened.

PREMIER MANEMOLLA DAVID MAKHURA: There was no satisfactory
explanation.

ARBITRATOR, JUSTICE MOSENEKE: From the MEC of Health?

3275**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: And from the HOD? Did they say why did
they permit what now clearly is an unattainable implementation of the decision to
shut down Life Esidimeni?

PREMIER MANEMOLLA DAVID MAKHURA: I think one of the things that...
3280everybody who came here said either they were steamrolled, they had said many
things, who came here. In the meeting I had with them, none of them said they are
afraid of the MEC, they didn't say that to me. Maybe they couldn't, I do not know.
None of them said they were being forced. In this arbitration process there was an
attempt to say somewhere else above them somebody ordered them to do this.
3285There was many effort to try and present it like that, but I met with them and asked
the questions the country and the families are asking today. Except that the only

one that I couldn't answer was on the policy and the deinstitutionalisation, which was under investigation. So the... if there was no concern about is this deinstitutionalisation the way to go or is it really being carried... if I wasn't awaiting
3290 the investigation of the Health Ombud on that issue of the deinstitutionalisation, I probably would have acted more drastically immediately. But now that there was an investigation and then there was a question mark about is there a basis about maybe were they implementing some policy of government where they... And Minister Motsoaledi will canvas this matter better here.

3295 **ARBITRATOR, JUSTICE MOSENEKE:** You know the MEC came here to all who were listening said that HOD, Dr Selebano, and head of health directorate, Dr Manamela, lied to her, they gave her false reports, they gave her assurances that the transfers were being done lawfully, humanely and no lives should be risked. Did she give you that explanation?

3300 **PREMIER MANEMOLLA DAVID MAKHURA:** Because, Justice, I was asking these questions in the presence of all of them, they were sitting in the room. And maybe fortunately there was no one who could blame the other, because they were all sitting there, the MEC, the HOD, Dr Manamela... I can say all of them who were part of this Marathon Project as defined, this disastrous and catastrophic project.
3305 They were all sitting there and none of them said to me that there is any... So there was no issue about being misled there, there was no issue of being afraid there. And I am not saying that they may have been people who were not afraid, but I was not overseas.

ARBITRATOR, JUSTICE MOSENEKE: You see the importance of what I am asking you is this, that was the first opportunity for them to explain to head of government in province what happened.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And I am trying to tie that with the explanations they gave before the arbitration.

3315**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: That would have been the first moment to tell the truth, isn't it?

PREMIER MANEMOLLA DAVID MAKHURA: Yes, certainly.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, any further questions to the Premier?

ADV. TEBOGO HUTAMO: Premier, if you can return to the question that I had posed earlier on relating to your ability or inability to have intervened in matters within a department. I say so in relation to your powers.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3325**ADV. TEBOGO HUTAMO:** With reference to the powers of the MEC and various heads of departments.

PREMIER MANEMOLLA DAVID MAKHURA: Counsel, let me return to the point that I am very conscientious about the obligation I have as the head of government that when something goes wrong in the government I lead in the end and ultimately

3330 I am responsible. I am very conscientious about that. And for that matter, all the interactions with Minister Motsoaledi, once things went wrong I knew that my head is also on the block, I knew that. And, Justice, when your head is on the block when you know why it must be on the block, you do so peacefully. I was not being forced to understand that people have died under the care of my provincial government, I
3335 must do everything at that time to clear anything to reduce the risk of those who are there and once... I have already explained that there were processes that the Minister has put in place. And I think I would like to say that there are also things that with hindsight, and I now know that there were also efforts by civil society groups that were very involved in this process to also try and reach my office. And I
3340 am saying I now know that letters would have been written and that the process in my office, which has now changed totally, that when these letters come, they get taken to engage with the relevant department by my service delivery intervention team, hoping that this department is well meaning, will respond to the issues in a well-meaning way and that the letters will include the letter written by students,
3345 which only came to my attention in January when the students... in January 2017 when the students would have written the letter before. And part of why I also take responsibility required of this office is that, yes, I could have knowing what I know, I could have intervened, including even on the Life Esidimeni contract. Although I don't make decisions on contracts, but when the consequences may be
3350 disastrous... So I want to say to the families today, when you are a head of government, there is nothing that you can say you can't do, as long as it is lawful, it is permissible in law.

ARBITRATOR, JUSTICE MOSENEKE: Yes because the noise, Premier, I am sure all counsel will put it to you very shortly once the cross-examination starts.

3355**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Was a family committee, they made representations to the MEC, to the HOD, submitted memoranda in March on headquarters of health.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3360**ARBITRATOR, JUSTICE MOSENEKE:** They appear on televisions and newspapers. There were professional bodies that wrote letters.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: But you know the evidence.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3365**ARBITRATOR, JUSTICE MOSENEKE:** You've heard most of it.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, I know now, Justice.

ARBITRATOR, JUSTICE MOSENEKE: And was all that quiet, nothing reached your office? Because it was a lot of resistance that you know now, I know now, everybody knows. None of that alerted you to say I ought to intervene.

3370**PREMIER MANEMOLLA DAVID MAKHURA:** Justice, the letters that came to my office – and I need to at this point also say that there was a process that was believed who'd lead to some amicable solution that my office was aware of, a

facilitated process by the national DG Matsoso to try... my office was aware as they were receiving that that process would lead to some amicable solution that would
3375have been announced publically and I myself did not familiarise myself with it, except that I knew later that it promised a lot of hope, but later was not honoured and unfortunately by my Department of Health it was not honoured, that process. And there was a period where those in my office who were dealing with this matter thought, no there is a solution, the parties are meeting, the national DG is facilitating
3380an amicable resolution of the matter and that was abandoned. When I keep asking why did this matter not, why was there no alarm, SOS, red alert... it was that process that was being spearheaded by DG Matsoso with the hope that there will be agreement reached between, especially Section 27 as one of the single society groups that was representing some of the family members working with the
3385committee. and that is why I say to you, because with the powers I have, even though I can't appoint service providers and I can't terminate contracts, not even in my office, I can just terminate... unless there is corruption, I must investigate and order, if the finding says it was irregular. But I could have done something and this lives with my conscience today, because at the head of government I could have
3390done something to be more responsive and bring the NGOs around the table with the Department to try and get an understanding to be reached, as I did with the union and the Department. But I want to say I don't want to excuse myself from the obligation and the responsibility. DG Matsoso tried it, it didn't work.

ARBITRATOR, JUSTICE MOSENEKE: Okay Premier. Any further questions in
3395chief?

ADV. TEBOGO HUTAMO: Indeed so, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Mm.

ADV. TEBOGO HUTAMO: Premier, you've given us the timeline of your engagement on the matter relating to Life Esidimeni. I just want to find out, was
3400 there any member of either Section 27 or any other civil society which made contact with you about issues relating to Life Esidimeni?

PREMIER MANEMOLLA DAVID MAKHURA: Counsel, firstly I have explained the communication system in my office. The only time I had direct contact with someone representing those who were really trying to avert the disaster, who
3405 worked so hard to avert the disaster that happened, was after the fact and it was with Mark Heywood from Section 27. Mark and I know each other from civil... we work with civil society on issues of xenophobia in the province and various initiatives. And Mark said to me, Premier, I was trying to reach you during this period because, you know, you and I know each other, to help us, because there
3410 was lot of toxic relations which... and we know that the Department was not willing to listen to us. And I said, Mark, how did you try to reach me and he said through your office and I said to Mark, you have my cell number and he said I don't have. And I said to Mark one of the tragedies of bureaucratic systems is that you can't find me when you represent such an important sector of civil society. And Mark and I
3415 exchanged numbers from there on and I said to Mark and that was after facts... and this was essentially not only... it was, I think, when the report was already released and I said if there is a problem, Mark, don't only talk to the people, call me. I can say, Justice, it is not only Mark that I say... people, leaders who represent

organisations, I say this is my number I know if you are sending communication you
3420 will go through the office, but please contact me directly. This is no disregard for
internal processes. So it is Mark Heywood. And from thereon wherever there are
issues Mark, whether it is on education, Mark calls me, we have a problem with
your department on this, can we either meet or can you do this. So that is the only
contact, Justice, I had. I am aware that there is a letter that says on behalf of Mark
3425 that Mark was in contact with me, but Mark and I would have the same... our
communication directly was only at that time after.

ARBITRATOR, JUSTICE MOSENEKE: Yes, there are going to be several
questions on that, I am sure counsel are waiting to draw your attention to attempts
to avert the tragedy.

3430 **PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: And the attempts were many, they were
varied, they were different classes and kinds, but I won't go there now. Counsel, do
you have any further questions?

ADV. TEBOGO HUTAMO: Indeed, Justice. Premier, you have already alluded of
3435 the interventions taken by the national director for health. I just want to ask a
question in relation to court proceedings, which were instituted against your office,
as well as the Department. It is on record that those court cases were indeed
instituted. I just want to quiz you on your knowledge of those proceedings having
been instituted.

3440 **PREMIER MANEMOLLA DAVID MAKHURA:** Justice, you know one of the things that I found out when I became the Premier of Gauteng in May 2014 is that there is a tendency for departments to cite the Premier's Office in court papers without bringing these documents to the Premier's Office. It was very rive. And one of the cases that the judgement is on today, is a case in point. And I went back to the
3445 executive council, together with the DG, put in place a system that no government department in Gauteng must go to court, even on issues that they have executive authority on in line with the constitution, for example education, health... must go to court without informing me, not just delivering court papers to the Premier's Office without... I don't want to see a member of my executive council in court on a matter
3450 that they have not discussed. I have put that to a stop. But it was a very normal abnormality, a regular practice that was occurring in the province. I don't know where else in government this happens. And the Premier Office legal team has presented us with a signed affidavit that actually those, the court papers were not delivered to my office, when the Department of Health went to court on this issue.
3455 And as I say it is a matter that we have now put to a stop. But knowing how government works now, even if you have put something to a stop, you must monitor it.

ARBITRATOR, JUSTICE MOSENEKE: Yes. Any more questions?

ADV. TEBOGO HUTAMO: Can you just clarify this point that prior to the 13th of
3460 September 2016, did you know of the Marathon Project which resulted in the transfer of patients in mass to the various NGOs?

PREMIER MANEMOLLA DAVID MAKHURA: Justice, I think I have canvassed that point adequately about the Marathon Project as defined by the Health Ombud is the transfer of people to NGOs.

3465 **ARBITRATOR, JUSTICE MOSENEKE:** Yes.

PREMIER MANEMOLLA DAVID MAKHURA: These NGOs that are unlawful. I have canvassed this point, Counsel, adequately that it was on the 14th of September 2016 when I was seeking answers that... Prior to that, no.

ADV. TEBOGO HUTAMO: You have also alluded to the fact that post the 3470 announcement by the former MEC, you had various interaction with the National Minister of Health with regards to the interventions which were taken in order to deal with the situation.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. TEBOGO HUTAMO: Pursuant to the further recommendations by the 3475 Ombud, were you satisfied that the government was being responsive to this touchy issue of people having lost their lives?

PREMIER MANEMOLLA DAVID MAKHURA: Counsel, through you Justice, when people have lost their lives and they are coming when they have lost their lives, you can't regard yourself as responsive, you are reactive. And I am very conscious that 3480 we came too late. And this is one of the things, when we had the prayer service at the SACC with not all members of the families, it is one of the things that I apologised for amongst the many things and we came too late. Once the report was concluded by – and I must say the matter of this report, investigation by Prof

Makgoba, was of great interest to me about the exact circumstances. And once
3485that report was finalised – and my last meeting with Minister Motsoaledi was just
before Christmas, again it was just to check when the report will be ready.

ARBITRATOR, JUSTICE MOSENEKE: And that was December 2016?

PREMIER MANEMOLLA DAVID MAKHURA: December 2016. The Minister and I
were working feverishly on the one hand and on the other hand I was just making
3490sure that the department cooperates with that process and there is nothing that
happens which we don't know. And it is a matter of fact now that the report, the
Health Ombud did a great job, but that report was released later in January. I got
the interim report on the 11th of January, which really revealed in a very devastating
way what the families have gone through.

3495**ARBITRATOR, JUSTICE MOSENEKE:** Why did the MEC resign?

PREMIER MANEMOLLA DAVID MAKHURA: Once I got the interim report,
Justice, I met with the MEC to say that did you get the report, she said she did and
she is going to, she is given a chance to respond, she has got bereavement in the
family, but I said this report is very-very serious, it is not just the number of people
3500who died now but the circumstances under which they died and what we as the
provincial did to contribute to cause this death. And I pressed upon her that she...
because she must respond as a matter of procedure that this report is very-very
series. And depending on what the final report would be based on her submission,
I am going to take very drastic action about it, I made it clear. She was basically
3505having a bereavement, it is a matter of fact, in that period and that is why there was

a delay. I think from there on I was also in contact with Prof Makgoba a few times. Once he sent to me the interim report, I was able to from time to time check with him and he said to me, look, there is nothing I can do. And I said when is the report being released, he said there is nothing I can do, the MEC has asked for more time, 3510 I must give her more time on that. And it is also a matter of fact I got the report, the final report now on the 31st of January, final report. I had studied that report and all its full implications and then after that... I will say even prior to... the MEC did say, as I was saying this report is very serious and I am going to take ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But she had seen it also then. I am sorry 3515 to interrupt you.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, she had seen the interim report when I interacted with her. And she said well, Premier, I am going to make my... she made it clear to me that she disagrees with the report and I said to her I don't know what disagreeing with the report means, but what the Health Ombud says 3520 here is very serious.

ARBITRATOR, JUSTICE MOSENEKE: And was she pushed or did she jump?

PREMIER MANEMOLLA DAVID MAKHURA: I know this is a question that has also come here. I want to say first that I did say to her, MEC, this is very serious. Firstly you know, it is not something that I have said once in my executive council 3525 and in this province of Gauteng, even the party I belong to, the ANC, in Gauteng Province even in the most difficult times, we have always said when something goes wrong in your line of duty you must take responsibility and that there will be

consequences. And she said, Premier, I will make my submission. If I have to resign, I will do so. And I was making it very clear to her that she should go that way or I will take a different decision if she is not convinced, but her disagreement to the report she must made her representation. And then should I say fortunately, she said to me, no Premier, I will resign if you want me to resign.

ARBITRATOR, JUSTICE MOSENEKE: Sure. And in all fairness to her, I can't recall any political principal who has resigned ...intervened.

3535 **PREMIER MANEMOLLA DAVID MAKHURA:** Not in the republic.

ARBITRATOR, JUSTICE MOSENEKE: Not in the republic for mismanagement or for improper conduct. I am trying to think... your memory might be better than mine.

PREMIER MANEMOLLA DAVID MAKHURA: Let me say, okay, Justice, in Gauteng Province, in the ANC government here and when I use... I am not boasting about it, it is just a fact, I used to be the secretary of the ANC in the province, that we have been dealing with... there are several MECs who have resigned when things went wrong. I, without boasting, I have had the honour to have been one of the people who had to talk to them. Former MEC Bob Mabaso in the period when Premier Mbaze Mashaloo (spelling) was the premier had to resign. And the second one was former MEC Humphrey Mmemezi, in the period when Premier Nomvula Mokonyane was the premier had to resign. And in a sense I think I was wrong, Justice, that she was the first. What I can't take away from her is that it didn't take a lot of persuasion. I think she said to me, Premier, if you think I must resign, I will do so. And at the time it was something understood very well with, in

3550line with what the ANC has also taken certain resolutions about this matter, when something goes wrong in your line of duty, you must consider that.

ARBITRATOR, JUSTICE MOSENEKE: Well you've claimed it for the Gauteng Province, I wonder if you can claim it for any other government.

PREMIER MANEMOLLA DAVID MAKHURA: You see, Justice, what saddens me ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Yes, it is not a light matter as you know, Premier.

PREMIER MANEMOLLA DAVID MAKHURA: It is.

ARBITRATOR, JUSTICE MOSENEKE: The importance of it is, creating a culture of accountability amongst those who yield public power, because public power is given only to do good.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Never to do bad.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3565**ARBITRATOR, JUSTICE MOSENEKE:** And when one has acted unlawfully or blatantly unethically and it is a public official, one of the ways is to fall on your sword, is to go away.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Because you don't deserve to yield that
3570public power.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, Justice, I agree with you. And
if I could say that exercise of ethical considerations is my religion, if I could say it. It
is the religion that I learned in the province of the ANC that that is important. And I
think one of the things that saddens me looking at the families here, it is passing the
3575buck. Everybody trying to say, you know, what is called an exercise in self-
preservation. And I hope what I am saying is not an exercise in self-preservation,
because I don't want to pass the buck. Where everybody says no they were not
there actually, even those who were at the head table when people died and when
they were transported to an illegal... everybody says they were not there. And to
3580evade the accountability that way shouldn't be acceptable in our democracy.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. I will invite Counsel to
continue with questions in chief.

ADV. TEBOGO HUTAMO: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Our time is running out, as you can see.

3585**ADV. TEBOGO HUTAMO:** Premier, I am going to allow the families through their
legal representatives to ask matters which are of their concern and it will be on that
note that I will end my examination in chief. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Thank you, Counsel. To the rest of
counsel, what do you want to do? Yes it is 17:30, but the day is still very young.

3590 **ADV. ADILA HASSIM:** Justice, from my part we are prepared to continue until such time is necessary.

ARBITRATOR, JUSTICE MOSENEKE: Yes. Counsel, you and Mr. Skibi, are you still here, do you have the energy to continue?

ADV. LILLA CROUSE: Justice, my learned friend will cross-examine and he is
3595 prepared to continue.

ARBITRATOR, JUSTICE MOSENEKE: He is prepared to continue.

ADV. LILLA CROUSE: Yes.

ARBITRATOR, JUSTICE MOSENEKE: He is all revved up and ready to go.

ADV. LILLA CROUSE: Yes Justice.

3600 **ARBITRATOR, JUSTICE MOSENEKE:** Very well. Adv. Groenewald?

ADV. DIRK GROENEWALD: Ready to continue, thank you, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes, I think we should. We should try and wrap this up by tomorrow. So I think we should continue. Adv. Hassim.

ADV. ADILA HASSIM: Thank you Justice. Good afternoon, Premier. My name is
3605 Adila Hassim and I appear with my colleague, Me. Steyn, and we represent the families of the deceased. I would like to thank you for making yourself available to testify before these proceedings and to answer the questions, the families have had many questions throughout the proceedings. I am also going to take it that you are familiar with most of the facts.

3610 **PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: If I refer to something that I haven't put to you, you may say so.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: Just in the interest of time.

3615 **PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: I would like to begin in 2015 with the litigation that was brought by the South African Depression and Anxiety Group, the South African Society of Psychiatrists, the South African Federation Mental Health and the association of concerned families against the Department.

3620 **PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: A lot had happened by 2015, many warnings had been made to the Department by experts including the parties to this litigation. But by December 2015 those engagements proved fruitless and it was necessary to seek the intervention of the courts to protect rights of the mental health care users. And I

3625 would like to refer you to an aspect of the record, which is a letter to your office in December, on 14 December 2015. There are a number of files next to you and if somebody can assist you to locate...

ARBITRATOR, JUSTICE MOSENEKE: Somebody will bring it to you, Premier. It will be brought to you.

3630 **ADV. ADILA HASSIM:** File 4. And it is page 1406.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: And it is a letter, I mean it is an email from a Me. Umunyana Regege (spelling) of Section 27 who is one of the attorneys representing the families.

3635 **ARBITRATOR, JUSTICE MOSENEKE:** Is it file 4, Counsel?

ADV. ADILA HASSIM: It is Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: And then the number is, 14?

ADV. ADILA HASSIM: 1406.

ARBITRATOR, JUSTICE MOSENEKE: Ja, my 1406 is... oh I see I have got it. It
3640 is an email.

ADV. ADILA HASSIM: It is an email. The subject matter is closure of Life Esidimeni.

ARBITRATOR, JUSTICE MOSENEKE: Thank you, I have got it.

ADV. ADILA HASSIM: It is dated 14 December 2015. The signatory is Me.
3645 Umunyana Regege, Attorney for Section 27 and she addresses the email to you. And it says: “Dear Honourable Premier, Mark Heywood has been in touch with you about the closure of Life Esidimeni and the concerns about the patients who are currently residing in the five facilities. We wanted to give you an update regarding our engagement with the Gauteng Department of Health. Please see attached
3650 correspondence for your information. Our clients” – and she lists the clients – “also attempted to engage with the Gauteng Department of Health in the last few weeks

and will continue to do so. Yours sincerely.” And the two letters were letters in which the concerns were detailed. So the concerns were not detailed in this email, but the attached letters detail the concerns. The letter was sent to several people in
3655your office. Did you not receive this letter?

PREMIER MANEMOLLA DAVID MAKHURA: No.

ADV. ADILA HASSIM: And why would you not have... well let me ask you this, are the people to whom it is addressed, am I correct to say they are people in your office?

3660**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: Why would they not have brought this to your attention?

PREMIER MANEMOLLA DAVID MAKHURA: Counsel, in my earlier testimony I explained that... let me first start with the mention of Mark Heywood being in touch with me. I have already explained that Mark and I have known each other before
3665and that the only direct contact with me in touch, if it means direct contact, is when this has already happened. But the letter did indeed go to my office and my office has been able to demonstrate that, as the system that I was explaining earlier on, they brought this to the attention of Department of Health, and it is quite clear to me that at that time it was a belligerent party to this process.

3670**ADV. ADILA HASSIM:** The Department of Health was belligerent.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, would not have... this is now what I know... would have not held given the experience of an attempt by the

national DG to negotiate a settlement. I am saying this is something that I really know now that they wouldn't cooperate because they were made up.

3675**ADV. ADILA HASSIM:** So I heard you saying that the system would have kicked in and it would have been sent to the Gauteng Department. But this email says we have already been in touch with the Gauteng Department.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: And there have already been attempts to engage and now
3680they are seeking to meet with you. So it is not an ordinary letter bringing something to the attention ...intervened.

PREMIER MANEMOLLA DAVID MAKHURA: I accept, Counsel.

ADV. ADILA HASSIM: So you accept that it should have been brought to your attention.

3685**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: And if a letter was now written to you, would it be brought to your attention regardless of whether there is another line department involved?

PREMIER MANEMOLLA DAVID MAKHURA: I have changed the system with DG Matsoso on this immediately after this and all letters... and if it was administrative
3690issue, it wouldn't be on... all letters from organisations especially that are making representation, complaining about a department of my government, I also get copies of those letters. They will still be actioned by the service delivery team, but I

now know it is not enough that there may be action at another level that I must involve myself. In fact I do also receive those letters directly now.

3695ARBITRATOR, JUSTICE MOSENEKE: DG Matsoso, I got a little lost there.

PREMIER MANEMOLLA DAVID MAKHURA: Oh no, DG Baleni, I am sorry.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

PREMIER MANEMOLLA DAVID MAKHURA: DG Matsoso is the National Health DG. I am sorry.

3700ARBITRATOR, JUSTICE MOSENEKE: You see, Premier, I am here and awake and I am listening to you.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, yes, Justice, thank you.

ADV. ADILA HASSIM: You see, Premier, the importance of this email is that it attached the letters, which more fully explain the need and the importance and the 3705urgency.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: Including the letter of 9 December 2015, which was a very long letter setting out all of the concerns and threatening litigation and this was a final attempt to avert litigation by approaching you.

3710PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: And what is also important is that the letter, even though resort was finally made to threaten litigation, what is important about the letter is that it says let's go together to court.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3715**ADV. ADILA HASSIM:** Let us jointly approach a court.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: Why? Because what really matters is the rights and interests of the mental health care users. So let's jointly go to a court and ask the court to appoint a curator to look after the rights of the mental health care users.

3720**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: And you were not aware of that, you say, until sometime later.

PREMIER MANEMOLLA DAVID MAKHURA: Regrettably yes and I am quite... I am deeply saddened by this and very embarrassed.

3725**ARBITRATOR, JUSTICE MOSENEKE:** Because you see, in our democratic system, Premier – I am repeating what you know very well and I know you do preach that from time to time – citizens should be able to kick up any concern.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: In other words from the bottom you should
3730be able to tell your ward councillor and move on to a councillor, move on to mayor,

mayor to premier, president... the whole system is meant to be responsive to our people.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And systems should be aligned to that so
3735that juniors don't kick around letters to some save zones and certainly it happened here.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: And had you received the letter in time, what would you have done?

3740**PREMIER MANEMOLLA DAVID MAKHURA:** My natural inclination when you have something like this, would have been to call a meeting with the department and those who have written a letter to me to try and facilitate a solution, an amicable solution on the matter depending on the nature of the issues. That is my natural inclination. I don't treat civil society, organisations as a nuisance, I think they add a
3745great value to our democracy.

ADV. ADILA HASSIM: And after this letter was sent and there was no response, court papers were filed, and there was a notice of intention to oppose that was filed by the Department, but also on your behalf – and if you wish to, we can go there, it is in file 1 page 398. It is a notice of intention to oppose that is signed by the
3750attorneys for... it says... they call themselves the attorney for the department and premier.

PREMIER MANEMOLLA DAVID MAKHURA: I am sorry, what page?

ADV. ADILA HASSIM: What page? It is page 398. Do you see it is a notice of intention to oppose?

3755**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: And if you see under the signature of the attorneys, it says first, second and fourth respondents' attorneys. First, second and fourth respondents. The first respondent was the MEC, the second respondent was the HOD (the head of department) and the fourth respondent was yourself.

3760**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: And the obvious effect of this is to say that they have instructions to oppose the litigation, including on your behalf.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: Were you aware that you were opposing this litigation?

3765**PREMIER MANEMOLLA DAVID MAKHURA:** I certainly checked with the DG in my office, DG Baleni, the office was not notified of this. Not only was I not notified but the office was not notified of this.

ADV. ADILA HASSIM: Is it customary for a department in the Gauteng Provincial Department to instruct private attorneys to oppose litigation on behalf of the
3770premier?

PREMIER MANEMOLLA DAVID MAKHURA: It is a disease that I have just been trying to cure. As I have said, Justice, it is very common, at least when I came in,

until I went to the executive council and said we must take a cabinet decision, no one can act on my behalf, go to court as a MEC or a department without me knowing or even act on behalf of the provincial government without me knowing. It was happening quite a lot.

ADV. ADILA HASSIM: Particular in the context where a threat to constitutional rights is being asserted.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3780**ADV. ADILA HASSIM:** The premier is cited, it is an expectation of the parties and indeed it is an expectation of the court that the premier would be aware of the litigation if cited and certainly if there is a notice of intention to oppose that the premier is aware of it.

PREMIER MANEMOLLA DAVID MAKHURA: So this is misrepresentation of the premier in the court.

ADV. ADILA HASSIM: And who misrepresented the premier?

PREMIER MANEMOLLA DAVID MAKHURA: I can only say it is the Department of Health. I can't think of anybody else, because they were the ones who were taking up this matter. Or am I wrong, Justice?

3790**ADV. ADILA HASSIM:** I don't know. I am interested to know how that would happen, because it is not appropriate, it would not be appropriate in government, I think, for an attorney to make a decision on opposing litigation in a matter involving fundamental rights without taking an instruction from the political principal.

PREMIER MANEMOLLA DAVID MAKHURA: I agree.

3795**ARBITRATOR, JUSTICE MOSENEKE:** In my time, Counsel, it was necessary to file a power of attorney.

ADV. ADILA HASSIM: Quite so.

ARBITRATOR, JUSTICE MOSENEKE: Is that still being done?

ADV. ADILA HASSIM: Often not.

3800**ARBITRATOR, JUSTICE MOSENEKE:** I mean if you claim to act for a party, the attorneys have to file a power of attorney. In certain actions I know it is still a requirement. In motion proceedings, is it required that you file a power of attorney authorising you to act on behalf of the party?

ADV. ADILA HASSIM: The practice now is not to do so, but if you are called upon
3805to show your power of attorney, you are required to do so.

ARBITRATOR, JUSTICE MOSENEKE: Because I am thinking here is an attorney who comes before court and says I act on behalf of the party, not just a party, head of government, and in truth and in fact it is not so, we are now told.

ADV. ADILA HASSIM: Yes.

3810**ARBITRATOR, JUSTICE MOSENEKE:** And I am wondering what would be the consequences of that.

ADV. ADILA HASSIM: Well that was my next question.

ARBITRATOR, JUSTICE MOSENEKE: Oh very well, you go there.

ADV. TEBOGO HUTAMO: Justice ...intervened.

3815 **ADV. ADILA HASSIM:** I don't know whether it... I am not sure if the question...

Sorry.

ADV. TEBOGO HUTAMO: Sorry, Justice, to intervene. I will suggest that my learned colleague move to the next question. not only has the Premier answered the question relating to his lack of knowledge of the litigation, there is also an
3820 affidavit which has been deposed and which forms part of these proceedings dealing with the notice of intention to defend which was entered on behalf of the Premier.

ARBITRATOR, JUSTICE MOSENEKE: Where do we find the affidavit? Has it already been handed in?

3825 **ADV. TEBOGO HUTAMO:** It is part of the ELAH exhibits.

ARBITRATOR, JUSTICE MOSENEKE: ELAH how much?

ADV. TEBOGO HUTAMO: Subject to correction, it should be ELAH 9. It is one of the aspects which was dealt with at the very beginning of these proceedings relating to ...intervened.

3830 **ARBITRATOR, JUSTICE MOSENEKE:** ELAH 9?

ADV. TEBOGO HUTAMO: ELAH 9.

ARBITRATOR, JUSTICE MOSENEKE: Well let's get to it Counsel, let's find ELAH 9.

ADV. ADILA HASSIM: It is not ELAH 9, Justice.

3835 **ARBITRATOR, JUSTICE MOSENEKE:** Well you say the matter has been settled through an affidavit.

ADV. TEBOGO HUTAMO: Yes. As I have said ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Just refer us to the number or find it and when you have it let us know.

3840 **ADV. ADILA HASSIM:** I am sorry, Justice, I am not sure what the meaning of saying the matter has been settled by way of affidavit. What is obvious and what is undisputed on the record is that there is a notice of intention to oppose that has been signed by the attorneys on behalf of the Premier.

ARBITRATOR, JUSTICE MOSENEKE: Well let's understand the response is that
3845 there is an affidavit which was handed up in which the Office of the Premier confirmed under oath that these proceedings had not reached his attention. So I am saying show us the affidavit and we will have a look at it.

ADV. ADILA HASSIM: Fair enough. My question goes beyond that point ...intervened.

3850 **ARBITRATOR, JUSTICE MOSENEKE:** Yes you can proceed.

ADV. ADILA HASSIM: About whether it came to the attention of the Premier. I accept the Premier is testifying under oath now and I accept when you say that it wasn't brought to your attention and we dealt with the problem of it not having been brought to your attention.

3855 **ADV. TEBOGO HUTAMO:** Justice, if I can just read it for the record.

ARBITRATOR, JUSTICE MOSENEKE: Before you read it, just give us the annexure, the ELAH number.

ADV. TEBOGO HUTAMO: I apologise for the incorrect numbering. It is in fact ELAH 22.

3860 **ARBITRATOR, JUSTICE MOSENEKE:** ELAH 22. Very well.

ADV. TEBOGO HUTAMO: As I have said, Justice, the Premier has dealt with the question relating to his knowledge of the litigation and in addition to that the affidavit has been filed to prove that the litigation was never brought to his attention.

ARBITRATOR, JUSTICE MOSENEKE: Who deposed to the affidavit?

3865 **ADV. TEBOGO HUTAMO:** The affidavit was deposed to Gerhard Hendrik (Inaudible). If I can just read for the record. "I am an adult male duly appointed in terms of the Public Service Act as the Chief Director State Law Advisory Services in the Office of the Premier. As such I am the head of the legal unit in the Office of the Premier." I am going to skip paragraph 2 and go to paragraph 3 of the affidavit

3870 which reads that: "The legal unit in the office of the Premier did not instruct Bebetsha Mahlangu Attorneys to act on behalf of the fourth respondent (Premier of Gauteng), nor did the legal unit instruct the attorneys to oppose the application on behalf of the fourth respondent under case number 2015/44348 in the South Gauteng High Court matter of the South African Depression and Anxiety Group, the 3875 Association of Concerned Families of the residents of Life Esidimeni, the South African Federation of Mental Health and the South African Society of Psychiatrists versus the Minister of the Executive Council for Health, the Head of Department of

Health Gauteng, Life Esidimeni (Pty) Ltd, the Premier of Gauteng and the Minister of Health.” The affidavit was opposed to on the 13th of October 2017.

3880 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you that helps. Counsel.

ADV. ADILA HASSIM: Justice, with respect, we moved off that point. I was entitled to ask the Premier from his own words to understand what happened. We moved off the point now. We have accepted that it wasn't brought to the attention of the Premier.

3885 **ARBITRATOR, JUSTICE MOSENEKE:** Yes.

ADV. ADILA HASSIM: My question to the Premier, if I then may move on... Premier, is that, once it came to your attention that the Department and the attorneys had made a decision without an instruction from you, what steps did you take against either the... against (1) the Department and (2) the attorneys?

3890 **PREMIER MANEMOLLA DAVID MAKHURA:** I asked... I basically instructed the DG in the Office of the Premier to ensure that we take appropriate steps, whatever steps are necessary legally to ensure that no one acts on our behalf and get away with it or misrepresent the facts. And I have already said, Me. Hassim, that I also made through the executive council that every MEC and HOD knows that they can't
3895 act on our behalf or claim to act on our behalf or even go to court and cite us or even if they don't cite us on the issues they have executive authority on in line with Section 132 and 33, even on those issues where they are not citing us, but the MECs must phone me at least. If other process are too long, phone me and say, Premier, we are going to court on this matter.

3900**ADV. ADILA HASSIM:** Did you instruct that any action should be taken or complaint laid against the attorneys purporting to represent you?

PREMIER MANEMOLLA DAVID MAKHURA: Me. Hassim, I will check the specific... I think I said to the DG what is it that we can do with such lawyers and I am not able to say to you at the moment what action has been taken. But I have
3905been upset a few times, Justice, by this issue of what I would call, with a great deal of respect to lawyers, rogue lawyers who act on our behalf without getting the instruction to do so.

ARBITRATOR, JUSTICE MOSENEKE: Which was the law firm again, remind me?

ADV. ADILA HASSIM: Bebetsha Mahlanga Incorporated. Justice, the same one
3910of the law firms that received R300 000 a day according to what we saw from the annual statements, it is the same law firm. So, the litigation ensues but settles and you've already said that you were aware that there had been an agreement between the parties and then you subsequently became aware that that agreement had been dishonoured by the Department.

3915**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: When did you become aware of serious concerns about the threat to mental health care users?

PREMIER MANEMOLLA DAVID MAKHURA: As I said, Me. Hassim, it was too late already.

3920**ADV. ADILA HASSIM:** In September 2016.

PREMIER MANEMOLLA DAVID MAKHURA: Yes. That there has been a lot of effort to try to press the button, the red alert, and also efforts to try and mediate which all did not yield any positive results.

ADV. ADILA HASSIM: You see by the time September 2016 came around and the 3925MEC answered the parliamentary questions, 85 people had died, even though the former MEC had reported 36, we now know through the Ombud's findings that it was 85. There had been a lot of media attention ...intervened.

PREMIER MANEMOLLA DAVID MAKHURA: Not 77?

ADV. ADILA HASSIM: Not by my calculation according to ELAH 57 of the 3930Ombud's report, but it is neither here nor there. My point is that it was much higher than 36.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: Much-much higher.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

3935**ADV. ADILA HASSIM:** And there have been many marches, there were marches and protests and media coverage prior to September 2016. Were you aware of those protests and the marches to the Department and to the MEC's office, the media, Check Point and those things?

PREMIER MANEMOLLA DAVID MAKHURA: Me. Hassim, I have already in 3940response to Justice, the question that Justice posed about everything, I have already said that I regret that I was not aware. And I know this is not good for

anybody in a position of leadership to say I was not aware, it is not good. It is not an acceptable excuse, it is... and it may be difficult for the families to believe it, I have interacted with them a lot of times and I understand, given what has happened 3945 and what was there around. So I have answered that question.

ADV. ADILA HASSIM: Yes, I am not going to take that question any further. Thank you. I accept your answer. The Ombud's report then... the Ombud began investigation and we know what the findings were and it resulted in the resignation of the former MEC. And the former MEC testified that she did so because she took 3950 political responsibility and that is why she resigned. I would like to know from you whether you think that the resignation is sufficient for the purposes of accountability.

PREMIER MANEMOLLA DAVID MAKHURA: Me. Hassim, I think I have already explained that I think our system of government would work better if everybody takes, are held to account and they take responsibility. And I want to say even 3955 where maybe you were not directly involved... so when she took... when I had a discussion with her and she said to me, Premier, if you think I should resign I will do so... I didn't have to fire her. Your question is, is resigning enough and that question can only be answered when the full facts are on the table, when we know what we now know. And at that point we didn't know as much as we do. And often 3960 I say that I think resigning shouldn't lead people to think that it is done, I have resigned, so what else do you want, why do you keep on asking me questions. I think if that is what anyone would think when they hold a position of authority, maybe even whether in the public or the private sector, I would call evading responsibility. So knowing... if there are issues that the MEC should still be held

3965 accountable or whatever comes out of this process, that really depends on what comes out of here and what facts are on the table. And I often say to my MECs that their actions you must take and there are others who will take other actions. It doesn't mean if you take that action that there will be no others who will think that we must go beyond that. So I would like to leave it there... leave it to this process.

3970 **ARBITRATOR, JUSTICE MOSENEKE:** That is helpful, but of course we have allowed you to answer questions quite long because of your seniority and your importance in the state structure. But if we are not to sleep here, I want to urge you to keep it a little tighter, sir.

PREMIER MANEMOLLA DAVID MAKHURA: Thank you. I thought that I was
3975 going to be very short today.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

PREMIER MANEMOLLA DAVID MAKHURA: I apologise if I was too long.

ARBITRATOR, JUSTICE MOSENEKE: No, not at all, but ultimately we will have to leave here. So I am just urging you very respectfully to keep them tight so that we
3980 can cover some ground. Thank you.

ADV. ADILA HASSIM: The arbitration has cast quite a bit of light on the systemic weaknesses in the Gauteng Department of Health.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: What steps are you taking to address those systemic
3985issues when it comes to financial management, accountability and also the culture
of fear that was spoken about by the Ombud?

PREMIER MANEMOLLA DAVID MAKHURA: It is true that one of the key issues
that comes out of the Health Ombud's report is the systemic issues and some of
those systemic issues are being dealt with by our provincial treasury. A culture of
3990not adhering to the budget... many of them are dealt with by MEC Dr Gwen
Ramokgopa, the new MEC for Health, to turn around the culture of the institution,
including basically performance issues. And I must say, Me. Hassim, that in my
four years, close to four years as the Premier, through you Justice, I have met lots
of health workers in Gauteng Province, if you like, what we call on the ground and
3995the institutions who are very committed, but the organisation is very sick. Because
if it was... the problem is not only with the mental health directorate, which has put
people through what they have been. But the organisation is very sick. So MEC Dr
Gwen Ramokgopa is leading that initiative. I have in addition to fixing that appointed
an intervention team, it is a cabinet committee, plus a team of experts now working
4000with MEC Ramokgopa and Dr Aaron Motsoaledi, the Minister, we together put
together a team of experts to help cure the department responsible for keeping our
people alive basically, because that department is sick in many ways. So I agree
with you, it is very deep institutional. And some of the issues get brought to my
attention by civil society people who are working in this area of health also will form
4005part of what we will do together.

ADV. ADILA HASSIM: Going forward.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: We also heard from the former MEC Mahlangu that decisions were collective, all the decisions that were taken were collective. What
4010 does that mean for individual accountability and who do you think ought to be held accountable for the decision?

PREMIER MANEMOLLA DAVID MAKHURA: Well, Me. Hassim, I thought that I have sufficiently canvassed this question at the beginning, but let me restate that the constitution of the republic does talk about collective and individual
4015 accountability amongst members of the executive council. So there is no way that you can leave out individual accountability. In this particular case, because what went profoundly wrong is in the Department of Health, it is an expectation from me something that it is a practice in our executive that when something goes profoundly wrong in your line of duty, you take individual accountability. In the end that
4020 individual accountability also means that me as the head of government, I can't end there, I must say... I must be able to account what is it that I did to either try and prevent the disaster, whether it is in school, in education or in any sector of government in the province. Something that goes wrong there, the first line of accountability is the executive authority responsible and then there is an accounting
4025 officer. But it keeps coming back to me as well and I have to demonstrate what I did to try and fix. And in this particular case I will probably demonstrate that, more than just what happened before the work I have done with Minister Motsoaledi and MEC Ramokgopa to implement the report of the Health Ombud without any reservation, to try and correct. It is not yet complete and that is why we are here.

4030 **ADV. ADILA HASSIM:** Thank you, Premier. The former MEC also testified that when she was cited in litigation that it doesn't mean that she reads the court papers and she is not required to read the court papers. You have already said what your view is when it comes to you. You would agree that the MEC is under an obligation to familiarise herself with litigation in which she is cited.

4035 **PREMIER MANEMOLLA DAVID MAKHURA:** How the briefings get done, Justice, is a different thing all together. The DG in the Office of the Premier briefs me about the issues that are under my purview. I may not read the full court documents, but if we are cited and it is brought to our attention, the DG comes to brief me... Premier, we have this case. So how reading or not reading is not the issue ...intervened.

4040 **ADV. ADILA HASSIM:** Yes that is not the crux of the question. The question is more about it is an obligation on the MEC to know about the litigation.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: And to give an instruction.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

4045 **ADV. ADILA HASSIM:** An informed instruction.

PREMIER MANEMOLLA DAVID MAKHURA: I agree with you.

ADV. ADILA HASSIM: The MEC also testified that at the crucial time when patients were being parcelled out ...intervened.

PREMIER MANEMOLLA DAVID MAKHURA: The former MEC.

4050 **ADV. ADILA HASSIM:** The former MEC, my apologies. The former MEC testified that at that time, critical period when patients were being parcelled out to NGOs that she was campaigning for local government elections for a period of three months. Is it permissible for a highly paid senior public official to take time out to do political campaigning?

4055 **PREMIER MANEMOLLA DAVID MAKHURA:** Me. Hassim, I will explain what I did in the midst of an election campaign and my diary will demonstrate that that I do lots of work, I go to communities, I go to meet with sectors to solve the problems whether it is in the economy or community related problem, in the midst of an election campaign. And the one in 2016 is the one in point, and that I know when I
4060 will do my campaign work, but my government obligations can never be compromised. Because in a way what is political campaigning if you are not providing the basic services that people want from their government, what is campaigning about? So it is illogical to me that you can use that as an explanation to evade accountability. I can provide my diary and you will see there are meetings
4065 I attended. But you will see how much government work in 2016 I was doing and even when I was overseas, foreign missions to go and mobilise investments. So I am saying I think politicians who think stop doing government work and go and campaign, I don't understand that type of campaign, because you must do your work. And if people are happy, they will be happy with your work – that is my
4070 school of thought.

ADV. ADILA HASSIM: Thank you. I am sorry to have to bring you back to this, but in the process of the exchange around what was happening in the December 2015

litigation and what you knew, I omitted to put something to you, so I need to return to that about when you knew about the project and the timelines and the NGOs. 4075And that is because... let me take you to... so that you can see exactly what I am talking about. It is in file 2 and it is at page 621.

ARBITRATOR, JUSTICE MOSENEKE: Obakeng, do you have file 2? Does the Premier have file 2?

ADV. ADILA HASSIM: It would appear not.

4080**PREMIER MANEMOLLA DAVID MAKHURA:** No Justice.

ADV. ADILA HASSIM: Sir, it is page 621, that's the document I want to turn to. It is the minutes of a meeting between Gauteng Department and stakeholders. It is dated 6 January 2016. And the relevant part of these minutes for the purposes of my question is at page 625. And it is the second bullet point and it says Dr Lebethe 4085noted concerns that were raised by stakeholders, but stressed that the Department had a mandate from the Premier, MEC and stakeholders to deliver on the project and on time. What do you say to that?

PREMIER MANEMOLLA DAVID MAKHURA: I am aware of this and all I can say is that maybe there may have been those who believed the Premier was aware. I 4090mean not that I was aware but maybe somebody was using my name. But I basically say there is no truth to this, as I have already demonstrated.

ADV. ADILA HASSIM: You are saying your name has been used, this is untrue.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, it is totally untrue. In my own sense is that it is possible that people want to move things by name dropping. This 4095 was brought to my attention quite recently that this is the case.

ADV. ADILA HASSIM: Thank you. With regard to the staff, you spoke about the meeting that you had on 5 November 2015 with the union and the discussion was about the absorption of about 370 of the staff of Life Esidimeni into the Department. Am I capturing it correctly?

4100 **PREMIER MANEMOLLA DAVID MAKHURA:** Including Selby. Remember I said there were three items. Selby retrenched, Life Esidimeni anticipated retrenchment and then the private hospitals.

ADV. ADILA HASSIM: So was the 370 not all Life Esidimeni staff?

PREMIER MANEMOLLA DAVID MAKHURA: It is possible that there were two 4105 different numbers for... in fact there was a number for Selby and a number for Life Esidimeni, yes, in fact there were two numbers.

ADV. ADILA HASSIM: Do you remember what the number was for Life Esidimeni?

PREMIER MANEMOLLA DAVID MAKHURA: I will be able to furnish you, Justice, with the exact number.

4110 **ARBITRATOR, JUSTICE MOSENEKE:** Do you have a number that you want to put to the Premier?

ADV. ADILA HASSIM: Well the only number that I have is the number that was referred to by MEC Chrissie which was in the same region of 360 or 370.

ARBITRATOR, JUSTICE MOSENEKE: 370, ja.

4115**ADV. ADILA HASSIM:** But what we do know is that there, according to Mr. Mosenogi's evidence was that there was about 700 health care workers that were employed at the Esidimeni facilities. And there were hundreds more staff that were employed in non-health provision services, so cleaners and gardeners and security guards. And we don't know what happened to them, isn't that so?

4120**PREMIER MANEMOLLA DAVID MAKHURA:** Yes. And I think... we don't know what has happened to all of them and the basic thing is that just reporting back on that issue, I left that matter in the capable hands at the time of both the MEC and HOD and the union representatives who said they don't need me, they were already talking to resolve the issues.

4125**ARBITRATOR, JUSTICE MOSENEKE:** And now we know that it was a big scheme and hoax because those workers lost their jobs and only a few of them were reabsorbed into existing provincial hospitals. So whether they were grounds people, workers in a variety of categories that is non-medical and those who were medically trained, many-many lost their jobs and they didn't come back to you, did
4130they, to say in fact despite the intervention of NEHAWU – who we know now were very unhappy from the evidence before us – jobs were lost.

PREMIER MANEMOLLA DAVID MAKHURA: Justice, they didn't come back to me.

ADV. ADILA HASSIM: The Department didn't come back to you, is that the they?

4135 **PREMIER MANEMOLLA DAVID MAKHURA:** Neither the Department nor the Union came back to me. And I could only safely assume until now that the matters were not as rosy as they appeared, that there I no problem, the issues will be attended to in line with procedures on how those workers could be brought into the new establishment.

4140 **ARBITRATOR, JUSTICE MOSENEKE:** Because you know, MEC, we are dealing with a massive fraud here in the sense that you presented with a plan to take mental health care users into the safe environs of existing facilities and then that doesn't happen.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

4145 **ARBITRATOR, JUSTICE MOSENEKE:** They are taken essentially to their death, to tell the truth.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And that will keep on popping up to say, my goodness, they reported so falsely. Because the MEC says Dr Selebano and Dr
4150 Manamela reported falsely. But there is no gain saying that she would have reported falsely to you, if I understand your evidence. So we actually have a disaster premised on a series of untruths and misrepresentations. I wonder how we overcome this and what is your understanding of this horrendous situation where public officials misreport in a way that leads to so many fatalities?

4155 **PREMIER MANEMOLLA DAVID MAKHURA:** I agree with you, Justice. I think it is abuse of trust that members of the public have in us, total abuse of trust.

ADV. ADILA HASSIM: And in fact, would you agree that this could have been averted if the warnings had been heeded, all the warnings by the experts, by civil society?

4160**PREMIER MANEMOLLA DAVID MAKHURA:** I agree.

ADV. ADILA HASSIM: And would you consider then implementing a programme in the provincial government to train your officials on their constitutional duties when it comes to Section 195 of the Constitution and the Bill of Rights and the importance of engagement with civil society and perhaps even within the Gauteng Department
4165of Health, how to understand their ethical role when it comes to making health decisions?

PREMIER MANEMOLLA DAVID MAKHURA: Yes, I agree and Dr Gwen Ramokgopa, the current MEC of Health in our province is very committed to rebuilding the relationship with civil society in the health sector, it is one of her
4170priorities, civil society and NGOs, given directly by me through cabinet that's something we should do, let's rebuild our relationship with NGOs and civil societies. But I have also made a commitment to a number of civil society players and leaders that not only in health care the nature of our democracy is that we can't do what the constitution says we should do, if government does not work in partnership with all
4175the organised communities, including civil society. So I am also personally very committed to rebuilding the training, ethical training of officials. It is also a program that MEC Dr Gwen Ramokgopa is prioritising. And I personally would like to make sure that what has happened with the blatant ill treatment of mental health care users and the mentally ill patients never happens again.

4180 **ADV. ADILA HASSIM:** Finally, Premier, our abiding concern as we sit here today, the end of January 2018, that we still don't know why this decision was taken. We still don't know why the decision to terminate the contract was taken and then why it had to be rushed in the way it was. All we know is that more than 143 people perished. We can't even be certain of the exact number of deaths.

4185 **PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ADV. ADILA HASSIM: Because 62 patients are still missing. They could be dead, they could be homeless, they could be in jail, we don't know. So despite the many important developments that have happened through this process, we don't have an answer to the question that we had when we started.

4190 **PREMIER MANEMOLLA DAVID MAKHURA:** I agree with you, Me. Hassim, that we still don't know and the fundamental questions I have been asking myself as well and some of them may be answered elsewhere other than through the arbitration process. Were there other motives including financial benefit as a driving motive to do what has happened. I hope the SIU, the special investigation unit, which is
4195 investigating the possible corruption on this, I hope it will provide answers. I am saying I just hope. MEC Dr Gwen Ramokgopa will, when appearing before here, deal with the issue of the 62 mental health care users who have not been accounted for. I am very certain that given the work that she has been doing on our behalf, she will be able to deal with that issue competently when she appears. But
4200 we still don't have answers.

ARBITRATOR, JUSTICE MOSENEKE: You know, Premier, in law, and I can say something about that.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: I practiced that for over 40 years.

4205**PREMIER MANEMOLLA DAVID MAKHURA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: When a citizen misrepresent facts to others and as a result of that misrepresentation harm ensues...

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: That harm may be financial and that harm
4210may take other forms, that may very well constitute fraud.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Let's bring it down to public officials.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Who knowingly and consciously convey
4215false information.

PREMIER MANEMOLLA DAVID MAKHURA: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: With the consequence that others, they or others, others act on that false representation and harm ensures.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

4220ARBITRATOR, JUSTICE MOSENEKE: A crime may very well have been committed.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Do you know of any reason why people who would lie to you, make representations, those under them act on the basis of 4225representations made and there are certain consequences that ensue that include death, why they ought not to be held liable, even criminally? You probably may not have an answer to that, but I just thought that in all fairness I must put it to you.

PREMIER MANEMOLLA DAVID MAKHURA: It is a fairly straightforward issue, Justice, that where the... it is necessary for people to face criminal consequences, 4230that their actions were criminal. I have no doubt in my mind, no slightest doubt that that should be pursued.

ARBITRATOR, JUSTICE MOSENEKE: And could any of your troops, your officials, credibly come before this arbitration and say I could not anticipate the likelihood, the probability of death if mental health care users off the (inaudible) that were kept at 4235Life Esidimeni would die if they were sent to a place with no resources, no medication, no proper hydration, no food... isn't it common sense, if you place people in that risk they might die and they have, in truth have in fact died?

PREMIER MANEMOLLA DAVID MAKHURA: It is more than common sense, Justice, if you are a health care professional. If you are a health care professional it 4240is more than common sense. It is something that is in your training that you would know that this would lead to loss of life.

ARBITRATOR, JUSTICE MOSENEKE: And some of your troops went on over a period and over time knowing where they have placed the patients, for instance some went to Siyabadinga, some went to Anchor, others went to Precious Angels
4245 and saw the conditions and yet they did not address the situation instantly until your intervention and the Minister's intervention and the task team later. What should we make of that when we have obvious constitutional and other duties to protect life?

PREMIER MANEMOLLA DAVID MAKHURA: Justice, that can lead you to lose faith in human beings as agents, as people who can act for good.

4250 **ARBITRATOR, JUSTICE MOSENEKE:** I am coming back to Counsel's question. now knowing what you know, why do you think they made, they I mean the MEC, HOD, head of the mental health directorate... why would they have persisted in a project that was so plainly likely to be murderous? What is the gain here? The gain might be political, the gain might be financial, the gain might be what? I am still
4255 struggling with that and the families are struggling with the decision and its real motive.

PREMIER MANEMOLLA DAVID MAKHURA: Yes. I am struggling with understanding the motive, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Money, was that a possible motive? Was
4260 there any evidence that may support a motive of trying to make money?

PREMIER MANEMOLLA DAVID MAKHURA: Well I hope, Justice, that the special investigation unit that is following up on the issues that have to do with what exactly happened to the money, will help shed some light on this issue, and those numbers

are not small. For NGOs that have no capacity to do anything, that have not
4265 invested in decent infrastructure, those are huge monies.

ARBITRATOR, JUSTICE MOSENEKE: In some of the schedules that we had, in
one year some NGOs end up to 13 million.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: It is a range between like 500 000 to 13
4270 million when I looked at the schedule for NGOs and that is in one year.

PREMIER MANEMOLLA DAVID MAKHURA: Yes, I particularly... when the
process of special investigation unit started as per the Health Ombud's
recommendations, I particularly ensured in my discussion with the DG and
Advocate Mothibi, the head of the SIU that the NGOs issue is very-very important
4275 about any link that must be investigated... I mean it is important to be investigated.

Is there any link between any of those NGOs and our officials in the provincial
government? We hope that we will get somewhere. As things stand at this
arbitration, the families don't have the answer, I don't have the answer as well.

ARBITRATOR, JUSTICE MOSENEKE: And some people are making the link,
4280 Premier, obviously who worked for you, like Dr Manamela issued falsified licenses
or unlawful licenses.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And Me. Jacoba (?) came and told us that
the underlying facts were all without foundation. So the law was used to allow

4285NGOs to perform conduct, activities that would allow them to be paid but in fact on an unlawful foundation. Have you worked that out? Can you shed light on that or what should we make of it? Just such blatant illegality of licenses that are totally unlawful and issued to entities unsuited to the purpose of caring for mental health care users.

4290**PREMIER MANEMOLLA DAVID MAKHURA:** Justice, I think there are times when you may think that people are, maybe they are incompetent, but their decisions cannot be explained from the point of view of incompetence. I think you can only think that these are criminally minded people. I wouldn't think that some of the things we are dealing with is just that people don't know the job. I think it is criminal
4295mindedness and that is why even beyond the arbitration process, the process of finding answers and bringing people to book must continue.

ARBITRATOR, JUSTICE MOSENEKE: Yes, Counsel.

ADV. ADILA HASSIM: Thank you Justice. Just on that point, Premier, I am not sure whether you are aware of it but Section 27 wrote a 24 page letter on 28 March
43002017 itemising the potential crimes that have been committed based on information that it had... and there are many, it is a 24 page letter ranging from murder to perjury.

PREMIER MANEMOLLA DAVID MAKHURA: Okay.

ADV. ADILA HASSIM: Have you had the chance... have you seen this... does this
4305ring a bell?

PREMIER MANEMOLLA DAVID MAKHURA: Okay, if... Justice, can you allow me for your indulgence, Section 27, Sasha has been working with us ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Who is she, I have never heard of her before?

4310 **PREMIER MANEMOLLA DAVID MAKHURA:** With the family committee and I have not... the letter has not been brought to my attention, I don't know if the DG in the province is aware of that. There is many things now that get brought directly to my attention by Section 27.

ADV. ADILA HASSIM: Yes, I am bringing it to your attention now directly.

4315 **PREMIER MANEMOLLA DAVID MAKHURA:** Okay, I would like to see the letter.

ADV. ADILA HASSIM: On behalf of Section 27.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ADV. ADILA HASSIM: It is in the record of these proceedings.

PREMIER MANEMOLLA DAVID MAKHURA: Okay.

4320 **ADV. ADILA HASSIM:** And perhaps if you could assist to follow-up on those, on the list of potential crimes.

PREMIER MANEMOLLA DAVID MAKHURA: I will look at it.

ADV. ADILA HASSIM: Thank you for appearing before these proceedings, Premier.

4325 **PREMIER MANEMOLLA DAVID MAKHURA:** Thank you.

ADV. ADILA HASSIM: Justice, I have no further questions.

ARBITRATOR, JUSTICE MOSENEKE: I am going to move to Adv. Groenewald...
no... Adv. Crouse. It is late in the day.

ADV. LILLA CROUSE: Justice, a concern has just been raised that some people
4330are using public transport and they are not going to get transport home and that is a
concern. We are ready to continue but I wonder if it is not unfair towards people
using public transport.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: And I was wondering if we couldn't start a little bit earlier
4335tomorrow morning to make up for the lost time.

ARBITRATOR, JUSTICE MOSENEKE: Yes, that is not an unreasonable
consideration, not by any means. Premier, we have tried to help you away today. It
is 18:30.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

4340**ARBITRATOR, JUSTICE MOSENEKE:** I am sure the generators here will run out
of petrol very soon.

PREMIER MANEMOLLA DAVID MAKHURA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: We have to get everybody home and come
back tomorrow. I am quite happy that we start at 9:00 if you are inclined to do that,
4345so that we can help you away. Will you be available at 9:00 tomorrow?

PREMIER MANEMOLLA DAVID MAKHURA: Justice, this is a very important process for the families and I have to set aside everything in government until I have completed my testimony. So I will be here whenever you want me.

ARBITRATOR, JUSTICE MOSENEKE: Yes. I might be a little ambitious, I am
4350coming from Pretoria, so I must be careful what I promise, whether I can fulfil that. But yes, I think... Adv. Groenewald, you've got to speak for your part.

ADV. DIRK GROENEWALD: I will be here at 9:00, Justice.

ARBITRATOR, JUSTICE MOSENEKE: You will be here at 9:00, right.

ADV. DIRK GROENEWALD: Ja.

4355**ARBITRATOR, JUSTICE MOSENEKE:** That's good. If you can then any other person coming from far... and what about the transport for family members, can they make 9:00 here? I hear somebody saying that they would have to arrange the drivers. I think let's stay with 9:30, let's not have broken noses unduly. Let's start 9:30 tomorrow and Adv. Crouse, you can start then, I think.

4360**ADV. LILLA CROUSE:** Thank you Justice. My learned friend is very eager to proceed.

ARBITRATOR, JUSTICE MOSENEKE: Oh yes, of course, no doubt about that. We are going to certainly start first thing tomorrow morning at 9:30. But of course the agreement is quite clear, we ought to finish tomorrow and we have all arranged
4365our lives around finishing the evidence tomorrow so that we can find new lives

beyond Life Esidimeni. Okay, we are then adjourned till tomorrow at 9:30. Thank you.

END OF SESSION 4