

LIFE ESIDIMENI ARBITRATION

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

Date: 31 January 2018.

SESSION 1 – 5.

5

BEFORE ARBITRATOR –JUSTICE MOSENEKE

10 **WITNESSES:**

PREMIER DAVID MAKHURA

DR. GWEN RAMOKGOPA

MINISTER AARON MOTSOLEDI

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may be seated. Premier Makhura, good morning.

PREMIER DAVID MAKHURA: Good morning, Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular]

PREMIER DAVID MAKHURA: [Vernacular]

ARBITRATOR JUSTICE MOSENEKE: Do you swear that the evidence that you continue to give will be the truth, nothing but the truth? If so, raise your right and say, "So help me God."

10**PREMIER DAVID MAKHURA:** Help me God.

PREMIER [duly sworn states]

ARBITRATOR JUSTICE MOSENEKE: Advocate Crouse. Oh, Mr Skibi, sorry. You are— You are the person the person who is going to be doing the cross-examination this morning.

15**ADV NZAME SKIBI:** Thank you. Good morning, Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, before you start, let me just say good morning to all Counsel and Molweni kai? You may proceed.

CROSS-EXAMINATION BY ADV NZAME SKIBI: Thank you, Justice. Good morning Premier.

20**PREMIER DAVID MAKHURA:** Good morning.

ADV NZAME SKIBI: Myself, my name is Nzame Skibi. I am appealing with my learned friend, Lilla Crouse. We represent the families of the survivors of this medicine project.

PREMIER DAVID MAKHURA: Yes.

5**ADV NZAME SKIBI:** Just before I begin with any questions, I think you on behalf of the families of the survivors for making time to come and give your testimony at these proceedings.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: As always, Mr Skibi, would you throw your
10voice out so that we all can hear you but the witness must also hear you and so do the families who are here.

ADV NZAME SKIBI: Thank you, Justice. Yes, thank you, Justice. If I am just going to take you on a timeline, in November 2014, you said that you were invited or you invited the MEC because there was a letter from the unions regarding the
15absolve– to absolve the employees from Life and Selby Park Clinic.

PREMIER DAVID MAKHURA: 2015.

ADV NZAME SKIBI: 2015. Thank you. Yes.

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: Was it the only– your first engagement with the Minister, I
20mean, MEC Mahlangu is regarding any discussion regarding the Life Esidimeni issues?

PREMIER DAVID MAKHURA: Counsel, outside the evidence presented here of the PBC meetings, the premieres budget Counsel meetings, that is– that was the only meeting to deal with that issue. As I say, the issues pertaining to the Premier’s budget Counsel have been fully canvassed here in the arbitration process.

5**ADV NZAME SKIBI:** So in your previous Premier’s budget, did you canvas the issue that Life Esidimeni would be shut down before you met with the unions and MEC?

PREMIER DAVID MAKHURA: Well, Justice, as I say, I think it yesterday I went at length to say that the budget Counsel meeting with this, the issue of life Esidimeni
10and the decisions of those budget Counsel meetings and the instructions the Department have been made clear, and I want to ensure Justice those issues have been fully canvassed.

ADV NZAME SKIBI: Okay. Right.

ARBITRATOR JUSTICE MOSENEKE: Let us get the point that question that you
15would like the premier to answer now.

ADV NZAME SKIBI: If Ms Mahlangu says that meeting you had with the union and the HOD in November 2015, there was also an agreement that some of the patients would be transferred to the NGOs. Will that be correct?

PREMIER DAVID MAKHURA: It would not be accurate. There were no
20discussions on the NGOs in.

ADV NZAME SKIBI: And it appears from the statement by the Minister Motsoaledi that indeed, that is what you told him, that at no stage was the issue of NGOs came up– came before your knowledge before this, the project occurred.

PREMIER DAVID MAKHURA: Yes, I stand by what I said yesterday. Not only before, but yesterday I did, before this arbitration process, emphasised that that is indeed so.

ADV NZAME SKIBI: Why which he said that you have knowledge that the NGOs will be, I mean, some of the patients will be sent to the NGOs if that did not take place? Do you have any response to that?

10**PREMIER DAVID MAKHURA:** No, I cannot read what informs people to say what they say. I can only say what I know. Again, which is not only me who corroborates that. It is corroborated also by MEC Chrissie's knowledge who was also in that meeting.

ARBITRATOR JUSTICE MOSENEKE: What Counsel is getting at is can you think 15of a reason why she would falsely implicate you?

PREMIER DAVID MAKHURA: I cannot think of a reason. I can only marvel at that. It may be an exercise in trying to shift blame, which I spoke extensively about yesterday. And unfortunately, I cannot shift blame because as I said, the buck stops with me. As the Skibi.

20**ARBITRATOR JUSTICE MOSENEKE:** Mr Skibi.

ADV NZAME SKIBI: Thank you, Justice. I just want to come shortly to this meeting that you had with the unions. If you look at file 1, I do not know if someone will assist you, file 1 page 167.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

5**ADV NZAME SKIBI:** Are you there?

ARBITRATOR JUSTICE MOSENEKE: The page is 167.

ADV NZAME SKIBI: 167, Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV NZAME SKIBI: That [indistinct 00:07:29] has got an emblem like a flag of the
10Republic and it is written, "South African Government." Are you familiar with that?
Or let me put it this way, Premier, so that we can just push some time. I do not
want to dwell much.

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: This letter, did you at some stage see it around 2015? It is
15dated 21st October 2015.

PREMIER DAVID MAKHURA: This is the letter to who, Sir?

ADV NZAME SKIBI: It is a communication from the Department of Health.

PREMIER DAVID MAKHURA: No, I have not seen that.

ADV NZAME SKIBI: So you never saw it? You exercised oversight of what is happening with the— before I go there. This letter on paragraph, the last paragraph, it reads:

“During 20[intervenues]”

5 **ARBITRATOR JUSTICE MOSENEKE:** Is it a letter or is it the press release?

ADV NZAME SKIBI: I am sorry, Justice.

ARBITRATOR JUSTICE MOSENEKE: No, just identify the document first.

ADV NZAME SKIBI: This document is a press release dated 21 October 2015 with the heading “Gauteng Health terminates Life Healthcare Esidimeni contract.”

10 **ARBITRATOR JUSTICE MOSENEKE:** The question, Premier, it is seen this press release at a time when it was made public?

PREMIER DAVID MAKHURA: No.

ADV NZAME SKIBI: Alright. Perhaps I am just going to read the last, just the last paragraph, only one paragraph on that letter. It reads:

15 “During 2014/15 financial year, the department spent about
323,700,000 on the said hospital for treatment of around 2378
patients. It is important to know that the Department report
this. The budget allocation which was previously utilised on
the said facility will be re-prioritised accordingly. This process
20 will assist our efforts to employ more employees at our
psychiatric wards. Concluded, MEC Mahlangu.”

So was there– the question, premier, was there any Premier’s budget whereby the Department of Health requested to reprioritise budget spending?

PREMIER DAVID MAKHURA: Well, Justice, through you, I did say extensively yesterday, no.

5**ADV NZAME SKIBI:** Okay. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Well, what Counsel is getting at is really is that so the MEC goes public and says she is going to shut down Life Esidimeni. When she did so in October 2015, was she totally on a frolic of her own? In other words, was she acting out of the parameters which have been set by the Premier’s
10budget Counsel?

PREMIER DAVID MAKHURA: Justice, again, I, in the interest of time, I think is the day I explained extensively that the only thing that made sense about terminating the Life Esidimeni contract was on the basis that patients will be transferred in public institutions. That is what I knew. That is what came before the budget
15Counsel. At that, that is my response.

ARBITRATOR JUSTICE MOSENEKE: Yes. In the passage you read, Counsel, is not it [? 00:11:49] fair to point out that the statement says:

“This process will also assist our efforts to employ more employees at our psychiatric wards and not at NGOs.”

20Can you see that, premier?

PREMIER DAVID MAKHURA: I can see that.

ARBITRATOR JUSTICE MOSENEKE: Is there anything you want to say about that in response to the passage which was just read to you?

?PREMIER DAVID MAKHURA: Well, Justice, saying this letter now, it may be that there may be a few other things to point out but that, what you are referring now, in the spirit of what would come before the budget Counsel about transferring these patients into existing public facilities, that would make sense. I am saying, in a— employ it more employees in the psychiatric wards, I am saying if in the spirit of what we had known the department was doing, that would make sense but we now know that was not the case. The people were transferred to NGOs.

10 **ARBITRATOR JUSTICE MOSENEKE:** Well, let us go through a few more paragraphs in this press release. If you look at the top, you can see it is a media statement.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And you can see it is issued by Province
15Gauteng and issued by Gauteng Health.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Right, and look, let us look at the second paragraph.

“The contract termination is in line with Mental Healthcare Act, which encourages
20mental healthcare practitioners to treat users in the least restrictive environment as reflected in chapter 2.”

So there the MEC purports to rely on the Mental Healthcare Act 17, 2002 in what she is doing. You have any comment about that?

PREMIER DAVID MAKHURA: Justice, yesterday, and I am sorry to keep referring to yesterday, Justice, because if my testimony continues today I have to remind you of what I said yesterday. I dealt [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Yes, [indistinct - cross-talking 00:14:24] always work that way, Premier.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: You say something, they still ask you 10 questions about it.

PREMIER DAVID MAKHURA: Okay.

ARBITRATOR JUSTICE MOSENEKE: So you going to find that you are asked questions about things you said yesterday.

PREMIER DAVID MAKHURA: Okay. So I— So be patient with me as well when I 15 keep referring to what I said yesterday, and I will be patient was being asked the same question again because the courts work that way. Yesterday, I dealt with this issue of the reason that was put on the 14th of September when I had a meeting with the MEC, the HOD, and their team, being the implementation of the 2013/2020 policy framework and strategic plan in the context of what they referred to as the 20 implementation of the Mental Healthcare Act. And I did say that it is common cause

that what is cited here is said by Health Ombud to be a selective interpretation, misrepresentation, and contravention of this act.

ARBITRATOR JUSTICE MOSENEKE: Yes.

PREMIER DAVID MAKHURA: And I— when they advanced the reason of the need to move people from the establishments such as life Esidimeni and two, what they explained as deinstitutionalisation, and I immediately went to discuss Minister Motsoaledi about this matter. And he will canvass the point here that that was not a reason enough for them to have used as moving people to NGOs.

ARBITRATOR JUSTICE MOSENEKE: But look at [intervenes]

10 **PREMIER DAVID MAKHURA:** So I now know that that paragraph itself would not represent accurately what the implementation of that policy would have been. And I also want to say, Justice, that MEC Barbara Chris would have said, implementation of national policy always serves before our executive Counsel, subcommittees, and then finally, the executive Counsel takes a decision. If there is no budget for that,
15 the implementation of national policy, we are able to point out, “But there is no budget. We may want to implement this national policy.”

ARBITRATOR JUSTICE MOSENEKE: Well, the statement continues. Remember, this is what MEC put in the public place.

PREMIER DAVID MAKHURA: Yes.

20 **ARBITRATOR JUSTICE MOSENEKE:** Let us look at the statement. Let us go back to it.

“ ‘Consequently as a Department we want to reduce psychiatric patients at facilities by discharging all those who are responding well to treatment and migrate them back to communities and afford them treatment at the respective homes,’ said MDC.”

5This other one part, she says they are going to discharge people to their homes.

About that I will ask a question in a moment. But here it comes:

“Patients that require further management will be referred to our hospitals which have psychiatric wards, and this will help as patients will be treated closer to home. We will also continue to work with NGOs in the mental healthcare environment to
10assist us manage those patients accordingly. In preparation of this termination, the Department will be referring less patients to Life Healthcare Esidimeni Hospital.”

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: So in the statement she says some will be taken to hospitals and others to NGOs. Did you hear anything about that in October
152015?

PREMIER DAVID MAKHURA: I, I have already said, Justice, that I did not see the statement that the statement is very telling because if you– so firstly, the hospitals which have psychiatric wards would feature here.

“We will also continue to work with NGOs in the mental health environments to
20assist us to manage these patients accordingly.”

That is also– they are existing NGOs in the mental health sector, existing, that are properly licensed, that are doing pretty good, a pretty good job of helping with providing healthcare to mental health, mental wealthcare users. And I will say, Justice, that the issue of the transfer of patients to the NGOs and the question, I would not say that it is here in the statement, unless if it is your interpretation.

ARBITRATOR JUSTICE MOSENEKE: Yes, remember when we come from. The initial question of Counsel was, “Had you heard of NGOs any time before your meeting of November 2015?”

PREMIER DAVID MAKHURA: And I had said no.

10 **ARBITRATOR JUSTICE MOSENEKE:** And you said no.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And then Counsel produced– I am trying to show you the trajectory.

PREMIER DAVID MAKHURA: Yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** Then Counsel produced page 167.

PREMIER DAVID MAKHURA: Yes, yes, yes, yes.

ARBITRATOR JUSTICE MOSENEKE: It is a public statement by the MEC
[intervenes]

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: In which she presumably tells the world what she is going to do.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And then sets out there:

5“Yes, others will be referred to our hospitals which have psychiatric wards and others will be managed– we will continue to work with NGOs.”

ARBITRATOR JUSTICE MOSENEKE: Sorry, that is what she says.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: So the real sting in the question is how
10could you not have known when she made a public statement which makes reference to NGOs?

PREMIER DAVID MAKHURA: Justice, are you saying that that says others will be referred to the NGOs?

ARBITRATOR JUSTICE MOSENEKE: I am not saying so. I have read to the
15passage.

PREMIER DAVID MAKHURA: Okay.

ARBITRATOR JUSTICE MOSENEKE: And you– it is your colleague who issued this and I am asking you to help us understand.

PREMIER DAVID MAKHURA: Yes, and my interpretation is that this does not
20mean others will be sent to NGOs.

“We will continue to work with NGOs...”

It is what the Department and the government has been doing, and I am saying to you working with– the government has been working with NGOs that have been providing fairly decent service consistent with our concern as the PBC.

5 **ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADV NZAME SKIBI: Thank you, Justice. So, Premier, the decision to cancel or terminate contract between the Department of Health of Gauteng as well as Life Esidimeni was an executive decision, am I correct?

PREMIER DAVID MAKHURA: I executive decision, I guess there is a section in
10 the constitution [intervenes]

ADV NZAME SKIBI: Section 140, yes.

PREMIER DAVID MAKHURA: Well, you know how decisions are made, very, very clearly. Firstly, it was a decision of the executive Counsel, I would have signed together with the relevant MEC. So it is not. If by executive decision you mean by
15 another executive authority at a different level, that is a different issue but as consistent with our executive decisions are made, which particularly need to be communicated to the next party, I sign, co-sign with my MEC.

ARBITRATOR JUSTICE MOSENEKE: Counsel is asking was it an executive decision in terms of section 140 of the constitution?

20 **PREMIER DAVID MAKHURA:** No.

ARBITRATOR JUSTICE MOSENEKE: Your answer could be yes or no. No?
Okay.

ADV NZAME SKIBI: So that decision to terminate the contract has got no legal consequences?

5**PREMIER DAVID MAKHURA:** We now know that there were legal consequences.

ADV NZAME SKIBI: Is that if they were legal consequences it is an executive decision, is it not?

PREMIER DAVID MAKHURA: Is that the logic?

ADV NZAME SKIBI: No, no, I am asking, Premier, with respect.

10**PREMIER DAVID MAKHURA:** I know. No, I think you are correct. Section 140 explains how an executive decision is taken. So this was not an executive decision.

ADV NZAME SKIBI: Although it had legal [intervenes]

PREMIER DAVID MAKHURA: Ja, they are many decisions that are made at different levels that have legal consequences but this was not an executive decision
15in terms of that section you are citing.

ADV NZAME SKIBI: Okay. Thank you. The meeting you had with the unions on, during November 2015, let us come to it now. You said there was no decision that, in that meeting about– that meeting only, was dealing only with three issues as you mentioned yesterday in your evidence in chief.

20**PREMIER DAVID MAKHURA:** Yes.

ADV NZAME SKIBI: So there was no further, nothing further was discussed?

PREMIER DAVID MAKHURA: Only those three issues.

ADV NZAME SKIBI: Alright. So if anyone says that they were is an issue of NGOs with patients had to be transferred, that would not be correct?

5**PREMIER DAVID MAKHURA:** Yes.

ADV NZAME SKIBI: I just want your comment. If you have, someone were to assist you in file 1 page 180, one-eight-zero.

ARBITRATOR JUSTICE MOSENEKE: I have got that, ja.

ADV NZAME SKIBI: This– at page– are you there, Premier?

10**PREMIER DAVID MAKHURA:** Yes, yes, yes. I am there.

ADV NZAME SKIBI: Okay, thank you. If I introduced you this document, the minutes, the recording minute of meeting Department of Health and Sadec.

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: It is dated 30 November 2015. It sets out the people who
15attend the meeting.

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: And if you turn to the next page, I just want to comment on the first sentence there. This meeting was chaired by Dr Selebano. It is recorded at page number 181 of this document.

20**PREMIER DAVID MAKHURA:** Yes.

ADV NZAME SKIBI:

“The HOD discussed the need to desegregate patience from the Life facilities and to assess the social impact on patients and employees of life Esidimeni as instructed by the Premier.”

5Do you have a comment on that? We know that here, when Dr Selebano was giving evidence, he denied that he was instructed by you. Do you have any comment about that?

PREMIER DAVID MAKHURA: If he deny it he is correct.

ADV NZAME SKIBI: So did you instruct him?

10**PREMIER DAVID MAKHURA:** I agree with him that I did not instruct him but the minutes [indistinct 00:26:35] a problem that he is not the MEC. It referred in the minutes as “MEC Dr Barney Selebano.” I am just doing that to your attention. I did not appoint him as the MEC.

ADV NZAME SKIBI: No, we understand that, Premier.

15**PREMIER DAVID MAKHURA:** Thank you.

ADV NZAME SKIBI: No, I just wanted your comment on that. I just want to come to your role to oversight to your executives, Premier.

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: Do you get monthly or quarterly reports about conformance
20of your executive MECs regarding the problems and successes in their departments?

PREMIER DAVID MAKHURA: Yes. We have— all our executive Counsel meetings received reports from all departments. These reports go through subcommittees. We have a, what is called a cabinet system that is functioning as a predictable. The reports first go to subcommittees, from all departments, on their work based on the programme of the year and implementation of the budget to support that program. So they, every department submit its report to the executive Counsel. In addition, Counsel, in addition to that, in 2016 I introduced the system. Apart from the meetings of the executive Counsel, every six weeks, and I am saying from 2016, every six weeks, in a cycle of six weeks, I met with MEC is to review the progress and their work with regard to the delivery of our priorities, give them feedback on that progress, and also crack the whip where there is no progress because at the end of every year, we must report about what, the commitments we have made. So from 2016, essentially October 2016, in addition to reports to the executive Counsel, I hold this six-weekly cycle of meetings with— in fact, it is not just the MECs. Every MEC and the HOD sit in that meeting.

ARBITRATOR JUSTICE MOSENEKE: And these will be one-to-ones.

PREMIER DAVID MAKHURA: Yes, Justice, what is called a “one-to-one.”

ARBITRATOR JUSTICE MOSENEKE: Yes.

PREMIER DAVID MAKHURA: You know the government system very well.

20**ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV NZAME SKIBI: So you only rely on that, on those meetings. There are no monthly or quarterly reports which are submitted to you so that you can see where there are challenges in any department.

PREMIER DAVID MAKHURA: Counsel, I did say there are reports that come to the executive Counsel. It is to me— it is the meetings six-weekly and the report that come to the Counsel. And that we do without fail, every meeting of the executive Counsel.

ADV NZAME SKIBI: So are you saying between November 2015 to September 2016, there was no report by the MEC Mahlangu raising the concerns raised by the 10 families regarding the transfer of these mental patients to, from Life to [intervenes]

PREMIER DAVID MAKHURA: It is correct.

ADV NZAME SKIBI: Nothing of that sort?

PREMIER DAVID MAKHURA: Correct. Not to the executive Counsel that I have referred to before I introduced this six, six weekly-cycle of meetings.

15 **ARBITRATOR JUSTICE MOSENEKE:** But was this a matter of such magnitude as to require reporting to the executive Counsel?

PREMIER DAVID MAKHURA: Yes. I would say that if they were the problem, the kind of problems that we now know were, including that they were the NGOs and the Department was finding, they were not finding each other, as I have said 20 yesterday, something I would have done would have been to bring them on the table – something I do quite often – round, on a roundtable to hear what the key

issues are and facilitate a solution. So that did not, did not come to the executive Counsel.

ARBITRATOR JUSTICE MOSENEKE: You see, the MEC on the evidence changed the course of her presentation at a policy level to the executive Counsel, at 5a budgetary level because you had promised, on your evidence, premier, that– and Ms Chris’s evidence, MEC Chrissie’s evidence, that they would be no– all the transfers would go to state hospitals.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And there is this major change of course 10which leads to all these deaths. That surely is a matter of sufficiently magnitude to be reported to you.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And this is where Counsel is going.

PREMIER DAVID MAKHURA: Yes.

15**ARBITRATOR JUSTICE MOSENEKE:** But she did not.

PREMIER DAVID MAKHURA: It was not reported, not even privately outside– let me explain that they are occasions when it MECs call me when they are really dealing – it is required – when they are dealing with issues that are quite a difficult and the executive Counsel meeting has taken place, and this is something I 20courage, that we should not only have the formal processes. Give me a call to say, “I have these difficult issues, Premier. Can you help me?” Or, “We have reached a

deadlock with a sector, very important sector. We cannot move forward. I need your help. Can you help facilitate? Or what is the advice you are giving me?"

ARBITRATOR JUSTICE MOSENEKE: But what about after the Nihau meeting? You knew then now that the hospital is going to be shut down [intervenes]

5**PREMIER DAVID MAKHURA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: ...and patients are going to be moved to other institutions [intervenes]

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: ...existing. Then she ever come back and 10say, "Actually, we have decided to accelerate the staff. We are going to take them out in three months, the high point being May of 2016, and we are going to put them on trucks and we going to take them to NGOs across the province." She never reported that.

PREMIER DAVID MAKHURA: That to change of course it was not reported. It is a 15matter of great concern, that total change of course.

ARBITRATOR JUSTICE MOSENEKE: Particularly, premier, because it led to death [intervenes]. It led to suffering.

PREMIER DAVID MAKHURA: It led us to where we are, Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. Do you know why she would behave 20this way? I mean, it is a total change of course. She releases a press statement in October, and they decide to accelerate this process, and even in the one-to-ones,

she does not say, "You know, premier, I have got this big project underway." I think this is where Counsel is going to really.

PREMIER DAVID MAKHURA: Yes. I definitely agree with you, Justice. And, Counsel, my response is in doing all that, that was not raised at the executive 5 Counsel meeting nor even called to say, "We are changing course. We have this problem. Now we are moving at a different angle together." That was not raised with me.

ARBITRATOR JUSTICE MOSENEKE: And an MEC reports to you, who withholds such vital information, that would be a very serious breach of trust, would it not?

10 **PREMIER DAVID MAKHURA:** Certainly, Justice.

ADV NZAME SKIBI: [Indistinct 00:35:02] had experienced or presumably from what she said regarding to the tenure that she has been serving the government, why would she behave in this manner of sabotaging? Is it sort of like, "I do not care what happens. I am in charge. So that is it." Why did she— do you have any 15 reason why would she be that manner?

PREMIER DAVID MAKHURA: Counsel, I would like to leave that to both this process and any other processes beyond this.

ADV NZAME SKIBI: Okay.

PREMIER DAVID MAKHURA: Because I would not know.

20 **ADV NZAME SKIBI:** And none of other because the evidence— we have got documents, we got in all different forms that there were protest, they were

memorandum, and none of other executive members they said, “Premier, just have a look there. Our government, our government would be in trouble in one of the days. Can you follow it up with the MEC for Health?” None of them between November 2015 until September 2016?

5 **PREMIER DAVID MAKHURA:** I certainly reassert what I said, Counsel, that none of that.

ARBITRATOR JUSTICE MOSENEKE: Well, you have your answer, Counsel.

ADV NZAME SKIBI: Okay. Thank you.

ARBITRATOR JUSTICE MOSENEKE: You can only pester and push so much.

10 **ADV NZAME SKIBI:** Alright. Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: You are bound by the answer now.

ADV NZAME SKIBI: Alright. So now, September 2016 on the 14th, you said you invited MEC and her senior managers who were involved in this project.

PREMIER DAVID MAKHURA: Yes.

15 **ADV NZAME SKIBI:** And the explanation they provide you, you sought an explanation as to how many deaths and the circumstances as to what happened. Did I get— okay. Fair enough [intervenes]

ARBITRATOR JUSTICE MOSENEKE: There is a simpler way, Counsel. Of course Counsel could say you had a meeting September 2016. What happened in 20the meeting? Let the witness say it.

ADV NZAME SKIBI: Can you tell us, premier, then [intervenes]

PREMIER DAVID MAKHURA: Yes, I do not mind repeating what I said yesterday.
Should I repeat what I said yesterday?

ADV NZAME SKIBI: Yes.

5**PREMIER DAVID MAKHURA:** I guess that is the request. Yesterday I said,
Counsel, that in that meeting, the fundamental, there were two fundamental issues.
The first one is— okay, let me start before that. On the 13th of September, the MEC
answered a question in the legislator and said 36 people have died in NGOs. I was
in, on what we call Desesano [? 00:38:24]. It is an out, community outreach
10programme, engagement with sectors of the economy to sort out the economy and
my spokesperson, Ms Phumla Sekonyana, came to me and said, “Premier, the
MEC has just announced in the legislator [intervenes]”

ADV NZAME SKIBI: Sorry, premier. I am sorry. In the interest of time, we heard
your evidence in chief. I just beg with greatest respect just if you may perhaps stick
15on the issues which were discussed on the 14th when you met.

ARBITRATOR JUSTICE MOSENEKE: You mean the issues discussed at the
meeting?

ADV NZAME SKIBI: At the meeting, yes.

PREMIER DAVID MAKHURA: Okay. Thank you. I did not know which part of my
20present he wanted me to repeat. So is that one is covered it is okay. So there were

two issues there as I said yesterday. The first one was, “How many people died?” and the second question was, “How did they die?” Those were the only two issues.

ADV NZAME SKIBI: On the first one what response that you get as to how many people they die?

5**PREMIER DAVID MAKHURA:** I, as I said yesterday, they gave a number of figures and this issue, it was clear out of the meeting that they themselves have a problem with tracking data. There were— and I have in the presentation that they presented – I did say yesterday, Justice, if the arbitration process needs a copy of that, I will present – they presented a lot of information on, regards they which were
10varying from, they would vary from, there would have been more than 36. And even amongst themselves it was clear that they are not sure how many people died, a fact established later by the Health Ombud, Prof Magoba.

ADV NZAME SKIBI: I just want to ascertain the number which was given to you. Let us put aside we know that what happened, what transpired later. The number
15that you were given on that, on the 14th of September 2016 in that meeting.

PREMIER DAVID MAKHURA: Counsel, Justice [intervenes]

ADV NZAME SKIBI: Was it 36 I may help?

PREMIER DAVID MAKHURA: It is more than 36. Can I submit a document?

ARBITRATOR JUSTICE MOSENEKE: Yes. I think you have [indistinct - cross-
20talking 00:40:48] yester day [intervenes]

PREMIER DAVID MAKHURA: I do not want to give you a number and then you later say that, “Before this arbitration process you give us a wrong number.” I have a great deal of respect for this process.

ARBITRATOR JUSTICE MOSENEKE: Thank you. The document would record the communication the made to you about [intervenes]

PREMIER DAVID MAKHURA: The numbers.

ARBITRATOR JUSTICE MOSENEKE: ...the number of deaths.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Very well. Let us arrange, Counsel. Would you arrange for us to have a copy of that from the Premier’s office?

ADV NZAME SKIBI: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you. And it will be handed in and we will give it an ELAH number at the time. So the answer is the exact number you will find in the document that will be handed in, but it was around, it was more than 1536.

ADV NZAME SKIBI: Alright. So the information which was submitted at the legislator during the answering of the questions and answers, it was false. It was not 36 in actual fact.

PREMIER DAVID MAKHURA: You certainly can draw that conclusion, Counsel.

ADV NZAME SKIBI: Alright. Thank you. On the second aspect, what answer did you get there on the second issue?

PREMIER DAVID MAKHURA: Again just to repeat what I said yesterday
[intervenes]

ADV NZAME SKIBI: Can you just be brief? We understand. I am sorry with great respect. I do not want to take much time of the arbitration.

5**PREMIER DAVID MAKHURA:** Yes. Yes. So I should summarise the repeat because I did say this yesterday, with great deal of respect, they– on the question of because why did they die in NGOs with they were supposed in our public health facilities, their explanation was to resort to the intimidation of the 2013– they said they were implementing the 2013, 2030 policy framework and strategic plan as part
10of the Mental Healthcare Act. That is the explanation they gave.

ADV NZAME SKIBI: Alright. Thank you. By that time, the number which was in your knowledge, 36, must have shocked you because it is a lot of people. Am I correct?

PREMIER DAVID MAKHURA: Precisely why I called them to that meeting, yes.

15**ADV NZAME SKIBI:** So if needed decisive action on your part on whoever who omitted to do his or her job.

PREMIER DAVID MAKHURA: Yes, on the basis of the actions that I undertook from there.

ADV NZAME SKIBI: Yes. Okay. We understand your conducts with the national
20Minister and your further instructions as to what should be done but you only suspended the HOD and head of mental health directorate on 8th of February 2017.

PREMIER DAVID MAKHURA: Yes, when the report was released by the Health Ombuds.

ADV NZAME SKIBI: And by that time, about 107 mental healthcare users have died according to the ombud's report.

5**PREMIER DAVID MAKHURA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Well, the question is really why did not you take steps to prevent further deaths question that is really the core of the question that Counsel is asking.

PREMIER DAVID MAKHURA: Yes. Thank you, Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** Why did you wait? Did you wait at all for starters?

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And if you did, why did you whilst more and more patients were dying? Let me put it to you this way. You see, between the 15times that Counsel was referring to through to September 2016, in some instances December 2016, patients continued to die. So the question was what remedial action you take immediately after, from September 2016?

PREMIER DAVID MAKHURA: Yes. I certainly said yesterday, Justice, but out of that meeting, my engagement with the Minister, it was clear that there is now an 20intervention driven by the Minister. And on my part I was fully mobilising to ensure that that intervention is supported to save more life, and that intervention has been

put before this yesterday. Firstly the team, the ministerial advisory Counsel that was now acting on the NGOs when life was being threatened and secondly, the investigate– the appointment of the Health Ombud to investigate. At that time, I was satisfied that anything that gets done outside that would complicate matters and it may also undermine the process that has been put in place by the Minister, and that everything we have to do is to support that process. I was convinced that that is the right thing to do.

ARBITRATOR JUSTICE MOSENEKE: When was the ministerial advisory team put together, which month?

10 **PREMIER DAVID MAKHURA:** All I know is that there– in the same, in few days, and the Minister will definitely testify here, in few days after the Minister hearing and in few days after I have heard, we were, we got in touch with the Minister and the set of actions that he was taking, I was happy that supporting those actions will help us a lot to save life. And the precise date is something that can be verified, Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** Sure.

PREMIER DAVID MAKHURA: But it is in September immediately after this matter of 36 patients into the public.

ADV NZAME SKIBI: Thank you, Premier, we appreciate the steps that you took towards intervention immediately after everything your knowledge. The issue that I 20am taking up with you is you were given an explanation by these officials which was not satisfactory. You do not ask anyone of them, say, “Can you give me reasons why you should not be placed on special leave?”

PREMIER DAVID MAKHURA: There is an important issue, Counsel, that this question about the implementation of the strategic plan and the Mental Healthcare Act, which was a subject of detailed the presentation by the Health Ombuds, was the only key thing that for me was hanging, was outstanding. Is this the real reason
5 and were they implementing the national, this national legislation or national policy, strategic plan? And if it came out that they were indeed doing that, I would have given them a benefit of doubt and still take action but it was clear that even that, that was not what they were doing. And I could only come to that full conclusion out of the investigation that was undertaken by the Health Ombuds.

10 **ADV NZAME SKIBI:** Fair enough. Ms Mahlangu testified here that she decided to resign out of our own conscience. What would your comment about that?

ARBITRATOR JUSTICE MOSENEKE: Again, Counsel, it will help, it will help to say it out loud than that, please.

ADV NZAME SKIBI: Thank you.

15 **ARBITRATOR JUSTICE MOSENEKE:** So we can all hear you.

ADV NZAME SKIBI: Ms Mahlangu testified that she resigned from your executive out of her own conscience, contrary to what you said. It will do clearly that if anything goes wrong profoundly within one's Department, there is no shifting of the buck, if I may put it in that way. What do you say?

20 **PREMIER DAVID MAKHURA:** Well, I want to repeat what I said yesterday that once I have got the interim report from the Health Ombuds – and I got that report on the 11th of January – I interacted with the then MEC and as I said yesterday,

indicated this report is very serious although it is still an interim report, although she still has to submit a response, this report is very, very serious. And she did say to me that if I want her to resign she will resign, in accordance with an understanding that you have referred to, and that, that I did not have to fire her. It is important if she resigns. You cannot fire someone who is resigning.

ADV NZAME SKIBI: So it was not out of her own volition, if I may put it in that way.

PREMIER DAVID MAKHURA: That is not what I am saying. Justice, that is not what I am saying.

10**ARBITRATOR JUSTICE MOSENEKE:** Yes, we have heard the answer. Counsel put to you his view and you could say you do not agree as you have just said. So the matter is settled.

PREMIER DAVID MAKHURA: The matter is settled. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Yes. Any further questions, Counsel?

15**ADV NZAME SKIBI:** Thank you. Thank you, Justice. Dr Selebano resigned few weeks ago. Did you get any reason why, why did he resign?

PREMIER DAVID MAKHURA: He does not state the reasons except that he wants to part ways with the employer, which is the Gauteng Provincial Government.

ADV NZAME SKIBI: He resigned after more or less about 11 months from the date of his suspension.

PREMIER DAVID MAKHURA: Certainly.

ADV NZAME SKIBI: Dr Manamela as well. It is the same. She, did she offer any explanation why is she resigning?

PREMIER DAVID MAKHURA: Dr Manamela does not report to me. It is only the head of Departments I appoint. So when they resign they write letters to me. So Dr Manamela is a director. She, when she resign, she report to the MEC for Health. So you could ask the MEC for health that question about what reason she gave.

ARBITRATOR JUSTICE MOSENEKE: On the resignation, is a HOD entitled to any package or the so-called golden handshake?

PREMIER DAVID MAKHURA: No golden handshake.

10 **ARBITRATOR JUSTICE MOSENEKE:** So it will be his jacket and his last pay packet.

PREMIER DAVID MAKHURA: As you say, Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. And would Dr Manamela be entitled to any emolument, gratuity, or a global sum on resignation?

15 **PREMIER DAVID MAKHURA:** Justice, I need to state that as far as we are so determined to proceed to those disciplinary processes of any of our officials who did something that was wrong, we will continue to do so. The only thing is that when they leave our employ we cannot discipline them as of the Public Service Act but they are still other steps that can be taken. No packages or golden handshakes –
20 how can we justify that given what has happened? How would be justify that?

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV NZAME SKIBI: Thank you. Thank you, Justice. I will refer you to ELAH 84 if someone can assist you. ELAH...

ARBITRATOR JUSTICE MOSENEKE: You know, Counsel Skibi, whilst looking at ELAH 84, I saw a social media entry which asked, “What was in this bottle? And why is the water reddish?” I hope you will attest when asked that is canned fruit that I drink. Some naughty young man says, “Why is the Judge awake until from 9 to 6 pm? It must be the red water.” So, you have been here throughout. I hope you can attest that it is only [intervenes]

ADV NZAME SKIBI: Ah, it is only water, Judge.

10**ARBITRATOR JUSTICE MOSENEKE:** ...strawberry and cucumber water. Very well. May you continue, please?

ADV NZAME SKIBI: Thank you. Thank you, Justice. Are you there, Premier, on ELAH 84?

PREMIER DAVID MAKHURA: Yes.

15**ADV NZAME SKIBI:** This document is in the address by Minister Aaron Motsoaledi, Dr Aaron Motsoaledi at the, in Parliament on the 23rd of February 2017.

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: And amongst other things, he is addressing this real issue which made us to be here we are today.

20**PREMIER DAVID MAKHURA:** Yes.

ADV NZAME SKIBI: If you look there at paragraph, just below paragraph 20, it is around 22, he says that, I quote:

“There was hence no reason for so many vulnerable people to perish on account of money. I interrogated this issue with the Premier of Gauteng Province because I wanted to understand what actually the Counsel in the province discussed and approved. He told me that the issue never featured on any agenda of the executive Counsel but he, as the premier, was told by the Department of Health that they have 4 000 beds in public health institutions which they would like to use and there is absolutely no reason to continue contract services of private companies with the public sector is able to provide that number of beds.”

Is that what you report to the— is that statement correct, correctly recorded?

PREMIER DAVID MAKHURA: Yes.

ADV NZAME SKIBI: It is what you told the Minister Motsoaledi?

PREMIER DAVID MAKHURA: Except that it should say “more than 4 000.” The only thing that it is “more than 4 000,” but it represents exactly what I discussed with the Minister.

ADV NZAME SKIBI: Okay. That number, it says— the public paragraph mentions that the patients in actual fact, it was going to be double or twice, more than 2000 patients.

ARBITRATOR JUSTICE MOSENEKE: I do not follow the question.

ADV NZAME SKIBI: Let me ask this question, Premier. Did you believe that they are, in this public health institutions they can absorb all the mental healthcare users from Life Esidimeni?

ARBITRATOR JUSTICE MOSENEKE: Does the premier believe that one? That 5what may absorb? I am sorry.

ADV NZAME SKIBI: Can accommodate the, all the legal has users from Life Esidimeni.

ARBITRATOR JUSTICE MOSENEKE: Does the premier believe that that state institutions were in a position to absorb [intervenes]

10**ADV NZAME SKIBI:** Yes, were in a position.

ARBITRATOR JUSTICE MOSENEKE: ...all the patients at Life Esidimeni?

ADV NZAME SKIBI: That is correct, Justice, yes.

PREMIER DAVID MAKHURA: You mean– I believed that when the Department said there are more than 4 000 beds. Remember, this also include the patience 15from Selby. Life Esidimeni was only smaller number accurately but they were also the patience from Selby because the issue has always been raised together. I believed that when the Department said they are more than 4 000 additional beds, I believed them. I had no reason not to.

ADV NZAME SKIBI: But were there any facilities increased the capacity to 20accommodate all these patience from Life Esidimeni by public health institutions from government?

PREMIER DAVID MAKHURA: Counsel, I do not understand the question.

ADV NZAME SKIBI: Let me put it this way.

ARBITRATOR JUSTICE MOSENEKE: Well, the question from Counsel is where suddenly would 4 000 beds have come from? Was there at the new facility that had been built? Where would the capacity come from?

PREMIER DAVID MAKHURA: Counsel, the Department that we have additional, also additional new hospitals that are coming into stream and additional facilities at the levels of primary healthcare facilities that will accommodate that, but it was principally an existing, expansion of existing wards in existing hospitals, in particular psychiatric hospitals, additional wards in psychiatric hospitals.

ADV NZAME SKIBI: Because, Premier, in actual fact this was overburden, it was going to overburden the state. The state would not have been in a capacity to accommodate all these mental healthcare users.

PREMIER DAVID MAKHURA: Counsel, you are saying at that time, the state if they were, if the Department was saying we have capacity for more than 4 000 additional beds, you are saying that would still overburden in the state?

ADV NZAME SKIBI: Yes.

PREMIER DAVID MAKHURA: I would not know, Counsel.

ADV NZAME SKIBI: You would not know. You know that there is a lot of mental healthcare users who are under the criminal Justice system had been referred to mental healthcare institutions for psychiatric observation. They wait months and

months in hospital, in prison before they get a bed in these institutions. You know that?

PREMIER DAVID MAKHURA: I would not know because I am not particularly running the health system at that level [intervenes]

5**ARBITRATOR JUSTICE MOSENEKE:** More directly, Counsel is saying at the time when— okay, let us try and contextualise this. When did you hear about the 4 000, at which stage in this project?

PREMIER DAVID MAKHURA: In the, Justice, in the period between the December 2014 PBC were the first, we for the first time this issue of the private health 10institutions, Selby and Life Esidimeni patients being, the department been able to provide these services in-house, that is when it first [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Ja, so you got the assurance then.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: I just wanted to have it so that we do not 15pose questions to you that may be unduly confusing.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Now, Counsel says you ought not to have believed that because in truth and in fact, the state did not have that capacity.

PREMIER DAVID MAKHURA: I would not have known, Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Yes. We know now as fact [intervenes]

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: ...and we know that Sadec to the MEC and the HOD, having been told that there is capacity, they went to every institution and the province's control and they came back with a schedule that showed that 5virtually every state hospital was full to the brim.

PREMIER DAVID MAKHURA: That is a matter that we now know.

ARBITRATOR JUSTICE MOSENEKE: We now know.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: So when the MEC reported before the 10PBC that she had 4 000 beds, that was a blatant untruth and Counsel is saying why did you believe the untruth. That is really the trend of the question.

PREMIER DAVID MAKHURA: Justice, you know when something is not true and you know that it is not true, you will not believe it.

ARBITRATOR JUSTICE MOSENEKE: So your answer is really you did not know 15then that is not true.

PREMIER DAVID MAKHURA: Yes. Yes.

ARBITRATOR JUSTICE MOSENEKE: You see, because objectively it was a blatant untruth because Sadec, and it is in the papers, I am sure you must have heard it in the proceedings, went to check on the claimed that they were 4 000 20beds.

PREMIER DAVID MAKHURA: Years.

ARBITRATOR JUSTICE MOSENEKE: So that subtle question is did you check or did any of your people check whether they were 4 000 beds available for the patients?

PREMIER DAVID MAKHURA: Well, Justice, when, so when you are the head of government as I am, and a Department of State in your government, as the fact your before this arbitration process, says, “This is what we want to do. This is how we are going to do it,” the— and they are assurances that are in place that this will be done, the question you are asking me is, “Should not you have gone to verify?” Learning from Esidimeni I tend to think that I will have to verify everything that I, I now receive. I have to verify every part of government report which has serious implications. I did not do at the time. I had no reason to doubt that this may be misleading or the intention may be to make a turn and move in a different direction.

ARBITRATOR JUSTICE MOSENEKE: Which brings me, Premier, to one of the big questions that have been droning in my head. These things tend to drone in my head – zzzzz – I think it happens to judges. You ask yourself the question and say, “I am going to ask the witness this question tomorrow,” and here it is. You opened up with an apology. What do you think was the lapse on your part as Premier?

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: What is it that when you look back and say, “Damn, if I had done this I might have been useful [intervenes]”

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: “...in preventing the disaster or the tragedy.” What gaps do you see that would have made a difference had you behaved differently?

PREMIER DAVID MAKHURA: Justice, I think we have now— let me first say that every, every report that we upped the risk measures in my office, myself and the DG in the province. We have— the monitoring and evaluation team that is my office is now monitoring not just the programs themselves, including what get submitted to the executive Counsel, whether it represent the truth because we now have to doubt human beings probably more than 100%, that given this experience, human beings can present things that do not quite tell or that they are not rep— they do not— they are very far from the truth. So knowing what I know now that you can get a situation where something so catastrophic happened, I— and I first want to say that the first thing is that I am going to have a lot of doubt in what my MECs tell me. I want to say that. I am go— first, firstly, I would want to on the basis that what they are telling me may not be so until I have verified that it is so.

ARBITRATOR JUSTICE MOSENEKE: You see, MEC, on substantial issues, on large issues usually those which impact our citizens and our people [intervenes]

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: ...let us talk a little principle, and I know— I have heard some of your public utterances. We might be in the same zone, we are. Our Constitution imposes responsiveness on wielders of public power.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: You cannot be responsive if you do not know.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: If the channel of information to decision-makers is blocked, they cannot fulfil the constitutional requirement of being responsive.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: You respond only when you know.

PREMIER DAVID MAKHURA: Yes.

10 **ARBITRATOR JUSTICE MOSENEKE:** So what am I saying? The Constitution imposes a duty on public officials to know.

PREMIER DAVID MAKHURA: Yes. Yes.

ARBITRATOR JUSTICE MOSENEKE: When they say, "I did not know," it then raises the big principal question which is, "How do you become responsive if you
15 do not know?"

PREMIER DAVID MAKHURA: Yes. Yes.

ARBITRATOR JUSTICE MOSENEKE: Until you know the traffic lights are out of order, you will not get teams there to resolve that

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: I am putting it at the simplest level and I know you show some of these values.

PREMIER DAVID MAKHURA: I do.

ARBITRATOR JUSTICE MOSENEKE: So it worries me. This case worries me 5that we have, “I do not know,” coming from the bottom to the top.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: So if you do not know, how do you fix things? By implication, you always if you are a public official have a duty to know.

PREMIER DAVID MAKHURA: Yes.

10**ARBITRATOR JUSTICE MOSENEKE:** I leave it there and invite your comment.

PREMIER DAVID MAKHURA: I agree with you, Justice, entirely. As you say, I share the same vision and I feel the same obligation. I feel the same responsibility and that I have to put in place, and I have upped the [indistinct] in my office with every structure that is responsible for this thing that can we know with the real 15situation is?

ARBITRATOR JUSTICE MOSENEKE: Yes.

PREMIER DAVID MAKHURA: Because it is not– I get embarrassed by having to say I do not know.

ARBITRATOR JUSTICE MOSENEKE: Yes.

20**PREMIER DAVID MAKHURA:** It is not an act of strength to say you do not know.

ARBITRATOR JUSTICE MOSENEKE: No. It certainly cannot be, and thank you for that response. We cannot continue to say to the public, “I did not know water would run out.”

PREMIER DAVID MAKHURA: Yes. Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** I did not know social grants will not be paid.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: I did not know you might die.

PREMIER DAVID MAKHURA: Yes.

10**ARBITRATOR JUSTICE MOSENEKE:** We always should be, at least those of us who have public positions, and I have been a public servant for 15 years [intervenes]

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: we are bound to say “I know.

15**PREMIER DAVID MAKHURA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Because the Constitution requires us to be responsive.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

20**PREMIER DAVID MAKHURA:** I share, I share that deeply, that conviction deeply.

ARBITRATOR JUSTICE MOSENEKE: Thank you. I have offloaded my burden for this morning. That is what I thought I want to debate with you, Premier. Yes, Mr Skibi.

ADV NZAME SKIBI: Thank you, Justice. On the last aspect, Premier, the issue of equitable redress, I mean, if the officials who were in your department there, we do not get any— I mean, they are conflicting versions. How will the family find closure? We have any comment about that?

ARBITRATOR JUSTICE MOSENEKE: Did you get the question, Premier?

PREMIER DAVID MAKHURA: I got the question but, Justice, you tend to help me understand what Counsel is trying to ask better.

ARBITRATOR JUSTICE MOSENEKE: Well, Mr Skibi will have to give me half his fees for reformulating the questions.

PREMIER DAVID MAKHURA: Please do, Justice.

ARBITRATOR JUSTICE MOSENEKE: In the face of so many conflicting versions before the arbitration process, how will the families find closure?

PREMIER DAVID MAKHURA: Certainly what I said yesterday was that I think for over and I just hope, firstly I hope, Justice, that what, what began to emerge yesterday, there is some questions that will be answered from here about budget issues and about the resources, the families will not heal and have closure if they are these many conflicting versions that they had here. I agree but this process, I hope even today, the last few of us who had the authority to be here, I hope we will

narrow those areas. I hope the families will not certain things that [vernacular 01:13:08]. It does not mean there was no money. That question I hope and that they will also be other issues that the families would have got from me and from MEC Chrissie, they will get from the Minister, so that they can say, "These ones we now know the truth." But I certainly know they will be other questions that the families who leave here not with the answers, "Why was this done?" That question you are asking me, Justice, yesterday. But why in the end did this take so much to cause so much damage? And we would otherwise be having the people still around, and I am saying that the pursuit of answers as to be done at different levels, including by law, using law enforcement agencies. Were there other things that drove the motive? And I listen to those figures, those numbers, the amount of money on NGOs have that these NGOs could not provide any decent service. So I want to say that in reply to you, Counsel, that they are questions that I will help to the best of my ability but they are those that must be, they can only be done by others other than me and the law enforcement agencies. The SIU investigation currently underway is very, very important, including tracing with any exchanges of money between those NGOs and officials who were driving this marathon project. That question I cannot answer myself but they must be— we live in a democratic state. This should be institutions that have a capacity to help us to answer that question, and I want to avail myself to continue to work with the families in pursuit of that. And there must— they cannot be Justice until those responsible are brought to book.

ADV NZAME SKIBI: So, Premier, the sanction which was [indistinct] out to these officials who were involved, it is about final written warning valid for five months. What is the state doing that [01:15:47]? Do you know or perhaps it will be deferred to your MEC?

5**PREMIER DAVID MAKHURA:** When the Minister Motsoaledi, myself, and MEC, Dr Gwen Ramakgopa, got the reported the disciplinary process outcome is the slap on the face, we were very upset.

ARBITRATOR JUSTICE MOSENEKE: I think it is on the wrist, Premier.

PREMIER DAVID MAKHURA: Slap on the wrist.

10**ARBITRATOR JUSTICE MOSENEKE:** Yes.

PREMIER DAVID MAKHURA: Okay, the face would have been harder. Maybe it should have been on the face and not on the wrist. We were very upset, Justice. We were very upset that you cannot in the face of such a disaster, you have disciplinary processes people are warned but the only way we can act on that is that
15the relevant executive authority, the MEC for health, Dr Gwen Ramakgopa, we agreed that she will reinstitute disciplinary processes out of the discussion with myself, MEC Ramakgopa, and the Minister Motsoaledi. And I am satisfied that that process is something the MEC would be able to explain but we did not accept that. Yes, we have respect for outcomes of processes but when we are not satisfied, we
20did not accept that, Counsel.

ADV NZAME SKIBI: So what are your [intervenes]

ARBITRATOR JUSTICE MOSENEKE: You know, Premier, we have evidence of all that as you know. They were enquiries that were amazingly superficial.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: The officers were advised to plead guilty. 5They pleaded to the. Not a scintilla of evidence, not a word of evidence about what happened. You will hear that from Adv Groenewald were canvassed those issues in his cross-examination.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And these office bearers were found guilty 10and given a written warning against 143 people who died because of their missteps and a lawful conduct. Does not that speak also to the culture, the disciplinary culture internally? What do you do with one of us who has not behaved in the way that the law requires? I am just worried that in the future we see disciplinary hearings that go quickly and people are found not guilty and it happened under your 15watch in the Department of health. In Esidimeni tragedy they all got written warnings.

PREMIER DAVID MAKHURA: May I say something?

ARBITRATOR JUSTICE MOSENEKE: Yes, I am inviting you to.

PREMIER DAVID MAKHURA: I share that. I share the core values and the attitude 20with you and I have publicly announced, both in the legislator and public, that the disciplinary processes in the public service are just the sham. Officials get

suspended for long and processes drag. They drag whatever. We know already that with this process of that disciplinary processes took longer and they hide behind the rules, the Public Service Act, and they hired lawyers. We live in a law governed society. I have respect for that. The lawyers are professionals. They
5protract [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Just go easy. I am a lawyer, Premier.

PREMIER DAVID MAKHURA: I know that, Justice.

ARBITRATOR JUSTICE MOSENEKE: So be gentle on us lawyers.

PREMIER DAVID MAKHURA: I am very gentle to the lawyers but I express this
10frustration to my computer all the time that processes drag. Somebody has done something, processes drag for long, and they come out of a process and essentially they are not found guilty, they come back. They come back to continue their normal lives and citizens have been harmed. So I share that deep frust– that is why Minister Motsoaledi, myself, and MEC Ramakgopa have said this disciplinary
15process must be restarted.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Thank you for your. Good nations and good organisations, premier, no doubt we share that. They quarter and hang their own when they misbehave, and the more we allow those who misbehave to thrive, the more the rot sets in. So it is something very vital for us, and we saw it
20here with evidence, despite all this pain, actually nothing happens. So it is something that I hope and trust we have reinduct the notion that there are

consequences for wrongful conduct. If there are no consequences, of course the bad men and women flourish and the good ones shrivel and die.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

5**ADV NZAME SKIBI:** Thank you, Justice. Just on what information would you share, Premier, if one of the families and say:

“My family relatives was moved from Life Esidimeni to these NGOs but she was brought back to the Life Esidimeni and does not know whether there is a contract existing at between Life Esidimeni and the government.”

10Will your department clarify, provide communication to these families because there is that uncertainty based on what has happened. Can you comment on that?

PREMIER DAVID MAKHURA: Counsel, you mean in the contract referring to after the release of the report and removing the mentally ill patients, the survivors basically back to Life Esidimeni. Is that what you are referring to? That there is no
15contract.

ADV NZAME SKIBI: Yes, they want clarity. In fact, they know that they were warned about the termination of the contract and the family members were moved from life Esidimeni. Suddenly, after the intervention they were brought back to life Esidimeni but there is no certainty as to what is going to happen when.

20**PREMIER DAVID MAKHURA:** Justice, I am very confident that Dr Gwen Ramakgopa will be able to make more assurances than I. As far as the Minister

and I know that we have signed a new contract with life Esidimeni. If it is not so, the MEC will be able to ex—that is as far as I know. We worked so hard to make sure that is no more other new issues and problems when we were moving, relocating the patients there. I know the Minister himself even visited as part of those 5locations. If it is not, Counsel, I will definitely take action but I would say there is no way that there is now no contract again. No.

ARBITRATOR JUSTICE MOSENEKE: It is a question of security of tenure. Families [intervenes]

PREMIER DAVID MAKHURA: Yes, the families need certainty.

10**ARBITRATOR JUSTICE MOSENEKE:** They need certainty but MEC Ramakgopa will be able to [intervenes]

PREMIER DAVID MAKHURA: MEC Ramakgopa will deal with that adequately.

ARBITRATOR JUSTICE MOSENEKE: Counsel next question.

ADV NZAME SKIBI: Thank you, Justice. Premier, if you have a look at ELHA 115 15and see if it is not the document that you were referring to in your testimony earlier.

ARBITRATOR JUSTICE MOSENEKE: Is 115 there?

PREMIER DAVID MAKHURA: It is part of the document.

ADV NZAME SKIBI: It is incomplete.

PREMIER DAVID MAKHURA: It is incomplete. There is a PowerPoint 20presentation. So this, in terms of the numbers, yes, this is— I am glad that the document is here. That is exactly the report on the numbers that was presented to

me on the 14th. And then there is a PowerPoint presentation which also deals with questions as I was asking all the time to them. So this is a useful document. We will add the other one.

ADV NZAME SKIBI: We will at the other one.

5**PREMIER DAVID MAKHURA:** Yes.

ADV NZAME SKIBI: Alright. Thank you. Thank you, Justice. There is no further questions.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Yina.

ADV NONTHLANTHLA YINA: Thank you, Justice. Good morning, Premier.

10**PREMIER DAVID MAKHURA:** Good morning, advocate.

ADV NONTHLANTHLA YINA: Just a follow up on the questions that you were asked by my learned friend, Adv Skibi on ELAH 84 on the speech that was made by the Minister. I just want to find out who in the department gave you the notion that the Department has more than 4 000 beds.

15**PREMIER DAVID MAKHURA:** It is the MDC and HOD.

ADV NONTHLANTHLA YINA: Yes. Were you aware that at that particular point in time there was a plan already that they had drafted in terms of moving patients from life Esidimeni to the NGOs?

PREMIER DAVID MAKHURA: No. I [intervenes]

ADV NONTHLANTHLA YINA: I would like to refer you to file number 8 page 2789.

PREMIER DAVID MAKHURA: 2789. Yes, I am with you.

ADV NONTHLANTHLA YINA: Is it the first time that you see that document?

5**PREMIER DAVID MAKHURA:** certainly, Counsel.

ADV NONTHLANTHLA YINA: That is the plan that was prepared by Dr Manamela. If you have regard to page 2824, you will notice that it was signed by her on the 30th of September 2015

PREMIER DAVID MAKHURA: Yes.

10**ADV NONTHLANTHLA YINA:** And it was countersigned by Dr Selebano as well as by the project manager, Mr Mosenogi. So in terms of this plan, if the instance of you were to go to page 2811.

ARBITRATOR JUSTICE MOSENEKE: Well, let us find out if the premier has the project plan before him.

15**PREMIER DAVID MAKHURA:** Yes, I do.

ARBITRATOR JUSTICE MOSENEKE: And you have seen the signatories to the plan on page 2824.

PREMIER DAVID MAKHURA: Yes, I have.

ARBITRATOR JUSTICE MOSENEKE: It is what Counsel was taking you
20[intervenens]

PREMIER DAVID MAKHURA: Yes, I have.

ARBITRATOR JUSTICE MOSENEKE: Okay, I am just making sure.

PREMIER DAVID MAKHURA: I have seen the document.

ARBITRATOR JUSTICE MOSENEKE: You may proceed, Counsel.

5

ADV NONTHLANTHLA YINA: Thank you, Justice. There is a table there, table number 18. Can you see the table?

PREMIER DAVID MAKHURA: Yes.

ADV NONTHLANTHLA YINA: That is the table in terms of which the patients 10 were going to be distributed. If you have regard to that, it would seem that of the patients that were to be moved from life Esidimeni, only 591 were to be sent to the NGOs, and 1993 were to be absorbed into the government institutions. Can you see that?

PREMIER DAVID MAKHURA: Yes.

15 **ADV NONTHLANTHLA YINA:** Yes. But the point is that when they, during the meeting in November 2015 when they made a presentation to you, they did not mention that some of the patients would be sent to the NGOs.

PREMIER DAVID MAKHURA: That is correct.

ADV NONTHLANTHLA YINA: Is that so? Okay, I would like also to refer you to 20 the last file, which will be file number 3.

ARBITRATOR JUSTICE MOSENEKE: Just before you move away. In any event, premier, it seems they betrayed given the plan on table 18, is it not?

PREMIER DAVID MAKHURA: Yes. It is a matter of fact that even what they may have presented themselves was not followed.

5**ADV NONTHLANTHLA YINA:** What you are saying is that in November when you the meeting, the plan was already in place and that plan was not disclosed to you.

PREMIER DAVID MAKHURA: Yes, definitely.

ADV NONTHLANTHLA YINA: Now if you have regard to file 3 page 1057.

PREMIER DAVID MAKHURA: Yes, I am there with you.

10**ADV NONTHLANTHLA YINA:** These are the responses that were prepared by the former MEC, Ms Qedani Mahlangu to the questions by the legislator.

PREMIER DAVID MAKHURA: Yes.

ADV NONTHLANTHLA YINA: Are you aware of this document?

PREMIER DAVID MAKHURA: I am aware of this document.

15**ADV NONTHLANTHLA YINA:** Yes, this document was in the 18th of November 2015 or it was signed on that date.

PREMIER DAVID MAKHURA: Yes.

ADV NONTHLANTHLA YINA: You will note that there is also a table on the question which was dealing with what was going to happen to the patients.

20**PREMIER DAVID MAKHURA:** Yes.

ADV NONTHLANTHLA YINA: And this table speaks to the plan [intervenes]

PREMIER DAVID MAKHURA: Yes.

ADV NONTHLANTHLA YINA: ...that I just referred you to.

PREMIER DAVID MAKHURA: Yes.

5**ADV NONTHLANTHLA YINA:** In other words, in November we with the Department, they deliberately misled you because they had a plan and the plan included NGOs, included sending patients to the NGOs.

PREMIER DAVID MAKHURA: They did not disclose that. It is correct.

ADV NONTHLANTHLA YINA: Yes. In actual fact, now we know that that the
10department did not have 4 000 beds to accommodate patients from Life Esidimeni.

PREMIER DAVID MAKHURA: It is a proven fact.

ADV NONTHLANTHLA YINA: So they did not only mislead you, they also misled the legislator, am I correct?

PREMIER DAVID MAKHURA: Certainly, yes.

15**ADV NONTHLANTHLA YINA:** And in actual fact, ultimately, they did not even distribute patients according to the own plan because now we know that instead of sending 591 mental healthcare users to the NGOs, they sent more than 1000 to the NGOs.

PREMIER DAVID MAKHURA: We now know, yes.

ADV NONTHLANTHLA YINA: And this just confirms that they did not have a proper plan.

PREMIER DAVID MAKHURA: Yes, because of you have a plan you stick to it.

ADV NONTHLANTHLA YINA: They were just doing things haphazardly.

5**PREMIER DAVID MAKHURA:** I will agree with you and the findings of the Health Ombud that this marathon project was called, was disastrous, rushed, and chaotic. Even use that phrase “chaotic.”

ADV NONTHLANTHLA YINA: It was chaotic.

PREMIER DAVID MAKHURA: Yes.

10**ADV NONTHLANTHLA YINA:** And in actual fact, speaking of the Ombud, on the chapter 12 of his report he indicated that the distribution was as follows: 1039 mental of the users were sent to 27 different NGOs, which was not part of the planned that they have prepared and also not part of the planned that they had presented to you.

15**PREMIER DAVID MAKHURA:** The plan was never presented to me, yes.

ADV NONTHLANTHLA YINA: It was not even according to the report that was made to you.

PREMIER DAVID MAKHURA: Yes, yes.

ADV NONTHLANTHLA YINA: Yes. Only 217 were sent to the specialist
20academic psychiatric hospital, according to chapter 12 of the report.

PREMIER DAVID MAKHURA: Yes, yes.

ADV NONTHLANTHLA YINA: 141 were sent to a non-academic district centre, which is the CCRC.

PREMIER DAVID MAKHURA: Yes.

5**ADV NONTHLANTHLA YINA:** So one can conclude that the information which was false that was given to you was deliberate.

PREMIER DAVID MAKHURA: I do not know how else can you do this if it was not deliberate and now, it is also clear that it is not only to me but also to the legislator. I can only conclude that it was to mislead legislator and to mislead myself or
10anybody else who interfaced with this process.

ADV NONTHLANTHLA YINA: Indeed, premier. Not only that. Even the reports of the death that had occurred in the NGOs was also misleading. The information that was given to Parliament was misleading because patients who had died at that particular time were more than 36.

15**PREMIER DAVID MAKHURA:** They were 77 according to the Health Ombud's report. Already by that time, there were 77 deaths.

ADV NONTHLANTHLA YINA: So there was just never any truth all transparency when this was implemented and executed.

PREMIER DAVID MAKHURA: I agree with you.

20**ADV NONTHLANTHLA YINA:** Thank you, Justice. That would be all.

ARBITRATOR JUSTICE MOSENEKE: [Vernacular], Counsel, [vernacular]. Adv Groenewald.

ADV DIRK GROENEWALD: Thank you, Justice. Premier, my name is Dirk Groenewald. I represent four of the families who have lost a loved one. Premier, I would like to start by saying that we appreciate the fact that you from the start acknowledged that you could have done more.

PREMIER DAVID MAKHURA: Yes.

ADV DIRK GROENEWALD: I think that goes a long way. I would like to canvas that totally different topic. The ombud in his report and during his testimony stated that the death of the patients was as a result of the “gross incompetence coupled with the cluelessness of the MEC.” Would you agree with that statement?

PREMIER DAVID MAKHURA: I have accepted everything the Health Ombud has said in his report as a matter of record. I have accepted his conclusions, everything, his findings.

ADV DIRK GROENEWALD: He says yes, these deaths occurred because these officials were incompetent and the MEC was just clueless, and you agree with that you say.

PREMIER DAVID MAKHURA: I want to repeat, Adv Groenewald, I agree with everything the Health Ombuds has said.

ADV DIRK GROENEWALD: Thank you very much,

PREMIER DAVID MAKHURA: [Vernacular]

ADV DIRK GROENEWALD: Now, premier, Mr Mosenogi also testified here, and you will recall that he was the project leader. Do you know that?

PREMIER DAVID MAKHURA: You have remember the proj– you are saying do I know that he was the project [intervenes]

5**ADV DIRK GROENEWALD:** He was the project leader. He was the leader of the marathon project.

PREMIER DAVID MAKHURA: I do not know that there was the marathon project until after the events that have taken place.

ADV DIRK GROENEWALD: But now you know.

10**PREMIER DAVID MAKHURA:** I now know.

ADV DIRK GROENEWALD: Yes. He testified in his closing address to the family, he said the following. He said:

“Finally, I would like to appeal to the government and especially my organisation, the ANC, that Health in Gauteng is a complex organisation. It has responsibilities
15not only for Gauteng but for the country. So any person who needs to be deployed to run the Department either as a head of Department or political head must be a seasoned, experienced health the person. It becomes easier when you interact
with a health person because then you can be able to speak the same language.”

Now, premier, this brings me to the question, and I hope and I trust that you will
20understand that this question must be asked. Why did you employ incompetent people?

PREMIER DAVID MAKHURA: In this particular case– so by “incompetent people” you are referring to the MEC?

ADV DIRK GROENEWALD: The MEC and the HOD, we know that you have appointed them.

5**PREMIER DAVID MAKHURA:** I have appointed the MEC and the HOD. Well, let me first say, Adv Groenewald, that Ms Mahlangu was the MEC for Health before. It was, she was coming back to the health portfolio in 2014 when I have appointed her. And she was also the MEC of various portfolios and I think it is something that is probably more this house, local government from 2004 and she was also the
10MEC for infrastructure development and the MEC for economic development before. So on the basis of that, I was confident that she would be able to handle any portfolio. And I agree with the conclusion that the best people to allocated to any portfolio such as specialist portfolios, not always across governance all over the world, is those who know something about that area. Not only know something but
15they are also trained in those areas. I agree with that and I make an endeavour to do that when I do my appointments. I accept with that. I did not have a doctor to a point in my cabinet at that time when I set up a government in 2014, and it is for that reason that I went back to really ask Dr Gwen Ramakgopa, who had retired from the public service, to consider coming back to the public service, and I have
20appointed her, the MEC. And that– the issue about Dr Selebano, he is a doctor. It also does not mean necessarily that– because some of the people who have appeared before this arbitration are kind of specialists in these areas but to be honest, they still messed up big time. They messed up big time. Some even have,

may I say, Ph.Ds. You know what I mean, just this. There is no guarantee that when you have probably the highest qualification you will do better. So that is what I wanted to explain, yes. I, with regard to health, education, and across the portfolios, I do look at, I do want to look at what other skills people have but I did not have a doctor in 2014 to a point as MEC. And I accepted that it is very consideration but is also a function of human beings. I think it is also a function of human beings. You may have a qualification but a different person who does not fulfil that responsibility. That is my response.

ADV DIRK GROENEWALD: Thank you, premier. Can I take from your answer that you agree that we should scrutinise and evaluate and make sure that those people that we appoint, who is responsible for the lives of many, should indeed be competent individuals.

PREMIER DAVID MAKHURA: Competent certainly but they should also have the right attitude.

ADV DIRK GROENEWALD: Indeed so.

PREMIER DAVID MAKHURA: And there should also be value human interaction and how to work with people.

ADV DIRK GROENEWALD: I can also gather from your answer that in future, you will place a higher value on the quality of the individuals appointed.

PREMIER DAVID MAKHURA: I think “quality” is the right word, Counsel. I will also look at what additional skills to they have, quality and the skills they have.

ADV DIRK GROENEWALD: Thank you very much, premier. Thank you for coming here.

ARBITRATOR JUSTICE MOSENEKE: Well, before you sent the premier so quickly, I have a question to ask. Premier, is part of the subterranean question must surely be arising from Adv Groenewald's interaction with you. It is the interaction between political hegemony and competence.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: When there is a competition between the two in areas where it specialised knowledge is required, what should our nation be doing, and therefore our leaders doing? He is competent but maybe not properly connected politically and she is maybe not so competent but has the right political pedigree. Mr Mosenogi came close to that. That is where Counsel started. What should we be doing and how do we resolve the inevitable tension? In the public service, we need skills and competence.

15 **PREMIER DAVID MAKHURA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Political principles is another matter. That is a political electoral question but should not we try and find a balance or should we always go for those who we know have the right political pedigree?

PREMIER DAVID MAKHURA: Not in Public Administration. I think it is very clear. 20 Our constitution first makes it very clear and the law of our land, in this particular case, the Public Service Amendment Act. We do not appoint people based on no, the political affiliation or orientation. And in Gauteng province I can assure you with

regard to the heads of departments that we put in place panels. We also do what is known as competency tests that are conducted. Before I sign off on a head of Department, I do not do so until there has been a competency test done. And heads of departments in the province are not appointed so much on the political ticket. It is what skills do they have and what can they do. I agree that across the nation there is also conversation that many institutions fail because there are no competent people who are appointed, I accept that, and that people are appointed on the basis of political connection. I want to contribute to ridding our system here in Gauteng at the level we I have influence and right up to the bottom to appoint the best South Africans we can get in any field because that is important. A politician does not have to be, if I was just to say to you, "I am not a trained doctor. My training is in Public policy," and public policy is general but they are specific portfolios. It is how to organise government and make sure government fulfils its obligation.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

PREMIER DAVID MAKHURA: And how to allocate resources in line with that but then I have to find people in the area of specialty that they will help us achieve that. I cannot do that if the politicians— I will have to appointed based— we are using a party system in South Africa. I cannot go and fetch somebody else who is not on list. I cannot do that. To promise you, Adv Groenewald, that I can do that, I will not be able to do it because parties decide who is on their list and who is available but officials, we should do everything to make sure that those officials are people who have the appropriate competencies and skills to get us to do the job.

ARBITRATOR JUSTICE MOSENEKE: And the affiliation is irrelevant to their technical skill.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: They should have political affiliation, that is fine, which sits in the background but when you want somebody to run your water, you want somebody who knows about water.

PREMIER DAVID MAKHURA: Certainly.

ARBITRATOR JUSTICE MOSENEKE: If you want somebody to be head of legal affairs, he must know about law.

10 **PREMIER DAVID MAKHURA:** Yes, yes, yes.

ARBITRATOR JUSTICE MOSENEKE: Somebody, whatever it is, over time we are going to need a civil service that is competent and politicians that come and go because of the electoral system. Every five years there will be [intervenes]

PREMIER DAVID MAKHURA: They come and go.

15 **ARBITRATOR JUSTICE MOSENEKE:** They come and go but the underlying substratum to deliver to ordinary people must always have that consistency of competence, is that not so?

PREMIER DAVID MAKHURA: And it must also be stable.

ARBITRATOR JUSTICE MOSENEKE: Yes.

PREMIER DAVID MAKHURA: I want to emphasise this point is canvassed elsewhere national development plan, the stability of the public service. Cannot change heads of departments and DDGs every time there is a new minister or a new MEC. It will cause disaster for our citizens.

5**ARBITRATOR JUSTICE MOSENEKE:** You know where this comes from? It comes from the evidence. It is not a general discussion. Mr Mosenogi, where Mr Groenewald started, sat where you sat and he was shaking about his fear to confront his political seniors, in his evidence, and we see, premier, other ways where junior people will appear before the arbitration are asked, “Why did not you
10say this was wrong?” they say they were afraid of their political seniors. So going to the future, I mean surely that is a blemish. It is something we ought to pay attention to, is it not?

PREMIER DAVID MAKHURA: Certainly, as the national development plan says, we should attend to it and I am doing my best in this province that people are— it
15may happen but we keep pumping the message that people cannot be appointed in the public service on the basis of any consideration other than their skills and ability to deliver.

ARBITRATOR JUSTICE MOSENEKE: You see, that is the relevance also here, premier. If they were not afraid they would have come to you and said, “Premier, a
20disaster is about to happen,” and we know it happen.

PREMIER DAVID MAKHURA: It did not happen.

ARBITRATOR JUSTICE MOSENEKE: None of them was prepared to go beyond the MEC or have the guts to go beyond the MEC. If they turned and there was a culture of governance, they would have gone and said, “Premier, [vernacular].”

PREMIER DAVID MAKHURA: Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** Somebody might interpret that. I do not know what it is English.

PREMIER DAVID MAKHURA: I also do not know what it means in English.

ARBITRATOR JUSTICE MOSENEKE: Yes, but that culture suppress the desire to go higher up. And we kept on asking the question as you would have followed in
10the proceedings, because we thinking of ways of conduct that would prevented the disaster.

PREMIER DAVID MAKHURA: To remedy the situation.

ARBITRATOR JUSTICE MOSENEKE: To remedy the situation.

PREMIER DAVID MAKHURA: I agree certainly with you, just this.

15**ARBITRATOR JUSTICE MOSENEKE:** Re-examination?

ADV PATRICK NGUTSHANA: Thank you, Justice. Good morning, premier.

PREMIER DAVID MAKHURA: Good morning, counsel.

ADV PATRICK NGUTSHANA: As it have been said, from time to time we get to go back to the things that you have said previously. I am just going to go back to
20what I have you yesterday about the role that you were requested to play in these

proceedings. In the main, you were requested to come and prefer your apology to the affected families and the nation. The families were given an opportunity to raise issues through the legal representatives, and I will not be having questions in re-examination and I will allow you without any interruption of questions to [indistinct] 5that apology to the family members present before you here and those who might be watching the proceedings. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Well, counsel, you are not allowing your to do anything. The Premier of course is entitled in the end to say that as you know is practice but before we get there, do you have any further re-examination? No? 10The Premier will get an opportunity to apologise. Are there any further questions beyond that that you have?

ADV PATRICK NGUTSHANA: As I have indicated, Justice, they are no questions in re-examination. I just wanted to state the objective as set out in the terms of reference for what the premier was requested to do these proceedings. I just 15wanted to highlight that point.

ARBITRATOR JUSTICE MOSENEKE: Oh, I follow. Very well.

ADV PATRICK NGUTSHANA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: Premier, before you go when you are given the opportunity, the finances of the Department of Health were presented 20before us yesterday, and there are deeply worrying.

PREMIER DAVID MAKHURA: Yes.

ARBITRATOR JUSTICE MOSENEKE: You would have seen this schedule is and the numbers before as presented by MEC Chrissie, as well as the financial annual report of the Department and the fact that the department was placed under administration.

5 **PREMIER DAVID MAKHURA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: And that is something in the order of about 1.6, maybe 1.8 billion of an authorised expenditure was referred to the SIU for investigation and that the Department continued to give contracts to consultants even after the circular to which the MEC drew attention, i.e. circular from Treasury 10 and the Minister of Finance. That is a matter of deep concern and it continues to worry me about the connection between what appears to be the financial challenge and the irrational decision to shut down Life Esidimeni. What you have to say about that?

PREMIER DAVID MAKHURA: Justice, the financial position of the Department of 15 Health is indeed a matter of great concern, and I have publicly stated that if there is a matter that threatens the financial stability of our province, it is what is happening in the Department of Health, that it is not only threatening the actual position of the Department itself. And MEC Chrissie dealt extensively with the interventions that were made previously and in the current period in the term that only now. One of 20 those is that firstly, whatever a little cent is there, that money has to be managed well and it must be put where it matters most, where it matters most to address the citizens' well-being. So internal financial management is very important and we have an intervention team that I have appointed together with Minister Motsoaledi

and MEC Ramakgopa, that is coming to focus on the finances and institutional overhaul of the Department of Health in Gauteng. That is a technical team but there is also a Cabinet subcommittee that is dealing with that. There are also these levels of the department where people do not adhere to budgets. This issue came to the fore yesterday. Budgets are passed but people spent, and the MEC will probably canvass the point about what she is doing. So there is a culture of just continuing to purchase and sometimes, the intervention is also helping us to sort out even over buying certain commodities. There is medicine's that are there, people overstock. And, Justice, I want to say to you that this intervention, institutional intervention that I have put in place deals only with ensuring that the system works and delivers but I also have another intervention which I want to report here about that day is a lot of scams to [indistinct] the money out of the Department of Health. That is why whereas we know that the department in the province is overburdened with servicing South Africans and people in neighbouring countries, that is an objective truth that from time to time, we go back to national government asking for money. But if we cannot manage the money we have well, we will get more money and that money will go into the scams. And the scams are in the following areas. One area is what is called medico-legal areas where we have claims about medico-legal claims, and I want to say again to lawyers, with a great deal of respect lawyers, that in the medico-legal claims, I had a meeting with the SIU, they are now going to help us deal with that. The MEC for health in our province will put a lot of basic documents before them, in the medico-legal claims there is lots of scams involving lawyers and doctors, and they are milking the Department, sometimes with the

participation of officials, officials in the system. So, yes, that is why the key thing is that it cannot be the reason for lack of money on terminating life Esidimeni. We do not buy it because there was budgeting for it. So managers goes in from places. Now as the head of government I cannot complain, I must act. So the special investigation unit is going to help us crack all the areas of corruption in the Department of Health, and this is not small. It involves billions of rands. It includes some of the issues that came from here. I was listening yesterday. Some of the contracts and the consultants and the things, and back of the NGOs and how much they got, all that the special investigation unit is going to deal with so that there is no leakage. So that those who, the specialists I have appointed to deal with the turnaround strategy, they will deal with the turnaround strategy but we do not want to return to the same thing two years later when we think we have stabilised. I have also appointed a panel which includes lots of civil society people or to fight corruption in our province, and one area of fighting this corruption, we are going to work with NGOs on this with the special investigation unit and other law enforcement agencies, I can see now they are beginning to bite, our law enforcement agencies are beginning to bite, we will go for health. They are beginning to bite.

ARBITRATOR JUSTICE MOSENEKE: Oh, yes.

PREMIER DAVID MAKHURA: We will go into the health Department but there are other departments also where— I am convinced as the premier. Sometimes the report of the AG just says something, the tip of an iceberg. Now we are going to work systematically with the special investigation unit to go for every area where

there is corruption. I want to assure you that that worries me great deal, and there shall be consequences. I want to say to this hearing that the issues that have arisen here are going to be followed up, not just by me. We are going to make sure, myself, that the special investigation unit follows up on them. We cannot when we have to provide service for so millions of people who cannot survive outside the public's health system, allow any money to be [indistinct]. So hold me accountable on that.

ARBITRATOR JUSTICE MOSENEKE: Yes, premier, thank you. We needed to get there. It is obvious importance you have stated and I am glad you are alive to the. We cannot threaten the right of access to healthcare. It is a fundamental right, and I am glad that much will be done going into the future. Premier, that I think concludes the questions to you. You know the practice. We have established it and it is valuable one think. It is your moment to say whatever else before we free you from the witness box.

15 **PREMIER DAVID MAKHURA:** Thank you, Justice. I would like to say to the families of both the deceased and the survivors of the life Esidimeni tragedy that I have faced you before on a number of occasions to apologise. And I know that apologising does not bring back those who are no more, and I have said in this hearing that as the government in our province I could have done more to doubt 20 and even question and even intervene even after the reports were there.

I could have done more. I apologise that something like that under my watch and that is why I keep coming back you to say to you [vernacular 02:03:08]. I cannot run away from you. I cannot run away from you. I belong to you. That is

why I came here to face you again to say you have suffered. There has been a lot of pain and that then continues even today. It sometimes worse when you do not hear the truth; it just takes you back. I want to say to you my humble myself before you [vernacular]. I will continue to apologise whilst I work with you, with my provincial government to help you heal and the best ways to make sure you find answers. And it has been difficult to find answers but I am confident that we will get these answers some day soon. It may be a process. I am also committed, absolutely committed – I made this commitment at Freedom Park – that I, of all the things that I am doing, I would like to make sure that when my term of office ends in 2019 I can say this sad chapter in the history of our country had been highly regrettable when I was the premiere of Gauteng. I can also be able to say that I dedicated my time and energy to help the families heal. I, it is something I am absolutely committed to. It is something I am going to continue to dedicate that time. The families have been the graceful. Justice, when people are hurting so much, when there are so– many of these families, I have talked to them at the December 2015 prayer service. I have talked to them at the healing session. I have worked with the family committee a few times and they continue to hurt and other family members continue to die. We were in October 2017 in Atteridgeville at church. They are very graceful people, very kind-hearted people. It breaks my heart that we, something so bad happened and yet, they are not reciprocate. I have never felt when I interact with the families that they are fighting me back, I have always felt it. Reverent Maboya always prays for us that reverent Maboya's son, Billy Maboya, who passed on. Christine works with the family committee.

Christine's sister passed on and the deceased's daughter also passed on. It breaks my heart that we have failed them the way we did. As a leader I can only commit to do my best to fix the system and fixing the system is important so that "never again" must not just be something we say. And not only the health system, the whole government system, I want, in the remainder term, I want us to improve the relationship between government and civil society because if the relationship was okay, the voice of civil society would have been heard. And I would like to say to the families again that in Afrikaans, "Ek vra om verskoning." In Venda [vernacular] for what the government I lead did. [Vernacular]. We will not return those who have died but we can do something that there are never forgotten and the best way to remember them, the best monument we can direct for them is to fix the mental healthcare system and the healthcare system and the government as a whole. And as a public official to fix ourselves that we must be more accountable, more transparent, and more accessible. And I will do my best. As long as I am the premiere of province I will do my best. I know that the families have always been open to work with us. As I say, I have never felt any hostility. And those officials of government say they want to go to the families, I think if they go there honestly, that is my experience, the families will receive them, and the families are the only ones who can forgive us. But if we are not frank and honest, I would not understand how we would expect the families to forgive us. And I hope but we have got from yesterday and today begins to provide some answers, not all. I take this opportunity to become that whether answers are not here, let us go out and find them and the families can always count on me. And, family members, thank you for your kind-

heartedness even as you grieve. [Vernacular]. Even when things have gone wrong, I still want to say thank you for your kind-heartedness in the way that you are working with us. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Premiere, thank you. [Vernacular]. I think this is appropriate perhaps to report publicly your role in making this arbitration process possible and the amount of work you put in together with the Minister to talk to families, to conclude an arbitration agreement. Many out there are quite confused whether this is a commission of inquiry or an arbitration but in fact, you know. You are one of the signatories to the agreement. It is an arbitration agreement, and you did much to follow the, to implement the recommendations of the Ombud, Prof Makgoba and you did much to assure the bodies of the process would work well. So it has been a wonderful role and I just want to say publicly you came to see me with the Minister, enquiring whether I would be available to chair the arbitration but so did the families. And it is often forgotten that this is a joint effort by state and claimants and families and they were always two parts to it. The one part was to find closure, in other words, to find the truth, and the other part was to find equitable redress and I am sorry to say, premier, you are going to have to pay because the award inevitably is going to include an award [indistinct] in money to the victims and to the claimants. I am not suggesting that money is going to be everything. I am saying often it is forgotten is an arbitration and while the merits have been agreed to and again, it was good of government to be so magnanimous and not to get us through a fight over the merits or the cause of death, what remains for me as arbitrator after hearing argument is to find equitable

compensation in a variety of forms, but also sounding in money, and that will begin hopefully to get somewhere. It is a long way of saying I would like to thank you for your role, your remedial role in other words, and make yourself available and available to contradict all of the versions that were put before us, which Counsel spent many days to try and demonstrate were irrational, and not to be trusted or not to be believed. So it is a long way to thank you for coming and we have come to the end of the proceedings, at least this part of it. We have two more witnesses. The time it is nearly 12 o'clock. We are going to adjourn at 12:34 our next witness.

[Vernacular]

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SESSION 2

ARBITRATOR JUSTICE MOSENEKE: Welcome and good afternoon Dr Ramogopa.

DR. RAMOGOPA: Good afternoon Justice Moseneke.

5**ARBITRATOR JUSTICE MOSENEKE:** In which language do you choose to testify?

DR. RAMOGOPA: I think English would be best.

ARBITRATOR JUSTICE MOSENEKE: English would be okay?

DR. RAMOGOPA: Yes.

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

DR. RAMOGOPA: So help me God.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Hutamo?

15**ADV TEBOGO HUTAMO:** Thank you Justice. Dr Ramogopa, good afternoon.

DR. RAMOGOPA: Good afternoon Counsel.

ADV TEBOGO HUTAMO: Can you just indicate for the record which portfolio do you hold within the Gauteng provincial government?

DR. RAMOGOPA: I am currently the member of the executive council, MEC for Health in the Gauteng provincial government.

ADV TEBOGO HUTAMO: Okay. Since when have you been appointed to the position?

5**DR. RAMOGOPA:** I was appointed to this position on the 6th of February 2017 until now, but maybe just to state for the record that I have occupied this position previously from 1999 until 2006.

ADV TEBOGO HUTAMO: Okay. If you can just try and move the mike closer to you so that you can be audible.

10**DR. RAMOGOPA:** Okay. Should I repeat or is it okay?

ADV TEBOGO HUTAMO: Yes, yes.

DR. RAMOGOPA: Okay. Counsel, I am saying that I do occupy the position of MEC for Health in Gauteng government from the 6th of February 2017, and also for the record that I have occupied this position previously from 1999 until 2006
15previously.

ADV TEBOGO HUTAMO: Thank you. These proceedings are pursuant to the recommendations which were made by the office of the health Ombud pertaining to the investigation which was conducted in relation to the deaths of mental health care users. As it is common cause the report was published on the 1st of February 202017 and from your testimony you say that you were appointed after the report was published.

DR. RAMOGOPA: Yes, indeed as a consequence of the report.

ADV TEBOGO HUTAMO: Yes. There are families before you here who are affected, who have been affected by the tragedy which had ensued within the Department of Health and in terms of the recommendations, the department, the national department as well as the provincial department were required to take certain steps in order to address the matters which have been raised in the report. I must just say that when these proceedings commenced last year, there has been a report which has been made to the members of the family and the public at large. There has been testimony which has been given, which the family members wanted to know the truth of how things occurred. We just want you to assist once again to give an updated report of the steps that the government has taken in order to address those recommendations made by the office of the Ombud. I will like to offer you that opportunity to be able to deal with those aspects.

DR. RAMOGOPA: Thank you very much Counsel. Justice, and I also want to extend my greetings to the family members that are here, various Counsels and the participants. I did indicate that my appointment followed the publication of the health Ombud, Professor Maguba's report, and the subsequent resignation of the then MEC for Health and I understood that my responsibility as the MEC for Health as of the 6th of February 2017 was to work with the Gauteng provincial government led by the Premier as well as the Minister of Health led by the Minister. With the families affected by the Gauteng marathon mental health project, and many of the families had lost their loved ones and many of the families were also worried about the well being of their loved ones that were still in the 27 sighted NGO's and it was a

very painful period. Not only for the country, for the health system, but it was a painful period particularly for the families. I think for me it was a time also to reflect on our constitutional democracy that accords rights, especially to all citizen and especially the most vulnerable in society. So I understood that my immediate task was to ensure that we implement the recommendations of the health Ombud. It was a very difficult process. The public felt it was painstakingly slow, but we had to move in terms of relocating patients at the pace at which the patients could cope. In the health system when you discharge patients, you do not discharge a group of people. You ensure that you look at the interest, the wellbeing, the specific needs of an individual patient. So this was, had to be done in a manner that it is done in the, within the ethics and also the practice of the health system. I must indicate that there are 18 recommendations that are general to government which also includes the Minister of Health and the Premier's office, and I have worked with both the principals to ensure that those recommendations are implemented, and that includes also the various statutory bodies like the South African Police Services, and we are working with the SIU which is busy investigating the relevant areas as well, and we also there are also six specific recommendations that are directed to the Gauteng Department of Health. I must say that we have indeed been working with the whole health system to respond to each of those recommendations. I must also indicate that I am aware of the reports that were tabled. The report that was submitted to the health Ombud. The report that Dr Kenoshi tabled here as part of his evidence. I am also aware of some of the financial, I may not have been fully following the whole proceedings, but some of the reports of finances that were

tabled and also that the Premier was here just before me to also deal with some of the possible gaps in terms of exactly what could have happened. So my focus mainly was on forward looking, whilst understanding what were the underlying reasons that resulted in this tragic event where more than a 100, I think by the end of September we had 143 patients who had lost their lives. Counsel, please allow me not to go through each and every recommendations 18 plus six and if there is any particular area that it is necessary for me to update, I will do so. Particularly two specific areas that has been a concern in the public. It is the numbers in terms of how many patients left. I did make a commitment that we will spend no effort to account for each one that left Life Esidimeni during this project. We have worked with a number of institutions, including Home Affairs, SASSA, also the South African ... [inaudible], and also the Department of Social Development to ensure the integrity of the information that we had, and the accountability accounting for each and every patient. From the 25th, sorry from the 15th of October 2015 the total number that we can confirm that were discharged or left Life Esidimeni, were 1711 patients, and the currently the number that Dr Kenoshi had presented here and I think also the DG Matsoso of those we could not account for. Meaning that those that we have not ascertained that they have gone to homes, to their homes, to their families, those that were not in our public institutions, hospitals, including the rehabilitation centre and also those that were not with NGO's. The number that was presented here before is 59. I am aware that over the weekend there was a number of 62 that was brandished. We have looked at that number of 62. It is, I think it is an error. There is no list that has the number 62. So that list has 55

patients. Justice and Counsels, and members of the families, I would like to indicate that, to request that you allow us to validate the numbers before we make them formal and official. I also want to assure you that we have been working with the South African Police Services. Even previously we have given them the list of 5the 59 before and we have been searching and searching.

ADV TEBOGO HUTAMO: MEC, if I can just interrupt you. You have made mention that the list of 62 is an error.

DR. RAMOGOPA: Yes.

ADV TEBOGO HUTAMO: The actual list is in fact 55.

10**DR. RAMOGOPA:** Yes.

ADV TEBOGO HUTAMO: You had initially mentioned that those who were not accounted for, were 59.

DR. RAMOGOPA: Yes.

ADV TEBOGO HUTAMO: Can you just explain how did you get to 55?

15**DR. RAMOGOPA:** Subsequent to the efforts that we had put in place, including consulting SASSA, based on the ID's four of the unaccounted for patients on the lists were identified and some were in NGO's, some had been at home. I must also, because I am privileged to this, I would like to indicate that as of this morning I was given a number of 48 with seven others identified, through the same process that
20had the list of 55 that was circulated, and that process, the correspondence was to the rest of the NGO community to help check whether any of the people on the list

are not there. So, but I am asking that I be allowed to subject this number of 48 through the validation process that we have put in place, but for me, I am really excited that we are able, we are getting closer for accounting for each one of the 1711 patients.

5 **ARBITRATOR JUSTICE MOSENEKE:** And MEC, excuse me Dr Ramogopa, just small ... [inaudible]. Counsel ask the questions and the answers should come this way.

DR. RAMOGOPA: Oh, okay.

ARBITRATOR JUSTICE MOSENEKE: To the audience. That will help, because 10 if you look only that way your voice tends to be cast that way.

DR. RAMOGOPA: Okay.

ARBITRATOR JUSTICE MOSENEKE: So it will help for everybody to hear you.

DR. RAMOGOPA: Okay.

ARBITRATOR JUSTICE MOSENEKE: Hear with the one ear, but remember your 15 focus is Counsel and the people who are here.

DR. RAMOGOPA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: Let us get back a little step by step about missing mental health care users. Let us get your definition of missing again. This would be mental health care users who fall in which category?

20 **DR. RAMOGOPA:** In our approach we actually refer to this number as unaccounted for persons. These are mental health care users that we have

validated and verified that they left Life Esidimeni under the Gauteng marathon mental health project.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR. RAMOGOPA: And we could not find them in the facilities or the homes that I have mentioned. That is the definition, unaccounted for.

ARBITRATOR JUSTICE MOSENEKE: Yes, unaccounted for persons would have been part of the 1711.

DR. RAMOGOPA: Yes. Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Mental health care users.

10**DR. RAMOGOPA:** Exactly Justice.

ARBITRATOR JUSTICE MOSENEKE: And with your tally you found that initially 59's whereabouts were not known. Is that it?

DR. RAMOGOPA: Yes. Indeed that was the initial submission that we had made.

ARBITRATOR JUSTICE MOSENEKE: And you say subsequently you were able
15to identify four.

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Which made them the unaccounted for mental health care users to be 55.

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay, and then you say further Dr Ramogopa that the number then came down to 50, sorry. You say number 62 is an error.

DR. RAMOGOPA: Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** That is an incorrect number, and you say you have recently identified seven more mental health care users who fell in the earlier category and the number remaining would be 48.

DR. RAMOGOPA: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: So I understood you well. Thank you.

10**DR. RAMOGOPA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Now do we know the names and the identity numbers of the mental health care users we are talking about?

DR. RAMOGOPA: Indeed.

ARBITRATOR JUSTICE MOSENEKE: Should I, I know you are going to come
15back, you say you want to verify the numbers. So are we able to be given a list of the 48 plus seven that you referred to?

DR. RAMOGOPA: We will certainly do so Justice.

ARBITRATOR JUSTICE MOSENEKE: Is the list available with identity numbers?

DR. RAMOGOPA: Exactly.

20**ARBITRATOR JUSTICE MOSENEKE:** Names and identity numbers.

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Yes, and would the list include the agenda? Will the list include any more description than the identity numbers and the names?

5**DR. RAMOGOPA:** Not in all cases. The list is as we were given by Life Esidimeni of the original patient lists that left Life Esidimeni. We have as much information as we could get from the records of Life Esidimeni.

ARBITRATOR JUSTICE MOSENEKE: And also, none of these mental health care users, and by these for now I refer to 48 given your evidence.

10**DR. RAMOGOPA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Could be found in any of the NGO's that were used by the department.

DR. RAMOGOPA: Some indeed were found in these NGO's. Some were found at home, and some we identified as they perhaps relapsed and come back into the
15health system.

ARBITRATOR JUSTICE MOSENEKE: Ja, let me try the question again.

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Doctor, I may not be clear enough. Of the
48 should we accept that you could not find in any of the NGO's that were
20previously used by the department?

DR. RAMOGOPA: They could not be found in the 27 NGO's that were sighted in the health Ombud's report. Justice, we also have over 100 NGO's in the department that we work with and some of the patients were found in those NGO's.

ARBITRATOR JUSTICE MOSENEKE: But of the 48 we still do not know their whereabouts. Is that it?

DR. RAMOGOPA: Indeed. We are not able to account of their whereabouts.

ARBITRATOR JUSTICE MOSENEKE: Are we able to identify to which NGO's they were originally sent?

DR. RAMOGOPA: Not at all. We just have them from the original list from Life Esidimeni, that they left Life Esidimeni. We are not able to account for where exactly they went. They are not in the list of those that went home, were discharged to the homes. They were not amongst those that were in the various NGO's, the 27 sighted and they were not in our public health facilities.

ARBITRATOR JUSTICE MOSENEKE: MEC, do we know whether they are alive?

DR. RAMOGOPA: We cannot account for them Justice. I really believe that and hope that we will find them alive. I am not aware. I cannot account for that.

ARBITRATOR JUSTICE MOSENEKE: And have we done any searches at mortuaries or places like that?

DR. RAMOGOPA: Yes, they are not amongst those that were, had passed away. They are not amongst those that the police have account for them.

ARBITRATOR JUSTICE MOSENEKE: Counsel. Thank you.

ADV TEBOGO HUTAMO: You may proceed.

DR. RAMOGOPA: The other issue that I need to update, is the issue of disciplinary ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I am sorry Doctor to take you back to that point. There has been general media reports that there are 62 names that have been talked about. Have we looked at those names and have we compared those names with your official records?

DR. RAMOGOPA: Justice, I have no record of a list of 62. What I have a record of that may be the same list, is an Excel spreadsheet which has numbers in terms of the rows from one to 62. The row one until six it is the logo of the Gauteng department, and the names begin on row seven and the name occupy from row seven until row 61. That is the list that could be the one that is referred to as the 62. The number of 62. I have no other list that has been brought to my attention that has 62 names.

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

ADV TEBOGO HUTAMO: Thank you MEC. You were still about to go into the issue relating to disciplinary proceedings.

DR. RAMOGOPA: In terms of disciplinary proceedings as per the recommendations of the health Ombud, there were two categories, officials, 20 Employees of the Gauteng Department of Health as well as at least one member, the Chair of the Mental Health Review Board. In terms of the disciplinary proceedings, I think it is known that both the head of department as well as the

head of the mental health program, the director had appealed but after their appeals were not successful, we proceeded with disciplinary hearings against them, and they have subsequently resigned from the employment of the department. In terms of the six directors, they were subjected through, they were subjected to disciplinary 5 procedures in the department and they pleaded guilty, and they, the sanction that was, they were found guilty. The sanction was a final written warning with counselling, and I actually indicated when the accounting officer reported to me of the outcome, I indicated that the sanction does not correlate with the weight of the problem or the what they were accused of and what they pleaded guilty to, and 10 therefore I have taken the decision to have the sanctions reviewed and we are still in that process. There is also the previous CEO of the Cullinan Rehabilitation Centre, who has been sickly and there are also challenges with the finalisation of the disciplinary hearings and we are also still seized with finalising the disciplinary hearings. She was actually sick quite frequently and the proceedings had to be 15 postponed, but I want to also indicate that we have reported all the officials, the Premier has reported the head of department to the relevant professional health council, the health professions council of South Africa, and I have reported the rest of the health professionals to the South African Nursing Council, which is the statutory council they are registered with. In terms of the members of the Mental 20 Health Review Board, the Chair of the Mental Health Review Board was subjected to an inquiry, as per the Mental Health Act 2002, and that process found her fit to hold office, and I completely disagreed with that outcome. I have also sent that outcome for review. In this particular case, it is very clear that the Mental Health

Review Board are establishments as per the Mental Health act of 2002. They are ...
[inaudible] judicial and they are established to protect the interest of the mental
health patients, mental health users, especially the involuntary and the assisted
patients, and I found it very difficult to understand how the outcome of the inquiry
5 could be that the Chairperson was fit to still hold office, and the rest of the Mental
Health Review Board who were in office during the marathon project are also being
subjected to an inquiry in terms of whether they are fit to hold office, and this is in
line with or as required by the Mental Health Act of 2002. I think those are the
updates, unless if perhaps there is a need for updates anywhere else.

10 **ARBITRATOR JUSTICE MOSENEKE**: Have you ... [interjects]

DR. RAMOGOPA: In terms of the health system we have looked and reviewed the
capacity of particularly the mental health services, and I must also indicate that we
appreciate that there was no way that as government alone we could review and
objectively. We needed to work with families and I want to appreciate the role of the
15 family committees who worked with us, and also other stakeholders who came on
board, the various professional bodies whose voices were not heard during the
project, the Gauteng marathon mental health project. All these discussions
culminated into dedicating the whole of the October month to a campaign of
profiling the mental health issues, breaking the silence and also making services
20 available and known by ordinary members of society, but also for the Gauteng
Department of Health officials reflecting and issuing apologies to the public for the
tragedy and also the pain caused, because indeed the greatest pain is to the
patients themselves. Some of whom we lost to the families, but the nation even

today is really pained at the, you know the possibility of this tragedy happening during our democracy. So we have had a review of the mental health system and we have also instituted measures especially at the district level to strengthen district health teams with specialists working with them and ensuring that we implement the new licensing regulations, although they are still in draft form, but they are gazetted by national and is tightening the health information system, including patient information system as per recommendations of the health Ombud.

ADV TEBOGO HUTAMO: MEC, there has been evidence before these proceedings that your department obviously before your appointment, was not listening to the concerns which were raised by civil society including non governmental organisations in relation to matters which were concerning the mental health care users. Can you just give an indication as to the measures that this department has now taken in order to incorporate the concerns of the general civil society.

DR. RAMOGOPA: Thank you Counsel. First and foremost it was important to work with the families of the mental health care users who were affected and through the office of the Premier we humbled ourselves. We have been working with the family committee and when the relocation process came to an end, the project was closed which was operating at the NICD, the National Institute for Communicable Diseases. We established a facility in my office for us to continue working with the family committee, and this was really to make sure that they help us to give them a facility to help us still be in touch, and linking up with the families. We have also as I have indicated, had dedicated the October month which is mental

health month globally to strengthening our partnership with the various stakeholders. We have set up processes where the professional associations and the various stakeholders own the health, the mental especially the mental health plan, strategies, programs and they feel that these do not belong to us who are just public servants, but they belong to society and my commitment is that if there is just one thing that we can do in honour of those that passed on and the pain that families are going through, if we can just achieve the goal or the objective of the public owning the health system and us in the public health system knowing that we are just but servants of the public, I think it would be a befitting tribute, but having said so within the first 100 days in office, we convened a statutory consultative forum as provided for by the national health act, the provincial health forum and the matter of the implementation of the health Ombud's recommendation was also presented, and we also discussed how to strengthen the partnership with stakeholders. It is really regrettable that the voices of stakeholders, including professionals and experts in the field, as well as the voices of families were not heard. If our department could have just listened to those voices, this tragedy could have been avoided.

ADV TEBOGO HUTAMO: Thank you. There has been mention of the ministerial task team. Are you aware of it?

DR. RAMOGOPA: The ministerial task team which was established by the minister, which is a multi disciplinary task team was established in terms of the Mental Health Act which is an advisory ministerial, well I think maybe that is what you are referring to.

ADV TEBOGO HUTAMO: Yes.

DR. RAMOGOPA: Ministerial advisory committee on mental health, which is chaired by Professor Rataimane. I was fortunate to have been working at the national ministry as a Deputy Minister when that structure was established so that the ministry is advised continuously of risks of best practices and also what needs to be done to strengthen the mental health services and to be compliant with the required policies. So that team, my understanding is that it is a team that the Minister sent to the province immediately when the legislature was informed of the deaths initially, but subsequently after their reports there has also been a multi-disciplinary task team, which consist of a psychiatrist, a psychologist, occupational therapist, dietician, environmental health workers. Amongst others to go and assess patients in these sighted NGO's, and also so that that becomes the plan, the basis of the plan for relocation of those patients to a safer environment.

ADV TEBOGO HUTAMO: Whilst you are on the point of sending the patients to a safer environment, there is a general concern from the members of the families that they had their loved ones in secure place, but were abruptly removed from the facility which cared for them, to the extent that remedial action has been taken. There is a concern of what arrangement did the department make with Life Esidimeni where the mental health care users were relocated to. They want to get an assurance whether if is there any contractual arrangement which has been put in place. Are we not going to have the repeat of what we had with regard to the termination of that contract.

DR. RAMOGOPA: Counsel, through you Justice. My understanding of the concerns that are there, is that beyond a contract which was entered into in March 2017, there was a need to have a service level agreement which took long in negotiations. I must assure the, through you Justice, Counsel that that SLA has subsequently been entered into and the basis of the service level agreement is the contractual agreement. The requirements do tally with what is in the contractual agreement which was signed in March 2017. The one thing that is very clear, is that the requirements from the service providers are much more stringent than in the past, and this we did as we had a number of families who were not completely satisfied with the previous arrangement. So we made sure that we tightened the accountability. We made sure that we also have specifications for the multi disciplinary teams that would be necessary for the best interest of mental health users in those facilities and also strengthened the accountability mechanisms.

ARBITRATOR JUSTICE MOSENEKE: How ... [interjects]

15**DR. RAMOGOPA:** So it took time before the service level agreements were signed, but the accounting officer has assured me that those have been ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: How long is the current agreement, signed in March 2017?

20**DR. RAMOGOPA:** The agreements are for three years.

ARBITRATOR JUSTICE MOSENEKE: Three years.

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And has a comprehensive service level agreement concluded?

DR. RAMOGOPA: The comprehensive service agreement has now been concluded. I think it is three years. Ja.

5 **ARBITRATOR JUSTICE MOSENEKE:** Okay.

ADV TEBOGO HUTAMO: MEC, I am going to take you back to the resignations that you had referred to and in particular the resignation of Dr Manamela. You have indicated that apart from her resignation, she has been reported to the relevant professional body. Can you just indicate to this inquiry as to whether were there
10 any reasons given for her resignation, and coupled with that can you also indicate if was there any package normally referred to as the golden handshake in return for her resignation?

DR. RAMOGOPA: Counsel, I have had sight of the resignation letter, and the resignation letter does not state reasons. The resignation letter is with immediate
15 effect, and the for both Dr Manamela and Dr Selobano the disciplinary hearings were coordinated through the office of the director general, and I have no information whatsoever whether there was any request for a golden handshake, and I have no doubt whatsoever that if it was, the DG would have certainly not entertained it at all.

20 **ADV TEBOGO HUTAMO:** Okay, thank you. It is quite clear that the department was generally headed by professionals and there has been testimony of experts on the ethics of professionals before these proceedings. Can you just indicate what

measures has been taken by the department to make it clear to all professional staff that they are required to execute their duties.

ARBITRATOR JUSTICE MOSENEKE: Counsel ... [interjects]

ADV TEBOGO HUTAMO: Regarding had to the issue of ethics.

5**ARBITRATOR JUSTICE MOSENEKE:** Just help me understand. Is the question about now or bout the past?

ADV TEBOGO HUTAMO: I am talking about the period after the appointment of the current MEC.

ARBITRATOR JUSTICE MOSENEKE: I see.

10**ADV TEBOGO HUTAMO:** With regard to how things are going to be conducted moving forward.

ARBITRATOR JUSTICE MOSENEKE: No very well, I understand. I was concerned by the statement that the department was meant or had personnel who were professionals and whether we could make that general statement, but I
15understand if you are talking about now, I am sure the MEC will, excuse me will respond to that.

ADV TEBOGO HUTAMO: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay. We are talking about now MEC, and what measures you have taken.

20**DR. RAMOGOPA:** Counsel, I myself am a professional in good standing registered with the relevant professions council. I found it very difficult to

understand how a professional could not execute their tasks without fear or favour in the best interest of in this case, of their patients. I must say that even today I struggle with that you know situation where professionals out of fear, could not execute their professional responsibilities. I have, I am still reckoning with it, and 5that is why it was important for me to refer the, even though this was not specifically recommended for the rest, I think for the two, the HOD and the Director for mental services, there was a specific recommendation that they be referred to the professions council, but we have referred the rest, so that together with the relevant professions councils, we can be able to get to the bottom of this phenomenon that 10we should not allow to festor. But in addition ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Just before you add that MEC. Would this include Ms Jacobus who ... [interjects]

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: I think is a professional nurse.

15**DR. RAMOGOPA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Would this include Ms Masondo?

DR. RAMOGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Very well.

DR. RAMOGOPA: Yes Justice. It includes the six deputy directors as well as 20those that were on the Mental Health Review Board who are professionals, and also in general that phenomenon I frankly find it very difficult if you are not facing a barrel

of a gun that it could arise. So it means that there is a major problem that the professional environment should deal with it in terms of ethics, in terms of practice of the profession, in terms of ensuring that the you know, that phenomenon is tackled and dealt with decisively. But having said so, I frankly and openly presented it to senior management. We had Legotla with senior management in February. We engaged on it and we continued to deal with it. Recently as the Gauteng provincial government led by the Premier, we established an advisory panel on ethics, and good governance and we that is part and parcel of making sure that the issue of ethics is high on the agenda of the public service. How public servants behave, but having said so it also means that we need to empower any public servant, any worker even in the private sector, to utilise the various mechanisms and systems and legislations that is available for whistle blowing and also for escalating issues when there are problems. So there is a need to do more, but we have begun to deal with the question of ethics and we will work with the various professional councils to reckon with this phenomenon to ensure that we do not allow it to fester.

ADV TEBOGO HUTAMO: Okay.

DR. RAMOGOPA: We appoint professionals and sit back with our minds at ease, knowing that they have codes of practices that they subscribe to and if fear can erode that, it is a serious concern. Whatever profession, but particularly in the health sector.

ADV TEBOGO HUTAMO: Okay. MEC, can you just indicate what arrangements were made regarding the provision of counselling services to the affected family members, since the release of the report by the health Ombud?

DR. RAMOGOPA: Counsel, we I have been informed that through the office of the Premier counselling services were offered, and at the point in time the family, there are families that actually opted to have counselling through their various representatives, including NGO's that they were working with, professional associations and I understand that. I guess it was the trauma of the health system having hurt them, their loved ones and the issue of trust was lost, but we have agreed that we will continue extending that facility and also assuring family members that there are many other experts in the health system, in the mental health directorate and service who most loudly and clearly and they are on record to have advised against this project. So the majority of mental health practitioners and specialists are with the families and they, if their voices would have been heard, those who were managing this project, would have not proceeded and we would not have the tragedy. So I hope that we will be able to rebuild the trust continue building the trust for families to accept the counselling offer that was made earlier.

ARBITRATOR JUSTICE MOSENEKE: MEC, in the award that the Arbitrator has to make, should I make any order in relation to access to counselling services provided by or paid for by the state?

DR. RAMOGOPA: Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: In other words should it be a voluntary regime or should they want that excuse me, is covered in the award?

DR. RAMOGOPA: Justice, having been part of the journey of the families, I really believe that part of healing must certainly include counselling. I have heard families stalk about their experiences on the 18th of February 2017 and their accounts continue haunting me and wondering how it was possible that in this day and era of our democracy, that citizens could have experienced what they have experienced.

ARBITRATOR JUSTICE MOSENEKE: But ... [interjects]

DR. RAMOGOPA: And that has been relived through this arbitration process, and I believe that without counselling services, within the government facilities or anywhere else, without that the healing process would not be complete.

ARBITRATOR JUSTICE MOSENEKE: What would be more practicable, I am thinking now of details that would typically come into an order. I am thinking like a Judge now. I am saying do you have sufficient counselling facility in-house to be able to provide that on demand by specified excuse me, family members of the deceased or survivors or should it be a case where they choose an external facility to do so?

DR. RAMOGOPA: What I would humbly advise, is that the services of the department should be made available, and only if there is no satisfaction, you know alternatives should be considered. Justice, Counsels and members of the families, I think we need to remember that the Gauteng Department of Health is also a teaching platform for experts that train specialists who work in both the public and

the private sector. I would not want to say that they should not be availed to support the families. We do have expertise that could be utilised in that regard.

ARBITRATOR JUSTICE MOSENEKE: And on a lighter note, somebody from your department wrote to my office to enquire whether I need counselling. Do you know
5 anything about that?

DR. RAMOGOPA: Justice, I think you would need a debriefing. If it does not work, counselling would be appropriate and I think all of us would need a healing process the extent to which would vary. The families would need a much more longer term and intense counselling. The stories they experience are to harrowing
10 for us not to provide professional support.

ARBITRATOR JUSTICE MOSENEKE: Of course you know excuse me, and you were part of the hard work around devising terms of reference or an arbitration agreement and that this process has the one end which is a pursuit of closure.

DR. RAMOGOPA: Yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** And the other end is financial compensation. Do you have anything to say about that end? Firstly I presume you and the HOD have the money to fulfil payment that might be required by any award arising from these proceedings?

DR. RAMOGOPA: Justice, the commitment of the Minister, the Premier and
20 myself, is that we will, we are here to ensure that we assist the families to find closure and we honestly and frankly so desire that we reach some agreement to for a reasonable especially monetary award, but I have really been encouraged that the

families themselves were the ones that were insisting that closure will not be in monetary terms alone. They have sought to get the truth. They have sought to be listened to. They have sought that all those who were involved must account, including even myself after as well, and they have also sought and I must say that the families have been very generous. They have sought for, for the Department of Health to be accountable to the public and that is how we agreed on dedicating a month long program. I must put it on record that as we speak now, the Gauteng Department of Health is in dire financial strains, and is not able to fully pay for even the services that it consumes year on year, and that is where the issue of accruals year on year is, but I do not want to burden this process with that issue. We are committed to sit down with families and look at what would be in their best interest and also in a manner that the health system continues to be available for the survivors, their loved ones and also for all of us who utilise the public health system. Gauteng Department of Health is the biggest health system in the country, if not within the continent itself, and as I have indicated I do not want to bore this process with the details, but it is in dire financial strains and the Premier has also indicated in the past that there is a need to look at the base line, improving the base line. Just to share with you Justice, maybe this is the last comment hereon. In 1999 when I was MEC for Health, the population size in Gauteng was 7.5 million. 2017 when I am now requested to come and assist, the population is 15 million. It has doubled. In 1999 when I was appointed, the staff compliment was 62000, around 62000. Because of financial challenges we had to manage it within affordability to about 40 to 42000. But you can see the system over time has demanded that that

be adjusted. It is around 68000. So the health system is indeed in serious strain. The accruals in 2014 were 1.9 billion. In 2015,16 were around four billion and in 16, 17 around 6.7 billion. But that should not be a barrier in ensuring that we find closure.

5 **ARBITRATOR JUSTICE MOSENEKE:** Yes. The accrual number is frightening to say the least, but my original question and you anticipated it. There is an agreement in the arbitration provision arbitration agreement of the time within which payments that might be made in the award ought to be made, and you can see obviously the connection between closure and the absence of any wrangling over
10 the time period within which award amounts would be paid, and the evidence before us suggested that the department was in severe strains. So I do not want to get to that point where the families are rambling with the department about timelines for paying compensation.

DR. RAMOGOPA: Honourable Justice, that should not be a barrier, because we
15 are approaching this ADR process as executive council collective led by the Premier. We will as the Department of Health work within that collective led by the Premier.

ARBITRATOR JUSTICE MOSENEKE: Could I just take you, I am sure there will be questions around that. What are we going to do with and about the missing
20 alternatively unaccounted mental health care users? What is the departmental plan?

DR. RAMOGOPA: Justice, we have left no stone unturned. We will continue working with the police. Some of the family members who were at Life Esidimeni came from different parts of our country, and we have not slowed down, nor have we given up to account for each one of them. We will use all avenues possible, and working with the police. There is a process, a legislated process working with the South African Police Services to for missing persons. So we continue looking working with Home Affairs, working with SASSA, social development departments and our sister departments throughout the country.

ARBITRATOR JUSTICE MOSENEKE: Do you know now why there were no records that will help you and us to identify the missing persons? Was it lack of records when they were transferred? Lack of records at NGO's? What exactly was the problem. I am trying to get to the cause of having a category of unidentified mental health care users.

DR. RAMOGOPA: Justice, to the best of my knowledge Life Esidimeni had records and they gave us, they required us to apply for these records through the access to information act, and we did so. Although I must also state that I was really reluctant because they were contracted to the department. They were obliged to provide such, but we do have direct access to their records through metro file. Electronic records. I think Justice, the project was very chaotic. It was badly managed, and that is the negligence that has most likely resulted in us not being able to account for the number of patients that we are not able to account for now.

ARBITRATOR JUSTICE MOSENEKE: Counsel. Thank you Doctor.

ADV TEBOGO HUTAMO: Thank you Justice. I was almost done with my examination in chief. I have just been handed a document which appears to be, it will be sought to be introduced as an exhibit. If I can be allowed an opportunity to take instruction on that document before I close my examination.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes, you can do it in re-examination as you know. You have the opportunity, you have two bites at the cherry. So if you want to take some time, do so. I intend to continue with cross-examination until two pm. So if you might introduce it, is it feasible to introduce it later?

ADV TEBOGO HUTAMO: Well, as I say Justice ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** It may cause prejudice to other Counsel maybe.

ADV TEBOGO HUTAMO: Yes. The point which I am saying is that the document has been provided by one of my learned friends. I do not know from which camp is it coming from. I just wanted to take instructions ... [interjects]

15**ARBITRATOR JUSTICE MOSENEKE:** Let us find another word other than camp. In present days South Africa you do not use the word camp.

ADV TEBOGO HUTAMO: So I just wanted to take instructions so that like I can deal with it in examination if necessary, otherwise like I would have been done.

ARBITRATOR JUSTICE MOSENEKE: So you will not be introducing the
20document. It will be introduced by a colleague?

ADV TEBOGO HUTAMO: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: Ja, it is a classical case of re-examination. So you have to wait for it to be introduced and you can re-examine the witness, Dr Ramogopa then. Is that in order?

ADV TEBOGO HUTAMO: I will not have difficulties with that for as long as there should be no issue that is, that will be raised when I will need to consult with the witness during the process of cross-examination.

ARBITRATOR JUSTICE MOSENEKE: Yes. When the document is introduced, as always it often happens in hearings, you look at it and you believe it requires consultation. Then we will adjourn for you to do so, but I do not think you should go and consult whilst the witness is under cross-examination. If you are not introducing the document, then you would have to alert us that you want to consult.

ADV TEBOGO HUTAMO: Essentially it is the request that I am making to you Justice that like we might take this as an opportunity to go for the lunch adjournment during which period I will make use of that opportunity to consult.

ARBITRATOR JUSTICE MOSENEKE: I see. I see some puzzled faces around here. Advocate Hassim? In essence the request is adjourn early.

ADV ADILA HASSIM: Well Justice, first of all I take responsibility for the introduction of the document. Is it not? Oh. I retract my comment. There is apparently another ELAH that has been submitted and I have not seen it before myself, so I actually should rather keep quiet.

ARBITRATOR JUSTICE MOSENEKE: Well, the camp must own up now. Which document, who seeks to introduce that document?

ADV. DIRK GROENEWALD: Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: That Dr Ramogopa must deal with?

ADV TEBOGO HUTAMO: Justice, it is marked ELAH163. It is titled list of 62 mental health care users not located.

5**ARBITRATOR JUSTICE MOSENEKE:** I see. Who would be introducing the document? Which Counsel?

ADV ADILA HASSIM: That would be me again Justice. There is another document, but that is not it. ELAH163 is the list of missing persons that was referred to earlier in your discussion with the MEC, and that is what we seek to
10introduce and it is our view that any questions that need to be followed by my learned friend can be done in re-examination.

ARBITRATOR JUSTICE MOSENEKE: Advocate Crouse? Just pardon us Dr Ramogopa. The question is quite plain, it is obvious. It is whether or not your Counsel ought to consult with you about the document and if so, why not. Counsel?

15**ADV. LILLA CROUSE:** Justice, I did not have firm instructions on the issue, but my prima facie view is that when a witness gives evidence and there is a document that goes against what she is saying, that is for cross-examination and re-examination. Not to ask the witness why her evidence does not accord with some other evidence that might still come. So I think at this stage we will object to further consultation at
20this stage.

ARBITRATOR JUSTICE MOSENEKE: Yes, and Advocate Hutamo might have another problem. Excuse me, to re-examine on a document that has not been formally admitted yet. It will only be open to examination when in fact is presented, I do not have a copy for instance. When it is presented and handed up as an exhibit. So that might be the challenge, but we will hear his response to that. Advocate Yina?

ADV NONTLANTLA YINA: Thank you Justice. I concur with the submissions made by Advocate Crouse.

ARBITRATOR JUSTICE MOSENEKE: Advocate Groenewald.

10**ADV. DIRK GROENEWALD:** Thank you Justice. We feel it is an issue that can be dealt with in re-examination if need be by my colleague.

ARBITRATOR JUSTICE MOSENEKE: Counsel, you seem to be alone. Do you have a different submission?

ADV TEBOGO HUTAMO: Justice, I will leave it in your hands.

15**ARBITRATOR JUSTICE MOSENEKE:** You cannot lead a document that is not yours, can you, in chief. Just as a procedural matter and less about the contents. I have heard that there will be a document coming. My witness tell me what your response is to that. I do not think that can be done Counsel, and Doctor will deal with that, Dr Ramogopa has already alluded to it, and she is aware of the media
20issues around it. So you can re-examine on it and carefully take the witness to where you want the witness to go to. So let us proceed. Any further questions?

ADV TEBOGO HUTAMO: Thank you Justice. Those were my questions in examination. No further questions to the witness. Thank you Dr Ramogopa.

ARBITRATOR JUSTICE MOSENEKE: Very well, thank you.

DR. RAMOGOPA: Thank you Counsel.

5**ARBITRATOR JUSTICE MOSENEKE:** I think we have to move on Counsel. Advocate Hassim?

ADV ADILA HASSIM: Thank you Justice. My colleague Ms Stein will be conducting the cross-examination of this witness.

ARBITRATOR JUSTICE MOSENEKE: Yes, at long last. We need to hear her
10voice. Advocate Stein?

ADV. NIKKI STEIN: Good afternoon MEC.

DR. RAMOGOPA: Afternoon Advocate Stein.

ADV. NIKKI STEIN: My name is Nikki Stein, and I am part of the team led by Advocate Adila Hassim representing 76 of the bereaved families who lost their
15loved ones arising from the marathon project. Justice, perhaps before I go into the questioning, may I beg leave to hand up ELAH162 and 163.

ARBITRATOR JUSTICE MOSENEKE: Yes indeed.

ADV. NIKKI STEIN: And have them admitted into evidence. ELAH162 Justice is the updated report from the South African Police Service that was referred to by Mr
20Ngutshana earlier in these proceedings and ELAH163 is the list of 62 mental health

care users who have not yet been located and this is the list that was circulating in the media.

ARBITRATOR JUSTICE MOSENEKE: And does Dr Ramogopa have copies?
Doctor, do you have copies of the documents?

5**DR. RAMOGOPA:** I do have 162, 163 yes.

ARBITRATOR JUSTICE MOSENEKE: Very well. There will be questions in relation to that and if you need an opportunity to read them obviously you are entitled to that. Counsel?

ADV. NIKKI STEIN: Thank you Justice. Dr Ramogopa, we have spent I think
10today is day 43 of the arbitration hearing and we spent a lot of time interrogating the supposed reasons for the termination of the Life Esidimeni contract. Up to now the evidence has established that cost constrains were not the reason for the termination of the contract, that concerns by the Auditor General were not the reason for the termination of the contract and those concerns related to long term
15contracts awarded to private entities, and the evidence also suggests that de-institutionalisation could not have been the reason for the termination of the Life Esidimeni contract. My question to you Dr Ramogopa is since you came in as MEC for Health in February 2017, if you are able to shed any light on what you think the reasons for the termination of the contract could be.

20**DR. RAMOGOPA:** Advocate Stein, I wish I could be of help. I really do not know the reasons, valid reasons for termination of the contracts, because evidence before us indicates indeed with the de-institutionalisation the policies and the guidelines

were not followed, and secondly that the cost issue also does not arise, because the costs actually increased and the even now some of the problems financial problems that the department has is because of the chaotic management of the project but also the project itself. Just to give you an example, the staff from both Life Esidimeni and well maybe it may not be relevant to this forum, and also Selby which was also, the contract was cancelled bloated the staff establishment to a point that we had warm bodies that were not funded, and the funding thereof came out of goods and services budget that is already strained. So the financial impact of that project is still heavy on the department, and ja. So I really wish to assist. I was also hoping that through this process we will get more information. There is further investigations that are underway through the SIU. Also we ensured that all our staff cooperate and at the conclusion of that process also we hope to have more answers to this, why this project had to be introduced, why it had to be fast tracked against policies, against practice, against ethics.

ADV. NIKKI STEIN: And so, sorry perhaps to take a step back MEC. Is it correct to say that you agree that the three reasons sighted by former MEC Mahlangu for the termination of the contract could not have been the real reasons for the termination?

DR. RAMOGOPA: There is no objective evidence why they could be the reasons thereof.

ADV. NIKKI STEIN: Thank you MEC. You spoke in your evidence in chief about the implementation of some of the recommendations and I do not intend to go through those one by one in detail, and I would not want you to repeat any of your

evidence, but I do have some specific questions in relation to those recommendations. The first set of questions relates to the former HOD, Dr Bani Selobani. We were advised earlier that there were disciplinary proceedings against him and we were advised subsequently and confirmed by you that he had resigned. 5We know that for the period of his suspension from March 2017 up until his resignation in January 2018 he was on full pay. Can you confirm that?

DR. RAMOGOPA: I can most certainly confirm that and that is in line with the public service regulations in terms of precautionary suspensions.

ADV. NIKKI STEIN: MEC, can you tell us what the total amount of money was that 10Dr Selobano received while he was on paid suspension?

DR. RAMOGOPA: I must apologise. I do not have the figure with me, but that we can provide even during the break.

ADV. NIKKI STEIN: If you could make that available ... [interjects]

DR. RAMOGOPA: Yes, but it was full, it was full pay yes.

15**ADV. NIKKI STEIN:** Thank you MEC. Dr Manamela similarly was placed on suspension in March 2017 and resigned in January 2018 similarly on full pay. Can you confirm that she was suspended on full pay?

DR. RAMOGOPA: I can confirm that.

ADV. NIKKI STEIN: And would you be able to tell us what the total amount of 20money was that Dr Manamela received while she was suspended on full pay?

DR. RAMOGOPA: I can provide that even during the break time, yes.

ADV. NIKKI STEIN: Thank you MEC. Now we have spoken about other officials in the Gauteng Department of Health, and specifically within the mental health directorate. And there were a number of officials named in the Ombud's report. His recommendation was to take disciplinary steps against them. My question MEC is whether you having taken over as MEC, have identified any other officials in the Department of Health or within the mental health directorate in the department, whether you have identified anyone else in respect of whom disciplinary proceedings should be taken?

DR. RAMOGOPA: Advocate Stein, should the investigations that are underway provide prima facie evidence that further steps needs to be taken against any official, we will, I will not hesitate to do so. I await the final, the outcome of the further investigations and we have also requested the SIU in particular to speed up without compromising the integrity of these investigations.

ADV. NIKKI STEIN: And so can you confirm MEC that these investigations are not limited by the evidence we have seen, but rather that their intention is to uncover the full story to the extent that there is more of the story?

DR. RAMOGOPA: Indeed.

ADV. NIKKI STEIN: Thank you. I would like to now move on to the Mental Health Review Board, and we have heard a lot of evidence during this hearing and it is confirmed strongly in the Ombud's report that the Mental Health Review Board at the time of the marathon project was not independent. Do you agree with that?

DR. RAMOGOPA: Most definitely. Advocate Stein, through you Justice, what we found was that there were appointment letters signed by the MEC for health of the Mental Health Review Board members, and that is within the prescripts of the law, but in addition there were appointment letters PP'd on behalf of the head of the department and those appointment letters were presented as if they are Employees of the department. My understanding is that that is how unfortunately the Mental Health Review Board operated as if they were Employees of the Gauteng Department of Health. They did not operate independently and with the authority that they had in law to protect the vulnerable in this case mental health users optimally, and that is the evidence before us, but as I have indicated, I have subjected the members of the then Mental Health Review Board through an enquiry or to an enquiry to assess their fitness to hold office, and these are the issues that that process is supposed to engaged with. I was not satisfied that the process that the Chairperson, the previous Chairperson was subjected to, had adequately dealt with the role, responsibilities, accountabilities to have come to a conclusion that she was fit to hold office, and that is why I have sent it for review.

ADV. NIKKI STEIN: Thank you. MEC, looking forward, can you confirm that a new Mental Health Review Board has been appointed?

DR. RAMOGOPA: Advocate Stein, indeed with reviewing the circumstances surrounding the functioning of the Mental Health Review Board, it was clear that for the number of patients that we have in the province, one Mental Health Review Board for the whole province was not adequate and I have then within the prescripts of the Mental Health Act, determined that there be five Mental Health Review

Boards, one for each of our five districts. Those have been appointed through a process where we invited public nominations and I also set up a two person advisory team of experts in the field to advise me on the names of nominees that were presented, and I must say that a number of professional bodies also made enquiries and also made nominations. So where I am, I am a much more comfortable that we do have a competent Mental Health Review Board persons who have at minimum someone with legal background, someone with a medical background, someone with a mental health background, and also someone who is a community representative.

10 **ADV. NIKKI STEIN:** Justice, I see that it is two o'clock. If I could be allowed to ask one more question just to round up this point.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: Thank you. MEC, you have spoken in quite some detail about the appointment of a new Mental Health Review Board and some of the 15 mechanisms you have put in place. I would just like to ask if in addition to what you have already mentioned, there is anything else you intend to put in place to ensure the independence of the new Mental Health Review Boards across the province.

DR. RAMOGOPA: The Mental Health Review Boards members were taken through an intense induction process with the support of Professor Melvin Freeman 20 from National Department of Health, and we also subjected them to case studies and also the one of the specialist psychiatric hospitals was made available for them to be taken through the feel of what their responsibilities is like, and we reminded

them that they are a ... [inaudible] judiciary structure to protect the rights of mental health users particularly those that are involuntary patients and those that are assisted patients, and I have no reason to believe that they understood, they understand and we have also made sure that they report directly to the MEC with administrative support provided there, and we have also made sure that the administrators that supported the single board, or the single board are adequately reorientaed to assist the Mental Health Review Board members to account to the MEC, but to account as prescribed by the law, and that is the most important in the best interest of the mental health users.

10 **ADV. NIKKI STEIN:** Thank you MEC. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you means I am done Counsel, is it?

ADV. NIKKI STEIN: For now Justice. If I could carry on after the adjournment.

ARBITRATOR JUSTICE MOSENEKE: You will continue with your cross-
15examination after the adjournment. I understand that. MEC we are going to adjourn for an hour. We are going to resume at three o'clock and we hope to finish with your evidence soon thereafter, then move on to the final witness, the Minister of Health. National Minister of Health. Yes. So I ask you to be back here at two pm. We are adjourned till two, till three pm I beg your pardon.

20

SESSION 3

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may be seated. You see Dr. Ramokgopa you are under your previous oath to tell the truth. You may proceed Advocate Stein.

5**ADV. NIKKI STEIN:** Thank you, Justice. MEC, I am going to move on now to the question of the NGOs to which mental healthcare users were transferred. Out of the 27 NGOs that were part of the Marathon Project, can you tell us how many were shut down?

DR. GWEN RAMOKGOPA: To the best of my recollection, 14 were completely
10shut down and 11, with the 11 some patients were remaining. I think just to give clarity is that some of the NGOs never existed before, therefore, they were just seemingly just put together for the purposes of the Marathon Project. But some NGOs existed prior and they had extraordinarily higher numbers than their capacity and against the licensing policy. So, some of the NGOs, most definitely 11
15remained with some patients from Life Esidimeni whose families refused relocation. So, those that were completely closed are 14.

ADV. NIKKI STEIN: Can you confirm for us that all those NGOs were not licensed were shut down by the Provincial Health Department?

DR. GWEN RAMOKGOPA: Indeed.

20**ADV. NIKKI STEIN:** I would like to take you -

DR. GWEN RAMOKGOPA: Yes, indeed, those that were not legally licensed, or which were irregularly licensed.

ADV. NIKKI STEIN: I would like to take you now to a document named ELLA161. I wonder if somebody could help you get to that document. MEC, this is a document that we received yesterday from the MEC for Finance, Barbara Chrissy. And it is a document that reflects payments made to NGOs by the Gauteng Department of Health and it lists the dates that those payments were made per NGO and the amounts that were paid to them. Do you see that?

DR. GWEN RAMOKGOPA: Yes, I do.

10**ADV. NIKKI STEIN:** If you could turn and unfortunately, the pages are not numbered but the lists of the NGO is alphabetical. If you could turn to the listing for Sharma House. It is on the 4th page of ELLA161.

DR. GWEN RAMOKGOPA: Yes, I am there.

ADV. NIKKI STEIN: Can you confirm MEC that almost 3 million rand was transferred by the Gauteng Department of Health to Sharma House?

ARBITRATOR JUSTICE MOSENEKE: Are we still off, well, mine is on. You may proceed. Okay.

ADV. NIKKI STEIN: Thank you, MEC, we were looking at the entry for Sharma House and the funds that were transferred to Sharma House by the Gauteng Department of Health.

DR. GWEN RAMOKGOPA: Yes, from this list that I have no reason to doubt that it comes from MEC Chrissy. Sharma House between 26 August 2016 until the 9th of March 2017 received a total of about 2.9 million rands.

ADV. NIKKI STEIN: Are you aware MEC that Sharma House was unlicensed, or they did not have a valid license?

DR. GWEN RAMOKGOPA: Yes, I am aware. It is one of those NGOs that were cited.

ADV. NIKKI STEIN: And it appears from this document that they continue to receive funds from the department of health up until March 2017.

10 **DR. GWEN RAMOKGOPA:** It is apparent.

ADV. NIKKI STEIN: If I could then take you to the entry for Tshepong which is just on the next page, and my reading of the document is that between the 13th of May 2016 and the 2nd of March 2017, Tshepong Centre for people with and it doesn't complete the name there, be, do you see which entry I am referring to?

15 **DR. GWEN RAMOKGOPA:** Yes, I do.

ADV. NIKKI STEIN: They received a total of R547 566, can you confirm that?

DR. GWEN RAMOKGOPA: Yes, according to this document, it is so.

ADV. NIKKI STEIN: Are you aware MEC that there had been 13 deaths at Tshepong in 2016?

20 **DR. GWEN RAMOKGOPA:** I am aware that there were deaths in Tshepong, yes.

ADV. NIKKI STEIN: I am not going to take you through each entry of each NGO MEC, but, I have gone through ELLA161 against the licences that are in File 7 of the record and I found out of these 20 NGOs, these 20 additional NGOs, only 12 of them have licences or be it irregular licences. The record does not contain licences for 8 of these NGOs at all. On that -

ARBITRATOR JUSTICE MOSENEKE: The proposition is 12 have -

ADV. NIKKI STEIN: 12 of them had licences, although we understand now Justice that they were irregular licences. I have not been able to find licences for 8 of the entities listed in ELLA161.

10 **ARBITRATOR JUSTICE MOSENEKE:** And the question to the MEC is?

ADV. NIKKI STEIN: The question to the MEC is, if there were 8 entities that were not licenced at all, why were they receiving payment from the Gauteng Department of Health?

DR. GWEN RAMOKGOPA: For each case, I can go back and verify. But, to the best of my knowledge, those that still had patients during the time of relocation needed to continue having those patients giving food and whatever else during that period before they were closed. But I also see Precious Angels here because by the time I came to the department, Precious Angels was closed. So, I would need to certainly investigate and all which I find has been helpful when I uncover possible irregularities, I would that it be included in the SIU investigation because this is issues of irregularities, possible corruption, as well as the need to repay, those that may need to repay the State is part of their mandates. But I see Precious Angels is

here and by the time I came in, it is one of those that were supposed to be closed. Let me just check the dates here.

ARBITRATOR JUSTICE MOSENEKE: As you see MEC, you can see the date, the 9th of September. From there on, they get paid every month through to February 52017.

DR. GWEN RAMOKGOPA: I see Precious Angels until the 2nd of February, just before I came.

ARBITRATOR JUSTICE MOSENEKE: Yes, they were shut down as I understand, they were in the forefront of the Ministerial task team quite early I think. It was 10somewhere around October. Is that it Counsel?

ADV. NIKKI STEIN: That's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: I think they were shut down around October, but they continue to receive money through to February 2017. That is what Counsel is putting to you.

15**ADV. NIKKI STEIN:** In addition to Precious Angels MEC, I would like to draw your attention to evidence we had from Ms. Dorothy Franks who came to us from Anchor House which was operating from Cullinan. She testified that she stopped taking mental healthcare users into her facility when it was shut down in October 2016, but, then she too continued to receive funds until February 2017.

20**DR. GWEN RAMOKGOPA:** Yah, I must say that it was a lot of work, effort and yah, interventions to have full accountability from our department of Finance and it

was not easy at the beginning. But, it is much better now after we had intervened. So, it is possible that there were irregularities.

ADV. NIKKI STEIN: And as we sit here today MEC, do you acknowledge that some payments were made to NGOs to which the NGOs were not entitled?

5**DR. GWEN RAMOKGOPA:** Yes, I actually also heard or read that one of those that came to give evidence here also invoiced for patients that had already passed away. So, indeed, there were those irregularities and the mandate of the SIU is to follow through those allegations and also, if for instance, in this case ensure that the State is paid back.

10**ADV. NIKKI STEIN:** And to the extent that there are NGOs that were receiving money and claiming money after they were closed, will the department take legal steps to claim that money back from them?

DR. GWEN RAMOKGOPA: We are working with the SIU on that matter. Most definitely, including those officials who may have had conflict of interest, who may
15have been corrupt or fraudulent. The SIU's mandate includes that.

ADV. NIKKI STEIN: MEC, I would like to move on to -

ARBITRATOR JUSTICE MOSENEKE: Before you do Counsel, MEC, I would like you to look at the same schedule and look at Mosego Home-based Care. I don't remember how many people died there but I am sure Advocate Stein can get that
20information very quickly. They are surely the champions of the Lord, isn't it? Look at that total, 13.5 million in less than a year. If you have the schedule before you MEC.

DR. GWEN RAMOKGOPA: Yes, I do.

ARBITRATOR JUSTICE MOSENEKE: Mosego Home-based Care.

DR. GWEN RAMOKGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Look at the payments starting to run from 5May 2016. So, they were paid quite early it seems to me as the Marathon Project was really intensifying. And look at that schedule, they run right through to March 2017 and by a quick look at those you can see that, that period is less than a year. It looks more like 10 months and 10 months, Mosego Home-based Care earned 13.5 million. Do you agree with my observation?

10**DR. GWEN RAMOKGOPA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: It seems to be so, and it can be put to you in a moment how many people actually died there. Do we know anything more about this because the number is so large in such a short space of time?

DR. GWEN RAMOKGOPA: What I am aware Justice, is that Mosego was 15operating prior and is one of the NGOs that had excessive numbers. So, I think it is quite obvious that they had lots of patients and that is why they also had deaths registered in the unit. What subsequently has happened with Mosego, when they reapplied within the new dispensation is that the number of beds or the number of patients they can take has certainly been reduced.

20**ARBITRATOR JUSTICE MOSENEKE:** And why are the monthly patients so irregular? Look at the last one in March 2.2 million in one month obviously. But look

at how irregular those amounts are. One month they are entitled to 386 as you can see, the next month – 386 000, next month 248, few months later they are entitled to about 3 or 4 times the other monthly amounts. And the final throw just before, in March 2017, then they are paid 2.2 million. Are you aware of any possible explanation? It was before your time, but it is just striking how large amounts were thrown at that NGO.

DR. GWEN RAMOKGOPA: Yes, the last month there I was in office. Judge, as I indicated at the beginning, it was very difficult to ensure accountability and also, as I have indicated, one of the recommendations of the Health Ombuds id to investigate the NGOs investigate possible corruption and fraud and conflict of interest. So, this matter falls within that -

ARBITRATOR JUSTICE MOSENEKE: In that category. Thank you. Counsel.

ADV. NIKKI STEIN: MEC, if I can perhaps just round up that point. I am looking now at ELLA57, that is a report from the Health Ombud entitled final summary on deceased Life Esidimeni patients prepared for the ADR process. If you could turn to page 8 of the report, please. There was a listing for Mosego and Takalani, it's the 3rd column, the 3rd row. On my calculation MEC, the number of deaths at this facility, at Mosego and Takalani was 38 with 3 deaths occurring in February 2017, one occurring in March 2017 and one occurring in April 2017. Do you see that?

DR. GWEN RAMOKGOPA: Yes, I do.

ADV. NIKKI STEIN: Would you like to comment on that further?

DR. GWEN RAMOKGOPA: The report of the Health Ombuds were checked with us and we also confirmed that, that was the case. And the report of the Health Ombuds closes a month after the relocation process ended which was May. Therefore, it does include the month of June. If we recall, Mosego, Takalani is one of those NGOs that appealed to the tribunal and the findings of the license, their appeal was upheld in terms of that. But in terms of the report of the Health Ombuds, their appeal was not upheld.

ADV. NIKKI STEIN: And the evidence before that MEC confirms that as per ELLA161, Mosego continued to receive large sums of money until March 2017 from the Gauteng Department of Health and that from the period February to April 2017, there were 5 deaths at that facility.

DR. GWEN RAMOKGOPA: Yes, indeed.

ARBITRATOR JUSTICE MOSENEKE: So, I guess the point MEC is also that not even all those millions saved the lives of the mental healthcare users because 38 of them died in total. I wonder would the excuse would be.

DR. GWEN RAMOKGOPA: It was clear, if you recall the Marathon Project, it actually begun with Takalani and the experts' stakeholders raised concern about the readiness of Takalani and indeed this is evidence that they were not ready for the huge numbers that they received from the Department of Health. I will also have to check the 311, whether the deaths occurred then or they were recorded then. I will have to get back to that, yes. But, what is very clear, what is on record, what I can validate is that Mosego, Takalani is one of the NGOs that were overpopulated. You

can actually sense that they could have been the best incentive of getting huge numbers beyond their capacity.

ADV. NIKKI STEIN: And perhaps MEC as you raise that there is a possibility that there is money that was being paid over to Mosego and Takalani wasn't translating to the healthcare of the patients, it wasn't going directly to them.

DR. GWEN RAMOKGOPA: Advocate, you see if you have only 5 beds and you have 20 patients, no amount of money would make those the excess patients comfortable and cared for properly until you expand. So, that is why I am saying could have been perverse incentive and put the lives of the patients at risk. All 10 patients, those who could sleep on the beds and those who were overflowed. So, what is clear is that they had and that is what was validated by the department when we were re-reviewing the licenses, that they had excessive number of patients beyond their capacity. Where the money went, that is the subject of the SIU and we certainly need to get to the bottom of that.

15 **ADV. NIKKI STEIN:** We heard earlier from these proceedings MEC from Ms. Hannah Jacobus from The Mental Health Directorate who confirmed audits were not properly done before patients were moved over to the NGOs and that the licences that were issued for the NGOs didn't necessarily reflect their capacity. In the light of what you have just said about overcrowding and resources being able to 20 deliver healthcare services and in the light of Ms. Jacobus' evidence, is there anything you would like to add or comment on?

DR. GWEN RAMOKGOPA: Advocate Stein, as I have indicated that there is a new licensing framework that the Minister has gazetted that the Department of Health is now utilizing to ensure that licensing processes are in the best interest of patients and that there is also compliance. So, that dispensation is now operational and we will continue monitoring it. And we have strengthened district health system to include psychiatrists in the district specialist teams. So that the monitoring is continuous. But I don't want to leave out the fact that the Health Ombuds recommendation was that the role of NGOs and possibly in cohorts with some of the officials be investigated. So, the matter does not end here.

10 **ADV. NIKKI STEIN:** MEC, perhaps before we move on, you have spoken about the role of NGOs, do you acknowledge that this is in fact a multi-faceted issue and that the role that NGOs play doesn't attract from the role that the department officials and the senior officials in the department of health played?

DR. GWEN RAMOKGOPA: I want to apologize through you Justice

15 **ARBITRATOR JUSTICE MOSENEKE:** I want to hear the same question Ms. Stein.

ADV. NIKKI STEIN: I will rephrase Justice.

ARBITRATOR JUSTICE MOSENEKE: Please do.

ADV. NIKKI STEIN: We have acknowledged MEC that the NGOs had a role to play in the tragedy that is before us. My proposition to you is that The NGOs are not solely to blame. The fact that they played a role does not mean that the officials in the department and that senior members also had a role to play in this tragedy.

DR. GWEN RAMOKGOPA: Most definitely. When you outsource a service, you don't outsource accountability.

ADV. NIKKI STEIN: I would like to move on now to the question of the numbers of the deceased. And it is something again that has come up quite often in this arbitration. We know from the title of his report, the Ombud also testified that the number of deaths was 94+, he said that he is still counting. The current list that has been provided to us stands at 143 people. If you could turn MEC to ELLA162 in front of you.

DR. GWEN RAMOKGOPA: Yes.

10**ADV. NIKKI STEIN:** This is the updated SAPS report that was provided to the arbitration, sorry, I am just looking for a date.

ARBITRATOR JUSTICE MOSENEKE: There might still be a loose sheet from the South African Police Services.

ADV. NIKKI STEIN: That report is dated the 24th of January 2018. Do you have it
15MEC?

DR. GWEN RAMOKGOPA: I do.

ADV. NIKKI STEIN: On the 1st page under the heading of status of investigation, we see that it says to date the investigation team can account to 144 deaths. So, it seems that the list of 143 may not be the final number, can you confirm that?

20**DR. GWEN RAMOKGOPA:** This is an official report from the South African Police Services and I have no reason to doubt the factual position of those numbers and

indeed it is saying 144. My understanding is that 143 number was presented by the acting head of department, Dr. [indistinct] and that was the figure that was available and verified up till the end of September 2017, yes.

ADV. NIKKI STEIN: In addition, to what we see in the SAPS report MEC, I have been through the affidavits that are in the record before you and it appears that there are 12 names of bereaved family members, their names do not appear on the list of 143. And perhaps for the record I should state who those bereaved family members are.

ARBITRATOR JUSTICE MOSENEKE: Let me understand the proposition before you read out names. You are saying over and above the 143, there are 12 mental healthcare users who passed on were not included in the 143?

ADV. NIKKI STEIN: Or the 144 Justice, but, yes, that is correct.

ARBITRATOR JUSTICE MOSENEKE: the 144.

ADV. NIKKI STEIN: That is correct. Justice, if I could read the names into the record of those included on the list -

ARBITRATOR JUSTICE MOSENEKE: Even before you do that, how would you have arrived at the new number?

ADV. NIKKI STEIN: So, the new number -

ARBITRATOR JUSTICE MOSENEKE: I just want to understand how you arrive at a proposition thing radically alters the number that we have before us?

ADV. NIKKI STEIN: Justice, Section 27 has provided affidavits from all of its clients who are all bereaved family members who lost their loved ones as a result of the Marathon Project. I have been through those affidavits and compared those affidavits to the list of 143 and noted that 12 -

5**ARBITRATOR JUSTICE MOSENEKE:** That is the list in the Ombuds supplementary report?

ADV. NIKKI STEIN: That is correct Justice. 12 of those -

ARBITRATOR JUSTICE MOSENEKE: I am just enquiring after the methodology before we get into detailed names.

10**ADV. NIKKI STEIN:** That is fine Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay.

ADV. NIKKI STEIN: 12 of the deceased mentioned in the affidavits provided by the bereaved families are not included on that list of 143 and my instructions Justice, I understand I am not permitted to give evidence but my instructions are 15that there is a conversation going on between section 27 and the government as to the inclusion of those names.

ARBITRATOR JUSTICE MOSENEKE: Very well, we have to have a little discussion before we put the detail out. You will get an opportunity to do that.

ADV. TEBOGO HUTAMO: I just wanted to raise the concern that before the 20names could be read into the record, from what my learned friend has said that

there is a discussion, those names might need to be verified in order to ensure that they fall within the period that is in question.

ARBITRATOR JUSTICE MOSENEKE: Yah, before I even invite Dr. Ramokgopa to respond to this, it is quite late in the day. I think the parties ought to do that verification sometime today for that matter. We have no other day for evidence. You said to me there are 13 more cold bodies which have never been accounted for until now. This shoots the number to 13 plus 144, that becomes -

ADV. NIKKI STEIN: 157.

ARBITRATOR JUSTICE MOSENEKE: 157. We need to find a proper platform for that radical change of the evidence.

ADV. NIKKI STEIN: Justice, the affidavits deposed to by the bereaved family members do establish that the deceased passed away within the relevant time period. We understand of course there does need to be a verification. But my proposition to the MEC is simply this that we still do not know exactly how many people lost their lives.

ARBITRATOR JUSTICE MOSENEKE: Before you make a proposition to the MEC, make it to me. Are these affidavits which are already part of the record?

ADV. NIKKI STEIN: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: But the tally has been done only now, is that it?

ADV. NIKKI STEIN: Justice, my instructions are that our attorneys have been corresponding with the attorneys of the state. There has been some backwards and forwards on these numbers and that our attorneys have not yet received full feedback on the inclusion of these deceased.

5**ARBITRATOR JUSTICE MOSENEKE:** I follow. We will have to devise a process that gives us certainty and that process has to be brought to the head and I am afraid today. Obviously, you are entitled to put that to MEC, but I would like the parties to during an adjournment to see what they can do because we are talking really about live someone families at an additional pain if you like. So, if put to a
10proposition to the MEC and then at an appropriate time we will have to adjourn so that we resolve the matter. We can imagine the headlines that will come out of that. 143 has sprung to 157. So, what do you want to do now? Do you want adjourn and do the rectification process or do you want to continue with your question?

ADV. NIKKI STEIN: Justice, if I could just take instructions from my attorney as to
15where the process stands.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. NIKKI STEIN: Justice, my instructions are to request a brief adjournment to allow the attorneys to talk about this. I am instructed that the relevant details have been provided to the attorneys for the State. So, they are in a position to advise us
20how long they need to adjourn for.

ARBITRATOR JUSTICE MOSENEKE: Mr. Hutamo, Advocate Hutamo, what light can you shed on all this?

ADV. TEBOGO HUTAMO: Justice, I am made to understand that, that process of verification is under way. It is a matter which requires time. I am not able to give an estimation. I will have to take proper instructions as the how long will it take to do that verification. If my learned friend requires an adjournment for that purpose, we should be able to get an indication. If is it a matter that can be resolved now and we move on or it will require more time? I should however caution that my learned friend should not be quick to mention those names into the record until verification has been made.

ARBITRATOR JUSTICE MOSENEKE: Do you know what the verification process will entail?

ADV. TEBOGO HUTAMO: Justice will recall that when the number had increased, the assistance on the office of the Ombud was actually of assistance in that regard. So, this cannot only be decided on the affidavit that my learned friend is making reference to. So, like it requires a proper investigation in order to like ensure that those people fall within the relevant period.

ARBITRATOR JUSTICE MOSENEKE: Is there agreement that the people referred to are in fact deceased? Is that common cause

ADV. TEBOGO HUTAMO: Well, that appears to be common cause. Not the concern is whether do they fall within the relevant period.

ARBITRATOR JUSTICE MOSENEKE: I.e. were they at Life Esidimeni at the time that the project was initiated. Is that it?

ADV. TEBOGO HUTAMO: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: So, the debate is not whether or not people died. It is whether or not they died in circumstances covered by the arbitration agreement?

ADV. TEBOGO HUTAMO: That is correct Justice.

5**ADV. NIKKI STEIN:** Justice, if I could perhaps say one more thing and that is I just like to correct the information has not been sprung on our colleagues just this afternoon. I am instructed that our attorney sent the initial to the attorney of the government on the 7th of December 2017 and has followed up since then and has still not received feedback. And this is certainly not the 1st time the they are hearing
10about these additional deceased.

ARBITRATOR JUSTICE MOSENEKE: MEC, before I adjourn, you have heard the exchanges. Is there any light you want to shed on this?

DR. GWEN RAMOKGOPA: Justice, what I can say at this point in time is one death is one death too many. And that if indeed there are deaths that were during
15this period and are validated and verified to have been during this period as a result of the Gauteng Mental Marathon Project, indeed, it would be appropriate to acknowledge that. If it has happened and we haven't acknowledged that, it is also secondary trauma as well to the affected. So, I think due process needs to be dealt with as speedily as possible so that we can get to the bottom of the numbers. I just
20want to refer you Justice and Counsels to ELLA163 which was shared with us just before we adjourned. If you look at just as an example sometimes why we say let's validate, let's verify. If you look at the 1st patient and please allow me not to

pronounce names for confidentiality's sake, MA1768, you will see the name, the surname – I mean, the 1st name is 2 there and the surname is on its own. And you go to 2nd page number 49, which is MA110, all those 3 names are there but in different columns. Be the you look at the date of birth, it is the same. So, I am just saying that whenever we receive any data, any names, we respectfully request the due process which does not only involve us should also involve Home Affairs and whichever other agency including the police. We should subject ourselves to that process so that we indeed have validated data.

ARBITRATOR JUSTICE MOSENEKE: yes, you say there is a lot of room for error and therefore, it is important to validate and check backwards and forwards. But, and I see the point and I can see the same name just spun around. Will an adjournment facilitate the verification?

ADV. TEBOGO HUTAMO: Justice, it appears that it will not be practicable to finalize that process as there are other government institutions that needs to be contacted and I had earlier submitted that it is indeed correct that there has been correspondence between the attorneys, but that process of verification was underway. From what the witness has just said is that like other government institutions will have to be brought in to assist to do that verification.

ARBITRATOR JUSTICE MOSENEKE: But is it so that this correspondence has been going on from December 2017?

ADV. TEBOGO HUTAMO: That is my instruction that there has been an exchange from that period.

ARBITRATOR JUSTICE MOSENEKE: And why haven't we had that verification done until this afternoon?

ADV. TEBOGO HUTAMO: Justice, I will have to get a proper report as to how far they have managed to get with regards to that process.

5**ARBITRATOR JUSTICE MOSENEKE:** Having heard all the parties, will the rest of the Counsel want to say anything before we adjourn? Advocate Crouse.

ADV. LILLA CROUSE: Thank you Justice. This is news for us. I don't have anything to add to this debate, but, it is something that must be resolved speedily in my opinion.

10**ARBITRATOR JUSTICE MOSENEKE:** Advocate Yina.

ADV. NONTLANTLA YINA: Thank you Justice, we are also not in receipt of the list. We have no objection to the adjournment.

ARBITRATOR JUSTICE MOSENEKE: You are not in receipt of the list which Ms. Stein is referring to? Is that what you mean?

15**ADV. NONTLANTLA YINA:** We are not aware of the list, yes.

ARBITRATOR JUSTICE MOSENEKE: Advocate Groenwald.

ADV. DIRK GROENWALD: Thank you Justice, it is also news to us. But, if we can resolve it quickly and find a solution then be it so. If there is more people that died who is not on the list, we should verify that, clarify that and include them and the
20only issue is the time constraints and see how we deal with that. But if there is an

agreement within the parties, as long as we can sort it out before argument by next week. Yah.

ARBITRATOR JUSTICE MOSENEKE: Obviously, the question of due notice becomes important. Advocate Stein.

5**ADV. NIKKI STEIN:** Yes, Justice. I will have to take further instructions on who was copied on the correspondence. My understanding is that the correspondence was simply between Section 27 attorneys and the attorneys for the State.

ARBITRATOR JUSTICE MOSENEKE: I understand that all of you coming to me prematurely, that understand entirely. What Counsel can resolve, I need not be
10involved. You have all involved me, so, I think we must adjourn and you must enter into a huddle and let's avoid what MEC rightly calls secondary victimization. You were dead in, you were dead out. Because we seem to be dealing with people who have passed on, who have lost their lives.

ADV. NIKKI STEIN: Certainly Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** So, I am going to adjourn, and I need to be told after an initial consultation what kind of time should I expect to be waiting. And thereafter, we should come back and proceed. I don't think we have another day for evidence. We all have ordered our lives around these dates, so we have to conclude this today. Very well, I am adjourned, and I have to be informed when to
20come back.

SESSION 4

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may be seated. MEC, you're under your previous oath to tell the truth. Ms Stein.

DR GWENDOLINE MALEGWALE RAMOKGOPA (still under oath)

5**ADV NIKKI STEIN:** Justice, we have agreed that these representatives for the state will address you with your leave on the issue of the list.

ARBITRATOR JUSTICE MOSENEKE: Yes. Adv Ngutshana.

ADV PATRICK NGUTSHANA: Thank you, justice. Thanks for the opportunity that you have given to us to try and resolve this impasse on the list which has been
10presented before this proceedings. I must indicate that we have agreed that there is indeed a need for these names to be verified.

The parties have agreed on that aspect and that we will seek the assistance of the office of the Ombud to conduct such a verification, and this has been done previously, he has come to our assistance, and we have accepted his verification
15process. The only issue which is of concern is that we have no control of how long will it take to finalise that verification. Aside the time period for the verification, the parties are agreed that it is quite prudent that there has to be a verification of those names.

ARBITRATOR JUSTICE MOSENEKE: And what does all that need in relation to
20the sittings [?].

ADV PATRICK NGUTSHANA: Well, Justice, it is quite a difficult question that the parties will then have to grapple with it's as to how is the process then taken forward. It is quite important that that matter has to be resolved. We are not against names being included on the list that have been agreed upon but what is of importance is that those things require to be verified. I should hasten to mention [intervenes]

ARBITRATOR JUSTICE MOSENEKE: How many names are they? Is that known? Have the parties agreed on that?

ADV PATRICK NGUTSHANA: I am making reference to the list of name of 12, 10the list of 12 that is being made mention of. That is the list that we have agreed that it requires verification.

ARBITRATOR JUSTICE MOSENEKE: Adv Hassim or Adv Stein, I know [intervenes]

ADV ADILA HASSIM: Sorry, justice. Ms Stein and I have discussed it and I will be 15addressing just this point before MS Stein continues with cross-examination. It is correct that we have accepted the proposal that the verification exercise be undertaken by the Ombud. We had accepted that verification is necessary on 7 December. So it is not a new agreement as far as verification goes.

When the were sent on 7 December it was for the purposes of verification. 20All we have agreed upon is that the verification exercise needs to take place. We have not been able to have an agreement on by when that exercise will be

completed. As my learned friend has said, he is unable to give a commitment as to time frame. A possible solution [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Did he say why not?

ADV ADILA HASSIM: No.

5**ARBITRATOR JUSTICE MOSENEKE:** Possible solution.

ADV ADILA HASSIM: A possible solution, and I am only proposing that in order to try to break the, it is my client's position that they have expected the verification exercised have been done by now but that– once the verification exercise is completed and we have the names, a final list of names that there is an agreement 10that those names will be automatically included in the award of the arbitrator.

Of course, that would mean that that we should get– I must stress, Justice, I am reaching for a solution to try to get as past it. I am not making it with any vigour.

ARBITRATOR JUSTICE MOSENEKE: Parties can always agree evidence and it to the arbitrator by agreement but I am not going to have another sitting of oral 15evidence.

ADV ADILA HASSIM: My proposal is that, the solution would be to avoid oral evidence. So if the parties agree then on the final list of names which will then be presented to the arbitrator on the basis of including them in the award, there would be no need for another sitting to hear evidence.

20**ARBITRATOR JUSTICE MOSENEKE:** Yes. Thank you. Adv Crouse.

ADV LILLA CROUSE: Justice, I have nothing to add to this debate. Maybe I should just at this stage interject because I am very scared that it will be a long night still. We have two or three affidavits ourselves which we would want to file before argument. If I could just raise that at this very late stage.

5**ARBITRATOR JUSTICE MOSENEKE:** But you also should provide final this, is not it?

ADV LILLA CROUSE: Yes, with our argument if we may.

ARBITRATOR JUSTICE MOSENEKE: Of claimants.

ADV LILLA CROUSE: Yes, absolutely, justice.

10**ARBITRATOR JUSTICE MOSENEKE:** And you say when would you do that?

ADV LILLA CROUSE: We were hoping to do it today, justice. It did not materialise but we will do so before we present argument.

ARBITRATOR JUSTICE MOSENEKE: And if it is disputed, if the list is disputed? I am certainly not having another *viva voce* hearing.

15**ADV LILLA CROUSE:** Yes.

ARBITRATOR JUSTICE MOSENEKE: We have to bring it to a close on time and the partings were amazingly dilatory. You have been having exchanges from December. I do not know reason why we have no closure of the matter of such significance.

20**ADV LILLA CROUSE:** Yes.

ARBITRATOR JUSTICE MOSENEKE: I am certainly not extending the hearing and we need to have— you to talk to your colleagues and find an agreement about the identity of the claimants amongst the survivor claimants, and that should be by agreement between the parties. There is consideration of justice when you could apply for reopening of oral hearing but you will have to say why you did not do it all these many, many weeks and months.

ADV LILLA CROUSE: Justice, we are not intending to do that at all at this stage. We realise that there is a cut-off date we need to finish by the cut-off date.

ARBITRATOR JUSTICE MOSENEKE: Okay. Adv Yina.

10 **ADV NONTHLANTHLA YINA:** Thank you, justice. We have no objection if the list is handed in by agreement between the parties.

ARBITRATOR JUSTICE MOSENEKE: Adv Groenewald.

ADV DIRK GROENEWALD: Thank you, justice. We support the suggestion by my colleague from Section 27 and the proposed procedure in dealing with this
15 issue.

ARBITRATOR JUSTICE MOSENEKE: Adv Hutamo.

ADV TEBOGO HUTAMO: Justice, it is [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Why can we not get a cut-off date and must we deal with an open-ended investigation in arbitration that requires finality? It
20 is never in the interest of justice to have opening arrangements. There must be a date. And if you seek extension you would have to approach me in Chambers or

otherwise for an extension but we cannot have an open-ended arrangement that one day you might find– complete the verification. How long should it take?

ADV TEBOGO HUTAMO: Well, it is indeed correct, justice. I wish I can be able to give certainty on when the outcome of the verification– I must just indicated that we have made contact with the office of the Ombud and it is clearly outside our hands to be able to give a commitment. That is a matter that we can try and canvas with the office of the Ombud and express the need for speed verification.

ARBITRATOR JUSTICE MOSENEKE: Well, you know how the law of evidence works. If the applicants provide me with a list and show and demonstrate that they are deceased under oath and affidavits, I will be obliged to accept that without referral back to the state and there is no way we could have argument without closing evidence. So common sense would suggest that that process must be done by the time argument is heard.

ADV TEBOGO HUTAMO: Justice, we have been on this route before about the list being introduced and being subject to verification, and I should indicated that at one instance the list which was provided could not meet the criteria for that list to be added to what we have. So [intervenes]

ARBITRATOR JUSTICE MOSENEKE: That may be interesting, Counsel, historically. I want to know within what time. I would like that verification. If the state is concerned about its accuracy, it must happen before argument. You cannot have legal argument with outstanding evidence. So whatever your instructions are, it has to be before we hear argument.

ADV TEBOGO HUTAMO: I do get the concern from you, Justice, about the timeframe but all that I want to submit is that that commitment can only be made by the office of the Ombud. We are not in a position to give a firm date of when the verification will be completed. We have gathered the information necessary to assist the process and once we have done that, we can only rely on the office of the Ombud to come to our assistance and [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Very well. Let me make my position quite clear. If by the time argument starts and I do not have the verification, I will accept the uncontroverted evidence of the applicants, of the claimants as uncontroverted evidence before me placed on affidavit. So you have that option. Either the state hurries up and does it in time or this matter will proceed with art without the state verification.

ADV TEBOGO HUTAMO: Well, I must say that the position that justice is taking, it gives the impression that the Department is not willing to get this issue resolved.

ARBITRATOR JUSTICE MOSENEKE: No, I think you should be careful what you say no. I am requiring timeframe from you and I am telling you which timeframe might work. I am not talking about the Department. I am not talking about anybody being willing. You must get instructions. You were asked in December and I would like to close this hearing. It cannot go on forever. At the point of argument, that verification if the state is interested in it, it must be before me. If it is not, I will proceed the way the law permits. It has nothing to do with any impressions about the Department. Anyway, are there any further questions?

ADV TEBOGO HUTAMO: Well, the point which I wanted to make is that the time period is not within the power of the Department. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Very well. Yes?

ADV NONTHLANTHLA YINA: Sorry Justice, it looks like Prof Makgoba would like to offer some assistance in respect of the list and the deadline. He would like to address you.

ARBITRATOR JUSTICE MOSENEKE: Well, [indistinct], Prof Makgoba is to get into the witness box and be sworn in. You cannot speak from the bar.

ADV NONTHLANTHLA YINA: Okay.

10 **ARBITRATOR JUSTICE MOSENEKE:** So if he is going to be the next witness after this, so be it but it cannot speak from the bar, can he? So we need to have the cross-examination. Anybody call Prof Makgoba then that may be done. Ms Stein.

CROSS-EXAMINATION BY ADV NIKKI STEIN: Thank you, Justice, and MEC, you just thank you for your patience while this issue has been discussed and
15 resolved. I only have three more issues that I would like to canvas with you, the first one being the pick up on an issue that you raised during examination in chief regarding the payment of compensation to the claimants in this case.

You testified in your evidence in chief that you are not dealing with this matter as the Department of Health alone, you are dealing with it as the provincial
20 government, is that correct?

MEC: Indeed, to the best of my knowledge, the parties representing the state are the Minister of health, the Gauteng provincial government in that order and I am part of the Gauteng provincial government.

ADV NIKKI STEIN: MEC, if you could please, and if someone could assist you, 5turn to ELAH 113 in the exhibits before you. Are you there?

MEC: Yes, I am.

ADV NIKKI STEIN: This is the budget speech which was delivered by the MEC for Finance Ms Barbara Chrissie, on 7 March, 2017. Do you see that?

MEC: Yes.

10**ADV NIKKI STEIN:** I am going to read to you, MEC, an extract from page 20 of that speech and am reading from the last paragraph and heading “Restoring public confidence in our public health system.” It is just before the next heading of “Fighting poverty and promoting social cohesion.” It says:

“When the alternative dispute resolution process is complete, we will appropriate 15any necessary resources for the families of the victims of the life Esidimeni strategy from the provincial revenue fund.”

Do you see that?

MEC: Yes, I did, Counsel.

ADV NIKKI STEIN: And so, can you confirm for us, MEC, that the resources– that 20Gauteng Department of Health will not be paying compensation in terms of the arbitration award from its own resources.

MEC: Through you, Justice, I have no authority over appropriations conference. That is the authority of the MEC for Finance and as such, I am not able to respond directly to your question respectfully.

ADV NIKKI STEIN: But you do confirm, MEC, that this case is not the Gauteng
5Department of health alone?

MEC: I have indicated that even before I joined the Department of Health as MEC for health, on behalf of the Gauteng government, the premier had accepted the recommendation of the health Ombud and that indeed, as the Gauteng provincial government we are part of this arbitration process and therefore, with– the
10respective offices will then deal with the matter according to the authorities that they have, legal authority they have.

ADV NIKKI STEIN: I would like to turn now, MEC, the question of the budget of the Gauteng department of health and you testified earlier that the marathon project was costly to the Department. You refer to a bloated staff establishment. You said
15they were warm bodies by the Department but that their posts were not funded, that that had come out of the goods and services budget. Can you tell us, MEC, what the total cost was of the marathon project?

MS GWEN RAMOKGOPA: I am not currently able to indicate the total amount and we can be able to provide you know, later but what I can indicate are the areas
20where there has been additional costs that were not previously budgeted for. How government works is that there is a medium-term expenditure framework of the

budgeting, and out of that the variations are also accommodated, whether midyear as part of the budget or the following year.

But in terms of this project specifically the additional costs were around the staff, around the relocation, and I must also indicate that national Department of health did raise some of the funds to support the relocation over and above the cost by the Gauteng Department of Health, and that the reopening of the Selby and life Esidimeni also was at an additional cost, and there were also costs incurred at the Cullinan rehab centre and various hospitals for the Gauteng marathon projects. So they has been quite a substantive fans incurred additionally to the MTF periods for 10the budget.

ADV NIKKI STEIN: If you could, MEC, provide us with the breakdown of what that cost wise, as you have undertaken, and in doing so, if you can also provide us with a comparison between that – those expenses, those costs – and the costs that the Gauteng Department of health would have incurred had the mental healthcare 15users not been discharged from life Esidimeni.

MS GWEN RAMOKGOPA: Yes. I must apologise. My understanding was that the MEC for Finance has going to deal with that. I will confer with her so that that is presented.

ADV NIKKI STEIN: Thank you [intervenes]

20**ARBITRATOR JUSTICE MOSENEKE:** And to which end with that be, council?

ADV NIKKI STEIN: Justice, we have heard a lot of this arbitration about the cost saving and that it was not about cost saving. This is almost the other side of the coin [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Well, we know now. It has been conceded 5by the state. At least three witnesses now said it was not about costs, it was not about savings. When we know better savings are, we know. It just shows that the decision was irrational but that is what all of the witnesses of the state has described it as. So I am not certain whether we should burden on the record to be on this, Ms Stein. This is a *prima facie* [indistinct] unless you persuade me 10otherwise.

ADV NIKKI STEIN: Justice, we are of course in your hands. This goes, in my submission, one step beyond that it was not a cost exercise but in addition to not effectively saving costs, there were in fact significant costs incurred by the Department of Health has confirmed by the MEC.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes, I think I would like to see the resources being spent to verify the names of the deceased rather than going to do financial spreadsheets on something that now is common cause already after the last three witnesses.

ADV NIKKI STEIN: We accept that. Thank you, justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Okay. Thank you.

ADV NIKKI STEIN: MEC, if you could now please turn to ELAH 159 in the exhibits file before you.

MS GWEN RAMOKGOPA: I have, Counsel.

ADV NIKKI STEIN: MEC, this is a document comprised of extracts from annual reports dealing with the Gauteng Department of Health's budget and specifically, the mental health budget and page 15, for your convenience, is a table that summarises the mental health budget and the total Department of Health budget from the financial year 2012/2013 up to financial year 2016/2017. Do you see that?

MS GWEN RAMOKGOPA: On page 13?

ADV NIKKI STEIN: Page 15.

MS GWEN RAMOKGOPA: Oh, okay. Page 15, my apology. Yes.

10**ADV NIKKI STEIN:** The first heading deals with the total budget of the Gauteng Department of Health, the second deals with provincial hospital services – so that is psychiatric and mental hospitals – third is chronic psychiatric care and that is life Esidimeni, the fourth is community-based services and those are the mental health NPOs and the fifth entry, the fifth heading on that table is the total of life Esidimeni plus mental health NPOs. Are you with me?

MS GWEN RAMOKGOPA: I am actually trying to be with you, Counsel.

ADV NIKKI STEIN: It on page 15.

MS GWEN RAMOKGOPA: My apology. I have got ... This is 13, this must be 14 [intervenes]

20**ADV NIKKI STEIN:** It is the last page of that exhibit.

MS GWEN RAMOKGOPA: 15. Okay.

ADV NIKKI STEIN: Now, the heading is “Audited outcomes.”

MS GWEN RAMOKGOPA: Statement of transfers to non-profit institutions [indistinct - cross-talking]. This is the last one I have here.

ADV NIKKI STEIN: No, the pages– there should be page numbers in the top right corner of that document. Perhaps somebody can help you [intervenes]

ARBITRATOR JUSTICE MOSENEKE: The document is ELAH 159, the top right would have the number ELAH 159.

MS GWEN RAMOKGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And it is numbered from 1 to 15.

10 **MS GWEN RAMOKGOPA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: On the last page [intervenes]

MS GWEN RAMOKGOPA: Page 15.

ARBITRATOR JUSTICE MOSENEKE: “Audited outcomes.”

MS GWEN RAMOKGOPA: Oh, okay. That is fine. I found it, page 15. Yes.

15 **ADV NIKKI STEIN:** And do you see the heading table, MEC, of the different sub programmes?

MS GWEN RAMOKGOPA: Yes, I do.

ADV NIKKI STEIN: The last, as we have said, is the total of life Esidimeni plus the mental health NPOs. If we look at that, do you agree with me that there has been a

decrease in the mental health budget allocated to life Esidimeni and NGOs since 2012 and 2013?

MS GWEN RAMOKGOPA: Indeed.

ADV NIKKI STEIN: And if we look then at psychiatric hospitals, which is the second heading, we see that overall there was still a decrease since 2012/2013 in the mental health budget.

MS GWEN RAMOKGOPA: Is that for the provincial hospital services, psychiatric and mental [intervenes]

ADV NIKKI STEIN: That is correct.

10 **MS GWEN RAMOKGOPA:** Yes. What I have here is an increase from 957– for 2012/13 it was, it has increased to 2016/17 by about 1.9%, and I correct? Yes.

ADV NIKKI STEIN: And perhaps I can frame my question is this way, MEC. We see under the provincial hospital services increase from 956, sorry, 956,000,000 to 1 billion, approximately 1 billion.

15 **MS GWEN RAMOKGOPA:** Yes.

ADV NIKKI STEIN: If we look at life Esidimeni plus NGOs we see a decrease from 532 million to 216 million.

MS GWEN RAMOKGOPA: Indeed.

ADV NIKKI STEIN: And so my proposition to you is that the combination of the budget for the hospital services, for life Esidimeni and the NGOs, if we look at all of those together, overall there was a decrease in mental health budget.

ARBITRATOR JUSTICE MOSENEKE: That is adding all the line items on the last column in 2016 from top to bottom. [Indistinct] what you mean?

ADV NIKKI STEIN: Justice, that is looking at the difference between 2012/2013 and 2016/2017, which on my calculation is about a R50 billion increase in respect of the psychiatric, sorry, R50 million increase in respect of the psychiatric hospital, decrease [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Ja, I do not want to be bogged down in detail. Would you put your proposition to the witness and then we can get a detailed to demonstrate the proposition? What do you seek from the MEC? We heard had MEC finance already. I do not want another MEC to deal with the figures unduly. So what is the proposition?

ADV NIKKI STEIN: My proposition, Justice, is that that we have seen in the Gauteng Department of Health budget a decrease in the resources available to mental health between 2012/2013 and 2016/2017.

15 **MS GWEN RAMOKGOPA:** Overall, it does come across as a decrease. What I am just trying to find out is if that first row of R27 million, actually, that is a total R27 billion. The total budget for the Gauteng Department of Health it is R27 billion from 2012/2013 to 37 for 2016/17. That is the total departmental budget.

ADV NIKKI STEIN: That is correct.

20 **MS GWEN RAMOKGOPA:** And then underneath, if you take me 1.9% nominal increase and the decrease in the sub programmes of mental health, indeed overall there is a decrease.

ARBITRATOR JUSTICE MOSENEKE: Ja, that is true of mental health care but it is not true of the total health budget because the total health budget as you can see increases, Dr Ramokgopa [intervenes]

MS GWEN RAMOKGOPA: Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** By 8.5%. So the proposition is on mental health care in particular. On the numbers, there is less allocated to mental health care, is that it?

ADV NIKKI STEIN: The proposition, Justice, is that there is a— the proportion of the total Gauteng Department of Health budget that is allocated to mental health is 10decrease in the years included in this table.

MS GWEN RAMOKGOPA: Yes, it actually looks like but if we consider that for 2017/18, this current financial year, we had to reverse the closure of life Esidimeni as well as of Selby. There would be an increase and the— most definitely that but I agree with you that from the figures presented between 2012/13 and 2016 financial 15years, there has been a decrease, yes, from the figures presented.

ARBITRATOR JUSTICE MOSENEKE: Ja. In effect, the answer is if you go through to March of this year and look at audited outcomes, you [indistinct] find more money because of the reversals. In other words, reopening Selby and life Esidimeni and all these costs, including costs of these proceedings.

20**ADV NIKKI STEIN:** That is correct, justice.

ARBITRATOR JUSTICE MOSENEKE: That number would probably be quite high.

ADV NIKKI STEIN: MEC [intervenes]

MS GWEN RAMOKGOPA: I must, through you, justice – my apology – I must indicate that since I had to deal with the finances of the Department of Health, I really find it difficult to deal with the figures before me without factoring in accruals because– I will just give an example.

Even in the last financial year is a reported under spending of about 200 million for infrastructure, but if you look at the overall budget and with the 10accruals of 6.7 billion, you can see that it is not possible to under spend because you really do not have money. So there could be a budget but you find out is no cash, and that is the cash modified accounting system that government uses.

And it is not only for this purpose that I become a bit anxious but all purposes and under all circumstances when I deal with the finances of the 15Department, I would like to also factor in the accrual, the accruals to get the correct picture.

ARBITRATOR JUSTICE MOSENEKE: Adv Stein.

ADV NIKKI STEIN: Thank you, justice.

ARBITRATOR JUSTICE MOSENEKE: You can sense my impatience already.

20**ADV NIKKI STEIN:** I can indeed and so I am going to move on to the last issue. MEC, now I would just like to talk about how we move forward from this arbitration.

We have heard a lot of evidence about failures across the health system in Gauteng. We have heard a lot of evidence about following unlawful instructions, ignoring procedures, ignoring the regulations that bind them, we heard about professionals that were acting in contravention of their oaths.

5 We also know that the problem extended outside the Department of Health to mortuaries, to NGOs. It has really been a deep and widespread issue and so my question to is this. Given the deep-rooted failures that we have seen in this arbitration, what is the Department of Health going to do to address these systemic failures and to make sure that we do not sit once more in the future when another
10tragedy occurs?

MS GWEN RAMOKGOPA: I think that is a very important issue to deal with. The commitment that I have made to the Premier and also to the public is that we will spare no effort to ensure that we identify risks and we deal with them decisively to ensure that we do not have a recurrence. First and foremost, I acknowledge that
15the health Ombud's recommendations are a significant contribution towards that and that is why we focus on the recommendations, including— one of the recommendations is on the health information system.

I can report that we worked around the clock. Last year December we presented to the executive Council an e-health strategy that will enable us to have
20reliable information system. We have already begun around the mental program to have an electronic database. That would be essential. Secondly, which is very critical, what I found was that the Department, especially at head office, was dysfunctional. There was no team effort.

There were no systems of decision-making and we have established executive management committee system. It took a bit of time but it is taking root and it is also part and parcel of the [indistinct] agreements between myself and the Premier to enforce a systematic process of decision-making that the institution can be held accountable for. The third important issue is to ensure that we respect and comply with policy and regulations that are there.

What I found for instance, was that at head office would have knowledge of regulations but those would not necessarily be— the institutions, facilities would not be aware of them. But in addition to that, I have engaged with the South African Institute of Chartered Accountants, which was mainly responsible for helping the Department to get a clean audit, that they must also focus on systems, especially financial management systems and accountability.

We have worked very hard around the clock and that is why we were able, with the assistance, to improve for instance, payment of service providers from as low as about 15% to about 30%. So we are seeing progress in putting systems in place and ensuring that there is accountability. Finally, without going through all the steps that we have taken [intervenes]

ARBITRATOR JUSTICE MOSENEKE: As you go “finally,” just remember your minister is waiting.

MS GWEN RAMOKGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: So we should help them sometime today still.

MS GWEN RAMOKGOPA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS GWEN RAMOKGOPA: Alternatively, we can submit a recovery plan but in addition to that, we have got a team of experts jointly appointed by the Minister, the Premier, and myself to manage particularly at head office. We have heard resignations of no less than five senior managers as we speak. So the intervention team is assisting during this process over the next six months until we have final appointments.

ADV NIKKI STEIN: MEC, we appreciate your offer of a recovery plan and look forward to receiving that from you. I would like to thank you once more for taking the time to testify today. There are no further questions from me.

MS GWEN RAMOKGOPA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: Thank you, Adv Stein. Adv Crouse.

CROSS-EXAMINATION BY ADV LILLA CROUSE: Thank you, Justice Moseneke. MEC, my name is Lilly Crouse. I appeared together with my learned friend Mr Skibi for the survivors of this program. I am going to ask you a few questions. It might seem disjointed because most of the stuff that has been dealt with. So I might move from one subject to another. Can I start of by just saying you said that you referred some of the officials to their professional bodies.

MS GWEN RAMOKGOPA: Exactly. Yes, I do.

ADV LILLA CROUSE: Can I ask you when did you do that?

MS GWEN RAMOKGOPA: With the— I have referred the case of, all to the Nursing Council jointly after the finalisation all the resignation of Mrs— Dr Manamela. So [indistinct - cross-talking]

ADV LILLA CROUSE: So that is just recently.

5**MS GWEN RAMOKGOPA:** Yes.

ADV LILLA CROUSE: Yes, and the other officials?

MS GWEN RAMOKGOPA: All of them I have referred it simultaneously.

ADV LILLA CROUSE: Could I ask why did it take so long to do?

MS GWEN RAMOKGOPA: Counsel, as I indicated, this has been quite a
10[indistinct] process of to and fro of who said what, who did not what. We had a— we
have just concluded actually the full record of the disciplinary hearing. We got the
documents piecemeal and we were told that the transcribing is not complete and so
those were the delay that we experienced. And I appreciate that indeed it has taken
long but we were determined, I was determined to ensure that there is a review and
15that they are [intervenes]

ADV LILLA CROUSE: My question is just when.

MS GWEN RAMOKGOPA: Yes.

ADV LILLA CROUSE: Thank you. Could I just move on to the next issue and that
is often missing mental health care users.

20**MS GWEN RAMOKGOPA:** Yes.

ADV LILLA CROUSE: There was a document handed to you, and I am not sure whether you were really— you refer to it now in your evidence.

MS GWEN RAMOKGOPA: Yes, yes, yes.

ADV LILLA CROUSE: We have a client who is still missing or family of a client that is still missing and his name is Guy Daniel Kanza. I am going to spell that for you: K-a-n-z-a. He is not part of that list. So if I could ask that you looking to his particulars as well. He was at Waverley and he was bipolar.

MS GWEN RAMOKGOPA: We will certainly deal with— follow that up together with the police. It is a matter that we are working with the South African Police Services
10on.

ADV LILLA CROUSE: Thank you very much. And then if I could just ask you, already on death 34, the Honourable Justice asked for a list of staff that was absorbed into the Department. That has not come forward yet. Do you know whether there is such a list?

15**MS GWEN RAMOKGOPA:** Um, ja.

ARBITRATOR JUSTICE MOSENEKE: That would be staff off?

ADV LILLA CROUSE: Life Esidimeni.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV LILLA CROUSE: Ja.

20**MS GWEN RAMOKGOPA:** I am aware of that list. I would not know why it has been submitted as yet.

ADV LILLA CROUSE: So it is available?

MS GWEN RAMOKGOPA: Yes, it is available.

ADV LILLA CROUSE: Could I ask that you submit that to us as soon as possible, please?

5**MS GWEN RAMOKGOPA:** Okay.

ADV LILLA CROUSE: Then, if I could also then move on. You said that there was a three-year contract in place for life Esidimeni. Our clients are concerned about their mental health care users. They are concerned that that they will have to go through this again. Can you give them any assurance that this would not happen
10again, this carnage of people?

MS GWEN RAMOKGOPA: The Gauteng mental health marathon project, it cannot happen again.

ADV LILLA CROUSE: You see [intervenes]

MS GWEN RAMOKGOPA: It certainly cannot happen again.

15**ADV LILLA CROUSE:** But is only a three-year contract in place now and as far as we can see, there is no building of community services and is definitely not place in hospitals. So what undertaking or assurance can you give to the families?

MS GWEN RAMOKGOPA: As I have indicated, the– even this process of the Gauteng mental health marathon project does not even have it within what you can
20indicate as a deinstitutionalisation within the context of the laws and the policies we have. So it cannot happen again.

ADV LILLA CROUSE: We all agree with you there.

MS GWEN RAMOKGOPA: Yes.

ADV LILLA CROUSE: But [intervenes]

MS GWEN RAMOKGOPA: The government planning is on a three-year cycle, 5MTF, and that is also how the relationship with various service providers has been and that is part and parcel of compliance, amongst others, with the PFMA so that there is transparency in the processes that are underway.

ADV LILLA CROUSE: Could I also then ask you, part of the Ombud's recommendation was disciplinary hearings against your officials but also that they 10would receive counselling. Now we have not received any evidence that there were counselling, and I am not meaning counselling to make them feel better, counselling to— how to deal with situations like this. Will that still happen?

MS GWEN RAMOKGOPA: I am aware that counselling has begun in terms of the mental health [intervenes] professionals.

15**ADV LILLA CROUSE:** Revealed board, you said [indistinct - cross-talking]. Oh.

MS GWEN RAMOKGOPA: No, the professionals that are in the Department, in the mental health directorate. But counselling has begun already.

ADV LILLA CROUSE: And that will include ethical duties hopefully.

MS GWEN RAMOKGOPA: Ethical counselling, the program is for all management 20and health workers in general. There is a strategy and a programme that is underway but most definitely it includes mental health directorate.

ADV LILLA CROUSE: Thank you, MEC. And then just ask you, we had evidence of a young man that went after life Esidimeni, his name is Sibusiso Ngwenya, he went to Thembisa. His father found him naked in a bed, tied to a bed. He was— they were human faeces in the ward. There was a corpse lying next to him. So going forward, it seems to me the problems are a bigger than only mental health institutions, and are you looking at that?

MS GWEN RAMOKGOPA: I must confirm that the office of health standards compliance does not only include the health Ombud. It also has the office that deals with standards that assesses compliance and also an Inspectorate. And it is our plan to ensure that we reinstitute a Gauteng based similar system. We are in discussion with the national Department to look at whether it is an extension of the office of standards compliance, the Gauteng chapter all of the Department of health institute such. By the time I left, there was an accreditation committee which was independent and which was also reporting to the legislator in 2006 to ensure that patient safety, patient care and quality are not compromised.

ADV LILLA CROUSE: You see, a mental health care user is a very vulnerable person. You cannot have in line hospital bound to a bed without a mattress next to a corpse. That just flies in the face of any normal situation but more so if it is a mental health care user.

MS GWEN RAMOKGOPA: That case must be reported to the mental health review board. It must be investigated and action needs to be taken against any official that subject of the mental health care user to that circumstances.

ADV LILLA CROUSE: Thank you.

MS GWEN RAMOKGOPA: And that is why we have mental health review boards in all our districts.

ADV LILLA CROUSE: Then lastly it just one issue that I want to raise with you, this is the last issue that I want to raise with you, and that is what systems you have in place to make sure that you are aware of court cases, especially court cases about human rights being in court, that you personally will be aware of them?

MS GWEN RAMOKGOPA: I must indicate that there was no reliable system, and that is one of the priority areas that are focused on. And we now do have a protocol of managing legal cases that come to the office, from the time that there is a notice and throughout the cycle. So that is the priority, and we have just completed the process of an electronic database of our legal department and .

ADV LILLA CROUSE: MEC, one of the things [intervenes]

MS GWEN RAMOKGOPA: It was a problem.

ADV LILLA CROUSE: One of the things that is bothering me for a much, and I can perhaps hand in the ELAH now, is— maybe I should just do that. Could the Court just give me a moment?

ARBITRATOR JUSTICE MOSENEKE: Oh, yes.

ADV LILLA CROUSE: Justice, this is a very thick document we have distributed it electronically to the parties but we be have a copy for the witness and for Justice. If

I could just– this is a court case– if I could just have the next ELAH number? I hear this was 169. We have consensus, justice. The ELAH number is 169.

ARBITRATOR JUSTICE MOSENEKE: 169.

ADV LILLA CROUSE: MEC, this is a court case that was made by Siya Badinga
5[intervenes]

ADV PATRICK NGUTSHANA: Justice, sorry for the interruption. I have just conferred with my learned colleague on my right to find out if he has the document. He is in the same position as us. We do not have the document.

ADV LILLA CROUSE: Justice, I will leave the document for the time being until my
10learned can have that.

ADV DIRK GROENEWALD: Now that I know what document it is, Justice, I have the document.

ADV LILLA CROUSE: I will just make the point and move on, justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

15**ADV LILLA CROUSE:** In this matter, there was asked that a curator be appointed, and you will see there are some flags, red flags there. It is to affidavits by a woman, Sandra de Villiers, and she begged the court in founding and in replying that a curator be appointed because she was fearing that her brother would die. And if you would see she has made the last affidavit – it is the second last red flag – on
20the 2nd of August.

Her brother died at the 3rd of October and the courts did not appoint a curator *ad litum* because the Department took, in my opinion, absurd technical point and the curator was not appointed. So what I want to put to you, this is Jaco Scholtz that died, Justice, but I want to put to you but you going to put in place to follow the court instructions that with human right abuses the state should not take technical points?

MS GWEN RAMOKGOPA: Counsel, can I respectfully reiterate that the legal unit was one of the most dysfunctional units [intervenes]

ADV LILLA CROUSE: Dysfunctional?

10**MS GWEN RAMOKGOPA:** Dysfunctional with following cases, record keeping, and we prioritised it. The head of legal resigned. Some few months ago we made an appointment of a new head as swiftly as we could, and we are working even with the Premier, the office of the DG to finalise the electronic manage of records. So I have knowledge that indeed they were problems, and I am putting on record
15that we have made interventions to avoid such occurrences.

ADV LILLA CROUSE: That human right abuses will be taken seriously by your department?

MS GWEN RAMOKGOPA: Human rights [intervenes]

ADV LILLA CROUSE: It would not be about winning in court. It would be about
20winning for the people that you serve.

MS GWEN RAMOKGOPA: That the Department of Health itself is about the right of the most vulnerable in society, constitutional rights, basic human rights, the Bill of Rights gives or assures, guarantees the South African progressive realisation of that right. So the Department of Health cannot be on the other side of protecting anyone human rights abuses.

ADV LILLA CROUSE: Thank you, MEC. I wish you well in getting the Department up to speed and doing the right things.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV LILLA CROUSE: Thank you, justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. Adv Yina.

ADV NONTHLANTHLA YINA: Thank you, justice. We have no questions for MEC.

ARBITRATOR JUSTICE MOSENEKE: Adv Groenewald.

ADV DIRK GROENEWALD: Thank you, Justice. Just two issues.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV DIRK GROENEWALD: MEC, my name is Dirk Groenewald. I appear on behalf of four of the family members who have lost family mem– MEC, I would just like to find out the instruction that the final written warnings be reviewed. When was that instruction given?

20 **MS GWEN RAMOKGOPA:** I received a report sometime in August and the instructions were given first week of September.

ADV DIRK GROENEWALD: First week of September?

MS GWEN RAMOKGOPA: Yes.

ADV DIRK GROENEWALD: Now we had Ms Jacobus here just the other day and she said well, nothing has happened. They have not received any documents indicating that the final warnings was going to be reviewed. Do you know anything about it?

MS GWEN RAMOKGOPA: Yes, it is possible. As I have indicated that the process of getting transcripts and all that took excessively long but I can assure you that the process has advanced and the team is working on it. We have received 10 Counsel, at least one senior counsel feedback that there is no prospects possibly of winning the case of review.

ADV DIRK GROENEWALD: And can I tell you why, Ma'am?

MS GWEN RAMOKGOPA: And we have also consulted further in this regard because it is really my believe that justice would not be fully done, especially in 15 terms of the sanctions given you know, compared to the wrong done.

ADV DIRK GROENEWALD: Thank you, Ma'am. Ma'am, do you know that the department asked the sanction of a final written warning, that a final written warning the post?

MS GWEN RAMOKGOPA: In my investigations of why they has not been 20 progress in this regard and why– I even phoned senior counsel myself to get an understanding, I was made aware by the– And he has put that in writing by the

attorneys that were representing the state that the intention was to call for a harsher sentence. And they were phoned and instructed by some officials in the Labour relations division to enter into a plea-bargain and bargain for a final written warning.

ADV DIRK GROENEWALD: So do you want to tell us that the Department gave instructions that they be negotiations that only a final written warning, a sanction of a final written warning be imposed?

MS GWEN RAMOKGOPA: That is what I have found and I have referred that to the accounting officer to take the necessary steps to deal with that matter but I must also put on record that the officials there are still remaining in the Department point 10a finger to the director Labour relations who has since resigned.

ADV DIRK GROENEWALD: So you think, you cannot confirm, but you think it was the direct Labour relations who gave the instruction?

MS GWEN RAMOKGOPA: No, the officials that were asked, and they have under oath made affidavits that they were instructed, they were so instructed. We have taken steps in this regard and I have instructed the accounting officer to ensure that— because he was not, he says it was not consulted, that he should take necessary disciplinary steps against the officials involved.

ADV DIRK GROENEWALD: Just one last thing, Ma'am. I think tomorrow marks the anniversary of the Ombud's report. It is a year since the release of the report.

20**MS GWEN RAMOKGOPA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Interesting observation.

ADV DIRK GROENEWALD: Thank you very much.

ARBITRATOR JUSTICE MOSENEKE: You are spot on, counsel.

ADV DIRK GROENEWALD: Thank you, justice. But you will agree with me, Ma'am, that there is still a lot of work to be done. We have missing patients. There is still some action taken against some officials. So there is still a lot of work to be done.

MS GWEN RAMOKGOPA: My approach, counsel, is that a lot has been done and especially together with the families, we have travelled a long way with your input as well, supporting the families in whatever way is that you can. And, yes, the process is not concluded but a lot has been done. We have de-risked these surviving patients from risky situations into safer places. We have strengthened the systems, including the licensing conditions and specifications.

We have also put systems in the Department to ensure a greater accountability. We have strengthened community-based mental health services to ensure that there is no vertical programs that does not involve the district services. So a lot has been done but yes, indeed, a lot more still needs to be done by all of us.

ADV DIRK GROENEWALD: Thank you very much. My final, final question, Ma'am, would you say that you have learned what not to do from your predecessor?

MS GWEN RAMOKGOPA: Yes.

ADV DIRK GROENEWALD: Can you highlight just a few of those things?

MS GWEN RAMOKGOPA: First and foremost, democracy and even our Constitution indicates that this is a participative democracy, that those of us that are in government are not self-serving. We are serving the public and we must try for the public to own their health systems and the state institutions and to hold us accountable.

The second issue is that professionals must have a high ethical grounding, and they must be able and be prepared to defend the professions. The ethical standards, they must be there at all times because we hire professionals because there are so accredited and so respected for the Kurds, the ethical codes that they subscribe to. And thirdly, to ensure that there are systems. It is really my opinion that sometimes, systems are broken down for ulterior motives because I can state that the Department of Health had systems in place but when I came in, there was not really very little of systems to show for.

So it means that our audit oversight process must be much more rigorous so that we institutionalise the progress that we make and that sensitive departments, like the Department of health, never regress. We are looking at the legislation in that regard. And just finally, to indicated that we need to empower especially staff, employees to utilise the whistle blowing processes that are there to ensure that we mitigate the risks that we see because many of the officials, they say they saw danger coming but they felt paralysed.

They did not take it further to ensure that this danger that they foresaw does not happen. So they are indeed a lot of lessons. And I have also proposed that we need to work with especially health systems schools to make this a

scholarly study so that we record it in history to ensure that it never happens again. The lessons must be recorded. But listeners cannot only come from me. It must come from the collective so that we as a society, we are able to defend institutions such as the health system.

5 **ADV DIRK GROENEWALD:** Thank you very much, MEC. Thank you very much, justice.

ARBITRATOR JUSTICE MOSENEKE: Well, you invited a lecture and you got it.

ADV DIRK GROENEWALD: Indeed so, justice.

ARBITRATOR JUSTICE MOSENEKE: But that is I might say, on my part, quite
10 immaculate. Re-examination, counsel.

ADV PATRICK NGUTSHANA: Justice, they are no questions in re-examination. Thank you, Dr Ramokgopa.

ARBITRATOR JUSTICE MOSENEKE: Thank you. MEC, I have a disclosure to make and that is that you come from that great village called Atteridgeville in
15 Pretoria, and that you and me were born in exactly the same village. And in case somebody talks about later, I have a duty to let them know, and I say that with a lot of pride, I know the amount of work you did together with Dr Gnocchi to get us to where we are.

And your role in negotiating with families to establish this ADR
20 process, its content, as well as decisions around whether or not the state would fight the merits of the case and so on, so you have been quite a very important

person, at least in the process I am aware of, leading to this arbitration. And to that extent, you have been a big part of the healing that might occur and I would like to thank you for that role. We have developed a practice to allow you to have your final word, and you may do so.

5 **MS GWEN RAMOKGOPA:** Justice, my final word is that this has really been a very painful experience for the families. I cannot take out of my mind the experience of 18th of February 2017, the healing session, and I must thank the families for trusting us to be part of the healing session that they convened, but that session made me realise that indeed, there is deep, deep pain.

10 There is also, and they must be, deep shame for all of us as the Department of Health, as a society to have had this tragedy in our lifetime in this land that is respected for a Constitutional dispensation that protects human rights. We let down the most vulnerable in society when we needed to be there for them. I just want to reiterate personally my deepest regrets and apology that even though I
15 was not in the Department of Health— yes, indeed, we could see the TV coverage, we did read about the protests but we never anticipated, we never appreciated the depth of the desperation.

 And for me, it would just be even and most because as a typical minister, I was responsible for amongst others, mental health services. And the
20 WHO did comment South Africa for having convened what is now known as the Ekurhuleni Summit, with Ekurhuleni declaration. But also our country, even before the National Health Act was promulgated, the Mental Health Act was promulgated to show that we put a high premium on the rights of the most vulnerable.

We as a society that I am part of, we were not vigilant enough to be able to join in those that were trying to avert this tragedy. I just want to also say on behalf of the Department of Health, I want to extend my deepest apology. And we have taken the various management as well middle management and ordinary 5workers to understand fully what happened. Many of them were not aware.

They understand, and many have signed a declaration that extends apology on behalf of the Department of Health to the families of the bereaved and also to the survivors and their families, as well as to the public. Please accept our most sincere apologies, and we want to commit to work with the family committee to 10redress what we still can redress but to institutionalise accountability, to institutionalised ownership by society. We have agreed the provincial health forum and the family committee that for assisted and in voluntary capabilities we must establish family committees.

That is also one thing, Counsel, but we still need to do to ensure that 15indeed, this happens never happens again. So we really apologise. It is actually unbelievable but it happened and if this process, our contribution to this process can help the healing process and also closure, although it will not be overnight, we are available to support that why we are here.

ARBITRATOR JUSTICE MOSENEKE: Dr Gwen Ramokgopa [vernacular].

20**MS GWEN RAMOKGOPA:** [Vernacular], justice. Thank you.

ARBITRATOR JUSTICE MOSENEKE: I have said a “thank you” in one of our official languages, Adv Groenewald. There are 11 of them. We are done. Again,

thank you so much and as I said earlier, I am very proud that you and me come from the same village and Dr Gnocchi. And you are been called in to clean up. So that leaves us, I cannot is to say, with great pride to come from that little village called Atteridgeville and to be so committed to try and help our country.

5 We are done with you, Doctor, for now and we thank you again. I am going to take the adjournment so that we get the Minister to come in. Subject to some violent objection, we have to go on and finish because that is all time we have. So I am going to take a 10-minute adjournment so that we can get the Minister in. Adv Hutamo, are you ready to go on? I saw you shifting in Yorkshire.

10 **ADV TEBOGO HUTAMO:** Justice, the Minister has been waiting and he is available. As you have said, unless there is a violent object to us proceeding, he would be able to take the stand.

ARBITRATOR JUSTICE MOSENEKE: Yes. No, thank you. Once more [vernacular] we are adjourned for 15 minutes.

15

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SESSION 5

ARBITRATOR JUSTICE MOSENEKE: Thank you. Please be seated. Minister, [vernacular] in which Adv Hutamo, you are going to proceed with the Minister now, 20are you?

ADV TEBOGO HUTAMO: Indeed, Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. In which language do you want to testify, Minister?

MINISTER AARON MOTSOALEDI: In English.

ARBITRATOR JUSTICE MOSENEKE: In English. Would you put your full names on record?

MINISTER AARON MOTSOALEDI: Aaron Motsoaledi.

ARBITRATOR JUSTICE MOSENEKE: Do you swear that the evidence you are about to get will be the truth and nothing but the truth? And if so, please raise your right hand and say, "So help me God."

10 **MINISTER AARON MOTSOALEDI:** So help me God.

AARON MOTSOALEDI (duly sworn states)

ARBITRATOR JUSTICE MOSENEKE: Thank you. Counsel.

EXAMINATION BY ADV TEBOGO HUTAMO: Good afternoon, Minister.

MINISTER AARON MOTSOALEDI: Good afternoon, Counsel.

15 **ADV TEBOGO HUTAMO:** Thank you for making time to be before these proceedings. I should put it on record that in terms of the terms of reference which regulated these proceedings, you have been called to come and give an apology to the affected families who went through the tragic events of their loved ones having to die pursuant to the marathon project.

We will not be limiting you on that aspect. We just want you to assist the families of how you came to know of the marathon project, and what is your relationship as the national Minister of health in relation to the provincial Department of Health. For the record, can you just indicate from which period we you appointed 5position of Minister of health?

MINISTER AARON MOTSOALEDI: Thank you, Counsel. I was appointed as a Minister of health from May 2009. I am not exactly confident about the month but it was after the 2009 elections.

ADV TEBOGO HUTAMO: As it is well known that these proceedings are as a 10result of the recommendations of the health Ombud, or who had investigated these circumstances relating to the gate of mental health users. It is quite clear that at the time of this investigation, you were and you are still the Minister of health. Just to assist these proceedings, can you just take us through your relationship with the provincial department of health as to how do you get to interact.

15**MINISTER AARON MOTSOALEDI:** Yes, thank you, Counsel. My relationship with provincial Department of Health is firstly guided by the constitution, which state that health is a concurrent competency. This is important to understand because they are other departments which do not have any concurrency like Departments of home affairs, science and technology, defence.

20 They all have ministers who act on their own but in health, it is supposed to be a concurrent competency in the constitution, meaning that the powers are exercised both nationally and provincially. To that extent, the National Health Act

2003 states that the role and responsibility of the national Department of health is mostly to come up with norms and standards, as well as regulations and policies and the role of provincial departments is to implement those policies.

Unfortunately, Counsel, something that I have been, through you, Justice, I have been canvassing in Cabinet for quite a long time, this issue of concurrency is quite complex and very difficult at times. But it also, when you look at the Public Finance Management Act and the Public Service Act, both myself and the MECs are what is called executing authorities, meaning we have got powers to execute and take final decisions on the matter. Meaning then that you have got an MEC in the province will is an executive authority but equally, a minister at national level who in his own power is an executing authority.

But now because these powers are concurrent, quite a few people believe the Minister holds power over all the MECs, which is not necessarily the case for instance, in four very important issues, which are even to the Parliament in August last year, to complain to members of portfolio committee that they must help us change that state of affairs, the issue of human resources – who get hired at what level?

It is not a concurrent function. It is a provincial function. There are people who have always asked me, “I do not you fire this MEC? Why do not you appoint a better MEC?” I do not have those powers at all. They vest in the hands of the Premier. So the issue of human resources, the doctors who get fired and believe they have been fired unfairly and they approach the Minister for relief. If you look at that function, the Minister getting nowhere at all. The hiring and firing of doctors,

nurses, et cetera, I do not have any powers over them. The only thing I can do is to persuade. That is the first one.

The second one is financial management. There are people will believe ministers are once will decide on how much money must go to provincial departments [indistinct] and amounts, and I hope MEC Barbara Chrissie has clarified it. Throughout her testimony I am sure she never mentioned the Minister in giving finances, what programmers get much, et cetera. So financial management is purely in provinces.

The third one is procurement and supply chain. As to what gets procured and get bought in the provincial departments of health, it is a function of the executive authority and the accounting officer in that province, is the MEC and the HOD.

The last one is maintenance and infrastructure. I know people usually phoned me and say, "Hey, this list is not working in the hospital. Minister, can you do any– something?" I do not have any powers on those, unfortunately.

Now the unfortunate part, Counsel, through you, Justice, is that these four are the cornerstones of the health care system. If you fail on these four – human resources, financial management, procurement, maintenance of equipment and infrastructure – if you fail on these four there is no whole system. It collapses and unfortunately, all those powers are not with the Minister. And I thought it is important for all these issues to be understood because many people do not necessarily understand them.

ADV TEBOGO HUTAMO: Thank you, Minister. At the outset, you have mentioned that your involvement is at the level of policy formulation. It is common cause that these proceedings related to matters in respect of mental health care users. I would like you to assist these proceedings with regard to your involvement in the formulation of policy in that aspect. I am going to ask someone to assist you to locate the file which is part of the record. It is file [intervenes]

MINISTER AARON MOTSOALEDI: Is that this one?

ADV TEBOGO HUTAMO: File 4. File 4, there is someone to assist you.

ARBITRATOR JUSTICE MOSENEKE: It will be brought to you, Minister.

10 **MINISTER AARON MOTSOALEDI:** Oh, thank you.

ADV TEBOGO HUTAMO: File 4, if you can turn to page 1358.

MINISTER AARON MOTSOALEDI: Yes, I can see at. Yes, I can see it. Counsel he knows.

ADV TEBOGO HUTAMO: Yes, if you can make use of the document that has just
15 been given you.

MINISTER AARON MOTSOALEDI: Okay.

ADV TEBOGO HUTAMO: I think that that would be of assistance. I would like you to express your involvement with regards to policy formulation with reference to the document that is before you, "National mental health policy framework and strategic
20 plan 2013 to 2020."

MINISTER AARON MOTSOALEDI: Yes, Counsel, this document is a document that guides how we implement the mental health services in the country. It is a policy framework as it say and also a strategic plan. It came into being after the World Health Organisation got worried about the issue of mental health globally, 5that it is generally neglected, it is not funded like the other functions, and there is no involvement of families in the care of mental health users globally.

And the director general of the World Health Organisation was instructed by the World Health Assembly to do something it, which the director general did. And eventually, the World Health Organisation came with mental health action plan 2013 10to 2020, which document is here in front of you, of me. And in the foreword of the document, the director general all the then director general, Dr Margaret Chan said:

“Mental health matters but the world has a long way to go to achieve it. Many unfortunate trend must be reversed, and he said that trends are negligent of mental health services and 15 care and abuses of human rights and discrimination against people with mental disorders and psycho-social disabilities.”

These are the words of Dr Margaret Chan. And then he said the objective, I mean, this plan has got four objectives. The first one to “provide effective leadership and governance or mental health.” That is the first objective. The second one 20“provision of comprehensive integrated mental health and social care services in community-based settings.” That is the second objective. The third one “implementation of strategies for promotion and prevention,” and lastly,

“strengthening information systems, evidence, and research.” These are the four main objectives of this mental health action plan.

After it was drawn up, it was then felt that it needs to be localised to countries. This is a global policy with the four objectives but obviously, countries are not the same. For instance, what they do in the UK will not be the same that I can afford to do in South Africa or another country in sub-Saharan Africa can do. So we had to localise it and in localising it, we realised that we need to come up with our own strategic plan but we did not just sit as a Minister or as a national Department and say, “We are doing a strategic plan.”

10 We first asked all our provinces to hold mental health summits with a must call the relevant stakeholders, the communities, civil society, the academics, and experts. And all provinces did so. And that culminated into a National mental health summit which was held in Ekurhuleni. And the mental health summit was not just ordinary summit because we did not just want to go through the motions. We 15 wanted to come up with a clean country plan, strategic plan on mental health.

So for that reason, we called experts. We called the director of mental health and psycho-social services from the World Health Organisation to come and be with us and guide us, and we also called the country director of the Health organisation in South Africa and also the head of mental health in the African 20 region of the World Health Organisation because the World Health Organisation has got six regions globally.

One of them is called Afro. So we called those and we even called the judiciary. Judge Jody Kollapen was invited specifically because it was the chairperson of the human rights commission before he became a judge. These are the people who guided us. Now, at the end of that summit we came up with something called the Ekurhuleni Declaration, which is inside this document.

And that Ekurhuleni declaration then, after all those processes, lead us to develop this National mental health policy framework and strategic plan 2013 to 2020, and are disposed to be the document that guides all our provinces or anybody who wants to provide mental health services in the country. That is where— the rule I've [indistinct] has played.

ADV TEBOGO HUTAMO: Then in terms of this strategic plan, what are the areas of emphasis in relation to issues relating to mental health?

MINISTER AARON MOTSOALEDI: Well, remember that this document is also stemming from the National Health Act 17, 2003, the Mental Health Act I meant to say. The document also stems from it because you cannot work, you cannot draw a strategic plan or policy document outside the framework of the law, of the act. So the act was also guiding us. Now, I want to start there, Counsel, because it is important. The Mental Health Act 17, I think it is 17, forgive me about that, I think 17, yes, of 2003, it was replacing Mental Health Act which I think is number 18 on 201973.

It was replacing at and the reason that it got replaced through you, Justice, is that Act 18, 1973 was giving immense powers to the Minister in terms of mental

health. Nothing could happen without me. Even the president, there are areas where they say the president, the country, must do A, B, C in regard to mental health.

So it was giving a lot of powers but it was devoid of human rights, completely. Now Act 17, 2003 were supposed to give that impetus to human rights. In other words, the core of the whole legislation on mental health is about human rights, seeing that we are dealing with vulnerable people. Now that I any of that is that in that process, all the powers which the Minister had, sometimes within the powers of the president, were taken down to the level of the MEC, and the MEC was given all those powers in terms of the Mental Health Act 2003, so that they could as the existing currently do that.

And the objectives were noble. It was thought that the Minister is sitting high up there. The service, all the services are provinces so it is better to take the authority to the provinces so that when people will have to implement, they do not have to wait for authority from above, either from the president or the Minister. They have got the authority right in their hands. So those powers were taken down from the National to the provincial level.

Now, this document obviously was based on that but they were very serious checks and balances, said that the power is now devolved to provinces. We had to put in lots of checks and balances, and one of the most important powerful check and balance, Justice, is the mental review boards.

ADV TEBOGO HUTAMO: Sorry to interrupt you. Before you get to that point, can you just explain the organisation of the mental health services in relation to that document at page 22? And in the record it would be File 4 page 1368.

MINISTER AARON MOTSOALEDI: Oh, yes. You know, this document is quite big but page 22 is a summary of what this document is all about. Yes, Counsel, it actually outlines the organisation of services in terms of what Dr Margaret Chan has said. And if you look at it, to make it easier they put it in the form of a pyramid so that even if you do not read this document you just look at this pyramid. It summarises for you.

10 At the tip of the pyramid, right at the top, it says, “Long stay services and specialist psychiatric services.” And I will tell you the significance of that because they has been this word called deinstitutionalisation, repeated all the time in this saga, deinstitutionalisation, deinstitutionalisation. I am actually trying to scratch my mind to find out where this word comes from because I am not sure.

15 No, no, I am not joking. I am not sure, Justice, because if you look at the mental health action plan 2013 to 2020 of the World Health Organisation, it does not actually mention the word “deinstitutionalisation.” They talk about community-based mental health care services. That does not mean deinstitutionalisation and the top of the pyramid says “long stay facilities and specialist psychiatric services” simply
20 because not all mental health users can ever be deinstitutionalised or be sent to the community.

There are people will have to be in an institution, unfortunately, unpalatable as it is. In other words, you cannot take a collective decision that “I am now deinstitutionalising or I am doing community health care and everybody must leave an institution.” They are just people will not leave. Justice, I am sure you are aware. The correctional service is the same. There are people who are in jail, unfortunately– I am using a very wrong analogy because these people are not in jail. So let me leave it. My apologies.

But I just want to show that there are people who will, unfortunately, against all our wishes have to stay in an institution because of their condition. Now below that tip of the pyramid follows two things which are parallel. One is psychiatric services in general hospitals, that you can actually provide psychiatric services in general hospital like any other hospital rather than a special psychiatric hospital. The next to it, it says, “community mental health services,” which is what the document of the World Health Organisation is all about; community mental health services.

Then below that, it says, “primary health care services for mental health.” I am sure you are aware of the definitional primary health care. It is a basic healthcare service that has got three characteristics. One is prevention of diseases. Two is promotion of health. Three is when you use the word “health is system,” you must stop at the bottom and not at the top, not at [indistinct] service, et cetera.

You must start with the clinics. That is why we are in the process of improving our clinics to become ideal. After that, as you move to the base of the pyramid is “informal community care,” where you can provide mental health care

services informally in communities. And at the bottom of the pyramid it says, “self care.” This is how mental health services will be provided in the country.

And as you can see, the word “deinstitutionalisation” does not appear on this pyramid, unfortunately. That is why so sometimes I get confused as to where where did it ever emerged? Where was it started being used efficiently in government documents because I am not sure. Let me leave it. I am not sure.

ARBITRATOR JUSTICE MOSENEKE: Would informal community care imply accommodation and institutionalisation? In other words, is that a layer of service inclusive of continual care of chronic patients or is it just a layer that will give support? In other words, simpler put [intervenes]

MINISTER AARON MOTSOALEDI: What it means, Justice, is that all these layers of the pyramid can coexist when you provide mental health services. It is a guidance that all of them can coexist and they can all be applied, depending on a particular mental health care user and the depending on a particular setting. But what I am saying is that the work deinstitutionalisation as it– s because my worry, Justice, is that people believe deinstitutionalisation means moving people out of the top layer, the tip, the long stay facilities and specialised psychiatric services.

ARBITRATOR JUSTICE MOSENEKE: We would an NGO fit in the pyramid, if anywhere?

MINISTER AARON MOTSOALEDI: Well, according to this document, Justice, it says the government must fund NGOs in order for the NGOs to capacitate these layers. For instance, if you think that there is a community mental health service

provided in a particular community, you can find an NGO that goes to train those people on how to do it. You can also, if self-care, it means a person who is better of who I understand that is mentally ill but need to self-care and support, s you can get NGOs to help them.

5 Now I heard argument that an NGOs can also, because there are many already in the country who are dealing with mental health care services, but unfortunately, in this booklet we did not necessarily put that directly because, Justice, when you remove a person from a big mental institution and put them in an NGO, that is still institutionalisation.

10 You are just deinstitutionalising from a bigger institution to a smaller one, which might even be more restrictive. If you look at the Ombud's report, he is saying so that he is worried that mental health care users were moved from all free environment which is bigger to a small house. I heard you, Chief Justice, congratulating the MEC for health for you coming from the same village in 15Atteridgeville. Unfortunately, that is where most of the people health care users died. Oh, that was not meant to be– Chief Justice, I hope that– did not mean to be any pun or what. I am just saying so. Not if you have read about the Ombud about whether died [intervenes]

ARBITRATOR JUSTICE MOSENEKE: I am not sure the pun was unintended, 20Minister.

MINISTER AARON MOTSOALEDI: Absolutely unintended, Justice.

ARBITRATOR JUSTICE MOSENEKE: I am not certain.

MINISTER AARON MOTSOALEDI: I realised it when they there are laughing, absolutely. I was just worried to give this example. Whether died is restricted. You just remove them from an institution where they were freer, they could move about to a— I mean, the reason that I am quoting Atteridgeville, you know the yards there. 5The apartheid system which was putting people in areas where the yards of very small, how then do you put mental health care users in that institution? It is just something that cannot happen or not be allowed.

ARBITRATOR JUSTICE MOSENEKE: To get to the next step, Minister, the takeaway here is that decision was totally irrational and inconsistent, certainly, with 10the policy framework and also obviously, plainly inconsistent with the Mental Healthcare Act, is it not so?

MINISTER AARON MOTSOALEDI: Absolutely.

ARBITRATOR JUSTICE MOSENEKE: Ja.

MINISTER AARON MOTSOALEDI: And that appears in the Ombud's report.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes, in the Ombud's report and the decision to shut down all of Life Esidimeni is equally irrational from what you are saying. You are urging us to take away that you cannot possibly have everybody being suitable to be moved to an NGO.

MINISTER AARON MOTSOALEDI: Well, you could, you can close Life Esidimeni 20if there are compelling reasons but then with the understanding that people, if you send them to communities, some of them need to go to an institution. And we have got institutions which I are equal to Life Esidimeni, if not better like Sterkfontein and

you know, Weskoppies, et cetera, which have been there for ages we people have not experienced what date unions when they move out. So the closure itself, if there are very good compelling reasons, is not necessarily wrong but the question is, "Where are you taking people to?"

5 **ARBITRATOR JUSTICE MOSENEKE:** Yes. That must be correct. I do not want to digress unduly. I think Counsel you must go ahead. And we know that Sadec went to all the institutions, the excellent once you are talking about, and they were full and they have long waiting lists. So the decision to close Life Esidimeni was irrational just from that point of view alone because there was no institution that in
10 fact could receive chronic patients from the Life Esidimeni.

MINISTER AARON MOTSOALEDI: There is a structure specifically established in terms of the which should have done that, not Sadec actually. There is a legal structure and it is not only a structure, it's it is a quasi judicial structure. And in my layman's terms, Justice, I understand a quasi judicial structure, the only person
15 more powerful than in this whole house would be yourself as a judge. All the others, including myself, will fall under that quasi judicial structure in terms of they are deficient.

They are the ones who should have visited there. If somebody saying, "I want to send of these patients to Sterkfontein," they are the ones who should have
20 gone there and they are called the mental health review board. The review board they are the ones who should have— they had powers. Sadec did not have powers. They just work in mental health. They can just advise. But that mental health review board has got powers to go and say, "No, it cannot happen. We went to

Sterkfontein and this and that reason. No, this cannot happen. So nobody can go there.”

ADV TEBOGO HUTAMO: Minister, we have come to know that when Life Esidimeni was closed down, the mental health care users were sent to various 5NGOs. You have just mentioned the mental health review board as a body which should have intervened during that transfer. I just want you to elaborate further on that matter with reference to a document, which is supposed to be before you. We have marked it ELAH 170. It has been circulated.

MINISTER AARON MOTSOALEDI: This blue one?

10**ADV TEBOGO HUTAMO:** Yes.

MINISTER AARON MOTSOALEDI: Yes.

ADV TEBOGO HUTAMO: If you can proceed to elaborate as to how could they have assisted or intervened when these mental health care users were removed from Life Esidimeni. We will deal with when, the date during which you have 15become aware but like if you can just try and assist and elaborate on the roles of the mental health review board.

MINISTER AARON MOTSOALEDI: Through you, Justice, I want to put it on record that of all the checks and balances to safeguard the rights of mental health users in terms of Act 17, 2003 which specifically, amongst other things, was 20established– I mean, the mental preview board, the act was specifically saying the act is being enacted, one of the main reasons being to establish mental health

review board. If there is any structure that was specifically place to protect the rights of mental health care users, it is the mental health review board.

And to that extent, in 2007 the Department of Health produced a document, “mental health review board orientation guideline and procedure manual.” That was long before I came into the Department of Health because the forward to this document was written by Deputy Minister Nozizwe Madlala-Routledge, who was the deputy Minister at that time in 2007 just to emphasise the powers which was been given the mental health review board.

ARBITRATOR JUSTICE MOSENEKE: But no, Minister, let me just come in there late in the day. The evidence shows us that that review board is completely. It believed it was hired by the MEC. It believed that it was simply on a payroll and they are there to do they work. So I wonder how much time we are going to spend on that. The evidence shows that they collapsed completely, or misunderstood their role and in fact, because of their inaction all these safeguards were never help anybody, even if– and they worsened the position of the mental health care users. So we have to decide just how much time was in the framework in the face of this devastation.

MINISTER AARON MOTSOALEDI: I will spend a few minutes.

ARBITRATOR JUSTICE MOSENEKE: Yes, certainly.

MINISTER AARON MOTSOALEDI: I think it is important, Justice, because I will tell you why. In the Ombud’s report it says the Gauteng mental health review board was [indistinct] and the Ombud recommended that the chairperson be charged.

And the chairperson went through that DC and was not found guilty. And I think we discussed with the MEC that we need to review. Actually, more than the Ombud, I am, as I am sitting here, I am surprised to why this should just be a neglect of duty.

I suspect it is a criminal conduct which must be charged criminally. And I will tell you that, and I am saying this with all due respect, Justice, what happens if a judge fails to perform their duty? I am sure you know but if a judge who is supposed to sit on a case that will save human beings dismally fails to discharge the duties to an extent that those human beings perish, and I want to read just four lines. In other words, it is short of four paragraphs. I am reading it in lines. In the introduction of this document, this guiding document, Deputy Minister Routledge says:

“In this orientation guidance and procedure manual, we examined the context of the establishment of the review boards, why there are critical to promoting human rights and justice, and how they can effectively function in the best interest of users,”

She goes on to say:

“As a quasi judicial authority, board has significant legal powers that must be administered with the knowledge and understanding of the intention and spirit of Mental Healthcare Act, as well as international and regional treaties and guidelines, and informed the existence of function...”

You know, this is what she was saying. And now goes on to say, this is the third one am reading so I am not going to take a very long time. It goes on to say:

5 “They should adopt an attitude of active inquiry. This means looking beyond the documents and other evidence before them in order to assist whether particular recommendations or decisions are indeed in the best interest of users or whether they reflect no more than the usual way of doing things or for the convenience of others.”

Meaning others rather than mental health care users. And it ends by saying:

10 “In particular vigilance is needed in the case of users who have been receiving care, treatment, and rehabilitation over extended periods of time.”

To me, this speaks directly to Life Esidimeni. That particular vigilance in that case because these are users which have been there for a long time. The last one I want
15 to read, it says:

20 “They should be seen as independent in reaching decisions. This means taking an impartial and unbiased approach and be open to hearing and weighing a variety of standpoints, including those of the user himself or herself, before making a decision. This place is particular demands on preview board members, more so if there are mental health will happen to be in the employee of the state. They need to ensure that no

questions can be raised regarding their independence in considering cases involving state institutions.”

This I believe— now, I understand some said they did not know their functions. They did not know that this function exist. They allowed Dr Manamela to appoint them as public servants. I will not easily accept that, Justice. They were appointed by the MEC Julie in terms of the law in November.

ADV TEBOGO HUTAMO: Minister, there is a document which has been placed before you. It is ELAH 171.

MINISTER AARON MOTSOALEDI: Ja.

10 **ADV TEBOGO HUTAMO:** Are you able to deal with that document? You recognise that document?

MINISTER AARON MOTSOALEDI: Yes, because I was saying— yes, it is exactly what I was talking about. I will not really accept it. They were appointed in November 2015. Their first meeting in Gauteng was on the 6th of January 2016, 15 and in the minutes they say a copy of this guideline was distributed all members and they were requested to go through it. And the resolution of that meeting says, “The orientation guideline will be then discussed in the next meeting.” That means take this copy, go and study it. In the next meeting we then discuss it.

ARBITRATOR JUSTICE MOSENEKE: No, we know, Minister. Thank you for 20 that. We have spent quite a bit of time already with them here in interrogating the framework and we are very alive to it because Counsel spend a lot of time on it.

Moribund means, you know better than us, you are a doctor, *moribund* means near dead.

MINISTER AARON MOTSOALEDI: Yes. And am saying I wonder whether that near dead is not a criminal activity for people of that nature.

5**ARBITRATOR JUSTICE MOSENEKE:** Well, we have looked at the provisions and in fact, I do not want to express myself now. Still being a judge I think I will give it there but we hear the point. They came here and said they believe they were employed and they received R30 000 a month or something like that and were happy to do that. But, Counsel, you have to decide which of the areas which the
10 Minister is going to canvass. It is nearly 7 p.m. and we are on the last witness. So you have to pick your priorities on what would be appropriate as a closing evidence for this hearing, which has been here for many, many weeks.

ADV TEBOGO HUTAMO: We are mindful of the [intervenes]

ARBITRATOR JUSTICE MOSENEKE: But you are the one to guide us.

15**ADV TEBOGO HUTAMO:** We are mindful of the time and taking into account that is going to be cross-examination, I did not want to approach the examination in chief on the assumption that questions are not going to be asked. The witness will have to cover what he considers to be important aspects in order to educate all of us in relation to matters which are very important these proceedings.

20**ARBITRATOR JUSTICE MOSENEKE:** Yes. Very well. It is a very senior witness and that is why we allow the latitude. And the Minister is aware of what has been said up to now and what is appropriate at this stage.

ADV TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: So we should maybe allow him free [indistinct] but to get to the issues that he would really like to express.

ADV TEBOGO HUTAMO: Thank you, Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** The facts have all been put before us. We have loads and loads of facts already. So I leave to you and the Minister but choose what is narrow, appropriate for the last witness for the day.

ADV TEBOGO HUTAMO: Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: He is arguably the most senior official to
10testify before us.

ADV TEBOGO HUTAMO: I will do so, Justice, to limit the questions.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV TEBOGO HUTAMO: Minister, we have come to know that the mental health care users or some of them were transferred from life is really without their records,
15and they were transferred to various NGOs. You have been dealing with issues relating to checks and balances. Can you please just assist us to explain what was the role of the doctors at Life Esidimeni when patients were transferred from the institutions?

MINISTER AARON MOTSOLEDI: I would not know because I was not aware
20that there are actually doing that. But what I do know is the role of discharging any patient, whether a mental healthcare user or any other patient, because I have

worked through that and it has always been sore point, Justice, doctors discharge patients not on the basis of groups. That is not allowed.

You cannot sit as a doctor and say, "This group of patients I am discharging them because of this and that reason." It is patient must be discharged as an individual and the decision to discharge is the decision of the doctor and the doctor only, and it is based on clinical grounds and no other ground whatsoever, just clinical. And that Dr can take the decision and nobody, even the Minister can stop the doctor.

For instance, if I go to a hospital and say, "This ICU is full and the government does not money. Please discharge this patient," no doctor is allowed to do that or no doctor should actually do that. If I insist, because in the Public Service Act says if somebody who is senior to you forces you to do something that is illegal, unethical or bordering on corruption or fraud, what you do, and I have made this a standard question when I interview people. In the public services says done in writing. Nobody must instruct you verbally to do something like that.

It is not allowed. You just refuse. It must be done in writing. Now, if I then write and say, "Discharge these people because the ICU is full and all that," the doctor all to say, "No, I cannot." And what would it happen? For instance, if it is your wife, Justice, will you come and say, "Please discharge my wife. I want her home." Yes, "I will her home," and you give very good reasons and the doctor examines the lady and clinically says, "No, she is not ready for discharge," and you had to insist the law provides for what is called an RHT. He must then give you a form called RHT, refuse hospital treatment. You sign it. Then the doctor is in the

clear because he is not discharging you. You are refusing hospital treatment. He is not prepared to discharge you. And I believe in my, in this case, sorry, in any case where patients need to be discharged, I believe in that. I know, Justice, you are saying this is late in the day but I want to give you an example because it happened 5to me and [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Well, I am worried. First was my village. Now it is my wife.

MINISTER AARON MOTSOALEDI: Apologies once more.

ARBITRATOR JUSTICE MOSENEKE: I fear that the next example that will come 10[intervenes]

MINISTER AARON MOTSOALEDI: No, no, no. It will not come into [indistinct] but is very important example. In 1981, the then president of South Africa, in apartheid South Africa, P.W. Botha, wanted to do something called consolidation of Homeland, that means is redrawing borders. There is a hospital in Limpopo called 15Shiluvane, which is a Shangaan name, but the hospital was falling Leboa government.

The consolidation of borders made it fall under Kasangulu government. I was still the medical student but you are made to understand patients were taken out of their to their own tribal group hospital in terms of P.W. Botha's rule. That I 20was not involved in but I came to know about it was in 1985. I was working Mapulaneng Hospital. Five members of the Leboa legislative assembly arrived in the hospital and said they want all the Shangaans to be discharged because there

are being because they are paying revenge for what they have done to the Pedis, and I am a Pedi by the way, but they did to the Pedis

in 1981 when I was a student. I was superintendent called us. Other doctors were switch doctors. They knew nothing about our politics. They were only four of us from South Africa who were Africans. Then he told us that no, "The are these guys. They come from Parliament. This you must discharge the people." We said, "No, never. The only reason we will discharging patients and individually is on grounds and nothing else.

They cannot be any other rule, whether it is from Parliament or not," and we told them we are not going to discharge them. And they said they will fire us and all that. And we said, "No, you go discharge them. When you are finished, when the last patient leaves we leave with them. We will never work in this hospital. Go and look for jobs elsewhere." I am trying to show the doctors have got power to protect patients from any artificial discharge, and that is our second mechanism, just like the mental health review board.

And all those mechanisms were breached. That is what makes me cry about the situation that we put up act which protect human rights and the human rights are completely thrown at the window. All the systems that you put in place, people just ignore them. So it is not, I am not being a populist and when I say I am wondering whether this does not hold on criminal activity because these are the people who have got more power than me. Why am I saying so? The quasi judicial mental review board has got more powers. The doctor in discharging a patient has got

more power than me as a Minister. I cannot instruct that doctor to say, "Discharge this patient," if they think it is not justified.

ADV TEBOGO HUTAMO: Minister, the doctors at Life Esidimeni were relying on the cancellation of the contract that it had with the Department. What will be your response from the explanation that you have given?

MINISTER AARON MOTSOALEDI: The cancellation of a contract is a government or governance or political activity whichever way you take it but I am maintaining that regard this, my relationship with the patient is not. That is why there is a Hippocratic oath between me and the patient. I might be having a contract with my employer will instruct me but my contract with a patient is stronger than my contract with the employer because this patient's life is in my hands.

ARBITRATOR JUSTICE MOSENEKE: You see, Counsel, is the question that will does the question implies that doctors at Life Esidimeni discharged patients? The evidence seems to be different though, is it not?

ADV TEBOGO HUTAMO: Justice, like I am trying to lead the witness on that aspect that he has indicated in relation to the checks and balances of the doctors at institutions at which they have been looked after. So I am just trying to make a comparison in relation to the doctors at Life Esidimeni as to whether any obligation to have either refused to allow the patients from leaving [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Well, the evidence before us is the was no formal process of a discharge, is it not?

ADV TEBOGO HUTAMO: Yes, like [intervenes]

ARBITRATOR JUSTICE MOSENEKE: You cannot point a process of discharge on the evidence. Can one do that? The patients were basically portioned out [intervenes] contained or whatever the name was but I mean, we did not have a formal process really patient individually was examined and it was certified that they were properly due for a discharge from the facility.

The facility was shut down and the patients were carted in a variety of modes of transport two different places where they were admitted again without any doctors. I thought that is the evidence.

ADV TEBOGO HUTAMO: Well, Justice, what we know is that the doctors at Life Esidimeni were aware when the patients were being transferred. So I am trying to test with the witness as to whether could they have been any role on their part when the patients were being we removed from the facility.

ARBITRATOR JUSTICE MOSENEKE: And is the implication that they ought to have resisted?

15 **ADV TEBOGO HUTAMO:** Well, I am trying to test that with the witness.

ARBITRATOR JUSTICE MOSENEKE: Okay.

MINISTER AARON MOTSOLEDI: Justice, I have just outlined the role that doctors play. If it was me, I will not discharge anybody because I have been instructed to do so unduly by any authority whatsoever, unless, unless, and I am 20 emphasising, unless it is an order of court as you know, in which case I cannot stand in contempt of court. So I was not speaking about Life Esidimeni specifically. I was speaking about the duties of each and doctor in discharge.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MINISTER AARON MOTSOALEDI: But if the patient is taken away from the hospital in any other activity, like the example I have given, if the members of Leboa government at that time got in and took anybody and threw them out, it is not me because I did not sign there and say, "Clinically I am discharging this patient."

ARBITRATOR JUSTICE MOSENEKE: To cut to the chase, we getting it second hand, you got it second hand like us, the evidence is quite clear. It was a brutal process. Patients were bundled up with the little belongings into a variety of vehicles, and they were portioned and parcel of different NGOs. And that the admissions had no proper process where doctors were involved except possibly a few instances, and NGOs there were no doctors in any rate.

MINISTER AARON MOTSOALEDI: In that case, they were not discharges and what the police need to investigate is whether that is an abduction. Yes, honestly they need to, whether people have been abducted or kidnapped or whatever, the police need to find out because it means legally they were never discharge [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Yes, there are many breaches of the Mental Healthcare Act, Doctor, no doubt and you know them better than all of us and I hope the police will go and look. There are many offences. That statute creates a number of offences, and I am sure the police and the NDPP will go and look carefully at the evidence we already have. Counsel, where next do we go?

ADV TEBOGO HUTAMO: Minister, it is not deal with what has been termed the marathon project, the project which was responsible for the transfer of mental healthcare users. Can you just indicate at what stage or when did you become aware of the number of deaths which resulted from the implementation of the 5marathon project?

MINISTER AARON MOTSOALEDI: I became aware on the 13th of September when the then MEC was answering and questioning the legislator and said 36 people have died in NGOs. That is when I became aware that people have died and number was put at 36.

10**ADV TEBOGO HUTAMO:** Was there at any stage that any member of the civil society could have alerted you of the impending implementation of the marathon project?

MINISTER AARON MOTSOALEDI: That there is something called the Gauteng marathon project, I read it for the first time in the Ombud's report that there was a 15marathon, a project called a marathon project. The part that I knew was that Section 27 did approached the DG at the end of 2015 about the issue of the contract between Life Esidimeni and Gauteng Department of Health.

And the DG informed me about it and no, she is taking up the matter with an HOD because it looked like an administrative programmatic issue rather than an 20important governance or political issue, which I may say, which decision must be taken at a political level. She said no, she is contacting the HOD and they are dealing with it.

Then from there, I think because they were threatening to take me and the Premier of Gauteng to court, she said, "Now, what has my minister done?" And he then said, "No, it is this type of project but I will deal with the HOD." And from what I heard, the DG then contacted the HOD, and both Section 27 and Gauteng Department met. And instead of going to court on the 22nd of November, they reached an out-of-court settlement and drew a document of what is going to happen, which look very good from what I have heard and from when I saw that later, that it was a very good document.

It was agreements which in the presentation to the Ombuds, the DG says she regrets why she did not insist that it be an order of court. And she did not insist because that then HOD of Gauteng, Dr Selebano, said, "DG, why are we going to be forced to have this as an order of court because we are agreeing. We are agreeing with Six and 27. We are agreeing that we will work together. We are agreeing that we will do A, B, C." That is the part I knew.

15 ADV TEBOGO HUTAMO: You have just mentioned that the national director of health was in contact with Section 27 in relation to these court proceedings.

MINISTER AARON MOTSOALEDI: The director-general want to say.

ADV TEBOGO HUTAMO: In the Department of health.

MINISTER AARON MOTSOALEDI: Yes, director-general or director.

20 ADV TEBOGO HUTAMO: Yes.

MINISTER AARON MOTSOALEDI: Yes.

ADV TEBOGO HUTAMO: I just want to find out from you did you ever make any contact with any member of Section 27 in relation to those matters?

MINISTER AARON MOTSOALEDI: You mean at that time before the court case, et cetera?

5**ADV TEBOGO HUTAMO:** Yes.45

MINISTER AARON MOTSOALEDI: I— no, I cannot remember that. I cannot remember that except in the letter that we have written to tell the national department about this issue, which matter I said was taken over by the DG. The
10contact which I have remember very well was when Mr Mark Haywood phoned me after these announcements in the legislator because if my memory serves me well, he was distressed as much as I was distressed about what has happened.

ADV TEBOGO HUTAMO: Yes. So you spoke to Mark Haywood after the announcement.

15**MINISTER AARON MOTSOALEDI:** I remember.

ADV TEBOGO HUTAMO: Yes.

MINISTER AARON MOTSOALEDI: I speak to him quite often, a lot of times but I seem to remember that yes, there was a discussion after the death. But the verbal discussion before that I do not remember it.

20**ADV TEBOGO HUTAMO:** Very well. Let us then deal with the measures or steps that you have taken once you have learned that the tragedy had actually occurred.

MINISTER AARON MOTSOALEDI: Well the first thing I wanted to understand ...

ADV. TEBOGO HUTAMO: Okay.

MINISTER AARON MOTSOALEDI: I can't remember that, except the letter that they have written to tell the national department about this issue.

5**ADV. TEBOGO HUTAMO:** Yes.

MINISTER AARON MOTSOALEDI: Which matter was taken over by the DG. The conduct which I remember very well was when Mr. Mark Heywood phoned me after these announcements in the legislature. Because if my memory serves very well, he was distressed as much as what I was distressed about what has happened.

10**ADV. TEBOGO HUTAMO:** So you spoke to Mark Heywood after the announcement.

MINISTER AARON MOTSOALEDI: I remember, I speak to him quite often, lots of times.

ADV. TEBOGO HUTAMO: Yes.

15**MINISTER AARON MOTSOALEDI:** But I seem to remember that, yes, there was a discussion after the death. But the verbal discussion before that, I don't remember it.

ADV. TEBOGO HUTAMO: Very well. Let's then deal with the measures or steps that you have taken once you have learned that this tragedy had actually occurred.

20**MINISTER AARON MOTSOALEDI:** Well the first thing that I wanted to understand, what actually happened, how do people go and die in NGOs in such large numbers.

I wanted to understand that from the MEC, because also it occurred to me that we've got a National Health Council, that's my other point of contact with the MECs, it is a statutory structure, National Health Council, which I chair. It consists of all the MECs, all the HODs, SALGA representative and the head of South African military health service or the sergeant general, where every huge project is decided there and must be discussed there. so I don't remember in the National Health Council, us sitting and discussing a huge project where large number of people will be taken to NGOs to an extent where they day. So fortunately the MEC, the then MEC had an appointment with me to talk about Nelson Mandela Children Hospital, which was on the 14th, so I waited for her. When she came I told her... I asked her first about this issue that I heard that in the legislature you announced the death of 36 people which is something that is quite scary and horrible that something like that must happen. We need to know and hence I told her that I am going to ask the Ombud to conduct an investigation – that was on the 14th. I said I will ask the Ombud, I am just informing you, because the Ombud might approach you to cooperation. And the reason that I thought about the Ombud, Justice, was because the Ombud was specifically the office... to establish that office of Ombud was specifically my idea. I was getting tired of people who actually receive bad treatment from health care facilities, they run to newspapers, there are headlines for a week and they forget about them, what happened. Then I said we need to have a public protector for health, that's the word I used, the public protector for health, the person who works like a public protector to protect specifically health, people who use our health facilities, not only mental health users. And the Ombud was then established by

amendment of National Health Act 2003. We put in an amendment. He was appointed in terms of Section 81 of that amendment. And coincidentally the Ombud was appointed officially by myself in terms of the Act in June that year. His first ever job was Life Esidimeni. I never knew that he was going to have such a huge impactful job when he was appointed. So I thought about him immediately when this happened and I phoned him. Unfortunately I was on my way to Canada to attend a global fund meeting. I said, Ombud, this is what happened, you must investigate, but because I am on my way to Canada, keep gathering facts, when I come back I will give you an official letter of appointment, not as an Ombud, he was already appointed, I have already given him that letter for appointment specifically to do this job, to outline what you must do. And I did so and I left to Canada. On the 26th when I came back I actually gave him that letter. And the Ombud logs it in, in terms of the act when somebody... By the way, who lodges a complaint with the Ombud? Any member of society, any human being can do so. And once you lodge that complaint with the Ombud, he must log it in, he/she must log it in and give you the log number. And the log number that was given to me was number 230 of 15/9/2016. That number was logged for me and Section 27, for both of us, because the Ombud then said, Minister, while you lodged a complaint, Section 27 also did so. Yours came first, but because you did not put it in writing, Section 27 did so. Your writing only happened on the 26th, I am logging both of you and the log number 230 belongs both to you and Section 27 as the people who have lodged this complaint.

ARBITRATOR, JUSTICE MOSENEKE: Well the MEC says she did, MEC Mahlangu.

MINISTER AARON MOTSOALEDI: She did what?

ARBITRATOR, JUSTICE MOSENEKE: She initiated and instituted a complaint with the Ombud to conduct the investigation.

MINISTER AARON MOTSOALEDI: Well if she did it before me, then I was not aware. I am sure the Ombud can answer that. Because he told me that the log number 230 is for me and Section 27 because we lodged a complaint. He never said anything about the MEC. If he did, I am sure he will be the right one to answer that question, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Council.

ADV. TEBOGO HUTAMO: Thank you Minister. And then once... I mean after having lodged this complaint with the Ombud, what other measures did you take in relation to those mental health care users who were transferred to the NGOs?

MINISTER AARON MOTSOALEDI: I arrived in Canada and then it occurred to me, because I spoke to him on the 14th and we agreed that when I come back I will write him the letter, but he must start gathering facts. I arrived in Canada. It just occurred to me by the way I don't even know the conditions under which these people died and the Ombud is still going to gather facts and wait for me, because I was going to go via New York to attend the United Nations General Assembly. I said what if whatever is killing these people, what if it continues, by the time I came back and... What if it continues? I then realised this is trouble, the Ombud is not

going to help to stop more death. I have got a ministerial advisory committee which has just been appointed in terms of this act and we appointed it, I can't remember the date, it was quite recent, which is chaired by the head of psychiatry at Sefako Makgatho University, Prof Rataemane. I then phoned him and I said, Prof, this has happened, I officially asked the Ombud but I am scared that more people must die. Please, can you over this weekend, visit all the NGOs, especially the ones where lots of people died, see what is happening there and don't wait for anything, this is a state of emergency now. I didn't even know whether if I have got those powers in state of emergency or what. I said close them down immediately, wherever you see there is a possibility of somebody dying, close it down immediately, we'll come and talk about the legalities later. That is what I told him. But then they said no, we need a written document, because it is a serious matter. And right from Canada my office told me it is possible. I then wrote a memo with the purpose, what must happen, the budget, what the committee must do, who must be in the committee and I signed it and I sent it. I then phoned the MEC and Dr Selebano and I told them that I have just appointed the ministerial committee to do work before the Ombud to save lives and I want you to cooperate with them. The MEC then said no, she would like to go with them wherever they are going. I said fine, you can accompany them, because anyway they are going to look for the list of the NGOs from you. I then hear from Prof Rataemane that one of the first NGOs they visited, I don't know in what order they visited, is Precious Angels in Atteridgeville... Unfortunately this is a fact, Justice, it is just a fact. And they found the situation scary and Prof Rataemane phoned me and he said this is absolutely horrendous

and I said close it. He said no you, Minister, and me do not have powers to close any institutions that was contracted by Gauteng, Gauteng must close it, so he spoke to them. And I said what if they refuse for whatever reason, but fortunately they never refused. He asked the HOD. In fact he said when they visited Precious Angels they were with the HOD, Dr Selebano. They told him no close this Precious Angels immediately. And I understand they even reached to the MEC because Dr Selebano, according to Prof Rataemane was doubtful and the MEC said I will close it. And I told them that if she didn't close it, I am going to go to court immediately, because I don't have any legal powers to do that. I was going to ask the court to give me powers to close it. And so Precious Angels was closed immediately. From there four other NGOs was closed by the Ombud as he started seeing that example that even if the report is not yet out, where you see that more human beings might die, we have got to act.

ADV. TEBOGO HUTAMO: What has been your interaction with the Premier of Gauteng in relation to the intervention measures that you had taken?

MINISTER AARON MOTSOALEDI: Of course the Gauteng Premier being the boss of the MEC, I had lots of discussions with him, because I also wanted to understand what does he understand about this. I am not in the Gauteng legislature, he is the most senior person in government. I wanted to ask him what is this whole thing of these people who died. But I said, Premier, the most important thing... because I also have to inform him that I have asked the Ombud to investigate, he must know. But I said the most important thing now is to stop more deaths and we need to do so and I was happy to see in the Ombud's report later,

three months later, that that had actually stopped more deaths from occurring. And I said, Premier, this is what we are going to do, there is the office. That's why if the MEC refused when I said, when the ministerial committee said Precious Angels must be closed, I said I was going to go to court, but obviously I was going to the Premier first, because he has got power over the MEC, not me. And that is another issue which people don't know, they believe we have got powers to instruct MECs. When I told you the executing authority, they might cooperate, they might not. Fortunately in most cases they cooperate, but not in this case of Gauteng, so-called Gauteng Marathon Project, there was no cooperation.

10 **ADV. TEBOGO HUTAMO:** Thank you Minister. As I have said earlier on that you have been requested to proffer an apology to the affected family members. I would like to pause at this juncture to allow the families through their legal representatives to pose any questions to you and you will thereafter render your apology to the family members. Those are my questions in examination, Justice.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you Counsel. Thank you Minister. There are four sets of advocates, so there is going to be a bit of a grind here. Let's see how many questions they have for you.

MINISTER AARON MOTSOALEDI: Okay.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Hassim or Adv. Steyn.

20 **ADV. ADILA HASSIM:** Thank you Justice. Adv. Steyn will conduct the cross-examination.

MINISTER AARON MOTSOALEDI: Advocate?

ADV. NIKKI STEYN: Adv. Steyn, Minister. My name is Nikki Steyn.

MINISTER AARON MOTSOALEDI: Nikki Steyn.

ADV. NIKKI STEYN: And I appear with and am led by Adv. Hassim representing bereaved family members.

5**MINISTER AARON MOTSOALEDI:** Okay.

ADV. NIKKI STEYN: Minister, I would like to start off by thank you on behalf of the family members for appearing at this arbitration and for availing yourself to give evidence and availing yourself at such a late hour. I hope not to keep you too long. I would like to just address two issues with you before we move on. The first being
10 recommendation 14 of the Health Ombud's recommendation. I will read to you the relevant portion. If you would like to follow, it is in file 1 at page 58.

MINISTER AARON MOTSOALEDI: Is this file 1?

ADV. NIKKI STEYN: Somebody will come and give you a copy of file 1.

MINISTER AARON MOTSOALEDI: At page?

15**ADV. NIKKI STEYN:** At page 58.

MINISTER AARON MOTSOALEDI: Oh the file is overfull, it is flowing over. I am sure they will come and rearrange it.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MINISTER AARON MOTSOALEDI: I am sorry. Yes, I can see page 58.

20**ADV. NIKKI STEYN:** Are you at page 58?

MINISTER AARON MOTSOALEDI: Yes.

ADV. NIKKI STEYN: Okay. Minister, you spoke in your evidence in chief about some of the challenges that you faced with the national and provincial, the relationship between the national and provincial health departments. 5 Recommendation 14 of the Ombud reads in part: “there is an urgent need to review the National Health Act of 2003 and the Mental Health Care Act of 2002 to harmonise and bring alignment to different spheres of government.” I take it in the light of your examination in chief that you agree with this recommendation.

MINISTER AARON MOTSOALEDI: Absolutely.

10 **ADV. NIKKI STEYN:** Has this review of the Mental Health Care Act and National Health Act commenced?

MINISTER AARON MOTSOALEDI: Oh yes. In fact I am made to understand that we are likely to get a report by the end of March. It has been done by the Law Reform Commission. Because what the Ombud here is saying is that some of the 15 things in that act have led to this and that is why I am saying it is an irony, the Act was supposed to make sure that human rights, you know, are respected. But it so happened that there was weakness, because the powers were taken from above to a lower level where they thought services were and it led to something like this. So certainly they must be reviewed and they are being reviewed wildly, both the 20 National Health Act and the Mental Health Act. And the DG has just told me, I am speaking under correction from her, that the Law Reform Commission told her that

they would like to give us the first draft in March, because it started immediately after the Ombud's report.

ADV. NIKKI STEYN: Minister, will there be an opportunity for stakeholders and civil society to comment on the draft report?

5**MINISTER AARON MOTSOALEDI:** Oh yes, we can't make a mistake. If we do any bill we will. After what has happened and in terms of the strategic plan which says you must involve civil society, stakeholders, etcetera, we won't make such a mistake, definitely not.

10**ADV. NIKKI STEYN:** Thank you Minister. My final question to you arises in the context of your constitutional obligations and your position as Minister of Health and the question is this, is there anything that you believe you could have done to avoid this terrible tragedy?

15**MINISTER AARON MOTSOALEDI:** Yes. As I said if... had I known that something like this is being planned, first of all I said that it will be discussed in the national health council where all the MECs are, the sergeant general of the military health services, SALGA and all the HODs and all the DDGs at the national department, all of them put together, they would have known whether something like this could have happened or not and I believe it would have been stopped, but unfortunately the matter did not even come there. I don't understand why such a
20big issue could not have come there. And the people who were involved in this, know better, because Justice, when we lodged the biggest HIV counselling and testing campaign, I still remember that very well, we had a whole week retreat in

Mpumalanga where we were outlining when you do such a big thing, what do you do. And I still remember MEC Mahlangu then, because she came twice to the department, she was the MEC from 2009 and in that 2010. I still remember, because she is not a health person, asking very deep questions. And I remember what she asked, what is the side effects, because we were talking about possible side effects of medicines. What is (inaudible) and we said all these things must be discussed thoroughly because we are coming with a huge project. And I want to believe that this should have happened also.

ARBITRATOR, JUSTICE MOSENEKE: Yes, indeed. But the question is a little closer home, Minister. The question is, is there anything as a matter of hindsight, that you could have done, to help prevent the disaster.

MINISTER AARON MOTSOALEDI: Oh yes. If I knew that there was going to be such a disaster, Justice, I will have done a lot. I already told you that one could resort to courts of law, I could have spoken to the Premier and say something like this supposed to happen, you've got powers over the MEC... I would have gone to lots of authorities to make sure that something like this doesn't happen.

ARBITRATOR, JUSTICE MOSENEKE: It is another way of asking, is there an omission that you are able to identify now that would make you say damn if I knew then or oh damn I would have acted differently?

MINISTER AARON MOTSOALEDI: Well maybe after Section 27 wrote to the Department and the DG was dealing with this matter. Because I thought the DG is well capable of dealing with it, maybe... but this is with hindsight... one should have

said hey, can I sit with the DG and ask her if she would like help from me and maybe something might have emerged. But because I thought she is competent enough and also because the agreement between Section 27, I don't think there is any human being, even Section 27 itself, which would have guessed that Gauteng Department of Health would (inaudible) because they completely (inaudible) on what they did and signed and obviously with hindsight I would have advised the DG, please even if they say they are not refusing, they are agreeing, let's be this an order of court, but unfortunately that I didn't do.

ARBITRATOR, JUSTICE MOSENEKE: You see, Minister, the evidence is there were marches, television programmes, press statements, agitation in a wide variety of ways and all of those escaped you certainly or your office until September the 14th. So the natural question – and this is where Counsel is going – is why was it so silent in the National Department of Health?

MINISTER AARON MOTSOLEDI: Well, Chief Justice, that is a very fair question and I am even also asking myself. But these types of things about problems with communities, etcetera, they happen a lot with provinces. And when they believe they are unable to solve those, they come to me. And I was under the impression that all these altercations would be solved at the provincial level, there is a MEC there, there is a premier. If they wanted my help they certainly will come, like Limpopo did and Eastern Cape at some stage. So I will say yes, with hindsight unfortunately after horror has happened, one then thinks back and says oh, maybe one should just have stomped in to ask, even when not being asked.

ARBITRATOR, JUSTICE MOSENEKE: Ja and in all fairness to you also, it was not your direct competence. You started with concurrent powers or competences. So it was a layer, at least one layer removed from you, maybe two layers, maybe three. Very well. Any more questions?

5 **ADV. NIKKI STEYN:** Thank you Justice. Other than to thank the Minister again, that's it from Section 27.

ARBITRATOR, JUSTICE MOSENEKE: Yes, thank you. Adv. Crouse.

ADV. LILLA CROUSE: Thank you, Justice Moseneke. Minister, my name is Lilla Crouse and I appear with my learned friend, Mr. Skibi, on behalf of the survivors of
10 this group. My learned friend for the State said that you are here to apologise for the deaths of the mental health care users. But in fact these proceedings go much further than only the deaths, it is also about the suffering. So I just want to put that on record and I am hoping that you will agree with me that it is not only about deaths.

15 **MINISTER AARON MOTSOLEDI:** Indeed I am aware of that, because it appears like that in the Ombud's recommendation number 17, which also established this ADR mechanism.

ADV. LILLA CROUSE: Minister, I am not going to be very long. I am going to be very brief with you, but there are some issues that I want to just deal with.

20 **ARBITRATOR, JUSTICE MOSENEKE:** It is called death by exhaustion, Counsel. At some point you tire them and they keep quiet, right. Even advocates do ultimately.

ADV. LILLA CROUSE: Justice, I will try to do my duty despite the exhaustion. Minister, if I can take you to ELAH 91, please. It is an exhibit that was handed in. It is exhibit 91, it is ELAH 91. Justice, might I ask that this light that is in my eyes ...intervened.

5**ARBITRATOR, JUSTICE MOSENEKE:** Is it bright in your face?

ADV. LILLA CROUSE: Yes, and I can't read. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: They want you on television, ma'am, that's the reason why.

ADV. LILLA CROUSE: Thank you.

10**ARBITRATOR, JUSTICE MOSENEKE:** If you can just put it a little aside, please camera lady, not right in the face of the advocate. Thank you.

ADV. LILLA CROUSE: Thank you Justice. Minister, do you have a document with the handwritten ELAH 91? It says affidavit by Nompilo Nkosi.

MINISTER AARON MOTSOLEDI: Yes, I have it.

15**ADV. LILLA CROUSE:** If you can turn the pages to the last three pages, you will see there is forwarded conversation.

MINISTER AARON MOTSOLEDI: Three pages?

ADV. LILLA CROUSE: Yes.

MINISTER AARON MOTSOLEDI: The third page is where there are signatures.

20**ADV. LILLA CROUSE:** If you turn to the fourth page after the word affidavit.

MINISTER AARON MOTSOALEDI: Forwarded conversation?

ADV. LILLA CROUSE: Yes, do you see that?

MINISTER AARON MOTSOALEDI: Yes.

ADV. LILLA CROUSE: It says open letter to the Minister, do you see that?

5**MINISTER AARON MOTSOALEDI:** Yes.

ADV. LILLA CROUSE: It is dated the 7th of June 2016 and it is to two officials, Radebe F and Sitho M, do you know those people?

MINISTER AARON MOTSOALEDI: Radebe F, the Radebe F I knew was my spokesperson, but who left long before that date. Sitho M is my PA.

10**ADV. LILLA CROUSE:** Yes. This was an open letter to you. Did this ever come to your knowledge?

MINISTER AARON MOTSOALEDI: No.

ADV. LILLA CROUSE: As a result of this letter wherein Me. Nkosi complaints about the human right violations, this letter or your office must have referred to the
15Cullinan Care and Rehabilitation Centre, because they answered this letter – that is the last page. So basically what I just want from you, did it ever come to your attention?

MINISTER AARON MOTSOALEDI: No, no, unfortunately not.

ADV. LILLA CROUSE: And if it had come to your attention, would you have done
20something about that?

MINISTER AARON MOTSOALEDI: I am not sure what is contained in this letter.

ADV. LILLA CROUSE: Yes, she is basically saying that her brother's constitutional rights are being violated because of this Gauteng Marathon Project.

MINISTER AARON MOTSOALEDI: Yes, I would have found out how they are being violated. Because as I told you the Mental Health Act of 2002 put a specific emphasis on human rights, it's the reason why it was established as against the 1973 act. So I would definitely would have liked to enquire what human right violations are there.

ADV. LILLA CROUSE: Is there any follow-up in your offices for complaints that come in as open letters to you?

MINISTER AARON MOTSOALEDI: Hey, I don't ever remember receiving open letters in my office. But the way my office works, immediately there is if correspondence, there is a lady who logs it in and answered and told them that it has been received. And then it goes to my chief of staff or PA. And of course they go through it, they might decide that this one, the mental health director can deal with it or this one can deal with that. Because sometimes the correspondence is huge, but I have asked them that as much as possible, those things which they seem to be controversial, they must bring them to me first, I am the one who will refer them, but it is very difficult to guide them which ones, but that is how the office works.

ARBITRATOR, JUSTICE MOSENEKE: You see, Minister, we debated this with the Premier earlier and you might be aware of that debate that we had. Leaders

must be responsive and the constitution requires leaders to be responsive. And you can't be responsive if the concerns of the community don't reach leaders, when it is important that leaders know about concerns. And one of the challenges in this arbitration process has been this, many leaders did not hear the voices of those on the ground. An open letter like this... we have other examples at MEC level, we have other examples at Premier level, indeed where there are examples at directorate level where things get managed by more junior people, even in circumstances where you would expect otherwise. Shouldn't there be a rethinking of governance and administration in a way that identifies critical things and juniors don't kick sideways or downwards important things? We had evidence of this, it is quite heartrending and if you find time to read the letter, it was directed at you as an open letter from somebody with a brother moved from Waverly ended up in Cullinan and the consequences were quite painful. Shouldn't there be a rethink of how you identify things that must come to you, if they come from citizens who are in pain?

15 **MINISTER AARON MOTSOALEDI:** Ja, I agree with you, Justice, indeed. It is quite unfortunate but I would like to add that it does not necessarily mean that when my office refers these things to officials then it is the end, it dies. Because quite a number of them are senior, director of mental health, chief director. They will then read these things and they know their job is to advise me. And usually after going through, they will then write a memo. I must also take this opportunity to correct something as I am answering this question, because I have heard that in government nobody takes decisions, they are taken by something called the collective, yes, and I was shocked to hear that because that is not how the State

works. When a decision is going to be taken, Justice, they will write a sort of a submission, what we call a submission, to the Minister. It has got a subject, then a purpose, then a summary and then follows strategic focus on the submission, in other words the annual performance plan and strategic plan. Then there is a thorough discussion which gives all the facts and figures, etcetera. After that you must state relevance to the... no, no, I skipped. You must mention relevance to many other factors like the financial implications, the human resource implications, the legal implications, the communication implication to the public and then from there, there is recommendation. And it must be signed until the DG recommends.

10 And on my part it says approved, not approved or amended and then I sign. Once I sign and I say approved, I am the one who legally has made that decision and that is how usually government works and that is how officials usually communicate with us. Because they advise you and say, Minister, under these conditions we recommend you do A, B, C, and the DG will say I will recommend it to the minister

15 or not or will say, Minister, this is what they have given to me for your approval. And I can say no I am not approving or I am saying I am approving or I am saying I am amending. So it doesn't necessarily mean that that form of communication means it is a dead end, it is not.

ARBITRATOR, JUSTICE MOSENEKE: Well three senior people ducked, they took

20 that route, it was a collective decision, it was a collective decision. Obviously it may have been in consideration of other forms of culpability and liability but what is clear is that somebody must make the decision surely.

MINISTER AARON MOTSOALEDI: Absolutely. Because any official... I don't see any official in government implementing any decision without this document I have mentioned about. Because otherwise government will become an extraordinary useless animal, because how do I know decisions that were made before my time? 5 If there is something that is happening in the department, I need to go back and say let me see how the decision was made. And I asked for a memo like this to see what was the subject, what was the purpose to the minister, what were the discussions, what were the considerations, did the minister approve and why. All those must happen. So it is absolutely not true to say in government that a decision 10 is taken by a collective and we don't know who that collective is. Because otherwise it is a (inaudible), there is (inaudible) in government and I have just informed you one of the things that happened is a concept called executing authority. And I am sure the meaning of the word executing is very clear and very serious.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes. Counsel.

ADV. LILLA CROUSE: Thank you Minister. I am still going to interrogate you a little bit on that a little while later, but I am thankful that you are putting that into perspective. Because some of the government official has definitely not told us the truth on that aspect. Could I just ask, is there any initiative to blacklist NGO 20 managers or workers that has been involved in this project where people have died and could that be a national project or initiative?

MINISTER AARON MOTSOALEDI: You know, Justice, one of the things that is not mentioned here is the issue of licensing, which in the previous act was the minister.

The minister could license NGOs and could withdraw the license. That power was taken, as I said, devolved to the MEC in the province. Now when I looked at what happened in Life Esidimeni when we read the Ombud's report, something terrible happened. Before a minister or MEC gives a license to a NGO, the people who must start first is the municipality, in terms of bi-laws, yes. Because you are going to put people there and treat them, which means it is a mini hospital and you can't just establish a hospital anywhere in any township, I am afraid to mention a name... Yes, in a township anywhere, you can't. The municipality will, in terms of their bi-laws, give permission, because where they are going to check is, is it allowed. I am sure there is something called zoning. Yes, they are supposed to apply zoning regulations. By the time it comes to the department of whether you can give a license or not, the municipality will have told you by zoning we agree. And it even mentions in the zoning regulations you must mention what purpose you want to use this facility for, how many people. They must even send experts to inspect this number of people can fit in here, in which case, if they have done, they would have seen that this is too small to fit so many people. That was not done.

ARBITRATOR, JUSTICE MOSENEKE: Yes, Minister, that is very helpful. But what Counsel is asking is, are you going to blacklist NGOs where this devastation has occurred?

MINISTER AARON MOTSOLEDI: I don't think we'll blacklist them. The police, SIU and the police must investigate. If they must be criminally charged, they will. What we will do is to apply the laws according to the plan, if they apply in future. I mentioned this in parliament and I want to mention it again, because somebody, a

member of parliament said Minister, your officials, the officials in the Department of Gauteng have messed up and you want to put the blame on NGOs, it is unfair. I said I still have to see an adult South African who is not in government, an adult South African who, whether they've got a correct license or not, can just take a 5bakkie and go to a mental health institution and choose people, tie them and load them in the bakkie and say I am going to take care of them. I said that doesn't need any education. Generally in our society, just morally, I don't see any adult doing that, except if that adult has got a criminal mind. So I still want ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: So we are not going to blacklist them, we 10are going to ...intervened.

MINISTER AARON MOTSOALEDI: No, we will say police must follow them. If they find them guilty, the law will take its course. On our side we will say from now onwards no license is issued until we follow all the laws, including the bi-laws of the municipality, including all the provisions of how to give a license – that will be some 15form of blackmail. But just to point and say you we don't, you we don't... I am not sure how just will be that.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you, Justice Moseneke. So are you saying that if one of the NGO owners wants to open a new NGO in Western Cape, they will be 20allowed to do that, even though people have died under their watch?

MINISTER AARON MOTSOALEDI: I don't think they will be allowed.

ADV. LILLA CROUSE: Why not?

MINISTER AARON MOTSOALEDI: Because all these things will come out during the time when you are giving them the license. You will ask them about their previous history, their capacity, etcetera.

ADV. LILLA CROUSE: And that will be built into the licensing. Are you saying that 5that process will be built into the licensing?

MINISTER AARON MOTSOALEDI: Yes, I think so. When we discuss, and I am inviting NGOs to recommend that when we develop the new norms and standards about licensing that people who have done wrong in the past must show why that wrong happened etcetera, etcetera. I am not sure whether you call that blacklisting, 10you know.

ADV. LILLA CROUSE: Yes. Thank you Minister. Can I also ask you, do you know the reason why this Marathon Project has happened?

MINISTER AARON MOTSOALEDI: You know, Counsel, I have been asking myself that question ever since this thing has started, because there is a lot of 15criminality in this whole thing. And in any criminal activity there is usually a motive. I looked left, right and centre what the motive could have been... I am afraid it beats me, up to today. And in parliament they even asked me, could the motive have been money. And I said to subject so many people to what has been subject to until they die, it needs to be billions that we are chasing. I still... so I am puzzled, I 20honestly don't know and that is why it is difficult for me. I thought maybe with the wisdom of Justice Moseneke we may arrive there and say this was the motive. But for me it beats me up to today and I have been thinking about it for more than 18

months now since this thing has happened, what could have been the motive that people do this. Because if you look, there was a clear intention to hide it, even from the national ministry, from the national health council, from the premier, for what motive? It absolutely beats me.

5 **ADV. LILLA CROUSE:** Minister, the reason I am asking this question, I am from the Eastern Cape and at the same time Life Esidimeni facilities was under siege like in Gauteng by the Department of Social Development and frail care patients were also threatened to be placed in non-licensed NGOs, were you aware of that.

MINISTER AARON MOTSOALEDI: When I became aware, the MEC was saying 10 frail care is not Social Development, it is Health, she wanted to send them over to Health. Because I still remember somewhere where they were saying, talking about oxygen cylinders, etcetera.

ADV. LILLA CROUSE: Yes.

MINISTER AARON MOTSOALEDI: I immediately approached the Minister of 15 Social Development and I said please stop this immediately. Maybe it is because we are now fully alert at that time after the strategy of Life Esidimeni, which was a horror. So Eastern Cape couldn't continue. The other province that acted very well is the MEC for Social Development in Limpopo, MEC Joyce Mashamba, because she specifically invited me to come and address the cabinet, because they wanted 20 to move people out of this Life Esidimeni. Coincidentally the hospital I talk about and say there were homeland politics called Shilovani (spelling) was the one where there is Life Esidimeni. And I addressed the cabinet and I told them that this is not

advisable. I sent a team there, the mental health unit nationally to go and inspect what they want to do and for what reason. That is why we were able to stop it. But the two provinces did not hide unfortunately, I mean fortunately. They didn't hide anything, they actually, especially Limpopo said Minister can you help, even if they know it is not my powers, they've got executive authority powers, they still look for advice.

ADV. LILLA CROUSE: Minister, just to correct, it was the court that interdicted the Eastern Cape situation, it wasn't coming from the officials, they were pushing for it until the court made the decision. But what you are telling us now is that there was also a drive against Life Esidimeni in Limpopo. So why was Life Esidimeni targeted in this way?

MINISTER AARON MOTSOALEDI: In Limpopo it was a bit different, I must state, because anyway we don't understand the reason in Gauteng. But in Limpopo it was not government which was targeting Life Esidimeni, it was workers, it was unions, because the unions... remember when you contract Life Esidimeni it employs each workers. So the workers discovered that state employees earn more than them and they wanted to become state employees. And they thought the only way to become state employees is to close Life Esidimeni. And so they mobilised the community to say the level of care there is very poor, it is down and the people need to be moved and be taken over by the State and all of that. So it was a ploy of workers who wanted more benefits than their employer was giving them, so it was not the State. And it is quite unfortunate that in Gauteng they are targeted by the

government, in Limpopo they are targeted by workers unfortunately, but that has since been stopped.

ADV. LILLA CROUSE: It seems to me that there was some orchestrated effort to close Life Esidimeni in South Africa, would you agree with that?

5**MINISTER AARON MOTSOALEDI:** I am not sure about that. It sounds like a conspiracy theory, unless I see where the conspiracy came from, I am not sure. Because these are isolated incidents and there is no relationship.

ADV. LILLA CROUSE: No, there is a relationship because it is all Life Esidimeni, with respect, Minister. But let's move on to my last point.

10**MINISTER AARON MOTSOALEDI:** It is possible.

ADV. LILLA CROUSE: Yes.

MINISTER AARON MOTSOALEDI: But I can't see that relationship, maybe you are seeing it.

ADV. LILLA CROUSE: Minister, I want to go back to Justice Moseneke's question
15to you about hearing the voices of the people. And I want to speak to you specifically about court cases. And what we have, we have a court case here where the Department has put untruths before the court and the court didn't protect ...intervened.

MINISTER AARON MOTSOALEDI: The Department has put?

20**ADV. LILLA CROUSE:** Untruths, they lied in the court.

MINISTER AARON MOTSOALEDI: Which department?

ADV. LILLA CROUSE: Your department, your mental ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: You mean the provincial department now.

ADV. LILLA CROUSE: Yes.

MINISTER AARON MOTSOALEDI: The provincial department?

5**ADV. LILLA CROUSE:** Yes.

MINISTER AARON MOTSOALEDI: Yes, not my department, the provincial one.

ADV. LILLA CROUSE: You've explained that to us, Minister, I take your point.

MINISTER AARON MOTSOALEDI: Okay fine.

ADV. LILLA CROUSE: My question to you is we have Section 27's court case
10saying you are not adhering to our agreement. And in that court case lies are told
and the court comes to the wrong decision. Then we have a court case that is lying
in front of you, it is a thick document, it is Siyabadinga Elderly and Disabled versus
the MEC of Gauteng. And in that affidavit or in that document, again the
Department is not truthful with the court and they take technical points. And again
15the mental health care users are not protected. Now my question to you is this, and
I am going to interrupt myself just a little bit – I do a lot of work against the
government and it is virtually impossible ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: No, you must explain, you mean litigation
against the government now.

20**ADV. LILLA CROUSE:** Yes. I do a lot of litigation. It is virtually impossible to get
personal service on a minister. And you are not a lawyer and I accept that, but

without personal service you can't hold the minister accountable for the orders that you get. Now my question to you is, how are we going to get government to be responsive through the executive to court cases firstly and then if you can also say how are we going to allow human rights violations to come to the attention of the executive? If you can answer those two questions.

MINISTER AARON MOTSOALEDI: Counsel, can you explain to me, because yes I am a little bit confused there. What do you mean by servicing the minister?

ADV. LILLA CROUSE: When you, in terms of the State Liability Act, the minister is always a party to government if you sue the government.

10**MINISTER AARON MOTSOALEDI:** Yes, yes, for anything.

ADV. LILLA CROUSE: For most of the things. Now when you sue the government, you have to give those court papers via the sheriff to the minister's office. You also go to the state attorney but more often you also go to the minister, even though the state attorney would be involved, they don't represent the minister, 15because the minister don't even know about cases against them. And I want to know how do we change that.

ARBITRATOR, JUSTICE MOSENEKE: I find the question quite confusing though, Counsel. Isn't it so that State Liability Act provides and permits service of a minister on state attorneys?

20**ADV. LILLA CROUSE:** Yes, the rules are being changed in that aspect, Justice. They are now dual or very soon it will be dual service. But the problem lies therein, and maybe if I can just... I will also give you half of my fee, Justice, to formulate my

questions. But what happens is you get an order against the minister, but you can't execute on it because there wasn't personal service on the minister and that happens all the time.

ARBITRATOR, JUSTICE MOSENEKE: I haven't heard that ever. I hear the point and they may have been changing the law. If there is due service and office which the law identifies as place, if you like, (inaudible), defined by law like a State Liability Act or the State Attorneys Act, then the problem might go away. I don't know how this minister helps us about issues of service.

ADV. LILLA CROUSE: Yes, no, what I am putting to the minister is, how can the executive be made aware of court cases so that junior officials are not dealing with issues, especially of human rights.

ARBITRATOR, JUSTICE MOSENEKE: Ja that is a legitimate enquiry. It has been clear in the evidence that there will be service of important claims against even political principles. We have examples here of the MEC, one of the premier and indeed possibly in your department where the principals themselves never know that court processes or papers were served. And therefore, even if you were to confront them, they will say I didn't know, I didn't give instructions to defend, it must have been my staff. So Counsel says, how do we make sure that in, especially in human right breaches, principals come to know of crucial cases against their departments?

MINISTER AARON MOTSOALEDI: Yes, indeed Justice, it used to be like that whereby some cases even get lost in court and we hear that there is an appeal and

you knew nothing about it. Now the present process in the department is that even if I don't know this memo that I have mentioned, the legal unit has been instructed that once they receive any... because anybody who is litigated in any part of the country, as long as they work in Health... even if your driver knocks another, you know, driving a government car and knocks another car and they want a R1 000, the minister is cited. So what the team does is to write this memo and give me advice and say, Minister, in this case don't defend or we are writing them to remove you, because you are not supposed to be party, they cited you wrongly. Or they are ask you that we are going on to defend, we'll tell the state law advisors to defend and I approve as I have mentioned here, because they would have mentioned all the facts.

ADV. LILLA CROUSE: Minister, are you saying that all cases come to your attention then?

MINISTER AARON MOTSOALEDI: Well not all cases, most I will say, because some of them still don't come. But I am just saying we have set up a new process. Remember this also is some form of culture, so we are trying to change that culture. So I will say most cases. It is better than it used to be in the beginning. I have been in Health for nine years now, it is better than nine years ago.

ADV. LILLA CROUSE: Yes.

MINISTER AARON MOTSOALEDI: But still not all cases, some of them are still missed.

ADV. LILLA CROUSE: Minister, I hope that this practice in your department will flow over to other national ministers as well. Thank you, Justice, that is all that I have.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. And it is a big accountability issue, I mean Counsel has got her finger on it. Lots could happen below principals, political principals and below executing authorities, as we have seen here. There is a claim against the department including the MEC in relation to Takalani. Officials depose to affidavits which turned out to be blatant lies and the court grants an order in favour of the department. The MEC comes here and she's never heard a word of it, but her name is there and notice to oppose is filed in her name. Lo and behold people are taken to Takalani. On the last count, Adv. Steyn, there were how many... I mean 38 died. So if there was a proactive executing authority aware that there is a court case and takes care, would interrogate it and it may well have been that Takalani would never have received mental health care users, they were the first. And there mental health care users died in large numbers, 38 bodies. And there is an outbreak there of Typhoid in Takalani. So you can see this is where the Counsel was coming from to say, there is something here. People litigate violation of human rights, executing authorities never hear of it, but they are cited in court. That is the point that was being made to you.

MINISTER AARON MOTSOALEDI: Ja, no, it is quite painful, Justice. And I believe under such conditions, whoever did that must be charged. And I believe Me. Mogopa is going to do that, because we said apart from the people cited by the

Ombud, I personally believe there is lots of people in the Gauteng Department of Health who must be charged in one way or the other.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

MINISTER AARON MOTSOALEDI: Really. And I am not saying it to spite anybody, because I have never seen such dubious characters working for government. I am saying so, because even after the Ombud ruled that we must de-establish the Gauteng Mental Health Marathon Project, we had lots of problems. I remember the family committees came and said so and so is not cooperating. We had to remove some of them in that process. That means even after the disaster they didn't seem to be appreciating, they were still continuing the way they were doing. And we agreed... remember I told you that this department needs to be overhauled completely.

ARBITRATOR, JUSTICE MOSENEKE: You know Takalani was paid over 13 million over 10 months and the payments went way beyond the time when you had started the multi-disciplinary project to shut it down. Somebody continued paying them right up to near I think April 2017.

MINISTER AARON MOTSOALEDI: I think the SIU must come in. Because how do we know that the payment was deliberate and there was a kick back, how do we know? We can't prove that and we can't just leave the matter. I will ask the MEC that and the DG of the province that this matter needs to be pursued, we need to understand who continued paying beyond what they were supposed to be paying. I hope also the auditor general might be able to pick it up.

ARBITRATOR, JUSTICE MOSENEKE: You see Precious Angels, which is your favourite example, Minister, and one of the first to be shut down, was paid continuously right through to March 2017, if my memory serves me well. Then presumably there were no patients anywhere near, but the Department of Finance continued paying them. So yes, we have quite a culture that is amazing, to say the least.

MINISTER AARON MOTSOALEDI: Because Justice, Precious Angels was the first one to be closed by the ministerial advisory committee and that was on the weekend of 16, 17, 18 September. It will then be amazing what they were being paid for in March. That is why I say the SIU must come in and investigate who paid for what reason. There might have been some kickbacks involved there.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Yina. Thank you Adv. Crouse, thank you.

ADV. NONTLANTLA YINA: Good evening, Minister. I am Nontlantla Yina, one of the evidence leaders. I just want to find out, did you get to know the names of the people who were involved in the conception and the implementation of the project?

MINISTER AARON MOTSOALEDI: Yes, the Ombud mentioned them in the report and even mentions what must happen to them.

ADV. NONTLANTLA YINA: Did you personally get to sit down with them just to find out what was the reason behind the project?

MINISTER AARON MOTSOALEDI: No.

ADV. NONTLANTLA YINA: Earlier on you indicated that this issue is one of the issues that ought to have been tabled and discussed at the national health council, is that so?

MINISTER AARON MOTSOALEDI: Yes.

5**ADV. NONTLANTLA YINA:** Am I correct that you chair that council?

MINISTER AARON MOTSOALEDI: Yes.

ADV. NONTLANTLA YINA: And that the MEC and the HOD also sit in that council.

MINISTER AARON MOTSOALEDI: Absolutely.

ADV. NONTLANTLA YINA: Did you not see it necessary to find out from them why
10they overlooked that council?

MINISTER AARON MOTSOALEDI: No, because I regarded this as a crime scene. Yes, I have already reported the matter to the Ombud, he is going to clearly... because now if I start interfering with them and asking them questions, I am not sure, I just thought it is inappropriate. But I thought after the Ombud has finished,
15we will then revisit the issue and find out politically why this was not done. So at the present moment I didn't do so, because as I am saying the Ombud was investigating, he came with recommendations, some of whom are being charged, they have to appear in DC. And I said because it is a HR issue and labour issue, it falls in the scope of the province, not mine. Then the recommendation 17 is about
20ADR and all those processes I wanted them to come to an end. There is another process here which was not mentioned that people can appeal and say no, the

Ombud found me guilty, but I don't agree. And in terms of Section 81 of the Act, they can appeal within 30 days and I must set a tribunal which must be chaired by a retired judge. And I appointed retired Judge Bennett Mohepe (spelling) to chair that, together with two health professionals. I appointed Prof JD Coovadia and Prof
5Robertson and so I couldn't interfere in all those and start asking my own questions, because there were processes set in motion.

ADV. NONTLANTLA YINA: Now that they have resigned, will it still be possible for you to deal with it politically?

MINISTER AARON MOTSOALEDI: Well after they have resigned obviously they
10no longer work for the State, they have got no reason to listen to me in any way. All I can do is to deal with those that are left in government.

ADV. NONTLANTLA YINA: Thank you, Justice.

MINISTER AARON MOTSOALEDI: Because the others is police. It doesn't mean if you resign from government it is over, it doesn't, police must still go. One of the
15recommendations of the Ombud, and we are waiting for processes to finalise, was that the two officials who are professionals, must be reported to the Health Professions Council and the Nursing Council, because they are professionals, whether they work for Gauteng or not. So the Nursing Council is still going to call Dr Manamela because we are going to go to them and say professional ethics here.
20And the Health and Professions Council will still call Dr Selebano, so it is not over. All I am saying is at my level as a politician, I can't call them because I call them as what?

ADV. NONTLANTLA YINA: But what about the MEC?

MINISTER AARON MOTSOALEDI: I will call her as what, because she is no longer the MEC, she resigned. If I talk with her individually because... yes she has resigned and the people who can deal with her are the Hawks and the police and the SIU or whatever legal authority and the courts, not me.

ADV. NONTLANTLA YINA: Thank you, Justice, that will be all.

ARBITRATOR, JUSTICE MOSENEKE: Thank you, Adv. Yina. Adv. Groenewald.

ADV. DIRK GROENEWALD: Thank you, Justice. Minister, my name is Dirk Groenewald and I represent four of the family members.

10 **MINISTER AARON MOTSOALEDI:** Dirk?

ADV. DIRK GROENEWALD: Groenewald.

MINISTER AARON MOTSOALEDI: Oh.

ADV. DIRK GROENEWALD: Yes. Minister, we would just like to thank you for appearing at these proceedings. Other for that, we don't have any questions.
15 Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

MINISTER AARON MOTSOALEDI: That is progressive hey.

ARBITRATOR, JUSTICE MOSENEKE: Minister for Council.

ADV. TEBOGO HUTAMO: Thank you, Minister. Seemingly to Adv. Groenewald,
20 we will no questions in re-examination.

ARBITRATOR, JUSTICE MOSENEKE: Minister, we have come, we are very close to the end, we are almost at the end. Before you make your final statement, and I don't want to speak after that, I just would like to thank you for coming here. I would like to, on behalf of certainly many South Africans and the families, to thank you for having been active in the remedial end of this disaster. And you were part of a contrite state. You know governance often are arrogant, but you chose a different route to show contrition, to show remorse and engage the families to arrange this arbitration process. I might remind you that it is going to come at a cost and I think you are one of the parties, you are one of those departments who are going to pay the claimants. And we would like to thank you for helping us get to that place. And in the evidence it appears that you took many steps to arrest what otherwise would have been even a bigger disaster. So I thought I would spend the time, and primarily to those who don't understand the process, how it came into being and role of State, there are cases where the State has never accepted liability and here the State did. Even that too has helped these proceedings and has brought us closer to closure, certainly for the families. So I thought it is appropriate to acknowledge that publically and that you've been part of the arbitration process and it might set an example for our nation going to the future. Those are the words I wanted to say publically in thanking you for your role, including coming to ask me to ask whether I would serve and chair this arbitration hearing and this ADR process. It is now your turn to say whatever, Minister, before we close.

MINISTER AARON MOTSOLEDI: Thank you Justice, I am very humbled by your words. And we chose you specifically because we had all the confidence in you.

Because the recommendation 17 by the Ombud said we must look for a credible South African who will conduct this process. And I must take this opportunity on behalf of government, as well as civil society and the relatives who suffered and the legal teams that represent them, to thank you hardly that once more you have shown your credibility and the confidence that we have put in you. Because the whole country is satisfied about the way you conducted this process. So (vernac), Chief Justice, when we come to ask you again. On my part I regard ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

MINISTER AARON MOTSOLEDI: On my part, Chief Justice, I regard the Life Esidimeni issue as constituting one of the most painful and horrible events in the history of post-apartheid South Africa. On the day the Ombud released his report, I was asked by the media if I am not embarrassed by this. And I said this goes beyond embarrassment, I am not embarrassed, I am horrified and very angry, because I feel people have been betrayed. But I also felt personally betrayed as the Minister of Health who is presiding over this department. So for that reason I said embarrassment doesn't really come to define the feeling I am having. Because this has tarnished the health system of the country in a way unimaginable and it has placed very difficult, us in a very difficult position, nationally and internationally. Because wherever you go internationally they ask you about this issue of Life Esidimeni. And because they don't know the South African legal system, they believe the minister was directly responsible, have got all powers, because many countries don't know our provincial system, especially that we keep on telling people we are a unitary state, but in most of these functions we are very federal, I

am afraid. And it is one of the things that we want to correct when we review the laws. So as the Minister of Health I wish to apologise unconditionally to both the families and relatives of the deceased and those who are still living and to the whole nation at large. We have really wronged them in a way unimaginable. I know that the emotional and psychological trauma that the families and relatives of the deceased, as well as living patients, have endured, is extremely unbearable and even impossible to quantify. When I read the Ombud's report about how people were bundled in vans and tied with sheets and how they were chosen like, as you described it like cattle at an auction... I mean I couldn't just imagine in our new democracy. And in a department where we put up an act and as one of the objectives, human rights, and human rights come and be breached in this manner in a way that is reminiscent of the apartheid era, not the democracy, it is very painful, that is why I feel personally betrayed that colleagues that we are working with, could do something like that. so my appearance today in this gathering, was in terms of the recommendation and to try and shed some light and I am disappointed once more that I am unable after 18 months to shed some light as to what was the motive of this, why should something like... why should human beings plan to do something like this, advertently or inadvertently. It is very painful and I don't know if the families would find it in their hearts to forgive us for what has happened, because it should not happen to any human being, not even your worst enemy and I am very sorry for that. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac). And I think we should allow you to leave and you need not in a hurry, there is a bit of housekeeping we are going to

do very briefly. But I would like to take some time to thank, this being the last day of evidence, to thank the families. This has been remarkable. To have a full house hearing must suggest a very deep, not only pain but commitment to see open justice. And I know I fought with you a good few times when you hackled, (vernac).
5And hackling witnesses and battling to keep you calm and yet you remain focused and we shared a lot of pain together and heard a lot of stories together. So I just would like to thank you and every morning waking up to be here. I know how early you wake up to make 9:00 here, very-very early coming from a variety of residences. I would like to thank you for that. And we all hope that this will accrued
10something beneficial to all of us. And all the Counsel and all their hard work, the teams behind the Counsel. We often have this confusion about who does the hardest work, is it the advocates or the attorneys who do the digging and the research and the hard work. But I really would like to thank you. It was trying from time to time, but you have been here. And as I said Mr. Skibi's my witness that this
15is plain water with a bit of fruit in it, so we have had a very good time. Last time I must spend time to also thank the media. It is not often that you find one, two, three, four, five, six, seven, eight, nine, ten, eleven cameras in one venue. But this has managed to convey this process, Minister, to the whole nation as you know, and they have done it with amazing (inaudible) and dedication to bring out this story
20to so many. Some have even fallen down here, some of these camera ladies, and survived the fall. So I would really like to thank all of you for coming out and all of those experts who came to testify pro bono and I would really like to thank you. And the camera people, a bit of a nuisance as they click away, but a necessary

nuisance I want to suggest and that is my way of thanking you. But lastly the provincial staff, the rolled out resources, I would like to thank the province for this, the HOD and the whole province for rolling out all the facilities. It would not have been possible to have a credible arbitration process without the resources of the 5 province and that is a very amazing example of caring for people in deep distress and in pain. We have come to the end therefore of evidence. Counsel, know that you owe me some evidence, documentary evidence, and I would like to have it before argument. Is there still any difficulty about that, Adv. Hassim?

ADV. ADILA HASSIM: Justice, no difficulty. All our evidence is in.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Ja, safe for the certification of people who have passed on, who are not yet on our lists.

ADV. ADILA HASSIM: The affidavits on behalf of the families are part of the evidence and all of the relevant information pertaining to the deceased.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

15 **ADV. LILLA CROUSE:** Thank you Justice. Justice, I have four affidavits that I would like to hand in now, if I may. It is ELAH 165, it is Thabiso Ramagapola. ELAH 166... it is the same name, but it is a different person. So it is two people with the same name, but it is in respect of two different family members. ELAH 167, Elizabeth Malgas. And ELAH 168 Mordechai Mtsopi Thlolo Mhampo. If I could
20 hand those in and there are some affidavits outstanding, but we will make sure that they are placed before you before argument.

ARBITRATOR, JUSTICE MOSENEKE: And they are marked sequentially as required.

ADV. LILLA CROUSE: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: And your colleagues will get copies of those.

ADV. LILLA CROUSE: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Thank you. Adv. Yina or Adv. Ngutshana? Adv. Yina?

ADV. NONTLANTLA YINA: We do not have any documents that we intend to submit, Justice, all the documents are on record.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. NONTLANTLA YINA: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Groenewald.

ADV. DIRK GROENEWALD: Thank you, Justice. Justice we would like to submit the actuarial report, ELAH 164, it supports and corroborates the report submitted by Section 27 with the exception that it is more specific to our clients and family members that we represent. It has been provided to all my colleagues.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Let's give it an ELAH number and hand it up.

ADV. DIRK GROENEWALD: ELAH 164.

ARBITRATOR, JUSTICE MOSENEKE: ELAH 164?

ADV. DIRK GROENEWALD: Indeed so, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you, Counsel.

ADV. DIRK GROENEWALD: Thank you, Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** Anything else from your end?

ADV. DIRK GROENEWALD: That is all, Justice. I would like to put in a motion that perhaps we appear next week, if we can use that canvas there at the back for the families to sign their names, so that it can bear testimony for generations to come for their participation in this process. I do not intend to argue that this should
10be the monument, but I think it would be quite a good gesture of showing their involvement.

ARBITRATOR, JUSTICE MOSENEKE: Well you are keeping up to your rock star image with the families. And I am sure they would love that, Adv. Groenewald, and thank you ever so much. Adv. Hutamo.

15**ADV. TEBOGO HUTAMO:** Thank you Justice. Before we deal with the documents, which we have got available, my learned friend has just mentioned ELAH 164 which is the actuarial report. He has not made it clear if there is going to be any evidence which is going to be led in respect of this actuarial report. We don't quite understand its value in the absence of the expert testifying on it. Apart
20from that, there are documents which MEC Chrissie has indicated that will be made available. We will try and find out how soon can we make them available before

argument is being led. And on the issue relating to the verification, we also act upon it and be able to... and endeavour to report at the appropriate time. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: An appropriate time would be the morning 5of the first hearing on legal argument.

ADV. TEBOGO HUTAMO: We will do our best to see if we are able to achieve that, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes, very well. Well I think we have (vernac), I think we have done our bit and all the evidence has been led. Just for 10the public record, we are going to meet again on the 8th and the 9th of February to hear legal argument and after which there will be a process of deliberation by the Arbitrator, who within the time specified in the arbitration agreement, will hopefully bring out an award, which really will be the outcome of all of these proceedings, which will be made available to you, of course, and the public at large. So that is 15really what remains. Final hearing 8th and 9th, deliberations and an award. Beyond that we have come to the end of these proceedings. Father, you are on your feet.

(Singing and praying)

END OF SESSION 5

