

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

22 JULY 2019

DAY 137

20

PROCEEDINGS COMMENCE ON 22 JULY 2019

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody.

ADV LEAH GCABSHE SC: Good morning Chairman. Chairman just as a...

CHAIRPERSON: Been – it has been quite some time we last saw you.

ADV LEAH GCABSHE SC: Mr Chair – Chairman you know that you keep us very busy doing back office work and the Vrede Dairy matter which is the one that is before you today.

10 **CHAIRPERSON:** Yes.

ADV LEAH GCABSHE SC: Is like an octopus with a million tentacles so we have been keeping busy.

CHAIRPERSON: Yes, no that is fine. Thank you.

ADV LEAH GCABSHE SC: Chairman just as a preliminary point I do know that a couple of implicated parties' legal representatives are here. I do not know if you simply want me to place them on record by telling you who they are or if you would prefer them to come up and place themselves on record.

20 **CHAIRPERSON:** I think they should come up and place themselves on record if the intention is for them to be on record but sometimes they just want to be present informally and not formally. Maybe I should say those who wish to place themselves on record should come up and do so. So that gives a chance to those who do not want to be placed on record formally to just sit there informally. Okay thank you.

ADV LEAH GCABSHE SC: Thank you Chairman.

ADV ALPHEUS DENGA: As it please the hearing Chair I am Alpheus Denga. I will be representing Mosebenzi Zwane in the proceedings. Thanks.

CHAIRPERSON: Thank you very much. Thank you.

Good morning Chair.

CHAIRPERSON: Good morning.

ADV TLELY: I am Ms Tletli from Morocco Attorneys we will be representing Ms Namalele and Ms Qabathe in these proceedings Chair.

CHAIRPERSON: Just one second. I do not know whether it is the
10 microphone today or whether it is people speaking very softly because with Ms Gcabashe too I felt that her voice was soft. I think they are trying to do something. Just raise your voice so everybody knows who you are and who you represent.

ADV TLELY: Thank you Chair. I am Ms Tleli frokm Morocco Attorneys we will be representing Ms Qabathe and Ms Namalele.

CHAIRPERSON: Thank you very much.

ADV TLELY: Thank you Chair.

CHAIRPERSON: Thank you.

ADV LEAH GCABSHE SC: Thank you Chairman.

20 **CHAIRPERSON**: That is much better.

ADV LEAH GCABSHE SC: It is much better thank you yes.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: Chairman in terms of the hearing schedule of the team today in fact for this week we will be leading the evidence of matters that occurred in relation to the Vrede Integrated Dairy Farm

which we in short call the Vrede Dairy Farm. Central to the investigations of the commission has been the quest Chairman to interrogate

1. The decisions that were taken by various public officials and functionaries.
2. The compliance with legal prescripts by those officials and
3. An effort to identify who the ultimate beneficiaries of the close to 280 million that was dispersed by government between 2012 and 2018 for this dairy project could have been.

10 So there is quite a bit of evidence that we will be placing before you Chairman. Evidence which falls within the terms of reference this commission is seized with in particular term of reference 1.4 and term of reference 1.9. I will not go through them Chairman because it is –

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: You have heard so much about those terms already.

CHAIRPERSON: Yes, yes, okay.

ADV LEAH GCABSHE SC: I – I do want to say Chairman that we have had a cooperation from the Department – affected departments and I
20 think that is thanks to your entreaty to them every now and again to come forward and assists us with documents. So I do want to say they have been helpful and in fact Chairman we have a reference bundle that I will take you through.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: In a short while which is comprised of

documents that were furnished by those departments.

CHAIRPERSON: Okay that is fine. That is fine.

ADV LEAH GCABSHE SC: Rule 3.3. Notices Chairman we have a list of 3.3 Notices that have been issued. I think all is in order in that regard.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABSHE SC: Chairman Rule 6.5 has relevance. Transcripts of proceedings that have preceded our commission hearings. I have said to the witnesses as we have interviewed them
10 that where they have been part of any proceedings they should please indicate such and where possible we have tried to get transcripts. In that regard Chairman you will find again with your leave that we have collected a couple of court records. Because they are affidavits made under oath that certain people have deposed to that we have the used where we have not been able to speak to those witnesses we have been used to interrogated – have been used by us to interrogate the facts that have are [indistinct].

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: Chairman next I will then go through the
20 exhibits that we will be handing up this morning. This particular chapter falls under the HH HH – H for happy. HH series Chairman. The witness bundles for today are marked HH1 and HH2. However Chairman we have been furnished with a supplementary affidavit by the first witness who will be Mr Jankielsohn because of your directive that where possible any amendments should be done prior to the hearing.

And that really is the essence of what that supplementary deals with. It also has an annexure – a new annexure but the bulk of it really deals with just corrections that we would normally have done in the course of the first ten minutes.

CHAIRPERSON: Okay. Okay.

ADV LEAH GCABSHE SC: So Chairman we then end up with Exhibit HH1.1 and 1.2 in respect of Mr Jankielsohn which we will ask you to admit into evidence. When Ms Buthelezi leads the evidence of Mr Venter later today we will then deal with HH2.1 and I believe he too is
10 trying to prepare a supplementary dealing with exactly the same issues.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: There may be one or two more and there may just be a 2.2 as well.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: But the base statements Chairman they made earlier this year are the base statements that are in those files.

CHAIRPERSON: Okay. Okay.

ADV LEAH GCABSHE SC: Chairman may I just...

CHAIRPERSON: Well shall I immediately – so HH – Exhibit HH2

20 **ADV LEAH GCABSHE SC**: That would be Mr Venter. So that is for this afternoon Chair.

CHAIRPERSON: That is not here. That is not before me or did – was it included here in this lever arch file?

ADV LEAH GCABSHE SC: Chairman it is one lever arch file. It is in that lever arch file. There is a divider.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: That separates HH1.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: And HH2. Have you been able to locate it
Chairman?

CHAIRPERSON: Well let us say in regard to – or the statements and
annexures relating to Mr Roy Jankielsohn and Mr Albertus Johannes
Venter are contained in one lever arch file. The statement relating to
Mr Roy Jankielsohn is marked or will be Exhibit HH1 and the statement
10 and annexures relating to Mr Albertus Johannes Venter will fall under
Exhibit HH2.

ADV LEAH GCABSHE SC: That is correct Chairman.

CHAIRPERSON: So the one lever arch file has two exhibits. One
Exhibit HH1, the other Exhibit HH2.

ADV LEAH GCABSHE SC: That is correct Chairman.

CHAIRPERSON: Is that right?

ADV LEAH GCABSHE SC: Save that.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: Because of the supplementaries where they
20 are just making those minor largely amendments.

CHAIRPERSON: Ja. Yes, Ja.

ADV LEAH GCABSHE SC: We have then split that to a 1.2.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: A 1.1 and 1.2 to accommodate the
supplementaries. But 1 still refers to Mr Jankielsohn's statement.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: HH1.

CHAIRPERSON: Okay. No that is fine. Alright. It may be – it may be that it is convenient if possible to keep each statement and its annexures either or the statement and annexures relating to one witness.

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: Under one exhibit. Even if it means the file must be a smaller file it is much easier than if we put more than one into one
10 lever arch file. But for this one we will leave it as it is. Ja okay.

ADV LEAH GCABSHE SC: Thank you – thank you Chairman we will arrange for that to be done during the tea break.

CHAIRPERSON: Yes. Okay thank you.

ADV LEAH GCABSHE SC: Chairman.

CHAIRPERSON: One second. Thank you.

ADV LEAH GCABSHE SC: Thank you Chairman. Chairman then additional documents that we will be using over the two weeks that we will be dealing with Estina we have a week now Chairman and then a bit of a break and another week of hearings is formulated in the
20 following manner Chairman. The one is Exhibit HH Reference Bundle A, B and C because it is – it has been filed in three files. Those are the documents I say we will be referring to that we got largely from the departments that have tried to assist us. The second bundle Chairman is Exhibit HH Legislation Bundle. Again just for you ease of reference Chairman in case you need to refer to any piece of legislation.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: There again we have got an A and a B only because it was rather bulky piece of work.

CHAIRPERSON: Okay. Okay.

ADV LEAH GCABSHE SC: The last one Chairman is Exhibit HH Media Bundle. There are a number of media articles that have been published on the Vrede Dairy matters.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: We thought it might be convenient for you
10 to have the more important ones we could identify in a file and we will use them again over the next two weeks of hearings as we call different witnesses.

CHAIRPERSON: Okay. No that is fine.

ADV LEAH GCABSHE SC: Chairman might I just say that what we have also done is take the report of the Public Protector. Again just for your ease of reference we know it has already been – I would like to think it has been handed up but that is sitting in the legislation bundle so as and when we need to refer to it and that particular witness has not got it in his or her bundle again it is just for your ease of reference
20 where we can actually read from it.

CHAIRPERSON: It might be convenient if it is not in the legislation bundle. If it is either separate or it is part of – of these – I do not know how thick it is but you might consider making it under a separate lever arch file or something. I think it would be convenient that way.

ADV LEAH GCABSHE SC: Certainly Chairman that we can – that can

be arranged.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABSHE SC: I believe that those are all the documents that we will be relying on Chairman might you admit them into the record.

CHAIRPERSON: Yes. Thank you very much. And the witness can be sworn in or the affirmation can be administered.

REGISTRAR: Please state your full names for the record?

MR ROY JANKIELSOHN: Roy Jankielsohn.

10 **REGISTRAR**: Do you have any objections in taking the prescribed oath?

MR ROY JANKIELSOHN: No.

REGISTRAR: Do you consider the oath to binding on your conscience?

MR ROY JANKIELSOHN: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

MR ROY JANKIELSOHN: So help me God.

REGISTRAR: Thank you.

20 **CHAIRPERSON**: Thank you.

ADV LEAH GCABSHE SC: Thank you Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Chairman if I might just enquire from you. For your convenience we have a supplementary affidavit that corrects particular paragraphs. Mr Jankielsohn will deal with those amendments

as he goes through the – his testimony but I am not sure if you would like us to just have the supplementary – how you want us to handle the actual supplementary statement.

CHAIRPERSON: I will – I would like to hand up – I would like you to hand up a copy now if possible.

ADV LEAH GCABSHE SC: It has been put in your file this morning.

CHAIRPERSON: Is it here?

ADV LEAH GCABSHE SC: Chairman only this morning though yes.

CHAIRPERSON: Oh okay. Would that be at the end or do you know
10 where about it is?

ADV LEAH GCABSHE SC: At 1.2 Chairman there is a sleeve that is marked 1.2.

CHAIRPERSON: Well...

ADV LEAH GCABSHE SC: And it is written supplementary.

CHAIRPERSON: Well ...

ADV LEAH GCABSHE SC: Mine has 1.2 Jankielsohn supplementary written on it Chairman.

CHAIRPERSON: Oh ja okay ja. I think it is better to – okay that is fine. So it is okay I have seen where it is.

20 **ADV LEAH GCABSHE SC**: Thank you Chairman.

CHAIRPERSON: Thank you.

ADV LEAH GCABSHE SC: What I would like to suggest Chairman is that Mr Jankielsohn simply gives his evidence.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: And where he has made corrections on his

original.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Statement.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: He will mentioned that he – the supplementary statement deals with those corrections.

CHAIRPERSON: Yes that is fine.

ADV LEAH GCABSHE SC: If that is in order?

CHAIRPERSON: That is fine.

- 10 **ADV LEAH GCABSHE SC**: Thank you Chairman. Mr Jankielsohn good morning again. Could you switch – yes switch on the microphone. Please – the documentation you have as 1. your statement that has been prepared and filed by the commission and we have given you some reference documents I will only point you to the ones that we may need. I have tried to avoid dealing with them because there are a number of annexures in any event in your statement. Can you go to page 1 of the paginated bundle – the one I would like to call the master copy that the commission has placed before you?

CHAIRPERSON: Is that Exhibit HH1?

- 20 **ADV LEAH GCABSHE SC**: It is Exhibit HH1. It really is 1.2 but it is your original statement. If you could turn to page 1 thereof – are you there? Do you have it?

MR ROY JANKIELSOHN: Am I – Exhibit HH1.1 or page 1 of the sworn affidavit through you Chairperson?

ADV LEAH GCABSHE SC: You are – where you start setting out your

testimony so you are at page 1 of Exhibit HH1.1. Are you alright?

MR ROY JANKIELSOHN: I am there.

ADV LEAH GCABSHE SC: Good. On that page it is entitled Judicial Commission etcetera sworn affidavit. Whose name appears on that page?

MR ROY JANKIELSOHN: Chairperson my name Roy Jankielsohn appears on that page.

ADV LEAH GCABSHE SC: If you could then hold onto that page and go to page 16 of the same document? Could you confirm for the
10 Chairman whose signature appears on page 16?

MR ROY JANKIELSOHN: Chairman my signature appears on page 16.

ADV LEAH GCABSHE SC: And then...

CHAIRPERSON: Your – your one is the top one – there are two signatures there is that correct?

MR ROY JANKIELSOHN: The top signature Chairperson the deponent is my signature.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: The bottom signature is the commissioner of oaths.

20 **CHAIRPERSON:** Thank you.

ADV LEAH GCABSHE SC: On what date did you depose to this sworn statement or sworn affidavit?

MR ROY JANKIELSOHN: Chairperson it was at Bethlehem on the 29th day of April 2019.

ADV LEAH GCABSHE SC: Thank you Mr Jankielsohn. I would then

want you to go to Exhibit 1.2 which is the supplementary statement you have submitted. Do you have that before – the supplementary statement?

MR ROY JANKIELSOHN: I do.

ADV LEAH GCABSHE SC: The – on the first page of that again whose name appears there?

MR ROY JANKIELSOHN: Chairperson my name appears there Roy Jankielsohn.

ADV LEAH GCABSHE SC: And then on page 3 of that statement just
10 before the annexure again who is the deponent who signed this particular document?

MR ROY JANKIELSOHN: Chairperson I signed the document.

ADV LEAH GCABSHE SC: And when – on which date did you sign this?

MR ROY JANKIELSOHN: I signed it yesterday in Bethlehem.

ADV LEAH GCABSHE SC: Are you – are you confirming that the original affidavit and the supplementary affidavit contain the testimony that you will be giving today?

MR ROY JANKIELSOHN: I can confirm that Chairperson.

20 **ADV LEAH GCABSHE SC:** Then if I might – say – on the direction of the Chairman as you go through your evidence where you want to make changes to the original affidavit which changes are currently reflected in the supplementary affidavit you will point out to the Chairman that paragraph such and such is one of the paragraphs I have dealt with in my supplementary affidavit and the amendment I have made is and you

will tell him what the amendment is that relates to that.

MR ROY JANKIELSOHN: I will do so.

ADV LEAH GCABSHE SC: Yes. Thank you Mr Jankielsohn. I suppose a starting question is what brings you to the commission Mr Jankielsohn?

MR ROY JANKIELSOHN: Chairperson as a member of the Provincial Legislature I have been as a – also as a member of the Portfolio Committee dealing with agriculture and rural development. I have been as a member of the Legislature and a member of the committee
10 involved with oversight over Provincial Government projects which includes the Vrede Dairy Project and since I have been in the legislature since the inception of this project I have been involved as a member in dealing with this project in probing this project and trying to get to the bottom of this project from the perspective of a member of the Provincial Legislature whose job it is to do oversight and ensure accountability over the executive.

ADV LEAH GCABSHE SC: Could you explain to the Chairman what the source of the information that triggered your interest in the Vrede Dairy Farm might have been?

20 **MR ROY JANKIELSOHN:** Chairperson there were two sources that triggered my interest. The one was during a SOPA address when the Premier of the Free State Ace Magashule mentioned it and at that stage it did not trigger any direct interest in the project because the Premier mentions various projects but there was subsequent to that an article in the Mail and Guardian which then generated my interest and prompted

me to probe this project further.

ADV LEAH GCABSHE SC: Have you personally visited the Vrede Dairy Farm Mr Jankielsohn?

MR ROY JANKIELSOHN: Chairperson I have visited the farm on a number of occasions so I am familiar with what the farm looks like on the ground and some of the activities that are taking place on the farm.

ADV LEAH GCABSHE SC: Chairman with your permission we some visuals of the farm which we thought would be useful in giving context and giving an idea as to what it is Mr Jankielsohn has been keen to talk
10 the commission about.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: We have asked him to kindly identify the visuals and just speak to them very briefly. It at least gives you a context.

CHAIRPERSON: Yes no that is in order.

ADV LEAH GCABSHE SC: Chairman before we go any further.

CHAIRPERSON: That is in order.

ADV LEAH GCABSHE SC: Mr Jankielsohn you will just go through this on the screen as it is put up.

20 **MR ROY JANKIELSOHN:** So far I just see myself on the screen
Chairperson.

ADV LEAH GCABSHE SC: Chairperson while they are sorting that out there are very many questions that I have for Mr Jankielsohn might we proceed?

CHAIRPERSON: Yes let us proceed.

ADV LEAH GCABSHE SC: And when the visuals are ready.

CHAIRPERSON: They will...

ADV LEAH GCABSHE SC: We will then start.

CHAIRPERSON: They will indicate to you when they are ready ja.

ADV LEAH GCABSHE SC: I – I thought I should ask you to give the Chairman an idea as to how issues are raised in the legislature just so that we as a country understand what your interest is and how you query issues that concern you in the legislature?

MR ROY JANKIELSOHN: Thank you Chairperson. There are various
10 ways in which – through which we receive information in the legislature and through which we are able to carry out our constitutional mandate which is to do oversight over the executive and to hold them accountable. We have committees in the legislature and we as members of specific portfolio committees have the opportunity there to receive reports from departments. We receive their budgets. We receive their annual reports, their plans for the year and various other documents in that committee and we are able to probe their presentations to us. We also have debates in the legislature where various MEC's come and present their budgets and their plans of action
20 to the legislature and we are able to debate those issues there but very importantly is that specifically in the Free State legislature in terms of our rules each member of the legislature is able to ask three questions of any MEC's or the Premier every week. So we used that as an additional opportunity because it does happen as with the case of the Vrede Project which I will refer to later that when the departments and

the MEC's are in the committee that they do not always give us the information and they are often protected by the Chairperson of the committee. But in – when we ask questions through the rules of the legislature they are obliged to give us replies within ten days failing which we can then request that those replies be placed over for oral reply during one of the sittings of the legislature. So that is an opportunity for us to ask questions, to probe issues in the legislature and to get more detailed information especially in written questions where you can ask more detailed information than you would be able to perhaps do in a sitting or in committee.

ADV LEAH GCABSHE SC: Thank you. Chairman it would appear that the visual presentation is ready.

CHAIRPERSON: Okay thank you.

[VIEWING VISUAL PRESENTATION]

CHAIRPERSON: I take it that somebody will indicate how big the farm is in terms of hectares and so on in due course?

ADV LEAH GCABSHE SC: In due course Chairman we have various people who will come and give you a lot more detail.

CHAIRPERSON: Yes.

20 **ADV LEAH GCABSHE SC:** The intention this morning is to give you at least a visual impression of the farm.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: And to identify as many of the buildings as Mr Jankielsohn is able to.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: But with your leave Chairman we will be putting it up again for specific purposes as we lead this evidence.

CHAIRPERSON: Yes okay thank you.

ADV LEAH GCABSHE SC: Mr Jankielsohn can you start with the very first slide? Chairman is that clear enough for you?

CHAIRPERSON: Yes it is.

ADV LEAH GCABSHE SC: If you could ...

CHAIRPERSON: It is very clear.

10 **ADV LEAH GCABSHE SC:** If you could identify – I would like you to start with the gate. I know it is a very – it is not a very clear picture but if you could give the Chairman just an idea as to where the entrance would be?

MR ROY JANKIELSOHN: Chairperson if you do not mind I am going to use this screen.

CHAIRPERSON: That is fine.

MR ROY JANKIELSOHN: Because that one is a little bit far.

ADV MUZI SIKHAKHANE: Yes that is fine.

MR ROY JANKIELSOHN: For me to see.

CHAIRPERSON: Yes, yes.

20 **MR ROY JANKIELSOHN:** Right in the distance Chairperson you will see two small walls just below the mountains that is the entrance gate of this facility. So there are two walls there is...

CHAIRPERSON: I am sorry you talk about a mountain. I do not see a mountain there.

MR ROY JANKIELSOHN: In the distance Chairperson there.

CHAIRPERSON: Very far?

MR ROY JANKIELSOHN: Very far.

CHAIRPERSON: Oh okay.

MR ROY JANKIELSOHN: And then behind the – now we have moved forward.

CHAIRPERSON: There is a forest there.

MR ROY JANKIELSOHN: Chairperson if we can go back to the gate.

CHAIRPERSON: Ja.

MR ROY JANKIELSOHN: You will see behind that silver shed.

10 **CHAIRPERSON**: Yes.

MR ROY JANKIELSOHN: Are those small two walls. That is the entrance gate and then we have a gravel road that leads into the facility.

CHAIRPERSON: Hang on. I am sorry, hang on. I see the – is it a shed or something?

ADV LEAH GCABSHE SC: The grey one, the largest one.

CHAIRPERSON: Ja the grey one.

MR ROY JANKIELSOHN: The grey shed.

ADV LEAH GCABSHE SC: Grey building.

20 **CHAIRPERSON**: Is the – ja.

MR ROY JANKIELSOHN: Behind that the small ...

CHAIRPERSON: There is a gate.

MR ROY JANKIELSOHN: The two small walls that is the entrance to the farm.

ADV LEAH GCABSHE SC: You would think they were two cows or

something. Those brown stumps just in front of.

CHAIRPERSON: Oh yes. Yes okay that would be ...

ADV LEAH GCABSHE SC: That grey building.

CHAIRPERSON: That is the gate?

ADV LEAH GCABSHE SC: That is the gate Chairman.

CHAIRPERSON: Okay.

MR ROY JANKIELSOHN: Chairman they are very relevant because according to the initial proposal that gate was supposed to cost R2.6 million. So that is why it is relevant.

10 **CHAIRPERSON**: Yes.

MR ROY JANKIELSOHN: It is marked as 1 I see now.

CHAIRPERSON: Is it possible to bring it closer, much closer to – for one to see it quite clearly or is that not easy? Yes something like that. Can you do more of that or not really? Is that the best you can do? Oh.

ADV LEAH GCABSHE SC: So those two brown protrusions...

CHAIRPERSON: Is it brick walls or what is that?

ADV LEAH GCABSHE SC: Mr Jankielsohn?

CHAIRPERSON: Is it brick walls?

20 **MR ROY JANKIELSOHN**: Chairperson they are two brick walls yes with the – with the gate in between yes.

CHAIRPERSON: With the gate in between?

MR ROY JANKIELSOHN: Yes.

CHAIRPERSON: Okay alright now I know. Thank you.

ADV LEAH GCABSHE SC: But Mr Jankielsohn can I also add to that

that there has been a qualifying response to how much was spent on that. Please tell the Chairman what you have also heard about the qualifying response just so the Chairman has a clear picture from the outset?

MR ROY JANKIELSOHN: Chairperson yes the initial proposal that we received was that the gate would cost R2.6 million.

CHAIRPERSON: The gate?

MR ROY JANKIELSOHN: The entrance gate yes.

CHAIRPERSON: Ja

10 **MR ROY JANKIELSOHN:** To the facility which is those two walls that you saw.

CHAIRPERSON: So the two walls and the gate?

MR ROY JANKIELSOHN: Yes.

CHAIRPERSON: The two brick walls for the gate and the actual gate?

MR ROY JANKIELSOHN: Yes Chairperson.

CHAIRPERSON: Hm.

MR ROY JANKIELSOHN: But in my supplementary affidavit paragraph 9 and 10 I do indicate that in the Public Protector's Report the former Premier of the Free State Mr Ace Magashule indicated that offices were
20 bought with that money as well which is a guest house in Vrede Town so the R2.6 million was also used to purchase that. I did attach in my supplementary affidavit an annexure that shows that – that deals with the deeds search that was done around this property and the property was bought first by Estina for R1.2 million and was later sold to a private individual Mr Prasad Chandrama after that for an additional

amount of R1.35 million. And the reason why I am mentioning this ...

CHAIRPERSON: 1.35?

MR ROY JANKIELSOHN: Million Rands.

CHAIRPERSON: Million okay.

MR ROY JANKIELSOHN: Yes. The reason I am mentioning that is because if we subtract the initial purchase of 1.2 from the 2.6 then the remainder is R1.4 million.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: And the remainder basically implies that
10 those two walls and the gate were constructed for R1.2 million. The additional aspect of it which I mentioned in my supplementary affidavit is that the Premier then admitted that public funds were used to buy a property which was put in the name of a private company Estina and Estina later sold it to Mr Prasad Chandrama. That is why it is relevant Chairperson.

CHAIRPERSON: So – so public funds were used to buy property for a private individual?

MR ROY JANKIELSOHN: For the company Estina.

CHAIRPERSON: Ja.

20 **MR ROY JANKIELSOHN**: Who were the partners in the project but also the implementing agents in the project.

CHAIRPERSON: Yes, yes. And then they sold that at some profit?

MR ROY JANKIELSOHN: They sold it for some profit Chairperson.

CHAIRPERSON: Ja. Ja. Okay. Thank you.

ADV LEAH GCABSHE SC: Chairman that is evidence that will – we will

be coming back to.

CHAIRPERSON: Will be provided.

ADV LEAH GCABSHE SC: And that will become clearer as we go along.

CHAIRPERSON: Okay. Thank you.

ADV LEAH GCABSHE SC: Could you then identify the building that is closest to the gate?

MR ROY JANKIELSOHN: Chairperson number 2 is the milk processing plant.

10 **CHAIRPERSON**: Okay I am sorry. You have those boards on the picture there 1 and 2 and you have got the gate just on the other side – oh that – oh that is – those are just arrows. Well they are prominent can I know what they mean that 1 and 2 what are they supposed to denote?

ADV LEAH GCABSHE SC: Chairman they are simply an easy way for us to identify the item or the building that he is referring to. So the first item he referred to was the gate that was marked 1.

CHAIRPERSON: Oh.

20 **ADV LEAH GCABSHE SC**: The second one he is now giving evidence on and identifying is the processing plant and it is marked 2. As we go through Chairman...

CHAIRPERSON: Yes okay.

ADV LEAH GCABSHE SC: I think we go through about ten pictures.

CHAIRPERSON: Then you will mark them ja.

ADV LEAH GCABSHE SC: We mark them just for easy identification

Chair.

CHAIRPERSON: Okay. So is 2 a building or is it a field, what is 2?

Okay. So is 2 a building or is it a field, what is 2?

MR ROY JANKIELSOHN: Chairperson 2 is the milk processing plant and in the initial proposal R30 million was allocated to this together with the milking parlour which we will see later. So that grey building there is the processing plant which has a large amount of equipment in it and has never been used. It is – it is dysfunctional at this stage. In fact after the FDC the Free State Development Corporation took over
10 the project they indicated that they will have to spend a large amount of money to replace most of the equipment inside there.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: The next building which is marked three can we go to that one? What is that building Mr Jankielsohn?

MR ROY JANKIELSOHN: Chairperson three is the workshop and storage facility of the farm.

CHAIRPERSON: Okay. You know the – this arrow number three it is quite clear that it points to that building but the one and two is – is – one was the gate is that right?

20 **ADV LEAH GCABSHE SC:** That is correct Chairman.

CHAIRPERSON: Ja. Somehow when I look at it – it is like it is pointing next to the silver grey shed you know. I do not know whether there is a way of making it look like it is where it is supposed to be. Maybe it is not possible but you see when I look at – at these now it is like the two arrows are on the other side of the shed that is one and

two but when I think later on if they are closer they all seem to be – to relate to the shed and next to the shed. That might be my poor reading of these things.

ADV LEAH GCABSHE SC: No Chairman ...

CHAIRPERSON: If there is a way then it would be helpful. Maybe by making the arrow actually touch the building that might help and make an arrow touch the wall – the gate then it will make it easy to – it will enable me not to – to get confused.

ADV LEAH GCABSHE SC: Chairman this is really for your benefit. So
10 your comments are constructive.

CHAIRPERSON: *Ja.*

ADV LEAH GCABSHE SC: And they assist us ...

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Because we will be going back to this particular ...

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Visual time and time again.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: If we get it right today then it makes ...

20 **CHAIRPERSON:** Then it – *ja.*

ADV LEAH GCABSHE SC: Things much easier.

CHAIRPERSON: And if it is possible to also have a copy of each visual you know a hard copy it – it would – it would also help. So without looking at this later on if I want to refresh my memory of certain features of the – of the – of the farm then I can just look at pictures –

hard copy pictures that could be arranged in due course.

ADV LEAH GCABSHE SC: That will be arranged Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: Okay, thank you. I think – I think that – that might be quite helpful.

ADV LEAH GCABSHE SC: Are we able ...?

CHAIRPERSON: I do not know. It might be that they might need to do some work and maybe we continue and then once they are ready or
10 they indicate.

ADV LEAH GCABSHE SC: Let us give it one more shot Chairman ...

CHAIRPERSON: *Ja*.

ADV LEAH GCABSHE SC: And if it becomes confusing I think we should put it aside because this was supposed to assist you and give you a quick picture.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABSHE SC: We can always come back to it.

CHAIRPERSON: *Ja*. No that is fine. Let us – let us continue.

ADV LEAH GCABSHE SC: Gentlemen number four.

20 **CHAIRPERSON:** So we – did we – have we spoken about the shed because – because we are now going to talk about the two other buildings but there is that shed. Have we spoken about what happens in that shed or not or is it – is there nothing of significance about it?

ADV LEAH GCABSHE SC: Mr Jankielsohn?

MR ROY JANKIELSOHN: Chairperson, number three is that shed with

the silver roof and you will see on the right underneath are some tractors and on the left there is a brick structure. That is – those are the storage facilities for equipment and other items such as additional feed, fertiliser etcetera. So it is basically the store – one of the storage sheds on the farm.

CHAIRPERSON: Yes and – and two does two relate to the silver shed? It looks like corrugated shed/corrugated iron.

MR ROY JANKIELSOHN: Chairperson, two is – two is the processing plant.

10 **CHAIRPERSON:** That is the processing plant?

MR ROY JANKIELSOHN: Yes and if I can – if you – if you will allow me to explain Chair the project was a dairy but in addition to that Estina was meant to establish a processing plant to process the products of the dairy the commodity which should be milk and that is the – the shed number two with the equipment that was purchased which is totally dysfunctional at this stage.

CHAIRPERSON: Yes. No I think – I think now it - the way the arrows are it is helpful. You know earlier on you would have – you would have heard me asking whether two related to a building or a – a feed – a
20 field because it looked like it – it was pointing to beyond that silver grey shed but what you are saying is that you are talking about what happens in the shed.

Okay, thank you. So two is whether the processing was going to happen. That is the silver grey shed and three is also a shed. It has got some red bricks and then it has got – what appears to be a

corrugated iron roof and you say that is where they kept equipment?

MR ROY JANKIELSOHN: Yes Chair.

CHAIRPERSON: Thank you. Okay.

ADV LEAH GCABSHE SC: Just to clarify for they Chairman Mr Jankielsohn where number three is – is where your tractors etcetera would have been parked but I will ask them to put up arrow number four just to clarify for the Chairman what number four - what that part of the building represented. I know you are repeating what you are saying but it is easy for us because we have been there.

10 It is for the Chairman to understand what is – what goes on in that brick building – solid brick building where arrow number four is.

MR ROY JANKIELSOHN: Chairperson, arrow number four is pointing to the cement between the two buildings not the silage shed. Arrow number four is where the silage is stored. So it is a storage facility.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC:

MR ROY JANKIELSOHN: Just – it is – a lot of the silage is kept underground Chairperson.

CHAIRPERSON: Yes.

20 **MR ROY JANKIELSOHN:** They dig holes. They – they build a facility and store it there.

CHAIRPERSON: Yes. Now three and four do they both relate to the structure that has got what appears like a corrugated iron roof and a part that has got what appears to be brick walls? Do they both – those two arrows they relate to the same structure?

MR ROY JANKIELSOHN: No Chairperson. Four is a separate structure behind the other building at the back or next to the other building in the back – in the background.

CHAIRPERSON: *Ja*. I think (intervenes).

MR ROY JANKIELSOHN: So it is – it is a separate structure.

CHAIRPERSON: I think ...

ADV LEAH GCABSHE SC: I think we should ...

CHAIRPERSON: Either whoever does the arrows is very bad or I am very bad in reading what it is.

10 **ADV LEAH GCABSHE SC:** Chair – Chairman no it is – you are not – it is not your – your difficulty at all. I think we should come back to this once we have ...

CHAIRPERSON: Later on.

ADV LEAH GCABSHE SC: Been able to properly identify each building.

CHAIRPERSON: Yes. It might need to be refined, yes.

ADV LEAH GCABSHE SC: Absolutely.

CHAIRPERSON: Yes, *ja, ja*.

ADV LEAH GCABSHE SC: And in the process we will also make a
20 copy for you ...

CHAIRPERSON: *Ja*.

ADV LEAH GCABSHE SC: Of the – the presentation itself.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: That might make it easier.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Chairman if we might ...

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: Then proceed in the meantime.

CHAIRPERSON: Let us proceed, *ja*.

ADV LEAH GCABSHE SC: To all the other evidence. I am also conscious Chairman that you have another witness whose evidence you have to hear today. Mr Jankielsohn so we will come back to the structures on the farm but in the meantime the evidence I am going to take you through now drawn from your statement which I have read.

10 We will first deal with your interaction with the Provincial Government regarding the concerns you had about that particular farm. Secondly I am going to be asking you questions relating to your interaction with the Office of the Public Protector. Third I will be exploring with you matters relating to the beneficiaries – your concerns around the beneficiaries and then any other additional matters.

 So we are dealing with the Provincial Government. We will be dealing with the Office of the Public Protector. We will deal with your concerns around the beneficiaries which I know you expressed and then lastly we will deal with any additional matters you want to bring to
20 the attention of the Chairman. Let us start with the Provincial Government.

 The term “Mohuma Mobung” what is your understanding of what that term was supposed to represent?

MR ROY JANKIELSOHN: Chairperson I was first confronted by this term when I was requested by Mr Mosebenzi Zwane who was former

MEC of Agriculture in the Free State to meet with him in his offices at Glen Agricultural College on 17 November 2011. During this meeting the MEC introduces this concept to us as a concept that would promote agri-processing in the Free State because we have a situation in the Free State where our agricultural sector produces various commodities.

Many of these commodities are exported outside the province and then brought back into the province for the consumers to buy at additional cost. So the concept as far as I understood it at the time was that the Provincial Government would create an environment for
 10 the stimulation of agri-processing in the Free State under the term “Mohuma Mobung” and at the time in principle we supported this because it is important for us as the Free State to create additional employment opportunities for our people and to stimulate local economic development.

So that is where I first was confronted by Mohuma Mobung but later in the affidavit you will see that Mohuma Mobung became more than just a concept. It was – it later actually became a company connected to the Vrede Dairy Project.

CHAIRPERSON:

20 **ADV LEAH GCABSHE SC:** Mr Jankielsohn ion the documentation that has been made available to the Commission this Mohuma – Mohuma Mobung has been referred to as a strategy. It has also been referred to as an initiative. If it were a strategy of Government would it have to be tabled in any form at all in the legislature?

MR ROY JANKIELSOHN: Chairperson the strategies of Government

are the behest of the Provincial Government Department. So they would have – it would have been part of their Annual Performance Plans – the APPs – but it is not necessary for the Provincial Government to table every single aspect of their – of their work but it – – it would have been – it might have been tabled as part of that.

ADV LEAH GCABSHE SC: So when Mr Zwane mentioned this to you - and in your statement you say it would have been at paragraph 8 – in November 2011 it really was a courtesy and to sound you out on what you thought of the idea?

10 **MR ROY JANKIELSOHN:** Yes. Chairperson it was purely a courtesy – courtesy call and to sound us out and I went there as well to – out of interest what the MEC would like to talk to me about at the time.

ADV LEAH GCABSHE SC: Let us move onto the establishment of the Vrede Dairy Farm as a project. I would like you to try and align the concept or the initiative of Mohuma Mobung with the Vrede Dairy Farm. Your understanding of where the Vrede Dairy Farm would then have fitted into that Mohuma Mobung strategy. If you think there is an alignment at all.

MR ROY JANKIELSOHN: Chairperson the Vrede Dairy Farm if it were
20 to be part of what we understood as Mohuma Mobung would be that the Vrede Dairy Farm would produce milk and that this milk would be processed on the processing plant which was to be established on the farm and that these products would then sold locally and further abroad nationally.

ADV LEAH GCABSHE SC: When you first heard about the Vrede Dairy

Farm as I understand your evidence it was really when the Premier mentioned in his State of the Province Address that this was one of the projects the Province would be undertaking.

MR ROY JANKIELSOHN: Yes. Chairperson during the Premier's State of the Province Address in 2012 - in February 2012 – he mentioned the Vrede Dairy Project as one of various other projects which the Provincial Government would be involved in and it is a place the State of the Province Address where the Premier would indicate what his plans were for the Province going forward.

10 So initially the Vrede Dairy Project would not have raised serious alarms at all. It would just be another one of those projects which the Provincial Government was planning to implement hopefully to benefit the people of the Free State.

ADV LEAH GCABSHE SC: You then have also said earlier that it was when you read a – a media article and you have annexed RJ2 – Annexure RJ2 – as the media article that raised your concerns. When you read this article you thought you should explore with Government what was going on at this farm.

MR ROY JANKIELSOHN: Chairperson, yes. In 2013 the Mail &
20 Guardian published an article which I have attached in my annexures. The heading of the article raised serious alarms with us because the heading says: "The Guptas Land of Milk and Honey" and then it goes out to link a family which we did not have much interest in at the time and which later became relatively notorious for all the wrong reasons.

That it basically linked this family to the farm and also raised

concerns that there might be various irregularities regarding this project. So that is where my specific interest was initiated.

ADV LEAH GCABSHE SC: What steps did you then ...?

CHAIRPERSON: I see that – so it is the Guptas land of milk and money and not honey but and money. Yes.

MR ROY JANKIELSOHN: That – that is correct Chairperson.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: It is the Guptas land and milk - of milk and money and not honey, yes.

10 **CHAIRPERSON**: Yes. Thank you.

MR ROY JANKIELSOHN: I would prefer honey to money Chairperson ...

CHAIRPERSON: Well ...

MR ROY JANKIELSOHN: When reading such an article.

CHAIRPERSON: If you have got money you can buy honey. Yes.

ADV LEAH GCABSHE SC: Thank you Chairman. Can I then ask you to explain to the Chairman the steps you took to try and find out what exactly was going on with this particular farm?

MR ROY JANKIELSOHN: Chairperson ...

20 **CHAIRPERSON**: Before that may I just say that if it is possible at all – if it is at all possible to obtain clearer articles of this article and other articles and whatever annexures that might not be so clear. That would be really helpful.

ADV LEAH GCABSHE SC: We will do that Chair.

CHAIRPERSON: In course. Thank you.

ADV LEAH GCABSHE SC: Yes Mr Jankielsohn you were going to explain to the Chairman what steps you then took.

MR ROY JANKIELSOHN: Chairperson as I indicated previously when questioned about this. There are various ways in which we can interrogate. So my first port of call was to go to the committee which I was a member of that deals with agriculture and rural development and through the committee request a report from the department on the specific project and we did receive a report which was signed by MEC Qabathe.

10 I - I have attached it as annexure three on 10 July 2013 and this report is addressed to the then Chairperson Ms Gondwana who was Chairperson of the Portfolio Committee of Agriculture and Rural Development and in this report various aspects relating to the dairy project are indicated. Information which we did not have previously. For example that representatives of the department had visited India to investigate and look for various partners in this project.

For the first time as well in this report we formally in the legislature are introduced to a company called Estina (Pty) Ltd who (intervenes).

20 **ADV LEAH GCABSHE SC:** Mr Jankielsohn if you could just indicate to the Chairman which paragraph you are at. Just so that he knows exactly where you are. So your first reference to the visit to the India would have been on first page under executive summary under point one. If you just help the Chairman follow because he has not seen these documents.

He has looked at them but not studied them the way you have and then as you move on to the next point if you say to him if we turn to page 46 etcetera. It will help, thank you.

MR ROY JANKIELSOHN: Thank you. Chairperson RJ3 the report point number one executive summary. The second paragraph reveals that representatives of the department visited India. The largest milk producers in the world and met with several established dairy producers and milk processing plants. Many of whom they indicate expressed a keen interest in working with the department.

10 On page 2 of that document Chairperson they indicate that the department hereafter signed an agreement with Estina (Pty) Ltd with the understanding that Estina had strong relationships with several well established dairy producers in India to deploy this flagship project.

ADV LEAH GCABSHE SC: Can I ask you to pause again? Was this the first time you were finding out that the Vrede Farm Project was a flagship dairy project for Government?

MR ROY JANKIELSOHN: Yes. This is the first time it came to that type of prominence where we were informed that it was a flagship project.

20 **ADV LEAH GCABSHE SC:** And ...

MR ROY JANKIELSOHN: Chairperson.

ADV LEAH GCABSHE SC: And also that there is a company - again this was Government's response to you – the MEC's response that Government had appointed this particular company to handle - I will use that word loosely because I know you want to deal with the detail

of the handling – to handle this particular project?

MR ROY JANKIELSOHN: Yes. Chairperson this is the first time that I was made aware by Government that the company Estina (Pty) Ltd were involved in the project. Even though it might have been mentioned in the land of milk and honey media article I prefer to get first-hand information through reports or through our questions or other documents from the Provincial Government to confirm. I prefer to use those source documents than to rely on – on media reports.

ADV LEAH GCABSHE SC: Yes continue. The investment that was
10 made.

MR ROY JANKIELSOHN: The second paragraph Chairperson indicates that a phased investment by partners in the project is based on a total projected investment of R570 million. The first phase implementation of the project is based on an initial grant of the department whereby a total of 114 million is required per year. This will add up to a total committed grant of R342 million over a period of three years and that is money that would have been sourced from Government.

The second phase implementation is the processing plant by Estina for the amount of R228 million in the second year of
20 implementation and they indicate here that they were still in the process of – of implementing the project but later it was confirmed that Estina did not meet this obligation of the processing plant because it – it never became functional and in fact we were – Estina did not invest R228 million in this project as indicated.

The other detail on it deals with the dairy infrastructure, the

various phases. The – phase one the dairy infrastructure, phase two the processing plant, product market and sales and then on the third page Chairperson it deals with this project as a flagship project. If you go to the middle of page 3 Chairperson and you see a heading “Overarching Benefits for the Province and the Nation”. The first bullet point says:

10 “In line with the Agri BEE business norm stipulated
by Government it has been agreed that a new
special purpose vehicle be created in which Estina
will hold a 49 percent share while the remaining 51
percent shares will be distributed to selected grant
recipients.”

Now later in my affidavit I deal with this in more detail because later I will explain that Estina received a 49 percent share of the project but only committed a 40 percent funding to this project in equity. So there is basically a nine percent equity bonus in terms of shares for the amount of money that they put in and then also later on we will deal in more detail with the fact that they say here that 51 percent shares will be distributed to grant recipients who were the
20 intended beneficiaries of the project and these recipients never – were never part of this project at all and were totally side-lined throughout the process but we will deal with that in more detail.

ADV LEAH GCABSHE SC: Mr Jankielsohn so this an official response from the MEC. This is the relevance of this document outlining what the project is about and in a sense justifying the decisions taken on

this particular project. Were you happy with the response?

MR ROY JANKIELSOHN: Chairperson that was the initial report from the MEC to the committee and based on the information of this report I then submitted supplementary questions in terms of the rules relating to questions in the legislature which I mentioned previously to obtain more detailed information on the funding. For example they talk – they talk about funds committed – large amounts of funds committed by Government but they do not indicate what exactly these funds are going to be utilised for.

10 So I used the question which I have annexed to obtain additional information on - on this information that was given to the committee.

CHAIRPERSON: I see that since the meeting you had with Mr Mosebenzi Zwane and this report there had been a change of MEC for this department. This report came under the name of an MEC other than Mr Mosebenzi Zwane. Is that correct?

MR ROY JANKIELSOHN: That is correct Chairperson. In the Free State Province the MECs especially regarding the Department of Agriculture played musical chairs. So there is a regular changing of
20 MECs in the – in the province. We have had - even since here. We have had a number of other MECs who have been responsible for this department.

CHAIRPERSON: And do you – do you recall when Mr Mosebenzi Zwane had ceased to be MEC for this department and this new MEC took over or is that something that you are not sure

about?

MR ROY JANKIELSOHN: Chairperson I do not have the exact dates in the ...

CHAIRPERSON: Yes, okay.

MR ROY JANKIELSOHN: When these various MECs took office.

CHAIRPERSON: Okay. No that is fine.

ADV LEAH GCABSHE SC: But the position in law is the MEC in office represents the views of that department irrespective of the person. That is – that is an official response from the MEC in office?

10 **MR ROY JANKIELSOHN:** That is correct Chairperson.

CHAIRPERSON: What – what you may wish to do if you have not done that already is to get the specific dates because obviously once you are no longer MEC for the department you are not responsible for what happens in the department after you have left but for the period that you were MEC you are responsible. So if that information can be obtained that would be helpful. Then one knows which MEC is responsible for what happened when.

ADV LEAH GCABSHE SC: Thank you Chairman.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABSHE SC:** Chair ...

MR ROY JANKIELSOHN: If – if I may – if I may assist. It was MEC Zwane who was the – who initiated the project ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: And most of the implementation was under MEC Qabathe.

CHAIRPERSON: Okay. No that is – that is fine. Thank you.

ADV LEAH GCABSHE SC: If we might just tidy up this point Mr Jankielsohn by going to Annexure RJ9. You have said that you interrogated the issue further. Unless you want to deal with a different annexure. I have looked at RJ9 and thought – and your statement and thought this might be what you want to take the Chairman through very briefly as the more detailed response that you referred to earlier.

MR ROY JANKIELSOHN: Yes. Chairperson RJ9 was a response to various questions that I submitted through the legislature to
10 MEC Qabathe which she replied to on 13 November 2013 and why this specific annexure and document is very important is because this reply is also what prompted me to request the Public Protector to investigate this project.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: Chairperson if I can – would you – would you like me to go through this – the response of the MEC?

CHAIRPERSON: Ms Gcabashe will guide you which of those she would like you to highlight.

ADV LEAH GCABSHE SC: Thank you Chairman. I think this is a
20 particularly important document Mr Jankielsohn because it sets out what was planned in terms of funding for this project. If you can then just very briefly then take the Chairman through paragraph 3.2 which details some of the amounts that the MEC says was spent on this project.

MR ROY JANKIELSOHN: Chairperson 3.2 the question was:

“What each of the respective amounts were spent
on since the project was initiated.”

The first bullet point the MEC indicates:

“Establish 151 hectares of crops and fodder which
are maize crops which are planted on 86 hectares
...”

CHAIRPERSON: I am – I am sorry. Will I not understand 3.2 better if
you start at 3.1 Mr ...?

ADV LEAH GCABSHE SC: Chairman he had – he had set out 3.1 a
10 little earlier. The 114 ...

CHAIRPERSON: Oh okay, okay.

ADV LEAH GCABSHE SC: Per annum.

CHAIRPERSON: Okay. Maybe – maybe he can just quickly deal with
it. Maybe I missed it. *Ja*, 3.1.

MR ROY JANKIELSOHN: Chairperson I will go through each ...

CHAIRPERSON: *Ja*.

MR ROY JANKIELSOHN: Each question then.

CHAIRPERSON: *Ja*.

MR ROY JANKIELSOHN: 3.1.

20 “How much money has been spent on each – in
each year since the project was initiated?”

The reply:

“The department has committed to pay the total
contribution of 342 million over a period off three
years in tranches of 114 million per year. The first

contribution was done in two payments of 30 million and 84 million which is equal to 114 million in 2012.”

Question two:

“What were each of the respective amounts spent on since the project was initiated?”

Bullet point one:

“The MEC indicates the establishment of 151 hectares of crops.”

10 And then they mention the various crops that have been planted and also the cost of seeds, fertilizers, inputs and diesel which was R319 290. The second bullet point relates to labour costs of 1 309 097. Bullet point three indicates that:

“A silage bunker was built for R5 million.”

The next bullet point indicates:

“The construction of a gravel access road of plus minus two kilometres.”

And they indicate it was completed at R1.2 million. Then they speak to the cattle shed which cost R500 000. A security gate and
20 guardhouse of R2.6 million which I also indicated previously when we dealt with the photographs. A temporary veterinary laboratory of R300 million.

ADV LEAH GCABSHE SC: No. Your reading of that number is ...

MR ROY JANKIELSOHN: Oh.

ADV LEAH GCABSHE SC: Not correct Mr Jankielsohn.

MR ROY JANKIELSOHN: Which number would that be?

ADV LEAH GCABSHE SC: The veterinary – the veterinary. It is 300 000.

MR ROY JANKIELSOHN: 300 000, sorry. Yes. The temporary veterinary laboratory of R300 000. I am sorry. I am talking in so many millions. I – I get confused between the two.

10 “Cattle feed plant of R7.35 million. A milking parlour. A 10 point static parlour and 72 point rotary parlour and milk processing plant of R30 050 000.”

So it is 30 million and R50 000.

“The purchasing of farm equipment: tractors – two John Deere tractors and various other tractors at R2.36 million.”

Equipment which they indicate here are things like:

20 “Ploughs, cultivators, maize planters, boom sprayers, fertilizer spreaders, water browser, diesel browser, spray guns, generator with welding machine, balers, disc mowers, harrows, wheel rakes, tipper trailers.”

I am going very fast through them Chairperson.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: The total cost of the equipment was R3.5 million. The farm tools which is the next bullet point and this includes:

“Spanner set sizes one to 36, ring spanner and

screwdriver, socket set, heavy duty vice, trolley
jack, a pick, shovel, silage fork, axe, rake, saw,
spot lamp, grinder ...”

Which is also includes gardening tools basically.

“Air compressor and drill machine for a ...”

What I thought was a staggering amount of R2.5 million
Chairperson if one looks at it. It is a couple of tools and garden
equipment, *ja*. The purchasing of dairy cows for R6.2 million and this
is also very relevant to the Public Protector’s report eventually because
10 we did get additional quotes for this Chairperson. The next bullet
point:

“The land surveyor, agriculturist, accounting fees,
office equipment, insurance salaries and wages,
professional fees, administration fees and legal
fees together cost R12 million.”

So it is basically all the administration around it was 12
million and then they secured a pasteuriser, dairy equipment and
irrigation equipment for R37.7 million Chairperson and it – it – this
reply is very important because when one looks at it just a cursory look
20 at this it immediately raises alarms ...

CHAIRPERSON: Yes I mean ...

MR ROY JANKIELSOHN: That they inflated.

CHAIRPERSON: Two tractors - that first bullet point under – under
purchasing of farming implements – two tractors - John Deere tractors
and two what – I do not know what a tractor Tafe or whatever it is

called is but 2.3 – R2.3 million. Do you know what a tractor Tafe is or whatever? I do not know what the pronunciation is or T-A-F-E.

MR ROY JANKIELSOHN: Chairperson I think it refers to the fact that they bought four tractors. Two different – two of one kind and two of another kind for 2.36 million.

CHAIRPERSON: Ja. It is – it is – sounds so unrealistic and excessive.

MR ROY JANKIELSOHN: Chairperson, if – if I can just stand still on this. I mention it in some of my other annexures as well. Is that during this time the National Department had donated about R40 million worth
10 of tractors and equipment to the Free State. So one of the issues that I raised as well is that why is it necessary to purchase additional equipment and tractors when in fact many of these tractors and much of the equipment was standing at the showgrounds at Vrede town and (intervenes).

CHAIRPERSON: So there were tractors that were physically available that had been donated by the national department?

MR ROY JANKIELSOHN: Yes Chairperson. I am of the opinion that those tractors could have been – could have been used for this.

CHAIRPERSON: Yes and they were not been used they were just there
20 in your understanding at least ...

MR ROY JANKIELSOHN: Chairperson they ...

CHAIRPERSON: At that time?

MR ROY JANKIELSOHN: They stood at the showgrounds and various other storage places. We were even informed that some of them were stored at this farm for a long time and then what they did with those

tractors is they eventually allocated them to districts. They formed five entities in the districts. Donated these tractors to those entities and those entities then sold those services back to Government to plant for various projects and emerging farmers. So what – what I indicated at the time is that those – that grant from Government of tractors and equipment was used to create another layer of bureaucracy and another layer of people who were then using this equipment to obtain funds from Government but that was not part of my ...

CHAIRPERSON: Yes.

- 10 **MR ROY JANKIELSOHN:** Affidavit to the Vrede Dairy Project. It is just for background information Chairperson.

CHAIRPERSON: Okay, okay.

ADV LEAH GCABSHE SC: Chairman I notice we are beyond quarter past 11. This might be a good time to take the tea adjournment.

CHAIRPERSON: Yes. Let us take the tea adjournment. We will resume at 20 to 12. We adjourn.

ADV LEAH GCABSHE SC: As it pleases.

REGISTRAR: All rise.

INQUIRY ADJOURNS

- 20 **INQUIRY RESUMES**

ADV LEAH GCABSHE SC: Thank you Chairman, Chairman I don't think this...(intervention).

CHAIRPERSON: I saw what happened, I know you are trying to get things in order.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: No that's fine, yes we were busy with – we were at page 177.

ADV LEAH GCABASHE SC: Yes I have a legal representative who would like to place himself on record, would you like him to do it at the end of these proceedings or at this point in time?

CHAIRPERSON: Was he not here when we...(intervention).

ADV LEAH GCABASHE SC: He was not here, Chairman, when we started.

CHAIRPERSON: He should have been here at the time.

10 **ADV LEAH GCABASHE SC:** Your prerogative Chairman.

CHAIRPERSON: Ja let's carry on he will place himself on record later

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Jankielsohn we are going through Annexure RJ9 and you had dealt with the matters under 3.2 in a bit of detail, you are now at the bottom of page 177 and if you could just summarise what's set out in 3.3 and 3.4, just the relevant parts of that and then if you could just tidy up your input on this particular document?

MR ROY JANKIELSOHN: Thank You, Chairperson question 3, were there any outside individuals or companies have been paid any money
20 in respect of this project, a) who are these respective individuals, the next page the reply to a) says Estina...(intervention).

CHAIRPERSON: That's 3.3?

MR ROY JANKIELSOHN: 3.3.

CHAIRPERSON: Okay.

MR ROY JANKIELSOHN: The next page indicate the reply being Estina

and 3.3 b), what services were provided by these respective individuals and companies, b) the reply indicates Estina to ensure the implementation of the project in the district with due skill diligence regularity and expedition and complete the project but a little bit further on – I'm not going to read through everything Chair, with your indulgence.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: A little bit further on, very important in the reply the MEC indicates, part of the responsibility of Estina is to ensure
 10 that sound financial management and accountability systems are in place and provide the department with monthly and annual reports as in line with the monitoring and evaluation system of the Department of Agriculture and rural development. Question 4, what is the total amount that the department plans to spend, this was replied to in the report as well, R570million which the department had committed a contribution of R342million and over a period of three years. Question – with a reply to question 5, which was, when will the project be complete, the reply indicates the Vrede Dairy Project was initiated on the 5th of July 2012 and is envisaged to be completed by July 2015.
 20 What are the expected outcomes of the project for the Free State Province and there are various overarching benefits for the Province and the nation here as well in the first bullet point they refer to the project being in line with Agri BEE business norms stipulated by Government. Estina proposes that a new special purpose vehicle be create in which Estina will hold a 49% share and the remaining 51% of

the shares will be distributed to selected grant recipients. Estina will provide the required capital injection as well as technical know how which will be provided by Paras, it is envisaged that the integrated Agri Business Project will become a centre of excellence for the Free State and even neighbouring provinces, Chairperson and there are various other aspects here relating to basic business financial management skills that they want to implement, cooperative processing, value adding marketing facilities etcetera which are in the reply. Again we ask, who is the private second partner and again the MEC replies at

10 3.7, Estina, 3.8 how much money will the private sector partner invest in the project, the total project cost is R570million of which Estina will contribute R228million. What is the agreement in 3.9, the question is what is the agreement between the province and the private sector partner in terms of the investment and they indicate here, the department has entered into an agreement with Estina for the construction and implementation of a dairy project with infrastructure? The first phase of the project involves setting up the dairy parlour within in house capacity of up to 1000 cows to supply milk to the parlour. The dairy construction will also include, among others, feed

20 storage, feed slots, land cultivation for feed on 4.4 – 4 400 hectares of municipal land. The second phase of the project involves setting up of a milk and dairy products processing plant to produce packaged milk and other dairy products. Estina agrees in pursuance of the project for the formulation of a new legal entity Mohamo Mobung Dairy Project (Pty) Limited wherein Estina shall hold a 49% share and the farmers a

51% share.

ADV LEAH GCABASHE SC: Mr Jankielsohn, can I just probe one aspect here, is it correct that – what is being communicated here is that Government will make the initial investment and then it's only at the second phase of the project that Estina will then put up that processing plant. I'm looking at the evidence you have given to this point, is that your understanding of what was going to happen?

MR ROY JANKIELSOHN: That is my understanding, Chairperson in terms of the reply that I received from the MEC, yes.

10 **ADV LEAH GCABASHE SC:** Yes continue, just to summarise the last few points.

MR ROY JANKIELSOHN: If I can go to the next page RJ180, Chairperson I'm going to skip the top section which just deals with additional things that Estina will do, for example just to provide beneficiaries with aftercare or mentorship in conjunction with extension support from the department according to the scope of work for each project shall use local labourers to provide evidence as per the agreement, these are just the last two bullet points at the top of the page and then they indicate, the training, mentoring and support will be
20 assessed beforehand by Glen Agricultural Institute and if it is not satisfactory it will have to be rectified by the service provider. Now why this reference to the beneficiaries is important is because up until now, to date, these beneficiaries have been totally side-lined for the project and it is my opinion, Chairperson that an Agricultural project cannot exist without beneficiaries. It is not Government's job to milk

cows. In this specific project the purpose would have been to identify beneficiaries and then to implement the project and ensure that these beneficiaries are part of the project from the outset because then they would be able to take ownership of the project, there would have been in-house training of the project and they would have been given employment during the initial phases of this project as well but the exclusion of the beneficiaries is very strange to me, given that Government projects have one purpose and that should be to benefit some beneficiaries on the ground, the people on the ground and in this

10 case the community of Vrede are – most of the people there are impoverished, there's huge unemployment and people were hoping that this project will bring some relief to at least those 80 people who were later identified to beneficiaries and unfortunately those people are still side-lined in this project.

ADV LEAH GCABASHE SC: Mr Jankielsohn can we then turn to page 207 which is yet another response to your enquiries, I'm really just trying to deal with how the legislature, how Government responded to the enquiries you made in your capacity as a member of the portfolio committee on agriculture and a member as the legislature.

20 **CHAIRPERSON:** And maybe before he does so, and please don't forget what the question was. As at the time that you received this report, was there, in existence, to your knowledge a study or a document that indicated that a study had been undertaken or some work had been done to say, if we want to achieve these goals, using this kind of project, what are the steps that will be necessary, what are the skills

that will be necessary, what will all this cost the department and whether the result of that study showed that it would be worthwhile to embark upon this project. Was there any document that reflected that kind of homework?

MR ROY JANKIELSOHN: Chairperson my understanding of this project is that certain individuals from the department and perhaps even some of the politicians visited India to try and find a partner for this project, so this project would have been, in my understanding, initiated within Government itself and that's where the idea of the project would have

10 come form and the documents that I received as well were only relating to the – only relate to the presentation made by, firstly Estina – under the name of Estina and Paras to Government and later the department to the Executive Committee requesting that this department receive the necessary funding and one of the issues that I refer to in my bundle of documents as well is that – and which is also referred to by some of the other bodies like the Treasury – the National Treasury investigated is that no feasibility study appears to have been done. One would have thought, as you correctly indicated Chairperson, that a feasibility study would be done beforehand to determine what the purpose of the project

20 is, who the beneficiaries would be of this project, what the costs of this project would entail and then also include the necessary timeframes for this but it appears that it – from the documentation that I've got this project, from the replies that I received was basically an agreement between Government and Estina, the beneficiaries were mentioned, almost in passing, and also used to justify the project but were never

physically involved in the project.

CHAIRPERSON: So to the best of your knowledge, no feasibility study had been undertaken by the department to see that this kind of project was worth spending the kind of tax payer's money that was envisaged and that it would achieve the desired goals?

MR ROY JANKIELSOHN: Chairperson you are correct, in my knowledge I'm not aware of any feasibility study and none of the documents that I received from the Provincial Government in terms of the report or replies made any reference to a feasibility study at all.

10 **CHAIRPERSON:** Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Jankielsohn the objective facts, however, not the ones that were presented to you but the objective facts say there was a feasibility study that was conducted. I just want to place this on record because we have the documentation and if my memory serves me well it was in October 2013. I know that the agreements were signed in July of 2012 and the feasibility study was done, Chairman might I correct myself, in October of 2012 a few months later. So it was still a case of putting the cart before the horse.

20 **CHAIRPERSON:** Yes okay.

ADV LEAH GCABASHE SC: Because the feasibility study came long after the agreement was signed and long after any monies were dispersed.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Just to set the record...(intervention).

CHAIRPERSON: Yes okay thank you.

ADV LEAH GCABASHE SC: But you are correct Mr Jankielsohn that in terms of the documentation that was furnished to you no feasibility study was attached to the documentation and to the answers that were given to you in the legislature. Can we then move on from that, I take it that you have dealt with most of the important aspects on this document, unless there is anything else you wanted to point to, I'd like to move on to the next aspect. Shall we do that?

MR ROY JANKIELSOHN: We can, I'm not sure Chairperson if I must
10 just answer, you said I must just hold onto the previous question while you asked a question.

CHAIRPERSON: Oh yes I didn't want you not to answer Ms Gcabashe's question but I think my interruption disturbed her thinking, she forgot that you still owed her an answer. Yes you can give the answer.

MR ROY JANKIELSOHN: Thank you Chairperson, in a reply from an acting MEC, Ms Olly Mlamleli on 30 April 2015, she confirmed in her reply that Estina was appointed as a service provider and when asked about beneficiaries she said beneficiaries were residents from the area
20 surrounding the project previously disadvantaged and with a keen interest in farming.

ADV LEAH GCABASHE SC: And that you'll find on page 208, that particular answer under point 2?

MR ROY JANKIELSOHN: That is correct Chairperson.

ADV LEAH GCABASHE SC: Thank you Mr Jankielsohn. I do want to

move on, if you're satisfied that we have at least settled the broad interaction you had with your colleagues in the legislature and responses they gave you when you interrogated the basis on which this dairy farm had been established. Can we move on to the agreement between the department and Estina and that you will find at your RJ5, Annexure RJ5. Do you recall when you were able to get hold of a copy of this agreement?

MR ROY JANKIELSOHN: Chairperson I can't recall the exact date, I've been involved with this project for several years and I can't remember
10 which documents I received and specific dates.

ADV LEAH GCABASHE SC: Who are the parties to this agreement?

MR ROY JANKIELSOHN: Chairperson RJ5, which is a copy of the agreement indicates that the agreement is entered into and between the Department of Agriculture and Estina (Pty) Limited.

ADV LEAH GCABASHE SC: And who signed on behalf of the department?

MR ROY JANKIELSOHN: Chairperson on page 143 of the document, it is signed at Bloemfontein on the 5th of July 2012 by the Head of Department, Mr Peter Thabethe as witness S. S Dlamini who I assume
20 was the former CFO of the department if it is the same individual.

ADV LEAH GCABASHE SC: Yes and then on behalf of Estina?

MR ROY JANKIELSOHN: On behalf of Estina signed on the same date in Bloemfontein a Mr Gautam managing director of Estina, Sanjeev Gautam and as witness Mr R J Sharma.

ADV LEAH GCABASHE SC: Can you then turn to the very next page

which sets out the obligations in the first phase?

MR ROY JANKIELSOHN: Chairperson, obligations, 1) land acquisition, 2) environmental impact assessment, 3) feasibility study, 4) water reticulation, 5) electricity connections, 6) include identified beneficiaries in Agri BEE entity, 7) set up of Agri BEE entity and clarify roles of stakeholders, the department and Estina, 8) draw a project plan up in line with Estina proposals which must have milestones and timeframes for phase 2 as approved by the department and 9) determine the dates for capital injection by Estina.

- 10 **ADV LEAH GCABASHE SC:** Yes thank you. What do you know about the acquisition of the land and so that would be the 4.4 hectares that was acquired at Vrede?

MR ROY JANKIELSOHN: Four thousand four hundred hectares Chair.

ADV LEAH GCABASHE SC: Yes correct.

MR ROY JANKIELSOHN: The land, as far as I'm aware belonged to the Phumelela local Municipality and that Estina then signed a 99-year lease on this land for the purposes of implementing this project.

ADV LEAH GCABASHE SC: Is that the extent of your knowledge?

MR ROY JANKIELSOHN: That's the extent of my knowledge yes.

- 20 **ADV LEAH GCABASHE SC:** You have said that you no nothing about the feasibility study what about the EIA, the Environmental Impact Assessment, is that something that you might have enquired about at some point?

MR ROY JANKIELSOHN: Yes, Chairperson, when we heard that a number of cattle had died on the project I was very concerned, I visited

the project with Carte Blanche team who also requested us to go and show them this and we found a spot on the farm where a number of cattle had been buried next to a stream and my interest in it is that the stream also feeds the local town with water and if these cattle – besides the fact that they died which is a concern to us, the larger concern is that these carcasses would pollute the stream and cause health issues for the neighbouring town of Vrede. We did request information around this and we were informed later that the carcasses had been moved to a different spot and that there was no longer cause
10 for a concern.

ADV LEAH GCABASHE SC: If you then turn to page 270 where you will find Annexure RJ16, this is one of the last responses you got to your enquiry, this particular response is dated 2015. Could you please take the Chairman through again, the responses that you were given as a committee/as the legislature to the issues that you were raising in that forum?

CHAIRPERSON: I'm sorry I missed the page?

ADV LEAH GCABASHE SC: It's 270 Chairman and it's RJ16.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC:** So it's addressed to a Mr B F Mothupi who was the table assistant or it could be a Ms Mothupi who was the table assistant Free State Legislature, could you speak to this document?

MR ROY JANKIELSOHN: Chairperson this is a reply received on the 28-04-2015 relating specifically to the agreement between Estina and the Provincial Department, shall I go through – Chairperson, shall I go

through the questions and replies as I did with the previous?

CHAIRPERSON: Yes, unless Ms Gcabashe indicates you to highlight on this certain of them that she's interested in.

ADV LEAH GCABASHE SC: Mr Jankielsohn if you could deal with question 2.1, I was hoping you could speak to it rather than read every clause, but I don't want to rush you and I want it to be convenient for you to give these responses, I really just want them on the record as a response from the legislature.

MR ROY JANKIELSOHN: Chairperson 2.1, what are the terms of the
10 contract pertaining to the Vrede Dairy Project between the Provincial Government and Estina prescribe regarding the cancellation of the project, and the reply is, the parties shall have the right to terminate the agreement without prejudice to any of its any other rights upon the occurrence of any of the following acts and then the first one on breach of the agreement as stipulated in clause 10, the breach of the agreement.

ADV LEAH GCABASHE SC: So we can take it where the agreement was breached, they could terminate the contract, that's the first one?

MR ROY JANKIELSOHN: Yes.

20 **ADV LEAH GCABASHE SC:** And they set out all the different parts of that breach clause?

MR ROY JANKIELSOHN: That's correct.

ADV LEAH GCABASHE SC: Can you then go on to 2.2, you'll tell me if I am rushing you, I really just want this on record.

MR ROY JANKIELSOHN: 2.2 indicates that they have the ability to

suspend further payments to the defaulting party. So if the – I presume that if the agreement were terminated then the Provincial Government would suspend further payments to the defaulting party.

ADV LEAH GCABASHE SC: Yes can I ask you Mr Jankielsohn, you'll tell me if I'm rushing you, but I actually want you to move on to page 271 and on page 271 there is a question under 2.2 on what date was the contract cancelled, can you go to that point?

MR ROY JANKIELSOHN: Chairperson the question, on what date was the contract cancelled, and the reply, the department cancelled the
10 agreement with Estina (Pty) Limited on 13 August 2014.

ADV LEAH GCABASHE SC: Please deal with 2.3.

MR ROY JANKIELSOHN: Whether any claims were made by Estina against the Provincial Government regarding the cancellation of this contract, if so what is the nature of the claim, b) the amount? The reply, no claim was made by Estina since the cancellation of the contract. 2.4 whether the department intends to pay any amounts relating to this claim if not why not, if so how much, and the reply is, no claim was made by Estina since the cancellation of the contract.

ADV LEAH GCABASHE SC: If you go back to your affidavit Mr
20 Jankielsohn and if you look at page 9 of that affidavit, there are some figures that you set out in your paragraph 18.25 relating to payments that were made. Please just take the Chairman through the dates of those payments bearing in mind that the contract was cancelled on the 13th of August 2014.

MR ROY JANKIELSOHN: Chairperson, since the cancellation of the

contract the information that I have is that on 20 December 2014, and we mentioned the contract was terminated in August 2014 and amount of R29.950million was paid to Estina by the Provincial Government Department. On 8 May 2015 and amount of R60million was paid to the Provincial Department – or to Estina by the Provincial Department and 5 May 2016, R46.252million was paid to Estina by the Provincial Department, the total of which adds up to R136 202 652.00. Now it's interesting because there is a cancellation agreement between Estina and the Department in which they indicate that R106 252 652.00 will be

10 paid by the Provincial Department to Estina based on monies that the provincial department indicated they still owed to Estina at the time. There is a discrepancy between the amounts paid and the cancellation agreement amount of just over R106million of R29.95million, that's the discrepancy between the physical amount paid and the amount indicated in the cancellation agreement which is close to R30million and just as a side Chairperson, the Gupta leaks indicated that it was R30million that was allegedly paid from the Project for the Gupta wedding and if I can go back to the replies that I received in line with the questions I was asked previously, it does, to a degree, contradict

20 those replies, because in those replies the acting MEC indicates that there's no amounts owing to Estina, nothing will be paid after the cancellation. The cancellation agreement says otherwise and the amounts paid indicate otherwise as well.

ADV LEAH GCABSHE SC: Mr Jankielsohn if you go to page 139 I am taking you back to the agreement. 139. And if you then read

paragraph or clause 15.3 which falls under the heading Termination. Please just read that into the record and I will ask you a question as soon as you have done that?

MR ROY JANKIELSOHN: 15.3

“Exhaustion of Funds”

ADV LEAH GCABSHE SC: Yes.

MR ROY JANKIELSOHN: Chairperson it reads as follows:

10 “It is also agreed that should funds no longer be available to pay for the execution of the project the department may terminate this agreement in its own discretion or temporarily suspend all or part of the project by notice to Estina who shall immediately make arrangements to stop the performance of the project and minimise further expenditure provided that Estina shall there upon be entitled to payment in full for the services delivered up to the date of termination or suspension.”

20 **ADV LEAH GCABSHE SC:** Now Mr Jankielsohn had somebody given you a response that said, we no longer have funds for this project therefore we are cancelling the contract and that last little proviso applies. The one that reads:

“Provided that Estina shall there upon be entitled to payment in full for the services rend – delivered up to the date of termination or suspension.”

Would you have be able to interrogate this matter further? Had

somebody said to you this is the reason 15.3 compels us to pay for services that were rendered?

MR ROY JANKIELSOHN: Chairperson I would have been able through the – if I was requested to do so through the processes in the legislature to submit supplementary questions to the relevant MEC based on this information.

ADV LEAH GCABSHE SC: Because this is what I understand of the statements and documents that have been made available to the commission that the project ran out of money as one of the reasons.

10 They therefore had to terminate and when they terminated there were outstanding services that had been rendered therefore those services were paid for post 13 August 2014?

MR ROY JANKIELSOHN: Chairperson it is strange to me that the documents indicate that there had to be a cancellation of this agreement shortly before Estina was meant to implement their part of the agreement which was phase 2 to ensure that the processing plant was functional and also to invest an additional amount of R228 million into the project. Because the Provincial Department did continue to fund this project to the tune of R20 million a year after the Estina
20 withdrew and the Free State Development Corporation took over this project. So there was funding available from the Provincial Government to continue with – with this project. We would have thought and that is one of the issues that is of concern to us that after spending all this money and the time frames that had passed that this dairy farm would be functional. That it would sustainable and it would

be self-supporting. The fact that the Provincial Department had to continue to put R20 million into this project annually which it is still – which it is still doing as we speak indicates that this project is not yet functional. It is not a sound running business concern and that it still requires a huge amount of government funding. Now when the Free State Development Corporation took over this project they immediately appointed a company E'tsho Civils to take over the running of this project because the Free State Development Corporation is not mandated to milk cows with all due respect to them Chairperson.

- 10 E'tsho Civils is a company that traditionally in the Free State builds roads, school etcetera. Now suddenly they were given this project. We did request information regarding what the R20 million was being used for because we would have expected that it would be running at a profit. We were informed and also on a visit to the farm itself we were informed that the project is not self-sustainable. That they nor producing enough milk to maintain the farm and that is why the government had to put in additional funding. But it is also interesting that of that R20 million R1 a month was paid to E'tsho Civils for professional fees and that is after all the other costs were dealt with.
- 20 Now my concern is that R1 million to pay someone to milk between a 100 and 160 cows is excessive. And even after Estina had withdrawn the department continued to funds into this money under a new partnership with the Free State Development Corporation who then appointed E'tsho to be their implementing agent. Now I am just – Chairperson R1 million a month profit to milk between 100 and 160

cows I am willing to do it by hand you know not even with machines if they – if they need to do that. Anyone who has milked cows before knows that it is an excessive amount.

CHAIRPERSON: But also that – that paragraph I do not know if it is normal that you have read paragraph 15.3 Exhaustion of Funds. I would have thought that if you embark on a project such as this and you had done your homework you would not embark upon it until you knew how much the project would cost and whether you will have funds to see it through to the end. So it is rather strange to me that there is
10 this clause which says in case we run out of funds. How do you start a project like this without certainty that you have got funds that will take you through? Because otherwise if you go halfway and you cannot proceed because there are no longer – there are no longer any funds the funds that you may have spent up to halfway may be completely wasted and that could be a lot of money.

ADV LEAH GCABSHE SC: Chair – Chairman if I could be of assistance?

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: It is not just within the remit of this
20 particular witness.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: To deal with

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: The question you have just asked.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: There was a specific reason.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: That these funds dried up.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: And that reason related to Estina.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Being the party that was implementing agent.

CHAIRPERSON: Yes. Okay.

10 **ADV LEAH GCABSHE SC:** Funds were then released.

CHAIRPERSON: Not from the government?

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: But a different witness will come and deal with that aspect Chairman.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABSHE SC:** But if I could ask Mr Jankielsohn to – to just break the answer you have just given to the Chairman and just help the Chairman understand one. Did you know what the basic core competency of the FDC was? Because you are saying that they could not do the job – they gave it to somebody else. What was it set up to do as you understand matters?

CHAIRPERSON: I am sorry Ms Gcabashe I am going to interrupt you.

Just going back to the point where we were talking about now. Another witness might deal with it but of course one can pick up things in terms of what makes sense and what does not seem to make sense and one accepts that sometimes what seems not to make to sense now might make sense when somebody who has knowledge explains things later. The way clause 15.3 is written at least I get the impression that it seems to – it seems to contemplate a situation where funds run – where the department runs out of funds but that might be a strict reading of it. That is the impression I am getting. But it might be a strict reading of
10 it. But you can – we can deal with it at a later stage. Okay.

ADV LEAH GCABSHE SC: Thank you Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: Mr Jankielsohn back to my question.

CHAIRPERSON: But what this witness can do he might be able to say, look I am not sure and I am – I do not want to comment because I may be wrong but having – having been intimately involved in getting information about this project and so on if he is able to say anything he can say. If he thinks there is something he can say that can enlighten things. So – but you would know whether you have anything that can
20 enlighten me on this or not.

MR ROY JANKIELSOHN: Chairperson are we dealing with you initial question regarding the feasibility of the project?

CHAIRPERSON: No, no.

MR ROY JANKIELSOHN: Are we dealing with the Free State Development Corporation?

CHAIRPERSON: The exhaustion of funds clause 15.3 that you read earlier. That is what we are talking about. But probably if you do not have a comment ready it must mean you do not have a comment on it.

MR ROY JANKIELSOHN: Chairperson I did indicate previously that I do see how there was an exhaustion of funds at least on the side of the Provincial Government if they continued to fund the project. I cannot speak on behalf of Estina.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: Whether they in fact had funds to put into
10 this project or not but they did receive substantial funding from the Provincial Government as implementing agents in this project.

CHAIRPERSON: Yes. That might tie in with what Ms Gcabashe says is the position namely that the running out of funds happened on the part of Estina at a later stage. Or they – it might not have been running out of funds but there may have been problems on the part of Estina. But there will be a witness you told me who will deal with this aspect.

ADV LEAH GCABSHE SC: Yes Chairman.

CHAIRPERSON: Ja.

ADV LEAH GCABSHE SC: Chairman the simple answer is National
20 Government stopped funding. Stopped that funding.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: Because of the illegalities involved in the contract.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: But a different witness is going to deal with

that.

CHAIRPERSON: Ja okay.

ADV LEAH GCABSHE SC: So it is those supply chain management issues and policies that had not been adhered to that triggered.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: 15.13 if you want to call it that.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: Okay no, no that is fine.

- 10 **ADV LEAH GCABSHE SC**: But can we deal with it in – with a totally different witness Chairman?

CHAIRPERSON: Ja. Okay.

ADV LEAH GCABSHE SC: But Mr Jankielsohn can I take you to page 312 which is RJ23 which deals with that FDC payment of R20 million in the year 2017 to 2018 and R51.2 million in prior years. That is the point you were speaking to earlier and I am simply showing you the Auditor General's Report that supports what you have been saying. So my question was what was the core competency of the FDC ought they to have been appointed at all as implementing agents?

- 20 **MR ROY JANKIELSOHN**: Chairperson the Free State Development Corporation is set up to stimulate economic growth in the Free State. To support small, medium, macro enterprises in the Free State with funding and to run various structures. Various things like office buildings and various other factories and various other things to rent them out, receive the rent and then use the profits for that as part of

their funding for small, medium, macro enterprises. I do not think dairy farming is part of that mandate at all.

ADV LEAH GCABSHE SC: Yes. Thank you. There are many areas Mr Jankielsohn that I have not specifically touched on because when we move to your interaction with the Public Protector some of those aspects will come up. Can we then discuss the nub of your complaint to the Public Protector? To assist you can I point you to RJ10 which is on page 184? Please speak to the Chairman about this complaint number 1. Can I also ask you to speak to the Chairman about the
10 earlier complaint that you had laid with the Public Protector in September of 2013? And then I will also ask you to deal with the last complaint you laid in March of 2015? I beg your pardon in May of 2015. So that is three distinct complaints you laid at the door of the Public Protector please address the Chairman on that?

CHAIRPERSON: Did you say we must go to page 314?

ADV LEAH GCABSHE SC: 184 Chairman.

CHAIRPERSON: 184.

ADV LEAH GCABSHE SC: And it is Annexure RJ10.

CHAIRPERSON: Thank you.

20 **MR ROY JANKIELSOHN:** Chairperson if I may be of assistance here. In the Public Protector's Report on page 329 she deals with the complaint of 20 September 2013 on 330 the complaint of 28 March 2014 and then on page 332 the complaint of 10 May 2016. So it might be easier since the pages follow in each other for the Chairperson if I go through each one of them it will be quicker than having to refer to

various....

CHAIRPERSON: Okay.

MR ROY JANKIELSOHN: Various supplements.

CHAIRPERSON: Okay that is fine.

MR ROY JANKIELSOHN: Chairperson 329 of the Public Protector's Reports – page 329. It deals with the complaint and it is on page 16 of the report itself but in RJ329.

ADV LEAH GCABSHE SC: So that is paginated page 329 Chairman.

CHAIRPERSON: Yes I have got it thank you.

10 **ADV LEAH GCABSHE SC**: Yes Mr Jankielsohn.

MR ROY JANKIELSOHN: Chairperson and I am going to read from the Public Protector's Report.

“The complaint submitted – the complainant submitted a complaint on 12 September 2013 with the following allegations of mal-administration in respect of the project.

1. That the Portfolio Committee on Agriculture and Rural Development in the Free State Legislature around September 2013 heard from the Head of Department Mr Thabethe that an agreement between the province and the private sector parties Estina Paras in the Vrede Dairy Project is subject to a confidentiality clause.”

20

ADV LEAH GCABSHE SC: Please pause. No and explain what upset you about this response?

MR ROY JANKIELSOHN: Chairperson what is concern around this

response if the confidentiality clause. I am of the opinion that a project of this nature should not be confidential and that public funds spent on a project of this nature similarly should not be confidential.

ADV LEAH GCABSHE SC: Continue the next one.

MR ROY JANKIELSOHN: Point 2.

“2. That in terms of the agreement the Indian Company Estina and their South African partner Paras will rec – or the South African should be the South African company Estina and the Indian Company Paras will receive a 49% share with a R228 million investment in the R750 million project while the 100 local beneficiaries will jointly receive 51% shares through a government investment of R342 million. This implies that Estina Paras will obtain a 49% share with an investment of 40% to the projected cost of the project. Government will thus be investing R144 million more in the project than their private sector partners without the beneficiaries receiving the proportionate numbers of shares.

3. That the project plans to milk 500 cows and produce 40 000 litres of milk per day that will be processed by a factory built by Estina Paras. The department invested R30 million in the project last year on designs and environmental impact assessment planting of fodder etcetera. This year an amount of R84 million is to be invested in infrastructure,

machinery and cattle. The department indicated that 400 pregnant cattle are already purchased for the project and

4. That the Public Protector investigate the issues in an attempt to ensure transparency in the project as well as equitable share in the project for the local beneficiaries based on the government investment.”

That was my request to the Public Protector on 12 September 2013.

ADV LEAH GCABSHE SC: So let us summarise it. First you took
10 objection to the head of department saying you cannot have access to information relating to the farm, one. Second the inequities in the shareholding distribution of shareholding. You took objection to that. Third you were concerned at the wastage and inflated costs that appeared to be associated with the cattle that were going to be purchased. So that was the nub of your first complaint?

MR ROY JANKIELSOHN: Yes.

ADV LEAH GCABSHE SC: I am just summarising it for you. Let us move onto the next.

MR ROY JANKIELSOHN: On 2014.

20 **ADV LEAH GCABSHE SC:** March 2014.

MR ROY JANKIELSOHN:

“On 28 March 2014 the Public Protector received a further complaint from the complainant on the project. The complainant made the same allegations as the allegations received on 12 September 2013. The second complaint

was:

1. That it came to light that Estina would only contribute if necessary and that they are also benefitting from the supply of goods and services from the contributions from the Provincial Government.

2. That R342 million is also subject to hugely inflated costs. Some of these include among others construction of the silage bunker for R5 million.”

10 I mention all those amounts which were mentioned in the previous reply Chairperson. They – with – is it necessary for me to read them again in detail or not?

ADV LEAH GCABSHE SC: Let us go to 2.3 in that – in that case.

MR ROY JANKIELSOHN: 2.3 Chairperson.

“That the Free State Government paid R2.8 million more for the 351 dairy cows that was necessary. There also appears to be no official record of such transactions within the breed society that keep stud books for such cattle. Even though the value of the cattle bought is questionable

20 the DA made enquiries about the best possible market prices for stud cattle with the Free State Friesland Breed Society. The market prices for prime cattle are indicated in the table which I attach – which are attached in the next page and the total of our investigation is that such cattle would cost about R3.4 / R3.374 million.

4. That recently the National Department of Agriculture supplied the Provincial Government with R40,4 million worth of equipment that included tractors and most of the other related equipment for planting and maintaining crops, purchasing additional tractors and equipment for the project was not necessarily and jointly cost a project an additional R5.8 million.

I am summarising the amounts.

10 5. That the top range rotary milking machines with electric sensors cost about R55 000,00 per unit. The machines for the 82 points should not have cost more than about R4.5 million. They are included as part of the R30 million price tag that includes the milk processing plant.

20 6. That it appears that the payments for goods and services are in some if not all instances highly inflated. It is also not known who the suppliers of the various goods and services are and whether the suppliers implementing agents or officials are responsible for the inflated prices.

7. That the agreement with Estina includes a clause that the service provider will be responsible to ensure that they comply with the environmental requirements has already been breached since complaints have been received of indiscriminate

ploughing of natural fields and wetlands. This cannot be done without the necessary environment procedures being followed and

8. That various reports indicate that up to 50 or 100 cattle have died since being purchased. There is obviously a serious problem with these cattle and this is costing tax payers a great deal of money. It is not known what the causes of the deaths are or what the cost of this is. Furthermore that some
10 carcasses have been dumped next to a stream that runs into the catchment area for water for the town of Vrede Zenzelene. These have been covered with gravel and still pose a risk when it rains.”

And that concludes my complaint of 28 March 2014. Shall I continue with the next?

ADV LEAH GCABSHE SC: You can.

MR ROY JANKIELSOHN: Complaint Chairperson.

ADV LEAH GCABSHE SC: You can but maybe we should pause for a minute and go to – because you know you had lengthy interactions with
20 the office of the Public Protector as I understand matters. And you have actually annexed to your bundle of annexures your interaction with the Bloemfontein office which is found at page 275. It is RJ17. It is headed – it is an interim report that you got from them – a progress report. You have annexed the document twice actually. It is RJ17 and RJ25 but let us go to RJ17. And the nub of my question really is they

accepted your complaints. They spoke to the Department and on page 278 you have got the response of the Department. Further on you have got a note on page 279. I am really just going through the highlights Mr Jankielsohn where the accounting – Accountant General investigated and prepared a report that was published in February of 2014. You have got responses from the Legislature that are set out in this document from the Public Protector. Much as it was a progress report. Were you satisfied with the responses that you were getting from the office of the Public Protector?

- 10 **MR ROY JANKIELSOHN:** Chairperson that report which has just been referred to was an interim report. Basically what the report was doing was informing us what information they had received and from whom up until that stage it was not giving any conclusions or recommendations. But what is – what was of importance for us relating to this at 4.2 of this interim report they indicate that on 24 March 2014 the acting Accountant General informed that the Provincial Report was submitted to the Premier of the Free State for comment. He was requested for a copy of the executive summary. He referred us to the Director General of National Treasury. And this is important to us because it implies to
- 20 us that government was aware of the Accounting General Report which indicated a great deal of maleficence with this project and that the Provincial Government specifically the Premier would of known of some of these irregularities that were taking place as far back as 2014.

CHAIRPERSON: I take it that that Accounting General is meant to be Account and General?

MR ROY JANKIELSOHN: I am quoting from them – from the document
Chairperson.

CHAIRPERSON: I know a position called Account and General not one
called Accounting General so I take it that then it must be a reference
to the Account and General?

MR ROY JANKIELSOHN: Yes Chairperson I presume that is what the
interim report is referring to. But we refer to this.

CHAIRPERSON: Yes

MR ROY JANKIELSOHN: Basically in the documents as the National
10 Treasury Report.

CHAIRPERSON: Ja the National Treasury has got a position occupied
by the Account and General. Okay.

ADV LEAH GCABSHE SC: Yes. Mr Jankielsohn you may want to deal
with the very last complaint and then we are done with the complaints
you – you referred to the Public Protector.

MR ROY JANKIELSOHN: Chairperson back to the Public Protector's
Report on page 332.

20 "On 10 May 2016 after the issues in the investigation
were identified by the Public Protector and
investigation was at an advanced stage the
complainant further submitted the following:

1. That the appointment of Estina as partner in the
project did not follow the necessary procurement
processes.
2. Estina misrepresented itself as being in partnership

with the large dairy company in India namely Paras by marketing itself in presentations as Estina Paras. This could not have been overlooked by those who approved the project since logic dictates that Paras would be part of such a presentation or at least be requested to commit in writing as being part of the project.

- 10 3. The contract was approved by the legal department of the office of the Premier as confirmed by the CFO of the department in interviews. This is the Department of Agriculture. The contract clearly benefits Estina at the cost of the state tax payers and beneficiaries.
4. The fact that Estina was both a partner and an implementing agent is highly irregular. Estina subsequently received up to R183 million for the construction of infrastructure and purchasing of cattle for the project. It appears that costs of some of the items were inflated and that the processing
- 20 plant that was paid for is dysfunctional.
5. The fact that Estina would receive a 49% share in the project with only a 40% contribution is irregular and robs the tax payers and beneficiaries of a nine percent share.
6. Estina was allowed to abscond from the project

without any accountability. The FDC have taken over their management role in this project.

7. The Mohuma Mobung part of the project including bank accounts in the name is unclear and appears to be irregular.

8. The fact that 80 beneficiaries have been side-lined while they in fact should own 51 percent of the project implies that they were used as pawns to justify the project after the DA requested the names from them. A meeting with some of them indicates that they were merely names on a piece of paper with no further information or involvement. They have a right to claim 51 percent share.

10

9. National Treasury investigation has revealed various irregularities with recommendations of disciplinary procedures against both the head of department and Chief Financial Officer which has been ignored by the Provincial Government and the Premier. The recommendation should be implemented.

20

10. The questions in the Portfolio Committee on Economic Affairs which includes agriculture in the Free State Legislature relating to the Vrede Dairy Project have been ignored. In fact the Chairperson of the Committee will not allow any questions to the Department of Agriculture on the issue by members

of the legislature. The former MEC for the Agriculture and for Rural Development Department Mamiki Qabathe refused to answer questions relating to the project in the committee.

11. That while FDC have taken over the management of the project the Department of Agriculture and Rural Development continue to make monthly payments for running costs such as food into the project.”

ADV LEAH GCABSHE SC: Yes indeed. Thank you. I then will ask you
 10 to turn to page 3-7-4 of the Public Protector’s – of the paginated papers which is still the Public Protector’s report where she puts – sets out her findings. So this is her response to the complaints - in the plural – that you have referred to her. Were you relatively satisfied with these findings? With the manner in which she had attended to your matters?

MR ROY JANKIELSOHN: Chairperson we were not happy with the manner in which the Public Protector dealt with the request for investigation because even though she mentioned in her report that the costs might have been inflated and that there were irregularities with
 20 the procurement and financial issues relating to the project. She does not deal with it specifically and another issue that she failed to deal with in detail was the issue of the beneficiaries which we requested her to look into and in fact my third complaint she ignored and then I think the most important aspect of that is that in her remedial action she also indicated that the Premier must implement remedial action and we were

of the opinion that the investigation should have in fact been extended to look into the politicians involved with the project as the architects of the project and the individuals who implemented this project because throughout we were informed that the Premier's Office was aware of the irregularities.

Similarly his MECs would – should have been aware of the irregularities based on the National Treasury Report which she received. They also recommended that disciplinary action be taken against the head of department, the Department of Agriculture and the
 10 CFO. The Premier who is responsible for the appointment of the head of department should have implemented the recommendations of the National Treasury Report which he failed to do and in fact while they were aware of the fact that the National Department had ceased funding of this project because of what they learned from the National Treasury Report and the various allegations of irregularities there.

The – it was the politicians who continued to appropriate funds to this project in spite of those facts and that is what we would have thought the Public Protector would also have looked into and made recommendations on. In fact what she basically said is that the –
 20 the officials are responsible for this. The Premier must take action against those officials and ignored much of the other – or many of the other issues relating to this project and also in the process avoided making any comments on political accountability in this project.

ADV LEAH GCABSHE SC: Given that you were dissatisfied what did you then do - not maybe you as an individual but you as a collective?

MR ROY JANKIELSOHN: The – the party which I represent – the Democratic Alliance – then took the report under judicial review and subsequent to that as I indicated in my initial affidavit where I have received a judgment and that has been submitted to the – to the Commission which I also indicated we will do in my affidavit.

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: Am I correct in understanding that at page 3-7-4 where the Public Protector says under paragraph 6.1.1 that:

10 “The allegation that the department improperly
entered into a public/private partnership agreement
for the implementation of the Vrede Dairy Project is
not substantiated.”

Am I correct in understanding that what she mean – she – she means there is that the agreement that the department entered into with Estina was in order – there was nothing wrong with it? Is that your understanding of what she is saying there or is your understanding different?

MR ROY JANKIELSOHN: That would be my understanding as well Chairperson.

20 **CHAIRPERSON:** Yes, okay.

ADV LEAH GCABSHE SC: I am so sorry Chairperson. I was distracted. I did not hear the answer.

CHAIRPERSON: Oh.

ADV LEAH GCABSHE SC: I do apologise.

CHAIRPERSON: Ja. He says his understanding is the – is exactly

what I am saying namely that the Public Protector is saying at page – at paragraph 6.1.1 at page 3-7-4 that there was nothing wrong with the agreement that the department concluded with Estina.

ADV LEAH GCABSHE SC: Hm.

CHAIRPERSON: He is saying it is his understanding that that was what that finding means. Did I understand you correctly?

MR ROY JANKIELSOHN: Yes. I concur with the Chairperson.

ADV LEAH GCABSHE SC: That is fine Chairperson. That is not how I had understood his ...

10 **CHAIRPERSON:** That is not how you understood.

ADV LEAH GCABSHE SC: His evidence.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: But that is – if that is his understanding ...

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: He is entitled to it because this is an aspect that we will deal with.

CHAIRPERSON: You deal with later on.

ADV LEAH GCABSHE SC: When other witnesses come ...

CHAIRPERSON: Yes.

20 **ADV LEAH GCABSHE SC:** And interrogate the nature of the contract.

CHAIRPERSON: Okay. No that is fine.

ADV LEAH GCABSHE SC: Unless of course Mr Jankielsohn you want to say to the Chairman you understood the nature of the contract and you understood the findings of the accountant general's investigators and that is why you come to the conclusion you are coming to. If that

is what you are saying you are entitled to your view.

MR ROY JANKIELSOHN: Chairperson in terms of what the Public Protectors says here ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: I – I agree with you that is what she is saying.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: I do not necessarily agree with what she is saying here.

10 **CHAIRPERSON:** Yes, yes, yes, *ja*.

ADV LEAH GCABSHE SC: It is ...

CHAIRPERSON: I understood you to be saying exactly that because I was looking at what she was – what she found in this regard. Okay and what your understanding of what she found is. Okay, thank you.

ADV LEAH GCABSHE SC: That is – that is ...

MR ROY JANKIELSOHN:

CHAIRPERSON: There is still some confusion?

ADV LEAH GCABSHE SC: No there is not Chairman because ...

CHAIRPERSON: Oh, okay.

20 **ADV LEAH GCABSHE SC:** I – I – I am debating whether to – to explore this further in the context ...

CHAIRPERSON: It is better or not, *ja*.

ADV LEAH GCABSHE SC: In the context within which the Public Protector made this finding ...

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Because we have not explored that with this witness ...

CHAIRPERSON: Yes, yes.

ADV LEAH GCABSHE SC: But if this witness holds the view that he has expressed.

CHAIRPERSON: *Ja.*

ADV LEAH GCABSHE SC: It really is not a difficulty because it is an issue we are going to be exploring ...

CHAIRPERSON: Yes, yes.

10 **ADV LEAH GCABSHE SC:** In the next week in any event.

CHAIRPERSON: Yes. Obviously his understanding might not be the correct one depending on certain things but that is the understanding he has.

ADV LEAH GCABSHE SC: Yes.

CHAIRPERSON: On the face of it that is how it seems to me but I have not looked at other documents and it maybe that when one looks at other pages and other documents one changes ones view.

ADV LEAH GCABSHE SC: My junior says I should take one last shot at this Chairman and ask Mr Jankielsohn to read ...

20 **CHAIRPERSON:** Okay.

ADV LEAH GCABSHE SC: 6.1.2.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: It might assist him and if it does not Mr Jankielsohn it really does not matter too much.

MR ROY JANKIELSOHN: 6.1.2 Chairperson reads:

“The department did not enter into a public/private partnership with Estina in the context of Treasury Regulation requirements.”

Chairperson if I may just talk to the judicial review ...

CHAIRPERSON: Hm.

MR ROY JANKIELSOHN: And in – in the judgment Judge Tolmay indicates that in terms of this report the Public Protector failed in her duties. That the report is unlawful, unconstitutional and invalid and I concur with Judge Tolmay and not necessarily with the Public Protector

10 in terms of this report.

CHAIRPERSON: Okay, thank you.

ADV LEAH GCABSHE SC: Mr Jankielsohn ...

CHAIRPERSON: We will look at the whole context in due course.

ADV LEAH GCABSHE SC: Indeed.

CHAIRPERSON: *Ja.*

ADV LEAH GCABSHE SC: Indeed Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABSHE SC: Mr Jankielsohn I do not know if you are aware that the Public Protector has in fact taken Judge Tolmay’s judgment on review. She did so now (intervenes).

20

CHAIRPERSON: On appeal?

ADV LEAH GCABSHE SC: On appeal I beg your pardon.

CHAIRPERSON: *Ja.*

ADV LEAH GCABSHE SC: On appeal. I do not know if you are aware of that.

MR ROY JANKIELSOHN: I – I am aware that she has taken that judgment on appeal.

ADV LEAH GCABSHE SC: On appeal, okay.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: *Ja.* Okay. Can we then wrap up with your views on whatever you might want – further want to say about the beneficiaries because I am aware that you – you had certain interactions with them. Maybe you want to speak a little bit about the interactions you personally had with the beneficiaries or the people
10 who are listed as beneficiaries in this project.

MR ROY JANKIELSOHN: Chairperson the beneficiaries are the most important people in this project. They are the ones who are supposed to benefit from this project, to receive some sort of livelihood from this project and meaning employment from this project. So from the outset these beneficiaries should have been at the core of the implementation of this project and should benefit from the outcomes of this project.

Our concern is based on that that the beneficiaries have been side-lined from the beginning from this project. That they have never been involved in the project. That they have received no benefit from
20 this project and I think Chairperson that the biggest crime that is committed here besides any possibilities of financial malfeasants and mismanagement is when politicians give people hope and then dash those hopes and that is exactly what has happened in this project Chairperson and I think the Public Protector's Report contributed to that.

That they did not deal with that issue as – as the Office of the Public Protector should have. So my concern throughout the project is of these beneficiaries. There - there was also last year a beneficiary who was very local – vocal. A local beneficiary who was very vocal about the project. Mr Ngwenya who was also murdered and the rumour on the ground is that he was murdered because he was very vocal about this project.

So there is a certain amount of fear as well among beneficiaries and there are a few of them who are very brave who have
 10 actually spoken out about this project but we - that is one of our main concerns. No agricultural project should exist if not for the purpose of the beneficiating individuals on the ground.

ADV LEAH GCABSHE SC: Thank you. I would suggest to you that is not only certain beneficiaries who are afraid of – of speaking about this matter but the officials as well who are reluctant to give information on what they know of the Vrede Dairy Farm Project. Would you agree with that?

MR ROY JANKIELSOHN: I would – I agree with that Chairperson. Within the Free State we do have a culture of fear among officials.
 20 Officials are appointed in their positions in terms of a specific Government Policy – the **KDA Policy** – and there is a culture of fear that if you speak out about any malfeasance there will be consequences.

You could lose your job. You could be side-lined and intimidated but in the specific case in February 2013 it is alleged that –

well we know for a fact that Moses Tshake was abducted, kidnapped. He was tortured and he was murdered and he was working within the department and it is alleged - and this is where the allegation comes in – it is alleged that that he was looking into and questioning some of the payments that they department was making towards Estina and no one in Provincial Government has come out and disputed those allegations at all and that adds to the culture of fear within the Provincial Government that ultimately you could die if you speak out.

We also have another incident the former Head of the
 10 Department of Police, Roads and Transport who – whom the former Premier Ace Magashule at this individual's funeral indicated that he was poisoned. We have questioned at length the Government about this and whether they in fact investigating murder and we still have not received a satisfactory response because if a Premier stands up and says someone – a senior person a head of department has been poisoned and then fails to lay criminal charges, fails to give additional information.

It adds to that fear within the Provincial Government and in this specific case it is officials who had to appear in court on charges
 20 based on this project and not the politicians and we know that it is the politicians who give the instructions and it is the officials in Government who have to implement those instructions and it is very difficult I put you for an official Chairperson to say to the MEC or even their Premier I will not implement this because I regard it as illegal. That person will not be in that job for very long.

ADV LEAH GCABSHE SC: If ...

CHAIRPERSON: Do you know whether the Law Enforcement Agencies have investigated these crimes that you have referred to and whether that is – it is known where those investigations are or is that something you do not know?

MR ROY JANKIELSOHN: Chairperson law enforcement agencies - because I did submit questions through to Parliament through our representatives in Parliament because the National Department of Police do not report to the Province. They report to Parliament. So I
10 used our channels through Parliament to ask questions about the Moses Tshake murder.

The reply was yes there was an investigation but they there were not leads or no information as to who the perpetrators were of the crime. So this case no one has ever been detected, arrested or charged for that specific incident. In relation to the second example that I mentioned of the former head of department. I also submitted questions to the police.

The MEC for Police in the Province relating to that issue because it is – it is – it is in the Province as well. They did inform me
20 that they are investigating it. I also asked whether the body had been exhumed to determine whether in fact in an autopsy the individual had been poisoned. They failed to give me a reply on that and I have submitted an additional question relating to that to the MEC to try and find out whether in fact this investigation is progressing because it is not as if there is no evidence.

You just have to do an autopsy to determine whether this in fact took place especially if a senior person like the Premier of the Province makes such an allegation. What I did do in addition to that is I laid criminal charges against the former Premier of the Free State at the Parys South African Police Service where - where he made these allegations.

In terms of the Inquest Act because the Inquest Act indicates that if you have knowledge of a death of an individual which was not due to natural causes you are obliged to report it to the South African
10 Police Services. Something which the former Premier failed to do and in terms of that Act I was able to lay criminal charges.

CHAIRPERSON: And what happened to the complaint you laid with the police about the former Premier not complying with that requirement of the Inquest Act that you have just mentioned?

MR ROY JANKIELSOHN: Chairperson I have received no ...

CHAIRPERSON: Was your complaint investigated?

MR ROY JANKIELSOHN: I have received no formal feedback from the South African Police Services that they are in fact investigating this. The only reply I received was through my question to the MEC of
20 Police, Roads and Transport that they are looking into it. That I did lodge a complaint. They gave me the case number and they said they are looking into it but I have received no formal feedback from the South African Police Services themselves.

CHAIRPERSON: How long ago was that when you laid the complaint?

MR ROY JANKIELSOHN: Chairperson it is about two years ago

already.

CHAIRPERSON: Yes but I can understand to some extent if the investigation into the death or murder of somebody takes quite some time but as I understand the last complaint that you were talking about now was a complaint that you laid with the police against the former Premier. That the former Premier failed to report to the police that he knew that the particular person was poisoned.

That should not take two years to investigate. Am I correct that that was your – the complaint you laid – the last complaint you
10 mentioned?

MR ROY JANKIELSOHN: That – that is correct Chairperson but that is the nature of the beast that we are dealing with in the Free State unfortunately.

CHAIRPERSON: And from what you have said I got the impression that you were present wherever it was where the former Premier said that this person had been poisoned. So in other words ...

MR ROY JANKIELSOHN: No.

CHAIRPERSON: It is something that you personally heard.

MR ROY JANKIELSOHN: Chairperson I was not present. What we did
20 is we got the media reports which quoted the Premier ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: Relating to this and submitted them as evidence.

CHAIRPERSON: Yes. Okay, alright. Thank you.

ADV LEAH GCABSHE SC: Chairman just for reference purposes

Mr Jankielsohn there is a media bundle – a very small bundle that has been given to you. It may just be in the box to your left. It is titled EXHIBIT HH Media Bundle.

CHAIRPERSON: Or maybe we can identify it after lunch?

ADV LEAH GCABSHE SC: Maybe we should do that Chair.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABSHE SC: Thank you.

CHAIRPERSON: Because I see it is time. We are going to take the lunch adjournment and then in the meantime that can be identified and
10 then we will resume at five past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay Ms Gcabashe are you ...

ADV LEA GCABSHE SC: Thank you for the indulgence Chairman.
Chairman just ...[intervenes]

CHAIRPERSON: Are you ready?

ADV LEA GCABASHE SC: Yes we are, thank you Chairman.

CHAIRPERSON: Okay.

20 **ADV LEA GCABASHE SC:** And the instructions I am being given is to explain to you Chairman that your files have now been separated, you have an HH1, which is in one file, that will be Mr Jankielsohn's affidavit and annexures, there is an HH2, which relates to Mr Venter in a separate file, so there are two distinct files now as you requested.

CHAIRPERSON: Okay let's correct, let's put that on record because

initially you said these are in one lever arch file so whoever reads the transcript will know that that has changed, the lever arch file that I said earlier on is marked Exhibit HH1 and Exhibit HH2 which I said contains in part the statement of Mr Jankielsohn, Mr Roy Jankielsohn, and annexures to that statement as well as the statement of Mr Albertus Johannes Venter and Annexures now only has the statement of Mr Roy Jankielsohn and Annexures – the statement and Annexures relating to Mr Albertus Johannes Venter are now in a separate file marked Exhibit HH2.

10 **ADV LEA GCABASHE SC:** Thank you Chairman.

CHAIRPERSON: Thank you.

ADV LEA GCABASHE SC: The next one Chairman is the Public Protector's report, there is now a reports file so it is marked HH Reports, it is a distinct file on its own.

CHAIRPERSON: Yes, I do not have that one, or is it somewhere there?

ADV LEA GCABASHE SC: Chairman I am being advised that it is there.

CHAIRPERSON: Ja, there's a separate file marked Exhibit HH and reports there's a file which has got among others a report by the Public

20 Protector.

ADV LEA GCABASHE SC: Correct.

CHAIRPERSON: Is it only Public Protector reports?

ADV LEA GCABASHE SC: At this point in time Chairman, we are likely to add to it as more witnesses come forward.

CHAIRPERSON: Ja, okay, I see there's another one, there's also

another lever arch file marked Exhibit HH and that is media bundle.

ADV LEA GCABASHE SC: Correct Chair and then last Chairman the presentation that we would like to make, just as we close not right now, we have printed those pictures, might I suggest Chairman that we simply put that into the reference bundle right at the back of the reference bundle or would you prefer it to be in a completely different bundle?

CHAIRPERSON: I think we could put it at the end of some bundle, but I know you showed it to me but it is not on my desk and that may be
10 because I did not give it to anybody to put it on my desk, thank you. Do you suggest that we put this at the back of ...[intervenes]

ADV LEA GCABASHE SC: The reference bundle Chairman, they are rather large, we've got A, B and C of the reference bundle.

CHAIRPERSON: Yes, okay ja. So that can be put there once we have used it.

ADV LEA GCABASHE SC: Yes sir, thank you.

CHAIRPERSON: Okay.

ADV LEA GCABASHE SC: Chairman to go back to where we were earlier on, Mr Jankielsohn you were really dealing just before we broke
20 for lunch with the culture of here in the Free State and reservations people have, the reporting you had undertaken in respect of what the former Premier had indicated at a meeting etcetera. What I did want to bring to your attention and really it is more for the record than anything else, in the media bundle I had asked you to find, I trust you have it now. If you go to page 29 of the media bundle there you will find an

article relating to Moses Chake, I was simply wanting you to have a very quick look at it and confirm that this is the incident you referred to in relation to what happened to Moses Chake and the fact that it seems to be one of those investigations that is incomplete.

MR ROY JANKIELSOHN: That is correct Chairperson, it is the same person to whom I referred previously.

CHAIRPERSON: Yes thank you.

ADV LEA GCABASHE SC: Mr Jankielsohn I then want to go back to your statement and look at specific paragraphs that I have glossed
10 over, just in an effort to satisfy you that all the evidence you wanted to bring to the attention of the Chairman is in fact on record. If we could start at paragraph – your paragraph 18.3 which is on page 4, which also speaks to Annexure RJ7. You will find Annexure RJ7 on page 169 – page 168 I beg your pardon, 168. If we just start with what you say at 18.3 Mr Jankielsohn, are you ready?

MR ROY JANKIELSOHN: Yes I am ready.

ADV LEA GCABASHE SC: If you could then just speak to the issue you raise at 18.3 of your affidavit?

MR ROY JANKIELSOHN: Chairperson what I was referring here is to
20 the Public Protector's Report and specifically where she indicated on 24 June 2014 the Acting Accountant General informed that the provisional report was submitted to the Premier of the Free State for comment and what I was indicating in my affidavit is that the Premier must have been aware of the various irregularities and malfeasance that the Accountant General indicated were taking place in the Free

State but in spite of that they continued to appropriate funds to the project, and in fact as far as I am concerned ignored the findings and recommendations of the Treasury Report.

ADV LEA GCABASHE SC: Mr Jankielsohn so you have just been looking at paragraph, your paragraph 18.31, am I correct?

MR ROY JANKIELSOHN: That's correct.

ADV LEA GCABASHE SC: Can I ...[intervenes]

CHAIRPERSON: Well I see 18.3 but not 18.3.1.

ADV LEA GCABASHE SC: He misheard me Chairman so I am going to
10 take him back to where I wanted him to be. We will come back to 18.3.1 at a later stage.

CHAIRPERSON: Okay.

ADV LEA GCABASHE SC: Mr Jankielsohn can we go to page 4 of your – of the paginated papers, so the top right hand number 004.

MR ROY JANKIELSOHN: If you will bear with me Chairperson I just have to ...[intervenes]

CHAIRPERSON: Yes let's make sure you've got the – that you have got the file that she is talking about is the file that has got your statement.

20 **ADV LEA GCABASHE SC:** And then it is page 4 of your sworn affidavit. I then asked you to look at paragraph 18.3, where you make some observations and at the end of the observation you refer the Chairman to Annexure RJ7 and it really goes to whether Parras was or was not involved in this deal Mr Jankielsohn. Do you want to speak to the issue just to put your views on record.

MR ROY JANKIELSOHN: For the record Chairperson what I was referring to in this specific reference is that the presentations made by Estina to Provincial Government and then by the Department to the Executive Council indicated that Estina had the support of a large dairy company called Parras in India and that in this specific article that I refer to in RJ717 that the article indicates or the investigator who wrote the article indicated that they contacted Parras who said that they were not involved in the project at all, and they might have or might not have been, I don't have the specific information on that, but in all my
10 interactions in the replies that I received from the MEC's, which are part of my bundle, in the reports that the committee received there was only mention of Estina and Parras wasn't mentioned in those reports and I would have thought that this is a very important aspect of the project that they have the expertise from Parras, because we know that Estina is an IT company it is not a dairy company and they would require the support of Parras in order to run to initiate and run a dairy farm, but in all my interactions both in my visits to the farm and the information that we received from the Provincial Government there was no further reference to Parras. So I am not aware if Parras was in fact
20 or was not involved in the project, except based on the information from this media article and my personal interaction.

ADV LEA GCABASHE SC: If I look at page 169 of the paginated papers, which is the article that you have annexed, that's RJ7, bullet point 2 notes that the Department did no due diligence on Estina or its claimed partnership with Parras, a major dairy company in India.

Parras subsequently denied any involvement, that's the point you're making, amongst others.

MR ROY JANKIELSOHN: Yes.

ADV LEA GCABASHE SC: Thank you. I just wanted us to cover any little bits that you had not had time to testify to. Can we then just deal with paragraph 18.7 and just your broad references to the CFO, is there anything in particular that you would like to bring to the attention of the Chairman in relation to the manner in which the CFO discharged her duties?

- 10 **MR ROY JANKIELSOHN:** Chairperson the National Treasury Report did indicate that some of the mismanagement and the misdemeanours took place as a result of the actions of the Head of Department and the CFO and both of them should be subjected to disciplinary action but in a transcription of the Accountant General Report the CFO also substantiated many of the issues which I've raised here regarding Mamamabung and various other issues, so it is there for the record.

- ADV LEA GCABASHE SC:** Also in paragraph 18.7 you mentioned that Mr Bertus Venter is the official, the legal advisor who drafted the agreement between Estina and the Department, are you there? So it's
20 your paragraph 18.7 that I am looking at Mr Jankielsohn.

MR ROY JANKIELSOHN: I do have it Chairperson.

ADV LEA GCABASHE SC: I don't know if you would like to just speak to that point as well.

MR ROY JANKIELSOHN: Yes Chairperson besides the fact that the Accountant General Report, the National Treasury Report was

submitted to the office of the Premier and he must have been aware of what was taking place there and then continued to appropriate funds to it, we also confirmed with Mr Bertus Venter in committee in the legislature that the contract was drafted in the office of the Premier, and that is the contract between Estina and the Department of Agriculture.

ADV LEA GCABASHE SC: But the reason he was ...[intervenes]

CHAIRPERSON: Do you – I'm sorry – do you know by any chance whether the Department of Agriculture had its own legal advisors who
10 could have drafted the agreement, rather than it being drafted in the Office of Premier when it was an agreement relating to the Department of Agriculture?

MR ROY JANKIELSOHN: Chairperson I am not aware that individual departments had someone who were capable who might have been capable of drafting such an agreement. I know that some departments do have legal advisors to assist the MEC's, but I am of the view, my assumption is that larger contracts of this nature would be drafted in the office of the Premier whose job it is to do oversight and monitor all the activities of other departments and this is a very important contract,
20 it was in fact a flagship of the province which was noteworthy enough to be mentioned in the State of the Province address of the Premier so I presume there should have been substantial interest from the Premier's office in this project.

CHAIRPERSON: Well the mere fact if the position is that for example provincial departments did not have legal advisors of their own and

they all made use of legal advisors in the office of the Premier were never and made (indistinct) it would cast a certain picture to the situation but if the position is that each department has got its own legal advisors but an agreement that related to a particular department which had its own legal advisors was actually drafted in the office of the Premier it may, and I put it no higher than, it may cast a certain picture but it may be that agreements that are not complex are dealt with by legal advisors in different departments but when it comes to complex agreements maybe they are taken to the legal advisors in the

10 office of the Premier because those legal advisors may be are much experienced legal advisors. I just wanted to check whether you know anything about whether government departments have their own legal advisors, but you are not sure whether every department has got its own legal advisor.

MR ROY JANKIELSOHN: Chairperson being a flagship project I would think that it would be drafted in the office of the Premier but I think that the next witness, Mr Bertus Venter, who is that person in the Premier's Office would be better able to reply to that.

CHAIRPERSON: Thank you very much.

20 **ADV LEA GCABASHE SC:** Save that Mr Jankielsohn in paragraph 18.6 he explained the centralisation of certain functions, if you could just link what you say in 18.6 to the answer you have just given to the Chairman.

MR ROY JANKIELSOHN: Chairperson what I am saying is that as I mentioned previously that the Departments may have their legal

advisors but that the important aspects regarding to legal matters are centralised in the office of the Premier and that is how I understand the Provincial Government to function.

CHAIRPERSON: Yes, okay.

ADV LEA GCABASHE SC: And they have been so centralised since about 2010, more or less.

MR ROY JANKIELSOHN: I cannot give an exact date for that Chairperson.

CHAIRPERSON: Okay.

- 10 **ADV LEA GCABASHE SC:** The next point Mr Jankielsohn arises on page 8 at paragraph 18.23, now at paragraph 18.23 you really complain in the very last sentence, you summarise your complaint, and that is the complicity of MEC's and possibly the Premier according to one or two other paragraphs where you say they really have failed to take responsibility for what happened at Vrede, at the Vrede Dairy Farm. Maybe it's just convenient to give you all of the paragraphs that deal with this complicity issue that you address, so it would be 18.23, 18.27, 18.34, 18.38, 18.30, I beg your pardon 18.50 and 18.51. The central point you make there is senior people in government appear to be
- 20 refuse to want to take responsibility when things go wrong. I don't think there's anything you want to add to the comments you've made during your evidence.

MR ROY JANKIELSOHN: Chairperson I think my comments are quite clear that people, senior people in government knew what was happening at Vrede, they cannot deny that they knew what was taking

place there, in spite of that they continued to appropriate provincial government funding to that project and still do so today.

ADV LEA GCABASHE SC: Then if I ask you to look at paragraph 18.41, which we ...[intervenes]

CHAIRPERSON: I'm sorry, I'm sorry, when you say they continued to allocate funding to the project up to now in circumstances where the agreement with Estina was cancelled some years back, do you know why there would be a funding being allocated, nevertheless despite the cancellation or is the position that the Department is obligated in some
10 way to spend some money because there are cattle there and so on, or what is the position?

MR ROY JANKIELSOHN: Chairperson after the withdrawal of Estina as I mentioned previously the project was handed over to the FDC who then appointed a company, Edshu to do the physical work on the ground and there are cattle there that need to be milked, so I presume that they continued to allocate funding firstly to ensure that the project was not in vain, that those existing cattle are still being milked, but secondly if they were to shut down the project it would be a huge acknowledgement that the project has failed and I don't think the
20 government wants to acknowledge by closing down the project that it would – that it has failed and there is no way I think at this stage that the project can continue probably without the traditional funding because the cattle that are there are already aged, because they didn't do the necessary management of the dairy cows and they are not producing enough milk to ensure that they even pay for their own feed,

those cattle, and that's the information we received on our visits to the farm itself.

CHAIRPERSON: Okay, thank you.

ADV LEA GCABASHE SC: I then had taken you to the incident where MEC Zwane as he then was refused to respond to questions you raised in the house and the Speaker didn't come to your assistance. I don't know if you want to take that any further?

MR ROY JANKIELSOHN: Chairperson just in terms of the MEC and the Premier's responses when we raised the issues of Vrede Project, the
10 former MEC, Mamiki Qabathe, in one of the committees refused to answer questions relating to the Vrede Dairy Project, she was protected by the Chairperson of the committee at that time. In another instance when the former MEC Mamiki Qabathe of Agriculture became Speaker the then MEC Zwane, because as I mentioned they play musical chairs, you know, one day it's this person, the next day the next person, when MEC Zwane was MEC he also during a sitting of the legislature refused to reply to questions, he said he's already answered them. We hadn't received the replies to those questions, and I then wrote to the then Speaker, Qabathe, to ask her if she would use her position as the
20 Presiding Officer to force him to reply to those questions and I never, ever received a reply from her office relating to that.

In other instances when I raised the issue of the Vrede Dairy Project in debates the MEC's and the Premier opted rather to use personal insults against myself and my colleagues in opposition rather than deal with the substantive issues that we raised during our debates

and that continues to take place up until now.

CHAIRPERSON: Well what you are raising Mr Jankielsohn is a very important issue for this Commission. I have said in the past in the hearings and in media briefings of this Commission that if at the end of the work of this Commission I find that there was State Capture in this country one of the things I will have to look at is what made State Capture possible. What facilitated State Capture? What environment made it possible. What structures and what bodies provided for in our Constitutional dispensation, in our legal systems, failed to do their job,
 10 which if they had done maybe State Capture would not have happened at all, or could have been arrested before it went too far, and one of the areas I am interested in is how the National Parliament and Provincial Legislatures performed their oversight constitutional obligations during the relevant times and what I say about State Capture applies to corruption, even if it is corruption that is not – that doesn't fall under State Capture.

How are portfolio committees in the National Assembly and in the National Parliament and in Provincial Legislatures performing their oversight obligations when they become aware of wrongdoing, of
 20 corruption, within the Executive, within Government. What do they do? Do they do their job the way they are supposed to do it, do some members of Parliament in certain portfolio committees not perform their constitutional obligations properly because they are party, the party from which they come is the same party that is in the Executive?

If it is so what is it that needs to be changed in our

Constitutional arrangements to make sure that in the future we won't have State Capture again, we won't have corruption reaching the levels that it has reached in this country. So I am very interested in getting information as to how in the National Parliament and in Provincial legislatures members of Parliament and members of the Legislature of all parties including members of Parliament and members of the Legislature who belong to the party that dominates the Executive, Provincial Executive, how do they perform their function, their functions of oversight.

10 Mr Bloem, Dennis Bloem gave evidence before me and said earlier this year and said when he was still a member of the ANC in the National Assembly at some stage in the past and he was a member of the Portfolio Committee on Correctional Services. When he raised certain issues with regard to the Minister responsible for Correctional Services issues of corruption he said his Chief Whip if I understood him correctly called him and said something to the effect like take it easy you are not an opposition party member. This is our own Minister. Is that the right thing? Is that kind of attitude the right attitude for

20 1. A party to tell a member of Parliament or is the position that a member of Parliament irrespective of what party they come from if they exercise they perform their constitutional obligations of oversight they are supposed to perform that without fear from their own parties and their parties should not instruct them not to do their job the way they should do their job.

I am interested in all of those things and I am interested in the

experiences of people who have been inside Portfolio Committees whether in the National Parliament or in Provincial Legislatures to say this is what happens. Because it may well be that if those people, if members of Parliament and members of Provincial Legislatures performed their constitutional obligations of oversight vigorously without fear that maybe if they perform those duties vigorously they will be victimised by their own parties and so on. It may well be that the levels of corruption in the country would not be where they are and that it may well be that if state capture did take place in South African
 10 maybe it would not have taken place or it would have been stopped at an early stage. So I am interested in evidence relating to that and I would be grateful if you are able to go back and look at the debates in the Provincial Legislature or in relevant committees where some such issues were raised and the manner in which certain members of Parliament dealt with them is not the way they should have dealt with them and as a result oversight was defeated. Okay. You understand.

MR ROY JANKIELSOHN: I understand Chairperson would you like me to comment now or would you prefer.

CHAIRPERSON: Well you can comment now if you are able to but if it
 20 is something that you – that needs more thought and more homework you can go back and prepare something that would be much more meaningful and make arrangements to make it available to Ms Gcabashe and then arrangements would be made whether you would need to come back and give evidence about it or how it could be used. But it is very, very important. Okay.

MR ROY JANKIELSOHN: Yes. Chairperson.

CHAIRPERSON: Thank you.

MR ROY JANKIELSOHN: May I make a comment on that please?

CHAIRPERSON: Yes, yes.

MR ROY JANKIELSOHN: Chairperson I think this is a classic example of how the Legislature and its committees have failed the people of the Free State by not allowing this issue to be interrogated at its inception and when the – the alleged irregularities took place and how committee chairpersons blocked opposition members attempts to probe these
10 issues. And now when opposition members in Parliament raised the issue we were – we were ridiculed and insulted by the governing party in attempts to deviate from those issues to something irrelevant. But I think Chairperson what is very important here is that members of the Legislature and Parliament take an oath of office that they will protect the constitution. And the constitutional mandate of the Legislature is hold the executive accountable individually and collectively and if we fail to do that then we are in fact in breach of our oath of office. And I think one of the problems of that is the political bosses are the Premiers and the MEC's they have control over the members of the
20 Legislature and Chairpersons of committees because we work on a proportional system where a list is submitted and those people in charge decide who is where on those lists. So the same culture of the fear – of fear that – that exists in the Provincial Government also would exist in the Legislatures and even Parliament. And I was a member of Parliament from 2000 to 2006 so I am aware of how that functions as

well. Chairperson I think the remedy to this would be to look at the electoral system. We have a proportional system at Provincial and National level. At local level we have a hybrid system of first past opposed and proportional that balances itself out. So I think the problem at National and Provincial levels specifically lies with the electoral system and people are accountable to the political party and not necessarily through the proportional system to the people that elected them.

CHAIRPERSON: No, no thank you, thank you very much. I – I do want
 10 to say that and this is partly for the benefit of the legal team and
 investigators. I am interested in – in members of Provincial
 Legislature, members of the Executive in the Provinces who may have
 adopted positions when members of the opposition sought to carry out
 their oversight obligations who may have taken positions that defeated
 or had the potential of defeating the very purpose of the existence of
 oversight obligations and those committees to be called here to explain
 their conduct in regard to specifics. And this Vrede Dairy Farm topic
 might just be an appropriate one because if somebody is asked
 questions. If an MEC is asked questions to account how tax payers
 20 money is being used in regard to this project and refuses to answer
 then it is very important that we should know whether that person had
 any acceptable grounds for refusing to answer and if they did not have
 acceptable grounds we may have to look at what is it that made them to
 adopt stances that sought to defeat oversight. That – so you might
 wish to have a look at that because then we will be talking specifics.

They might be able to come and put up an explanation that no on such and such a date I had answered this question here is proof or something like that. But it is important to have a look at these issues because when one looks at the levels of corruption in our country it is important to see those who are given an obligation to take steps to make sure there is no corruption or if it is brought – corruption is brought to their attention that they take steps to stop it. What have they been doing? Thank you.

ADV LEAH GCABSHE SC: Thank you Chairman. Mr Jankielsohn let us
 10 then move onto the last – well the pen ultimate aspect actually and that is the evidence you set out at paragraph 18.50 on page 13 of your – of the paginated bundle and that flows into 18.51 all the way down to 18.54 really. The issues you raise here relate to the report of the Account and General of February 2014. And much as that report we know is a report that continues to be a work in progress Chairman. You have made certain observations here you may or may not wish to bring specific ones to the attention of the Chairman.

MR ROY JANKIELSOHN: Thank you Chairperson this is almost a
 20 summary towards the end of some of the arguments which I have already made. And I indicate in 18.49 on page 13 that if one considers the content of the National Treasury Report as well as the context of all the information that I have set out in previous paragraphs in my affidavit then the Premier Mr Ace Magashule, the former MEC Zwane, former MEC Qabathe, acting MEC Lamlele and Former MEC of Finance Elsabe Rockman were were pertinently aware of the issues and

problems relating to Estina and in spite of that allowed substantial payments to be made towards this project while being pertinently aware of these issues. I also indicate that the failure to implement the disciplinary recommendations of the National Treasury Report against the former Head of Department makes them complicit in the greater Estina scheme. And that they ought to also have implemented these recommendations. They were supplied with evidence of serious maleficence in this project and they deliberately ignored it Chairperson. They were also aware of the skewed allocation of shares towards

10 Estina which I mentioned and that Estina never contributed any of its own funds with the Department. In spite of that they also continued to pay funds over to Estina. The contract was drafted in the office of the Premier and indicates that the Premier should have been aware of this. I also mentioned that this is just – is not just a normal agricultural project it was a flagship project in the Free State and there was a great deal of media interest in the – not only the project itself but also the allegations of misconduct and the irregularities that took place there. The other aspect relates to the what I think was a misrepresentation by Estina to the extent perhaps of which Paras were involved in the

20 project they must have been aware of this because as I indicated in the documents and the replies I received Paras was never mentioned. It was always only Estina. They must have been aware given the fact that the presentation that was made to the Executive Committee was on behalf of Estina Paras not just Estina. If I was MEC or I would – I would have asked that question, where is Paras these are the guys with

the skills an IT company is not meant to implement a dairy project so why are they not mentioned in any of those documents? The continued Chairperson to appropriate funds to this project in spite of all of this. A very important issue. They were aware that there were no beneficiaries in this project. We were informed that for MEC Zwane when questions were raised by the Department, the National Department and by ourselves in the Legislature regarding to a list of beneficiaries that it is alleged that and the beneficiaries will be able to confirm this they are coming to give evidence tomorrow that he drove – that they drove

10 around with a loudhailer informed people to meet at the community hall, took down names of people who might be interested in farming and then submitted that as the beneficiary list. They were aware from the beginning that even because there was not perhaps a feasibility project – a feasibility study that was carried out that there were no beneficiaries of the project. And as I indicated previously a project of this nature cannot exist without beneficiaries. And they were complicit in side lining these beneficiaries because they were aware of them and because even today with all the amounts of funny – money that continued to be – to be appropriated to this project these beneficiaries

20 are still not benefitting from this project. They – they are the real shareholders of the project and even though we speak of a 51% allocation of shares it is my opinion that these beneficiaries should eventually be 100% shareholders. Why would a Provincial Government want to hold shares in a dairy project when people on the ground in Vrede are suffering from unemployment, poverty and inequality?

Chairperson the last issue relates to the cancellation of the project without penalties to Estina. The documents indicate that a resolution was taken by the Executive Committee that this contract would be cancelled. We also know that funds were paid to the – to Estina after the contract was cancelled and they allowed this to take place. As a collective Chairperson because it is an Executive Committee that took this decision. From the Premier right down to all the MEC's were involved in that committee.

ADV LEAH GCABSHE SC: Thank you Mr Jankielsohn. The only point I
 10 want to up with you from the evidence you have just given is that relating to Paras and I just want to point you to your Annexure RJ6 which is at page 148 of the paginated bundle. And it is a presentation on Mohuma Mobung but it has the Paras and the Estina names on it. You are not satisfied that this is sufficient evidence that there was some relationship between Estina and Paras?

MR ROY JANKIELSOHN: Chairperson what we have here is a piece of paper with Paras' name on it. There might even have been an agreement between Estina and Paras which I was not aware of but if Paras were meant to be the people that supply the necessary skills and
 20 expertise to the project and even training to the non-existent beneficiaries then surely we would have seen them on the ground? Then surely they would have been mentioned in the many documents that we received from the Provincial Government and I did not see them there Chairperson. So perhaps they look – perhaps it is a paper – it was like the beneficiary list where the beneficiaries were not involved

perhaps Paras were the same. If they were the company that was meant to give the expertise but they were just non-existent and not involved.

ADV LEAH GCABSHE SC: Yes thank you. The last...

CHAIRPERSON: Well I am sorry. What was said to be the relationship between Estina and Paras in terms of your understanding from the beginning? What were you told was the actual relationship between the two?

MR ROY JANKIELSOHN: Chairperson Estina was originally an IT
10 company so they would not have the necessary expertise to implement and initiate a dairy project. So they would need some assistance from outside and as far as I understood Paras was the company that would partner with them with the necessary expertise. So Estina would be the people who basically got the contracts and signed the contract but Paras would be the brains behind this project with the necessary expertise. And that was – that is my understanding of what the relationship should have been between Estina and Paras and perhaps the failure of the project is perhaps proof that – of Paras' non-involvement in this project. Because it appears that even with the
20 inflated prices and things that – there was not the necessary expertise to run a dairy farm of this magnitude.

CHAIRPERSON: So if the – if the true position is that Paras was not involved and was never involved then what we have would have been a dairy farm project that was run by IT people?

MR ROY JANKIELSOHN: Chairperson that is correct. I cannot say

that they were never involved at all.

CHAIRPERSON: Paras?

MR ROY JANKIELSOHN: What I am saying is I have never seen them involved.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: And the project failed.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: Yes.

CHAIRPERSON: Okay alright thank you.

- 10 **ADV LEAH GCABSHE SC**: Chairman it is important probably to bring to your attention and Mr Jankielsohn's and we have discussed this but it is a document it is does not – he has never seen really that there is a memorandum of understanding.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Between Paras and Estina.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: But somebody else will deal with this.

CHAIRPERSON: Will talk to it ja.

- 20 **ADV LEAH GCABSHE SC**: The point Mr Jankielsohn makes is in all the enquiries he made nobody bothered to show him this particular document or explain the relationship between Estina and Paras.

CHAIRPERSON: Yes. Thank you.

ADV LEAH GCABSHE SC: Mr Jankielsohn then the last aspect that you may want to touch on is again the relationship between Estina and Wagerfield. If you go to page 371 of the paginated papers the Public

Protector mentions these parties at her paragraph 5.3.17 and 18. You may want to make some comment on who Wagerfield is or was and what you understood of that relationship?

MR ROY JANKIELSOHN: Thank you. Chairperson before I deal with this specific instance I just want to take you back to the article of the land of milk and honey which the Gupta's were alleged to be – to have been involved and benefitting from this project. And if one looks at the evidence presented by the Public Protector in her report and I would like to go back two pages to page 369 paragraph 5.3.12 of the Public
10 Protector's Report.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: Chairperson the Public Protector indicates at 5.3.12 invoices obtained from the Department on the additional purchase of animals were the following and it is interesting to note that the animals that were bought were bought from various people but bought by a company called Vargafield not Estina. And then if we go onto the page 371 that was indicated paragraph 5.3.18. The Public Protector indicates a search done on the CIPC website indicated that both companies are still registered separately with the sole director of
20 Estina being Wasram Kamal and the sole director of Vargafield being Sanjay Grover. Now I also confirmed this in a company search and it appears that Mr Sanjay Grover is a resident of Dubai. He does not live in South Africa. His company is registered at the same address where that guest house which I mentioned right in the – initially which was bought with the – the gate and the guardhouse. It was some of those

funds were bought that they used the same address Vargafield and Estina in their company documents. Now just a basic online search of Mr Sanjay Grover indicates that he appears to be the financial advisor of the Gupta family and he also through another company registered in Dubai has a 10% share in Mabengula together with other shareholders such as Duduzane Zuma and a person called Rajesh Gupta. Also a company which it is alleged the former Premier Ace Magashule's son was also employed by. So this raises further question relating to the role of the Gupta's in this project and perhaps confirms that initial Mail and Guardian article that they were probably involved in this project. I also confirmed on the ground with individuals who were present that when this property which I mentioned the guest house which was the offices of the Estina company was purchased that there were members of that family present during the purchase of that property which further confirms some of the allegations made in that land of milk and money not honey article.

ADV LEAH GCABSHE SC: Thank you. Thank you Mr Jankielsohn. I think that last portion you have dealt with brings us squarely to the supplementary affidavit – statement that you have made and I really just want to very quickly take you through the amendments that you would like the Chairman to note. The very first one really is a fairly minor one. You have corrected paragraph 3 of your original affidavit, 13 of your original affidavit by correctly identifying RJ1 as the SOPA document and RJ2 as the Mail and Guardian article. You would agree with that?

CHAIRPERSON: That is correct Chairperson.

ADV LEAH GCABSHE SC: And then at paragraph 18.24 of your original affidavit you make a minor correction again and that is the date on which the Estina agreement was cancelled. The correct date is August 2014 and not April 2016 as you had indicated?

MR ROY JANKIELSOHN: That is correct.

ADV LEAH GCABSHE SC: Then again 18.26 again relates to that change of date. 18.26 instead of April 2016 you would like that date to be substituted by August 2014?

10 **MR ROY JANKIELSOHN:** That is correct.

ADV LEAH GCABSHE SC: When you get to paragraph 18.28 you there the whole paragraph be deleted in its entirety and substituted with a new paragraph. Could you please read your new paragraph into the record it is your paragraph, your evidence?

MR ROY JANKIELSOHN: In reply dated 28 April 2015 to a question to the MEC for the Department of Agriculture and Rural Development regarding whether disciplinary action was instituted against the senior officials as recommended in the National Treasury Report the Acting MEC for the DARD Ms Ollie Dlamlele indicated that no disciplinary
20 action was instituted which indicates further that the report was deliberately ignored. I attach hereto annexure RJ16 a copy of said reply.

ADV LEAH GCABSHE SC: You – do you wish to make an further comment on that point?

MR ROY JANKIELSOHN: No Chairperson.

ADV LEAH GCABSHE SC: Thank you. Then we look at 18.56 again would you please read the part in bold which you want substituted for what you had in your original version. Can you please read this into the record?

MR ROY JANKIELSOHN: I further wish to place on record that in a reply to the Public Protector as indicated in her report attached as annexure RJ25 former Premier Ace Magashule indicated the following where I also advised that a guest house which was procured in the town of Vrede to accommodate individuals responsible for the
10 implementation of the project is included in the amount of R2.6 million. It was necessary to buy this property given the fact that there were no facilities in existence on the land in question at the commencement of the project. The Premier further committed to an assessment of value for money to be performed by the Free State Provincial Treasury.

ADV LEAH GCABSHE SC: Yes. Thank you. Then your last insertion which is your – the new paragraph 18.57 there you really just deal with the fact that you are annexing documents to this supplementary affidavit which you mark as RJ26 and those documents speak to the issue you raised earlier that is the property that was purchased in 2012
20 for 1.2 million and that changed hands – you have given that testimony already.

MR ROY JANKIELSOHN: That is correct Chairperson.

ADV LEAH GCABSHE SC: The only issue I will ask arising from this is I just found it rather curious reading the Public Protector's Report that all her questions appeared – well the ones I was looking at appeared to

be directed to the Premier much as they really related to the Department of Agriculture and Rural Development. Is that the way you would normally do things in the Free State? The MEC was not the one whose responses are recorded here but the Premier's?

MR ROY JANKIELSOHN: Chairperson one would think that both the MEC and the Premier and the department would have been questioned and requested for information by the Public Protector.

ADV LEAH GCABSHE SC: Chairman if you will indulge us just for five minutes of going through that presentation that did not quite work when
10 we started off this morning. The team has been ready, willing and able to take you through that. Mr Jankielsohn we are going to go back to that presentation that gave us a bit of trouble in the morning.

If you could take the Chairman through the various buildings on the farm so that he gets a sense as to what is there and at – we have given you a copy Chairman of the presentation. The very last page of that hard copy has got the figures that MEC Qabathe mentions in RJ9 ...

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: As monies that were spent on those
20 particular items.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: So we thought it might help inform you as – as you look at the pictures even at your leisure later on as to what the official response was in 2013 ...

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: To where the money had gone to in respect of the buildings that we are going to show you now.

CHAIRPERSON: Yes. I think the hard copy is really quite helpful to me. Yes, thank you.

ADV LEAH GCABSHE SC: Thank you. Thank you gentlemen. Mr Jankielsohn are you ready?

MR ROY JANKIELSOHN: Yes.

CHAIRPERSON:

ADV LEAH GCABSHE SC: I think if you start at building – at number
10 four because I think the Chairman is happy with one, two and three.

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Chairman, can we start at four? Thank you.

CHAIRPERSON: Yes you may start at four.

MR ROY JANKIELSOHN: Thank you Chairperson. From my memory of my visits to the farm four is a silage bunker for which R5 million was allocated. Building number five which would be to the left of four – there we are – is the cattle feed plant where the silage is mixed for feed to feed the dairy cattle. The amount allocated in the presentations for this is R7.35 million.

20 **ADV LEAH GCABSHE SC:** R7.35 million for that building where arrow number five is?

CHAIRPERSON: Is that for the building – for the walls and that what looks like corrugated iron. Is – is that what you are – is that – is that what your understanding is of what the 7.-something million was for?

MR ROY JANKIELSOHN: Chairperson the figures that I have

presented here on this document are based on the replies that we received from the MEC. My visits to this farm – the understanding that I got from my visit is that those are the buildings that are referred to in that document.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: I cannot verify whether the full amounts were spent on these buildings ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: But at least in the replies ...

10 **CHAIRPERSON:** Yes.

MR ROY JANKIELSOHN: That is what we were informed ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: Would be spent on these buildings.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: Number six – building six.

MR ROY JANKIELSOHN: Building six is the office and milking parlour. R30 million was allocated for this but this is also combined with the processing plant which we saw in the previous slide close to the gate.

20 **ADV LEAH GCABSHE SC:** Yes. There will be one – a couple of other pictures of that processing plant. Number seven.

MR ROY JANKIELSOHN: Number seven is the veterinary facility for which R300 000 was allocated. Eight is a maternity facility – R500 000 together with item nine which is a cattle shed was allocated for those two facilities. So nine – eight and nine which is a cattle shed was R500 000.

ADV LEAH GCABSHE SC: Yes.

MR ROY JANKIELSOHN: Number 10 is just a ...

CHAIRPERSON: I mean those are – well nine seems to be a structure without a wall. I may be mistaken. It is – but it looks like it is some poles and there is a – there is corrugated iron serving as a roof. Is that how it was when you went there?

MR ROY JANKIELSOHN: Yes Chairperson.

CHAIRPERSON: It is poles that are put into the ground and then on top of the poles – (clearing throat) excuse me – then there is a roof
10 that is made of corrugated iron.

MR ROY JANKIELSOHN: Yes Chairperson. Obviously with the fence around it as well because it has to ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: House the cattle.

CHAIRPERSON: Yes and is that – that clearly seems to be the case with regard to number nine. Number eight does appear to have some walls. Is that correct or not?

MR ROY JANKIELSOHN: Yes. Number eight does have walls. It is the ...

20 **CHAIRPERSON:** Yes.

MR ROY JANKIELSOHN: Maternity facility.

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: So it does house calves ...

CHAIRPERSON: Yes.

MR ROY JANKIELSOHN: And they need walls around them.

CHAIRPERSON: But eight and nine you say on your understanding cost about – together cost about R500 000?

MR ROY JANKIELSOHN: That is correct Chairperson.

CHAIRPERSON: Yes, okay. Huh-uh.

ADV LEAH GCABSHE SC: I thought it had been – it was seven million. Have I got it wrong? The feeding shed is that where we are?

CHAIRPERSON: Numbers eight and nine.

ADV LEAH GCABSHE SC: Numbers eight and nine together 500 000 with item nine, yes. Thank you Chairman.

10 **CHAIRPERSON:** *Ja*, huh-uh.

ADV LEAH GCABSHE SC: And then 10/11?

MR ROY JANKIELSOHN: Number 10 is just a cattle kraal. No amount is specified. I do not think much money would have been – so it is basically just a fenced in area where the cattle are held.

CHAIRPERSON: Well ...

MR ROY JANKIELSOHN: Number 11.

CHAIRPERSON: You – you never know. You would be surprised. Yes. So you do not know the amount spent on number 10. Is that – is that what you say? You do not know what amount ...

20 **MR ROY JANKIELSOHN:** There is no specified amount Chairperson ...

CHAIRPERSON: No specified amount, yes.

MR ROY JANKIELSOHN: But I would not think if there is just a fence around we would be talking more than R1 000 or R2 000.

CHAIRPERSON: Well with evidence that I have heard in other matters here, *ja*.

MR ROY JANKIELSOHN: Chairperson then numbers 11 and 12 ...

CHAIRPERSON: Anyway number 11.

MR ROY JANKIELSOHN: Are feeding sheds. The cattle are brought in and fed because in a dairy ideally cattle would be given certain rations, certain types of feed dependent on their production. So they are fed according to that and it is a – it is – it should be a very scientific process and 11 and 12 are the feeding sheds which are – which it is mentioned cost R7.35 million which is also rather ...

CHAIRPERSON: Together?

10 **MR ROY JANKIELSOHN:** Rather excessive.

CHAIRPERSON: Together?

MR ROY JANKIELSOHN: Together yes.

CHAIRPERSON: What I see - and you must confirm because you have been to the farm – what I see both in regard to the shed at 11 and the shed at 12 is that it appears that it is some poles. There - there is no – there are no walls as such. It is poles maybe made of steel I am not sure and then there is a roof provided but I do not see any wall. Is that correct?

MR ROY JANKIELSOHN: That is correct Chairperson. Inside this
20 facility there would be steel structures where the cattle are brought in individually each with their own feeding trough. They would fed there and then led out of this feeding facility.

CHAIRPERSON: Yes but you say the amount for the – for the two sheds and whatever is inside in terms of those feeding troughs you say the response from the department was that it cost – they cost - those

two sheds cost R7.-something million?

MR ROY JANKIELSOHN: 7.35 that is correct Chairperson.

CHAIRPERSON: Okay, thank you.

ADV LEAH GCABSHE SC: Chairperson I – I believe that if you look at the picture that is up now especially the one on the extreme left is that ...

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: What the cattle feeding shed would be – would be like from the inside Mr Jankielsohn?

10 **MR ROY JANKIELSOHN:** That is correct yes.

ADV LEAH GCABSHE SC: And that is what costs 7.3 million for two of those?

MR ROY JANKIELSOHN: That is correct.

CHAIRPERSON: On the hard copy what - where – where is that?

ADV LEAH GCABSHE SC: It is – it is number 11 Chairman. It is towards the back.

CHAIRPERSON: Number 11.

ADV LEAH GCABSHE SC: I think the penultimate ...

CHAIRPERSON: Is that at page – page 11?

20 **ADV LEAH GCABSHE SC:** On page – page 10 at the bottom Chairman. It is item 11 at the top ...

CHAIRPERSON: Oh.

ADV LEAH GCABSHE SC: But page 10 at the bottom.

CHAIRPERSON: Okay. Oh yes.

ADV LEAH GCABSHE SC: So that is the structure on the inside.

CHAIRPERSON: Yes, okay.

MR ROY JANKIELSOHN: The one at the bottom on the right Chairperson is the cattle shed that you were referring to which does not have walls around it which is numbered nine in the previous slide. I see they do not have cattle in there. They have horses in there when the photograph was taken.

CHAIRPERSON: Okay, *ja*. You are still at page 10 *ja*. Okay, yes. Thank you.

ADV LEAH GCABSHE SC: Then if you could just describe to the
10 Chairman what the picture is that is up on the screen now.

MR ROY JANKIELSOHN: Chairperson on the far left is the photograph at the top of the processing plant and the other photographs are just random photographs of the facility on the inside.

ADV LEAH GCABSHE SC: That is the milk processing plant on the inside?

MR ROY JANKIELSOHN: That is correct.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: So those big tanks are the tanks that you would be using for churning milk and making cheese or yoghurt or
20 whatever?

MR ROY JANKIELSOHN: That is correct.

ADV LEAH GCABSHE SC: Would facilities like this – I do not know if you have any expertise on this at all Mr Jankielsohn – have these single brick walls I see you have very, very thin walls here. Is that formal for a – a building such as this?

MR ROY JANKIELSOHN: Chairperson I am not able to answer whether that would be normal for a building like this. It does appear to be rather frugal.

ADV LEAH GCABSHE SC: It cost in the middle – in the region of 30 million this particular - with the contents this particular plant.

MR ROY JANKIELSOHN: With the dairy yes and one must also go and look at some of the equipment that was indicated in the MEC's reply because I presume that – some of that money might also have been used in this facility.

10 **ADV LEAH GCABSHE SC:** Yes. Those particular items: the car and those tractor tyres where would those be kept?

MR ROY JANKIELSOHN: Chairperson this would be in the workshop and the storage shed.

ADV LEAH GCABSHE SC: So it really is just a building with walls and the – and they – they keep this particular equipment in it?

MR ROY JANKIELSOHN: Yes.

ADV LEAH GCABSHE SC: Then you have the next picture. Just describe to the Chairman what this is?

MR ROY JANKIELSOHN: Chairperson this is the cattle feed plant.

20 This is where the feed is mixed. So they would mix bails of – of feed together with silage and then perhaps grain – a different kind of feed grain to - in order to produce the feed which is fed to the dairy cows. As I indicated it is a scientific process to feed dairy cattle and to give them the correct feed.

I am not an expert on that and I am sure there – one would

be able to find someone who can – who can deal with that.

ADV LEAH GCABSHE SC: We have a witness who will be dealing with that Chairman and then if we look at the maternity facility just to give the Chairman an idea as to what that facility looks like.

MR ROY JANKIELSOHN: Yes Chairperson. That is the maternity facility. That is where the calves are weaned – that are weaned are taken away from their mothers and would then be fed separately on some sort of formula to raise them up until they are able to go out into the field.

10 **ADV LEAH GCABSHE SC:** Now Chairman just for the record these pictures were taken in March this year. Just so you know when they were taken.

CHAIRPERSON: Okay.

ADV LEAH GCABSHE SC: Mr Jankielsohn are there any other matters you would like to raise with the – with the Chairman before we – we close?

MR ROY JANKIELSOHN: Chairperson I think I have dealt substantially with most of the issues which I wanted to raise. What I would like – would like to do in closing is to thank the Chairperson and the
20 Commission for delving into the issue of the Vrede Dairy Project. It is very important for the people of the Free State but more important for those beneficiaries who have been given some hope for a better future, for a job and ownership of something and whose hopes have been dashed by the inactivity of this project.

So we would like to thank the Chairperson and the

Commission for the opportunity to come and speak to this – to this issue and for dealing with this issue in the Commission for us as Free State it is very important.

ADV LEAH GCABSHE SC: Chairman I have no further questions.

CHAIRPERSON: No thank you very much. Thank you very much Mr Jankielsohn. It is quite clear that you have played a - a very important role in seeking to establish exactly what happened with regards to this project and who should be held responsible and you sent complaints to the Public Protector and it is seems that you have
10 played a very important role and we thank you for – for that and – and again going back to the issue that we discussed earlier on about members of the Provincial Legislature how are they exercising their oversight functions in the Provincial Legislatures.

Are there things that are done by their parties which undermine their oversight obligations? Are there things that are done by the Executive to undermine their oversight obligations? Are there things that are done or said by certain members of Portfolio Committees and of the Provincial Legislature which defeats the very purpose of having these oversight obligations for members of Provincial
20 Legislatures and the very purpose of having these oversight committees and if so what may need to be done to make sure that if in future similar problems arise they would be dealt with differently for the benefit of the citizens.

So it is important that if at all possible you and other members of the Provincial Legislature and the same thing applies to

members of the National Parliament. They must look at – at those issues and see whether there are not issues they can bring to the Commission to say over the – over X number of years we – maybe we just have this constitutional obligations on paper.

When we try to exercise them we are defeated by people who do not want oversight functions to be carried out properly or do not want accountability to be shown. So it is important to – to look at that and if there is any information or evidence that can be put forward that that be made available to the Commission so that it can look at what
10 recommendations it can make to make sure that oversight obligations and the oversight mechanisms are improved or are strengthened. Thank you very much. You are excused.

ADV LEAH GCABSHE SC: Thank you Chairman. Might we just have three minutes to remove – so I can remove my papers?

CHAIRPERSON: Yes.

ADV LEAH GCABSHE SC: Ms Buthelezi is indicating that she might have to run through to about five – 5 o' clock if that ...

CHAIRPERSON: That – that is fine.

ADV LEAH GCABSHE SC: Is alright.

20 **CHAIRPERSON:** We are at 25 past now. Shall we take five minutes? Is that enough to change?

ADV LEAH GCABSHE SC: That is sufficient Chair.

CHAIRPERSON: Yes. Okay we will take a five minutes adjournment.

ADV LEAH GCABSHE SC: Thank you.

CHAIRPERSON: We adjourn.

ADV LEAH GCABSHE SC: Thank you.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Buthelezi?

ADV ZINHLE BUTHELEZI: Afternoon Chair. Chair before we start with Mr Venter there is a legal representative who would like to place himself on record.

CHAIRPERSON: Ja, let's do that.

10 **ADV ZINHLE BUTHELEZI:** Thank you.

CHAIRPERSON: Ja.

MR SIBISO RAMAGALE: Good afternoon Chairperson, thank you for your indulgence, my name is Sibiso Ramagale, I act for the former Premier, Mr Ace Magashule and I just wanted to place myself on record and to also state that we have received a number of Rule 33 notices which we will be responding to in due course.

CHAIRPERSON: Yes, no, no that's fine, and you were present when I spoke to a group of legal representatives of various persons?

MR SIBISO RAMAGALE: That's right, in your chambers, that's right.

20 **CHAIRPERSON:** Yes, thank you very much.

MR SIBISO RAMAGALE: Thank you Chairperson.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank you Chair. My next witness will be Mr Venter, Mr Venter is the Deputy Director General at Corporate Administration and Coordination at the Office of the Premier, Free

State.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Much of what he will be delivering today will be contracts the he drafted or his office drafted as well as the opinions that he gave.

CHAIRPERSON: Okay, I don't know whether whenever an evidence leader starts there is something wrong with either their voice or the mic.

ADV ZINHLE BUTHELEZI: I will bring it closer.

10 **CHAIRPERSON:** That's much better.

ADV ZINHLE BUTHELEZI: Thank you Chair.

CHAIRPERSON: Okay, alright.

ADV ZINHLE BUTHELEZI: Chair I was saying Mr Venter will be dealing much with the contracts that he drafted or that were drafted in his office and the opinions that he gave relative to the Vrede Dairy Project.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: May I ask that the witness be sworn in.

CHAIRPERSON: Okay, thank you. Please administer the oath or affirmation.

20 **REGISTRAR:** Please state your full names for the record.

MR ALBERTUS JOHANNES VENTER: I am Albertus Johannes Venter.

REGISTRAR: Do you have any objection with taking the prescribed oath?

MR ALBERTUS JOHANNES VENTER: No.

REGISTRAR: Do you consider the oath to be binding on your

conscience?

MR ALBERTUS JOHANNES VENTER: Yes.

REGISTRAR: Do you swear that the evidence you give will be the truth, the whole truth and nothing but the truth? If so, please raise your right hand and say so help me God.

MR ALBERTUS JOHANNES VENTER: So help me God.

MR ALBERTUS JOHANNES VENTER: (duly sworn, states)

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair, to orientate you Mr
10 Venter the bundle which contains your statement is marked HH2, Chair there is a supplementary affidavit on that bundle which is marked HH2.2. The first part of the bundle has – is marked HH2.1, it contains ...[intervenes]

CHAIRPERSON: Well even if it was simply attached not as 2.2 just as a secondary to that file, but it's okay the way it is done, that's alright.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Yes the HH2.1 it is the one that contains his original statement, and I would also ...[intervenes]

20 **CHAIRPERSON:** That is what makes it confusing because when somebody reads the transcript and sees HH2.1 they might look for a lever arch file that has got that on the spine.

ADV ZINHLE BUTHELEZI: Yes, Chair ...[intervenes]

CHAIRPERSON: I wonder whether we shouldn't simply have this as Exhibit HH2, full stop, and it has got a number of things inside

including the supplementary affidavit.

ADV ZINHLE BUTHELEZI: I have no issues with that Chair.

CHAIRPERSON: Ja, so we don't refer to HH2.1 and HH2.2, we just refer to each item as it appears.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Is that fine?

ADV ZINHLE BUTHELEZI: That is fine and let's ...[intervenes]

CHAIRPERSON: And later on you can take out the dividers that say 2.1 or 2.2

10 **ADV ZINHLE BUTHELEZI:** I will do so Chair.

CHAIRPERSON: Okay, alright, thank you.

ADV ZINHLE BUTHELEZI: Yes, Ms Gcabashe would like to know if we could do the same with Mr Jankielsohn's file as well.

CHAIRPERSON: Yes please, yes, yes, ja.

ADV ZINHLE BUTHELEZI: We will do so Chair.

CHAIRPERSON: Ja, okay.

20 **ADV ZINHLE BUTHELEZI:** Thank you. Chair I would like to then orientate Mr Jankielsohn that the file containing your statements and annexures is marked HH2 and there are other files that I will refer you to, our reference file which has file A, B, C, I will only refer you to A and B and there is a legislation file as well which is my HH legislation file, I will refer you to file A of that particular bundle of documents, yes, thank you. Mr Venter on Exhibit HH2 there is a document, an affidavit that appears from page 1 to page 5 of that document.

MR ALBERTUS JOHANNES VENTER: I see it Chairperson.

ADV ZINHLE BUTHELEZI: Do you confirm that is the affidavit you prepared for the Commission?

MR ALBERTUS JOHANNES VENTER: Yes indeed it is my affidavit Chair.

ADV ZINHLE BUTHELEZI: Yes, and the signature that appears on page 5 of this document is that your signature?

MR ALBERTUS JOHANNES VENTER: Yes it is.

ADV ZINHLE BUTHELEZI: Thank you, then Mr Venter would you please give us your qualification and your employment history. I am
10 interested in your employment within the Free State Government.

MR ALBERTUS JOHANNES VENTER: Thank you. Chair I have a BJuris LLB degree, I am an attorney admitted to the High Court, I started my career in the legal profession as a Public Prosecutor and after seven years I switched to the side of the defence and I started with a firm of attorneys, completed my articles as it was known at that time and I practiced in that firm for about 11 years. Just as background – my apologies Chair I am suffering from a bit of the flu, but just as background the firm had a human rights practice and I got involved in human rights cases, I did a lot of cases for the liberation movements
20 prior to 1994, unions as well as for civic organisations and the reason why I am saying this is that post 1994, in about September 1994 I was approached to form part of an interim management committee for the three police forces in the Province, apparently the thinking at National level was that one force should not manage the other until the composite structure for the police services as we know it now has been

finalised so I was part of that management team, and I also became part of the National Change Management team dealing with change management of the police post-1994 and it dealt from simple issues such as uniforms to more complicated issues such as structures and components. A part, or whilst involved in these committees I continued to practice and then in the beginning of 1996 the post of Head of Department for Safety and Security as it was known then was advertised, I applied and I was fortunate to be appointed following a selection process. That is how I arrived in government.

10 **ADV ZINHLE BUTHELEZI:** Yes, and are you still within the government at this stage?

MR ALBERTUS JOHANNES VENTER: Yes Chairperson I was transferred in – at the end of 2002 to the post of Chief State Law Advisor which became vacant at that point in time, the previous incumbent retired and subsequent to that I was given additional responsibilities and functions to the extent that my post was upgraded or – ja upgraded is the right word, to that of Chief Operating Officer, which I occupied up to about 2007, when that post was abolished and I was transferred to the post that I currently occupy.

20 **ADV ZINHLE BUTHELEZI:** Yes and for how long have you been in this post?

MR ALBERTUS JOHANNES VENTER: The current post from 2007 up till now.

ADV ZINHLE BUTHELEZI: Who do you report in your current post?

MR ALBERTUS JOHANNES VENTER: I report to the Director General.

ADV ZINHLE BUTHELEZI: Thank you. As someone or as a senior official within the Free State Government and someone who is based at the office of the Premier could you give us an overview of the structure of the office of the Premier?

MR ALBERTUS JOHANNES VENTER: Chairperson the organisational structure of the office of the Premier, and I am referring to Office of the Premier because that is how the department is referred to in the schedule to the Public Service Act, has four main divisions and we refer to it as Programs, Program one is the program that houses the office of
10 the Director General, the Chief Financial Officer, the person responsible for Executive Secretariat services, security services, risk management and internal audit. Program Two is my program for which I am responsible. It deals with human resource management, and that includes labour relations and employee wellness and so on. It includes skills development, there are three components which is a training institute, a bursary management as well as a broader provincial skills development where we engage with the SETA's to try and get funding to train people in the Free State. Legal Services is also reporting to me, IT, Information Technology and Communication Services, I hope I have
20 not left out any. Program three deals with policy and planning, it's a unit that looks broadly at the strategies of government whether it fits into our Provincial Growth and Development Strategy and how it fits into the National Development Plan and the Medium Plan Strategic Framework and that unit will do impact assessments and propose policy changes from time to time to make sure we are more effective and

comply with what is expected from us if we look at the National Development Plan.

We have some time ago created a fourth program monitoring evaluation and the functions of that unit is mostly to look at annual performance plans of departments, look at the State of the Province Address, budget speeches of MEC's, engagements which politicians have with a community where certain commitments are made and then list all of those commitments and track progress with that.

It supports also the various committees of the Legislature,
10 dealing with departments, that unit provides a report to that – to the Committee of the Legislature on which the report the Committee engages the particular departments.

ADV ZINHLE BUTHELEZI: Thank you and does the Premier have advisors, if so what would be their role?

MR ALBERTUS JOHANNES VENTER: Yes Chairperson I perhaps forgot to mention the inner office of the Premier but it's a fairly small staff component looking at support to the Premier, him or herself, Chief of Staff and a number of officials. The Premier may appoint two advisors, I must perhaps just indicate that Section 12(A) of the Public
20 Service Act provides the authority to appoint advisors. These advisors are not employees, they are excluded from being employees in the Public Service Act per definition and there is a directive issued by the Minister for Public Service and Administration which determines the conditions and the benefits of these advisors. They are as such on the payroll of government to put it like this.

ADV ZINHLE BUTHELEZI: Thank you. These advisors do they play any role in implementing government projects for example would they have a role to play in implementing the Estina Dairy Farm project?

MR ALBERTUS JOHANNES VENTER: Chairperson no, they are simply there to provide advice. The directive to which I have referred makes it also very clear that such advisors should assist from getting involved in the operations of the department.

ADV ZINHLE BUTHELEZI: Thank you. You gave us a supplementary affidavit this morning where you make reference to the appointment of
10 an advisor that was appointed in 2012, Mr Narayan, was – just tell us about his appointment, what you know regarding his appointment. What was he appointed to do?

MR ALBERTUS JOHANNES VENTER: Chairperson I don't have any personal knowledge, I was requested by the investigators of the Commission to provide them with a copy of the letter of appointment. I had with the permission of my Director General engaged with the Chief of Staff who provided me with a copy of that appointment letter and that letter, copy is attached to my affidavit. That person was not part of the advisors appointed in terms of Section 12 (2), there was mentioning
20 made in an earlier state of the province address of the previous premier that he would appoint an economic advisory council.

ADV ZINHLE BUTHELEZI: Yes is that Premier, Magashule?

MR ALBERTUS JOHANNES VENTER: That is correct.

ADV ZINHLE BUTHELEZI: Yes.

MR ALBERTUS JOHANNES VENTER: And that council consisted of a

number of - if I remember correctly there was a number of imminent people from the private sector who served on that committee.

ADV ZINHLE BUTHELEZI: Yes do you now any – do you know anything about him travelling with the HOD for the Department of Agriculture in March 2012?

CHAIRPERSON: Try not to – let him give evidence, try...(intervention).

ADV ZINHLE BUTHELEZI: Let me rephrase rather Chair, sorry.

CHAIRPERSON: I guess he has heard so, ja give evidence.

MR ALBERTUS JOHANNES VENTER: Chairperson I was not
10 personally involved in any of the travel arrangements, I became aware of it late on when it emerged, I think when the Hawks executed the search and seizure warrant, it was one of the documents they were looking for and that is why I know that there is such a document.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank You Chair, Chair more evidence will come from other witnesses regarding this aspect, I just wanted to clarify.

CHAIRPERSON: Yes but if he became aware of a certain document that reflects (indistinct) he can give evidence about what he saw in
20 terms of that document.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: That document you are talking about what did it reflect?

MR ALBERTUS JOHANNES VENTER: Chairperson I – if I remember correctly and I must say I think it was approval for a trip overseas to

India for the Head of the Department who was supposed to be accompanied by Mr Narayan that document was a document which, I think was in the archives of the Department of Agriculture so it was not a document that I sourced and handed over to the Hawks.

CHAIRPERSON: Okay do we have that document, will it come later or is it something we don't have?

ADV ZINHLE BUTHELEZI: It's something we do have it, I'll just have to find the correct reference, I'll ask Mr Venter to confirm it later.

CHAIRPERSON: Okay.

10 **ADV ZINHLE BUTHELEZI:** Ms Molefe is helping me to locate that document, thank you. Then let's go back to your programme what I your role in your programme?

MR ALBERTUS JOHANNES VENTER: Chairperson I manage the various components to which I've referred earlier but given the amount of legal work that we have or that we are responsible for, I also handle certain matters myself and that includes certain advice, opinions that we are requested for, oral opinions, some contracts, although I do a little and then also a number of litigation that I handle.

CHAIRPERSON: So as Deputy Director General of Corporate
20 Administration and Coordination there are certain units or sections that fall within your authority that you are responsible for, is that right?

MR ALBERTUS JOHANNES VENTER: That is correct Chair.

CHAIRPERSON: And you said there are three of them, is that correct?

MR ALBERTUS JOHANNES VENTER: Chair it's a bit more than three it's Human Resource Management, Human Resource Development

which is – both have sub-divisions, Information Technology, Communication...(intervention).

CHAIRPERSON: Yes okay but one part of your responsibility or part of the responsibility of your section is giving legal advice, is that correct?

MR ALBERTUS JOHANNES VENTER: Yes Chairperson I have a team of six people at this point in time it includes myself, while legally...(intervention).

CHAIRPERSON: Sorry that is?

MR ALBERTUS JOHANNES VENTER: Six.

10 **CHAIRPERSON:** Legal advisors?

MR ALBERTUS JOHANNES VENTER: Yes that is correct.

CHAIRPERSON: Yes including yourself?

MR ALBERTUS JOHANNES VENTER: Including myself, people who are legally qualified.

CHAIRPERSON: Okay yes and, I think earlier on when you were describing the office of the Premier I got the impression that initially, I thought you are within the office of the Premier but I think later on when you were explaining it appeared that, that might not necessarily be the so, you are for something much wider and then the office of the

20 Premier is a smaller office, is that correct?

MR ALBERTUS JOHANNES VENTER: Yes, Chairperson, that is correct and it is unfortunately, or unfortunate that the confusion is created by the naming of that department in the Public Service Act because when one refers to office of the Premier, many people envisages the four walls within which the Premier sits, whilst we have a component of

approximately 600 people at this point in time, there's a large number of community development workers which forms part of a component known as the Intervention Unit which try and deal with issues on the ground and it's part of the monitoring evaluation programme that I've referred to earlier.

CHAIRPERSON: Now I know that with provinces there would be a Director General of the province and then there would be heads of departments whose political heads are MEC's. You are Deputy Director General, are you Deputy Director General in terms of the province as such and the person you report to is the Director General of the province as such?

MR ALBERTUS JOHANNES VENTER: Chairperson, no my – although the Director General has wider functions than a head of department if one looks at Section 7 of the Public Service Act. My responsibilities relates only to the department which we call the office of the Premier and that component programme...(intervention).

CHAIRPERSON: Oh okay now I understand so – but the office and person that I referred to as the Director General of the province, is that same person or the holder of that office also in effect the Director General of the so-called office of the Premier, is that correct?

MR ALBERTUS JOHANNES VENTER: Yes Chairperson that is, indeed correct.

CHAIRPERSON: Oh okay, no thank you. So you would be reporting to that person and you are Deputy Director General Coordination - Corporate Administration and Cooperation in the office of the Premier,

in that department?

MR ALBERTUS JOHANNES VENTER: That is correct Chairperson.

CHAIRPERSON: Okay now I understand, thank you.

ADV ZINHLE BUTHELEZI: Thank you Mr Chair. Mr Venter the document I wanted to refer you to is on page 669 of reference Bundle C, those two in front of you, Bundle C page 669. So there will be a small c on the spine reference Bundle 88 then a small c on the spine.

MR ALBERTUS JOHANNES VENTER: C?

ADV ZINHLE BUTHELEZI: Yes.

- 10 **MR ALBERTUS JOHANNES VENTER:** Chairperson I have Bundle C here but it starts at page 839.

CHAIRPERSON: I think mine starts on that page number as well Mr Venter.

ADV ZINHLE BUTHELEZI: I'm looking at the wrong number, I'm so sorry Chair, the correct number it's 1323, the bundle is the same but the page number – I was referring to the wrong page numbers.

CHAIRPERSON: What's the page number?

ADV ZINHLE BUTHELEZI: 1323.

CHAIRPERSON: 1323?

- 20 **ADV ZINHLE BUTHELEZI:** Yes it's not really visible on my copy because there's something written on top of it, but I'm told it's the correct number, it's under tab 91.

MR ALBERTUS JOHANNES VENTER: Yes I do have it.

ADV ZINHLE BUTHELEZI: Yes is that the document that you saw relating to Mr Narayan's trial?

CHAIRPERSON: Please wait for me Ms Buthelezi, yes I'm also there.

ADV ZINHLE BUTHELEZI: Thank you, can you please identify that document and tell the Chair what it contains?

MR ALBERTUS JOHANNES VENTER: Chairperson, it could be the same document, I must confess that the previous time that I looked at a similar document was quite fleeting but it looks like the document that I've seen at the time when the Hawks executed the warrant.

ADV ZINHLE BUTHELEZI: Yes it goes up to page 1326, can you confirm that?

10 **MR ALBERTUS JOHANNES VENTER:** Yes indeed.

ADV ZINHLE BUTHELEZI: And would you please then tell us ...(intervention).

CHAIRPERSON: Well I'm sorry Ms Buthelezi doesn't the document go up to 1324 and then there's an Annexure to it that starts at 1325?

ADV ZINHLE BUTHELEZI: That's correct Chair.

CHAIRPERSON: Yes so it's not the same document?

ADV ZINHLE BUTHELEZI: Yes the Annexure starts from page 1325.

CHAIRPERSON: Ja.

ADV ZINHLE BUTHELEZI: But it's related to this document.

20 **CHAIRPERSON:** Yes okay.

ADV ZINHLE BUTHELEZI: Yes, thank you.

MR ALBERTUS JOHANNES VENTER: Chairperson the document is headed, request for approval for head of department for Agriculture, Mr P M Thabethe, and Ashok Narayan to attend a strategic meeting with the strategic partner in India from the 29th of February to the 4th of

March 2012 in support of the expansion of dairy farming in the Free State.

ADV ZINHLE BUTHELEZI: Thank you, for the record Narayana is spelt Narayana (name spelt), thank you and then...(intervention).

CHAIRPERSON: You said earlier on Mr Venter that the document that you saw was an approval of a trip I think to India by Mr Magashule, I see that this document, at page 1324, although it has three signatures, the two signatures which are suppose to – well the one which is for the MEC is supposed – the MEC is supposed to have crossed out one of
10 two, there's recommended and not recommended and nothing is crossed out as it seems to me and just above the name of the – of Mr Magashule is says recommendation 4.1, approved – not approved by and then nothing is crossed out but there seems to have been a stamp that was put there and it's not legible I don't know whether whatever was written on this stamp indicated that the Premier approved or not approved but I thought I would draw that to your attention to – do you have anything to say?

MR ALBERTUS JOHANNES VENTER: Chairperson if I may guess, it's not very clear but it look rather like the type of stamp that would be put
20 onto a document when payment needs to happen.

CHAIRPERSON: Yes but my question was really aimed at establishing whether – since you said the document that you saw was one in which Mr Magashule was approving a certain trip and this doesn't seem to approve anything. My question was whether you think this is the same document that you saw?

MR ALBERTUS JOHANNES VENTER: Chairperson it could be, I did not look at that first document with quite intensively due to the circumstances prevailing at that point in time.

CHAIRPERSON: Obviously by signing the intention was to do one of the two but without crossing out one, it's not clear which one?

MR ALBERTUS JOHANNES VENTER: Yes.

CHAIRPERSON: Yes okay, I don't know if you are able to assist Ms Buthelezi but I just – it caught my attention that he did not cross out...(intervention).

10 **ADV ZINHLE BUTHELEZI:** Any election.

CHAIRPERSON: Ja he didn't elect to say he was approving or not approving.

ADV ZINHLE BUTHELEZI: I understand Chair and I noticed that. But I would like to refer Mr Venter to the annexure to this document that appears from page 1325. What does that document inform you – if I may?

MR ALBERTUS JOHANNES VENTER: Chairperson it looks like a quote from a travel agency.

CHAIRPERSON: Like a what?

20 **MR ALBERTUS JOHANNES VENTER:** A quotation from a travel agency.

CHAIRPERSON: Oh okay ja.

ADV ZINHLE BUTHELEZI: Yes and the document on page 1326 what does it inform you?

MR ALBERTUS JOHANNES VENTER: Chairperson it is probably the

second page of the quotation.

CHAIRPERSON: Is that not – ja that is – that seems like a....

ADV ZINHLE BUTHELEZI: But for a different person now?

CHAIRPERSON: Is that not a second page of the document at page 1325?

ADV ZINHLE BUTHELEZI: Yes it is.

CHAIRPERSON: Hm? Looks like the same page 2 of the same document.

ADV ZINHLE BUTHELEZI: Yes it is Chair. Mr Venter the person that is
10 quoted for flights on page 1325 could you please give us the name that is there?

MR ALBERTUS JOHANNES VENTER: That is Mr Thabethe Mabana Peter.

ADV ZINHLE BUTHELEZI: And what position did he hold at the time?

MR ALBERTUS JOHANNES VENTER: He was the head of the Department of Agriculture and Rural Development.

ADV ZINHLE BUTHELEZI: Yes and on page...

CHAIRPERSON: And this was I see that quotation was dated 24 February 2012.

20 **MR ALBERTUS JOHANNES VENTER**: That is.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Is that the position he held at that time?

MR ALBERTUS JOHANNES VENTER: Yes.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Yes. And on page 1326 whose name

appears there?

MR ALBERTUS JOHANNES VENTER: That is Ms Ashok Narayan.

ADV ZINHLE BUTHELEZI: And what position did he hold at the time according to your knowledge?

CHAIRPERSON: You mean what name appears at the top? There is another name appearing at the bottom? You mean the one at the top?

ADV ZINHLE BUTHELEZI: Yes the one at the top yes.

CHAIRPERSON: Yes. Okay that is Mr Narayan yes.

MR ALBERTUS JOHANNES VENTER: Chairperson I - I do not know.

10 **ADV ZINHLE BUTHELEZI:** You are not...

MR ALBERTUS JOHANNES VENTER: What position he occupied at that point in time.

ADV ZINHLE BUTHELEZI: He did not hold any position within your government?

MR ALBERTUS JOHANNES VENTER: No not that I am aware of.

ADV ZINHLE BUTHELEZI: Thank you. Chair there will be witnesses that will testify to – with regards to this trip as well as the approval and the people who travelled. May I –

CHAIRPERSON: Okay.

20 **ADV ZINHLE BUTHELEZI:** I will leave it here at this stage thank you.

CHAIRPERSON: Yes. But to the extent that it is meant to say that the Premier approved.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: There might be need to – or there might be a need for evidence to show approval other than the letter because the letter does

not seem to show approval or disapproval.

ADV ZINHLE BUTHELEZI: Noted. Noted Chair thank you. Let us then move to the first time that you Mr Venter you heard about the Vrede Dairy Project when was this?

MR ALBERTUS JOHANNES VENTER: Chairperson that was during the meeting of the executive council which I attended in I think it was on the 13 June if I remember correctly.

ADV ZINHLE BUTHELEZI: Which year?

MR ALBERTUS JOHANNES VENTER: 2012 my apologies.

10 **ADV ZINHLE BUTHELEZI**: Thank you. You may proceed.

MR ALBERTUS JOHANNES VENTER: It was a presentation which was made by the then head of department Mr Thabethe in which the project was – was explained to the executive council and there was also a request made for an additional allocation to the budge of the Department of R84 million in order to execute this project.

CHAIRPERSON: And the reference to the Department here now is the reference to the Department of Agriculture?

MR ALBERTUS JOHANNES VENTER: Indeed my apologies Chair.

CHAIRPERSON: Yes okay. Okay.

20 **ADV ZINHLE BUTHELEZI**: Yes and what was your view on the project at the time?

MR ALBERTUS JOHANNES VENTER: Chairperson it sounded like an excellent project. When I listened to it how it was presented.

CHAIRPERSON: Maybe you could just indicate the essence of what you were told – what the executive council was told this project was

about, ja?

MR ALBERTUS JOHANNES VENTER: Chairperson it is a long time ago but I still remember it well.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: The picture that I formed in my head when it was presented was that the farm – the [Kruinoslust] farm which was the farm on which this project was to be executed will be divided into portions on which emerging farmers would be – or which would be allocated to emerging farmers to – to milk cows on it and then
10 to milk the cows and that milk which has been produced would have been picked up. There would have been a service picking up all the milk from the emerging farmers on the farm. That milk will – would have eventually been processed by a processing plant but it was not enough to make the processing plant a viable economic option and therefore a milking parlour had to be constructed in terms of which or through which milk would be produced in high volumes. But that milking parlour would then be used to train these emerging farmers to become dairy farmers using the latest equipment and technology instead of milking the cows wherever they were housed. My
20 understanding was that the processing plant would then be run by Estina or not by – it will be constructed by Estina. It was their responsibility to construct the milking – the processing plant and that a company would be established in which Estina and the beneficiaries would have shares and the beneficiaries would then from the sale of the products that are being produced at the processing plant received

dividends as shareholders in that company. What made it sound particularly good was and I think Mr Jankielsohn referred to as well that was beneficiation within the province. Our milk has in large quantities been exported outside to the province where it was processed. But what made it attractive was the fact that the town of Vrede or Phumelela and the farm was close to the N3. So it was – would have been easy to transport these processed products to Gauteng as well as to KwaZulu Natal where there was apparently a big market for that. So it sounded very well at that point in time. And I may just add that the

10 processing plant had – was supposed to produce milk, fresh milk, yogurt, butter, cheese. Whatever milk products there is this plant was supposed to produce it. That was my understanding of what was presented.

ADV ZINHLE BUTHELEZI: Thank you. If I may refer you again to the reference bundle A at page 323. Page 323 of bundle A.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Chair I will be only using A and C on the reference bundles and if you could just leave those two next to you.

CHAIRPERSON: Okay.

20 **ADV ZINHLE BUTHELEZI:** Thank you.

CHAIRPERSON: Page 300 and?

ADV ZINHLE BUTHELEZI: 23.

CHAIRPERSON: 23. Okay thank you. You can proceed.

ADV ZINHLE BUTHELEZI: Thank you. What is – could you please identify that document and tell us what it informs us?

MR ALBERTUS JOHANNES VENTER: It is a resolution of the executive council following the presentation which was made by the Department of Agriculture and Rural Development.

ADV ZINHLE BUTHELEZI: Yes and what is the dates on that document?

MR ALBERTUS JOHANNES VENTER: 13 June 2012.

ADV ZINHLE BUTHELEZI: Yes. And what does it tell us?

MR ALBERTUS JOHANNES VENTER: It basically records the resolution of the executive council. There are various resolutions. One
10 is that the executive council approved the following recommendations.

1. The implementation of the proposed integrated Vrede Dairy Agri business project.

2. Under that supports the sourcing of additional funding of R84million for this current financial year from the province. Then

b. The executive council further agreed that

1. Where possible the department should meet the cost and will be later refunded and engage other relevant departments.

ii. The matter to be further discussed in the Treasury Committee as a matter of urgency.

20 iii. FDC should play a role especially from the business point of view.

v. For the next three years the Department of Agriculture will have to pay R113 000 it looks like but it is probably million.

ADV ZINHLE BUTHELEZI: Yes as someone who was at this meeting did you understand why there would be – why there was some sense of

urgency that is referred to on – on the third last point from the points that you have just read?

MR ALBERTUS JOHANNES VENTER: Chair If I remember correctly the matter of urgency was because of the fact that it was a project which was mentioned in the State of the Province address of the Premier and there was – there was an obligation to implement that project in that financial year.

ADV ZINHLE BUTHELEZI: Yes. And if I look at points number 3 from the top from the points that you have just read to the record – sorry it
10 is point – actually it is point number a ii that the [indistinct] was supporting the sourcing of the additional R84 million. How much was initially budgeted from this project if you know?

MR ALBERTUS JOHANNES VENTER: Chairperson if I remember correctly the Department of Agriculture and Rural Development indicated that they reprioritised funds from other projects and they were able to get R30 million together but they need another R84 million in order to get to an annual cost or an annual contribution of this project with R114 million.

ADV ZINHLE BUTHELEZI: Okay. So the original amount budgeted was
20 R30 million is that what you – is that your evidence?

MR ALBERTUS JOHANNES VENTER: Chairperson I am not sure...

CHAIRPERSON: It has got to be more than that.

MR ALBERTUS JOHANNES VENTER: One will have to look at the Appropriation Act that was approved by the Legislature.

ADV ZINHLE BUTHELEZI: Okay.

MR ALBERTUS JOHANNES VENTER: At that point in time to see what was originally budgeted but as I say as my memory serves me correct – if my memory serves me correct the Department reported in that meeting that they reprioritise funds from other projects as well to get that R13 million together.

ADV ZINHLE BUTHELEZI: Thank you. Then – let us then go back to your statement. I will – I will take you to paragraph 2.1 it is on the first page of your statement where you deal with the opinion that you gave to the Account and General of the Province. Would you please take us
10 through this opinion that was provided to the Account and General?

MR ALBERTUS JOHANNES VENTER: Chairperson this opinion was provided by Advocate Ditira in the unit.

CHAIRPERSON: That is in your unit?

MR ALBERTUS JOHANNES VENTER: She is in my unit.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: She was approached by the Account and General in the Provincial Treasury Ms Fourie at that point in time.

CHAIRPERSON: So there would be – I am sorry. You know earlier on
20 we talked about an Account and General so there would also be a person holding the position of Account and General in a Provincial Government as opposed to National Government?

MR ALBERTUS JOHANNES VENTER: That is correct Chairperson.

CHAIRPERSON: Ja and the one you are talking about here is a provincial one?

MR ALBERTUS JOHANNES VENTER: That is correct.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank you Chair. Yes. You actually attach that opinion or a letter or correspondence as Annexure A it appears on page 6 of bundle HH2. Would you please take us – what was the opinion about and what – were you – was sought that you clear?

MR ALBERTUS JOHANNES VENTER: Ja. Chairperson I may just perhaps say that on the 18th when Ms Fourie engaged with Advocate Ditira I was out of the office I was not there.

10 **CHAIRPERSON:** Yes.

MR ALBERTUS JOHANNES VENTER: But Advocate Ditira phoned me and expressed her concern about the June contract and the June contract is a contract which the Department concluded with Estina.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: Somewhere early in June.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: Of 2012.

CHAIRPERSON: Okay.

20 **ADV ZINHLE BUTHELEZI:** Chair there will be a witness that will take us through that conference.

CHAIRPERSON: Ja.

ADV ZINHLE BUTHELEZI: This witness did not have any knowledge thereof.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Please proceed.

MR ALBERTUS JOHANNES VENTER: Okay.

CHAIRPERSON: So as you understood the position the person in your section was approached by the Provincial Account and General for what?

MR ALBERTUS JOHANNES VENTER: For advice on that June agreement.

CHAIRPERSON: Oh on the agreement between the department and Estina?

MR ALBERTUS JOHANNES VENTER: That is correct Chairperson.

10 **CHAIRPERSON:** Yes okay yes continue.

MR ALBERTUS JOHANNES VENTER: When she phoned me and raised her concerns I contacted the then Director General.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: And the advice from the then Director General was that we should in our advice to the Provincial Treasury request that the Treasury Committee refer that contract back to us.

CHAIRPERSON: Yes.

20 **MR ALBERTUS JOHANNES VENTER:** To have a look at it again. Now the reason why the Treasury Committee was mentioned is that the resolution of the Executive Council which I read out just now referred that this matter must be referred to the Treasury Committee because there was a significant budget issue to be addressed at R84 million. It is normally something that a Treasury Committee which is a sub-committee of the Executive Council would look into and interrogate

before any final decisions were made.

CHAIRPERSON: So was the person in your unit asked by the Account and General, the Provincial Account and General for an opinion whether the agreement between Estina and the Department was valid legally, is that what was asked?

MR ALBERTUS JOHANNES VENTER: Ja Chairperson...

CHAIRPERSON: As you understood the position?

MR ALBERTUS JOHANNES VENTER: Yes that is how I understood it.

CHAIRPERSON: Okay.

10 **MR ALBERTUS JOHANNES VENTER**: And there were certain concerns raised by Advocate Ditira.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: The validity ...

CHAIRPERSON: Of the agreement?

MR ALBERTUS JOHANNES VENTER: Yes.

CHAIRPERSON: Yes okay.

20 **MR ALBERTUS JOHANNES VENTER**: Chairperson in the private sector the meeting of mines normally results in an agreement but in the public sector when a bid is advertised and the bid is awarded that is the guiding – your guidance to prepare an agreement and your procurement process normally provides you with the deliverables from both parties to enable you to at least capture that in the agreement amongst other things that you normally find in an agreement. And at that point in time if I remember correctly there was a judgment of the Supreme Court of Appeal and I think it was TEB Properties versus the

MEC for Health and Social Development North West in which the court ruled that when an agreement is inconsistent with your bid documents the agreement is void in as far as it is inconsistent and it is very – it was very important for us to make sure that every or any agreement that we prepare would be consistent with what was the outcome of the procurement process. And at that point in time it was reported to me that it appeared as if there was no procurement process and the agreement would be as a result of that void – that was the issue that was reported to me.

- 10 **ADV ZINHLE BUTHELEZI**: Thank you and which – where was this agreement drafted? Who drafted this agreement?

MR ALBERTUS JOHANNES VENTER: Chairperson it was not my unit. I do not know who drafted it.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: It was submitted to Treasury and from Treasury it was forwarded to our offices but I have no idea who drafted it.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Thank you.

- 20 **CHAIRPERSON**: I think I may have interrupted you at a time when you were saying you spoke to the Director General after a person in your unit had spoken to you about concerns relating to this agreement and that you said that the Director General gave you certain advice. I think I interrupted you at that level – I interrupted you and Ms Buthelezi at that level. Ms Buthelezi was that covered or did I take you off track?

MR ALBERTUS JOHANNES VENTER: Chairperson I think I mentioned it but I will repeat it.

ADV ZINHLE BUTHELEZI: Yes.

MR ALBERTUS JOHANNES VENTER: The advice that was received from the Director General is that in the response to Treasury we should indicate that the Treasury Committee should submit that agreement to our office.

CHAIRPERSON: Yes okay.

MR ALBERTUS JOHANNES VENTER: For proper interrogation.

10 **CHAIRPERSON:** Okay.

ADV ZINHLE BUTHELEZI: Yes and then what happened to this agreement? Was it actioned or was it declared invalid and that was the end of it?

CHAIRPERSON: Oh well let us hear first. Did you – was Treasury then asked to submit it back or submit it to your office?

MR ALBERTUS JOHANNES VENTER: Yes. Chairperson in the advice which Advocate Ditira wrote to the department it is on page AJV6 attached as Annexure A to my affidavit. In point 4 she wrote that we suggest that you proposed to the Treasury Committee that the
20 agreement and the procurement documents be sent to us for review.

ADV ZINHLE BUTHELEZI: Yes then what happened following that review process?

MR ALBERTUS JOHANNES VENTER: Chairperson I had a meeting with then Head of the Department Mr Thabethe indicating to him what I have related to you earlier how important the procurement process is to

us. When he came to meet with me he brought along an international agreement concluded between South Africa and India on agricultural cooperation as well as I think the Black Economic Empowerment charter. And I indicated to him although that could be an important role players or documents to be considered in drafted the agreement we are still very keen to look at the procurement process and to see what the deliverables are.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: He indicated that he will submit
 10 it to me and after that meeting I engaged Advocate Ditira again. I may just perhaps explain that all new work that comes in for legal services comes through my office and I allocate it to the legal advisors in terms of the amount of work that they are managing at that point in time. Since she was involved in this I thought it appropriate that she should continue with it and a letter was then drafted by her which I gave certain input into requesting the Head of the Department for certain information in order to enable her to prepare the agreement. Subsequent to that there was correspondence exchanged between her and the Head of the Department of which my office was copied which in
 20 those correspondence that information did not come to the fore.

CHAIRPERSON: That is now the information to what effect?

MR ALBERTUS JOHANNES VENTER: The information which was requested in the first letter by Advocate Ditira to enable her to prepare an agreement.

CHAIRPERSON: Oh okay.

MR ALBERTUS JOHANNES VENTER: Chair if I may just mention?

CHAIRPERSON: Did that include information about whether there had been compliance with procurement procedures?

MR ALBERTUS JOHANNES VENTER: That is correct.

CHAIRPERSON: Okay that was not supplied?

MR ALBERTUS JOHANNES VENTER: That was not supplied.

CHAIRPERSON: Ja.

MR ALBERTUS JOHANNES VENTER: I may just mention that the concern which was also raised by Advocate Ditira is that there was
10 supposed to be a R30 million initial payment but in the first agreement it was not clear what exactly the deliverables for that R30 million was supposed to be. And what we agreed then is that we should get the information and rather prepare a proper agreement that at least covers that R30 million. Because that was the concern which Treasury raised to say there is a R30 million payment that must be made but we are not sure - If we look at the contract what is supposed to be delivered for that R30 million.

CHAIRPERSON: One second. Thank you.

ADV ZINHLE BUTHELEZI: Thank you Chair. Then Mr Venter then that
20 agreement was never actioned upon, is that your evidence? The first agreement that...

MR ALBERTUS JOHANNES VENTER: No Chairperson I do not think that agreement was implemented. In the next week I am aware that there were certain engagements between Advocate Ditira and the Head of the Department and officials from Treasury. I was on leave that –

the subsequent week and Advocate Swanepoel was acting in my place.

ADV ZINHLE BUTHELEZI: And what was the date of that week?

MR ALBERTUS JOHANNES VENTER: Chairperson I think it was from the 2nd to the 6th of July 2012.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Okay I just want to make sure I follow. When Advocate Ditira called you after she had been approached by the Provincial Account and General there was already an agreement between the Department of Agriculture and Estina. And she was asked
10 to give a legal opinion on whether that agreement was valid. And she was concerned about the validity of the agreement with special reference to what appeared to have been lack of compliance with procurement procedures, is that right?

MR ALBERTUS JOHANNES VENTER: That is correct Chairperson.

CHAIRPERSON: And she expressed that to you and you had a discussion with the Director General and the Director General's advice was your unit must ask the Provincial Treasury to send the agreement to you. Was it to your unit? Was the agreement ever sent to your unit?

MR ALBERTUS JOHANNES VENTER: Chairperson our decision was to
20 be proactive to request that information.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: Before even...

CHAIRPERSON: Before they sent the – they could send the agreement?

MR ALBERTUS JOHANNES VENTER: Ja. Before the agreement even

arrived.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: So that – so the – would...

CHAIRPERSON: And the information was requested which included information about whether there had been compliance with procurement procedures and although there was a response there was no specific response in regard to whether there had been compliance with procurement procedures, is that right?

MR ALBERTUS JOHANNES VENTER: That is correct.

10 **CHAIRPERSON**: Okay.

ADV ZINHLE BUTHELEZI: Thank you.

MR ALBERTUS JOHANNES VENTER: So Chairperson in the next week.

ADV ZINHLE BUTHELEZI: Yes

MR ALBERTUS JOHANNES VENTER: When I was on leave there were certain engagements – it would be hearsay if I relate that.

CHAIRPERSON: Yes but between your department – your unit and who?

MR ALBERTUS JOHANNES VENTER: The Department of Agriculture
20 Treasury was involved.

CHAIRPERSON: Yes okay.

MR ALBERTUS JOHANNES VENTER: That I am aware of.

CHAIRPERSON: Okay.

MR ALBERTUS JOHANNES VENTER: There may be other officials as well.

CHAIRPERSON: Yes, yes.

MR ALBERTUS JOHANNES VENTER: And I was then informed that another – a new agreement was drafted and that that agreement was signed and that was on my return to office on the 9th July.

ADV ZINHLE BUTHELEZI: Yes are you now referring to the agreement that you referred to on paragraph 2.2 of your statement that is the second agreement?

MR ALBERTUS JOHANNES VENTER: Yes Chairperson that is – that is it. It was signed on the 5 July.

10 **ADV ZINHLE BUTHELEZI:** Yes and where was this agreement drafted? Who drafted this agreement?

MR ALBERTUS JOHANNES VENTER: Chairperson the agreement was drafted by Advocate Ditira.

ADV ZINHLE BUTHELEZI: From your office?

MR ALBERTUS JOHANNES VENTER: From my office and I understand that Advocate Swanepoel who was acting in my place also made certain inputs. I was unfortunately at a where I could not receive emails.

CHAIRPERSON: Okay.

MR ALBERTUS JOHANNES VENTER: Through the cell phone network.
20 I could receive a short message but the moment there was a bulky attachment it simply did not deliver.

ADV ZINHLE BUTHELEZI: Okay from what you know who requested that this second agreement now be drafted at your office?

MR ALBERTUS JOHANNES VENTER: Chairperson I am not sure if it was a specific person.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: But it could be emanating from the fact that we said we need an agreement that provides deliverables for that 30 million because the first agreement was not clear about it and I think it was one of the issues the Treasury raised to say we have a problem with the 30 million because we are not sure for what it is to be expended.

So that second agreement was supposed to address the 30 million but also pave the way for the rest of the implementation of the –
10 of the project.

ADV ZINHLE BUTHELEZI: Yes. Mr Venter would you please make us understand why this – this agreement that was for the Department of Agriculture was being drafted at the Office of the Premier.

MR ALBERTUS JOHANNES VENTER: Chairperson I maybe a bit lengthy but pardon me please. Chairperson I cannot really say what happened prior to 1994 but immediately after the 1994 elections there was resolve from Government to create a strong legal unit within the Office of the Premier and I am aware of it because at that point time while still practicing I served on at least two panels when we made
20 appointments and one of those panels was for the state – the Chief State Law Advisor who was the person who retired into which post I was – was transferred and at that point in time departments did not have legal advisors.

Although they were appointed subsequently but the resolve was also that in the Office of the Premier in that department there

needs to be a very strong legal component. One of the reasons being that in terms of the old Treasury instructions that legal advisors central component had a role to play in advising accounting officers on issues with financial implications and the same instructions at that point in time provided that contracts had to be submitted to the State Attorneys.

Now when the PFMA replaced those instructions the State Attorneys indicated to us that we have no obligation anymore in terms of the Treasury instructions. So you will have to look at the contracts yourselves which we carried on. A lot of legal work had been referred
10 to us at that point in time and in 2005 we formalised the relationship to some extent where the Director General concluded a protocol for legal services with the various accounting officers.

Basically just indicating when we are requested for legal advice how should it be structured and how should it arrive at our office and what is our response and timeframe. So it is basically just short of a civil level agreement but we refer to it as a protocol for legal services. In that time or subsequent to that we discovered as – as legal advisors in the Office of the Premier that in instances where bids were awarded and that awarding of a bid was made subject to a service
20 level agreement that in many instances the service provider drafted their own agreements submitted to the department and they signed it and those agreements did not necessarily protect the Government.

So I – I made a point to – to raise that with – with my Director General on – on more than one occasion and I also – we picked it up and in commercial contracts in the private sector it is quite prevalent

that you get an indemnity clause where the parties agree to indemnify each other under certain circumstances and I pointed it out to the Director General and I think I mentioned it also to a meeting of heads of department. I am not sure.

That we have come across agreements which were signed which include an indemnity clause in which the particular department of or the accounting officer the head of the department indemnifies the service provider against whatever it was and I pointed it out to them that in terms of the PFMA Section 66 determines that only the MEC for
 10 Finance can issue, go and borrow money, issue a guarantee or an indemnity or committee a department for a future financial commitment but more importantly I pointed it out to them that I think it is Section 86 of the PFMA creates a crime if you are not authorised – if you are not the MEC and you sign an indemnity or issue a guarantee and so on and I indicated to them in blunt terms that if you have done it you have committed a crime.

All that needs to happen is for you to be arrested and so serious it is. So please send those agreements to us and then in 2010 a – this directive was issued and I cannot say it is because of the
 20 things that I related. I have no idea what motivated it because it was mentioned firstly in a meeting that the Premier had with CFOs, heads of Supply Chain Management and heads of department and subsequently repeated in the Executive Council that all contracts must be submitted to my office for the State Law Advisors to – to consider.

I must immediately also just say Chairperson that it is not in

all procurement processes where a – a service level agreement or a subsequent contract is necessary and many instances the specifications in the bid document is sufficient enough to create a relationship on – on acceptance by a bid – by the accounting officer to constitute a proper agreement and in many instances delivery of a single item is required and the time is specified in the bid.

So it is unnecessary to – to basically repeat what is already in existence but some agreements – *ag* – some bids are advertised subject to the signing of a Service Level Agreement where it is
 10 necessary to manage service to be delivered over time and the payments and whatever is necessary.

CHAIRPERSON: Thank you.

ADV ZINHLE BUTHELEZI: Thank you Mr Venter. So in – when you get these requests to draft a contract for the department how far do you go? Do you interrogate the service – Supply Chain Management processes that have been followed? What is it exactly that you look at to enable you to draft these documents?

MR ALBERTUS JOHANNES VENTER: Chairperson when we have arranged with the legal advisors and departments and we work with
 20 them. It is our purpose to build their capacity as well. So we do not want to just keep all the - the franchise to legal knowledge under our wings. We – there is a duty on us to build capacity in departments and we are trying our best to do it and I must say there is no currently more stability in departments and there are more capacitated legal advisors in departments which makes our job a lot easier but we – we have an

arrangement with them that once a contract is submitted to our office it must be a draft.

They must first prepare a draft and when the draft arrives it must be accompanied by all the procurement documents. The bid minutes of the bid adjudication Bid Evaluation Committees so that we can go through the bid what was submitted what was accepted and how – what the deliberations in the committees were to enable us to make sure if there appears something out of that committee meeting especially the adjudication committee that we can capture it into the agreement but that is the standard practice at this point in time.

ADV ZINHLE BUTHELEZI: Yes. With regards to this particular contract what information did you have in preparation of this contract - the Vrede Dairy Farm Contract, Estina and the Department of Agriculture Contract?

MR ALBERTUS JOHANNES VENTER: Chairperson the project – there was a project proposal which was supposed to be attached to the agreement and I do not think it was but reference was made to it so that information was available at that point in time. It was supposed to be Annexure B to that agreement but it was not attached to the document that was signed.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Procurement information was there ...

MR ALBERTUS JOHANNES VENTER: Chairperson there was ...

CHAIRPERSON: And the deliverables.

MR ALBERTUS JOHANNES VENTER: There was a submission that I

have seen where the head of the department approved the appointment of Estina on a deviation from the procurement process which was authorised in terms of Treasury Regulations 16A6.4 but in that submission it was not clear what the reasons for the deviation were.

There is a subsequent or not a subsequent a Treasury Instruction basically dealing with the threshold values when you must – when you can procure without quotes, when you can procure with three quotes, when you can procure on quotations from all the service – possible service providers on the database and then above 500 000 it
10 must be a bid.

That Treasury Instruction also indicates that when an accounting officer decides to deviate from the bid process there are certain things that must be done and that was not in that submission and some of it – two of the things that need to be done is one, a copy of that must be submitted to Treasury and to the Auditor General and it was an audit issue later on that I became aware that the Auditor General had issues because those requirements were not complied with.

CHAIRPERSON: Is what you are saying among other things that you
20 were provided with documents in order to enable you to draft the agreement and one or more of those documents suggested that either there had been an approval for deviation from procurement processes or procedures or that one or more documents indicated that a request should be made for approval for deviation.

Which of the two did the documents in front of you suggest

was – was the case?

MR ALBERTUS JOHANNES VENTER: Chairperson I am aware of the submission that request the deviation and it was approved.

CHAIRPERSON: Oh there – oh there was a request among a document containing a request for deviation among the documents that were given to you?

MR ALBERTUS JOHANNES VENTER: That I became aware of yes.

CHAIRPERSON: That you became aware of?

MR ALBERTUS JOHANNES VENTER: Yes.

10 **CHAIRPERSON:** And at some stage you also became that the request for deviation had been approved?

MR ALBERTUS JOHANNES VENTER: That is correct.

CHAIRPERSON: And had been approved by the right authority?

MR ALBERTUS JOHANNES VENTER: The right authority although there were compliance issues ...

CHAIRPERSON: Okay, alright.

MR ALBERTUS JOHANNES VENTER: In that document.

CHAIRPERSON: Okay, thank you.

20 **ADV ZINHLE BUTHELEZI:** Thank you. Who exactly in your office concluded or drafted this document?

MR ALBERTUS JOHANNES VENTER: That if you refer to the agreement it was ...

ADV ZINHLE BUTHELEZI: Yes the agreement.

MR ALBERTUS JOHANNES VENTER: The Advocate Ditira.

ADV ZINHLE BUTHELEZI: It was Advocate Ditira?

MR ALBERTUS JOHANNES VENTER: That is correct.

ADV ZINHLE BUTHELEZI: Yes because I want to refer you to certain clauses in this document. If you may be able to assist. On page 8 of the - this agreement I am interested in Clause 2. I will start reading from Clause 2.1 that:

10 “The department has in line with the vision Mohuma Mobung initiative identify the need to establish a dairy project in Vrede. The Government of the Republic of South Africa and India entered into a memorandum of understanding on agricultural cooperation which include promotion of agricultural trade and investment. The department has met Paras Dairy the largest private milk producer in India who has technical no how and has the right to the international brand names and has agreed to work with the department.”

Is there any agreement that you had sight of between the department and Parag?

20 **MR ALBERTUS JOHANNES VENTER:** Chairperson no not the department and Parag. I have never seen such an agreement.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Did you come across any agreement that involved Paras even if it was not with the Department of Agriculture in regard to this project?

MR ALBERTUS JOHANNES VENTER: Chairperson there may be an

agreement between Paras and Estina ...

CHAIRPERSON: Okay.

MR ALBERTUS JOHANNES VENTER: But is not part of my file content.

CHAIRPERSON: Yes, okay. Thank you.

ADV ZINHLE BUTHELEZI: Yes.

MR ALBERTUS JOHANNES VENTER: I think if i am not mistaken the previous witness has mentioned something ...

CHAIRPERSON: Oh, okay.

10 **MR ALBERTUS JOHANNES VENTER:** But ...

CHAIRPERSON: Yes, okay.

MR ALBERTUS JOHANNES VENTER: It is not part of the documents that we ...

CHAIRPERSON: That came to you?

MR ALBERTUS JOHANNES VENTER: Ever received.

CHAIRPERSON: *Ja.*

ADV ZINHLE BUTHELEZI: Thank you Chair. Then let us move onto paragraph 2 – Clause 2.4.

20 “Estina is the counterpart of Paras Dairy in South Africa and therefore sole provider who can execute the project.”

What I want to understand from this clause is that this what is your understanding of a sole provider?

MR ALBERTUS JOHANNES VENTER: Chairperson if you read the clause it means it is the only entity at that point in time who could

provide the service and in discussions afterwards with head of the department he mentioned that as one of the reasons why he did – deviated and just as an example I think when we consulted with the evidence leader used the example of Microsoft.

So we all use Microsoft and if we want to procure from Microsoft we cannot go to other companies to buy products if we want Microsoft products as a platform for instance. So we – we have to procure from Microsoft and they – Microsoft is the sole provider at that point in time for whatever needs to be procured.

- 10 **ADV ZINHLE BUTHELEZI:** In – in your view would you consider a dairy farmer as a sole provider?

CHAIRPERSON: Or maybe the question maybe – you should put it this way bearing in mind your understanding of what this project was about what do you think about the statement that Paras Dairy was the sole provider of this kind of service?

- MR ALBERTUS JOHANNES VENTER:** Chairperson I have to rely on my memory on issues which were raised during the audit and the response thereto and why I am aware of it is the previous MEC for Finance created an intervention committee where issues in the annual audit that
- 20 has been raised by the Auditor General is submitted and the relevant officials from a particular department are then called to that meeting to come and explain why this audit query is raised and whether it can be resolved or not and my memory on – on the reasons for this deviation comes from that committee and again my apologies. It is a long time ago and I ...

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: Did not expect the question so I did not do any research to see if ...

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: I have any paperwork ...

CHAIRPERSON: Okay.

MR ALBERTUS JOHANNES VENTER: But if I remember correctly what was related in that meeting was that various companies in South Africa were approached to form part of this initiative and there was no
10 interest. So ...

CHAIRPERSON: Okay. That was your understanding of what had happened?

MR ALBERTUS JOHANNES VENTER: That was my understanding.

CHAIRPERSON: Whether it was factually so you do not know?

MR ALBERTUS JOHANNES VENTER: I have no idea Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank you Chair and if I may refer you to the next page – page 9. It is Clause 2.5. This clause states that:

20 “Estina is willing and able to execute the project
 and has necessary experience and expertise in
 connection therewith.”

 We have heard the evidence earlier on from Mr Jankielsohn that Estina was actually an IT company. Was this interrogated when this contract was drafted?

CHAIRPERSON: Sorry where were you reading from Ms Buthelezi?

ADV ZINHLE BUTHELEZI: The next page Chair. It is page 9. It is Clause 2.5 of the contract.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: It is right on top, thank you.

MR ALBERTUS JOHANNES VENTER: Chairperson I am not aware whether it has been interrogated and the extent if it was but from my own perspective when I am supposed to draft an agreement on behalf of a (indistinct) department I will be very reluctant to include clauses like that because you are commit yourself in an agreement that the
10 service provider has the capacity to do it and once you have agreed that you are bound to what you have agreed whether or not it is the truth eventually.

You commit yourself to a specific statement of fact in an agreement and it will be very difficult then to – to get out of it based on the fact that there was no – no capacity. So I would not include it as if I have to – if I was the drafter of this agreement.

ADV ZINHLE BUTHELEZI: Is this something that one would expect that someone in your office should interrogate before committing to this clause in the contract?

20 **MR ALBERTUS JOHANNES VENTER:** Yes Chairperson. I think it is unfortunate that it slipped in. It should not have been there.

ADV ZINHLE BUTHELEZI: Thank you and you have already told us that you have gotten some - the information from the department in order to enable you to draft this contract. Other than that information what else informs you on what terms you should include in the

contract?

MR ALBERTUS JOHANNES VENTER: Chairperson except from the project proposal that must have been there as I have indicated there I am aware of a number of engagements between the legal advisors in our office and the department and the information which is captured here could be from – from those engagements in all probability.

ADV ZINHLE BUTHELEZI: Yes. On paragraph 2.3 of your statement it is on page 2 of your statement you tell the court the request that you received from the Municipal Manager of Phumelela Municipality.

10 Please take us through that request and who was the Municipal Manager at the time?

MR ALBERTUS JOHANNES VENTER: Chairperson the Municipal Manager was Mr (indistinct) and the advice which he sought from us was a lease agreement which were to be completed between Zayna Investment and the municipality. Now Zayna Investment is the company that was established to run the - or to manage the processing plant in which the beneficiaries were supposed to have shares. The matter was again referred to Advocate Ditira and she prepared advice to Mr (indistinct) which is attached as Annexure C to my Affidavit AJV27
20 in the bundle.

ADV ZINHLE BUTHELEZI: Yes. What was the – the – what opinion was sought from you if ...?

MR ALBERTUS JOHANNES VENTER: Basically whether that agreement which was submitted to the Municipal Manager to sign was in order.

ADV ZINHLE BUTHELEZI: And what was the agreement about?

MR ALBERTUS JOHANNES VENTER: That was a lease agreement in terms of which this Zayna company would lease the farm from the municipality.

ADV ZINHLE BUTHELEZI: Yes and what opinion then did you give Mr (indistinct)?

MR ALBERTUS JOHANNES VENTER: The opinion was that if you look at the MFMA as well as very regular – various regulations that it – it was simply not achievable. The Minister – there was a four percent
10 share allocation made to the – to the municipality but there is no authority in any piece of legislation for a municipality to become a shareholder in a company unless it is a municipality and there is a lot of other regulations which regulate the establishment of municipal entities and so on.

So basically what the opinion indicated was that it is not a viable option and it concludes at the end indicating that there are other options which should be explored. For instance it reads in the last paragraph 11.

20 “Alternatively we suggest that the municipality make the land available to the Department of Agriculture to build a dairy and to enter into a lease agreement with community members and then Estina can obtain a piece of land outside the municipal land and build the processing plant. That will not pose any legal challenges to the proposed transaction.”

We alerted the municipality to the fact that if Estina is supposed to receive any dividends which it was from the proceeds of the processing plant and that processing plant is established on municipal land it will be a public/private partnership and there is a – quite an intricate and complicated process for public/private partnership to be established and that was why it was indicated that Estina should get land outside the municipal land.

ADV ZINHLE BUTHELEZI: Thank you. Chair I am advised that it is almost 5 o' clock or is it 5 o' clock. I still need about an hour and a
10 half. I believe if we start at 09:30 tomorrow I should be done by tea time.

CHAIRPERSON: Well I thought – I thought we would be able to finish both witnesses but obviously we – we are not able if at 5 o' clock we are not done yet. You say you ...

ADV ZINHLE BUTHELEZI: We ...

CHAIRPERSON: Think you need – need another hour?

ADV ZINHLE BUTHELEZI: Yes because there are some contracts that I still need to take and opinions that I need to take the witness through.

CHAIRPERSON: Hm.

20 **ADV ZINHLE BUTHELEZI:** Yes and if we may start early tomorrow ...

MR ALBERTUS JOHANNES VENTER:

CHAIRPERSON: Are you generous or conservative will you say an hour?

ADV ZINHLE BUTHELEZI: I think ...

CHAIRPERSON: Is 30 minutes doable or it is not doable without doing

injustice to the matters?

ADV ZINHLE BUTHELEZI: I do not think it will be doable Chair.

CHAIRPERSON: You do not think it will be doable?

ADV ZINHLE BUTHELEZI: No. I do not think it will be doable.

CHAIRPERSON: Okay. No we will – I asked if we can have the air conditioner switched on because I was feeling it is hot. I see it has been switched off so it is – it is even hotter. I want it to feel cold but it is okay because we are adjourning or was I the only one feeling hot?

ADV ZINHLE BUTHELEZI: I do as well.

10 **CHAIRPERSON:** I think somebody is punishing us. Okay. No we are going to adjourn but I think we – we - I think there would be a challenge starting at half past nine tomorrow. So let us start at 10 tomorrow ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: But if necessary we can also go up to five tomorrow and maybe if need be on that depending.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: So, but we can – we can discuss in the morning in terms of how it – whether it would be looking like we might need to go
20 beyond five but we can go up to five if we need to but obviously if we finish at four it is fine.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: We will try and use more time if necessary to try and – and make as much progress as we can. I think I am under the impression that Ms Gcabashe had asked for – for that. If I am mistaken

she will remind me. Okay. Mr – Mr Venter are you available tomorrow at 10 o' clock? Will you ...?

MR ALBERTUS JOHANNES VENTER: I have made arrangements to stay over Chair.

CHAIRPERSON: Yes.

MR ALBERTUS JOHANNES VENTER: I will be here tomorrow.

CHAIRPERSON: Okay. No that is fine. Okay. We are going to adjourn then and tomorrow we will start at 10 o' clock. We adjourn.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS TO 23 JULY 2019**