

**LIFE ESIDIMENI ARBITRATION**

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

**DATE: 19<sup>th</sup> OF JANUARY 2017.**

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**DAY SESSION 1 – 3.**

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**BEFORE ARBITRATOR, JUSTICE MOSENEKE**

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**WITNESSES:**

**MS HANNAH JACOBUS.**

**PROF AMES DHAI.**

15 **Contents**

SESSION 1.....2

SESSION 2.....100

SESSION 3.....140

19 JANUARY 2018

## SESSION 1

**ARBITRATOR JUSTICE MOSENEKE:** 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, 5“So help me God.”

**MS HANNAH JACOBUS:** So help me God.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

**CROSS-EXAMINATION BY MS LILLY CROUSE:** Morning, Justice. Thank you very much. Ms Jacobus, my name is Lilly Crouse. I appear with Mr Skibi on behalf 10of Legal Aid South Africa and we appear for the survivors of this project.

**MS HANNAH JACOBUS:** Yes, ma’am.

**MS LILLY CROUSE:** I am going to ask you some questions. I will try not to repeat what was already been said.

**MS HANNAH JACOBUS:** Okay, ma’am.

15**MS LILLY CROUSE:** Can you tell us what your qualifications are?

**MS HANNAH JACOBUS:** Um, my qualifications, I have got a diploma in various fields of nursing, the different fields of nursing, BCare and a masters.

**MS LILLY CROUSE:** Masters in?

**MS HANNAH JACOBUS:** Psychiatry.

**MS LILLY CROUSE:** And when did you get the diploma in nursing?

**MS HANNAH JACOBUS:** Um, I started my training in 1978 to 1984.

**MS LILLY CROUSE:** Were you qualified in 1984?

**MS HANNAH JACOBUS:** Ja, the difference is then...

5**MS LILLY CROUSE:** And your masters in psychiatry?

**MS HANNAH JACOBUS:** Um, if I– I cannot recall the year back now but it is about eight, nine years ago.

**MS LILLY CROUSE:** Are you registered with the Nursing Council?

**MS HANNAH JACOBUS:** Yes, Ma'am.

10**ARBITRATOR JUSTICE MOSENEKE:** Is it a diploma in psychiatric nursing or in psychiatry?

**MS HANNAH JACOBUS:** In psychiatric nursing.

**MS LILLY CROUSE:** And you have told the court yesterday you have about 30 years' experience with the Department.

15**MS HANNAH JACOBUS:** Yes, Ma'am.

**MS LILLY CROUSE:** As a nursing official and with this experience, you have been working with mental health users and people with intellectual disabilities for 30 years.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you know them to be vulnerable, no doubt.

**MS HANNAH JACOBUS:** Pardon, Counsel?

**MS LILLY CROUSE:** And you know that there are vulnerable?

**MS HANNAH JACOBUS:** Yes, Counsel.

5**MS LILLY CROUSE:** And you also know that it is probably very difficult for them to fit into society at times.

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**MS LILLY CROUSE:** And that is one of the reasons why there are so vulnerable, is that not so?

10**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you also probably know then that if they are outside without sufficient care they end up on the streets most of the times.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And that makes them more vulnerable.

15**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Or they end up in conflict with the law, which also makes them vulnerable, is not that so?

**MS HANNAH JACOBUS:** Yes, Counsel, it happens.

**MS LILLY CROUSE:** And you probably also know that is not sufficient care in society, in community to give for these people at the moment.

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**MS LILLY CROUSE:** And you know that there is stigmatation [00:03:10] involved with them.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** All of this just adds up to extremely vulnerable.

**MS HANNAH JACOBUS:** Yes, Counsel, it does.

**MS LILLY CROUSE:** And they need to be protected. You agree with that?

10 **MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** You also probably know of the move in 2007 from Life Esidimeni Baneng to Kwezi Languso, of the children Yes, Counsel.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Everybody knows about that.

15 **MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** And that children died as a result of that.

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**MS LILLY CROUSE:** And you also know when they got back to Life Esidimeni, they were undernourished and dehydrated.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** So in your mind as an official with experience as you have, you probably would have seen the red lights [intervenes]

**MS HANNAH JACOBUS:** Yes, Counsel.

5**MS HANNAH JACOBUS:** ...of this project, is not that so?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you would probably have wanted to make sure that this does not happen again as happened to the children in 2007.

**MS HANNAH JACOBUS:** Yes, Counsel.

10**MS LILLY CROUSE:** Now, it seems to me also that you knew in the start of this project that the procedure was completely wrong. You testified to it yesterday.

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**MS LILLY CROUSE:** And you also knew, as per your evidence yesterday, that the implementation thereof was completely wrong.

15**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you probably knew that people were going to die, is not that so?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And we know that people had died.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Now we also know that before people died, they probably suffered. You will agree with me.

**MS HANNAH JACOBUS:** Yes, Counsel.

5**MS LILLY CROUSE:** And you will also agree with me that the people that survived, that did not die, they also suffered.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And we cannot measure what has happened only by the people that have died. We must look at the suffering of those that survived. You  
10will agree.

**MS HANNAH JACOBUS:** Yes, I agree, Counsel.

**MS LILLY CROUSE:** You will also agree with me that the families suffered.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Now my question to you is, we are coming from the same  
15page here, what was your role in all of this?

**MS HANNAH JACOBUS:** Um, my role that was assigned to me was to look at certain [indistinct 00:05:51] hospitals that needed to be renovated to place these patients, and in some clinics or some of the areas that needs to open for extension or new NGOs that needed to be visited and [intervenes]

**MS LILLY CROUSE:** Just rephrase the question. Sorry, Mrs Jacobus, my question is in all this suffering, in all the deaths, what was your role in those?

**MS HANNAH JACOBUS:** Um, my role in the Department [intervenes]

**MS LILLY CROUSE:** No.

5**MS HANNAH JACOBUS:** Oh, in the activities [intervenes]

**MS LILLY CROUSE:** What role for you playing, now looking back, in the deaths and suffering?

**MS HANNAH JACOBUS:** My role looking in the death and suffering of the project that emanated to all these events was when the users was transferred down to  
10NGO levels, to visit as much of these NGOs and also when they where contacted me. And when I realised the intenseness of it and I– within assisted and I called other staff members in to support to get medical, more medical assistance to transport them to hospitals to say that these medication, get doctors to assist with prescription [intervenes]

15**MS LILLY CROUSE:** Yes, I hear what you are saying, Ms Jacobus, and to what you are telling us, you tried to make things better.

**MS HANNAH JACOBUS:** Yes, ma'am.

**MS LILLY CROUSE:** But I am asking you what was your role in having people dying and suffering? What blame do you take for that?

20**MS HANNAH JACOBUS:** I take responsibility because in view of my appointment as the manager for– to manage and assist the coordination of mental health NGOs,



my view of that appointment is I have to say that patients are well cared for and protected. And so in view of that, my responsibility and accountability was not implemented properly.

**MS LILLY CROUSE:** So you say you were not responsible enough in looking at the NGOs. Is that what you are saying?

**MS HANNAH JACOBUS:** Yes, ma'am, I was not responsible enough to [intervenes]

**MS LILLY CROUSE:** And that caused suffering and dying.

**MS HANNAH JACOBUS:** Yes, to combat or to assist or avoiding that to happen.

10 **MS LILLY CROUSE:** Would you agree with me that you could have done more?

**MS HANNAH JACOBUS:** When the immenseness of this impact has on me, Counsel, I realised that I did not do enough. I should have done more and in respect of all the processes that went on and organisations and [indistinct 00:08:40] and the court cases, I did not stop the process. I should have also consult more broadly to find out what more can I do and where else can I go. And I did not do that.

**MS LILLY CROUSE:** We will speak about that a little bit later. Can you just, as you sit there now, how could this whole tragedy have been avoided?

**MS HANNAH JACOBUS:** It could have been avoided by the initial process in terms of [indistinct 00:09:17] that was worked out, the strategic plan. If we could have kept to that and implement the project plan, I mean the strategic plan.

**MS LILLY CROUSE:** Are you saying better planning?

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**MS LILLY CROUSE:** Yes. I am going to just leave that there for a moment. I want to [intervenes]

5**ARBITRATOR JUSTICE MOSENEKE:** Are we talking better planning or better implementation?

**MS HANNAH JACOBUS:** Justice, better planning and implementation, both.

**ARBITRATOR JUSTICE MOSENEKE:** Continue.

**MS LILLY CROUSE:** Thank you. I want you to please go to File 1 – it is in front of  
10you – I wanted to open at page five-eight [58] of the file. Justice, that is the  
recommendations of the Ombud in Chapter 18 and I am going to refer to paragraph  
6 thereof. Have you got that in front of you?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** The page has got 18 with “Recommendations” on it. Do you  
15have that?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And I am going to refer you to paragraph 6 thereof.

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** And now this comes from the Ombud’s report.

20**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Have you seen that before?

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** Have you studied the Ombud's report?

**MS HANNAH JACOBUS:** Yes, counsel.

5**MS LILLY CROUSE:** I am gonna just refer to paragraph 6 thereof. It says that corrective disciplinary action should take place against a variety of people, and your name is in there, is not that so?

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** Then it says that the reason for this is for you and others  
10“failing to exercise your fiduciary duties and responsibilities.”

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** Do you see that there?

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** What do you understand by that?

15**MS HANNAH JACOBUS:** Our duties that we did not do more and escalate to all, even beyond our levels [indistinct - cross-talking] the Department.

**MS LILLY CROUSE:** What did you understand under “fiduciary”?

**MS HANNAH JACOBUS:** That we did not speak out, we did not act. We did not comply in terms of safeguarding the patients enough beyond what we have done.

**MS LILLY CROUSE:** So do you understand “fiduciary” to mean that he had to look after the best interest of the patients and you did not do that.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** Is that what you are trying to say?

5**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** Now it further– it continues– or maybe I should ask you do you agree with that and that you did not exercise your fiduciary duties and responsibilities?

**MS HANNAH JACOBUS:** Not well enough, counsel, or not proper enough  
10according to my assumption.

**MS LILLY CROUSE:** So what you are saying is that you did not fail completely but you failed partially. Is that what you are saying?

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** Now the next paragraph or the next sentence says, “You  
15allowed fear to cloud and override your fiduciary responsibilities.” In respect of you, how is that true?

**MS HANNAH JACOBUS:** Counsel, what– when the instructions was given and I tried to communicate my fears and concerns and what the implications could be and would be for not instituting proper procedure, for instance licensing, and the  
20implications thereof and my senior was very adamant. And afterwards, I was fearful

in terms of I did not know how to handle it and how to get through to and not to adhere to what [indistinct 00:12:53] was saying. Because [intervenes]

**MS LILLY CROUSE:** Okay, so you are saying she did not listen. You said that yesterday as well.

5**MS HANNAH JACOBUS:** Yes. Yes.

**MS LILLY CROUSE:** So your fear is not really a fear. It is more a frustration. Is that what you are saying?

**MS HANNAH JACOBUS:** Fear and frustration. There was at times wish you would say I would be subjected to disciplinary implications [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** Who is “she”?

**MS HANNAH JACOBUS:** Dr Manamela.

**MS LILLY CROUSE:** So you spoke out?

**MS HANNAH JACOBUS:** Yes, I have tried, Counsel.

**MS LILLY CROUSE:** And you say you have a fear for a disciplinary hearing.

15**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Is that what you are saying?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Is that the only fear is that you had?

**MS HANNAH JACOBUS:** Fear also in terms of what would happen to the patients and fear of some of the NGOs not really properly in place and things that is not proper. There was still some work that needed to be done and equipment that needed to be given like in terms of [indistinct - cross-talking 00:13:42] and that.

5**MS LILLY CROUSE:** Yes. Ms Jacobus, I will get back to your feeling towards the patients. I am trying to find out what was going on in your own head. What fear were there other than for a disciplinary hearing? What fear did you have for yourself?

**MS HANNAH JACOBUS:** For myself that I would not execute what needs to be  
10done in such a short space of time [indistinct - cross-talking 00:14:06] because that was [intervenes]

**MS LILLY CROUSE:** So there were pressures against you.

**MS HANNAH JACOBUS:** ...very fearful for me. It was very fearful.

**MS LILLY CROUSE:** But that is not a fear.

15**MS HANNAH JACOBUS:** Oh, okay.

**MS LILLY CROUSE:** Will I be correct to say that you did not really have a fear?

**MS HANNAH JACOBUS:** I did have a fear because I was— it a conglomeration of feelings. I just have a fear. I [intervenes]

**MS LILLY CROUSE:** You did not fear Dr Manamela because you spoke out  
20against her all the time, is not that so? You were not scared to speak out.

**MS HANNAH JACOBUS:** Yes, because I have to.

**MS LILLY CROUSE:** Yes.

**MS HANNAH JACOBUS:** I have to [indistinct - cross-talking] the patients.

**MS LILLY CROUSE:** So there was not a fear towards Dr Manamela. There was a frustration at most.

5**MS HANNAH JACOBUS:** Yes. Yes.

**MS LILLY CROUSE:** Yes. Thank you. Now the next line says that, “Fiduciary responsibility is essential for good corporate governance.” What do you understand by that sentence?

**MS HANNAH JACOBUS:** What I understand by that sentence is that in order to  
10execute proper– your duties in the workplace, you need to conduct in such a way  
that you always communicate at all levels and above levels, irrespective what is at  
hand, whether it is work or things that needs to be done beyond that [intervenes]

**MS LILLY CROUSE:** Just to put it – sorry for interrupting you, Ms Jacobus – is the  
simple answer not that you put your patients’ lives and well-being before your own?

15**MS HANNAH JACOBUS:** Yes, yes.

**MS LILLY CROUSE:** Is not that in any case what it registered nurse would do?

**MS HANNAH JACOBUS:** Yes. Yes, counsel.

**MS LILLY CROUSE:** And you did not do that.

**MS HANNAH JACOBUS:** I have tried to– when implementation, I was always  
20thinking about the patient and families.

**MS LILLY CROUSE:** We will deal with that shortly, and I will try to prove to you that you did not do that but am I correct to say that in so far as you are concerned, the Ombud was not correct to say that you were fearful of Dr Manamela? You were frustrated but you were not fearful of her.

5**MS HANNAH JACOBUS:** I do not know how to term this.

**MS HANNAH JACOBUS:** No-no, I cannot hear. Sorry, you have to [intervenes]

**MS HANNAH JACOBUS:** I say I do not know how to term that, Counsel.

**MS LILLY CROUSE:** You were not in fear of your life. You were not in fear of your job.

10**MS HANNAH JACOBUS:** Not really for my job but in terms of the implementation of the project and the patients that needed to be placed and what was going on, I was really fearful of that if one thinks what can happen and what is not really or not yet proper in place.

**MS LILLY CROUSE:** I will speak to you about that. Now the Ombud  
15recommended that you, there be a disciplinary hearing. Is that right?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you were in fact, you received a charge sheet.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** Can you remember what the charges against you were?



**MS HANNAH JACOBUS:** The charge sheet was in the fiduciary responsibility that we did not perform [intervenes]

**MS LILLY CROUSE:** And eventually, there was a disciplinary hearing.

**MS HANNAH JACOBUS:** Yes, Counsel.

5**MS LILLY CROUSE:** Is that right.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** You were represented.

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** How did you get that representative?

10**MS HANNAH JACOBUS:** We all or within the workplace[sic] I belong to PSA Union, and they were representing me.

**MS LILLY CROUSE:** Were the same p– was the same representative allocated to all the employees?

**MS HANNAH JACOBUS:** No, some belong to Hospersa and the others to I think  
15Denoso.

**MS LILLY CROUSE:** Did you ask for a representative or did your employer arrange one for you?

**MS HANNAH JACOBUS:** The employer arranged and says we should a representative.

**MS LILLY CROUSE:** Yes. And did you consult with this representative before the hearing?

**MS LILLY CROUSE:** Yes, counsel.

**MS LILLY CROUSE:** On how many occasions?

5**MS HANNAH JACOBUS:** One occasion, counsel.

**MS LILLY CROUSE:** How long before the hearing?

**MS HANNAH JACOBUS:** The morning, the day before the hearing.

**MS LILLY CROUSE:** How long was the consultation?

**MS HANNAH JACOBUS:** I think if I can think back, it was about four hours.

10**MS LILLY CROUSE:** I am going to take you to the notice to attend the disciplinary hearing and the hearing itself. It is ELAH15. ELAH – it is in the Exhibits File, number 15. Do you have it in front of you?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** It reads, “Gauteng Province” at the top and then it says:

15            “In the disciplinary inquiry between the Department of Health  
and yourself.”

Do you see that?

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** Then there is– the first page is the notice to attend the  
20disciplinary hearing and it is your name there.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** Do you see that?

**MS HANNAH JACOBUS:** Yes, counsel.

**MS LILLY CROUSE:** You have seen this document before.

5**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Now there are two charges against you. The one is:

10                   “...breach of Section 195 of the Constitution in that you failed  
to display a high level of professional ethics in that you failed  
to protect the rights and interest of the mental health care  
users by allowing their transfer when you know or ought to  
have known that it was not in their interest;  
and you failed to provide public service in a manner that is  
impartial fair and that you allowed your fear to cloud your  
professional judgment.”

15 Now we already established that you did not really have a fear. Let us just make  
sure that did you understand this charge? Was it explained to you what it meant?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** And “you failed to display a high level of ethics.” What did  
you do wrong?

20**MS HANNAH JACOBUS:** I was guilty by not performing my ethical duty as  
stipulated [intervenes]

**MS LILLY CROUSE:** Ja, we understand the big words but I want the facts. What did you do wrong?

**MS HANNAH JACOBUS:** I have done wrong by allowing pressure me or pressuring that I conducted the licensing, the licenses without the proper procedure 5by allowing the users to be placed and that is now one of the major things that I have allowed to happen.

**MS LILLY CROUSE:** You know they should not have been transferred [intervenes]

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** ...and you were instrumental in that.

10**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** Now let us just turn the page to charge 2. Charge 2 is:

“That you breached the Mental Healthcare Act in that you failed to take steps to ensure that the mental healthcare users were protected from exploitation, abuse, and degrading  
15 treatment.”

What did you understand under that?

**MS HANNAH JACOBUS:** In terms of the act, as a caring or as a professional person, I should always at all times ensure to look proper and in a respectful and a decent manner after mental healthcare users. And in all endeavours that happen  
20whether placing or the treatment, that everything is there for immediate effect to protect them.

**MS LILLY CROUSE:** Okay, give us the facts. How did you not protect them against exploitation?

**MS HANNAH JACOBUS:** Exploitation again by doing the licenses because that is one of the major things.

5**MS LILLY CROUSE:** Give us facts. How did you exploit the mental care health—the mental healthcare users?

**MS HANNAH JACOBUS:** By conducting the licences, bringing out the licences for signing.

**MS LILLY CROUSE:** How were they exploited?

10**MS HANNAH JACOBUS:** Because I feel and as I have pondering a lot throughout since then, if there the licenses what I assume, was if the licenses was not there, if I did not [indistinct 00:22:15] then the patients would not have been down referred to these facilities.

**MS LILLY CROUSE:** You did not contravene the act and committed fraud?

15**MS HANNAH JACOBUS:** I have contravened the act.

**MS LILLY CROUSE:** Yes, and abuse? How did you abuse the mental care health users, mental healthcare users, sorry?

**MS HANNAH JACOBUS:** I should have been advocated more for them. Because I did not do that and allowed the transfers to happen, I did not [intervenes]

20**MS LILLY CROUSE:** You should have made sure that they had food, water, medical treatment, is that not?

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** So that is an abuse.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** And degrading treatment?

5**MS HANNAH JACOBUS:** In the manner they were treated and transferred in huge numbers at the same time with not sufficient staffing.

**MS LILLY CROUSE:** And you were responsible for that.

**MS HANNAH JACOBUS:** Yes, I take responsibility because I was part of the project, Counsel.

10**MS LILLY CROUSE:** And there should have been medical treatment, hygiene, is that not so?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** And you– the second part of this charge is “that you failed to report the potential and the actual exploitation, abuse, and degradation.”

15**MS HANNAH JACOBUS:** In my view, Counsel, I reported prior that a potential. I have raised my concerns, and after that, whatever happened, I kept in contact with my– with Dr Manamela and reported what was going on.

**MS LILLY CROUSE:** So insofar as 2.2 is concerned you say you did report. You did not fail to report.

20**MS HANNAH JACOBUS:** Yes. Yes, I [intervenes]

**MS LILLY CROUSE:** So you are not guilty on that part.

**MS HANNAH JACOBUS:** I am guilty because maybe I should have done more or I could have done more and even escalate it to other avenues and I failed to do that.

**MS LILLY CROUSE:** Let us just move on. It says there that the hearing would have been on the 2<sup>nd</sup> of June 2017. Did you attend a hearing on the 2<sup>nd</sup> of June 2017?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** Let us turn two pages on if you will do with me. It is the outcome of the disciplinary hearing. Was any evidence presented at this hearing?

10 **MS HANNAH JACOBUS:** Evidence in terms of, Counsel?

**MS LILLY CROUSE:** Did somebody testify as you are doing today?

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** There was [intervenues]

**MS HANNAH JACOBUS:** There were no [intervenues]

15 **MS LILLY CROUSE:** There was no witness.

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** And am I correct to assume that the charges were read to you?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** And that the presiding officer asked you what you are pleading, is that so?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** And what did you say?

5**MS LILLY CROUSE:** I said I plead guilty because I was part of the project and I felt responsible [intervenues]

**MS LILLY CROUSE:** No-no, do not– just answer my question.

**MS HANNAH JACOBUS:** Oh. Guilty.

**MS LILLY CROUSE:** Did you only say, “Guilty”?

10**MS LILLY CROUSE:** No, I said I am feeling guilty and responsible and accountable for not performing my actions properly.

**MS LILLY CROUSE:** Did you plead guilty to the fist charge and to the second charge or did you plead guilty in one go for both of them?

**MS HANNAH JACOBUS:** In one go for both of them.

15**MS LILLY CROUSE:** Did anybody ask you any questions relating to your plea of guilty?

**MS HANNAH JACOBUS:** Not really, Counsel, that I can remember.

**MS LILLY CROUSE:** Nobody asked you why you are guilty?

**MS HANNAH JACOBUS:** No, not in detail.



**MS LILLY CROUSE:** And then you were summery found guilty? You were just found guilty on that?

**MS HANNAH JACOBUS:** Because as I have said, that was my answer towards the guilty part when that was [intervenes]

5**MS LILLY CROUSE:** Yes, just yes or no, ma'am. I am not [intervenes]

**MS HANNAH JACOBUS:** Yes, yes, yes, Counsel.

**MS LILLY CROUSE:** So there were no inquiry whatsoever against what you did wrong?

**MS LILLY CROUSE:** Inquiry, I do not understand the inquiry part, Counsel.

10**MS LILLY CROUSE:** The presiding officer did not ask you for details, facts why you are guilty.

**MS HANNAH JACOBUS:** No, no, Counsel, not in so much words.

**MS LILLY CROUSE:** Do you have children, ma'am?

**MS HANNAH JACOBUS:** Yes, Counsel.

15**MS LILLY CROUSE:** When a child tells you they are sorry for something, you do not allow them just to say sorry. You ask them, "What did you do wrong?" Is that not so?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** That they [indistinct 00:26:28] know.

20**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** In the criminal courts it works the same way. If there is a serious problem and somebody pleads guilty, you look for facts to see whether they are in fact guilty. You would probably not know that but I put it to you.

**MS HANNAH JACOBUS:** Okay.

5**MS LILLY CROUSE:** And in most, all disciplinary hearings where I have been, there is facts to substantiate. I find it strange that there were no facts to substantiate why you were guilty here.

**MS HANNAH JACOBUS:** Counsel, the presiding officer had quite a detailed explanation to that charge and yes, I cannot remember all the words and all the  
10details [indistinct - cross-talking 00:27:11]

**MS LILLY CROUSE:** Yes, this is his judgment. He repeated the charge sheet but there is nothing in this judgment pertaining to any facts. You see, the reason why I am asking these things, it seems to me that all the people that the Ombud said should have disciplinary hearings, there was just this en mass hearings without any  
15substance and a slap on the wrist. Do you agree with me? It seems that it was prearranged between the employer and yourselves what would happen.

**MS HANNAH JACOBUS:** No, I had no discussion or communication with my employer before the [intervenes]

**MS LILLY CROUSE:** So why did they arrange a legal representative for you? Why  
20did you not arrange that yourself?

**MS HANNAH JACOBUS:** No, the Department did not arrange the union member. They have– what the HR manager said, they will, if we want a representative, we must arrange it ourselves and we can use our unions to represent us [intervenes]

**MS LILLY CROUSE:** You said earlier that you [intervenes]

5**MS HANNAH JACOBUS:** ...but they will support us.

**MS LILLY CROUSE:** You earlier said, ma'am, that the Department arranged the legal rep for you.

**MS HANNAH JACOBUS:** I meant by [intervenes] asking.

**ARBITRATOR JUSTICE MOSENEKE:** I think, Counsel, the witness has explained  
10that the union procured counsel.

**MS LILLY CROUSE:** Thank you.

**MS HANNAH JACOBUS:** Yes, Justice.

**MS LILLY CROUSE:** Now, the sanction was ultimately that you receive a final written warning.

15**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** Is that so? What did you understand by a final written warning?

**MS HANNAH JACOBUS:** If any or similar or any other incidents occur, then the written warning will fall away and I will then be charged.

**MS LILLY CROUSE:** The sanction also say that you must counselling. Are you aware of that?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Did you receive the counselling?

5**MS HANNAH JACOBUS:** We had one session, Counsel, one group session.

**MS LILLY CROUSE:** A group session?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** All of you together?

**MS HANNAH JACOBUS:** YES, COUNSEL.

10**MS LILLY CROUSE:** And what was the session about?

**MS HANNAH JACOBUS:** What happened in the session was the psychologist was– he referred to and was getting more information what happened and how we feel, our feelings, our– how do we cope and what we currently doing to cope within our work and on a daily basis.

15**MS LILLY CROUSE:** When did you receive this counselling?

**MS HANNAH JACOBUS:** I cannot remember the date now, Counsel. It is– I think it was a few, two months after the disciplinary letters that was given out.

**MS LILLY CROUSE:** The– sorry, Justice.

**MS HANNAH JACOBUS:** Two or three months.

**ARBITRATOR JUSTICE MOSENEKE:** No, you go ahead. I think I will ...

**MS LILLY CROUSE:** The counselling was not to tell you how you should do your duties.

**MS HANNAH JACOBUS:** Excuse me [intervenes]

5**MS LILLY CROUSE:** The counselling was not aimed at showing how you should do your duties.

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** It was just on how you feeling at the moment.

**MS HANNAH JACOBUS:** And it was a information sort of gathering from us what  
10happened, who did what, that type of things. And as I have said, it was one session.

**MS LILLY CROUSE:** Was there any benefit to that?

**MS HANNAH JACOBUS:** In my opinion, no, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** How long did your hearing take,  
15disciplinary hearing? Ten minutes?

**MS HANNAH JACOBUS:** No, if I– I am trying to think now. Until two o'clock, until  
12 o'clock from the morning [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I not am talking about the consultation, the actual hearing before Advocate Tshabalala.

**MS HANNAH JACOBUS:** I think it was about– we started at eight, half past eight until one o'clock.

**ARBITRATOR JUSTICE MOSENEKE:** You see, when [intervenes]

**MS HANNAH JACOBUS:** I think that time period.

5**ARBITRATOR JUSTICE MOSENEKE:** ...Counsel was taking you through the judgement, there is not even one word of evidence.

**MS HANNAH JACOBUS:** As I am saying, Justice, it was the presiding officer and a departmental representative, one lawyer and a, ja, and another person and there was a lot of discussion and all that also between them going on.

10**ARBITRATOR JUSTICE MOSENEKE:** No, but from you, there is not even a word about what you did wrong.

**MS HANNAH JACOBUS:** When the presiding officer read, as I have said, read out what went wrong and all that, and it was then a deliberation with the– the union representative was also present within that. So there was a cross-ques–  
15discussion.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, you pleaded guilty but you were not asked any of the things that Advocate Crouse asked you this morning.

**MS HANNAH JACOBUS:** Not really. Not in that much words, Counsel, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, it is not recorded here but also, was  
20there any talk about deaths?

**MS HANNAH JACOBUS:** No, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Was there any talk about you have been asked this morning, the pain and trauma of the survivors?

**MS HANNAH JACOBUS:** Yes, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** No, in the hearing.

5**MS HANNAH JACOBUS:** Not in the hearing but in the discussion [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I am not talking about the psychologist session, at the hearing.

**MS HANNAH JACOBUS:** No. No, no, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** He records here that you pleaded guilty.

10**MS HANNAH JACOBUS:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And you were found guilty as pleaded but you are not asked about in what way have you failed to do any of these charges.

**MS HANNAH JACOBUS:** There was a short discussion but not, if I can recall back, not much in detail but there was a discussion around all these things, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** And it is the representative of your employer who suggested a warning. The record says Mr Ngwenya who appeared for the province suggested that, paragraph 9 – can you see that? – page 7. So your employer recommended that you only be given a final written warning.

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You see, Dr Gnocchi was here and said he was very unhappy with the outcome of these disciplinary hearings and that they might appeal against or review them. Have you heard anything about that?

**MS HANNAH JACOBUS:** No, Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** That is coming off very lightly, is it not, 143 people die and you admit to the things you have admitted this morning from Advocate Crouse's questions, and you get a final written warning, like you arrive late at work. What do you think, was it an appropriate punishment [intervenes] really light?

10**MS HANNAH JACOBUS:** Justice, in terms of that I cannot say but the personal and emotional impact, it is much, much worse than a final written warning. I am still suffering under that and immense remorse because what happened.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

**MS LILLY CROUSE:** Thank you. These hearing, Ms Jacobus, was all about you  
15and it was not about the harm that you have caused. Do you not agree?

**MS HANNAH JACOBUS:** YES, COUNSEL.

**MS LILLY CROUSE:** And all of you got the same sanction without any evidence, is that not so?

**MS HANNAH JACOBUS:** YES, COUNSEL.

20**MS LILLY CROUSE:** And the whole process seems to pay only lip service to the Ombud's recommendation. Nobody took this serious. Do you agree?



**MS HANNAH JACOBUS:** I do not know whether I can answer. I am not– I do not know how to answer that, Counsel.

**MS LILLY CROUSE:** Let me put it a different way. From outside it seems as if this was pre-arranged just to get a slap on the wrists and to be done with the Ombud's recommendation. Would you agree that that could be the perception from outside?

**MS HANNAH JACOBUS:** I do not think so because even prior this thing when we were dealing with what happened and with the– with our director, it was discussed really [indistinct 00:26:15] and what we should do more or be apprehensive of future endeavours [intervenes]

10**MS LILLY CROUSE:** But that is not part of the disciplinary hearing, ma'am. That is part of ongoing departmental policy. I am talking about this disciplinary hearing process. I want to put it to you that it was a wholly unsatisfactory implementation of the Ombud's recommendation. You cannot differ from that, can you?

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

15**MS LILLY CROUSE:** And I also want to put it to you that the sanction was not in line with the seriousness of the wrongs that you yourself did. Do you agree?

**MS HANNAH JACOBUS:** I understand, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** No, do you understand or do you agree?

**MS HANNAH JACOBUS:** I agree.

**MS LILLY CROUSE:** Because of what you know, Ms Jacobus, and what you knew beforehand, I want to put it to you that you were not fearful but you were rather not caring or advancing your own career. What do you say to that?

**MS HANNAH JACOBUS:** I disagree, Counsel.

5**MS LILLY CROUSE:** Okay, maybe it was too many facts on one. You agree that you have knowledge.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And that you should have acted differently.

**MS HANNAH JACOBUS:** YES, COUNSEL.

10**MS LILLY CROUSE:** You agree that you were not fearful of Dr Manamela.

**MS HANNAH JACOBUS:** I do not know how one can say fearful but I have tried. I have tried my best, Counsel, to not agreeing or to implement and to also communicate what needs to be done proper and why can [intervenes]

**MS LILLY CROUSE:** I think we can accept that you were not fearful. I think we  
15can accept that because you spoke your mind to her.

**MS HANNAH JACOBUS:** Can I respond, Counsel? I do not know. For me also, though that I speak my mind, I had to because even if you are fearful and you do not speak up, it may result also in wrong things. So I have tried to speak. I have tried to engage with others to also push that the procedure should be stopped but  
20[intervenes]

**MS LILLY CROUSE:** You said to us yesterday that you were uncomfortable.

**MS HANNAH JACOBUS:** I were?

**MS LILLY CROUSE:** That you were uncomfortable with this whole process.

**MS HANNAH JACOBUS:** Yes, from the beginning.

**MS LILLY CROUSE:** You said to us yesterday your uncomfortableness[sic] was about the licenses and the moving of the patients and the whole of the process.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Now that, coupled with what you said this morning, makes me wonder why you were part of this.

**MS HANNAH JACOBUS:** Counsel, I– from my side was because I am working, I am employed by the Department and taking my knowledge back and being employed, that the employer says you should execute at all times all the instructions of the employer.

**MS LILLY CROUSE:** Ma'am, I am going to argue at the end of all of this, that your fingerprints were all over the plans to relocate and the relocation. Do you agree with that?

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** You are trying to create the impression that you are only acting on instructions. Is that what you are trying to do?

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** So were you acting on your own?

**MS HANNAH JACOBUS:** Was I acting?

**MS LILLY CROUSE:** Were you acting on your own knowledge?

**MS HANNAH JACOBUS:** No– I do not– if you can explain my own knowledge.

**MS LILLY CROUSE:** Okay, let me try to give you an example. For instance with the linen and the person you said lost his house as a result of the linen, Dr Manamela told us that you are the one that arranged this. I am just putting it to you. You said no, Dr Manamela told you to go and do this.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And in doing this, you did not protect his best interest at all, you did not protect the patients.

**MS HANNAH JACOBUS:** Can I explain, Counsel, please? When I receive that and when I discussed with the person that was proposed to provide the linen, I went beyond that. I went and I looked at both sides: if the NGOs cannot pay, will the Department– because I have cleared that with Dr Manamela and she says the NGOs will be responsible and I sort of disagreed with that. I went to the finance section and says because no proper procedures was put in place to acquire the linen, if the Department does not pay, can we ask or can we hold the NGOs responsible from their [indistinct 00:41:22] and services portion. And so we looked at that and with the okay from the finance section, we then went ahead.

**MS LILLY CROUSE:** Ma'am, bottom line is you did not tell the supplier, "You are not going to be paid." You did not care whether he was going to get paid. You worried about your own career.

**MS HANNAH JACOBUS:** No, Counsel. I have said to him I will ensure— because she has asked me that, and he says if the NGOs cannot pay, I said to him, and I still hold to that, that I will pay him out of my own pockets.

**MS LILLY CROUSE:** Have you paid him?

**MS HANNAH JACOBUS:** Not yet because I was asked [intervenes]

**MS LILLY CROUSE:** And he has lost house.

10 **MS HANNAH JACOBUS:** I was asked just to wait a bit because the Department is looking into that.

**MS LILLY CROUSE:** And what authority do you have to negotiate on behalf of NGOs? How could you enter into a contract with him on behalf of NGOs?

**MS HANNAH JACOBUS:** It was entered into and there was a NGO meeting where 15 they were called together and also discussed with him before the finalisation, and he also had an agreement, a signing agreement between him and the NGOs that they will pay.

**MS LILLY CROUSE:** Ma'am, if one look for instance, at two parts of evidence that you are more worried about appearances than caring for the patients and the first 20 that I want to put to you is the whole saga around Siya Badinga's licensing. Now in law we work with a ring of truth to it [intervenes]

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** ...and what was testified here is that you came with a license and you placed it at the back of the door and you said no, if people check they will not see the wrong name there. That just has a ring of truth to it. What do you say  
5about that?

**MS HANNAH JACOBUS:** I still maintain and I say I did not do it, and it was not— during the visit, while we were standing there, because myself and Mrs Gordon was standing next to each other, it was not at the back of the door. It was against the wall and my eye fell onto it and I have enquired and asked who has put that there.  
10And she says she did not, she does not know. So I also have no idea [intervenes]

**MS LILLY CROUSE:** So she is just lying completely about you placing it behind the wall and you saying nobody will see it.

**MS HANNAH JACOBUS:** Yes, I have not done it, ma'am.

**MS LILLY CROUSE:** And there is also evidence that you told Dorothy Franks so  
15separate men and female because there was going to be some sort of an inspection.

**MS HANNAH JACOBUS:** No. What happened with the— no, doctor— the DGD has asked that that should be done.

**MS LILLY CROUSE:** So you did not ask Dorothy Franks to just, for the time of the  
20inspection, just separate men and women so that it does not look too bad.

**MS HANNAH JACOBUS:** I have done that in the beginning.

**MS LILLY CROUSE:** Yes.

**MS HANNAH JACOBUS:** Because it was like that and then it was done. And then more patients came and because of space, the same thing occurred again and I only observed that evening during that visit that there are again a few females in the 5male ward. And the...

**MS LILLY CROUSE:** Ms Jacobus, you know that men and women should not be in the same ward.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** And if you ask them to be separated for appearance's sake, 10you are not acting in the patients' best interest. Do you agree?

**MS HANNAH JACOBUS:** It is not just appearance, because of all the dangers attached to it and the dignity of the patient, Counsel.

**MS LILLY CROUSE:** Yes, so you should have ensured that that did not happen.

**MS HANNAH JACOBUS:** Counsel, as I am explaining, the first time when I saw 15that while we were doing rounds and visiting the NGOs to support them, I observed that and so I actually assist separating and rearranging the spaces. And then, remember, it is not just that one NGO. And then that evening, while we were walking around with all the seniors through all these NGOs, I observed again that there is few and then when I asked her, then she says there was not enough space 20in the other ward. These patients came afterwards and she was asked to take the

patients in. So I was not aware of that. So that is where the other also then came in.

**MS LILLY CROUSE:** So she is also lying to say that you said that must be changed for the inspection.

5**MS HANNAH JACOBUS:** Ja, no, not for the inspection because I did not say that prior to the inspection.

**MS LILLY CROUSE:** Why is it that everybody is lying about you?

**MS HANNAH JACOBUS:** Ma'am, I really– I did not do. I have done it before that and I was not aware of the placement of the other patients, a few that came that  
10was placed again in the ward.

**MS LILLY CROUSE:** Let me speak to you about Dorothy Franks. My learned friend for Section 27 referred you to a newspaper report [intervenens]

**MS HANNAH JACOBUS:** Yes, ma'am.

**MS LILLY CROUSE:** ...and you said you knew here because it is a small  
15community.

**MS HANNAH JACOBUS:** Yes, ma'am, I– and their family. I know her family [intervenens] and herself.

**MS LILLY CROUSE:** And you know her family.

**MS HANNAH JACOBUS:** Yes.

20**MS LILLY CROUSE:** Were you at school together.



**MS HANNAH JACOBUS:** Yes, there is only Eersterus High School [intervenes]

**MS LILLY CROUSE:** Yes, why did you not tell my learned friend that yesterday when she asked you whether you knew her from before? You said no.

**MS HANNAH JACOBUS:** I said no. I did not say no. I said yes, from the NGO because she was running this NGO in Eersterus for seven years.

**MS LILLY CROUSE:** Why did you not say to her, “We went to school together”?

**MS HANNAH JACOBUS:** We were not in one class. I did not really know her at school but her whole family, we all attended school at one place and I am not sure but I have not really had— I had contact with— her sister was two subjects above me. So I had more contact with her sister, not contact but knew her sister and not Dorothy per se.

**ARBITRATOR JUSTICE MOSENEKE:** TMI, Ma’am, TMI, too much information. What you are being asked is why did you not say you were together at school. Just deal with that.

**MS HANNAH JACOBUS:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** Time is precious. Just listen to the question and try and answer what Counsel is— there are good reasons why you are asked these things. Just provide the answer, please.

**MS HANNAH JACOBUS:** We attended one school.

**MS LILLY CROUSE:** Yes. And you also attended the same church, the Immanuel Congregational Church, according to the newspaper article.

**MS HANNAH JACOBUS:** No, I am alone in Immanuel Congregational Church.

**MS LILLY CROUSE:** Sorry?

**MS HANNAH JACOBUS:** I am alone in Immanuel Congregational Church. I have never seen her at church. She was never in our church, and I am there from small.

5**MS LILLY CROUSE:** Have you visit her at home?

**MS HANNAH JACOBUS:** Not really, Ma'am [intervenes]

**MS LILLY CROUSE:** Not really. What does that mean?

**MS HANNAH JACOBUS:** I have not visit– I do not visit her at home. I am not really friends but we have met at her aunt's place. My– her aunt and my mother  
10are– were friends. So when we at times were at, and this was way back, when we were still schooling, we will meet there [intervenes]

**MS LILLY CROUSE:** So it would be fair to say that [intervenes]

**MS HANNAH JACOBUS:** ...but very limited.

**MS LILLY CROUSE:** Sorry for interrupting you. It would be fair to say you know  
15her a little bit better than the normal NGO employee or official.

**MS HANNAH JACOBUS:** Ma'am, I will not say know a little bit better. I do not know Dorothy like in her personality or her home circumstances. I do not know her [intervenes]

**MS LILLY CROUSE:** Yes, but you know her family. You should have some feeling  
20for this woman at least to protect her.

**MS HANNAH JACOBUS:** I have feelings for all the NGO managers to protect  
[indistinct - cross-talking]

**MS LILLY CROUSE:** Okay, we will get to all of them but I am only speaking about  
Ms Franks now. Surely with your feeling of, of feeling uncomfortable with what is  
5happening, surely knowing her family, you would not have allowed her to become  
part of this abortive process.

**MS HANNAH JACOBUS:** Ma'am, the— I did not allow her to become part. It was  
an open invitation to all the different NGOs and community for the word if they are  
interested in opening an extension, and that is how she became part of the project  
10[intervenes]

**MS LILLY CROUSE:** Surely you should have said to her and the others, “Be  
careful. This process cannot work.”

**MS HANNAH JACOBUS:** The four that was at Kalafong, I have said because  
remember, with the opening of an NGO, responsibility and equipment is their  
15responsibility. So when I saw what was going on, then hence I have written those  
letters [intervenes]

**MS LILLY CROUSE:** Yes, you are not answering the question now, Ma'am.

**MS HANNAH JACOBUS:** I said to Basil [intervenes]

**MS LILLY CROUSE:** What I am saying is you know this person's family. You  
20know this process cannot work. You should have warned them saying, “This is not  
going to work. Do not start here.”

**MS HANNAH JACOBUS:** I have warned the four people at the NGO at Kalafong but not the family. I mean, I do not go to their families [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** No, the question simply put. Why did you not warn Ms Franks that this is bad territory, she should not enter it.

5**MS HANNAH JACOBUS:** Not warned but I have alert her of the circumstances, what can happen and [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Did you alert her?

**MS HANNAH JACOBUS:** Yes, that she should take cognisance of that.

**ARBITRATOR JUSTICE MOSENEKE:** So the answer is yes, you did alert her.

10**MS HANNAH JACOBUS:** Yes, yes, and not in that– in a really thorough way but in...

**MS LILLY CROUSE:** Let us test that, Ma'am. You knew she had no experience. Is that right?

**MS HANNAH JACOBUS:** Ma'am, according to my observation, when she was  
15dealing with children at the FMA and she was looking seven years, she had good reports and all her reports was in good standing.

**MS LILLY CROUSE:** You already– yes, I am just repeating what was said yesterday. You already said she did not have any experience with adults. You knew that.

20**MS HANNAH JACOBUS:** [Indistinct - cross-talking 00:50:49] she did not have experience with adults.

**MS LILLY CROUSE:** You knew she had now qualifications, is that not so?

**MS HANNAH JACOBUS:** Yes, there is no qualifications, Ma'am.

**MS LILLY CROUSE:** You knew that she had no premises.

**MS HANNAH JACOBUS:** Yes, because the premises was [intervenens]

5**MS LILLY CROUSE:** You knew– Just yes or no.

**MS HANNAH JACOBUS:** Yes, yes.

**MS LILLY CROUSE:** You knew she had no staff.

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** Yet you go on the 23<sup>rd</sup> of June 2016 and you go introduce her  
10saying she is now taking over here.

**MS HANNAH JACOBUS:** By then she had staff because they were all doing  
[intervenens]

**ARBITRATOR JUSTICE MOSENEKE:** Did you go and introduce her. Let us  
start– this is the question. Did you go and introduce her that she would be good to  
15run the NGO?

**MS HANNAH JACOBUS:** No, I did not introduce her. When I introduced her on  
the 23<sup>rd</sup> she was already there. She was introduced to the Cullinan CEO that she  
will be on the premises.

**MS LILLY CROUSE:** And then you forced her to take extra patients a few days  
20later after the 23<sup>rd</sup>. Knowing all this, did you really act in anybody's best interest?

**MS HANNAH JACOBUS:** Counsel, I was not responsible for the placement. I will become know of placements afterwards. After the 23<sup>rd</sup>'s placement, it was there that I saw it was adults and that is why I was trying to clear that.

**MS LILLY CROUSE:** Ma'am, on the first placement on the 23<sup>rd</sup> of June 2016, you 5were there. You introduced Franks, Ms Franks there to everybody.

**MS HANNAH JACOBUS:** No, she was introduced long before that because they had to prepare [intervenes]

**MS LILLY CROUSE:** Well, that is not the evidence, Ma'am.

**MS HANNAH JACOBUS:** According to my knowledge and what happened, she 10was on the premises [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** You were there on the 23<sup>rd</sup> at Cullinan, were you?

**MS HANNAH JACOBUS:** Yes, I was on the premises when she received the patients and that is why I have cleared and asked [intervenes]

15**ARBITRATOR JUSTICE MOSENEKE:** And you are one of the people who said she must take more patients, is that right?

**MS HANNAH JACOBUS:** No. No, Ombud. No, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** No? Who did that?

**MS HANNAH JACOBUS:** No.

**MS LILLY CROUSE:** You are the person that knows that she” has a licence,” if I can put that quote unquote, to 150 children.

**MS HANNAH JACOBUS:** For Kalafong Heights, yes.

**MS LILLY CROUSE:** Yes, and here you put 70 adults with her. Is that looking after her or the patients?

**MS HANNAH JACOBUS:** Not looking after her nor the patients.

**MS LILLY CROUSE:** She said that after Charity Leghotso died, Ms Franks asked you to come and assist with the ID of patients, remember that?

**MS HANNAH JACOBUS:** Yes, yes, Counsel.

10**MS LILLY CROUSE:** And she said you never came.

**MS HANNAH JACOBUS:** I could not because I was elsewhere busy and there were people that was dealing with that. So I referred and I have her in connection with the people to assist.

**MS LILLY CROUSE:** Yes. She said you said you will sort it out and you never  
15sorted this out. Is that looking after her or the patients?

**MS HANNAH JACOBUS:** No, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** What is that answer, sorry?

**MS HANNAH JACOBUS:** Excuse me, Justice?

**ARBITRATOR JUSTICE MOSENEKE:** What is the answer to Counsel’s question?

**MS HANNAH JACOBUS:** Because I have put the person in charge to assist her and the people did do that. It was admin and the district people that assist her. I could not do it myself.

**MS LILLY CROUSE:** Ma'am [intervenes]

5**MS HANNAH JACOBUS:** And then, sorry, Counsel, and then also the— what Dr Manamela said and when I discussed it with Dr Manamela, the Cullinan rehab social working was put in place also by the DGD to assist the two NGOs on the premises.

**MS LILLY CROUSE:** Ma'am, before the placement, you said to Ms Franks that she  
10can go and pick and choose her patients at Life Esidimeni.

**MS HANNAH JACOBUS:** Not pick and choose. What normally happens in the past, Life Esidimeni will asses and identify the patients and then just to make contact and to see whether— that is— was for a prerequisite from Life to meet the managers first, to speak to them to see if it would be adequate for them to give the  
15patients over to them. So that process where we could, we still continued with that.

**MS LILLY CROUSE:** Ms Franks had the idea that she could go and physically decide which patients she wanted.

**MS HANNAH JACOBUS:** No, Ma'am, it is not a decide because it was already being [intervenes]

20**MS LILLY CROUSE:** In any case, there was no proper handover of her patients, and you knew that, did you not?



**MS HANNAH JACOBUS:** Counsel, Ms Franks on the 23<sup>rd</sup> did not receive patients from Life Esidimeni. I was from Cullinan.

**MS LILLY CROUSE:** Yes, but there were no handover whatsoever.

**MS HANNAH JACOBUS:** I was there on the premises that evening when the 5patients arrived. When she phoned us, we were at Bafalong Centre. So we said we will come. So we got there round about 20 past six. When the patients eventually arrived, I was not even aware because I thought it would be children that will be transferred because what she said, the CEO said the patients will come after six, between six and half past seven when they are done. So I just assume it would 10be children. When we got there and when the patients [intervenes] there were no patients.

**ARBITRATOR JUSTICE MOSENEKE:** What question are you answering now?

**MS HANNAH JACOBUS:** The type of patients, the adults. The children were– the patients were transferred from Cullinan Centre not from Life.

15**MS LILLY CROUSE:** Yes, and there were no children transferred in any case [intervenes]

**MS HANNAH JACOBUS:** No, there were no children there.

**MS LILLY CROUSE:** ...so I am not understanding what you are saying but let me just end this part of Ms Franks. You knew her family. You knew her from before 20and yet, I can put it in no other way, you threw her under the bus.

**MS HANNAH JACOBUS:** Counsel, for me, I cannot make distinctions because I need to treat all equally [intervenes]

**MS HANNAH JACOBUS:** You treated them all the same, Ma'am [intervenes]

**MS HANNAH JACOBUS:** Yes.

5**MS LILLY CROUSE:** ...you threw all of them under the bus, knowing what would happen, is that not so?

**MS HANNAH JACOBUS:** Counsel, it was an invitation for them who are interested to open up NGOs. And as I have said, the proper process was not followed but Ms Franks did have prior knowledge what it entails to run a centre.

10**ARBITRATOR JUSTICE MOSENEKE:** But to take patients who ultimately ended up with Ms Franks and place them under her, an accountant clerk with now staff – you answered all these questions already [intervenes]

**MS HANNAH JACOBUS:** Justice [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Was it proper care to the patients?

15**MS HANNAH JACOBUS:** Justice, she had [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Forget about the NGOs. Let us talk about patients. You are a professional nurse. You have got a BCare. You have got a masters degree. You go and take somebody from a family you know, and you place patience under her care and those patients die. Do you think you are  
20blameless in all that?

**MS HANNAH JACOBUS:** No, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** What is your response? It is not, “We invited, it was an open invitation.” You are in charge and you had to follow the law. No you do not. You take somebody you know and place patients under her, when she had only looked after children in the past, and some of these patients died and 5 others survived but suffered. What do you say about that?

**MS HANNAH JACOBUS:** Counsel, she was not supposed to have adults. As the licence are reading, she was supposed to receive children. It was only with that even when the patients came that I observed it was adults.

**ARBITRATOR JUSTICE MOSENEKE:** But you were the team. You were the 10 people in charge of the project. She was a recipient and you were the person who was in charge.

**MS HANNAH JACOBUS:** In terms of placement [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** What about the patients? Why expose these patients this way? And your job is to look after the patients, is it not so? You 15 have said that many times.

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** So why did you do this?

**MS HANNAH JACOBUS:** Justice, I was not aware that sh– I was not even aware that it has been arranged that Cullinan would place the patients. I only discovered 20 that evening.

**ARBITRATOR JUSTICE MOSENEKE:** Did you do it so that Ms Franks can earn over R1 million?

**MS HANNAH JACOBUS:** No, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Have you since found out how much she earned?

**MS HANNAH JACOBUS:** Me [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** She told us already how much she earned. Have you found out?

**MS HANNAH JACOBUS:** No, Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** Why do you not know this?

**MS HANNAH JACOBUS:** Justice, because of all the [indistinct 00:59:09] of all the NGOs, I have not— because there is finance people [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Forget about the [indistinct]. She is there. She is from your neck of the woods. You placed her there and you bring patients  
15there and she earns a lot of money. Have you heard how much it was?

**MS HANNAH JACOBUS:** No, Justice. I did not enquire from her or from the finance section. Because it [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Why did you not?

**MS HANNAH JACOBUS:** It is a district competency and the district follows up and  
20deal with the finances.

**ARBITRATOR JUSTICE MOSENEKE:** And I asked you a question yesterday about the cards of deceased mental healthcare users. Did you tell her she may draw the money [intervenes]

**MS HANNAH JACOBUS:** No, Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** ...on the back of mental healthcare users?

**MS HANNAH JACOBUS:** No, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Where did she get the cards from?

**MS HANNAH JACOBUS:** Normally when 24-hour centres open, there was– there is a understanding between Health and Sassa that the patients, the families for 24-10hours will not continue drawing. It will cease and the money will go over to NGOs to support the NGOs.

**ARBITRATOR JUSTICE MOSENEKE:** Did she tell you that she withdrew money of deceased mental healthcare users?

**MS HANNAH JACOBUS:** No, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** Why not?

**MS HANNAH JACOBUS:** Because [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** You are her immediate superior. You told Advocate Hassim yesterday Siya Badinga and the other place were under your charge. Why did you not know this?

**MS HANNAH JACOBUS:** It was up to Justice, I was there up to the, I think the 29<sup>th</sup> and then I was removed from the Cullinan area. I did not go or have any contact. Somebody else was then placed, Dr Lunkwane was placed there to look after them. I was not anymore responsible at that side anymore.

5**ARBITRATOR JUSTICE MOSENEKE:** And going back to the question that Counsel asked you about men and women and you required them to be separated, it is just beyond me, Ms Jacobus. Somebody like you, trained us you are, with a masters degree in psychiatry, you go and sit and look at the devastation in treatment of patients and you do nothing about that.

10**MS HANNAH JACOBUS:** Can I answer, Justice?

**ARBITRATOR JUSTICE MOSENEKE:** Yes, you must answer.

**MS HANNAH JACOBUS:** I did. I did do something be— prior to that, we did separate and we have done that and then, when we were visiting that evening, when the seniors visit and we came there, there was a mixture again in the one  
15ward. And when she was enquired by the senior managers what is happening, why this is so, then she answered that she received more patients a few days apparently before that and she did not have enough space to put them.

**ARBITRATOR JUSTICE MOSENEKE:** Did you ever, even once, asked consent  
form these patients or from their family members to take them to Cullinan and to  
20move them around the way you people did? Did you just once give a thought to these patients?

**MS HANNAH JACOBUS:** Counsel, there was— as I have said, there they were being divided into different groups and there was the two officials [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I am asking you, you were deputy director. You, did you ever give a thought to that?

5**MS HANNAH JACOBUS:** I was dealing with a few patients at— with a few family members, not many. If I can recall it is about six family members that I directly dealt with, who contacted me and who I met [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** [Indistinct - cross-talking 01:02:37]

**MS HANNAH JACOBUS:** No, I did not with all the members.

10**ARBITRATOR JUSTICE MOSENEKE:** Had you done your job, would these people who were at, let us start for a moment, at Siya Badinga, would they have died if you had done your job, make sure that it is a proper NGO, it is properly licensed, and it is properly resourced and the patients there are being medicated the proper way? All these questions have been asked to you already [intervenes]

15**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** ...I am moving to a conclusion: if those things had happened and you had done the job for which you are paid every month, would these patients have died or those who have survived had suffered?

**MS HANNAH JACOBUS:** No, Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Why did you allow it to happen?

**MS HANNAH JACOBUS:** Justice, I was not even aware of patients at Siya Badinga until we have been sent the and the patients have been there for two months already.

**ARBITRATOR JUSTICE MOSENEKE:** You know, on the plan, your name appears on every single action that is listed. [Indistinct 01:03:38] the plan you were shown yesterday?

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You were a core part of that team, were you not?

10**MS HANNAH JACOBUS:** Justice, as I have said, the plan as not discussed with us. I have never went through the plan [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Do not duck this.

**MS HANNAH JACOBUS:** No, I am not ducking, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You were part of just about every section  
15of implementation. If I show you– I can show it to you again [intervenes]

**MS HANNAH JACOBUS:** Yes, I have seen it.

**ARBITRATOR JUSTICE MOSENEKE:** Remember, you saw it and your name is there all the way.

**MS HANNAH JACOBUS:** I have seen, Justice.



**ARBITRATOR JUSTICE MOSENEKE:** And when Counsels says your fingerprints are all over there, you deny it.

**MS HANNAH JACOBUS:** Oh, I thought she meant my signature. I thought, Counsel, but, Justice, also the plan and all the implementation was not done as planned, and that– the way it was supposed to be. So all documentation was not utilised in terms of the implementation of this.

**ARBITRATOR JUSTICE MOSENEKE:** Then why did you allow that? Unlawful things happened. You act fraudulently. Somebody has a license for children. You allow adults to go there, and you do not scream and say, “She does not have a licence for adults.” You play along. You divide them. You push beds around.

**MS HANNAH JACOBUS:** Justice, when I discussed that with Dr Manamela, the overcrowding and all that, she assured me that it will continue and we will sort it out after the project ends.

**MS LILLY CROUSE:** Thank you, Justice. Ms Jacobus, I am very nearly finished but I just need to finish this point still.

**ARBITRATOR JUSTICE MOSENEKE:** You do not have to finish, Counsel.

**MS LILLY CROUSE:** I do not have to, I must.

**ARBITRATOR JUSTICE MOSENEKE:** No, I did not say you do not have to. I hope I did not give a signal that you are. No, the messages appear so plain and yet we are not hearing very well educated and senior people dealing with it.

**MS LILLY CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And acknowledging just how the devastation they have caused and then they get off by, with a what? A written warning. Anyway, proceed.

**MS LILLY CROUSE:** Thank you, Justice. What I am busy is just showing that you had knowledge of the devastation that is going to come [intervenes]

**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** ...and you had knowledge of what should happen, and yet you promoted the wrongness of what was going on for instance, we have evidence that you said to the families, “Everything will be all right. I have been working with NGOs forever.” Remember saying that to the families?

**MS HANNAH JACOBUS:** I cannot remember, Counsel.

**MS LILLY CROUSE:** Well, we have evidence to that. So you gave assurances to families, knowing full well that this cannot work. Do you agree?

**MS HANNAH JACOBUS:** Counsel, in my working [intervenes]

15 **MS LILLY CROUSE:** Just yes or no first before.

**MS HANNAH JACOBUS:** I cannot remember having that [indistinct 01:06:41]. I said the broader family but the smaller groups yes, I have made that promise that [intervenes]

**MS LILLY CROUSE:** You made promises knowing that those promises cannot be delivered on, is that not so?

20

**MS HANNAH JACOBUS:** I did. Counsel, I did not anticipate that the project would work out the way it did.

**MS LILLY CROUSE:** Yes, we already have your assurances that you knew that people could die, that people will suffer.

5**MS HANNAH JACOBUS:** Yes.

**MS LILLY CROUSE:** And yet, to advance your career, you acted against the patients' best interest, against the families' best interest. Do you agree?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Similarly, with Siya Badinga, when they asked you for a real  
10license, you said, "I will sort this out." It was never sorted out, do you agree?

**MS HANNAH JACOBUS:** No, Counsel. I never made that communication with Siya Badinga, never had.

**MS LILLY CROUSE:** Okay. We also have evidence, Ma'am, when Ms Ethel Ncube, that you said to her she is asking too much questions, too many questions  
15and you cannot work with somebody asking that many questions.

**MS HANNAH JACOBUS:** I cannot recall.

**MS LILLY CROUSE:** You cannot recall that? It seems to me that there is a lot that you cannot recall, Ms Jacobus.

**MS HANNAH JACOBUS:** Counsel, if you can maybe just explain that because I  
20have also assisted and worked with Mrs Ncube and as I have said, we have been

placed in different areas. In terms of supporting her, I was only after the patients was transferred from her areas to Kalafong.

**MS LILLY CROUSE:** Why would you say something like that to concerned NGO owner? Why would you say, “You are asking too much questions”/

5**MS HANNAH JACOBUS:** I have never said that to [intervenes]

**MS LILLY CROUSE:** No, you said you cannot remember saying [intervenes]

**MS HANNAH JACOBUS:** I cannot remember but I cannot remember me saying that to any person or any NGO manager.

**MS LILLY CROUSE:** You see, that fits the profile of what we have seen here: 10somebody that worries more about doing unlawful things than the patients and the people. What do you say to that?

**MS HANNAH JACOBUS:** I do not– if you say so, Counsel, then it is like that.

**ARBITRATOR JUSTICE MOSENEKE:** Why do you think NGOs offered to take patients? What was in it for them?

15**MS HANNAH JACOBUS:** According to my experience and my observation throughout working with NGOs, there is nothing in for NGOs. The subsidy that we provide does not cover even their full expenses, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** So why would they place themselves in that situation?

20**MS HANNAH JACOBUS:** A lot of NGOs that wants– managers that wants to open up places, come forth on their own and a lot of them says it starts off with some

family members or a need in the community and they were running and since I took over from NGOs that was opened, that was— it happened.

**ARBITRATOR JUSTICE MOSENEKE:** Why do NGOs, with evidence of that here, went on to take so many patients on premises which were limited in space?

5**MS HANNAH JACOBUS:** Justice, with the placement of the beds, certain numbers were given through and when I discussed with the placement team [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I am not talking about you. I am talking about NGOs. Why was there overcrowding? Why did NGO tend to take so many patients?

10**MS HANNAH JACOBUS:** It is not the NGOs. They were given the patients by the placement team.

**ARBITRATOR JUSTICE MOSENEKE:** Oh, they had no choice in it. They were just given the numbers.

**MS HANNAH JACOBUS:** Yes. Yes, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** Why was it so?

**MS HANNAH JACOBUS:** Justice, as I have said, afterwards, after the placement, when we went around and see how many to do our support visits, then we discovered more patient has been placed that was initially communicated through.

**ARBITRATOR JUSTICE MOSENEKE:** [Indistinct 01:10:41] why did the placement  
20teams overcrowd NGOs?

**MS HANNAH JACOBUS:** They said it was an instruction according to them from Dr Manamela.

**ARBITRATOR JUSTICE MOSENEKE:** So Dr Manamela instructed them to overcrowd NGOs?

5**MS HANNAH JACOBUS:** I will not say overcrowd. What they said was Dr Manamela will contact them and says at NGO X place so many patients. At NGO S place so many patients. So they were working on instruction from Dr Manamela. That is what they– the answer given to me.

**ARBITRATOR JUSTICE MOSENEKE:** So you telling us that there was no  
10commercial motive on the part of NGOs.

**MS HANNAH JACOBUS:** No, not that I can think of, Justice, and I can really sure  
[? 01:11:22] when one goes through the NGO financial expenditure reports, even longstanding ones, to look after mentally ill patients in a proper way, they also have to contribute [intervenes] finances.

15**ARBITRATOR JUSTICE MOSENEKE:** Ms Franks told us that she made a profit.

**MS HANNAH JACOBUS:** I do not know.

**ARBITRATOR JUSTICE MOSENEKE:** You are shaking your head. You have got to say something.

**MS HANNAH JACOBUS:** No, I said I do not know that, Justice, because  
20remember, I did not see Ms Franks.

**ARBITRATOR JUSTICE MOSENEKE:** Ms [Indistinct - cross-talking 01:11:50] told us once the money came through she made a profit.

**MS HANNAH JACOBUS:** According to my understanding, if one takes all the different categories of payment, and at times the money will be paid out not in the—  
5 according to the SLA, there is certain timeframes that the money was supposed to be paid and then they do not receive the money, and they will get extra. So but that is also another section that really follows that in the district and they will inform us.

**ARBITRATOR JUSTICE MOSENEKE:** Did you get any financial benefit out of this disastrous transfer of patients?

10 **MS HANNAH JACOBUS:** No, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And what was this linen thing about?

**MS HANNAH JACOBUS:** When [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Which NGOs received linen?

**MS HANNAH JACOBUS:** All the NGOs, Justice. I communicated because  
15 remember, I was responsible for the beds, and some NGOs did not have enough linen. So I went to different hospitals, private, public, two hotels assisted us [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** But why linen? They did not have food. They did not have medication. They did not have proper ablution facilities. They  
20 did not have proper clothing. They had just about nothing, and then there is this big order of linen. Why?

**MS HANNAH JACOBUS:** That was prior to the placement, Justice, and still getting things prepared, the linen and bedding and equipment, bomenometres, your gluco metres and all that was not in place. So I have tried with all the hospital facilities to get that for us and when [intervenes]

5**ARBITRATOR JUSTICE MOSENEKE:** [Indistinct - cross-talking 01:13:26] linen got to do with it when there are such big needs?

**MS HANNAH JACOBUS:** Remember the big needs, Justice, derived after the placement that we have noticed about the food because prior to that, there was not any mention of food. So I was seeing that all the equipment and necessary medical  
10equipment are in place.

**ARBITRATOR JUSTICE MOSENEKE:** And lastly for me, at any rate just to remind you about something that worries quite often. You are a nurse, are you not?

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And you still kept your nursing registration,  
15did you?

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Fundamental responsibilities of nurses, can you remember them?

**MS HANNAH JACOBUS:** Yes, Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Can you just repeat them to me?



**MS HANNAH JACOBUS:** I cannot out of hand, Justice, honestly I cannot  
[intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I beg your pardon?

**MS HANNAH JACOBUS:** I think I know– I cannot repeat them like that. If you can  
5 read it out to me please, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** To promote health.

**MS HANNAH JACOBUS:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** You agree?

**MS HANNAH JACOBUS:** Yes, Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** To prevent illness.

**MS HANNAH JACOBUS:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** To restore health.

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** To alleviate suffering.

15 **MS HANNAH JACOBUS:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And that is in the Nightingale pledge, is it  
not?

**MS HANNAH JACOBUS:** Yes, Justice, part of it.

**ARBITRATOR JUSTICE MOSENEKE:** Do you still remember that?

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Then why did you not do it here?

**MS HANNAH JACOBUS:** Justice, in terms of executing within the project, I have tried to accomplish all that in all the ways and spheres I could. That is why I said I 5 even went beyond just– it was– when the application for the linen was made, I think that was in March, April, but as the time drew neared, Dr Manamela said it is taking so long, I must also look at other areas for the linen. So I have done that and then in July, June, July, Mr Maritz came back and says that the linen orders are ready and you could not then stop that process. So it was given out to all these NGOs.

10 **ARBITRATOR JUSTICE MOSENEKE:** I am not talking about linen.

**MS HANNAH JACOBUS:** Oh, sorry, I misunderstood.

**ARBITRATOR JUSTICE MOSENEKE:** I am talking about nursing ethics.

**MS HANNAH JACOBUS:** Oh, nursing ethics.

**ARBITRATOR JUSTICE MOSENEKE:** You see, in your evidence, I have not 15 heard you talk about patients, their needs, their health, their care, prevention of suffering. I do not hear that, and the question is inevitable: did you care or was it just you and your career? That is what Counsel was trying to get to you now.

**MS HANNAH JACOBUS:** No, Justice. I did not even think about my career.

**MS LILLY CROUSE:** Thank you. Ms Jacobus, I want to put it to you, you also did 20 not think about the patients, and the reason I say this is Life Esidimeni asked you for a list of the NGOs. We spoke about that yesterday, is it not?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you said you did not know about that.

**MS HANNAH JACOBUS:** No, I said I knew Dr Manamela had said to Dr Makatshwa that she will send the list [intervenes]

5**MS LILLY CROUSE:** But was there ever a list? Was there ever a list?

**MS HANNAH JACOBUS:** There– Dr Manamela [intervenes]

**MS LILLY CROUSE:** No, forget about Dr Manamela. I am asking you was there a list?

**MS HANNAH JACOBUS:** Not a complete list, a partial list as it was [intervenes]

10**MS LILLY CROUSE:** Was there a list?

**MS HANNAH JACOBUS:** Yes, Counsel, not [intervenes]

**MS LILLY CROUSE:** There as a list.

**MS HANNAH JACOBUS:** But not complete.

**MS LILLY CROUSE:** Ma'am, a list is a list.

15**MS HANNAH JACOBUS:** Oh, okay.

**MS LILLY CROUSE:** There is either a list or there is not a list.

**MS HANNAH JACOBUS:** Okay, then it was not ready.

**MS LILLY CROUSE:** There was not a list. Now the family members asked you for this list, remember that?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** And you never gave them a list.

**MS HANNAH JACOBUS:** Mr Thabani has sent a list through the chairperson.

**MS LILLY CROUSE:** Just answer my question. Did you give them a list?

5**MS HANNAH JACOBUS:** No, not me, Counsel.

**MS LILLY CROUSE:** If you were worried about the patients, you would have given them a list and say, "Go there. Go and look, things are not ready." So you did not care about the patients. Do you not agree?

**MS HANNAH JACOBUS:** I care about the patients, Counsel.

10**MS LILLY CROUSE:** Why did you not give the list to the families?

**MS HANNAH JACOBUS:** Mr Thabani was in charge of that process. He provided the list and he arranged the NGO visits with the family committee.

**MS LILLY CROUSE:** You see, Ms Dumi Masado [intervenes]

**MS HANNAH JACOBUS:** Masanga.

15**MS LILLY CROUSE:** Do you know who she is?

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** She said she was asking for the list from you personally and you did not provide a list to her.

**MS HANNAH JACOBUS:** I have provided the list only when it was complete to the review board.

**MS LILLY CROUSE:** No, she said you had several reasons for not providing the list. Sometimes it was you are still editing. Sometimes you were still busy. Sometimes you said there were new NGOs. Sometimes you said NGOs were not functioning.

**MS HANNAH JACOBUS:** Yes, because [intervenes]

**MS LILLY CROUSE:** You said all of those things.

**MS HANNAH JACOBUS:** Yes, yes, I did to explain to her.

10**MS LILLY CROUSE:** So if you were worried about the patients' well-being and not about your career, why did you not give this list to her and say, "Look out for these NGOs"?

**MS HANNAH JACOBUS:** What I have done, Counsel, I gave her the— a list that was sort of edited, the old list, and I told her because what I mean is there is still 15NGOs that is not ready and NGOs are closing. The minute it is finalised, they will get the final list and they did receive that.

**MS LILLY CROUSE:** Did you tell her, "Watch out, this is a wrong plan. It is not going to work"?

**MS HANNAH JACOBUS:** Yes, we have discussed it in a meeting. She also 20attended our meetings and she raised her concerns with us.

**MS LILLY CROUSE:** And you kept up the façade; good plan, it is going to work out. People are not going to suffer.

**MS HANNAH JACOBUS:** No.

**MS LILLY CROUSE:** No, you did not. You did not care about the patients, Ma'am.  
5Can I just ask you, now after the fact, if you say you care about patients and care about their well-being, what have you done to make this better after the— after your disciplinary hearing?

**MS HANNAH JACOBUS:** After the disciplinary hearing, all these centres were closed, Counsel [indistinct - cross-talking 01:19:51]

10**MS LILLY CROUSE:** But that was not your doing. That was the Ombud's doing, was it not?

**MS HANNAH JACOBUS:** Yes, yes.

**MS LILLY CROUSE:** I want to ask what did you do to make this better, the suffering that you have caused?

15**MS HANNAH JACOBUS:** I looked even— what— we took all into consideration, what happened during the project, and we went back to all existing NGOs and we visited and see and strengthened according to what the Ombudsman's report was, to see if we did wrong, why this current status is, et cetera.

**MS LILLY CROUSE:** What did you do about the missing 59 patients?

20**MS HANNAH JACOBUS:** There was people that was following those up, Counsel.

**MS LILLY CROUSE:** What did you do about the missing 59 patients?>

**MS HANNAH JACOBUS:** I could not be part of that process because there was people appointed to do that, Counsel. I could not be part.

**MS LILLY CROUSE:** Is your answer, “I did nothing”?

**MS HANNAH JACOBUS:** I could not do anything, Counsel.

5**MS LILLY CROUSE:** Is your answer you did nothing?

**MS HANNAH JACOBUS:** Yes, Counsel, because I could not [intervenes]

**MS LILLY CROUSE:** Up to today, do you know what happened to the 59 patients?

**MS HANNAH JACOBUS:** Yes, I have been keeping and asking constantly how far the process is, how many patients have been found, et cetera, on a regular basis.

10**MS LILLY CROUSE:** And how many patients have been found?

**MS HANNAH JACOBUS:** I think it was 50... there was quite a number that was found.

**MS LILLY CROUSE:** Can you provide us with a list of the patients that were found and where they are?

15**MS HANNAH JACOBUS:** Yes, that can be provided. I will ask the [intervenes]

**MS LILLY CROUSE:** No, no, I am not asking whether I can be provided. I am asking whether you can provide us with that list.

**MS HANNAH JACOBUS:** No, I cannot do that, Counsel. I have to obtain the information to give to you because I know it is available.

**MS LILLY CROUSE:** I want to put it to you, as I have been doing so far, that you have not worried about that patients, that you were worried about yourself and your career. And even now, you are continuing by not playing open cards with this court. Do you agree with me?

5**MS HANNAH JACOBUS:** Counsel, what I can say is I have tried and I was doing everything I could. There were different processes, different teams, different members, and I could not do everything all over all the time [intervenes]

**MS LILLY CROUSE:** We are talking about you today.

**MS HANNAH JACOBUS:** Yes.

10**MS LILLY CROUSE:** Let us play open cards. Why was this plan forced into being?

**MS HANNAH JACOBUS:** The plan was forced– we have been told that it was an instruction from above [intervenes]

**MS LILLY CROUSE:** But whose plan was this? I am not believing you when you say not wanting to name names. You know.

15**MS HANNAH JACOBUS:** Dr Manamela, every time she gave feedback to us says that it was discussed in senior management and the plan and decision has been taken, and it needs to be implemented.

**MS LILLY CROUSE:** I am quite sure, Ma'am.

**MS HANNAH JACOBUS:** But there was not numbers, I mean names. I was only  
20[intervenes]



**MS LILLY CROUSE:** I am quite sure, Ma'am, that you would have said, "Whose plan is this because it cannot work."

**MS HANNAH JACOBUS:** We did ask. We did ask.

**MS LILLY CROUSE:** Now, I want an answer to that.

5**MS HANNAH JACOBUS:** She said senior management [intervenes]

**MS LILLY CROUSE:** And you left it there.

**MS HANNAH JACOBUS:** And then said that at a stage the MEC has taken a decision and it must be implemented.

**MS LILLY CROUSE:** So now you are saying it is the MEC that took the decision.

10**ARBITRATOR JUSTICE MOSENEKE:** Who is the MEC? Who is that.

**MS HANNAH JACOBUS:** Ms Mahlangu.

**MS LILLY CROUSE:** So why did it take so long, after a day and a quarter of evidence to say that?

**MS HANNAH JACOBUS:** Sorry. I apologise, Counsel.

15**MS LILLY CROUSE:** Sorry?

**MS HANNAH JACOBUS:** I apologise.

**MS LILLY CROUSE:** You see, that is [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 01:23:28]. Please, [vernacular].

**MS LILLY CROUSE:** Surely you would have sent a message to the MEC and say, “It cannot work.”?

**MS HANNAH JACOBUS:** We have done in several meetings.

**MS LILLY CROUSE:** You told the MEC to her face, “This cannot work”?

5**MS HANNAH JACOBUS:** No, I was not– I did not attend MEC meetings. We have done it through our meetings forum. Dr Manamela was attending senior management meetings.

**MS LILLY CROUSE:** You told Dr Manamela to tell the MEC.

**MS HANNAH JACOBUS:** Yes [intervenes]

10**MS LILLY CROUSE:** Did you write a letter to the MEC?

**MS HANNAH JACOBUS:** No [intervenes]

**MS LILLY CROUSE:** Did you write a letter to anybody?

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** Did you contact the press?

15**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** You knew Section 27 was involved.

**MS HANNAH JACOBUS:** Yes, Counsel.

**MS LILLY CROUSE:** Did you contact them to say, “Guys, come and help. Things are not going to go well here”?

**MS HANNAH JACOBUS:** They were part of our meetings, Counsel.

**MS LILLY CROUSE:** Section 27?

**MS HANNAH JACOBUS:** Yes, they have attended [intervenes]

**MS LILLY CROUSE:** They seem surprised about it. They do not know about it.

5**MS HANNAH JACOBUS:** They have attended one or two meeting with us  
because [intervenes]

**MS LILLY CROUSE:** Let me then go back, Ms Jacobus. Let we not talk past each  
other. Did you tell them, “This plan cannot work and I know people are going to  
die?”

10**MS HANNAH JACOBUS:** Not in so much words, Counsel.

**MS LILLY CROUSE:** Why not?

**MS HANNAH JACOBUS:** But we have said the concerns [intervenes]

**MS LILLY CROUSE:** Why not? If you care about the patients as much as you say,  
why not?

15**MS HANNAH JACOBUS:** Not with Section 27 in particular, but with Sasop doctor  
we have discussed it with us [intervenes]

**MS LILLY CROUSE:** We are talking about now with Section 27 that you say were  
at the meetings. I am asking you [intervenes]

**MS HANNAH JACOBUS:** No, I did not.

20**MS LILLY CROUSE:** ...why did you not do this?

**MS HANNAH JACOBUS:** Because the concerns were raised in a meeting forum.

**MS LILLY CROUSE:** Ms Jacobus, you are running all around the question. You are not asking.

**MS HANNAH JACOBUS:** I did not say that. I did not.

5**MS LILLY CROUSE:** Now my question is why did you not do it if you care so much about the patients? It is an easy question.

**MS HANNAH JACOBUS:** I do not know how to answer [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Is the answer that you actually did not care?

10**MS HANNAH JACOBUS:** I did, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You did not care whether they died or lived, did you?

**MS HANNAH JACOBUS:** I did, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, let us test that a little. Did you even  
15know how many patients died? Let us start at Siya Badinga.

**MS HANNAH JACOBUS:** I cannot remember all the figures by heart but I know about the different areas and the [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** And Precious Angel?

**MS HANNAH JACOBUS:** At Precious Angels was 18.

**ARBITRATOR JUSTICE MOSENEKE:** What – here comes the question – what did you do to help deal with the bodies and corpses of the patients you had to look after?

**MS HANNAH JACOBUS:** My colleague that was working at Precious Angels has assist in that, Counsel, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** I am talking about you. I am talking about you. You are head of NGOs and people start dying at facilities you have licensed and there are bodies there of vulnerable people, most of whose families you had not even told where they were? What role did you play in helping to dispose of the 10bodies that resulted from your omission?

**MS HANNAH JACOBUS:** Justice, the NGOs where I– where that– where the bodies was and were people was, we were assigned to different NGOs and they assist in supporting the NGOs.

**ARBITRATOR JUSTICE MOSENEKE:** [Indistinct] talking about “they,” I am talking 15about you.

**MS HANNAH JACOBUS:** Ja, okay, I did not [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I want to understand this compassion you say you have so much for patients and they die because of all the omissions we now know, what did you do?

20**MS HANNAH JACOBUS:** Justice, in the NGOs that I was working at there was no deaths in those areas, [Indistinct 01:27:21], El Shadai [?] they did not have deaths,

the ones where I have worked. There was only one death at Bapalong Centre and that we have supported the centre to contact the family, wait for the family

[intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** As MK, at Siya Badinga?

5**MS HANNAH JACOBUS:** No, I left there prior [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** And Precious Angels.

**MS HANNAH JACOBUS:** No, Justice, I was not [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** You left for where? You still work in the directorate.

10**MS HANNAH JACOBUS:** No, I did not work at Cullinan area any longer when I— when those deaths occurred. I was in another area.

**ARBITRATOR JUSTICE MOSENEKE:** You were the head of the whole province, Mrs Jacobus. Have you forgotten that?

**MS HANNAH JACOBUS:** No, Justice. We [intervenes]

15**ARBITRATOR JUSTICE MOSENEKE:** What did you do? Just tell us one good you do to help these corpses to reach their families.

**MS HANNAH JACOBUS:** Justice, I did not partake in anything because there was [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Is the answer you did nothing?

**MS HANNAH JACOBUS:** Yes, I did not do because I was awa— I— when we became [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** But you are told your patients you have to look after are dying. You do not even raise finger.

5**MS HANNAH JACOBUS:** Justice, the NGOs had different— there was— in the certain areas we were different people looking after certain NGOs, and the ones that I was, there was noth— as I have said, it is just to sort out and clear everything. It was so hectic. There was not real good communication between us because we had to— and the people assigned to those places [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** Maybe you did not care for them when they were alive. You did not care for them when they were dead. What is your response to that because you really did nothing.

**MS HANNAH JACOBUS:** I did. I did. I did, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

15**MS LILLY CROUSE:** Did you say that none of the places that you were any patient died?

**MS HANNAH JACOBUS:** Only at Bapalong, one patient died.

**MS LILLY CROUSE:** Who died there?

**MS HANNAH JACOBUS:** It was a female patient at Bapalong. If I can remember  
20back [indistinct] and I found but it was a female patient at Bapalong. There was one death.

**MS LILLY CROUSE:** Yes. I am not sure whether you are correct and I have not had been able to check that but I might as that to be followed up. Do you know about Rantsho Hendrik Israel Mabou? Is that Billy?

**MS HANNAH JACOBUS:** I do not know, Justice. I do not know who that person is. I could be a patient but I do not know all the patients that was transferred.

**MS LILLY CROUSE:** And you know where he died?

**MS HANNAH JACOBUS:** No, Counsel.

**MS LILLY CROUSE:** Okay, I just wanted to end of my cross-examination with you by saying that you are not taking blame. You are shifting blame all the time.

10**MS HANNAH JACOBUS:** No, Counsel, I am taking blame. I am taking full responsibility.

**MS LILLY CROUSE:** Ja, we are not seeing any of that, Ma'am. Thank you, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, Counsel. Advocate  
15Groenewald.

**CROSS-EXAMINATION BY ADV DIRK GROENEWALD:** Thank you very much, Justice. I do not think we are going to be too long. There is just a few clarifying questions. Ms Jacobus, my name is Dirk Groenewald and I represent two of the families who have lost loved ones. Ma'am, I would like to start off by putting it to  
20you that there is a lack of moral and ethical consciousness in the Depart of Health.



**MS HANNAH JACOBUS:** Yes, it became evident and as we were executing, it became evident of– and also through the project.

**ARBITRATOR JUSTICE MOSENEKE:** No, but what is the answer? Something is put to you as clear as that, the answer must be yes or no. If it is no, you might want to explain or yes.

**MS HANNAH JACOBUS:** Yes, yes, yes. Yes.

**ADV DIRK GROENEWALD:** Yes, you agree, Ma'am.

**MS HANNAH JACOBUS:** Yes, Sir.

**ADV DIRK GROENEWALD:** Yes, Ma'am. And one would have expected from the Department of Health that subsequent to this tragedy, they would have embarked upon a process sensitise the employees of the Department of Health about the values, our constitutional values, to reiterate your obligations as healthcare workers, and again to strengthen the ethical compliance but that has not happened.

**MS HANNAH JACOBUS:** Not yet, Counsel. Nothing has been started.

**ADV DIRK GROENEWALD:** Notwithstanding 143 people dying, the Department of Health has not embarked upon such a process.

**MS HANNAH JACOBUS:** Yes, Counsel.

**ADV DIRK GROENEWALD:** No. Ma'am, Justice, also just you have touched on it, Ma'am, you have indicated and you have testified that you have not received any application or document from the Department of Health stating that they are going to take your final written sanction, final written notice, they are going to review that.

**MS HANNAH JACOBUS:** No, Counsel.

**ADV DIRK GROENEWALD:** Nothing. Justice, just for the sake of the record, day 5 of the transcripts, the evidence of Dr Gnocchi, at pages 7 thereof, he testified that as follows:

5            “So they have been given final written warning letter but the government feels the sanctions may be too lenient and the government has or the Department has or is in the process of applying to reviewing the sanctions.”

Now this was on the 13<sup>th</sup> of October and, Ma’am, as you have just indicated, that is 10not been done.

**MS HANNAH JACOBUS:** No, I did not receive or hear anything, Counsel.

**ADV DIRK GROENEWALD:** Now, Ma’am, but I also canvassed with Dr Gnocchi is what happened to these employees during the disciplinary proceedings, and I asked him specifically whether or not the Department argued for a specific sanction to be 15imposed. So I asked in whether or not the Department ask that you be dismissed or whether you would be given a final written notice, final written notice, and he explained to me the following. He said to me:

                 “Counsel, in a disciplinary hearings, in accordance with the disciplinary code in the public service unlike in a court of law, 20 does not allow employer to say to the presiding officer that, ‘This is the sentence that you should impose.’ So it was not done in this case. The person leading evidence of behalf of

the employer set out what the employee is charged with, and they provide some evidence. Obviously, as accounting officer I did not sit in those hearings but the presiding officer did provide a report of these findings and also the rationale for the sanctions, and the sanctions as well. Those of the documents that we are privileged to but there was no saying by the employer representative that, 'This is the sanction that should be imposed'."

But you have just now testified that in fact, your employer requested that the sanction of a final written warning be imposed upon yourself. Is that correct?

**MS HANNAH JACOBUS:** Not imposed on myself. I received a final written warning.

**ADV DIRK GROENEWALD:** Yes, mam.

**MS HANNAH JACOBUS:** I have been informed [?01:55:26].

**ADV DIRK GROENEWALD:** We have— we went through the findings of the disciplinary, of the chairperson of the disciplinary hearing, and the finding was that your employer argued and said that you should receive a final written warning.

**MS HANNAH JACOBUS:** Final written warning, yes.

**ADV DIRK GROENEWALD:** Final written warning [indistinct]

**MS HANNAH JACOBUS:** Yes, Counsel.

**ADV DIRK GROENEWALD:** That is so?

**MS HANNAH JACOBUS:** Yes, Counsel.

**ADV DIRK GROENEWALD:** That they argued for final written warning?

**MS HANNAH JACOBUS:** Yes, Counsel. We received final written warnings.

**ADV DIRK GROENEWALD:** So what Dr Gnocchi testified is not true?

5**MS HANNAH JACOBUS:** I do not know what Dr Gnocchi testified, Counsel. I cannot speak to that [intervenes]

**ADV DIRK GROENEWALD:** I am putting it to you this is what he testified under oath. He testified under oath that the employee did not ask for a specific sanction, and you testified that no, the employer asked for a specific sanction of a final written  
10warning.

**MS HANNAH JACOBUS:** Not asked. That was– I cannot remember all these legal enmities but what the presiding officers said there the final written warning or after that, I cannot remember that clearly but then the HR apparently to the directors says final written warnings would be made out and we would be called in again. And  
15when, on receiving of those final written warning, there were also a number of people there when we received the final written warnings, when I received it.

**ADV DIRK GROENEWALD:** So that it did not happen on the specific day.

**MS HANNAH JACOBUS:** No, it did not.

**ADV DIRK GROENEWALD:** When you went to the disciplinary hearing, did the  
20representative of the employer, when you pleaded guilty, did he make submissions that you should only receive a final written warning?

**MS HANNAH JACOBUS:** No. No, Counsel [intervenes]

**ADV DIRK GROENEWALD:** So how did it then work?

**MS HANNAH JACOBUS:** I do not– as I have said, we have been called afterwards for another meeting and another session with Dr Gnocchi and there was another person, then handed over the final warnings and explained that that was the decision the Department has taken. And so we received at those final warnings then. It was not done on the same day. It was been done separately.

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry, the recorders are struggling to pick up your voice, and I think two people in the hearing. So try and throw your voice out, please.

**MS HANNAH JACOBUS:** Excuse, Justice.

**ADV DIRK GROENEWALD:** Mam, you say that you sat in the disciplinary proceedings from eight o'clock until one o'clock, eight 30 until one o'clock.

**MS HANNAH JACOBUS:** Yes, Counsel.

15**ADV DIRK GROENEWALD:** Yes, mam. Alright. So you, charges were presented, you pleaded guilty. Did the employer make submissions?

**MS HANNAH JACOBUS:** There was a representative of the Department within the disciplinary hearing and I think what happened, my understanding because this is my first encounter, the employer representative then made submissions back to the Department I think.

20

**ADV DIRK GROENEWALD:** And he made the submission that you should receive a final written warning.

**MS HANNAH JACOBUS:** Yes, because after that, after, I think it was a few weeks, I cannot remember the dates, then I received the final [intervenes]

5**ADV DIRK GROENEWALD:** Yes, then you received but at your disciplinary hearing, representations was made by the employer that you should receive a final written warning.

**MS HANNAH JACOBUS:** I cannot remember all the exact action but I think it was part of that.

10**ARBITRATOR JUSTICE MOSENEKE:** Counsel, you can put it to the witness that the report says so.

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

**ARBITRATOR JUSTICE MOSENEKE:** It is in the record. It is in the outcome of written out by the presiding person, an Advocate Tshabalala. So you can put it to  
15the witness, and she can admit or deny that that is what happened.

**ADV DIRK GROENEWALD:** But you admit that?

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**ADV DIRK GROENEWALD:** They argued for final written warning to be issued.

**MS HANNAH JACOBUS:** Yes, Counsel.

**ADV DIRK GROENEWALD:** Yes, thank you, Ma'am, and that is quite contrary to what Dr Gnocchi testified here.

**MS HANNAH JACOBUS:** I did not hear Dr Gnocchi's testimony [intervenes]

**ADV DIRK GROENEWALD:** I put his evidence to you [intervenes]

5**MS HANNAH JACOBUS:** As you have read, ja.

**ADV DIRK GROENEWALD:** You can agree with me that the evidence is not in line with what happened.

**MS HANNAH JACOBUS:** Yes, Counsel.

**ADV DIRK GROENEWALD:** Thank you very much, mam. Now, Ma'am, these just  
10a few things that I would like to clarify it respect of what happened, and my  
colleagues have taken you through a number of things. First off, you say you do not  
know why the contract with Life Esidimeni was terminated.

**MS HANNAH JACOBUS:** It was only afterwards where Dr Manamela has  
explained that the contract– the– it was part of the– due to the [indistinct 01:40:19],  
15the Department has the decision to haste the process and to end the contract of Life  
Esidimeni because of financial constraints.

**ADV DIRK GROENEWALD:** Okay.

**MS HANNAH JACOBUS:** And – can I explain?

**ADV DIRK GROENEWALD:** Yes.

**MS HANNAH JACOBUS:** Then in view of that, all the money that was supposed to go to Life would then go over to NGO implementation and management.

**ADV DIRK GROENEWALD:** Okay. You also do not know how you by the NGOs?

**MS HANNAH JACOBUS:** It was by spreading, in a meeting, spreading by word of mouth up within a meeting and the district also by meeting procedures where people could supply the interests to the district level, and then they will called in also for submissions. Then it was sent up to provincial level. So there was not any other method used.

**ADV DIRK GROENEWALD:** Did they formally apply? Did they submit some form of documents to you?

**MS HANNAH JACOBUS:** No, Counsel.

**ADV DIRK GROENEWALD:** They have not submitted any documents [intervenes]

**MS HANNAH JACOBUS:** No, Counsel.

**ADV DIRK GROENEWALD:** Okay. So, and I know this question has been asked, but who will make the final selection? Did you have 50 NGOs that applied and you only selected to 27?

**MS HANNAH JACOBUS:** All NGOs that applied were visitors, all of them but others that was not compliant in terms of a facility was not taken into account stage.

**ADV DIRK GROENEWALD:** Well, the problem is, Ma'am, the evidence shows that the number of these NGOs actually did not exist at that point in time.

**MS HANNAH JACOBUS:** From the new ones?



**ADV DIRK GROENEWALD:** Yes.

**MS HANNAH JACOBUS:** Yes, it was Ubuthle, Reba 5, Fele [? 01:42:10] . There were quite a few of them. So their spaces or their facilities were visited to see whether the facility will adhere and comply to admit patients.

5**ADV DIRK GROENEWALD:** Were you part of the selection team to select that the NGOs?

**MS HANNAH JACOBUS:** There was no selection team at that stage because it– in normal circumstances it was supposed to happen but it did not happen in that year.

**ADV DIRK GROENEWALD:** But did you make recommendations as to which  
10NGOs should be selected?

**MS HANNAH JACOBUS:** No, Counsel.

**ADV DIRK GROENEWALD:** So who made the selection?

**MS HANNAH JACOBUS:** The NGOs were just taken. Nobody made selections. There was no meeting procedures. Remember, the NGOs applied, the places were  
15visited [intervenēs]

**ADV DIRK GROENEWALD:** You just said there was no application, formal application.

**MS HANNAH JACOBUS:** No, they apply in sort of verbally. There was not a formal application.

20**ADV DIRK GROENEWALD:** Okay.

**MS HANNAH JACOBUS:** They submit the request to [indistinct] those that wants to– that have their own facilities and those that wants to have the NGOs at hospital premises.

**ADV DIRK GROENEWALD:** Okay. So [intervenes]

5**ARBITRATOR JUSTICE MOSENEKE:** I wonder how they applied orally, Counsel, to whom, where?

**ADV DIRK GROENEWALD:** That is where I was going, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Oh, okay.

**ADV DIRK GROENEWALD:** Of the application [indistinct 01:43:31], was it a  
10meeting is sitting there, people putting up their hands and say, “Well, I will take 20  
or I will take a 50”? How did it work, Ma’am?

**MS HANNAH JACOBUS:** No. Within that, after they have made known their  
requests to the district, we went out on district visit to visit these places. And as I  
have said, because of the normal procedure that did not take place, I have asked  
15the engineers to accompany the different districts. And because the normal team  
did not do any inspections, so the engineers then measured and also assist looking  
at these places and measured the capacity, how many be each place could take.

**ADV DIRK GROENEWALD:** Alright.

**MS HANNAH JACOBUS:** And based on that, the number of beds was assigned to  
20a particular facility.

**ADV DIRK GROENEWALD:** I also put it to Dr Manamela that it was not really a situation of the NGOs applying.

**MS HANNAH JACOBUS:** Ja.

**ADV DIRK GROENEWALD:** It was more a situation of the Department saying, "Well, this NGO can take 150. That NGO can take 50." The Department of made the calls that the NGOs in the initial situation.

**MS HANNAH JACOBUS:** Yes, because that was according to the bed capacity, yes.

**ADV DIRK GROENEWALD:** Yes, and this readiness assessment reports of yours, which we have not seen – there is no readiness assessment report - are there any readiness assessment reports?

**MS HANNAH JACOBUS:** No, it was not done [intervenes] Counsel.

**ADV DIRK GROENEWALD:** So there was no formal [intervenes]

**MS HANNAH JACOBUS:** Audits done, no, Counsel.

15**ADV DIRK GROENEWALD:** ...no formal audits done, you testified that, but you testified also that you drew up the licenses based on the audit letters [intervenes]

**MS HANNAH JACOBUS:** Now, based on the budget letter.

**ADV DIRK GROENEWALD:** ...the budget letter, and you also said that ja, based on readiness reports.

**MS HANNAH JACOBUS:** No. Counsel, if I– I did not say readiness reports.

Remember, there were no reports. It was only a budget letter. The readiness reports was done afterwards [intervenes]

**ADV DIRK GROENEWALD:** After the allocation, after the transfer.

5**MS HANNAH JACOBUS:** After the licenses. Ja, after the licenses.

**ADV DIRK GROENEWALD:** After the transfer of the [intervenes]

**MS HANNAH JACOBUS:** They were a few done before the transfer of patients.

There readiness reports that people will visited these places made their comments but it is not a formal audit document. It is just a brief report.

10**ADV DIRK GROENEWALD:** But the few NGOs that you visited prior to issuing the licences, those visits was simply to go and see how many patients can fit into the facility. It was like a– it is more like a possibility report. It is possible that even the kitchen is fit in here, cupboards are put in there, that wall is done away with, we can fit 50 or 60 or 70 people in here.

15**MS HANNAH JACOBUS:** Not really, Counsel. It was looked at in terms of what needs to be in place. That was looked at before you say that this place cannot have patients.

**ADV DIRK GROENEWALD:** Ja, but it is exactly what I am putting to you.

**MS HANNAH JACOBUS:** Ja.

20**ADV DIRK GROENEWALD:** It was not an assessment report.

**MS HANNAH JACOBUS:** No.

**ADV DIRK GROENEWALD:** It is a possibility report. It is like we go and look here and see whether or not it is indeed possible, and based on that hopefully possible, it you then said, "Well, we can issue licenses."

**MS HANNAH JACOBUS:** Yes.

5**ADV DIRK GROENEWALD:** Let us go to Volume 7 page 2424.

**MS HANNAH JACOBUS:** 2424?

**ADV DIRK GROENEWALD:** Are you there?

**MS HANNAH JACOBUS:** Yes, Sir.

**ADV DIRK GROENEWALD:** Do you know this document, mam?

10**MS HANNAH JACOBUS:** Yes, I know this document.

**ADV DIRK GROENEWALD:** What document is this?

**MS HANNAH JACOBUS:** This is the brief report. It is not in a audit. It is a report. It is sort of written in a report form.

**ADV DIRK GROENEWALD:** But this is what you did prior to issuing the licenses.

15**MS HANNAH JACOBUS:** Yes.

**ADV DIRK GROENEWALD:** That is all that you have done.

**MS HANNAH JACOBUS:** Yes.

**ADV DIRK GROENEWALD:** Before you issue the licences. Now, can you just explain what else this document tells us in respect of– firstly, in respect of which NGO is this document?

**MS HANNAH JACOBUS:** It is in respect of Bokang Centre [indistinct - cross-stalking]

**ADV DIRK GROENEWALD:** Look at the right top hand side. Is identified there?

**MS HANNAH JACOBUS:** Myself and Mr Thabani was responsible this.

**ADV DIRK GROENEWALD:** Yes. But the letterhead – District Tshwane, Precious Angels, House 2, Danville.

10**MS HANNAH JACOBUS:** No, that is wrong. That [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** Are we still on 2424, Counsel?

**ADV DIRK GROENEWALD:** Yes, yes. My apologies, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, thank you.

**MS HANNAH JACOBUS:** That is– that information is wrong that on this form.

15**ADV DIRK GROENEWALD:** So that is wrong.

**MS HANNAH JACOBUS:** Yes.

**ADV DIRK GROENEWALD:** So this report is actually what?

**MS HANNAH JACOBUS:** For Bokang Centre if I read here, Bokang Centre.

**ADV DIRK GROENEWALD:** Alright. So let us go through that. Can you just explain to us how did this assessment work?

**MS HANNAH JACOBUS:** It was looking– it was looked at the exterior, what is available, and where in which area of the NGO is. Also still at outside, what is available. Then the interior, how many rooms are within the area. Inside how many bathrooms, outside areas. How many bidding space here is with a kitchen. What is the content of the house? The water supply rehabilitation is it– will there be space for that? Administration area, is there space for education. Safety features, what is available. Ventilation, staffing.

10**ADV DIRK GROENEWALD:** Ja, you say well, it is possible you know, if the following things are done then it is possible that people could be looked after here. Just from a buildings perspective, not taking into account medicine, food, all the [intervenes]

**MS HANNAH JACOBUS:** Yes, yes, yes. And all that, ja. There was nothing at 15that stage because there was no patience at that place.\_

**ADV DIRK GROENEWALD:** So, Ma'am, am I correct [intervenes]

**ARBITRATOR JUSTICE MOSENEKE:** I miss a date here, Counsel. Can you see the date?

**ADV DIRK GROENEWALD:** Justice, if I am not mistaken [intervenes]

20**MS HANNAH JACOBUS:** 21<sup>st</sup> of February.

**ADV DIRK GROENEWALD:** 21<sup>st</sup> of February at the start date of visit.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you.

**ADV DIRK GROENEWALD:** So that is— we are in the final stages of the transfer already almost and you know, now we are position where we say, “Well, you know, the building is semi in order to accommodate.” But, Ma’am, am I then correct to state that this was basically used to say that well, not in all instances but in some of them [intervenes]

**MS HANNAH JACOBUS:** In most.

**ADV DIRK GROENEWALD:** In most.

**MS HANNAH JACOBUS:** Yes.

10 **ADV DIRK GROENEWALD:** This was used to issue of the licences.

**MS HANNAH JACOBUS:** Yes. Yes, Counsel.

**ADV DIRK GROENEWALD:** But in fact, there was no proper assessments done in respect of the food and the staff and the medicine and the linen and the clothing and ....

15 **MS HANNAH JACOBUS:** It was just enquiries about that and hence, when we have— as I have said, when I looked that that was absent, I alert Dr Manamela on that day and she says I must start looking for the linen and et cetera, et cetera, et cetera, all the equipment because there was no medical equipment in place, no first aid. So I had to arrange all those things.

20 **ADV DIRK GROENEWALD:** When did you issue these licenses?



**MS HANNAH JACOBUS:** Prior to this visit. No, the 1<sup>st</sup> of... It was I think the last week in March the districts received the licences.

**ADV DIRK GROENEWALD:** You see, Dr Manamela testified that you know, she signed licenses almost right through the year because we had a big discussion, big debate about the date of 1<sup>st</sup> of April.

**MS HANNAH JACOBUS:** Since I joined the provincial office, we have done at once a year. For the past three years it was once a year.

**ADV DIRK GROENEWALD:** Are you telling us now, Ma'am, that the 27 NGOs that applied for licences or NGOs that applied for licences, all the licenses were issued, signed on the 1<sup>st</sup> of April?

**MS HANNAH JACOBUS:** Just I think the week before the 1<sup>st</sup> of April it was signed. From the last week in March to the 1<sup>st</sup>, the licenses were made and print out. So after that process it was signed to then because it took about a few days to construct those licences.

**ADV DIRK GROENEWALD:** So you and Dr Manamela's evidence is again at odds with each other.

**MS HANNAH JACOBUS:** No, that is what happened, Sir. Normally, even— let us say for this year, though that we follow proper procedures but only after all work has been executed, the last week, two weeks in March then the licences would be printed to be ready for the 1<sup>st</sup> of April.

**ADV DIRK GROENEWALD:** But why would she say differently?

**MS HANNAH JACOBUS:** We have not done— I have not done any licences in between the year. I have only done it once a year for '14, '15, and '16. Only done once a year.

**ADV DIRK GROENEWALD:** Who provide the NGOs with the licenses?

5**MS HANNAH JACOBUS:** Give it to the NGOs?

**ADV DIRK GROENEWALD:** Yes.

**MS HANNAH JACOBUS:** The district coordinators.

**ADV DIRK GROENEWALD:** Do you know that some of the NGOs said that well, they did not receive the licences or they received the licences only in June?

10**MS HANNAH JACOBUS:** I have heard all that, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** But we know do we not? We are going to tea now but the one thing we know is that the licences were forged. They were not done in accordance with the law.

**MS HANNAH JACOBUS:** Yes, it was not signed by the HOD.

15**ARBITRATOR JUSTICE MOSENEKE:** And you did not— you never checked to verify whether any of the facts on which they might be based were correct.

**MS HANNAH JACOBUS:** I did check, Justice, and as I have said, I even went back in documentation [intervenens]

**ARBITRATOR JUSTICE MOSENEKE:** [Indistinct - cross-talking] change your  
20evidence now in full flight, are you? You are trying to do that, are you?

**MS HANNAH JACOBUS:** No, no, I am not trying to changing my evidence. It was signed by Dr Manamela, not the HOD.

**ARBITRATOR JUSTICE MOSENEKE:** I am saying you told us yesterday that they were no district reports.

5**MS HANNAH JACOBUS:** Reports. Yes, there was nothing.

**ARBITRATOR JUSTICE MOSENEKE:** And that you were given some schedule from [indistinct], started writing up licenses.

**MS HANNAH JACOBUS:** I was using the budget letter, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, and you took those to Dr Manamela  
10to sign.

**MS HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And you have already told us that you add knowledge that that was unlawful [intervenes]

**MS HANNAH JACOBUS:** Yes, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** ....it was reckless, and it was fraudulent.  
Do not shake your head.

**MS HANNAH JACOBUS:** I said yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** We will adjourn for tea.

## SESSION 2

**ARBITRATOR JUSTICE MOSENEKE:** You may be seated. You are under your previous oath to tell the truth Ms. Jacobus. Counsel.

**ADV. DIRK GROENWALD:** Thank you Justice. Ms. Jacobus, let's move on. For 5the financial year 2016-2017, did you receive a performance bonus?

**MS. HANNAH JACOBUS:** No, Counsel.

**ADV. DIRK GROENWALD:** Why not?

**MS. HANNAH JACOBUS:** I didn't submit any PMD to the department.

**ADV. DIRK GROENWALD:** So, it was simply just because you did not submit?

10**MS. HANNAH JACOBUS:** No Counsel, I decided not to do that because in terms of what happened with the project in my participation and my request, it wasn't adhered to. I felt it's not truthfully for me to do that and to satisfy because one of the managers from that section said that I must submit and I said give me something in writing that I have to do that because for me what happened and the way I feel and 15what I endured, I feel I can't do that and they didn't come back to me up till now. So, I didn't receive anything.

**ADV. DIRK GROENWALD:** Did any of your colleagues that participated in the marathon project, did they received performance bonus?

**MS. HANNAH JACOBUS:** They handed in documentation.

20**ADV. DIRK GROENWALD:** And did they receive bonus?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. DIRK GROENWALD:** Are they the same colleagues that also received final return warnings?

**MS. HANNAH JACOBUS:** Yes, Counsel.

5**ADV. DIRK GROENWALD:** And according to yourself that is not right?

**MS. HANNAH JACOBUS:** I think it is a personal choice because as I am saying according to the department you are obliged to do that and to hand in because the explanation that was given to me when I refused, they will be asked questions and I stated my concerns why I don't want to hand in that document and they must put it  
10in writing and I answer them in writing and I hadn't heard anything since then.

**ADV. DIRK GROENWALD:** So, are you telling us that your employer actually insisted that you still apply for performance bonus on that period.

**MS. HANNAH JACOBUS:** Yes, on a quarterly basis there is certain time periods that have these documentation needs to be handed in and I hadn't handed in for the  
15whole year and then at the end of the year for the closure of financial year, I have been told by the management of the section, they said they noticed that I didn't hand in and this is not just for this year, even the previous year I didn't hand in. I must go and construct all the documentation and come and seat. And I said I am not going to, so, I haven't done that.

20**ADV. DIRK GROENWALD:** Did your employer report you to your professional body in this Council?

**MS. HANNAH JACOBUS:** No, Counsel.

**ADV. DIRK GROENWALD:** So, they haven't done that. Madam, we have from a number of witnesses of the department, we have heard them testify to say, you know we could not have foreseen that this would happen, we did not foresee that 5people would die. Did you differ with them?

**MS. HANNAH JACOBUS:** In the sense that I didn't also foresee that people would die. But they knew that after the implementation there would be a lot of work to do. Hence, I have prepared to keep yourselves busy and they have started working form day 1 to put in more time in all these NGOs. And hence we were so busy 10getting things and also getting like food, medication, arrange for all that and all that.

**ADV. DIRK GROENWALD:** Madam, you will agree with me that if our public servants faced with these facts, if they cannot foresee this tragedy then our public service is in a crisis.

**MS. HANNAH JACOBUS:** Yes, Counsel.

15**ADV. DIRK GROENWALD:** Then there must be something wrong with our public servants.

**MS. HANNAH JACOBUS:** Or denial Counsel.

**ADV. DIRK GROENWALD:** Or denial, that is also a possibility. But the fact is we will only be able to ensure that this does not happen in future.

20**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. DIRK GROENWALD:** If our public servants is able to recognize the danger and to recognize the obligation to adhere to our laws. Because this is what happened, there was a total disregard of the laws of our country.

**MS. HANNAH JACOBUS:** Yes, Counsel.

5**ADV. DIRK GROENWALD:** Not even speaking about the ethical obligations of doctors and nurses.

**ARBITRATOR JUSTICE MOSENEKE:** Well, you can't shake your head only, you have to say something.

**MS. HANNAH JACOBUS:** Oh, I though Counsel is still speaking. Yes, Counsel.

10**ARBITRATOR JUSTICE MOSENEKE:** And by yes you mean what? That you agree, that what?

**MS. HANNAH JACOBUS:** Everything that all the doctors and nurses and everything wasn't put in place to see that all the legal requirements to look after the mental healthcare users was in place.

15**ADV. DIRK GROENWALD:** You will agree with me that some drastic action is needed for the department to recognize, perhaps the government to some extent that there is no compromise when it comes to the law, the values of our constitution and our ethical obligations.

**MS. HANNAH JACOBUS:** Yes, Counsel. They have to be put in place.

20**ADV. DIRK GROENWALD:** Thank you very much Justice, we have no further questions.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you Advocate Groenwald. Advocate Hutamo?

**ADV. TEBOGO HUTAMO:** Good afternoon Ms. Jacobus? It is your 2<sup>nd</sup> day being on that stand and much ground has been covered. I will just try and limit the 5 questions without having to repeat what you have already testified on. You have mentioned that you have been working in the department for a period of 30 years or so.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And these proceedings relate to the consequences of 10 the implementation of the Marathon project as we all know.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And your testimony has been that you have been involved with the NGOs prior to the implementation of the Marathon project.

**MS. HANNAH JACOBUS:** Yes, Counsel.

15 **ADV. TEBOGO HUTAMO:** And if I recall your evidence, you have testified that you were reporting to Dr. Manamela.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** Whose decision was it to place the patients in the Non-governmental organizations?



**MS. HANNAH JACOBUS:** Yes, Counsel. According to after I had enquired from my colleagues, they received instructions from Dr. Manamela that amount of patients be placed at NGOs like S-NGOs, that type of thing non a regular basis.

**ADV. TEBOGO HUTAMO:** And it would not have been your own decision that a particular number of patients should be sent to certain NGOs.

**MS. HANNAH JACOBUS:** No, Counsel.

**ADV. TEBOGO HUTAMO:** You have mentioned the number of NGOs which were under your jurisdiction. Do you remember that?

**MS. HANNAH JACOBUS:** Yes, Counsel.

10 **ADV. TEBOGO HUTAMO:** And among those you referred to Bopelong as the only NGO in which one of the patients unfortunately passed on. Can you just remind us which other NGOs were under your control?

**MS. HANNAH JACOBUS:** It was Sebo Serima (sp), El-Shaadai. I can't think straight.

15 **ARBITRATOR JUSTICE MOSENEKE:** Are you okay Ms. Jacobus, do you want us to adjourn for a while for you to find -. Can we all be quiet please?

**MS. HANNAH JACOBUS:** It was Bopelong, Sebo Serima (sp), El-Shaadai. Sorry, I can't think straight but it was 4 NGOs that they had to look after. But besides looking after that 4 NGOs, all the NGOs had also people assigned to it when they had problems or they would call me or the NGOs would call me direct if they are sitting with a challenge or what they should do or whatever and I would also run and

20

assist at these different things. Like Tsepong for instance. I was called because there was a problem with food apparently 2 days prior to that. Then I had arranged with Rabafeng manager because I knew when I was there they would arrange for food. So, I asked them also asked them to supply Tsepong. So, I just went to go 5and check on that and the team went ahead and ordered. And that is why I didn't partake in the full extent of the audit and that is how I have been working.

**ADV. TEBOGO HUTAMO:** And if I recall your evidence, you stated that 3 of the 4 NGOs which were under your control, none of the patients passed on during the Marathon project?

10**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And u have also mentioned that the information that was given to you was that t decision to transfer these patients was a decision of the executive?

**MS. HANNAH JACOBUS:** That is what we have been told by Dr. Manamela. Yes, 15Counsel.

**ADV. TEBOGO HUTAMO:** And you were purely following instructions of what had to be done from time to time?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And we now know that a number of patients 20unfortunately passed on.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** By any chance do you know the exact causes if death of those patients?

**MS. HANNAH JACOBUS:** Oh, the causes. When I was assigned to Cullinan in Siyabadinga NGOs to assist there. Hence, I said we took patients to hospital 5virtually on a daily basis. Take some out and take others back. And because of the time, I just went to 2 hospitals to speak with the medical officers to ask what is wrong with the patients. And one of the 3 patients that I can remember back clearly was one was undiagnosed HIV, one was undiagnosed cardiac problem, other one was extended TB that was also undiagnosed. The patients wasn't divorced down 10from Life Esidimeni without medical treatment. They have been given administrative records. And at times when you go through the administrative record, not all the medical information would be in that file. So, there was some constraints. They received yes, a discharge form and a brief report.

**ADV. TEBOGO HUTAMO:** Yes. And you have mentioned that the core of your 15responsibility was to manage the NGOs in respect of which the patients were transferred?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And now it is common cause that certain aspects of investigations relating to those NGOs were not followed.

20**MS. HANNAH JACOBUS:** If you can explain investigations Counsel.

**ADV. TEBOGO HUTAMO:** We now know that the NGOs in respect of which patients were transferred were not properly assessed?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And you were purely executing an instruction in respect of the compilation of the information relating to those NGOs.

**MS. HANNAH JACOBUS:** No, Counsel. There was no compilation, what did you ask?

**ADV. TEBOGO HUTAMO:** You were given the responsibility to identify the NGOs which were going to be used?

**MS. HANNAH JACOBUS:** No, Counsel. I didn't identify the NGOs.

**ADV. TEBOGO HUTAMO:** Who identified those NGOs?

10**MS. HANNAH JACOBUS:** As I alluded earlier on Counsel, there was a meeting. Dr. Manamela discussed this closure and discussed this with various sectors of meetings that she called to inform about the Life Esidimeni closure. And then the last process was the November meeting at Sterkfontein hospital where the word has already gone out to different districts to identify and hear about people that  
15wants to open up NGOs or extend beds. So, in that meeting in Sterkfontein, they were told to go back and if they decided to do that they must then come back and then I can't remember the whole extent because Manamela was driving the whole process mostly. Because after that meeting, sporadically a few NGOs where she will inform I must come to the office she is going to see like Rabafele for instance  
20which is a new NGO, I didn't know them. She is going to have a meeting with them and she also set up the district meetings were the different NGOs in the different

districts will come and present to her if they are interested, the staffing and what they have.

**ADV. TEBOGO HUTAMO:** Essentially it was Dr. Manamela who made the decision which NGOs are going to be used.

5**MS. HANNAH JACOBUS:** In terms of which NGOs was going to be used, after that compilation or the names and NGOs was received, then it was visitation of these NGOs to ascertain what is available at those particular NGOs and particular facilities. And based on that, if a particular facility is more or less the requirements then it will be said that, that one can continue. Those ones for hospitals has given 10because this thing was out, people who wants hospitals, they must submit with their NGOs they must submit their names. Those hospitals was then inclusive with it.

**ADV. TEBOGO HUTAMO:** Okay, thank you. And in your testimony you mentioned that had the project been managed properly, the unfortunate results would not have occurred.

15**MS. HANNAH JACOBUS:** Yes.

**ADV. TEBOGO HUTAMO:** In light of your evidence that you were simply taking instructions and not making decisions relating to the transfer. And I just want to find out with your involvement with the NGOs, did you foresee people dying simply by them being transferred to NGOs?

20**MS. HANNAH JACOBUS:** No Counsel, and may I explain Justice. I didn't transfer patients. Patients were transferred, as I have said, Dr. Manamela would communicate with a transfer team and then they would then be sent. I wasn't part of

any, I was just become known after the placement when NGOs would call or if I happen to come to that NGO were that patient has been placed.

**ADV. TEBOGO HUTAMO:** So, you became aware of the placement after placement basically.

5**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** So, you did not have prior knowledge?

**MS. HANNAH JACOBUS:** No Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** What do you mean by that? Who made decision to transfer patients?

10**MS. HANNAH JACOBUS:** My understanding Justice in what Counsel is asking is my involvement of placement of patients at NGOs. There was a placement team at both centres. People that was assigned to those areas and they were preparing the placement of the patients to the different areas.

**ARBITRATOR JUSTICE MOSENEKE:** But you knew Esidimeni contracts will be  
15terminated, right?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** And you knew that patients were going to be removed from there

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** You knew that patients will be taken to NGOs.

**MS. HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And you knew that NGOs were not ready.

5**MS. HANNAH JACOBUS:** The NGOs that was ready and those that were not suitable for patients, all the communication went through to Dr. Manamela.

**ARBITRATOR JUSTICE MOSENEKE:** But you knew all those things.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** So, what are you saying now? Or you  
10 simply mean that physically you were not at Life Esidimeni?

**MS. HANNAH JACOBUS:** Yes, I was not there at Life Esidimeni.

**ADV. TEBOGO HUTAMO:** But you knew the whole plan and you were part of it.

**MS. HANNAH JACOBUS:** Yes, Justice.

**ADV. TEBOGO HUTAMO:** And you were in the directorate, you were number 2 in  
15 charge in the directorate. Mental healthcare directorate. Isn't it so?

**MS. HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You were the 2<sup>nd</sup> in command.

**MS. HANNAH JACOBUS:** Yes, Justice. At that time there were no meetings held. I think since the placement started we haven't seen one another.

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

**ADV. TEBOGO HUTAMO:** Ms. Jacobus, you testified yesterday that you visited some of the NGOs. Is that how I recall your evidence?

**MS. HANNAH JACOBUS:** Yes, Counsel. If I couldn't go then I would ask support from the district people. I can't go to this one, this came up, they would inform, okay go that way. So, I couldn't do all by myself. And the other people were assigned to certain NGOS of my colleagues.

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry Counsel. And the district people, who did they report to?

10 **MS. HANNAH JACOBUS:** The district people reported to the district office.

**ARBITRATOR JUSTICE MOSENEKE:** Those who monitored the NGOs reported to the district office.

**MS. HANNAH JACOBUS:** Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And the district office reported to?

15 **MS. HANNAH JACOBUS:** The provincial office.

**ARBITRATOR JUSTICE MOSENEKE:** That is you?

**MS. HANNAH JACOBUS:** Dr. Manamela.

**ARBITRATOR JUSTICE MOSENEKE:** No, the district office in relation to NGOs reported to you?

20 **MS. HANNAH JACOBUS:** Yes, Justice.



**ARBITRATOR JUSTICE MOSENEKE:** You were the provincial head?

**MS. HANNAH JACOBUS:** Coordinator, yes.

**ARBITRATOR JUSTICE MOSENEKE:** Coordinator for NGOs. Thank you, you may proceed.

5**ADV. TEBOGO HUTAMO:** Ms. Jacobus, I just want to repeat the question that I posed to you earlier on. I think I just need to get clarity on it. In respect of those that you have managed to visit, can you just tell us if you foresaw the possibility of patients dying if they had to be transferred to those NGOs?

**MS. HANNAH JACOBUS:** Yes, Counsel. Can I further explain Justice? Even with  
10the meetings with the Life Esidimeni without concerns was that only 60%, I am quoting a document that patients that would be (inaudible 0:22:21) is not suitable for discharge. And according to the placement team, some of the patients were supposed to be placed at hospitals but the hospitals didn't have enough space for all those patients.

15**ADV. TEBOGO HUTAMO:** Let's talk about the NGOs that you have visited. What were the conditions of those NGOs?

**MS. HANNAH JACOBUS:** Most of the conditions of the facility itself?

**ADV. TEBOGO HUTAMO:** Of the facility, in respect of the ones which you have visited.

**MS. HANNAH JACOBUS:** It was conducive. According to that list that was read out yesterday, the place, the facility was according to that least, there was kitchen that was proper and all that, laundry area, sleeping rooms.

**ADV. TEBOGO HUTAMO:** So, in respect of those that you have visited, you say they appeared to be conducive?

**MS. HANNAH JACOBUS:** Yes.

**ADV. TEBOGO HUTAMO:** Conducive to what?

**MS. HANNAH JACOBUS:** For placement or to receive patients.

**ADV. TEBOGO HUTAMO:** Would you have foreseen death occurring from those NGOs?

**MS. HANNAH JACOBUS:** Yes and no Counsel in terms of the condition but in terms of the type of patients that was placed, yes, there was a lot of constraints there.

**ARBITRATOR JUSTICE MOSENEKE:** There was a lot of what?

**MS. HANNAH JACOBUS:** Constraints. That is why when we assess we would then remove the patients immediately and take them to hospitals.

**ADV. TEBOGO HUTAMO:** Yes, well if you can just try and assist us. I mean like I just want you to clarify when you say you have visited certain NGOs in respect of which you inspected the facility and your observation was that the NGOs were conducive to receive the patients?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And I just want to know from you if you knew what would cause any death in respect of any of the patients which were to be accommodated at those NGOs?

**MS. HANNAH JACOBUS:** According to my observation, if one takes nutrition and 5 remember at that stage when the patients were placed, you didn't have a medical record, so you don't know what type of diet this person should be placed, they still had to be assessed. The ones that we didn't take to clinics and hospitals because it was a process that we 1<sup>st</sup> identify the crisis ones and the urgent ones that we have dealt with. And then it was the medication for instance that some NGOs ran out of 10 medications and as I have said we engaged some doctors to assist. Some were psychotic -

**ADV. TEBOGO HUTAMO:** Yes, the question that I want to pose to you, I am speaking in relation to the conditions of the NGOs at the time of inspection and when patients had to be transferred. I just wanted to find out from you as at that 15 time, not post the transfer of patients. So, can you just assist us as to whether at that time did you foresee death occurring to -

**MS. HANNAH JACOBUS:** No, Counsel. I can't say.

**ADV. GROENWALD:** You have asked the question 4 times and the answer was yes, we have foreseen. And now he has rephrased it and rephrased it until he gets 20 his answer. So, I am objecting to this line of questioning.

**ARBITRATOR JUSTICE MOSENEKE:** I was just about to tell Advocate Hutamo that it might be that you are worsening this poor witness' position. We have heard

her talk about foreseeability 3 times and the answer is irrevocable and u are pressing. I think you are bound by the answer that the witness is giving. You may not like the answer but she has given the answer three times. So, you are entitled to continue with the question but it cant be the same questions because you have had 53 answr4s. It may not even be in the witness' interests soliciting the answers you have already solicited. Be that as it may, you have heard the objection and I suggest you proceed with your questions and repeat only if in another form. But you have had 3 answers to the question.

**ADV. TEBOGO HUTAMO:** Justice, it is quite correct that the question may be 10proceeded in a different form and what I have done is exactly that. It is just unfortunate that my learned colleague did not like the last answer to the question. So, he is equally bound by the answer to the last question.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, but 3 answers plus 1, so, you the cross-examiner I think you must move on to another area.

15**ADV. TEBOGO HUTAMO:** Indeed the question has been answered.

**ARBITRATOR JUSTICE MOSENEKE:** With 4 answers, with 3 plus 1

**ADV. TEBOGO HUTAMO:** Indeed.

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

**ADV. TEBOGO HUTAMO:** Ms. Jacobus, you have been asked questions about 20your fear of Dr. Manamela. Do you recall that?

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** And it has been put to you that you were not fearful of Dr. Manamela.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** In your testimony, you have testified that despite your protestation, you ultimately had to execute the instruction that was given to you.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** By Dr. Manamela.

**MS. HANNAH JACOBUS:** Yes, Counsel.

**ADV. TEBOGO HUTAMO:** In that way will it be correct that you could have acted against her instructions to you?

**MS. HANNAH JACOBUS:** Yes Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, at some point you will have to put your case to the witness of course. At some point. You do not have to say now but ultimately you have to say my – the state’s position is as follows, is that you acted unlawfully, you acted despite what you say in an orderly way you issued the licences knowing that everything was prim and proper. You, at some point the state’s view is different and you have to put it like any other cross-examiner. I am waiting patiently. I am not stopping you yet. But you have had your answer. It might not be the answer you wanted but you have had it.

**ADV. TEBOGO HUTAMO:** Thank you Justice. What is it that you could have done contrary to the instructions that was given to you.

**MS. HANNAH JACOBUS:** Yes, Counsel. What I have done was also to raise concerns within meeting procedures informing the project manager that we had a meeting, called a meeting with Dr. Mazamisa, Dr. Manamela's supervisor, it was raised. And in our meetings even within the meetings we have asked the doctors to support us with the letters or the concerns should come from their side to support us. Because Council remember there were different actions that was supposed to stop the project. There was court decisions to stop the project and all those things failed. And I am just – so, yes, I have tried but all (interjects)

**ARBITRATOR JUSTICE MOSENEKE:** Can we give the witness an opportunity please.

**MS. HANNAH JACOBUS:** But after all else there was nothing I could do and only afterwards and remember being within the public sector, you know that if the most senior people in the department is part and parcel of this project and making decisions receiving information from down there. They have the ambit responsibility to take decisions and we never got back sufficient answers on our concerns even with the assessors and all others.

**ARBITRATOR JUSTICE MOSENEKE:** Which senior people did you come to know where in support of the project?

**MS. HANNAH JACOBUS:** Justice, I cant answer the senior people in support of the project because when we raised our concerns as things were going on, Dr. Manamela executed and divide us into different areas, we would ask about this and

that and she says there is nothing that can be done. It is a senior management decision, senior management says that the work should go on.

**ARBITRATOR JUSTICE MOSENEKE:** Who makes up senior management according to your knowledge?

5**MS. HANNAH JACOBUS:** I am not sure but it is a different departmental, it is like finance, HR, etcetera. All the departmental heads inclusive the HOD.

**ARBITRATOR JUSTICE MOSENEKE:** But when you talk about senior management, who are you talking about?

**MS. HANNAH JACOBUS:** The personal who is responsible for – the CFO for  
10finance. At that time it was Mr. Mahlangu, a person responsible for quality services, Mrs Maurie and it is all these people, all the departmental heads within the department up to the HOD.

**ARBITRATOR JUSTICE MOSENEKE:** And you had an impression that they supported the project?

15**MS. HANNAH JACOBUS:** And they listened to our concerns and all else that our concerns or everybody else's concerns was addressed. What came up was the assessor's section was pressing on answers that Dr. Manamela said that they should write a formal letter. So, then a letter was constructed and sent up to them.

**ARBITRATOR JUSTICE MOSENEKE:** Remember my question was much  
20narrower. Anyway, proceed Counsel. I was asking who was senior management that is all.

**MS. HANNAH JACOBUS:** It is all departmental heads Justice.

**ARBITRATOR JUSTICE MOSENEKE:** All departmental heads.

**MS. HANNAH JACOBUS:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, thank you.

5**ADV. TEBOGO HUTAMO:** Ms. Jacobus, in your capacity, do you have any regret  
in how the project was implemented?

**MS. HANNAH JACOBUS:** Yes Counsel, a lot. I have a lot of regrets that I  
continued participating in this project.

**ARBITRATOR JUSTICE MOSENEKE:** Just let me know when you can't proceed  
10and we will adjourn.

**MS. HANNAH JACOBUS:** I am fine Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV. TEBOGO HUTAMO:** Justice, if I can be allowed to end the questioning on  
that note. There will be no further questions to the witness. Thank you, Ms.  
15Jacobus, for coming through.

**ARBITRATOR JUSTICE MOSENEKE:** At that point Counsel, are you sure you  
have exhausted all your questions, you are fine?

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

**ARBITRATOR JUSTICE MOSENEKE:** Okay, very well. Re-examination.

20**ADV. PATRICK NGUTSHANA:** Thank you Justice Moseneke, no re-exam.



**ARBITRATOR JUSTICE MOSENEKE:** No re-exam, thank you. Ms. Jacobus, thank you for coming out. By sheer coincidence you are my neighbour right. I am sorry you look a little distressed now. Firstly, thank you for coming and coming on your own without subpoenas and compulsions. Thank you, you are a very important person and witness who knew about the project, marathon project. So, thank you for letting us know and the families may think one way or the other but I am sure they appreciate that. You have been here and you were prepared to testify about a very difficult project with very difficult circumstances. And outcomes affecting nearly 1400 people. But here we have a practice at the end of evidence we allow the witness to have a valedictory address. So, you are not obliged to do it but if you feel like you would like to have your final word, this is your moment.

**MS. HANNAH JACOBUS:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Please speak loudly and clearly into the mic so that everybody can hear. We are recording the proceedings.

**MS. HANNAH JACOBUS:** Thank you Justice. From the time of the announcement or the clarity that the project will continue and then on a daily basis, there was a lot of reflection in terms of the unavailability to do the correct thing. The unavailability of me as the accountable and responsible person to be also part and parcel of the final decision in implementation of this project and merely keeping some instructions of where to go and how to do and what to execute for that matter. I have walked out for instance 3 times out of a meeting and then I was caught at the lift and gone back. I have shared many a tears with the implementation of first referral of patients that went to these NGOs and one realized the circumstances. Remember when you

do and the magnitude of the patients, you can't down devolve patients of that magnitude to any place. Whether it's a hospital or whatever. It is very cumbersome and it is expressing for that patients that needs to adapt and the other circumstances was family members that have to run around looking for patients, I don't know where the patients, I don't know where the patients are. I feel really terrible for my actions and non-action for that responsibility. It is only now with the onwards discussion that I realize that we could have gone further beyond the MEC and the Premier and took other steps. Just way back when we had a problem and we went but this is some time back to human rights for example and then they said it is a departmental thing and we must handle. So, coming with those past experiences we thought our seniors must listen to us and support us because it is a trust and working relationship. And I really regret the non-action of not doing more what I have done and escalate the concerns to other areas. I really apologize to the families for what happened and if they can forgive me for partaking in this project because when we realized what was going on, there wasn't enough time to speak to families properly or to communicate to families. I have made promises to 3 families, elderly people that I will see that they will be delivered at the places that they asked me to do. It was given after the project and I had to go around to all these places to look for these patients. I found 2 and I have taken 1 to the patients and I have asked the district support to assist me. The other 2 family members because I didn't know the faces of the patient, when I was known of the deaths and sit with the death report, it was so heart-breaking and I asked myself if this person is still alive. Where are their family members? When they asked me, it was in one of

the family committee meetings, you could see the desperation, please assist. I don't know who it is. I had an accident and the taxi was helping me to clear the car. So, I had no information who the people was and where to look for them. And if I don't find them now, I will go to my grave with that questions. Where are they, are the child alright, are their families alright because they were quite elderly. NB then I am really wanting to apologize to the families that the patients died, that I didn't do more than what I have done, to the family members that have still patients for them, for the agony and sadness that you have to endure and then to the country as a whole for this implementation of this project and then for having taken part in this project that has caused the death of so many mental healthcare users. The pain and the sadness of the families. I wish to ask again for forgiveness. And forgiveness again that I didn't do more than what I have done to stop the project from my side. And to make it hard even on that, during the course of this project, afterwards when I became known of the deaths, I had a mixture of feelings, extreme anger, extreme sadness, extreme guilt feelings because I couldn't give answers or whatever to assist and I couldn't forgive myself, which resulted, I couldn't eat properly, I couldn't sleep properly, I couldn't even function at work at times properly, go to work, walk around the place aimlessly, go back to the office and think what do I have to do, what is supposed to be done? Yes, I don't have to make this excuse but I am not well. And also the extreme guilt feelings for allowing the district in assisting me in this project and they were really pressurised through district members, had a severe breakdown and they ended up in hospital. And it was evident just looking at them that they are not well. They are still now recuperating. So, for my part and my guilt, I

don't know whether I will ever be able to get rid of that and I just (crying)... And what I realize now in future, whatever comes part, if it is not on paper like the implementation of the project, that I shouldn't allow that fear and uncertainties by seniors and be bullied by them to implement things. And I have become wiser how to handle and where to run and if I can't do it, to get other people to assist and to partake and give information and to consult rather on how to do and not to do and not just doing the work and also look at how the thing is to be executed. And I am really extremely sorry that I have allowed management to bully me, to continue implementing this. Thank you Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** Thank you Ms. Jacobus we are in your hands. If you have more to say, you have the opportunity to do so. But if you have come to the end of your closing remarks, of course you will let us know. I again thank you for having come to share this and again for recognizing the gravity of the pain for others and for yourself indeed. If you have more to say, you will let me  
15 know so that we will allow that. But it is an important part of – can we get support staff as usual.

**MS. HANNAH JACOBUS:** Justice, it is so humiliating and I feel so used. I feel this - (crying)

**ARBITRATOR JUSTICE MOSENEKE:** You have done much to confess to what  
20 you did and I think you must take that with you. It is important to see that happen and I don't think you should throw yourself into nowhere. But once you are done, I think you should chin up. The pain is hanging around all of us. But once you are okay, tell me so that we can release you from the witness box. I can thank you for

coming and your words are very important. I hope you are supported and your family members will be with you. Thank you for your candour and thank you.

Advocate Hassim.

**ADV. ADILLA HASSIM:** Justice, our next witness is Professor Ames Dhai and she is ready to take the stand.

**ARBITRATOR JUSTICE MOSENEKE:** I think we should invite Professor Ames Dhai to take the stand. While she is coming through, I have been alerted by staff in my office that there is somebody who is conducting a twitter account in the name of Dekgang Moseneke and has been tweeting about the proceedings here. I do watch and follow social media but I don't keep an account and I do not tweet. Not about soccer, not about music, not about anything. Least still about the proceedings where I am an arbitrator. So, I just wanted to make that quite clear that one or two busy bodies but I don't tweet about anything here. There are at least 10 cameras, So, I don't have to tweet anything. It is all recorded all the time. So, I want you all to accept that there is no such account I keep and I simply do not tweet about everything. I do read other people's tweets and that is how far it goes. Professor Dhai on that note on tweeting, welcome. In which language do you want to testify?

**PROF. AMES DHAI:** In English Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Would you want to take an oath or an affirmation?

**PROF AMES DHAI:** The oath.

**ARBITRATOR JUSTICE MOSENEKE:** The oath is fine with you. Do you swear, please put your full names on record please.

**PROF. AMES DHAI:** Ames Dhai.

**ARBITRATOR JUSTICE MOSENEKE:** Do you swear the evidence that you are going to put will be the truth and nothing but the truth and if so please raise your right hand and say so help me God.

**PROF AMES DHAI:** So help me God.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Advocate Hassim.

**ADV. ADILA HASSIM:** Thanks Justice. Good afternoon Professor Dhai.

10**ARBITRATOR JUSTICE MOSENEKE:** Before the witness proceeds. I have to make disclosure and Counsels are welcome to raise an objection if any. I am an Honorary Professor of Bioethics at the same centre where Professor Dhai is director, something of public knowledge. So, if I am not a Justice, I am the professor. I wanted you to all know that. It is unrelated to your presence here. She is invited  
15independently and that is so. I occasionally give lectures at the Medical School at her request and I want that to be known. Any objections from the Counsel.

**ADV. ADILA HASSIM:** Nothing from our side, thank you Justice.

**Advocates:** No objections Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, I am relieved. Very well. Shall  
20we proceed?

**ADV. ADILA HASSIM:** Thank you. Professor Dhai, if you could just for the record state where you are currently employed?

**PROF AMES DHAI:** I am currently employed at the University of the Witwatersrand at the faculty of Health Sciences School of Clinical Medicine.

5**ADV. ADILA HASSIM:** And what position do you hold at the university?

**PROF AMES DHAI:** I am the head of discipline for Bioethics and the director of the Steve Biko centre for Bioethics and health law.

**ADV. ADILA HASSIM:** And did you establish the centres, is that correct?

**PROF AMES DHAI:** I did.

10**ADV. ADILA HASSIM:** When was that?

**PROF AMES DHAI:** At the beginning of 2007.

**ADV. ADILA HASSIM:** And what is your field of expertise?

**PROF AMES DHAI:** Currently, it's bioethics and health law but prior to this I was a gynaecologist.

15**ADV. ADILA HASSIM:** A gynaecologist, so you are a medical doctor by profession.

**PROF AMES DHAI:** Yes, my background is medicine and a speciality in obstetrics and gynaecology.

**ADV. ADILA HASSIM:** Justice, Professor Dhai's CV is attached to her report. It is to be found immediately after her report. It is an extensive 32 page CV. I don't think we should go through with the entire contents.

**ARBITRATOR JUSTICE MOSENEKE:** You want to invite your colleagues whether they concede that she is an expert?

**ADV. ADILA HASSIM:** Indeed.

**ARBITRATOR JUSTICE MOSENEKE:**

**ADV. LILLA CROUSE:** Thank you Justice, we have seen the CV and we have accepted the expertise of the witness.

10 **ADV. PATRICK NGUTSHANA:** We have no issue with the CV Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** But you accept that she is an expert?

**PROF AMES DHAI:** Yes, we accept that.

**ADV. DIRK GROENWALD:** We accept that she is an expert

**AD. TEBOGO HUTAMO:** We accept her expertise Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** You may proceed then to the core evidence rather than qualifying the witness.

**ADV. ADILA HASSIM:** Thank you Justice. Professor Dhai, you have prepared a report as part of your evidence that you are about to give before this hearing. Are you familiar with the facts of the arbitration.



**PROF AMES DHAI:** Yes, I am familiar with the facts in terms of the Ombuds report and in terms of the media reports that I have come across.

**ADV. ADILA HASSIM:** And u have read the full Ombuds report?

**PROF AMES DHAI:** Yes, I have gone through the full Ombuds report.

5**ADV. ADILA HASSIM:** And your services were retained by the attorneys for the families Section 27?

**PROF AMES DHAI:** Yes, that's true.

**ADV. ADILA HASSIM:** And the purpose was to provide a report on the ethical implications on the Life Esidimeni Marathon Project?

10**PROF AMES DHAI:** Yes, that's true.

**ADV. ADILA HASSIM:** And if we could start then at the beginning. Just explain to the hearing why the ethical implications would be of importance to this matter?

**PROF AMES DHAI:** I think as we can see or from the reports and the Ombuds report that I read, patients were not only harmed but they were wronged and wrong  
15has a greater moral emphasis as compared to harmed. Not only where they wronged, patients' families were wronged as well and communities and societies were wronged in this process. Who were they wronged by? Not only healthcare professionals but non-healthcare professionals involved in this project. So, the ethical and moral implications are quite huge. They are grave ethical implications  
20associated with the entire project.

**ADV. ADILA HASSIM:** We haven't had any evidence thus far on the ethical implications. So, I am grateful to you for making yourself available. I am going to turn to your report. You begin the report dealing with obligations in the health profession, obligations of health professions. Would you like to just expand a little on that. You speak about certain obligations that are specific to healthcare and you distinguish it from other professional environments, business or any other career and you explain that. Can you do so now?

**PROF AMES DHAI:** So, the fundamental obligations for healthcare professionals are compassion and caring that go together, competence and professional autonomy. This together with a respect for human rights actually form the basis or the foundation of ethical practice in healthcare. And why so? It's because as healthcare practitioners we actually work with human beings. Okay, you work with people that come to you in highly vulnerable situations. When you look at vulnerability, what do I mean? There is a power dynamic. You have the healthcare practitioner that's the all-powerful versus the patient that's coming to you without the knowledge and understanding of your training and of your understanding of what could actually be wrong with the patient. So, it is in that position of vulnerability that the patient is forced to place his or her trust on you the healthcare practitioner. And it is because of this type of vulnerability that a high degree of professionalism and ethics is required by healthcare professionals. Over and above that, how do healthcare professionals actually train? We train on human bodies and how do we train on human bodies? It's society that sanctions our training. It's society that allows us to examine ill patients, it's society that allows us into the anatomy labs to

work with dead bodies and because of this contract that we now have with society we have to have a certain level of professionalism that will respond to society's need and society's trust in us.

And the 3<sup>rd</sup> reason is as healthcare professionals all of us take oaths at graduation when we complete. And inherent of those oaths is the fact that we understand the gravity of our calling. Our calling is not the same as any other profession. It's not the same as a business and the healthcare professionals' knowledge and training is not for sale in the marketplace. And it is for those reasons that the healthcare professionals are placed at I would say a higher level in terms of professionalism.

And if you look at professionalism in healthcare and how one would actually define a professional in healthcare. Professionalism in healthcare is an activity with a high level of moral standing. An activity with a high requirement for an understanding of people's well-being. It is also a profession in which one must have a mastery of the body of knowledge and skills associated with that profession. And very important, a high level of professional autonomy.

**ADV. ADILA HASSIM:** Thanks, so it is obvious that it is a lot more than clinical or technical excellence. While that is important, the ethical obligations go much beyond the requirements.

**PROF AMES DHAI:** Absolutely, it goes beyond clinical and technical excellence. When we look at competence, the excellence extends into ethical competence and understanding being competent from the human rights perspective. And why? Because practice in healthcare is also about feelings and experiences and an

understanding of the human being in extraordinary situations of anxiety, fear and doubt. And this is what contributes to that vulnerability and it is inherent within this vulnerability that professionalism gets situated.

**ARBITRATOR JUSTICE MOSENEKE:** I am sure Professor Dhai you are going to  
5 later deal with this as you are talking about autonomy and self-determination. I  
immediately think of a class of patients here who have none of the two ordinarily. In  
other words, they are not always available and capable of making decisions. And  
when they do they are not always capable of communicating the decisions. If you  
are going to deal with it later, think about dealing with it then. But trust me that here  
10 we have vulnerability multiplied in a way particularly around self-determination and  
autonomy. Am I right?

**PROF AMES DHAI:** Absolutely Justice because when you look at patients in the  
mental health situation, there are often times when these patients are not in a  
position to make informed decision, not in a position to actually express their  
15 autonomy or their self-directedness. However, I think it will be very important to  
explore with the patients how far their decision-making can actually be drawn into  
the process. But and if there is a problem there is a proxy and the proxy is usually a  
family member that will assist with the patients actually attaining that autonomy that  
they lack.

20 **ARBITRATOR JUSTICE MOSENEKE:** Here is a follow-up question, in a moment  
I think your Counsel will get to there ultimately which would be, is there a  
proportionate relationship between a lowered level of self-direction in a patient and  
a heightened ethical responsibility? I don't know if you get my point. If you say Mr.

Mosenele I want to take your eye, it is bad I probably will have a few things to say about that. You might not get it right. But if you told somebody who doesn't have outward self-direction. So, the question is do you professionals in the medical would have a higher duty when self-direction or autonomy is lower?

5 **PROF AMES DHAI:** Yes Justice. In situations of this nature, vulnerability is further increased. So, we recognize the situation of heightened vulnerability and where there is heightened vulnerability, as you correctly said, there are further ethical dimensions that one would need to consider. And therefore the importance of stops, checks, balances and safeguards, further safeguards in terms of protecting the  
10 rights and needs of these patients.

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

**ADV. ADILA HASSIM:** Thanks Justice. Just, we will return to this later. But just to close the point, is it your view that there is a heightened ethical duty in the case of patients with greater vulnerability like mental healthcare users.

15 **PROF AMES DHAI:** I definitely believe that there is a higher ethical duty because these patients are not able to protect themselves. Where there is a loss of autonomy, there is a loss of the ability to protect one self. So, it is important for us as healthcare practitioners to recognize this and if they are unable to protect themselves then as healthcare practitioners, one will have the responsibility to  
20 recognize this higher ethical safeguard that one will have to have towards these patients.

**ADV. ADILA HASSIM:** And that will involve ensuring that there is adequate communication with family members. Would that be correct?

**PROF AMES DHAI:** Absolutely Counsel because one would look at the family members as the proxy for these patients, as the substitute decision makers for these patients. And therefore, the families will play a pivotal role in this regard.

**ADV. ADILA HASSIM:** Thanks, we will return to that and in the context of the facts on what to place here. So, we will come back to the topic again. You were talking about the specific nature of healthcare professions, ethical obligations that are unique to this profession. It is also the case that the healthcare profession is very heavily regulated by law, why is that in your opinion?

**PROF AMES DHAI:** Very important because we are dealing with vulnerability. So, health professionalism is regulated and this is to protect the public and to guide the professions. And what do I mean by to guide the professions? It is to set standards of ethics and professionalism which healthcare practitioners will need to abide by. It is also to denote responsibility and accountability to the healthcare professionals. It is also to give them that status that healthcare professionals that they hold.

**ADV. ADILA HASSIM:** Thank you, can you just explain before we get into your report what you approach to your enquiry was for the report, your bioethical inquiry.

**PROF AMES DHAI:** Okay, so there is various ways to approach a bioethical inquiry. One can use the oaths guidelines, one could use a conceptual analysis using principles. What I did, the basis of my report in terms of the ethical analysis is from the oaths guidelines and this for me was important because in terms of

healthcare professionals we have oaths that have moral authority going back into antiquity, taking us back into the Hippocratic era which is over 2500 years old. And while we have had an evolutionary process in terms of progress in science, technology and society, the principles of Hippocratic oath have remained unaltered, have remained the same. So, that is why – what I did was I looked at the oaths in terms of the international guidelines. I also looked at what we had nationally in terms of regulators, the codes that are provided by our regulators and the oaths that are taken in the different medical schools. So, this was one aspect of my analysis. I also used human rights concepts and this is because human rights has actually in the not too recent past led to many developments or influenced developments in ethics. I also looked at history and especially considering our situation in South Africa, I felt history was very important because history then enabled me to locate my analysis within a certain trend. And using history I was able to identify similarities with what happened in the past. And therefore, ethical issues from the past that have been dormant for some time have now resurfaced.

**ADV. ADILA HASSIM:** we will come back also to that. I think that the issue of history returns in the way that you have analysed some of the facts in this case. If I am wrong then you may feel free to expand on the relevance of history or else we can deal with that as it arises.

**PROF AMES DHAI:** Yes, we could.

**ADV. ADILA HASSIM:** You begin with the codes, you begin with the nursing profession. Can you in summary tell us what the key codes are and what the key principles are in the facts of this case.

**PROF AMES DHAI:** Okay, so I think maybe it would be a bit of a long summary but I think it would be important to go back to 1893 with the Florence Nightingale code. And that was the beginning of the code for our nursing profession. And basically the principles in the Florence Nightingale code, very important for this case is to lead by example. Faithfulness, responsibility and accountability, quality and devotion. Okay, and if you look at this principles, you look at what for me what came from the Ombuds report and what I picked up from the media reports, many of the principles of the Florence Nightingale code were infringed. Then later on we had towards the middle of the last century, we had the International Council of Nurses, the ICN that came up with its codes which underwent amendments with the latest being in 2012. And when you look at the preamble of the ICN code, it states categorically that the responsibility of nurses is to promote health, to restore health, to prevent illness and to alleviate suffering. Okay, very important in this situation as well. It goes on further to state that human rights must be respected and in particular the right to life and the right to dignity. And it also goes on further to look at some core principles which it actually pulls from the Florence Nightingale code, responsibility, it also pulls on being responsiveness as well. Trustworthiness comes into the situation.

So, we have the ICN that is the International guidelines and then we have the South African Nursing Council Code which was promulgated in 2012 or 2013 around that time. And the South African Nursing Council Code is very similar to the International Code. But very important in the Nursing Council Code, it states upfront that it is binding on all nurses in the country.



**ADV. ADILA HASSIM:** And at what point be nurses bound by that code? When they finish their studies, when they practice?

**PROF AMES DHAI:** Definitely when they begin to practice they are bound by this code because we go on further in Nursing Council Code, there is a pledge. A pledge that had been taken by nurses for around 50 years. And this is a pledge taken by all nurses graduating from Nursing School. And basically the pledge boils down to nurses pledging to serve humanity. So, [pledging themselves to the serving of humanity, to actually conduct their work with conscience and with dignity.

**ARBITRATOR JUSTICE MOSENEKE:** Does it make a difference if a nurse is in an executive management or administrative position?

**PROF AMES DHAI:** It is binding to all nurses that have taken that code because if a nurse is in that executive management position and is taking decisions that are going to impact on patients, it is binding because they say I solemnly pledge to respect the human rights of the patient. I solemnly pledge the health of the patient would be the 1<sup>st</sup> consideration etcetera.

**ADV. ADILA HASSIM:** So, mere movement to an executive role directed at nursing is not sufficiently removed to exonerate the nurse from being bound by the code?

**PROF AMES DHAI:** No Justice because the code does not say I solemnly pledge in my direct action with patients, it does not differentiate between direct and indirect. And the International Council of Nursing within that code stipulates that nurses, the

code applies to nurses whether they are directly involved with patients or not. And South Africa draws from the International codes

**ADV. ADILA HASSIM:** Thank you Justice I hear your question and it will also arise later on the question of loyalties.

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

**ADV. ADILA HASSIM:** The Nursing Council Code that you were talking about, does that only bind nurses who are bound by the Nursing Council?

**PROF AMES DHAI:** It will bind nurses that are registered with the Nursing Council.

**ADV. ADILA HASSIM:** And is it correct to say that one of the ethical obligations of 10nurses is to advocate for the patients?

**PROF AMES DHAI:** Yes, it is and it is spelt out very clearly in the codes as well that they will need to advocate for patients in terms of equity, in terms of justice and in terms of ensuring that the patients are basically, the best interests of the patients are taken heed of.

15**ARBITRATOR JUSTICE MOSENEKE:** Of course I am sure Counsel will talk to you about this later. I am just flagging it to show my interest to hear your views on that. Is a conflict that might arise within an ethical duty on the one side and a command arising from a position of power and authority – I don't know if you want to answer it now, if it will come out fully because I have read the report fully 20obviously. But it is one of the issues, I have dealt with the executive role, and the

other is, no, I have contrary instructions at odds with my ethical duty and how does a nurse, indeed a medical healthcare professional resolve that conundrum?

**PROF AMES DHAI:** I think while we will develop this a bit later Justice, I think a very quick answer to that is the nurse has taken a pledge and an oath to abide by that pledge and oath to ensure that the best interests of the patients are actually met. And once one takes an oath, one needs to abide by that oath. Whether in a situation of conflict or not.

**ADV. ADILA HASSIM:** Justice it is time for the lunch adjournment.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I have noticed. It is good a time as any to take the adjournment. Professor Dhai, we will be having a one-hour lunch adjournment. I hope you will find somebody to give you a piece of bread somewhere and I hope to see you then at 14:30. We are adjourned.

## SESSION 3

**ARBITRATOR JUSTICE MOSENEKE:** Professor Dhai, you are still under your previous oath. Thank you. You may proceed Counsel.

**ADV. ADILA HASSIM:** Professor Dhai, we left off talking about the codes governing the nursing profession, and in your report you then applied the codes to the facts of this matter as it applies to Dr Manamela. Before we come to your findings in relation to Dr Manamela and the her, the ethical obligations that rested on her as a nurse, I am going to quickly just refer to the facts that you relied upon. Can you confirm whether these facts are those facts that were in the Ombud's report?

**PROF. AMES DHAI:** Yes Counsel, I have derived them from the Ombud's report.

**ADV. ADILA HASSIM:** So they begin at page 14 and they go up to page 16 of your report.

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** And it says that they are from the Ombud's report and I would like to just mention some of them so that we have some context to your findings for the purposes of the record and for the understanding of everybody who is listening. Some of the facts that you included, were that Dr Manamela admitted that there was not an official delegation of authority for her to sign the licences, but that she did so anyway. That the service level agreements were not in place and where they were they did not make it obligatory for provision of adequate amount of

meals to the patients that Dr Manamela stated that Precious Angels had experienced an expertise. Yet this NGO was in the list of the top five where 80 percent of deaths occurred. You also said the environment at the NGO's was described and you quote:

5"*As unstructured, unpredictable, substandard caring. Facilities were overcrowded, restricted. Some had no sheets, pillows or blankets on their beds. Patients were kept starving and cold. That it was described as concentration camps by relatives and prison like conditions.*"

And you referred specifically there to the Collets family:

10"*That the NGO's lacked security and were unsafe. That staff were not trained or qualified. That there was poor quality of care in terms of nutrition, hydration and medications resulting in patients wasting away. That the NGO's were not funded in time. That there were no piloting or feasibility assessments prior to placements of*  
15*patients was done in a hurry and executed chaotically despite wide spread warnings and advice. That frail, incapacitated and disabled patients were transported inappropriate and inhumane modes of transport. That some NGO's chose patients like an auction cattle market. That some were transferred several times, further exacerbating their anxiety and instability. That the patients conditions*  
20*were not recorded during transportation and after the deaths many relatives were not informed.*"

So those are some of the facts upon which you base your opinion in relation to Dr Manamela. Those circumstances of course are relevant to other officials, is that not so?

**PROF. AMES DHAI:** Absolutely.

5**ADV. ADILA HASSIM:** Can you tell us in respect of Dr Manamela what your finding was?

**PROF. AMES DHAI:** So when I looked at the facts against the oaths that she had taken, you know despite pledging herself to the service of humanity, despite pledging to practice her profession with conscience and with dignity, and despite  
10pledging that the health of her patients would be her first consideration, and despite pledging to respect the life of the patients, she actually violated all these pledges, and when you look at the foundational core values in health care, compassion, caring, respect, it actually went against all these. For me, in my opinion, it was as if these did not exist for her, and if she had taken oaths, she basically paid lip service  
15to her oaths. I think it is very important to remember that when we have patients in all situations, patients must be nursed in facilities that are appropriate. They are appropriately equipped and appropriately staffed. So, and if this is satisfied, it will allow for ongoing observations, and if it is appropriately staffed where the observations can be interpreted, then this would allow for ongoing care. These  
20patients were denied that. It is also very, very important to ensure that when you want to have continuity of care, it is absolutely imperative to have immaculate record keeping in the health care context, and if there is going to be transport of patients, patients must be transported with comprehensive records, and none of this

happened in this situation, and it is very, very sad that none of this happened in this situation, because it brings back memories and it calls to mind the situation of Steve Bikho. You know, when you look at the conditions at the NGO's as described by families and as described in the Ombud's report, the inhumane conditions. There were starvation, dehydration, almost as if in concentration camps. When one family member managed to get into an NGO found that there were mattresses without sheets or pillows, and you look at the situation of Steve Bikho, he was arrested around August 1977, and when you look at his situation in his cell where he was arrested, he was left lying on a mat soaked in urine on a cement floor. He was later transported to Pretoria, and he was transported at the back of a Land Rover and he was transported comatose, in handcuffs, lying on mats at the back of the Land Rover. Here our patients, okay look at the mode of transport and look at how they were transported. They were actually tied, because there were no wheelchairs. So they were tied or strapped to the vehicles. The bakkies or whatever they had used, and we may have forgotten the situation when it came to Steve Bikho, but upon reading this, it drew, it brought back those reminders.

**ADV. ADILA HASSIM:** So it does not matter that not all of the patients were transported in that way or does it make a difference?

**PROF. AMES DHAI:** Even if one patient was transported in that way, it is a crime against humanity. It is a crime against that patient.

**ADV. ADILA HASSIM:** Are you saying that we should have learnt from our history? Can you explain more about your reference to Steve Bikho?

**PROF. AMES DHAI:** I think within our country and having, and with 1994 okay, not far behind us this is still fresh in our minds, and it is so important for health care workers to ask ourselves what is it, what happened pre 1994, and what should we do to avoid a recurrence, and certainly in this situation there was no reflection on that, or at least in my opinion there was no reflection on that.

**ADV. ADILA HASSIM:** What would you say to the view, the fact that Dr Manamela was not acting in her, in the capacity as a nurse at this time?

**PROF. AMES DHAI:** She was still a health care worker. Whether as an administrator or a policy maker, because the code would still apply to her, and it is made very clear in the South African nursing code. You can look it up, it is page 5 I think of the code. That the code will apply to nurses whether directly or indirectly involved in patient care, and as an administrator or at the level of management, she was indirectly involved in patient care. She took decisions that impacted on patients.

**ADV. ADILA HASSIM:** So if a health professional moves, in a health profession's career trajectory, moves from being a practising professional to a government position, but within health, it is your view that the code, the ethical code binds them equally when they are working in a different capacity.

**PROF. AMES DHAI:** Yes, that is my view, and just to add further, because they have all taken pledges, should they determine to move away of their pledges, from their pledges, they would need to make open declarations that the pledges no longer apply to them.



**ADV. ADILA HASSIM:** So that is a requirement, that that is your way out of the oath that you have taken?

**PROF. AMES DHAI:** So, it is not a requirement but it is the ethically correct thing to do.

5**ADV. ADILA HASSIM:** Yesterday and today ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Of course with, sorry Counsel. What extinguishes, this must surely be that the nurse acting an executive position was making decisions about the nursing requirements of other people. If the decisions were about HR, or about renovations of an office building, then the code would not  
10come into play, would it?

**PROF. AMES DHAI:** Justice, it would be specific to the practice of health care.

**ARBITRATOR JUSTICE MOSENEKE:** Sure. So there is the limiting thing. That the Executive moved away, there will have to be that nexus, that connection with the duty of care and the duty to prevent harm, the duty to heal. Ja.

15**PROF. AMES DHAI:** But if I may continue Justice, if the Executive was making decisions about HR and about renovations of a building that had an implication on health care practice, then that Executive would be bound by the code.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV. ADILA HASSIM:** In this case Dr Manamela and others were having to act in  
20a context where their seniors had already made a decision to terminate the contract

with Life Esidimeni. What would you say to the argument that Dr Manamela had no choice, the contract had been terminated.

**PROF. AMES DHAI:** I do not believe that she had no choice. Despite the contract being terminated. I believe that it would have been important for her to go back to her codes and her pledge and to abide by the codes and the pledge that she took.

**ADV. ADILA HASSIM:** Yesterday and today we have heard testimony from Ms Hannah Jacobus who is also a psychiatric nurse, registered with the nursing council, and she admitted that she was responsible for preparing the NGO licences for Dr Manamela. What would that conduct mean? Would that mean that she too violated her codes? Would this apply equally to others like Ms Jacobus?

**PROF. AMES DHAI:** Yes Counsel. Any nurse that was involved in the project that resulted in wrongs and harms to the patients, would be implicated.

**ADV. ADILA HASSIM:** Ms Jacobus similar to Dr Manamela, contends that she was following instructions.

15 **PROF. AMES DHAI:** So Counsel, she was following instructions to do wrong, and it is very clear, both ethically and legally, that one is not, one is not excused when one does wrong.

**ADV. ADILA HASSIM:** In your report you refer to the concept of dual loyalty. Is that what was at issue here when, is that the conflict that was posed with these  
20 officials?

**PROF. AMES DHAI:** Yes. This was a situation in which a dual loyalty conflict arose, and a dual loyalty conflict arises when there is a simultaneous obligation to patients and to a third party, and in many situations the third party would be the state. Okay, and what the situation would result in some form of moral distress for the health care practitioner, because the health care practitioner would be pressurised by the state to follow instructions. However, what should be first and foremost in the mind of the health care practitioner, is that the patient or patients must be treated as patients. You cannot run away from the fact that patients are patients, and they have to be treated as such.

10 **ARBITRATOR JUSTICE MOSENEKE:** And that conflict is fore scheduled in the oath, is it not so? If you go look at the hippocratic oath or the international nurse's code. The conflict between state power, from the state or wherever else, and the health practitioner is fore shadowed.

**PROF. AMES DHAI:** Yes Justice, it definitely is fore shadowed. Going back 2500  
15 years in terms of the hippocratic oath.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** And sorry Justice.

**ARBITRATOR JUSTICE MOSENEKE:** No, not at all. I just wanted to, would the facts here surprised me in many ways in the sense that practitioners, Dr Selobano,  
20 Dr Manamela who is a psychiatric nurse, the nurse was here this morning, strangely they thought they were bound by orders which were inconsistent with their ethical obligations. Professional ethical obligations. Do you want to express yourself on

that, because when you look at the codes it is always anticipated. Interests of the patients first and I will not be persuaded by considerations of politics, of religion, of colour, of gender or sexual orientation of, and most of these are listed as grounds which should never intrude into professional ethics. But they all, three of them at least, those that I have given you, consistently said they thought they were bound by their orders.

**PROF. AMES DHAI:** Justice, I think it is important to understand that ethics rises above any orders that put you in a situation to do wrong, and your ethical principles must actually must actually rise to the fore, but it is not only our ethical principles. We look at our constitution of the country, and the importance to respect the human dignity of our patients. That is not negotiable. Whether there is an order or not. That is non-negotiable, and so they were also bound by the constitution of the country, and this comes out clearly in the South African Nursing Code, and the Health Profession Counsel Guidelines, that while we have our guidelines and codes, we are still bound by the constitution and the laws of the land.

**ARBITRATOR JUSTICE MOSENEKE:** You see Professor, when forgetting ethical codes, professional health codes for a moment, the situation is not different either in law is it? I know you are not testifying as a lawyer, but I am taking it back in common sense for that matter. Let us forget about law. As far back as ... [inaudible] trials and even much earlier, people were acting under orders. The first inquiry must surely be was it a lawful order. I did not hear that come through with senior executives here. I am including those who are non health care professionals and health care professionals. It does not seem to be engrained at all in health care

givers or in the public service. It is a sufficient political influence or sufficient for administrative seniority or any of all those considerations when you give, the first question must be is this a lawful order. ... [inaudible] asked to do something lawful.

**PROF. AMES DHAI:** Yes Justice, I agree with you, because had they sat back and thought about it, and I am sure they did, they ought to have realised that the order was unlawful, and that reflecting in itself, could have or should have urged them to think and act differently and there could have been a concerted effort to, a concerted effort to actually bring the issues or take the issues out of that executive level that had actually been pressurising them. They were within their rights to do so. My concern as I read the Ombud's report, was was it because they themselves lacked compassion and was it because they themselves just did not care?

**ADV. ADILA HASSIM:** Are you saying if they had reflected, then the obvious course would be to refuse to obey the instruction?

**PROF. AMES DHAI:** Yes Counsellor, if they had reflected and understood their calling okay, as health care professionals, and reflected on the oaths that they had taken and the codes that they were bound by, if they had understood that, they would have not proceeded with the wrongs that they had done.

**ADV. ADILA HASSIM:** Prof, would you say that this is analogous to the situation that public health professionals were placed in during HIV denialism?

**PROF. AMES DHAI:** It is similar, and again they were forced to follow orders by senior management, and there were public health officials that spoke out against

this and worked with other bodies towards ensuring that at the end of the day the best interests of the patients were first and foremost.

**ADV. ADILA HASSIM:** So we in fact very fresh in our memory still, is that episode. So we have been here before.

5**PROF. AMES DHAI:** Yes, we have been here several times. Steve Bikho and also if we look at what came out of the TRC hearings in terms of the health care sector. So we have been here many times pre 94, and we hear again post 94 and not for the first time post 94.

**ADV. ADILA HASSIM:** So the bottom line for you is that conflict would be 10presented, but the conflict for the health professionals should be resolved in favour or should be resolved by foregrounding their ethical obligation.

**PROF. AMES DHAI:** I agree Counsellor.

**ADV. ADILA HASSIM:** Even if it means going against a senior official.

**PROF. AMES DHAI:** I agree with you, even ... [interjects]

15**ADV. ADILA HASSIM:** Even if it threatens their employment.

**PROF. AMES DHAI:** I think that would be very important as well.

**ADV. ADILA HASSIM:** In this hearing we have been informed that the Gauteng Department of Health had not reported the officials to the professional bodies yet, because they and let me start at the beginning. Are you aware that in the Ombud's 20report there was a recommendation that some of the officials should be reported to their professional bodies?

**PROF. AMES DHAI:** Yes Counsellor, it is in the report.

**ADV. ADILA HASSIM:** And if I recall correctly it was specifically Dr Selobano and Dr Manamela who were mentioned in the report. Do you think it should be limited to those officials?

5**PROF. AMES DHAI:** No Counsellor, it I think it all health care professionals that participated in this project, knowingly participated, knowingly, knowing that what they were doing was wrong, would need to be reported.

**ADV. ADILA HASSIM:** And it is, is it correct that the nursing council is empowered to take action against registered nurses, even if it has not been reported to the  
10nursing council, even if misconduct has not been reported? I think it is the required, I think it is stipulated in the law. I just want to know what your view is on that.

**PROF. AMES DHAI:** So I think one would have to look at ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Do you mean it is not complaint driven?

**ADV. ADILA HASSIM:** Correct. That the nursing council could *mera moto*  
15investigate a professional.

**PROF. AMES DHAI:** I think it would be important for the nursing council and the health profession's council, especially if the mottos are to protect the public, to have already started investigating.

**ARBITRATOR JUSTICE MOSENEKE:** Whilst you are there, can I just canvass  
20another point which I think Counsel canvassed in the beginning. I just want to go back to it. Is there a duty to report unethical, unprofessional conduct that maybe

inferred from any of the codes? Rights of a patient are violated or there is cause to believe that they will be violated, in ones presence, in ones knowledge, is there an ethical duty to report?

**PROF. AMES DHAI:** Within the Health Profession Council Guidelines there is an ethical duty to report. If one, if one finds a colleague practicing wrongfully, then there is this ethical duty to report, especially where lives of patients are put at risk. I am not totally sure what the situation is with the nursing council in terms of their codes.

**ARBITRATOR JUSTICE MOSENEKE:** You see, the profession where I come from and where Advocate Hassim comes from, Advocate Hutamo, Advocate Crouse or Groenewald, Advocate Groenewald, the ethical code specifies the duty to report ones colleagues on profession conduct. I do not say it happens all the time, I am merely enquiring whether such a duty exists, because you see here if somebody like Ms Jacobus is saying she was uncomfortable, she was afraid, she hated what is happening, a call or two an email to the nursing council would resolve that. A report to some Professor of psychiatry would resolve that. As she sat here I could think of a million ways in which she could have just ... [inaudible]. So the question automatically becomes did she have the duty to report, to disclose, to divulge impending health care disaster?

**PROF. AMES DHAI:** Yes Justice, she had the duty to ensure that whatever was done for patients was in their best, in the best interest of patients, and if she was being pressurised to act in such a way that harmed patients by a colleague, she would have had a duty to report that colleague. It does not have to be spelt out.



**ARBITRATOR JUSTICE MOSENEKE:** So it can be reasonably inferred from, excuse me, from the provisions of the code.

**PROF. AMES DHAI:** Yes, I agree it can be inferred.

**ADV. ADILA HASSIM:** But the code that applies to medical doctors, it is spelt out in that code, the duty to report.

**PROF. AMES DHAI:** Yes Counsel, it is spelt out.

**ADV. ADILA HASSIM:** So let us turn then to those codes, unless there is something else you would like to add at this point, on the nursing code and the violation by those nurses who were employed by the department.

10 **PROF. AMES DHAI:** No, I do not have anything further.

**ADV. ADILA HASSIM:** So you then turned to the codes that govern medical, the medical profession. Could you, like you did with the nursing profession give us a tight summary of the key aspects of those codes?

**PROF. AMES DHAI:** Okay. So I have already mentioned the hippocratic oath which is over 2500 years old, and currently we have a modern day version of the hippocratic oath, which is the declaration of Geneva, an international declaration by the world medical association, and that declaration basically informs again on the importance of a service to humanity, and it says you know the oath to quote says:

*"I consecrate myself to service of humanity"*

20 And there is a pledge in there to function according to ensuring conscience and dignity. Upholding respect for patients, upholding their right to life, respecting their

right to life, and doing all in their power to actually promote the well-being of patients. So ... [interjects]

**ADV. ADILA HASSIM:** While you are on that code, sorry I do not mean to interrupt you but one of the aspects of the code that you referred to that also struck me is the following, which is part of the oath that medical professionals are supposed to take. Part of the oath which states, I quote:

*"I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient."*

10**PROF. AMES DHAI:** Correct, and I think that is really important in terms of not discriminating on the basis of disability and not allowing politics to actually influence your duty to your patients.

**ADV. ADILA HASSIM:** Are you saying that politics influenced duty to patients in this case?

15**PROF. AMES DHAI:** Well, if you look at the decisions that were taken and who the head was in terms of the situation, the MEC of health was a political placement. She was not qualified in terms of being a health care professional. She had, and I doubt she had any understanding of what true professionalism in health care practice actually meant, and if we actually look at the situation, in my opinion this is  
20definitely a situation where politics in a very bullied way determined ethics and this should never be allowed.

**ARBITRATOR JUSTICE MOSENEKE:** Of course it will be politics in the narrow sense of the word, is it not so? In the sense that it is a state functionary who is appointed politically. In other words I am trying to distinguish between politically ... [inaudible] sentiments or policy on the one hand and the decisions of a state functionary who has acquired the position through a political process. Do you get the distinction I am trying to get at Professor?

**PROF. AMES DHAI:** I think I understand your distinction, but whether politics in a narrow or broad process should not matter, because politics should not influence ethics.

10**ARBITRATOR JUSTICE MOSENEKE:** Yes. In other words those who hold public power, executive power, derived through politics should not undermine the interest of the patient.

**PROF. AMES DHAI:** I agree Justice, and should not conduct oneself with impunity, because this is the situation that we found.

15**ARBITRATOR JUSTICE MOSENEKE:** And you say derives from a position acquired not through professional competence, but through a political process.

**PROF. AMES DHAI:** Yes, agree Justice.

**ADV. ADILA HASSIM:** Please continue. I interrupted you. You were talking about the codes.

20**PROF. AMES DHAI:** Okay. So we have the declaration of Janeva and then another code in terms of the world medical association codes that I think is

important and applies here, is the declaration of Tokyo and this declaration of Tokyo is basically guidance to health care professionals in situations of torture, inhumane, cruel and degrading situations in for patients in prison or in detention, but I think it applies here, because when you look at the description by some of the family members where families were not even allowed into some of the NGO's, it would by inference one could draw a parallel with patients being kept in prison like situations, and this particular code reminds the health care professional of his or her privilege in being a health care professional, and reminds the health care professional that his or her duty to the patient is first and foremost and no higher order should actually come between his duty to the patient and himself.

**ADV. ADILA HASSIM:** Would the fact that these were mental health care users and therefore had limitations of their autonomy. Would that bring it within the realm of this declaration, the Tokyo declaration?

**PROF. AMES DHAI:** Not just the fact that there were mental health care patients with limitations on autonomy, but the manner in which they were treated. The inhumane, the cruel inhumane degrading manner in which they were treated brings this into the realms of it.

**ADV. ADILA HASSIM:** And the declaration of Tokyo is specific to medical professionals, are you saying?

**PROF. AMES DHAI:** Yes, it is specific to medical professionals. So we have those that are important declarations, and then of course we have our Health Profession Council Guidelines, and I have referred specifically to the booklet 1 in

terms of our general ethical guidelines stress the importance of health care practitioners remembering that their jobs as health care practitioners actually allows, comes from a position of privilege. Okay. It actually outlines 13 duties and very important in these 13 duties for me, is the duty of compassion which we found 5lacking here. There are other duties and I do not think I will go through them, because this would come out in, as we continue. But again what it stresses is the best interest of the patient is important, and the health care practitioner must recognise the fact that he or she has, is in a situation of power and must not abuse the situation of power.

10 **ADV. ADILA HASSIM:** So as a layperson we often hear this phrase of above all do no harm. Is that correctly, is that a correct reflection of the ethical value of a health professional?

**PROF. AMES DHAI:** It is a correct reflection and it actually comes in from the principal of non melefacense okay. Also principal or a duty within our general 15ethical guidelines and very important, first and foremost, consider the best interests of your patients, and do not harm your patients.

**ADV. ADILA HASSIM:** So in a way like constitutional lawyers refer to negative and positive obligations, the duty that rests on a health professional is more than to take positive steps to look after the patient, but also to ensure that no harm, that 20there is no deterioration. Is that the correct understanding?

**PROF. AMES DHAI:** That is a correct understanding.

**ADV. ADILA HASSIM:** And you spoke about the 13 values from the HBCSA code and you referred to compassion. There are two others that I would like to just point out to you that also struck me. I mean they of course are all important, but the first one is respect for persons, and it says that health care practitioners, you summarised it as saying that health care practitioners should respect patients as persons and acknowledge the intrinsic worth, dignity and sense of value, and of course that would include mental health care users, is that not so?

**PROF. AMES DHAI:** Yes, agree Counsel.

**ADV. ADILA HASSIM:** And was that at play, adherence to this value in your view?

10 **PROF. AMES DHAI:** No. The manner in which the patients has been treated, was totally disrespectful. There was no regard to their indignity, their inherent ... [inaudible] and their sense of value.

**ADV. ADILA HASSIM:** And a further value that struck me was the one of truthfulness. That health care practitioners should regard the truth and truthfulness as a basis of trust in their professional relationships with patients. Can you explain that? I found that to be an important value that was stipulated in the code.

**PROF. AMES DHAI:** A very, very important value and it is a value that draws from the general ethics in terms of health care, health care and health care professionalism, and that is because patients are vulnerable. Health care practitioners are agents. Are agents that serve as that gap between science and society and for them to, and for them to serve responsibly, in terms of bridging that gap, they have to be trusted, and they have to earn that trust as well, which brings

in the notion of trustworthiness, and when you look at the situation that unfolded in this tragedy, they lost that trust.

**ADV. ADILA HASSIM:** Would you say they lost that trust by the patients?

**PROF. AMES DHAI:** By the patients, by public and by society at large and this tragic ... [interjects]

**ADV. ADILA HASSIM:** And the families.

**PROF. AMES DHAI:** And the families, and this tragedy has actually left quite a dent in the reputation of health care professions and health care practice.

**ADV. ADILA HASSIM:** You continue with your oath to set out the different oaths that are taken upon graduation. It is all contained in your report. Is there something specific you would like to highlight?

**PROF. AMES DHAI:** No, well there are eight medical schools in the country and there are eight oaths that are taken. Unfortunately we do not all take one oath. Okay. However, the oaths are very similar and the principles all aligned to respect for patients, promoting the best interests of the patients, respecting the rights of patients. Some of the oaths go as far as pledging towards advocacy for social justice for patients. Other oaths look at ensuring that the professional knowledge that they have is used towards the safety and well being of the patients.

**ADV. ADILA HASSIM:** Those oaths are over and above the Health Profession Council Guidelines you referred to?

**PROF. AMES DHAI:** Yes. Yes Counsellor.

**ADV. ADILA HASSIM:** Those are binding on health professionals?

**PROF. AMES DHAI:** These are binding on health professionals, and these are the oaths they take at graduation as a public declaration that they understand the gravity of their calling.

5**ADV. ADILA HASSIM:** Understand. You then applied these codes to Dr Selobano as the HOD and you came to some findings. Like I did with Dr Manamela, if I may just point out some of the facts that you relied upon for your analysis, and again is it correct that you drew these facts from the Ombud's report?

**PROF. AMES DHAI:** Yes, that is correct Counsellor.

10**ADV. ADILA HASSIM:** So for the sake of completeness and context I will not refer to all of them, but some of the facts upon which you rely. You say that:

*"Dr Selobano described alternative options and a viable option of purchasing Life Esidimeni as money was available for this and stated that these were and you quote, put on the table, and that the purchase was stalled and then that he said that*  
15*he was side lined thereafter. He does not state at whose table the option was put, and by whom. You then say he was aware that communities had not matured to the extent of deinstitutionalisation. He agreed that the project could have been done differently and that leadership got too involved and made the Managers commit serious errors in execution. He admitted that families were forgotten in the*  
20*process. The Ombud found that his evidence was evasive and contradictory and states that following the interview, Dr Selobano backdated all licences to 1 April 2016 and did not indicate the date on which he signed them."*



We have now heard testimony from Dr Selobano and he admitted to all of those facts and more. On the basis of those facts, what was your ethical opinion?

**PROF. AMES DHAI:** So based on this it was clear that Dr Selobano realised that the entire project was wrong, and despite realising that the entire project was wrong, he went ahead and signed off for it to be instituted. So he basically promulgated wrong, and the real concerning part is he was well aware that the communities had not matured adequately for the transfers to happen and yet he went and allowed for the transfers to happen.

**ARBITRATOR JUSTICE MOSENEKE:** But listen to what he puts up as a defence of sort. He says I was sitting on top of the, or he says two things. The first he says I have not treated patients for ages. I am an Executive Manager, and he says when he executes that role he is not bound by the code. That is the first point that he makes. The second is he is removed many steps from implementation. No HOD would know the details and therefore he sees no culpability on his part, but the real point is the first one. The ethical question is the first one, which says what is his position and given your opinion here, to the extent that he claims that I was an Executive like any other and he thought he was a dangerous doctor now because he had not treated patients in a long time. What is your response to that?

**PROF. AMES DHAI:** The fact that the decisions that he made impacted lives of patients was very important and he was bound by his codes. Whether he was a non practising doctor, a non clinical doctor or not, he was still bound by his codes, because the decisions that he took impacted on patients harmfully and wrongfully. So I think that he was just making excuses in my opinion.

**ARBITRATOR JUSTICE MOSENEKE:** Professor, would that be a liability ... [inaudible] or as a doctor or liability as an executive? Here we are talking ethical considerations, right. So he still was he says I have not been a clinician for years, to use his words and therefore you cannot judge me by the code.

5**PROF. AMES DHAI:** I do not think Justice that that would apply. He would still have to be judged by his codes, despite the fact that he was non-practising and non practising for many years. The fact that he is still registered with Health Professions Council obliges him to have continuing professional development, and it was his responsibility to ensure that he continued with his professional development, 10especially since science and technology is so rapidly evolving that one cannot rely on the medical knowledge gained many years ago to institute management at a later stage, and therefore the need for continuing professional development for all practitioners involved in health care practise.

**ARBITRATOR JUSTICE MOSENEKE:** I follow that. Of course even assuming he 15were right, which I do not think he was *prima facie*, he would still have the constitutional obligation which I see is incorporated in many of the oaths which are taken at graduations. I mean that is supreme, is it not? He is obliged as an HOD in the health department to ensure access to health care and where it exists not impede it, not to take it away.

20**PROF. AMES DHAI:** I agree with that Justice. He basically ignored the codes, the laws and the supreme law of our land which is our constitution. He ignored the fact that patients, even mentally ill patients have constitutional rights.

**ARBITRATOR JUSTICE MOSENEKE:** Right. Counsel.

**ADV. ADILA HASSIM:** Sorry Justice, if ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I am done. I was really at a point of assessing Dr Selobano's conduct against the codes and that he tried to place himself outside the codes.

**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And therefore whether or not he ought to be judged by the codes or not.

**ADV. ADILA HASSIM:** One of the aspects of the code that we referred to was truthfulness and respect. So in those respects would it be fair to say even as a non practicing clinician, non practicing doctor, he would have violated the code.

**PROF. AMES DHAI:** Yes, I agree it would be true to say that. I think if, I think we need to look at the code that he took. Sorry, the oath that he took and he was at what was then the Medunsa University and look at what he had actually agreed openly to abide by. He said I will actively guard against all human rights abuses, and yet he was party to human rights abuses. He said I would strive for good relationships with my patients, based on respect, communication and trust. That was thrown out of the window. He said I will promote ethical standards in community engagement, including amongst others service. There were no ethical standards in terms of the engagement with the community of families, and with the service provision for these patients.

**ADV. ADILA HASSIM:** Another defence that Dr Selobano put up was that he did not foresee that death would result. What do you say to that?

**PROF. AMES DHAI:** I have a concern with a statement of that nature, especially when you look at these mentally ill patients. There is a certain standard of care and 5a certain duty of care required for these patients, and if one is not compliant with this standard, if the quality is thrown out of the window, you do not have to be a rocket scientist to foresee that patients would be wronged and harmed. There would be morbidity and mortality.

**ADV. ADILA HASSIM:** So you do not buy the defence. Is that what you are 10saying?

**PROF. AMES DHAI:** I agree Counsel, I do not buy it.

**ADV. ADILA HASSIM:** And so your bottom line finding in relation to Dr Selobano is that it did not matter that he was an executive. He violated his code.

**PROF. AMES DHAI:** I agree. He violated medical codes, the law and our 15constitution.

**ADV. ADILA HASSIM:** You go on saying within the medical profession and the codes that apply, you also considered the role of other doctors in this project, and you referred to the death certificates, some of the death certificates and a report by a journalist that had analysed some of the death certificates. Will you just confirm 20that that is correct, I am putting it correctly?

**PROF. AMES DHAI:** That is correct Counsel.

**ADV. ADILA HASSIM:** I would like to take you to some of those death certificates to understand what your opinion is in relation to violations by other medical professionals in the context of this tragedy, and so I would like to take you to parts of the record. There are files in front of you and if we could begin with file 9. At file 59 if you could look at page 2996. Are you there? This is the death certificate for Busisiwe Tshabalala, and it states the usual particulars and it states the cause of death as natural causes. You see that?

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** Then the notice of death, or let me ask you this. Is this 10form filled out by a medical doctor, the death certificate?

**PROF. AMES DHAI:** The, this form that is entitled abridged death certificate ...  
[interjects]

**ADV. ADILA HASSIM:** Yes.

**PROF. AMES DHAI:** Is issued by Home Affairs.

15**ADV. ADILA HASSIM:** And what is it based on? What informs this?

**PROF. AMES DHAI:** It is based on the notice of death certificate which is filled out by the medical doctor.

**ADV. ADILA HASSIM:** So the notice of death certificate then is to be found at page 3000.

20**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** And if we look at the second page which is 3001, at paragraph it looks like 22.1, it states that:

*"I the undersigned"*

And that refers to the medical practitioner:

5"*Certifies that the deceased to the best of my knowledge and belief died solely and exclusively due to natural causes.*"

Do you see that?

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** So there are two options. That is the first option. The  
10second is for the medical practitioner to say:

*"I the undersigned am not in a position to certify that the deceased died exclusively due to natural causes."*

So there are two options.

**PROF. AMES DHAI:** Yes.

15**ADV. ADILA HASSIM:** And in this form the first option is selected.

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** Meaning that the medical practitioner certifies the death was due solely and exclusively to natural causes.

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** So please turn to page 3003, and this is the page of the notice of death form that provides for recording the cause of death, and can you tell us from your, in your medical knowledge what is the cause of death that is recorded in this form?

5**PROF. AMES DHAI:** So the cause of death that is recorded is hypothermia.

**ADV. ADILA HASSIM:** Hypothermia?

**PROF. AMES DHAI:** Hypothermia.

**ADV. ADILA HASSIM:** And what is hypothermia?

**PROF. AMES DHAI:** It is extreme cold.

10**ADV. ADILA HASSIM:** And then underneath hypothermia it is written severe dehydration.

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** And that is, so they were both conditions present?

**PROF. AMES DHAI:** Well, according to this notice of death yes. There was  
15severe dehydration and there was hypothermia, but I would like to if I may?

**ADV. ADILA HASSIM:** Yes.

**PROF. AMES DHAI:** Draw to your attention that one would like to say what the underlying causes for the hypothermia was, and this death certificate does not have all the underlying causes. Yes, severe dehydration may cause hypothermia, but  
20being exposed to the cold may cause hypothermia as well, and just when you look

at part 1, Section 77 part 1, just A and B have been filled in and the death certificate needs to be filled in sequentially with the underlying causes of death culminating in that final cause of death and those have been left out, and then part 2 other significant conditions contributing to death, but not resulting in the underlying cause of death. This patient was ill. This patient was, had a problem in terms of mental illness, and we know with mental illness there are other conditions that a patient would have, and none of this is recorded here. But having said this, with severe dehydration and hypothermia being noted on this notice of death, I find it very difficult to believe that this would be a natural cause.

10 **ADV. ADILA HASSIM:** So the, you are saying that the form first of all is incomplete. Is that right?

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** It has not been filled out?

**PROF. AMES DHAI:** It has not been filled out completely, no.

15 **ADV. ADILA HASSIM:** And the conclusion of the medical practitioner you are saying does not follow from the cause of death?

**PROF. AMES DHAI:** It does not follow. That is in my limited knowledge. I must say I am not an expert.

**ARBITRATOR JUSTICE MOSENEKE:** Where are we going Counsel? ...  
20 [inaudible] ask a question.



**ADV. ADILA HASSIM:** So the expert report refers to the obligation that rest on medical professionals, and that there were many medical professionals involved in everything that took place around this tragedy. It did not end with the death of the patients. It ended with then how they were treated.

5**ARBITRATOR JUSTICE MOSENEKE:** I can see 4.7.1, I can see that. But what I am saying is that we should just keep in mind that this is an expert who is qualified in respect of ethics and ethical conduct.

**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And the underlying training is quite clear.

10**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** She is a specialist doctor.

**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** But qualified for one clear area. We are always careful not to travel beyond the scope of the qualification.

15**ADV. ADILA HASSIM:** Sure.

**ARBITRATOR JUSTICE MOSENEKE:** As an expert.

**ADV. ADILA HASSIM:** Justice, I do not seek to do so.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV. ADILA HASSIM:** The purpose of referring to the death certificates, was whether these medical professionals carried out or rather adhered to their ethical obligations ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

5**ADV. ADILA HASSIM:** In the manner in which they conducted their functions.

**ARBITRATOR JUSTICE MOSENEKE:** So you are supporting 4.7.1?

**ADV. ADILA HASSIM:** 4.7.1.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. That is fine, as long as you do not call for opinions of causes of death and so on.

10**ADV. ADILA HASSIM:** No, no, no. It is simply the following and that is whether these medical professionals failed the patients in some way.

**ARBITRATOR JUSTICE MOSENEKE:** Fair enough. You get the point of course Professor, you said it yourself.

**PROF. AMES DHAI:** Yes, I think ... [interjects]

15**ARBITRATOR JUSTICE MOSENEKE:** Plainly so we are not inviting to give us opinions about obstratics or about gynaecology or about cause of death. You are here to talk about the intersection between ethics and medicine.

**PROF. AMES DHAI:** Yes, I agree Justice and I also would like to state that it is important, because as I thought about the opinion, the fact that some of the patients  
20who had died were wilfully denied post mortems, denied them that final step in justice and we are looking for answers and the families are looking for answers, and

I think it is important for us to consider the ethical issues around how the death certificates were filled in.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I understand that. That I follow and I think you may express an opinion on that, yes.

5**ADV. ADILA HASSIM:** So, thank you Professor. So in your view there was a violation, you can express to me what you see as the ethical violation that is exhibited by this death certificate and notice of death form.

**PROF. AMES DHAI:** So my concern here is that the records, the you know the underlying causes of death were actually not recorded adequately and this was an  
10ethical violation.

**ADV. ADILA HASSIM:** And what is the consequence of recording a, well let us come to it in a moment. I would like to take you to another exhibit, and that is to be found in file 11, at page 3848. 3848. It is the death certificate of Ms Maureen Khunjwa. Do you have it?

15**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** And it states the cause of death as natural causes.

**PROF. AMES DHAI:** Natural.

**ADV. ADILA HASSIM:** So what follows is the notice of death after the death certificate, and if we look at page 3850 and we look at paragraph 22, the paragraph  
20that we referred to earlier with the previous example, there is an election that is

open to the medical practitioner to certify whether the death was due to natural causes, and what is the election made here?

**PROF. AMES DHAI:** Well, it is left blank. So this is page 3850.

**ADV. ADILA HASSIM:** Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**PROF. AMES DHAI:** And the medical practitioner has not filled in whether the patient died of natural of unnatural causes, but we have a death certificate now issued by Home Affairs that actually records natural causes.

**ADV. ADILA HASSIM:** So how would the death certificate have record natural  
10causes. Where would that information come from?

**PROF. AMES DHAI:** I have no idea.

**ADV. ADILA HASSIM:** But the ethical violation here is not only the incomplete, unlike the previous example where the causes of death information was incomplete. There is simply no election made by the medical practitioner.

15**PROF. AMES DHAI:** Yes, there is no election made by the medical practitioner.

**ADV. ADILA HASSIM:** The cause of death is at paragraph 77, page 3852. So there is a cause of death, but despite the cause of death there is not an election made.

**PROF. AMES DHAI:** Yes, there is not an election made so the cause of death  
20reads:

*“Neuro glycopenic brain injury.”*

And the underlying causes read sepsis, epilepsy and other significant conditions read cerebral palsy.

**ADV. ADILA HASSIM:** So this medical practitioner did not do their job properly.

5**PROF. AMES DHAI:** The form is incompletely filled, so he has, he or she has not done the job properly, because the fact that the certificate, the fact that Section 22 is left blank, is not filled in, means that this is an incompletely filled in death certificate.

**ADV. ADILA HASSIM:** And if it had been, if there had been reason to think that it 10was unnatural death, then the appropriate cause would be to have a post mortem, a medical legal inquiry.

**PROF. AMES DHAI:** Yes. In terms of the Medical Health Care Act, sorry in terms of the Births and Deaths Registration Act, one will fill in natural causes if one is satisfied that the patient died of natural causes. That is the practitioner, the 15patient’s practitioner. If the patient, if the practitioner has not been involved in the care of the patient, and has been called in to certify the patient dead, then that practitioner must do a thorough examination of the patient and only fill in natural causes if satisfied. Where there is any doubt, in other words if not satisfied, then unnatural causes needs to be filled in and this must be reported to the police.

20**ADV. ADILA HASSIM:** So in your view was justice and ethics at play here in the final stage of Maureen Kunjwa’s departure from our earth?

**PROF. AMES DHAI:** I would believe that there was a grave injustice done, in that the medical practitioner did not fill in whether the patient died by natural or unnatural causes. So that was a problem on the part of the medical practitioner. If he or she was unsure, should have followed the law and reported it to the police, and filled in unnatural.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, I am trying to anticipate your argument ultimately. These are medical practitioners of unknown descriptions. We are not able to identify them. I look at the names and so on, people have filled in names as medical practitioner. We have a few which were filled in by nurses.

10 **ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And some by emergency health care workers. So I am trying to anticipate the argument ultimately that you will make that if it is that the indignity was exacerbated by professional malpractice, in other words unethical conduct, the bare minimum is to be able to place it at the door of some medical practitioners. The code would apply to those who fall within a limited ... [inaudible]. So I am trying to anticipate how your argument, less about the opinion that says that we all are entitled to dignity up to, including satisfying the cause of our death properly and lawfully and respectfully.

**ADV. ADILA HASSIM:** Yes.

20 **ARBITRATOR JUSTICE MOSENEKE:** Including the option for an autopsy if the law requires it. I understand that part. What I do not understand is pagging the ethical concerns on faceless doctors, if they are doctors.

**ADV. ADILA HASSIM:** So Justice ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** For now it is an exchange between you and me.

**ADV. ADILA HASSIM:** Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** We will get the Professor in in a moment.

**ADV. ADILA HASSIM:** If I could ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I am raising a legal question to you now.

**ADV. ADILA HASSIM:** I understand. If I could explain where I am going and what my, the purpose of putting these certificates ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** Yes, that would help.

**ADV. ADILA HASSIM:** To the Professor, is to the, it is not just about the dignity in the final stage. It is also about what we are, what the consequences are of the failure and it is not about putting liability or blame at the door of any particular individual. From these certificates we can see that they are filled out by medical  
15practitioners, either a doctor or a nurse, medical practitioner of some sort. That is all within the regulations.

**ARBITRATOR JUSTICE MOSENEKE:** Ex facie on their facts.

**ADV. ADILA HASSIM:** Exactly. But the consequence of the ethical violation. So it does not end at the ethical violation. The consequence is that for these patients,  
20for these deceased rather, we are unable to know what caused their death. There is nothing in evidence and there could not be, because of the ethical violations that

took place, because had those professionals whoever they were, abided by their ethical obligations, then perhaps there would be post mortems and that would have given us the cause of death. What we have on record are official documents from the Department of Home Affairs that say that these deaths were due to natural causes, and my argument is that we cannot rely on those certificates.

**ARBITRATOR JUSTICE MOSENEKE:** Sure. It cuts both ways. That is the point I was really making from the beginning, in this way. If they are doctors the ethical question arises.

**ADV. ADILA HASSIM:** Yes.

10 **ARBITRATOR JUSTICE MOSENEKE:** If we do not know whether they are doctors, it might be the end of the inquiry. Get my point? In other words it is about the reliability, the cogency of the documentation before us.

**ADV. ADILA HASSIM:** Well, we know that they are doctors, because they apart from the name, their HBCSA code is noted. So if we accept that *ex facie* the documents, the truthfulness of those registration numbers and so on, then we can ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** So you say the code indicates that there are doctors?

**ADV. ADILA HASSIM:** That there are doctors.

20 **ARBITRATOR JUSTICE MOSENEKE:** *Prima facie*, you cannot say more than that, can we?



**ADV. ADILA HASSIM:** No. To the extent that we can rely on a notice of death form that is an official form.

**ARBITRATOR JUSTICE MOSENEKE:** That is a mortuary stamp.

**ADV. ADILA HASSIM:** So ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** I hear the point. You have ... [interjects]

**ADV. ADILA HASSIM:** It is on page for example Justice, I am not sure which ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** 3850 I am looking at for instance, for now.

**PROF. AMES DHAI:** If I may come in Justice?

10**ARBITRATOR JUSTICE MOSENEKE:** Yes Professor.

**PROF. AMES DHAI:** 3850, look at Section 23 and that states:

*"Health Profession Council registration number"*

Which is followed by MP with a number, which means medical practitioner.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I can see that. Thank you for alerting  
15me. I have seen that. Let us continue. You heard the initial issue I raised so that we can continue to be, I will look at the rest and we might, but you continue. I do not think we should stop at this stage. Then we can have a fuller discussion at argument stage.

**ADV. ADILA HASSIM:** Sure Justice.

**ARBITRATOR JUSTICE MOSENEKE:** That is why I say I do not know how to anticipate your argument, because all evidence must always fore shadow what one ultimately is going to argue. Okay.

**ADV. ADILA HASSIM:** Justice, I am, I will be relying on the documents as they are and the *ex facie* the document. The truthfulness.

**ARBITRATOR JUSTICE MOSENEKE:** That is fine.

**ADV. ADILA HASSIM:** The probity of the HBCSA ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** If the state says they are not, they can say so ja.

10 **ADV. ADILA HASSIM:** If anyone were to say these were not actually medical practitioners, then yes.

**ARBITRATOR JUSTICE MOSENEKE:** They can controvert, read the evidence.

**ADV. ADILA HASSIM:** They can controvert that.

**ARBITRATOR JUSTICE MOSENEKE:** I hear the argument.

15 **ADV. ADILA HASSIM:** And in the document that we were just looking at for Lucky Jeremiah Modise, I am not sure whether we got there, we were about to get there. It is just another example of the same point at page, at file 9 page 2977. But specifically in relation to your concern Justice, at 2980 there is a stamp by the doctor, Dr Jaco with his registration number.

20 **ARBITRATOR JUSTICE MOSENEKE:** Yes. I think you are making a fair point. We will accept, until the state tell us otherwise that their documents are inaccurate.

**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Or not to be trusted. *Prima facie* they are doctors. I think you may proceed.

**ADV. ADILA HASSIM:** Prof ... [interjects]

5**PROF. AMES DHAI:** I do not have file 9 Counsellor.

**ADV. ADILA HASSIM:** Okay. No, it is fine because it is just another example of a point we have already made about the incomplete, the incompleteness of the document and the failure to make an election of natural or unnatural causes, but the death certificate records it as natural causes. It is the same point as the previous  
10example.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**PROF. AMES DHAI:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** But you and me can make that inference from the evidence. The question is the ethical point that Professor Dhai has value  
15on, which really is had they acted ethically. In other words dutifully.

**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Would have had post mortem reports.

**ADV. ADILA HASSIM:** That is correct, and that would have then allowed us to establish.

20**ARBITRATOR JUSTICE MOSENEKE:** Ja, a much fuller inquiry, a proper inquiry.

**ADV. ADILA HASSIM:** Indeed.

**ARBITRATOR JUSTICE MOSENEKE:** And for closure purposes.

**ADV. ADILA HASSIM:** Absolutely.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, I hear you.

5**ADV. ADILA HASSIM:** One of the issues Justice in the hearing has been the problem with the post mortems one and two, the fact that most of the deaths are recorded as natural.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV. ADILA HASSIM:** And hence this exercise.

10**ARBITRATOR JUSTICE MOSENEKE:** No, that is fine. Proceed. As long as you do not make Professor Dhai a general practitioner.

**ADV. ADILA HASSIM:** Professor Dhai, do you have file 11 in front of you?

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** Can you turn to page 3790?

15**PROF. AMES DHAI:** I am on the page Counsellor.

**ADV. ADILA HASSIM:** This is a notice of death form for Ntsoelengwe Michael Mogate.

**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** And in the section of causes of death, can you read the word that is written in as the immediate cause of death?

**PROF. AMES DHAI:** So it says:

*“Sepsis, with a question mark that follows. So query sepsis.”*

5 There are, the underlying causes of death have not been filled in. However part two, other significant conditions they filled in dementia.

**ADV. ADILA HASSIM:** So it is sepsis with a query?

**PROF. AMES DHAI:** Sepsis with a query.

**ADV. ADILA HASSIM:** And then if we look at 3792, the election that has been  
10 made is that it was a death due to natural causes.

**PROF. AMES DHAI:** Yes. So if I may? I am not too sure how one could actually come to the conclusion that it was death due to natural causes. When there is a query as to what the immediate cause of death would be. So in other words this particular practitioner was not satisfied that the cause of death was natural causes  
15 and hence the query sepsis.

**ADV. ADILA HASSIM:** Hence the query?

**PROF. AMES DHAI:** Hence the query.

**ADV. ADILA HASSIM:** And the death certificate which is at 3795.

**PROF. AMES DHAI:** Reads natural causes.

**ADV. ADILA HASSIM:** But in your view this was not an act of a diligent medical practitioner to fill out the form in this way?

**PROF. AMES DHAI:** Yes. A diligent medical practitioner, if not totally sure would not be totally satisfied, and therefore the cause of death would go on as unnatural.

5**ADV. ADILA HASSIM:** I was going to refer you to one more, which is the notice of death in relation to Caswell Mosiyane, but as I look at it, it is a repetition of a similar point. So I am not going to take you there. It is another example Justice of no election made of whether it is natural or unnatural. For the record, I would like to say that at page 3499 the death certificate however, says that it was death due to  
10natural causes.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. I take the point. I think the point is good. I hear it, and let me just say that maybe we can look at the documents and we can make the inference. It is the ethical implications that arise from there that we find value in Professor Dhai's evidence. Ja.

15**ADV. ADILA HASSIM:** Absolutely, and my argument will be that what it demonstrates is why we have ethical obligations. Why medical professionals, the ethical obligations of medical professionals is so important to the entire system. We are going to move on from medical professionals Professor Dhai, and in the next part of your report you deal with obligations of non health care professionals.

20**ARBITRATOR JUSTICE MOSENEKE:** In fact, on second thoughts. I am sorry to interrupt you that way. It might be even more important when you are cold stone dead. Then you are totally vulnerable and truly vulnerable and the point we made

earlier about legal prescripts to protect. So you probably need the protection most when you are there, or at least your family would need the protection most in relation to the cause of death, a possible post mortem and ultimately of course a proper barrier.

5 **ADV. ADILA HASSIM:** That is so.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, I get the point.

**PROF. AMES DHAI:** Counsellor, if I may just please ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** Yes.

10 **PROF. AMES DHAI:** So I think you know, filling in medical certificates and death certificates, I think it is so important to actually do this scrupulously, truthfully and responsibly, because the end result in terms of the way the death certificate is filled in, has far reaching implications, and again I want to go back to history, and I want to go back to Steve Bikho. So Steve Bikho was taken for interrogation on the 6<sup>th</sup> of  
15 September, after being imprisoned okay, and the following day a district surgeon which is a qualified medical practitioner, was called to examine him because it was stated that he was no cooperating and he, he was refusing to answer questions. Despite Steve having evidence of trauma, lacerations and bruises. Despite Steve having slurred speech and an ... [inaudible] okay, which could imply head injury,  
20 okay. The medical practitioner filled in the certificate as nothing wrong with the patient. Then let us fast track to our TRC hearings. The health sector hearings, and look at testimony by Dr Gluckman, the pathologist, and Dr Gluckman had

several examples of medical certificates and death certificates that were incorrectly filled in. So as to exonerate the state. Okay, and there were situations of bullet wounds and injury, massive trauma that was not recorded, and this was brought out during our TRC hearings. So this is a lesson that we need to learn as well. We need to go back to history and look at how we have not learnt from history and I think it is important to highlight this, to prevent this from happening again.

**ARBITRATOR JUSTICE MOSENEKE:** I have got it.

**ADV. ADILA HASSIM:** Thanks Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you Professor. Proceed Counsel.

10**ADV. ADILA HASSIM:** Professor Dhai, we were looking at the next part of your report, which was about ethical infringements by non health care professionals, and you specifically looked at the example of the former MEC Mahlangu, and you referred to the oaths that are taken in that case, not being the professional oath of the medical practitioner, but the oath that is taken by an MEC upon taking office.  
15Can you take us to that aspect of your report and your findings please?

**PROF. AMES DHAI:** Okay. So that is in section 5 of the report.

**ADV. ADILA HASSIM:** Yes.

**PROF. AMES DHAI:** And basically the MEC of health was when sworn in, she was sworn in in terms of Schedule 2 Section 5 of the constitution, and basically  
20what she swore to, was respecting and upholding the constitution. Okay, and conducting herself with honour and dignity and being true and faithful, and clearly



with the type of instructions and pressures that she had metered out, she had actually failed this oath. She betrayed her constitutional oath.

**ADV. ADILA HASSIM:** And on what facts do you base that finding, or we can go, it is to page 35. If you could just, if you could just summarise that, the facts that you base your findings on in relation to the former MEC.

**PROF. AMES DHAI:** So the former MEC was the final decision maker, and she had issued the instructions, and according to the Ombud's report, there was an environment of fear and pressure from her, and in terms of the Ombud's report there was this general culture of disempowerment that had been metered out from her office, and it was my word in inverted commas. So basically it would seem that from her, from her office she had actually, she had actually conducted herself such that it was a reign of terror which is, one would draw similarities with in terms of repressive states.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, but we have to stick to the facts in the Ombud's report you know Professor, because MEC is yet to testify, and the report has been admitted and that is why it is quite safe territory as in your report to stay on the facts as tabled by the Ombud. Principally because a witness is yet to testify, which is on Monday and therefore findings will still have to be made. The rest of the witnesses have testified, so one can go to the record, and look at the facts, but in this case I think we must stay strictly on what you have recorded in the report and then followed by your opinion on the facts that are known from the Ombud's report on page 24 and 25. Professor?

**PROF. AMES DHAI:** In terms of the Ombud's report and the facts that I had pulled out of the Ombud's report, she is alleged by many to have said that her decision is final and non negotiable.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

5**PROF. AMES DHAI:** And that the project had to be done, and that she left no room for engagement. In terms of the Ombud's report, staff members felt powerless and had to deliver to her the outcome of a project that they did not believe in, and in my opinion the outcome of that project was a cost reduction from R320-00 a day to R112-00 a day. Okay, and in my opinion what she had done, is 10she had reduced the whole situation. She had moved from humanitarian needs to narrow financial issues. I have done a calculation. When you look at 320 versus 112, you are looking at R208-00 per patient saving per day. Okay. Now multiply that by the 1500 okay, and then multiply it by 30. You are looking at close to about nine and a half million rands a month. Okay, and that is why in my opinion it was 15more financial than humanitarian.

**ADV. ADILA HASSIM:** Just to clarify. You are saying that her, the motive that drove her were costs rather than adhering to the oath?

**PROF. AMES DHAI:** Yes, I agree. There was also the Ekurhuleni ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** That is oath of office of the MEC?

20**ADV. ADILA HASSIM:** Oath of the office of MEC, yes.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, because she would not, it cannot be argued that she is bound by any of the medical oaths or nursing oaths.

**PROF. AMES DHAI:** I agree Justice. It is the oath of the office. When she sworn into power, she has to take an oath or an affirmation and that oath or affirmation is outlined in the constitution.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**PROF. AMES DHAI:** And she abused that. She was also bound by the Ekurhuleni oath which was, which was declared. Sorry, the Ekurhuleni declaration on mental health, April 2012, and this is attached as Appendix 3 to the National Mental Health Policy framework and strategic plan 2013, 2012. Sorry, 2020. There are pertinent aspects of this Ekurhuleni declaration that would apply, and amongst that is that the users of the mental health care services have to be integral to the planning and delivery of mental health services, and the voices of our patients and their families were ignored. They were not integral to the planning and the implementation, and what it also recognised was the importance of the right of all South Africans to the enjoyment of the highest attainable standards of physical and mental health and in this situation ... [interjects]

**ADV. ADILA HASSIM:** Sorry, is that in the Ekurhuleni declaration?

**PROF. AMES DHAI:** In the Ekurhuleni declaration.

**ADV. ADILA HASSIM:** Okay.

**PROF. AMES DHAI:** And in this situation it must be achieved through increased services for mental health at all levels of the health care services, and what she did was she actually issued an order that resulted in decreased services. Okay, and it commits to amongst other things equitable. Evidence based interventions. It also goes to further expand on the fact that the users have to not only participate in the planning and implementation, but the monitoring and evaluation.

**ARBITRATOR JUSTICE MOSENEKE:** But why would the Ekurhuleni declaration particularly bind the MEC?

**PROF. AMES DHAI:** Because it is an attachment. It is an appendix to the health policy frameworks strategic plan. It is a policy and she would be bound by that policy.

**ARBITRATOR JUSTICE MOSENEKE:** Ja. I am asking this in the light of the fact that she is MEC for Gauteng for the province.

**PROF. AMES DHAI:** But the Ekurhuleni declaration applies to the national mental health policy. So it, despite being called Ekurhuleni declaration, it would apply nationally.

**ARBITRATOR JUSTICE MOSENEKE:** It has got a provincial reach nationally?

**PROF. AMES DHAI:** National reach.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

20**PROF. AMES DHAI:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you.

**ADV. ADILA HASSIM:** Like the declaration of Tokyo is still applicable to us?

**PROF. AMES DHAI:** Yes, and the declaration of Hell Sinky, and of Janeva. Okay, and this declaration also commits to providing physical infrastructure that responds to the needs and human rights of these mental, mentally ill patients. So it does have important implications.

**ADV. ADILA HASSIM:** Yes. Of course the constitution itself imposes obligations. You have considered that in your report and particularly the obligations under chapter 2 of the constitution, the bill of rights, and in your report you say that the right to health is of special significance. Why do you say that?

10**PROF. AMES DHAI:** The right to health I think is necessary for the realisation of other rights, because health is a basic need. Why does one require health? One requires health such that one is functional, one is able to make decisions and one is able then to recognise what ones, what the other rights actually are. So it is a basic need required by all human beings.

15**ADV. ADILA HASSIM:** And you refer to international obligations.

**PROF. AMES DHAI:** Yes. Starting off with the universal declaration of human rights.

**ADV. ADILA HASSIM:** And all of these are binding as you point out. They are binding on the government of South Africa.

20**PROF. AMES DHAI:** Yes.

**ADV. ADILA HASSIM:** And do you say that they are binding on each individual official?

**PROF. AMES DHAI:** Yes, they would be binding on all the, on all the role-players involved in this project.

5**ADV. ADILA HASSIM:** So you would then come to the conclusion on this aspect. You say that South Africa has done well in its legislative framework in the protection of the right to health. But that it fails when it comes to implementation. Can you explain why you say this?

**PROF. AMES DHAI:** We have got the most, I think some of the best human rights based laws, and we look at our constitution and I would, I would say that I think our 10constitution is about one of the best constitutions internationally. Human rights based constitutions, and yet when it comes to implementation, we have problems and rights are not realised. Now fast track to our situation here, Life Esidimeni. We look at Section 27, the right to access health care. This was denied to our patients, 15but other rights were denied to patients. The right to dignity. The right to life. Patients died in the process.

**ADV. ADILA HASSIM:** And particularly we are dealing with mental, rights of mental health care users.

**PROF. AMES DHAI:** Yes.

20**ADV. ADILA HASSIM:** Is there anything you would like to say about that, about the position of mental health care users within the health care system?

**PROF. AMES DHAI:** I think it is you know, I think it is important like I said before.

Here we are looking at not just a patient's vulnerability, but you know additional vulnerability based on the capacity of patients to understand and make decisions, and based on that there needs to be a positive obligation to ensure that the rights of these patients are actually protected, and it does not remain just an obligation, but it remains that implementation of protecting these rights.

**ADV. ADILA HASSIM:** Thanks Professor Dhai. Would you like to add any concluding remarks before I close leading your evidence?

**PROF. AMES DHAI:** Yes. I think I would like to go back to the MEC.

10 **ARBITRATOR JUSTICE MOSENEKE:** Well, we should as a matter of process agree whether we are going to have closing remarks now or after cross-examination.

**ADV. ADILA HASSIM:** It is not closing remarks in total, it is just in relation to this report.

15 **ARBITRATOR JUSTICE MOSENEKE:** Relation to this evidence in chief?

**ADV. ADILA HASSIM:** In evidence in chief.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** That the Professor feels I did not address.

**ARBITRATOR JUSTICE MOSENEKE:** Very well, because you have got a right of re-examination.

**ADV. ADILA HASSIM:** Yes, I understand.

**PROF. AMES DHAI:** So one of the things that concerned me, and this is what I found on the Ombud's report, was that during the interview she stated that when a policy decision is taken, you do not know how it is going to unfold and what is going to happen. The risks associated with it. So that is a direct quote from the Ombud's report.

**ARBITRATOR JUSTICE MOSENEKE:** She would have been who? Sorry Professor, I missed that.

**PROF. AMES DHAI:** The MEC.

**ARBITRATOR JUSTICE MOSENEKE:** Oh, the MEC.

10 **PROF. AMES DHAI:** The MEC.

**ARBITRATOR JUSTICE MOSENEKE:** Oh yes.

**PROF. AMES DHAI:** So my concern is that she undertook a policy intervention without having adequately explored the risks associated with that policy intervention.

15 **ARBITRATOR JUSTICE MOSENEKE:** Because the evidence is that all the risks were pointed out to her.

**PROF. AMES DHAI:** The risks were pointed out to her. She chose to ignore those risks. Okay. However, when you look at the situation in health care, and I want to look at the Ekurhuleni oath. The Ekurhuleni oath states that interventions must be evidence based. There was no evidence based intervention here. Now by her saying that well, you do not know the risks associated with it, one then starts



thinking of experimentation, and when you look at one of the definitions of an experiment, and I will quote, and this is from the Oxford dictionary:

*"It is a course of action tentatively adopted without being sure of its outcome."*

So in my opinion I would liken the project to a massive experiment that included 5 highly vulnerable patients, who because of their vulnerability being exploited, she exploited their vulnerability. They suffered serious harms and wrongs, and the entire project for me with patients being herded and taken into concentration camps as described by families, for me it is a distressing reminder of Hitler's Nazi war atrocities where the vulnerable were considered to be sub human, of decreased 10 intelligence, of no moral status and lacking human dignity and therefore exploitable.

So I would like to say that I would also like to say in terms of my opinion generally, this is a sad reminder of pre 1994 where black people in our country were regarded as sub human, lacking moral status or not having moral status, and lacking human dignity. So unfortunately this project is not only a sad reminder of Hitler's war 15 atrocities, but a sad reminder of South Africa pre 94.

**ADV. ADILA HASSIM:** Thank you Professor. As I close, I would just like to say that for the record that you have provided your services pro bono and for that the families are thankful.

**PROF. AMES DHAI:** Thank you.

20 **ARBITRATOR JUSTICE MOSENEKE:** Professor Dhai, thank you. Thank you Counsel. We are going to do ... [inaudible] that lawyers do. Everything we state

lawyers tend to probe and question, and that is what is going to happen now.  
Advocate Crouse?

**ADV. LILLA CROUSE:** Thank you Justice Moseneke. Professor, thank you very much for giving evidence and availing yourself to do so. Can I just make this observation. This, the atrocities that happened here is not about the deaths only. Would you agree with that?

**PROF. AMES DHAI:** I agree.

**ADV. LILLA CROUSE:** It is about the suffering before the deaths. Would you agree with that?

10 **PROF. AMES DHAI:** I agree, yes.

**ADV. LILLA CROUSE:** And it is also about the people that survived who suffered.

**PROF. AMES DHAI:** I agree yes.

**ADV. LILLA CROUSE:** And the family members who suffered as a result of what has happened here. Do you agree?

15 **PROF. AMES DHAI:** Yes.

**ADV. LILLA CROUSE:** The one aspect further which I would like to term heightened vulnerability, is the fact that these patients were all reliant on state help. They were not rich people that would have a medical aid and would be able to go to some other place.

20 **PROF. AMES DHAI:** Yes, I agree with that too.

**ADV. LILLA CROUSE:** And that would be a heightening of their vulnerability because their choices would be so limited. Would you agree?

**PROF. AMES DHAI:** Agree, yes.

**ADV. LILLA CROUSE:** I will not ask you about informed consent before, because  
5Professor Grobler will still come and we will deal with that in his evidence. But  
could I just ask you, do you know that in 2007 children were moved from Life  
Esidimeni to an NGO and some of them died, and they were moved back to Life  
Esidimeni and they were dehydrated and malnourished. Did you know of that?

**PROF. AMES DHAI:** Yes, I did actually come across that some time ago, yes.

10**ADV. LILLA CROUSE:** And how would that affect the ethics of the people having  
lived through that to do this, to endeavour the same exercise at this stage? What  
would that history mean for you?

**PROF. AMES DHAI:** It is very similar to the history that I have brought up in terms  
of Steve Bikho and pre 1994. It is, there was historical experience in terms of  
15morbidity and mortality with a move in 2007, and yet despite this, the decision was  
taken to repeat the mistake.

**ADV. LILLA CROUSE:** Thank you Professor, I have no further questions for you.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you Advocate Crouse. Advocate  
Ngutshana. Are you going to go ahead of Advocate Groenewald?

20**ADV. PATRICK NGUTSHANA:** No, we have no questions Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You have no questions.

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

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV. PATRICK NGUTSHANA:** We have, Professor Grobler who deals with the same issues, I think we are going to lead him, so we have no questions.

5**ARBITRATOR JUSTICE MOSENEKE:** You should not have. You had very many questions yesterday.

**ADV. PATRICK NGUTSHANA:** Ja.

**ARBITRATOR JUSTICE MOSENEKE:** And Advocate Groenewald?

**ADV. DIRK GROENEWALD:** Thank you Justice. Professor, we only have a few  
10 questions. The earlier witness that testified, Ms Jacobus, I put it to her that there was a lack of moral and ethical consciousness within the department, and she confirmed that to be the truth. She said yes, that is so. Now something that stood out for me during these proceedings, was the fact that those responsible who came and testified, all of them said well, we could have, we could not have foreseen the  
15 deaths and could not have foreseen that this would happen and that would happen. Now we know the facts. I mean we have heard the facts that has been presented, and I mean it has been the opinion that they should have foreseen it. Is that a cause for stress to the effect that the department, there is a lack of ethical consciousness according to you as well. Can you confirm that from what you have  
20 heard and what you have read that there is a lack of ethical consciousness within the department?

**PROF. AMES DHAI:** I do agree that it would seem as if the department was devoid of any ethical consciousness. Any moral consciousness either, and whatever the department might have had in terms of the patients rights charters etcetera, displaying all over the walls, was just lip service to documents.

5**ARBITRATOR JUSTICE MOSENEKE:** I understand the proposition, but I presume you are limiting it to the, to this project.

**ADV. DIRK GROENEWALD:** To this project.

**ARBITRATOR JUSTICE MOSENEKE:** I think it must be made clear. You cannot have, tie everything around the department.

10**ADV. DIRK GROENEWALD:** No, no.

**ARBITRATOR JUSTICE MOSENEKE:** It must be about this project.

**ADV. DIRK GROENEWALD:** This project. This project. Indeed so Justice. But that brings you then to my next question. To enforce compliance with the law it is quite easy. You threaten people that you are going to throw them in jail, but ethical  
15compliance as I understand it, is a bit higher than legal compliance. That is my understanding. You might be compliant with the law but your conduct can still be unethical. So how do we instil ethical compliance?

**PROF. AMES DHAI:** How do we instil ethical compliance?

**ADV. DIRK GROENEWALD:** Yes.

20**PROF. AMES DHAI:** I think we have to go back to the drawing board in terms of the training that our practitioners get. The understanding of what the ethical

principles and codes actually mean, and also to try to separate that from behavioural issues as well. Enforcing ethical compliance, I would assume that was the reason one could have foreseen the difficulties with enforcing ethical compliance and therefore professionalism in health care is highly regulated and this is where our regulators come in. Like the Nursing Council and the Health Profession's Council. They are there to enforce ethical compliance.

**ARBITRATOR JUSTICE MOSENEKE:** Sorry Professor. Again I presume the question is within the context of the project, the marathon project.

**ADV. DIRK GROENEWALD:** Indeed ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** Let us keep it tied. We cannot talk about generally how do you enforce ethical behaviour.

**ADV. DIRK GROENEWALD:** Indeed so Justice, but ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** There will be many broken noses which should not be broken.

15**ADV. DIRK GROENEWALD:** Ja.

**ARBITRATOR JUSTICE MOSENEKE:** If we throw it wide, unduly wide.

**ADV. DIRK GROENEWALD:** We have learnt from Ms Jacobus that subsequent to these, this tragedy the department has not done anything to explore or to sensitise or to educate or to the personnel in respect of the ethical compliance and so on. So  
20that basically is my question. How do you go about.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. I just want to make sure the Professor understands you are talking about project marathon.

**ADV. DIRK GROENEWALD:** Indeed so Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. It must always be limited to that, because it is what we are about.

**ADV. DIRK GROENEWALD:** Ja.

**ARBITRATOR JUSTICE MOSENEKE:** That is all I am saying.

**ADV. DIRK GROENEWALD:** No, definitely.

**ARBITRATOR JUSTICE MOSENEKE:** You cannot talk about the department generically.

**ADV. DIRK GROENEWALD:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV. DIRK GROENEWALD:** That will also, it will go to argument at the end of the day in respect of the project and what can still be done and ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Indeed.

**ADV. DIRK GROENEWALD:** The relief.

**ARBITRATOR JUSTICE MOSENEKE:** Please proceed.

**ADV. DIRK GROENEWALD:** Ja. So to summarise madam.

**PROF. AMES DHAI:** So in other words what are the lessons learnt and how do we prevent this from recurring. I think that it would be very important for those that have been involved in the situation and those that continue taking care of mentally ill patients, because we would not want a repeat. To actually use the situation as a case study and to look at the situation and examine the ethical failures along the line, okay because when you actually look at this tragedy, one can liken it to a moral pathology and an ethical crisis. I think it is important to lay the facts on the table for health care professionals, for Managers, administrators etcetera, and get them to understand what went wrong and how to prevent the wrongs going further. I definitely think that there has got to be remedial action taken as well in terms of training in ethics and understanding ethics.

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

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Advocate Hutamo?

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

15 **PROF. AMES DHAI:** Good afternoon Counsel.

**ADV. TEBOGO HUTAMO:** We thank you for highlighting the issues that you have dealt with. We will pose no questions to you. Thank you.

**PROF. AMES DHAI:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Well, that is coming off lightly Professor  
20 Dhai. Re-examination?

**ADV. ADILA HASSIM:** I have no re-examination Justice.



**ARBITRATOR JUSTICE MOSENEKE:** Okay. What remains of me is to thank you, and for agreeing to do this pro bono. I ... [inaudible] that we are from the same institute and I cannot say ... [inaudible], but I would like to really thank you for being here and the views that you have expressed. Only a Professor of ethics of a medical school will talk about moral pathology. It is an unusual combination, but it makes the point quite tellingly. Over time obviously there will be an award at the end of all this, and the Arbitrator is expected to deal with equitable redress and some of the valuable things you have said might very well become a component of that redress going forward, but I again would like to thank you. We have a practice here that at the end of the evidence of any and every witness, we allow them to have a valedictory statement before we excuse them. So it is your opportunity to do that.

**PROF. AMES DHAI:** Thank you Justice. I think in closing what I would want to say is I have done several ethical opinions previously, but this doing this ethical opinion has really, really touched a raw part of the heart. It is also brought back the floods of memories pre 1994. You know, Steve Bikho had said and I want to quote:

*"In time we shall be in a position to bestow on South Africa the greatest possible gift, a more human face."*

When you look at the role players in the project, the question that you need to ask is did they lack compassion? Did they not care? Where is this more human face? How far are we in terms of Steve's dream? You know, Steve died for an idea that would live, and that idea that must live and must actually unfold is this more human

face for all of us in South Africa, and we must be strong enough to ensure that this idea is not killed by those few who just do not care.

**ARBITRATOR JUSTICE MOSENEKE:** Professor Dhai, we are thankful, and fortunately you are talking to the whole nation, so you are being listened to by many. But thank you again ever so much and this is a valuable and value adding part of the exercise that we are engaged in now, and it must be added that the state is part of it. The province is a partner in seeking this healing sometimes. I repeat it just again to find that balance all the time and there cannot be healing except if the department itself and the mental health care directorate understands the extent of the devastation and the points that you are making, because they are not challenging your evidence, so they are a good partner to try and resolve this matter.

**PROF. AMES DHAI:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, and you are excused from where you are seated. Counsel, late in the date. The last time I checked it was a Friday. It is ten to five, not so? I will start ... [inaudible] this time. Anything Counsel that you want to say, record before we adjourn to Monday?

**ADV. PATRICK NGUTSHANA:** We have no matter to report at this stage.

**ARBITRATOR JUSTICE MOSENEKE:** Are we satisfied with the security arrangements for Monday?

**ADV. PATRICK NGUTSHANA:** Well Justice, I will have to check with the relevant officials. I cannot make the commitment now.

**ARBITRATOR JUSTICE MOSENEKE:** Well, I was not asking you to make any commitment. I think I would like on Monday morning we should meet at nine o'clock so that I can be apprised of the arrangements. There is cause to believe that the numbers will be unusual and there is cause to believe, and I have a duty to make sure that at least the witnesses are well protected and so too everybody else. So it is a matter that I would like you and staff in my office to talk about and to report on, on Monday morning before we start. Is that possible Counsel?

**ADV. PATRICK NGUTSHANA:** We will do so Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Let us meet at nine o'clock, the latest on Monday to talk about the arrangements and will we be using this venue or another venue? Obakeng?

**UNKNOWN:** Another venue.

**ARBITRATOR JUSTICE MOSENEKE:** The larger venue.

**UNKNOWN:** Yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** Very well. Anything else Counsel?

**ADV. PATRICK NGUTSHANA:** Nothing more Justice.

**ARBITRATOR JUSTICE MOSENEKE:** No. Advocate Groenewald?

**ADV. DIRK GROENEWALD:** We have nothing Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Advocate Hutamo?

20 **ADV. TEBOGO HUTAMO:** We have nothing to add Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. Does Advocate Yina ever speak? I have not heard her speak the last two days. You are okay Counsel?

**ADV. YINA:** I am okay, thanks Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

5**ADV. ADILA HASSIM:** There is nothing from us Justice.

**ARBITRATOR JUSTICE MOSENEKE:** There is nothing from both of you, is it. Okay, or all three of you.

**ADV. LILLA CROUSE:** Justice, from our side and I speak for both of us.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

10**ADV. LILLA CROUSE:** We were informed that on Sunday we will receive a transcription of the MEC's evidence or her interview with the Ombud, and I just want to make sure that that is still the case that we will receive it on Sunday?

**ARBITRATOR JUSTICE MOSENEKE:** And the assurance was from which Counsel?

15**ADV. LILLA CROUSE:** I think it was from Obakeng if I am not mistaken? Could I just take an instruction?

**ARBITRATOR JUSTICE MOSENEKE:** Obakeng has no right of audience. That is his problem.

**ADV. LILLA CROUSE:** I see that it now only will be available on Monday morning  
20Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. You will have to deal with that.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And it is settled issues of leading of the MEC are all settled. Advocate Hutamo?

5**ADV. TEBOGO HUTAMO:** Yes Justice Moseneke. That has been settled.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. It looks like Counsel, the day is done. We have done what we have to do. My young men, young Jan ... [inaudible] always remembered the oath. On my honour I promise to do my best. My duty to God and my land and so help me God. We should always do that. I think we have  
10done that for the day. Shall we adjourn till Monday at 09H30.

**END OF RECORDING**