

**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
**HELD AT**  
**CITY OF JOHANNESBURG OLD COUNCIL CHAMBER**  
**158 CIVIC BOULEVARD, BRAAMFONTEIN**

**22 SEPTEMBER 2020**

**DAY 269**



**Gauteng Transcribers**  
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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 22 SEPTEMBER 2020**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

**ADV PRETORIUS SC:** Morning Chair.

**CHAIRPERSON:** Are we ready?

**ADV PRETORIUS SC:** In 30 seconds Chair I will be ready if I may?

**CHAIRPERSON:** Okay. Mr Mokhesi the oath you took yesterday continues to apply today okay? Alright.

10 **ADV PRETORIUS SC:** Good morning Mr Mokhesi.

**MR MOKHESI:** Morning Advocate.

**ADV PRETORIUS SC:** We were at Bundle FS14 at page 129 and we were about to deal with the conclusion of the so called cession agreements; material supply cession agreements. But I wanted to deal with something before that; that is not dealt with to any extent at least in your affidavit.

In paragraph 92.1

**CHAIRPERSON:** In paragraph 19?

20 **ADV PRETORIUS SC:** 92.1 at page 127 of FS14. You describe there the difference between the building contracts and the material supply agreements and you explained how the material supply agreements amended or altered the building contract agreements and the regime that was set up in terms of those agreements. Do you

recall that evidence?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** What was the answer Mr Mokhesi?

**MR MOKHESI:** Yes it was yes.

**CHAIRPERSON:** Ja. Okay.

**ADV PRETORIUS SC:** Alright. And then if one goes – in describing those agreements your affidavit does say that it is not clear how the parties who entered into the material supply agreements were identified. In other words, who  
10 selected the suppliers? Do you recall that evidence?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Was any investigation done under your watch at least to find out how the individual suppliers were appointed?

**MR MOKHESI:** No. It – you know the – no, no it was not – it was not done to that extent but it was very clear that they were selected arbitrarily because some of – some of the material suppliers are [00:04:01] suppliers like your Corobrik and so on.

20 **ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** That I know but others [00:04:15] there is one that I can – I think I can recall that is also in the affidavit where we made an example who was a supplier for material, I think it is Care Construction if I am not mistaken. He was a supplier of material. He was also the

contractor and also sub-contracted in certain instances. So there were those type of – and obviously that type of arrangement will ordinarily become very expensive particularly to contractor – to the contractors that are linked to it.

**ADV PRETORIUS SC:** Yes because the contractor had to produce the building ultimately or the buildings at a set price.

**MR MOKHESI:** Yes the contractor had to – the price was  
10 fixed indeed yes correct.

**ADV PRETORIUS SC:** Yes. And we know that subject to individual investigations and we know that there are some examples produced by those investigations that show that there were suppliers who did not act properly or honestly and suppliers who should not have been appointed in the first place. Is that correct?

**MR MOKHESI:** Correct. Correct.

**ADV PRETORIUS SC:** Now one would have thought that in those circumstances one would have asked the question,  
20 who appointed the suppliers and why were these particular suppliers appointed? I am not talking about the genuine suppliers like Corobrik and others.

**MR MOKHESI:** Ja. Look it – it – you know we – let me say for my side I never got a clear answer as to who supplied, who selected in the first instance and what was the criteria

that was used? Hence the – the investigation and ultimately the disciplinary process that went on. Because the people involved did not come out very clear as to how – how these – how the contractors were appointed; who selected; how they were selected and so on? So that information never came up.

**ADV PRETORIUS SC:** So that problem arose both in respect of the contractors and in respect of the suppliers.

**MR MOKHESI:** The suppliers.

10 **ADV PRETORIUS SC:** And you say that full information could not be obtained in regard to the manner in which they were selected.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** I would like to put to you some passages in that regard from the disciplinary inquiry. If you would just reach behind you please and get Bundle FS12. That is the statement bundle. This is the affidavit of Mr Mokoena. Remind us please Mr Mokoena was who?

20 **MR MOKHESI:** Mr Mokoena was a HOD – Head of a Department.

**ADV PRETORIUS SC:** At the – during 2010/2011?

**MR MOKHESI:** That is correct. Yes.

**ADV PRETORIUS SC:** Correct. If you would go to page 344 please of that bundle.

**MR MOKHESI:** 344?

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** Yes I am on 344.

**ADV PRETORIUS SC:** In his affidavit which we will deal with hopefully later today Mr Mokoena is dealing with the implementation of the prepayment plan at page 344. You have that at the top of page 344.

**MR MOKHESI:** Yes. Yes I have that.

**ADV PRETORIUS SC:** He says:

10 “It should be born in mind that at that stage we were reaching the end of the year and the contractors were due to close on 15 December for the annual builder’s holiday.”

He then says in paragraph 20 that is Mr Mokoena.

“Shortly after my meeting with the MEC”

The MEC at that stage you have told us was Mr Zwane, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** In paragraph 20 Mr Mokoena says:

20 “Shortly after the - my meeting with the MEC he approached me with a list of about 106 contractors and instructed me to use – appoint these contractors.”

Did you establish that fact in your own investigations?

**MR MOKHESI:** Well No I did not because as you can see

this was a meeting between two people if it happened and that information if indeed it was so I would have got it from the officials at that time but they were not forthcoming in terms of [intervention]

**ADV PRETORIUS SC:** Alright. You say they were not forthcoming?

**MR MOKHESI:** They were not forthcoming in terms of how – how one – how the contractors were – we know that it was cancelled – the bid was cancelled but the criteria that  
10 was used in terms of appointing those contractors that were there they were not forthcoming.

**CHAIRPERSON:** Mr Mokhesi you say the officials were not forthcoming. But you knew who was the HOD at the time did you not ask the HOD even if he was out of the department?

**MR MOKHESI:** Well he never told me.

**CHAIRPERSON:** No he never – he would not tell you if you did not ask him. Did you ask him?

**MR MOKHESI:** No I did not.

20 **CHAIRPERSON:** Why not? He was the HOD. He was in charge of the department. You wanted to know how these contractors got appointed. Why did you not ask him? He was the most obvious person to ask. Why did you not write to him? Why did you not phone him and say; Mr Mokoena you were the HOD when this mess happened who selected



these people? Why did you ask – limit your enquiries to junior officials when you knew who was the HOD at the time?

**MR MOKHESI:** I – I – my questions was – my question were to the people who were at that time involved who were the officials; the senior officials in the department were part of that.

**CHAIRPERSON:** Do you mean you took a conscious decision not to ask the person who was HOD.

10 **MR MOKHESI:** No I did not say – I could not say I took a conscious decision – I did not ask.

**CHAIRPERSON:** Hm.

**MR MOKHESI:** Chairperson.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** I did not take a conscious decision.

**CHAIRPERSON:** Yes but why did you not ask the most obvious person namely the HOD at the time? Because the fact that he might not have been in the department did not mean you could not ask him. It did not mean you could not  
20 phone him. It did not mean you could not direct a letter to him to say I want to know who made this decision because you were the HOD at what was the basis for the decision.

**MR MOKHESI:** Chairperson the fact is I did not ask.

**CHAIRPERSON:** Ja but I want to know why you did not ask because it seems so obvious to me that a new HOD

who finds this kind of mess would ask the previous HOD.

**MR MOKHESI:** I did not ask Chairperson.

**CHAIRPERSON:** And you do not why you did not ask?

**MR MOKHESI:** It did not come to my mind at that particular time to ask because I simply took the – their reports – in other words that was there that says this is what has happened. We have appointed these contractors and so on. So that is basically where he ended and then I started to say okay let me – maybe let us institute an  
10 investigation to find out exactly what happened.

**CHAIRPERSON:** Well we will see when all the evidence is in Mr Mokhesi but I am just surprised. One gets the impression that whatever investigation was being done within the department was not done with the vigour that one would have expected when so much of taxpayers' money seems to have been lost.

**MR MOKHESI:** I was – I was not the only person who was doing the investigations.

**CHAIRPERSON:** Sorry?

20 **MR MOKHESI:** I was also – I was not the only person who was doing the investigation at that time.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** At that time – at that time as well an investigation had already been proclaimed. When I went into the department the investigation – the President has

already proclaimed on that. The investigation was on-going anyway. Now.

**CHAIRPERSON:** But if you could ask Mr Mokhesi if you could ask the junior officials why could you not ask the HOD of the time? The fact that there was an on-going investigation did not prevent you from asking the junior officials why did it prevent you from asking the HOD.

**MR MOKHESI:** You see Chairperson when I – when I arrived there was already an issue or a complaint – a letter  
10 directed to me. On the first day when I reported for work the SIU had – there was already a letter on my table that says officials are not cooperating including the Head of the Department. Earlier there had been a letter that was written to the HOD then to say please this information and it was followed up by myself. So if there is a point where they say the SIU themselves who had already started that there was no cooperation. They have written to the HOD already and they were not getting joy. Surely that was sufficient reason for me enough to be able to say alright let  
20 me just try and source that information. Whatever information that SIU has requested that – at that particular time. And this is exactly what I did. Because already before the SIU has indicated that they had written to the HOD and around requests of this type of information and so on. It was not forthcoming

**CHAIRPERSON:** Was it only the previous HOD that the SIU said was not cooperating or did it also say the same thing about some of the officials?

**MR MOKHESI:** They say – they indicated that they had written to the HOD and the officials concerned. So that letter is there.

**CHAIRPERSON:** But you know – you see you are saying to me that letter from the SIU gave you justification for not asked the previous HOD. But from what you are saying the  
10 SIU letter also said the officials were also not cooperating. But you did ask the officials but you did not ask the HOD. Yes Mr Pretorius.

**ADV PRETORIUS SC:** Apologies Chair. We will deal with further allegations in this regard in the affidavits and in the disciplinary inquiry in due course. But what is striking Mr Mokhesi that there was a disciplinary inquiry conducted against certain officials – the more junior officials. The transcript of that inquiry runs into almost 3000 pages of finely packed detail. There was a thorough investigation in  
20 regard to certain people but it seems in regard to others there was no investigation at all. And the inference that is drawn is that certain people were being protected.

**MR MOKHESI:** Mr Pretorius I do not know about that. I do not know whether there are certain people who have been – who were protected. I simply – because you know the

result of investigation and so on and – you know the disciplinary hearing was as – was the outcome of the investigation to say the specific person and then that is what they pointed out and that is why there were those people who were – who were charged because I cannot at where I am say that there were certain people who were protected because mostly I was never – you know deliberately so to – just to keep away from the investigation as it was done both by – by the SIU as well  
10 as the one that we – was instituted against officials. Because some of the four officials were only got away with a warning. Not everybody was dismissed in process. There are officials who were also charged but they received a warning. There were others who had – who were dismissed on the recommendations. So to say that there were – there were others who were protected honestly I am not in a position.

**ADV PRETORIUS SC:** Well we will come to that in more details in due course. Perhaps not in your evidence but in  
20 the evidence of other witnesses as well. But does it not strike you as strange that we have a disciplinary record of nearly 3000 pages of questions arising out of a very thorough and very detailed investigation on the one hand and then in respect of certain persons questions simply just are not asked. Is that not a strange situation?

**MR MOKHESI:** Which persons?

**ADV PRETORIUS SC:** Well we know that no questions were asked about how the 106 contractors were appointed by you certainly. You see the point I am making is that certain people were picked for discipline that is another question how those names were arrived at but I am not going there for the moment. Certain people were charged pursuant and an inquiry was held pursuant to a hugely detailed set of investigations. Investigations that took  
10 3000 pages to lay out and traverse in the disciplinary inquiry and there were disciplinary inquiries findings. And I will deal with those findings in due course because one of the defences raised by those persons was we were following orders and implementing decisions by others. Notwithstanding that defence they were still found guilty and they lost their jobs and some still are unemployed. That is on the one hand. On the other hand, in relation to who made the decision and how the decision was made to select the contractors once the procurement processes had  
20 been abandoned it appears that no investigation has been done at least that you know of.

**MR MOKHESI:** Okay.

**CHAIRPERSON:** Well I want to add this Mr Mokhesi. I go back to an issue I raised with you yesterday. Well at some stage I was saying I got the impression you were – or you

did not want to be categorical on certain issues but you were not in a position to tell me yesterday as to how many houses or – had been built by the end of the financial year? How many houses had been built by the time – by October 2010? And yet we are in 2020. If you were really interested to establish certain important facts about this, I do not understand why knowing that you were going to come and give evidence about this you would not know that. To say the department paid so much money but there  
10 were only 100 houses that had built to completion; ex number of houses were only built up to the wall; so many it was only foundation and when you look at all of that it could not have cost more than this. Therefore, so much money was just wasted. I could not understand why you could not have that information at hand.

**MR MOKHESI:** Chair with due respect this thing happened and when I come here I do not know the questions that I am going to – you prepare for some but others you do not. But I think yesterday what you have instructed me to do –  
20 requested me was to – to get that information which I said we would – it should be in the – we should be in the position to get it by going back into the system. That I said we will do. Now I am under oath here.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** You know I cannot – I cannot – the most

dangerous thing is for me to speculate and find out that it is not actually correct. I am under oath.

**CHAIRPERSON:** No, no, no I accept that you should not say anything you are not sure about and you still should not say you are sure. But what I am saying is when you come give to evidence here as Head of the Department about this project it seems to me that you do not need to be told what questions you are going to be asked to know that you should be able to say: You know Chairperson this  
10 whole project this is how many housing units they – had been built by end of the financial year. This is how far they had gone by that time. Maybe the one about October might be shaky for me to expect you to know that but at least by the end of the financial year you – I would expect you to be able to say – to check that at least you know. But you undertook to give us that information.

**MR MOKHESI:** I did.

**CHAIRPERSON:** Ja okay.

**MR MOKHESI:** I did to say I will try and...

20 **CHAIRPERSON:** Yes.

**MR MOKHESI:** And get that information. It is probably also available on the annual reports and so on and so on you know the number of annual reports that are – that are there. As well as the [00:25:16] plan.

**CHAIRPERSON:** Ja.



**MR MOKHESI:** Because I think what I would also indicate is that because of that – because of that particular issue it became very difficult to catch up in terms of the targets or the fiscal targets that had been set for five years. Because there was no new money so this issue of non-achievement in that particular year obviously will affect that. So I had said you know with those particular – because it is about numbers; how many and so on and so on and I said I will – I undertook that I will provide that  
10 information.

**CHAIRPERSON:** Hm. Okay alright. Mr Pretorius.

**ADV PRETORIUS SC:** Thank you Mr Mokhesi for that. You will understand that part of the submissions that the legal team will make at the conclusion of this evidence will deal with the issue of accountability. In other words, who was called to account for what happened not under your watch but before you came to the Department. And so it is only fair that these questions be put to you even though you were not there at the time you were there at the time that  
20 accountability or non-accountability occurred. I am sorry.

**MR MOKHESI:** You know I said I have – you know earlier yesterday I said you account for those things that happened even before your time.

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** And so that I appreciate [00:26:49].

**CHAIRPERSON:** Well you did say that Mr Mokhesi to be fair to you and it is in accordance with my expectation that a new Accounting Officer would not just look at what happened when he or she came in but would look at – at what had happened before because the duty to rectify whatever mess happened before would be on him or her. So when you say you account even for that it is in line with what I would expect namely you come in; you want to see what is the state of the department. You see what has  
10 happened; you see what has gone wrong; you devise a way of rectifying those things even though they happened before your time. So I am just saying to be fair to you; you made that point yesterday and it is in line with my expectation of what a new Accounting Officer would do. Okay.

**ADV PRETORIUS SC:** Do you know for example from your own investigations Mr Mokhesi who devised the prepayment plan? Whose idea was it in the first place?

**MR MOKHESI:** Well when I look at the – at the memos or  
20 you know documents that were there – there was a memo from you know particularly one that was signed by three officials Mr Tsoametsi I think.

**ADV PRETORIUS SC:** Sorry by?

**MR MOKHESI:** Mr Tsoametsi the one that we discussed.

**ADV PRETORIUS SC:** Tsoametsi yes.

**MR MOKHESI:** Yes because it looks like it originated from that particular ...

**ADV PRETORIUS SC:** From Mr Tsoametsi.

**MR MOKHESI:** From Mr – from – ja it – from that memo which was signed and approved.

**ADV PRETORIUS SC:** Yes but he wrote that memo on instructions. You know that?

**MR MOKHESI:** Well I do not know on whose instructions.

**ADV PRETORIUS SC:** Alright. Because that is question  
10 do you know where the plan originated? Who was responsible for the devising of the plan? Do you know that?

**MR MOKHESI:** Well I think – I think the commission has called all the people to come and account here.

**ADV PRETORIUS SC:** No, no I am...

**MR MOKHESI:** To say on whose instructions – what I know is that it originated from that memo and if Mr Tsoametsi says it was – he was instructed then he must say by who because... [speaking over one another].

20 **ADV PRETORIUS SC:** Yes, no all I am asking you – I am sorry I interrupted you.

**MR MOKHESI:** Okay.

**ADV PRETORIUS SC:** Did you finish?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** All I am asking Mr Mokhesi is do

you know from your own investigations who devised the plan. That is all I am asking.

**MR MOKHESI**: You say Mr Pretorius it was devised – it was – Mr Tsoametsi got instructions.

**CHAIRPERSON**: Mr Mokhesi the question is a simple one. Do you have knowledge as to who ...[intervenes]

**MR MOKHESI**: I do not have knowledge of that.

**CHAIRPERSON**: You do not have knowledge.

**MR MOKHESI**: Yes.

10 **CHAIRPERSON**: You do not?

**MR MOKHESI**: I do not have any knowledge of that.

**CHAIRPERSON**: Okay alright.

**ADV PRETORIUS SC**: Alright. Well, let us go back to page 344 of FS12 at paragraph 20.

**MR MOKHESI**: Is it the same?

**ADV PRETORIUS SC**: That is Mr Mokoena's file.

**MR MOKHESI**: Okay.

**ADV PRETORIUS SC**: Affidavit. And towards the end of 2010, is the period we are dealing with here, he talks of the  
20 meeting with the MEC and he says that:

“The MEC approached with a list of about 106 contractors and instructed me to use/appoint these contractors.”

He continues:

“Although I cannot recall all the names on the list, I

remember noticing that the first six contractors on the list were not contractors ever used by HS (Human Settlements) before.

I also remember asking the MEC why we were allocating so many units/houses to contractors we do not even know. The MEC was however adamant that these were the contractors we should use.”

He continues:

10 “In relation to the six contractors above, I recall the names of three contractors, Aleatory(?), Quinoa(?) Cockatoo(?) Developers and Relato(?) Properties. It should be noted that these contractors were very close to Mr Zwane. I say this as Mr Zwane personally called me to expedite the processing of their payments.”

Was any investigation done under your watch in relation to allegations such as those?

**MR MOKHESI:** Chairperson... oh, sorry. Ja, Chairperson, you know if you... if somebody asks you to do something that  
20 is irregular or unlawful or whatever the case might be and... because this is the discussion, this is what an allegation between the accounting officer then to say this is how I was instructed and so on. The first thing that you do is you write that down. Now ...[intervenes]

**CHAIRPERSON:** The first thing that you do?

**MR MOKHESI:** You write. You write. You write to the authority.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** To say ...[intervenes]

**CHAIRPERSON:** Who is giving instruction.

**MR MOKHESI:** To say, who gave the instruction? If you indeed would believe that this instruction is ...[intervenes]

**CHAIRPERSON:** Unlawful.

**MR MOKHESI:** Is unlawful. The first thing that you do, you  
10 write to the authority. To that authority that instructed you to say, this and that, because of the following reason and X Y. You either do that under objection or whatever the case might be or you simply do not read.

Now I cannot answer for Mr Mokoena on the allegations and also around the investigation. What am I going to achieve? Because there is... you know, it is a discussion between two people who says, he said that and so on.

The fact of the matter is, you know, this is what he says. What did he do? And I am informed that he is going to come  
20 and testify here around that. Then he will have to answer that.

**ADV PRETORIUS SC:** Yes, and he will be asked these questions.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** You can rest assured Mr Mokhesi.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But the question I am asking is also not a difficult one. Did you under your watch conduct any investigations into allegations of this nature?

**MR MOKHESI:** I do not know what that... this actually happened. Remember, you are placing this affidavit now in front of me.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** I am sorry Mr Mokhesi, I did not hear that.

10 **MR MOKHESI:** I am saying, I do not know whether this happened. This affidavit is being placed in front of me now.

**CHAIRPERSON:** You have never seen it before?

**MR MOKHESI:** I have never seen it before.

**CHAIRPERSON:** Oh.

**MR MOKHESI:** It has not been given to me.

**CHAIRPERSON:** Okay, okay.

20 **ADV PRETORIUS SC:** Now the point I am putting to you is there is evidence that we know of and that the investigators have unearthed in relation to the question as to who devised the plan and who selected the contractors that became part of the plan.

Now all I am asking you, were those investigations or a similar investigation ever conducted by yourself or by other people under your construction when you were Head HOD? That is all I am asking.

**MR MOKHESI:** About this?

**ADV PRETORIUS SC:** About two questions. Who selected the contractors that were to get contracts from the panel of contractors or the database of contractors? And how was the plan devised and by whom was the prepayment plan devised? Those two questions.

**MR MOKHESI:** The source of the prepaid plan comes from the name *mos*. The name that was written by ...[intervenes]

**ADV PRETORIUS SC:** Did you ever ask ...[intervenes]

10 **CHAIRPERSON:** I am sorry. I am sorry. I am sorry. Mr Mokhesi, just take it easy. Listen to the questions carefully and answer them to the best of your ability.

The question is simply whether you or somebody else under your instructions ever conducted investigations into those two questions?

So it is either you say: Yes, I did conduct an investigation. Or: Yes, but I did not conduct it myself. I instructed somebody to conduct it into those questions.

Or: No, there were no such investigations that I  
20 conducted or I instructed anybody to conduct. That is what he is, Mr Pretorius is asking.

**MR MOKHESI:** [No audible reply]

**CHAIRPERSON:** Were there... let us break the question into two. Did you yourself conduct any investigations into the two questions he has raised?



**MR MOKHESI:** Personally, no. I asked... asked... if I asked... I asked that the whole thing must be investigated. I was not specific to say investigate that and investigate that.

**CHAIRPERSON:** So you asked ...[intervenes]

**MR MOKHESI:** I asked that the entire ...[intervenes]

**CHAIRPERSON:** Investigation.

**MR MOKHESI:** ...prepayments or material ...[intervenes]

**CHAIRPERSON:** Be investigated.

**MR MOKHESI:** ...be investigated.

10 **CHAIRPERSON:** Okay.

**MR MOKHESI:** Ja, I was not specific ...[intervenes]

**CHAIRPERSON:** Not specific ...[intervenes]

**MR MOKHESI:** The terms of reference were there.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** And you know and to say, investigate this and come up with actually what happened.

**CHAIRPERSON:** Okay. Mr Pretorius.

20 **ADV PRETORIUS SC:** Well, that might assist us Mr Mokhesi. Is there a document which contains those terms of reference for the investigation under your watch?

**MR MOKHESI:** Well, I will try and get that.

**ADV PRETORIUS SC:** Thank you. That will help us.

**MR MOKHESI:** Ja.

**ADV PRETORIUS SC:** In any event, if we go back to page 344 of FS12 at the bottom of the page, the last paragraph if I

can just place it on record again and then go over the page.

“In relation to the six contractors mentioned above  
...[intervenues]

**MR MOKHESI**: Last paragraph, yes?

**ADV PRETORIUS SC**: Well, I am sorry to do this. It is important that it be placed in context because I want to put a long passage to you. Mr Mokoena says in paragraph 20 on page 344 of FS12:

10           Although I cannot recall all the names on the list, I remember noticing that the first six contractors on the list were not contractors ever used by HS before. I also remember asking the MEC why we were allocating so many units/houses to contractors we do not even know. The MEC was however adamant that these were the contractors we should use.

20           In relation to the six contractors mentioned above, it should be noted that these contractors were very close to Mr Zwane. I say this as Mr Zwane personally called me to expedite the processing of their payments.”

Now we will ask Mr Mokoena about how he came to that conclusion. You can rest assured that we will do that. But he goes on and he says:

“I found this to be highly irregular as an MEC in the

normal course of business does not have any involvement in payments to contractors.”

And I suppose the same would apply to the appointment of contractors. Would you agree with that?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Yes. Paragraph 21 on page 345 reads:

10 “As a result of the instructions given by the MEC, we as the department also did not go out on tender in order to appoint the contractors. The contractors were appointed as per the instruction of the MEC.”

So it seems Mr Mokhesi that the HOD at the time was of the view that the contractors were appointed on the instruction of the MEC. It seems now that that was known to the HOD at the time. Do you see that?

**MR MOKHESI:** Yes, paragraph 21?

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** Okay. Yes, I see that.

20 **ADV PRETORIUS SC:** He then goes on to say that ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Pretorius.

**ADV PRETORIUS SC:**

“Within Human Settlements, he used to work on a system whereby we graded our contractors in terms of competencies/performance. Therefore, we made

sure that those contractors who always delivered on their contracts were the ones that received the big allocations for the construction of houses.

This did not happen in relation to the appointment of these unknown contractors.

To provide some context, it just does not make sense to award a contract to a contractor to construct 600 RDP houses if that contractor has never constructed an RDP house in his life.

10 The latter is however exactly what we ended up doing based on the instruction of the MEC. We, for instance, allocated between 500 and 600 units/houses to the first six contractors that appeared on the MEC's list.

At that stage, the units/RDP houses were constructed for an amount of about R 55 000,00...[intervenies]

**CHAIRPERSON:** Mr Pretorius, I think there is something wrong maybe with the... well, the aircon is not making any  
20 noise but you cannot hear me sometimes when I call you. So maybe I will have to speak louder.

**ADV PRETORIUS SC:** Well, I heard that...

**CHAIRPERSON:** [laughing] But... no, I wanted to say, you were saying that Mr Mokoena was of the view that the MEC had instructed. But I wanted to say, it does not say that he

was of the view. He clearly says he was... they were instructed by the MEC.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Yes. I just wanted to correct that.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** That Mr Mokoena ...[intervenes]

**ADV PRETORIUS SC:** That is correct. Perhaps I was not clear ...[intervenes]

**CHAIRPERSON:** Yes.

10 **ADV PRETORIUS SC:** ....what I mean. He is saying now ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** ...in the course of the investigations that that happened in the past.

**CHAIRPERSON:** Yes, ja.

**ADV PRETORIUS SC:** So his... that is his current ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** ...view of what happened in the past.

20 Thank you, Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Mr Mokhesi, the simple point I want to make is, this is precisely the sort of issue that one would have expected to be the subject of thorough investigation after the event. Would you agree with that?

**MR MOKHESI:** Ja. Remember Chair, I think in the disciplinary hearing Mr Mokoena was called and I do not know if he was called also to come and explain.

Now if... you know, you... I can only discipline people who are reporting to me. I cannot discipline people who I... you know, I cannot discipline my boss so to speak.

Now if people are saying I was instructed to do X, Y, Z and there is no written communication that will also even suggest that indeed that did happen, it becomes very  
10 difficult.

Because you are talking about the meeting of two people somewhere. He says that and I said that and ...[intervenes]

**CHAIRPERSON:** But you at least... should you not at least take steps to establish whether... what version you are told by the person who is alleged to have given the instructions and then see whether in your mind you have any doubt which version is true? Should you not at least take that step?

Because if both version and you happen to think that you believe the version of the one says he was instructed, you  
20 may want to take certain steps to enforce accountability in ways that do not involve disciplinary action but there may be other ways.

**MR MOKHESI:** But is there no duty on him as well to do the same? What I am trying to say Chair is, in this particular instances because there are documents, signatories, memos

and so on, then you are able to take a particular action or what is...

You know, there are investigations that are conducted. There are memos, there are minutes and that. Then on a balance of probabilities and then you say: Yes, indeed this ...[intervenes]

**CHAIRPERSON:** But you do know Mr Mokhesi that it is going to be very rare for you... for somebody to reduce to writing and unlawful instruction that he knows to be unlawful.

10 So you will find a document. But does that mean that nothing will ever be done because that person...[intervenes]

**MR MOKHESI:** Okay, let me talk about me personally.

**CHAIRPERSON:** No, no, no. Let us not talk at the same time.

**MR MOKHESI:** Oh.

**CHAIRPERSON:** I will give you a chance. So does that mean that as long as the instructions are verbal, nothing ever will be done because there is nothing in writing?

20 **MR MOKHESI:** But you must also live with the consequences.

**CHAIRPERSON:** Sorry?

**MR MOKHESI:** You must also live with the consequences if you do not write.

**CHAIRPERSON:** Who are you looking at now when you say he must live with the consequences?

**MR MOKHESI:** No, I am saying if something is wrong and somebody instructing to do something wrong, the duty is upon you to say: I am not going to do it. Or you raise issues and you advise.

**CHAIRPERSON:** Yes. No, no, no. That is... I think that is understood.

**MR MOKHESI:** If he goes... if he continues and you know there is an insistence as it is alleged here, then you have a record ...[intervenes]

10 **CHAIRPERSON:** But are you saying, as long as you do not have a record then nothing ...[intervenes]

**MR MOKHESI:** It becomes extremely difficult as well. By the same way as... it becomes very extremely difficult as well. You know Chairperson, also with those that report to me as well. I have instances where they also will write to me because I encourage them because I also want to know why certain...

If somebody along the line disagrees with a particular issue, you do not simply say: I do not recommend. Tell me  
20 why so that I can also have the reason to approve or not to approve.

Or instances, I can overrule that because I do not believe that they were correct but it will be on record.

**CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** Thank you, Chair. The point that is



at issue at the moment Mr Mokhesi is a broader point than simply your own knowledge and your investigation.

Although your own knowledge and your own investigation is part of the point that I am attempting to deal with you.

At paragraph 93 of your own affidavit at page 127 of FS14 ...[intervenes]

**MR MOKHESI:** Where? Page?

**ADV PRETORIUS SC:** FS14, paragraph 127. That is your...

10 **MR MOKHESI:** Oh, this one?

**ADV PRETORIUS SC:** It is on the left-hand side. This is your affidavit.

**MR MOKHESI:** You said paragraph, Mr Pretorius?

**ADV PRETORIUS SC:** 93 on page 127.

**MR MOKHESI:** 127. Oh, 93. Yes.

**ADV PRETORIUS SC:** You said second colon:

20 “The department did not follow any proper procurement process before concluding the material supply agreement. It simply concluded the agreement. It is unclear how it identified the material supplied with whom it contracted.”

So you yourself in your affidavit at the time of this review identified the need to establish the really straightforward fact. It may not have a straightforward answer and indeed it does not. That you had a procurement

process that was abandoned.

You had a second supplier agreement process here there was no procurement process at all and out of nowhere or out of the database, people are just appointed in the discretion of obviously those persons who appointed it.

So it would be important to know how those material suppliers were identified. You agree with that?

**MR MOKHESI:** Ja but let us look at when this affidavit was made. This was made on 26<sup>th</sup> and the people are no longer  
10 there. So in the process of... because where we started, advocate. We started with how... ja, we started with... is it action proceedings? To try and get documents because that was the key.

Remember this, there were investigations. SIU was doing something. Was also busy investigating. But key to us in terms of priority was that let us follow, let us follow where the money is.

We started with that action proceeding and indeed got a judgment before we went... because this was guys by a  
20 different advocate to say: No, no. I do not think this is the way that we should do because let us get... let us do something. Let us do this review application so that the onus falls on the other side.

In other words, those who receive money must tell us this is what we did with the money. If you do not... if you

cannot account for what you have done with it, then it must come back. So this was actually the second part to say let us review that particular decision.

**ADV PRETORIUS SC:** I understand the point you make Mr Mokhesi about lapse of time but our investigators have managed to obtain at least some information in 2019 and 2020. Not as if the information has just disappeared. The people are there. They can be asked questions.

10 **MR MOKHESI:** No, but the people who were part or who were on this particular, are not there. I mean, this.... I am not... I do not know whether you say they are there in terms of the department or elsewhere.

**ADV PRETORIUS SC:** Well ...[intervenes]

**CHAIRPERSON:** Well, you see Mr Mokhesi, for me the later it is when you deposed to this affidavit, the more time it means you have had to get to the bottom of everything and to get all the answers you wanted. If this thing happened in 2011 by, and you wanted answers maybe of the financial year at the end of March 2011.

20 **MR MOKHESI:** 2011, yes.

**CHAIRPERSON:** And you wanted answers by end of April, somebody could say this time is just too short for us to do a proper investigations.

So by end of April, you are not going to have answers to all the questions because more time is needed in order to

give you answers to all the questions. It will give you answers to some of the questions but not all the questions.

But when you are talking nine years later, seven years later, if you had used the time available, you wanted to use the time to get answers. You have had all the time in the world.

You do not have to investigate in 2016 when you are deposing to this affidavit. You should have investigated a number of years earlier and got all the answers to the questions that naturally arose in this matter. You understand  
10 my thinking?

**MR MOKHESI**: No, I do not.

**CHAIRPERSON**: H'm?

**MR MOKHESI**: I do not.

**CHAIRPERSON**: You do not understand that?

**MR MOKHESI**: No, I do not understand what it is.

**CHAIRPERSON**: Okay let me try and explain it again. If something happens today and you want to investigate it and you say you want answers by the end of today, that time  
20 might be too limited to allow a thorough investigation.

If something happens today and you say you want answers by the end of the week, it may be that that time is too short for you to get all the answers because the investigators would need more time, okay?

But if you say, this thing that happened today must be

investigated and you want answers in seven months' time or at the end of the year, I am saying, the investigators would have had more time to investigate.

And therefore, chances that they will give you more answers to your questions or even all the answers to your questions are greater than when the time is shorter.

**MR MOKHESI:** Chair, I think what is not appreciated here in this... One could have simple said: Okay, the SIU is doing the investigation. There is a proclamation by the president.

10 And you know and leave everything to the SIU to do the investigation. But we... it seems that, you know, that even that which we have done is not being appreciated.

You know, you, obviously, you are parting(?) holes in terms of what we have done whereas I think, in my view, we have done sufficient. We have seen our means.

We might not have done certain things perhaps to say this is what we should have done, this is so and so on. I think earlier on, Advocate Pretorius, you know, when he started this thing, he said there was an overdose of the  
20 investigation which is an indication of the number of investigations that were done, right.

And to the best of my ability, I think I have done my part in terms of where we are right now with two decisions in our favour.

And we are now in the position also to try and save the

money and get people to account. Now the SIU also had played a specific role and indeed we were sharing information in the process, you know.

**CHAIRPERSON:** H'm. You ...[intervenes]

**MR MOKHESI:** The only thing that I perhaps had sight of is actually the report. I saw the report now. It is... it was attached. But as I have indicated, the report is not my report. It is the president's report.

**CHAIRPERSON:** Ja. No, no. It is important that you put  
10 your side as to what you did and if you believe you did it to the best of your ability. That is important. This is an inquiry. We are probing certain things.

And the fact that you might not be able to answer a certain thing, it is one thing. But we are probing to say, was this done? If it was not done, why was it not done?

So you just answer to the best of your ability and where you believe that you were not required to do more than what you did, then feel free to say so.

But we are probing to see what was done, what was  
20 done, why was it not done. And you just answer. If you know why it was not done, you say this is the reason why it was not done.

And if it was done, you say it was done. If it was done by somebody else and not you, you believe somebody else did it, then this is who did it.

**MR MOKHESI:** Ja but it seems as if I am being taking on, on things that perhaps did not come from my mind on that particular time, whereas you know, we are here and we are able to discuss this affidavit. You see the affidavit that was done at that particular time. We are here and able to discuss that.

**CHAIRPERSON:** You see, Mr Mokhesi. You are the current head of the department or you followed after Mr Mokoena. Is that right?

10 **MR MOKHESI:** [No audible reply]

**CHAIRPERSON:** Ja. You followed after Mr Mokoena. By reason of that, one would expect certain things. One would expect you to do certain things when you are arrived at the department and found what you found, okay. And that has got to be looked into.

Yours is to just answer to the best of your ability. There is no... it is not like as if you say something and we are not happy with it, we are just going to accept it. That is not going to happen.

20 It will be probed and it is the right way that it should be probed. But from your side, feel free at all times to put your side of the story so that when I look at all the facts, I will have your side of the story.

**MR MOKHESI:** Noted Chairperson.

**CHAIRPERSON:** Okay alright. Mr Pretorius.

**ADV PRETORIUS SC:** And although some of the questions Mr Mokhesi might seem probing and might seem to call you personally to account in your official capacity, really what the Commission is looking for is your assistance to help the Commission answer certain questions that it has.

And the question that we are probing at the moment is the question to accountability. We know what happened to a degree, not in all the detail that we would wish but to a degree we know what happened. And we are now exploring  
10 if he was called to account for it. We know that a number of employees who participated in the execution of the scheme were dismissed despite the fact that they said they were following orders, right? And I will deal with that in due course.

There are two questions that do not seem to have been answered let alone resulted in any accountability of note to date. If we are wrong about that then that is where we would like your assistance.

The first question is we know that there was no  
20 procurement process either in respect of the contractors who built houses and in respect of the parties who supplied materials but we know they were selected nevertheless and the question is, who selected them and on what basis and we would like your assistance in that regard. If there was no investigation done into that question, we would also like



to know that and perhaps even ask why not.

The second question is, this recovery plan or this prepayment plan, and in some context, they are treated as different plans, who devised that plan? Who is ultimately responsible and should be accountable for devising the plan and deciding on the plan in the first place, the very plan which employees then participated in to implement and got dismissed for? What has happened to that? Was that question investigated?

10 So those are the sorts of things we are looking at now and if I could take you to the findings of the disciplinary enquiry because you refer to the disciplinary enquiry at bundle FS19, page 655.

**MR MOKHESI:** Page?

**ADV PRETORIUS SC:** Page 655 of FS19. This is an extract ...[intervenes]

**MR MOKHESI:** I am not there. 655 you say?

**ADV PRETORIUS SC:** Yes are you in FS19?

**MR MOKHESI:** Yes, FS19, 655.

20 **ADV PRETORIUS SC:** Yes, this document is the reasons or the findings of the disciplinary enquiry into several employees who were charged and dismissed as a result. You know of those circumstances, is that correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Do you know who decided who

should be charged?

**MR MOKHESI:** Normally what happens is that there will be first a preliminary investigation, which was done, you know, I will call it high level investigation, which was done by open notice so say actually can you look at this? What happened here?

**CHAIRPERSON:** Okay, I am sorry, just repeat your answer?

**MR MOKHESI:** I am saying normally what will happen is  
10 that you will look at - you know, there will be an investigation, I will call it a preliminary to say we have particular – and what actually happened here in this. Based on that particular recommendation and then you will say – obviously you write to those people and tell us why you should not be - you know, the normal part of the leading to suspension because then you have to look into their areas as well, them being the senior managers and in charge of that and then once these people have been removed or suspended then the investigation will continue  
20 in those particular areas and ultimately their role will then be determined. Their role in terms of all these particular irregular expenditure as well will then be determined as to whether they should be charged or there is no – or simply warned, be a warning and so on. And that process was done.

**CHAIRPERSON:** That is the general – that is – your answer relates to the general but Mr Pretorius' question is specific.

**MR MOKHESI:** I am responding to what happened in this. It was through a recommendation in terms of the preliminary investigations as to who are the people who will have been involved in this particular advance payments or material supply, etcetera. So there would have been specific people who are in charge in those particular areas  
10 and those are the people that we will look at.

**CHAIRPERSON:** So if you answer that you do not know in terms of names or who made the decision as to who should be charged but there is a way of identifying who would have made a decision, who would have made that decision.

**MR MOKHESI:** No, no, I do not say ...[intervenes]

**CHAIRPERSON:** Because the question was who made the decision as to who [inaudible – speaking simultaneously]

**MR MOKHESI:** I made the decision.

**CHAIRPERSON:** Yes.

20 **MR MOKHESI:** Based on the preliminary investigation about possible people who were being involved.

**CHAIRPERSON:** Okay, alright. So the answer, Mr Pretorius is he made the decision.

**ADV PRETORIUS SC:** Well, do you recall your answer earlier when I asked you, Mr Mokhesi, about who devised

the plan, right? We know that employees were disciplined and dismissed for participating in the execution of the plan. You know that, correct?

**MR MOKHESI:** Okay.

**ADV PRETORIUS SC:** And in fact – I will give you the detail in a moment from the finding, it is in the reference that we have just called up there, but I want to deal with one issue. When I asked you who devised the plan you said as far as you knew it was Mr Tsoametsi who devised  
10 the plan and he did so in a memorandum and we have got the memorandum and we can show that to you in due course but what is interesting is that persons were dismissed for participating in the execution of the plan but to your knowledge, Mr Tsoametsi devised the plan and he was not even charged. Can you explain that?

**MR MOKHESI:** Mr Tsoametsi was not in the department any longer. He was a witness, he was a witness of – in a disciplinary hearing. So yes, he was not charged.

**ADV PRETORIUS SC:** But surely it should have been a  
20 matter of course that if he moves to another department he is charged nevertheless. You cannot just escape liability for misconduct just by moving from one department to another, surely?

**MR MOKHESI:** Well, he was not charged, Mr Pretorius.

**ADV PRETORIUS SC:** No, I am just asking why? Why

not?

**MR MOKHESI:** Well, I do not have the reason except that it was per recommendations. You know, people were subjected to that, to say who must be charged and so on and based on that recommendation from the investigations, the preliminary investigation and that is the action that we took or that is the action that they took.

**ADV PRETORIUS SC:** Well, would you accept at least the following proposition? Those persons responsible for  
10 devising and ordering the implementation of a fraudulent plan with all the characteristics that we have canvassed in evidence should have been held to account.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Are you saying that at the time that you made the decision to go along with the recommendation to have certain people charged, at the time you made that decision, Mr – is it Tsoametsi, was no longer in the department?

**MR MOKHESI:** Yes, he was no longer in the department.

20 **CHAIRPERSON:** Was he in another department within the same provincial government?

**MR MOKHESI:** Yes, he was in Agriculture, yes.

**CHAIRPERSON:** Sorry?

**MR MOKHESI:** Was in Agriculture.

**CHAIRPERSON:** He was in Agriculture?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Did you ever bring to the attention of the HOD in Agriculture or the MEC, did you ever bring to their attention the fact that here was somebody who had devised a plan that had caused the department to lose a lot of money that they may need to look into because you could not discipline him anymore? Did you bring that to the attention of his superiors in Agriculture to say the man that you have there used to be here where we – I would have  
10 charged him, I would have caused him to be charged with misconduct because we are charging people who were under him, junior ones, but he has gone, he is with you but I want you to be aware of this so that he can be held to account?

**MR MOKHESI:** Chair, some of these things as to who do you charge and so on would ordinarily be on recommendation. You know, I just want to say that particular individual. Also taking into consideration that Mr Tsoametsi was a witness in this – in the disciplinary  
20 enquiry.

**CHAIRPERSON:** Well, when you made the decision, he was not a witness yet, is it not? He became a witness when the hearing started when you made the decision ...[intervenes]

**MR MOKHESI:** The recommendations and – ja, the

recommendations from the investigations was that these people are going to be the witnesses and here are the participants and so on and this is how it went about.

**CHAIRPERSON:** But when any recommendation is made to you, including the recommendations that you are talking about, you are not meant to just rubber stamp, take them as they are and make your decision on the basis of them, you are supposed to satisfy yourself that they are sound, is it not?

10 **MR MOKHESI:** Yes, which is what I did.

**CHAIRPERSON:** Yes. Now the information placed before you it seems should have indicated that he was the person who devised the plan. Surely if that is what the information before you showed, surely you should have been concerned to say how are we going to charge only the people who carried out the instruction and not charge the person behind the whole plan? Did you ask yourself that question? In other words, it might be a wrong term but the kingpin. How do we charge these – the real person  
20 who came up with this plan is the person who should be charged. How do we not charge him but charge the others who carried out his plan? Did you ask yourself that question?

**MR MOKHESI:** Chair, maybe on hindsight that should have been but he was in the department any longer but I

accept that perhaps maybe on hindsight, I - you know, one should have taken it further than what was placed before me because you will hope at sometimes when – because this disciplinary process took a very long time, I think it took about two, three years to conclude it to say as and when things are going that some of the other things will come up, you know? That is what we were hoping because this was a very complex matter, it was not a very easy matter to deal with and it still is a very complex matter, in  
10 my view.

**CHAIRPERSON:** So would you accept that you ought to have brought his role in the scheme or in this plan to the attention of his then superiors namely in the Department of Agriculture because it seems to me that a concern that you ought to have had would be if this person could do this in my department, he could do that in another government department. They should at least know and see if they want to continue to employ a person who has played this role in this department which belongs to the same  
20 provincial government, it is not another provincial government, it is the same provincial government.

**MR MOKHESI:** I accept that.

**CHAIRPERSON:** You accept that. Okay, Mr Pretorius?

**ADV PRETORIUS SC:** Would this be a convenient time?

**CHAIRPERSON:** Yes, let us take the tea adjournment, we



will resume at half past eleven. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue.

**ADV PRETORIUS SC:** Thank you, Chair. Mr Mokhesi, just for the record our information is that Mr Tsoametsi and Ms Dlamini the CFO of Human Settlements moved to Agriculture and had moved by the time the disciplinary enquiry took place, is that correct?

10 **MR MOKHESI:** Yes, correct.

**ADV PRETORIUS SC:** And of course, we know that the MEC, Mr Zwane, also moved from Human Settlements to Agriculture at the same time.

**MR MOKHESI:** Yes, correct.

**ADV PRETORIUS SC:** Right. And the activities that took place in the Department of Agriculture have also been the subject of this Commission's investigations and evidence but we do not expect you to comment on that. Mr Tsoametsi evidence, however, before the disciplinary  
20 enquiry is of some interest. If you would look please at FS13, bundle FS13 at page 531.

**MR MOKHESI:** 131?

**ADV PRETORIUS SC:** Yes, I am corrected, I am referring you to the transcript of Mr Tsoametsi's interview with the investigators.

**MR MOKHESI:** Okay.

**ADV PRETORIUS SC:** Page 531.

**MR MOKHESI:** 531. Yes, I am on 531.

**ADV PRETORIUS SC:** Now his evidence was that he participated in the selection of contractors and also that he had through a trust an interest in one of the contractors which interest he did not see as a conflict of interest but that is not for you to account for at the moment. If one looks at page 531 at line 12, Mr Tsoametsi says

10 ...[intervenes]

**MR MOKHESI:** You say line 12, 531, FS13?

**ADV PRETORIUS SC:** Yes, you will see Mr Tsoametsi, it is actually line 11.

**MR MOKHESI:** I do not even have 11, it is 10 and 20.

**ADV PRETORIUS SC:** Are you on the black numbers?

**MR MOKHESI:** Oh, okay. It is 10 – actually for me, it is 10, 531 black numbers is actually 10.

**ADV PRETORIUS SC:** Yes. Now I want to draw your attention to the next line which is line 11. It is not marked  
20 but it is just the line after line 10. Mr Tsoametsi says:

“Now afterward this thing had happened, three things happened, I think it is December of January, that period.

2010, it actually would have been 2011.

Yes, where I now moved to Agriculture.”

And then he says:

“To get to move to Agriculture. Five of my colleagues get to be fired. That is now the 2010 onwards information. The HOD Gift Mokoena gets to be in the municipality, I think Mangaung, where to now – now those colleagues of mine that gets to be fired, a disciplinary hearing gets to be called. All what I have said here is what I have said in that meeting to say there was a letter coming from the National Minister, the meeting of all us was called to do a plan. All of us had the responsibility and my responsibility was to produce those document (sic) and this is what had happened. So that is what had transpired.”

10

It is not very clear from what he said but from what we know he is saying that he, together with others, were visited with the responsibility of devising the plan and implementing the plan, correct?

**MR MOKHESI:** Yes.

20 **ADV PRETORIUS SC:** And then Mr Lambrechts, the investigator, says:

“Why were they fired?”

Mr Tsoametsi:

“We were told that they were fired because of the solution in that disciplinary hearing.”

That is obviously the prepayment scheme, right?

“The fired because of that solution?”

Mr Tsoametsi:

Yes, of me.”

Mr Lambrechts:

“But you were never charged, that is the belief.”

And Mr Tsoametsi says:

“That is it now – that is what I am – I am asked in that and I hope it is recorded.”

10 He said.

“I said I am coming here in this disciplinary hearing and I am asking myself why my colleagues are being charged and I am not party to that charge, I am not being charged. I had asked that. Even I think they can say because I do not know, I was not a witness for the department neither was I a witness for them. I was just there to give what had happened to that and I said that to them.”

20 So two points arise, Mr Mokhesi. Firstly, that the information regarding Mr Tsoametsi’s involvement was available at the time of the disciplinary enquiry and the second is that even he was puzzled as to why he was not charged. Do you have any comment?

**MR MOKHESI:** No, I do not have any comment.

**ADV PRETORIUS SC:** Alright. Let us look at the findings.

Well, let me just put it to – do you know of the principle in labour law of selective dismissal, that it is unfair to select certain people who are guilty of the same conduct for dismissal and not to discipline others? That is unfair. Do you know ...[intervenes]

**CHAIRPERSON:** Well, you might confuse him, Mr Pretorius, by referring to labour law. Maybe you should just ask – put the proposition whether it is fair to charge some and not others if they have all done the same thing.

10 **ADV PRETORIUS SC:** Well, perhaps I should not have put a label to it because that is a specialist endeavour.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** But it just seems in the first place unfair to charge those who were down the line in the pecking order, as it were, in executing the plan and not charging the person who devised the plan, on your version. That seems unfair.

**CHAIRPERSON:** He wants you to comment if you are able to comment on that proposition.

20 **MR MOKHESI:** Oh, okay. I note that, Mr Pretorius.

**ADV PRETORIUS SC:** You do not want to comment on the fairness of that. Even Mr Tsoametsi commented on that.

**MR MOKHESI:** Well, he was talking to other people – I note that, thank you very much. I note, you know?

**CHAIRPERSON:** Would you not regard it as unfair if two

people have done the same thing to charge one and not the other?

**MR MOKHESI:** I would.

**CHAIRPERSON:** You would?

**MR MOKHESI:** H'm.

**CHAIRPERSON:** Okay.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But there is another point I think that is more – perhaps more relevant for present purposes  
10 and that is instead of being held accountable, Mr Tsoametsi moves department and appears somehow to be protected against discipline. What do you say to that?

**MR MOKHESI:** I do not know.

**ADV PRETORIUS SC:** You do not know?

**MR MOKHESI:** No, I do not know.

**ADV PRETORIUS SC:** Well, let us look at the findings of that disciplinary enquiry where Mr Tsoametsi actually testified and so this evidence was available obviously when this testimony was given. At page 655 of FS19, I am  
20 going to ask you to change bundles please to bundle FS19.

**MR MOKHESI:** Page?

**ADV PRETORIUS SC:** Page 655.

**MR MOKHESI:** Oh, 655, yes. I am on 655.

**ADV PRETORIUS SC:** You recall evidence relating to the war room?

**MR MOKHESI:** The war room?

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** Yes, the war room.

**ADV PRETORIUS SC:** You recall that?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The war room was in fact not so much a room as a series of meetings that took place to devise and implement the prepayment plan. Do you recall that?

10 **MR MOKHESI:** I recall that.

**ADV PRETORIUS SC:** Yes. Please, if you would speak up, Mr Tsoametsi.

**MR MOKHESI:** Sorry, I am not Mr Tsoametsi.

**ADV PRETORIUS SC:** Sorry, not Mr Tsoametsi. My apologies, Mr Mokhesi. Mr Tsoametsi and Ms Dlamini both testified at the disciplinary enquiry. Now we know that Ms Dlamini was the Chief Financial Officer of the Department of Human Settlements in 2010, 2011. She moved to Agriculture with Mr Tsoametsi under the leadership of the  
20 MEC, Mr Zwane. Both of them testified in relation to the activities in the war room. Now the employees were dismissed for amongst other things their participation in the deliberations at the war room. You know that.

**MR MOKHESI:** Yes, I know that.

**ADV PRETORIUS SC:** Paragraph 86 Mr Tsoametsi says –

or not Mr Tsoametsi at this stage, this is the evidence summarised by Adv van Graan, the Chair of the disciplinary enquiry and he is referring to the evidence of Mr Tsoametsi and Ms Dlamini. He says in paragraph 86:

“As stated above, the MEC and the HOD created the war room. Five of the employees...”

And they are then named.

10 “...participated in the functions of the war room. So the first fact we have is this war room which is specifically there to implement the plan, for which the employees are dismissed, was created by the MEC and the HOD.”

That is Mr Mokoena and Mr Zwane respectively. Paragraph 87:

“Mr Tsoametsi testified that the purpose of the war room was to create an intervention plan which had to be submitted to the Minister.”

We have dealt with that in your evidence. Importantly the next sentence:

20 “The parties...”

That is the department on the one hand and that would have been under your watch and the employees charged on the other hand.

“...have agreed that the employees...”

That is the employees charged.



“...have not participated in the decision to make advance payments to material suppliers.”

So the persons charged, it was common cause, had not participated in the decision to create and implement the plan. All they were involved in was, amongst other things, the discussions in the war room for which they were fired.

Paragraph 88:

10 “Ms Dlamini, the former CFO of Department of Human Settlements, however testified that the war room, which was established after the formulation of the recovery plan, was to monitor the recovery plan.”

Paragraph 89:

20 “Mr Tsoametsi testified about the task of the war room. The war room meetings were usually chaired by the MEC. He specifically mentioned the presence of Mr Ndenzi(?) at the war room where the implementation of the new systems was dealt with. Then Tsoametsi says after the MEC would make allocations, appointment letters of contractors would go out, contracts would be signed, amendments were done.”

And then he refers to the sessions and the tripartite agreements. So what is apparent from the disciplinary proceedings is that the decisions at the highest level were

made by the MEC and Mr Tsoametsi, correct?

**MR MOKHESI:** I see there is also a mention of Mr Mokoena as well.

**ADV PRETORIUS SC:** And of course Mr Mokoena, yes. We will speak to him later today, hopefully but neither – it seems as far as our investigations have gone, neither Mr Zwane – of course could not be disciplined by you, he was an MEC, but nevertheless - Mr Tsoametsi or Mr Mokoena were held to account in any way. Is that not strange?

10 **MR MOKHESI:** [No audible reply]

**ADV PRETORIUS SC:** You have not answered.

**CHAIRPERSON:** He is giving you a chance to comment on the proposition [inaudible – speaking simultaneously]

**MR MOKHESI:** To say is it ...[intervenes]

**CHAIRPERSON:** You say it is.

**MR MOKHESI:** No, I appreciate and understand the concern of Mr Pretorius to say -, you know, I appreciate and understand, so [inaudible – speaking simultaneously]

20 **ADV PRETORIUS SC:** Is strange too strong a conclusion to draw?

**CHAIRPERSON:** Yes, did you also find it strange or do you not find it strange?

**MR MOKHESI:** Well, yes.

**ADV PRETORIUS SC:** Thank you.

**CHAIRPERSON:** Let me ask this question. At some stage

did it appear to you that the then MEC Mr Zwane might not – might have played a role in this whole project that was not proper, not acceptable or did that – is that something that did not appear to you to be the case?

**MR MOKHESI:** Chairperson, you know, there is a reporting all the time for all of us HODs to MECs around, you know? They have the specific role that they play in a department which is clearly defined by the law and account officer also have. Now with all this particular things that  
10 had been said there, if indeed it did happen, I am not saying that it did, if indeed it did happen, one will conclude that there was an overstep by the MEC, if indeed this did happen. So, you know, that is my response to that. That if indeed this happened.

**CHAIRPERSON:** But with all the information that you were getting as the time went on from the time you came to the department, did you not get at some stage – did you not reach the conclusion that maybe this was something – his role should be reported to the Premier?

20 **MR MOKHESI:** Well, I have my MEC, remember?

**CHAIRPERSON:** Yes.

**MR MOKHESI:** I would have my MEC who would also know about this particular – because this – you know, the disciplinary processes of the senior managers because by law the appointment of the SMS, as we refer to, you know,

it rests with the executive authority in the MEC. The MEC will certainly be knowing about what is going – I mean, my MEC basically.

**CHAIRPERSON:** Is your answer that you did not consider that it was your role to bring to the attention of the Premier the role that MEC Zwane appears to have played in this whole thing for him to decide what to do with the information?

**MR MOKHESI:** No, it certainly is not my role to inform the  
10 - you know, to inform the Premier, my role is to have this information and also discuss it with the executive authority who is the MEC because I do not get into instances where I - you know, I discuss directly issues with the Premier when I have my executive to do so.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Because that is a potential for conflict.

**CHAIRPERSON:** Yes. So you would have to discuss with your MEC?

**MR MOKHESI:** Yes.

20 **CHAIRPERSON:** And then it would be up to him whether he took whatever information to the Premier.

**MR MOKHESI:** Whatever information there is.

**CHAIRPERSON:** Is that right?

**MR MOKHESI:** Correct.

**CHAIRPERSON:** Yes but did you discuss with your MEC

the role that MEC Zwane seems to have played?

**MR MOKHESI:** She will have the reports that are, you know, around what has happened. Even at a point of suspending, particularly if you are talking about senior managers. It has got to be in consultation – I do not know whether it is consultation after consultation but I think you understand what I am trying to say.

**CHAIRPERSON:** Ja, ja, ja.

**MR MOKHESI:** Basically.

10 **CHAIRPERSON:** Yes.

**MR MOKHESI:** She will know. Probably not know if it is lower than the senior managers.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** The director upwards, she will know.

**CHAIRPERSON:** Yes. Is your answer that you did not discuss these matters, MEC Zwane's role with your MEC as such but there were reports ...[intervenes]

**MR MOKHESI:** There were reports.

20 **CHAIRPERSON:** That had been placed before her which, if she read, she would have known what role MEC Zwane [inaudible – speaking simultaneously]

**MR MOKHESI:** Yes, the reports were there.

**CHAIRPERSON:** Yes, okay.

**ADV PRETORIUS SC:** In relation to the role played by the MEC, Mr Zwane, Mr Mokhesi, there will be evidence – not

your evidence – that in fact he directed the creation and implementation of the plan, he participated directly. Are you able to confirm that?

**MR MOKHESI:** No, I am not able to confirm that. I do not know.

**ADV PRETORIUS SC:** Let us get back please to complete that series of agreements. You will recall there was the first agreement with the contractors. You have described that to the Chair. The second was the material supply agreement, the so-called tripartite agreement. You have  
10 described that. And then you went to some lengths in the affidavit in the review application to describe the material supply cession agreements.

**CHAIRPERSON:** Are we going back to his affidavit now?

**ADV PRETORIUS SC:** Well, I am going to deal in summary with that in order to avoid ...[intervenes]

**CHAIRPERSON:** Must I keep this other file that you were dealing with just now?

**ADV PRETORIUS SC:** Yes please.

20 **CHAIRPERSON:** Or we can come back later?

**ADV PRETORIUS SC:** We will come – the disciplinary record, FS19, we do not need that anymore for the present at least.

**CHAIRPERSON:** Okay. At some stage, Mr Pretorius, you were referring to the findings made by the Chairperson of

the disciplinary enquiry.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Did you get to them or did I interrupt you and you ended up not getting to them? The last paragraph I referred to was paragraph 89 on page 656 of FS19.

**CHAIRPERSON:** Yes, I think you were – I got the impression you wanted to refer to a finding that might have led to Mr Tsoametsi, but I may have misread what you had in mind. As long as you have covered what you wanted to  
10 cover, it is fine.

**ADV PRETORIUS SC:** Yes, no, the passage that I was referring to was the passage testified to by Mr Tsoametsi that the MEC made allocation and there will be further evidence but that is to follow, Chair.

**CHAIRPERSON:** So we are back to Mr Mokhesi's affidavit at what page?

**ADV PRETORIUS SC:** Yes. We are at page 98 of the bundle. That is bundle FS14, paragraph 98, I am sorry.

**CHAIRPERSON:** Okay, paragraph 98.

20 **ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Not page?

**ADV PRETORIUS SC:** Not page, I apologise, paragraph 98 on page 129 of FS14.

**CHAIRPERSON:** I was wondering how we could go back so – to almost right at the beginning.

**ADV PRETORIUS SC:** Well, we are going to go pretty fast now, Chair.

**CHAIRPERSON:** Ja, okay.

**MR MOKHESI:** 129?

**ADV PRETORIUS SC:** Page 129. There you – same paragraph 98, the next piece of the puzzle is the conclusion of approximately 167 purported deeds of cession term Material Supply Cession Agreements by the contractors and material suppliers and agreed to by the  
10 defendant. Now it is possible just for the record to summarise that by referring to the judgment of the court in that application at FS14, page 603 and all I am going to do is to ask you if you agree with that finding. It does appear to be consistent with your affidavit but it will save us a lot of time.

**MR MOKHESI:** 603?

**ADV PRETORIUS SC:** 603, paragraph 13 of the judgment of Pohl AJ.

**MR MOKHESI:** Yes, I am on 603.

20 **ADV PRETORIUS SC:** You have it?

**MR MOKHESI:** Ja, 603.

**ADV PRETORIUS SC:** 603, paragraph 13.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The judge says:

“Thirdly, there were the material supply cession



agreements. The cession agreements purport:

1. To give effect to a cession by the contractor, as cedent, of its claim against the department, as debtor, to the material supplier.”

We could just pause there and explain. The contractor, the builder, has the duty to purchase and obtain the materials and it then has a claim against the department, the client...

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** For the materials so supplied and  
10 what was happening here is that claim was being handed,  
ceded to the supplier. Whether this was necessary or no  
we will come to in a moment.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The second point made was that:

“These agreements were intended to instruct the department to pay the claim to the material supplier on demand and not to the contractor.”

Correct?

**MR MOKHESI:** Yes.

20 **ADV PRETORIUS SC:** Because the claim had been now  
passed to the supplier.

“These cession agreements were then used as part of the documentation to create the farce of legitimacy so as to make the payments look regular and in accordance with the law. As indicated

before, it was all done to circumvent the provisions of DORA.”

That is the Division of Revenue Act. Now I can confidently say to you that these findings mirrored precisely the allegations in your founding affidavit. Do you accept that?

**MR MOKHESI:** Yes, I accept that. Yes.

**ADV PRETORIUS SC:** Yes. Of course the reason for that is that it was entirely unnecessary to have a cession agreement other than to give it to the people who were  
10 paying the accounts in the Department of Human Settlements to give it a veneer of legitimacy because when the materials – when the arrangement was made with the suppliers there was no claim.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** To cede because the house had not been built yet.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And that claim would only arise when the house had been built [inaudible – speaking  
20 simultaneously]

**MR MOKHESI:** Or the milestones.

**ADV PRETORIUS SC:** The milestones, yes, when the milestones had been achieved.

**MR MOKHESI:** Completed.

**ADV PRETORIUS SC:** And verified. Only then would such

a claim arise.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So it was entirely unnecessary to have these cession agreements other than to convince people to pay. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** If I could then go to – back to your affidavit please. At paragraph 107.

**MR MOKHESI:** Page 107 or paragraph 107?

10 **ADV PRETORIUS SC:** Page 132, my apologies again, of FS14. Paragraph 107.2, you referring to the documents attached to your affidavit and you say in paragraph 107.2 in NM18 which is an example of a cession agreement:

20 “The right ceded is supposedly the contractor’s rights to payment from the department in respect of the provision of bridging finance and or securities and the supply of financial services. This is frankly bazaar, the contractors did not provide bridging finance or securities or financial services to the department and had no claim against the department for payment of such services or product.”

Now we know that the description of the cession agreement as being the cause of the cession is described in some of the cession agreements as being the provision of bridging

finance and the supply of financial services.

It seems that at that stage there was no understanding of what was happening and in fact you described it as bazaar because those services simply were not provided. Correct?

**MR MOKHESI:** Yes and it is not, we are not in that business of giving finance.

**ADV PRETORIUS SC:** Yes, but it appears what happened and this is in the findings of the disciplinary enquiry at least in some cases is that money was being given to the suppliers and the suppliers were then passing that money on to the contractors. Did you know of that?

**MR MOKHESI:** Yes that was – yes I know, there are instances where it was an investigation it was discovered exactly what you are saying. Now money was paid to - and cash was advanced to the contractor for whatever reason.

**ADV PRETORIUS SC:** So this is a way of spending a lot of money quickly is simply to give it to the supplier and the supplier then hands some of that in cash to the contractors completely illegitimate I would assume.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But that happened – just for reference Chair those findings are in the disciplinary enquiry findings at FS19 page 664 and FS19 page 676 perhaps for completeness we should go there.

**CHAIRPERSON:** Well before you do that Mr Mokhesi I – it seems quite clear from your paragraph 107.2 that what was being done was to make misrepresentations of facts in order to create the impression that there was entitlement to payment of money or there was an obligation to pay money.

**MR MOKHESI:** Yes, there was no cause for a claim.

**CHAIRPERSON:** And what these sessions where it seems intended to create the impression as if there was cause for  
10 payment.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** When actually there was no cause.

**MR MOKHESI:** There was no cause for payment.

**CHAIRPERSON:** Yes, yes Mr Pretorius.

**ADV PRETORIUS SC:** Let us deal with the first reference in the findings of the disciplinary enquiry proceedings at FS19 page 664. Now we know that NURCHA was one of the entities briefed to do investigations. You said that to the Chair sorry page 662 of FS19.

20 **MR MOKHESI:** 662, ja I am on page 662.

**ADV PRETORIUS SC:** 662, this is a summary of the evidence of Mr Lees of NURCHA which was an entity that was engaged to try and remedy the problems that had arisen in 2010/2011 you have told the Chair about that. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** One of the things that Mr Lees said appears in paragraph 108 on page 664. Mr Lees established that some of the material...[intervene]

**MR MOKHESI:** Page?

**ADV PRETORIUS SC:** Do you have it?

**MR MOKHESI:** Ja, page?

**ADV PRETORIUS SC:** 664 paragraph 108.

**MR MOKHESI:** 108, yes.

10 **ADV PRETORIUS SC:** The disciplinary findings. Mr Lees established that some of the material suppliers were advancing the contractor out of the cession payments they had received for the material from DHS. So that appears to be confirmation of what you have told the Chair that suppliers would get money from the department and hand some of those moneys onto the contractors, completely irregular is it not. Correct?

**MR MOKHESI:** Yes.

20 **ADV PRETORIUS SC:** So your own conclusion at paragraph 109 is that:

“The purpose of these cession agreements was to enable the department to spend its money by making payments to the material suppliers.”

You say that...[intervene]

**MR MOKHESI:** Sorry Mr Pretorius are we back on the

same.

**ADV PRETORIUS SC:** Okay I am sorry we taking it to fast, FS14 page 133.

**MR MOKHESI:** 133, I am on page 133 yes.

**ADV PRETORIUS SC:** Page 109:

“The department then used the material supply cession agreements to make payments to material suppliers...[intervene]

**CHAIRPERSON:** Paragraph 109 you said page 109 I think  
10 you mean paragraph.

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** So it is the opposite.

**CHAIRPERSON:** Page 133 paragraph 109.

**ADV PRETORIUS SC:** Paragraph 109. Do you have it?

**MR MOKHESI:** Yes, I have it.

**ADV PRETORIUS SC:** So your conclusion there in the affidavit is the department then used the material supply cession agreements to make payments to material suppliers. But what is interesting is the manner in which  
20 they were used and you describe that in paragraph 110 Mr Mokhesi you said:

“The material supply cession agreements form part of the paperwork submitted to the departments accounting staff together with an instruction to make payment. As I explain below the departments

instructions to make payment were accompanied by different documents from one case to another. In some cases, the department scheme was completely crude and in other cases somewhat more sophisticated. But the starting point in almost every case was the material supply cession agreement.”

And then you say:

10 “The material supply cession agreement made it look as if there was indeed an amount due and payable by the department through the material supplier.”

Do you stand by that observation?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And the reason is obvious because the cession had not created a claim in the first place it was just used as a document to persuade the Finance  
20 Department to pay.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** In paragraph 114 you give an example of, some of the corrupt activities that took place



under the guise of the scheme. You say:

“Moreover many of such invoices are obviously false.”

Those are the invoices submitted as part of the claims.

“They reflect for example that materials for roofs and walls had been delivered but at such an early stage of the project, so soon after the conclusion of the construction agreement that the contractor had no use yet for roofing and wall material and had not  
10 claimed or purported to claim for foundation related work or materials.”

Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So before the contractor, the construction entity, the builder has even claimed for building the walls and the roofs you have already paid for the material which by that stage would not have been delivered. Correct?

**MR MOKHESI:** Oh the milestone which does not  
20 exist...[intervene]

**ADV PRETORIUS SC:** I am sorry.

**MR MOKHESI:** The milestone which does not exist.

**ADV PRETORIUS SC:** Oh the milestone had not been there.

**MR MOKHESI:** Ja.

**ADV PRETORIUS SC:** And you make the point of course that the reason for this is that roofing material is the most expensive of all the material and in that way a lot of money could have been spent and received.

**MR MOKHESI:** Ja, in terms of the emphasis has always been on it yes, the finishing part.

**ADV PRETORIUS SC:** That is where the high cost are.

**MR MOKHESI:** That is where the high cost is.

**ADV PRETORIUS SC:** You make that point in paragraph  
10 115 on page 134. In paragraph 118 and I am not going to go into the detail of this, it is safe to say that the HSS the housing subsidy system has its own rules and regulations...[intervene]

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** ...in regard to payment on milestones. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And that system was manipulated to put in there supply of material as a milestone when it  
20 should not have been. Correct?

**MR MOKHESI:** Yes, correct.

**ADV PRETORIUS SC:** In paragraph 132.

**CHAIRPERSON:** 152?

**ADV PRETORIUS SC:** 132, paragraph 132, page 143.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** You say:

“That the department paid approximately R631million without having received anything in exchange. There was no evidence when the department made its payments that it had received value for payments made in that houses had been built or part built to a satisfactory standard.”

Was that your information on your research at the time?

**MR MOKHESI:** Yes, that was my information at the time to  
10 say we did not – at that time we did not receive value.

**ADV PRETORIUS SC:** You did not receive value for money, you were satisfied with that statement at the time and now. Correct?

**MR MOKHESI:** Yes, because I think even for now given what we have gone through and what has – you know the claims that we have against the supplier of material I can only conclude that we did not receive full value. Amounts might have changed because there has been some recovery I am aware by the SIU.

20 **ADV PRETORIUS SC:** And then in paragraph 135 you make perhaps the most important point of this whole exercise. You say:

“Aside from the issue of misspending of money this scheme has had the result that many of the intended beneficiaries of the BNG Project remained

homeless. The department flouting of national governments requirements legislative provisions ordinary prudent commercial practice and alike has had a practical consequence for hundreds of families. Their access to housing has been yet further delayed.”

Perhaps an obvious point but worth emphasis nevertheless.  
You made that point?

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** Then paragraph 143 on page 147 if we could deal with that briefly please.

“As I stated earlier.”

This is you speaking in the affidavit Mr Mokhesi:

“The department has instituted action proceedings against the contractors and suppliers. They are listed in the schedule attached as NM2”.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The first question is was action taken against all the contractors and suppliers or only  
20 some?

**MR MOKHESI:** To my personal knowledge it was taken against all the contractors and the suppliers.

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** To the best of my knowledge.

**ADV PRETORIUS SC:** There may be other evidence or

certainly a need for other investigation in that regard but we do know that many of them had gone into liquidation or been sequestrated.

**MR MOKHESI:** Yes there are instances like that, yes. There are instances like that there were some that...[intervene]

**CHAIRPERSON:** Have you got an estimate maybe in your mind of what percentage of the contractors and suppliers you are likely to get anything from? I mean you said that  
10 the all or many of the contractors were put into a better place even those who were disqualified.

Some who had never built one RDP house were given a job to do - build 600 houses. In terms of their financial muscle what are the chances that you are going to recover anything substantial from most of them?

**MR MOKHESI:** I am afraid from what I have observed Chair we might not recover much in terms of my observation, particularly for those reasons that you have just indicated.

20 **CHAIRPERSON:** Ja, ja.

**MR MOKHESI:** So - but we will have to go on up to the end you know this process that has been where we have got by the courts the latest application that we have done will continue against all of those but clearly there are others who are liquidated that we know and I am informed

that there has been also action that has been taken on other. I think our legal can be in a position perhaps just to give the latest report as to how far the process has gone.

**CHAIRPERSON:** But people who have been sued to try and recover money from are they limited to the contractors and suppliers of material or have you included officials and politicians who may have caused this situation by their conduct.

**MR MOKHESI:** Well let me – to be fair also to the  
10 contractors they did not receive you know when money went from the department out it went to material suppliers.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** And this is...[intervene]

**CHAIRPERSON:** It never got to the contractors.

**MR MOKHESI:** It might have got to the contractors as it has been demonstrated that there were some instances where they were given cash.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** And in certain instances, the material was  
20 purportedly delivered but there was no proof in the form of delivery notes, invoices etcetera, etcetera that indeed that material was delivered.

In certain instances, you have a delivery note but then the contractor is saying ja but this is not my signature that is there.

In certain we have instances where we were informed that material was simply dumped on site where there were no people to receive it and so on.

Now and I think this is also what informed the second review of you know the review of the decision to say to those that receive money you must tell us what is it that you did. If you cannot prove where the money went to, it must come back.

**CHAIRPERSON:** But my question is whether the  
10 department has also sued people who may have been in  
the department at the time.

**MR MOKHESI:** In the department?

**CHAIRPERSON:** In the department including politicians or  
their conduct that may have led to a lot of financial loss to  
the department?

**MR MOKHESI:** No.

**CHAIRPERSON:** That has not been done.

**MR MOKHESI:** No that has not happened.

**CHAIRPERSON:** Ja, has it been raised as something that  
20 should be looked into within the department or its lawyers?

**MR MOKHESI:** No, it has not been raised.

**CHAIRPERSON:** Okay, alright, yes Mr Pretorius.

**ADV PRETORIUS SC:** Thank you Chair. Mr Mokhesi at  
page 150 – perhaps before I ask you to deal with the  
matters that appear there. There have been indications

and I put it no higher than that for the present that have been drawn to our attention by the investigators that some of the suppliers and contractors who should have been sued were not sued. Do you know anything about that?

**MR MOKHESI:** I have only said to the best of my knowledge all the contractors.

**ADV PRETORIUS SC:** Okay.

**MR MOKHESI:** All the contractors or the material suppliers.

10 **ADV PRETORIUS SC:** But that may well be the subject for further investigations but at that stage I can put it no higher than that there are indications of that. If you would go please to page 150.

**MR MOKHESI:** Yes, page 150?

**ADV PRETORIUS SC:** 150.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** You deal there with the regulatory framework and perhaps it is necessary to summarise that very briefly before we finish. You referred to the  
20 framework of legislation and regulations that were breached in this construction and supply agreement project.

You start with the constitution we have dealt with that in evidence before you deal with that on that page. On page 151 you deal with the Treasury regulations and



the provisions of the Treasury regulations that are relevant and were offended they are there for the record it is not necessary to go through them in detail unless you wish to Chair. And then page 162:

“The department of course has its own supply chain management policy as it was obliged to have.”

Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Paragraph 162 and...[intervene]

10 **MR MOKHESI:** 16?

**ADV PRETORIUS SC:** Of course the provisions in the supply chain management policy were also offended.

**MR MOKHESI:** Sorry Mr Pretorius you said page 162?

**ADV PRETORIUS SC:** No, page 152 paragraph 162.

**CHAIRPERSON:** Oh I also thought you said page 162.

**ADV PRETORIUS SC:** Well I am...[intervene]

**CHAIRPERSON:** So it is 152.

**ADV PRETORIUS SC:** Page 152 paragraph 162, I could easily made another mistake.

20 **CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** My apologies Mr Mokhesi. Paragraph 162 you refer to the departments supply management policy the provisions of which were also offended. Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And you make the point in paragraph 163 that there are very good reasons for the implementation of a fair transparent equitable and competitive supply chain management policy. You say in 163.1:

“It’s fair to do so.”

Correct?

“And it helps reduce the corrupt award of government business.”

10 You make that point in 163.1. Do you see that?

**MR MOKHESI:** Yes, I see that, thank you.

**ADV PRETORIUS SC:** It means to – in 163.2:

“That if one complies with the procurement principles laid down in the law and the regulations in your own policy it gives people a fair opportunity to complete what might be lucrative government business.”

And you make the point in paragraph in 163.3:

20 “That the requirement of competitiveness together with the more specific requirements of how bids must be evaluated and awarded helps to ensure that government work is awarded to persons who are able to do the work.”

Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So if these procedures are not followed not only is it unfair on people who wish to bid for the work and do not get the opportunity to do so not only would it reduce corruption in the award of government business but importantly the process is there to ensure that people who are able to do the work get the work. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And you would not have the  
10 problem of people walking off site or less problem of people walking off site not completing buildings which occurred in this case. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Then the provisions of – well before we go their paragraph 166 you say:

“Regarding the tripod type material supply agreements there is no indication at all as to how the department identified the material suppliers. It is a gross example of the direct award of  
20 government business without the proper procurement process made all the more flagrant by the fact that the department then paid substantial amounts of money to the suppliers and received nothing in exchange.”

Now that is an observation you made in order to obtain the

order as you said but nevertheless, I take it that it is a correct observation as far as your concerned.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** What it does indicate however it is the importance of conducting a thorough investigation as to how the material suppliers were identified. It is an important investigation. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Then on page 154 Mr Mokhesi you  
10 deal with the division of Revenue Act and the requirements of that Act which we have canvassed. In paragraph 168.2.1 and paragraph 168.2.2 you deal with Section 15.2C and B of the division of Revenue Act. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And the reference that – perhaps I should have put to you yesterday appears at the top of page 155. There I will read it to you the section of DORA reads:

20 “In the case of an advanced payment 1, the receiving officer has certified to the National Treasury that the transfer is not an attempt to artificially inflated spending estimates and that there are good reasons for the advance payment or transfer. And 2, the National Treasury has approved the advanced payment or transfer.”

Now you said yesterday that as far as you are aware that approval could be presumed where a certain program had been followed. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And then in paragraph 170 to 171 you talk about the conclusions of unauthorised expenditure as well as irregular expenditure in terms of the Public Finance Management Act. We did not go into detail there but they are there for the record. The conclusion you draw  
10 is in page 177.

**MR MOKHESI:** Page 177?

**ADV PRETORIUS SC:** 177.

**CHAIRPERSON:** Page or paragraph?

**ADV PRETORIUS SC:** Paragraph I am sorry Chair page  
157, paragraph 177. You say there:

20 “Although agreements of the nature of construction agreements and agreements governing the supply of building materials are in themselves perfectly lawful the agreements at issue in these proceedings were concluded for an illegal purpose.”

Of course, when you say that agreements might be irregular, we have dealt with the cession agreements and the problems relating to those. Those are not regular on the face of it. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But then in the second sentence of paragraph 177 you say:

“They were concluded to facilitate a scheme to spend public funds in contravention of DORA and therefore then defraud the fiscus.”

That is the final reference to fraud that you make, correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And you stand by that?

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** Further detail is given and you deal there with the delay which we are not concerned with this in this application. But if I may take you to paragraph 187 on page 162. The head of department during 2010/2011 was Mr Mokoena.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** He went to another provincial department. Is that correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** He did not go to a municipality?

20 **MR MOKHESI:** No, he went... sorry, sorry. My apologies. He went to the municipality.

**ADV PRETORIUS SC:** Yes. And you were appointed as the HOD. You began in January 2012.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And then interestingly. In paragraph

192 having referred to the investigations of the Special Investigate Unit, the SIU, you referred to a meeting that took place in April 2012.

“The then Premier and the MEC for Human Settlements called a meeting with senior department officials to discuss the fact that contractors appointed to construct the BMG funded houses were simply not performing.”

Now this in 2012 in April.

10 “At that meeting it emerged that the contractors’ failure to perform under their contracts was largely caused by the fact that materials had not been delivered to them by the suppliers.”

But we know that R 600 million had been spent, approximately. The amounts vary but over half a billion rand had been spent on suppliers and yet, in April 2012 there were still complaints of none-delivery, correct?

**MR MOKHESI:** Yes, correct.

**ADV PRETORIUS SC:** And in paragraph 193, you referred  
20 to the fact that, in fact, the suppliers simply had not delivered material or at least a significant number of them had not delivered material. That... was that the finding?

**MR MOKHESI:** Yes, that was the finding.

**ADV PRETORIUS SC:** And then you talk in paragraph 194 of the department appointing Open Waters as forensic

auditors to investigate certain of the allegations made by the contractors. Now was that the contractors complaining that supplies had been paid for but not delivered?

**MR MOKHESI:** Not delivered.

**ADV PRETORIUS SC:** Is that correct?

**MR MOKHESI:** That is.

**ADV PRETORIUS SC:** Just to summarise too. We have the Nurcha remedial activity. They were appointed by the department, correct?

10 **MR MOKHESI:** Yes, they were appointed by the department.

**ADV PRETORIUS SC:** Yes. To do what?

**MR MOKHESI:** In the main to also to matter they are involved in project management and building and financing at the time.

**ADV PRETORIUS SC:** Sure.

**MR MOKHESI:** Bridging financing. That is their mandate. So they were assisting us, one, to reconcile and see what happened and also to provide a project management support  
20 to the department which was obviously lacking.

**ADV PRETORIUS SC:** Correct.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Then you refer to the SIU report, the Special Investigative Unit support.

**MR MOKHESI:** Yes.



**ADV PRETORIUS SC:** You have referred to the appointment of Open Waters as forensic auditors, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And you have referred to the disciplinary proceedings. All those reports and records Chair are part of the bundles and are summarised in the investigative report which is before you. Mr Mokhesi, you have assisted us with a great deal of information. Is there anything else that you feel you need to add?

10 **MR MOKHESI:** No, I think none. Thank you, I have... it has been two long days.

**CHAIRPERSON:** Have you got any understanding why the criminal trials have not taking place arising out of all the investigations that have been done? I see the disciplinary... the rulings, judgments in the disciplinary hearings, which were quite extensive and comprehensive, were completed in 2015.

I think some people may have been judge at some stage, I am not sure. Do you have any understanding and simply  
20 being the head of the department, you would have wanted to find out how the law enforcement agencies were proceeding or were progressing with the investigations and they would have told you.

**MR MOKHESI:** Chair, we had an understanding with SIU. And one of the things that they said that they would handle

because at some stage as well, I think they made me sign an affidavit. I suppose it was around the documents.

I cannot recall what exactly because they did on my behalf. But they will deal with the recovery part. They will deal with the investigation. Because you know, they are able to do certain things that we cannot do.

You know, like accessing bank accounts of the individual and so on and so on. But they will into that. They will make that investigation and then hand over that information to  
10 appropriate law enforcement agency, whether it is assessing for SARS, et cetera.

So that was the understanding. And I am informed that the case has been opened. I assumed that that was in that light in that understanding that we had with them at the time.

**CHAIRPERSON:** How long ago was this understanding?

**MR MOKHESI:** Right at the beginning when we made this, when we started.

**CHAIRPERSON:** Would that be about 2013/2014?

**MR MOKHESI:** Yes, it would be around... although, by the  
20 way, they had already... by the time I assumed office ...[intervenes]

**CHAIRPERSON:** Yes.

**MR MOKHESI:** ...the proclamation and so on had already been made.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Already. They had already started and hence also that me then to say... they were struggling to get information. That is something that we have discussed. It is not for now.

**CHAIRPERSON:** Ja.

**MR MOKHESI:** To say, this is how we will proceed. And indeed, we proceed around the civil route because it was... given the amount of money that I will say we did not receive value for ...[intervenes]

10 **CHAIRPERSON:** Ja.

**MR MOKHESI:** ...it became important for the department and try and recover as much as possible.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** And SIU will deal with these other issues. So there has always been cooperation between ourselves.

**CHAIRPERSON:** Yes. So nobody has been arrested or charged or anything?

**MR MOKHESI:** Not to my ...[intervenes]

**CHAIRPERSON:** Not to your knowledge?

20 **MR MOKHESI:** Not to my knowledge but I am aware that the law enforcement agency are working on it. We have been interviewed by the law enforcement agencies.

**CHAIRPERSON:** H'm. It is just that it is concerning because part of the complaints connected with allegations of state capture is that some of the law enforcement agencies

were paralysed or did not do their job in regard to certain matters.

Of course, it may be that in this case they have done their job to the best of their ability given whatever resources they have and may be given the enormity of the job, I do not know, but it is concerning when the taxpayers have lost as much money as we are talking about here, you know.

And they lost it in 2010 and 2011 by the end of the financial year, the 2010/2011 financial year since March  
10 2011.

Now that is close to ten years and no arrests, nobody charged and yet, the taxpayers, on your estimate, at least lost about R 500 million or even more.

And ten years later there is nothing that the public knows that the department knows that gives confidence that something is being done. That the matters are being given the urgent attention it deserves.

I mean, as I say the disciplinary hearings seems to have elicited a lot of information and quite comprehensive. Your  
20 own affidavit was deposed to in December 2016. 2017, 2018, 2019 – where next week, we are going to be October 2020.

That is about four years since your very comprehensive affidavit was given and yet, nobody has been arrested, nobody has been charged. It is quite concerning.

And of course, I have heard evidence in relation to PRASA for example, where also millions of rands were involved, where the chairperson of the board of PRASA, at a certain time Mr Molefe said: We presented all the evidence to the Hawks and asked them to investigate and take action. They did not take action. We had to go to court to get them to be forced to do their own job.

And my information, if my memory serves me well, I have not had any arrest connected with that or people being  
10 charged. And I am sure there are many others. So it is very concerning.

So that is why I was asking whether as the HOD you had been given any information that gives one confidence that maybe something is about to happen because we are about ten years after these things happened. But you have indicated what you have been told or what your understanding is.

**MR MOKHESI:** [No audible reply]

**CHAIRPERSON:** Okay. Thank you very much Mr Mokhesi  
20 for coming to give evidence. We appreciate it. I know that we have not seen you for the last time because there is one evidence you still need to give in due course but thank you very much. You are... I am not getting any indication that your counsel wishes to re-examine you or anything.

**COUNSEL:** No, nothing Chair. Thank you.

**CHAIRPERSON:** Thank you. Thank you. So you are excused Mr Mokhesi. Thank you.

**MR MOKHESI:** [No audible reply]

**CHAIRPERSON:** Yes. You... maybe we should keep our resumption at two.

**ADV PRETORIUS SC:** As you please.

**MR MOKHESI:** Yes. Okay we will take the lunch adjournment now and we will resume at two o'clock. We adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Mr Pretorius are we ready?

**ADV PRETORIUS SC:** Yes, thank you Chair, the next witness is Mr Mpho Moses Mokoena, and may he take the oath?

**CHAIRPERSON:** Yes, please administer the oath or affirmation.

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

20 **MR MOKOENA:** My full names are Mpho Moses Mokoena.

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

**MR MOKOENA:** No I don't.

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

**MR MOKOENA:** Yes I do.

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

**MR MOKOENA:** So help me God.

**MPHO MOSES MOKOENA [D.S.S.]**

**CHAIRPERSON:** You may be seated Mr Mokoena.

**ADV PRETORIUS SC:** Chair there is a bundle that has been handed to you, FS12, Bundle FS12, that is the bundle  
10 of the statements of the various witnesses, some of whom will testify, may that be admitted as Bundle FS12 and the affidavit of Mr Mokoena appears at page 334.

**CHAIRPERSON:** Well the bundle will be referred to Bundles FS12, but we will admit each exhibit as and when we have to deal with it. Mr Mokoena's one is at what page

**ADV PRETORIUS SC:** Page 336, Exhibit UU3.

**CHAIRPERSON:** Yes okay, alright, once he has confirmed what he needs to confirm about it we will admit.

**ADV PRETORIUS SC:** Would you look at Bundle FS12  
20 please Mr Mokoena at page 336, yes and we refer to the black numbers in the top left hand corner.

**CHAIRPERSON:** The bundle number will be on the spine of the file and I think he needs assistance.

**ADV PRETORIUS SC:** Are you at FS12 336?

**MR MOKOENA:** [No audible response]

**ADV PRETORIUS SC:** Would you speak into the microphone please Mr Mokoena and speak loudly so that the transcriber can pick up your voice. Would you please go to ...[intervenes]

**CHAIRPERSON:** I think let him just get settled, he is still trying to tidy things up in front of him. Okay, alright.

**ADV PRETORIUS SC:** Are you settled? Alright, if you could go to page 353 please. Also the black numbers, top left hand corner.

10 **CHAIRPERSON:** So whenever you are referring to a page number Mr Mokoena just remember that that will be a reference to the black numbers at the top left corner of each page.

**ADV PRETORIUS SC:** Are you at page 353.

**MR MOKOENA:** 353 yes.

**CHAIRPERSON:** No FS you know, look at the top left corner you will see a black number starting with FS- maybe 12 and then -353, that 353 is the page number that Mr Pretorius is referring you to, ignore the FS and the 12, just  
20 focus on the last digits, the three digits.

**ADV PRETORIUS SC:** So when we refer to page numbers we will be referring to the last three numbers in the top left hand corner Mr Mokoena, if you would just look at the signature on page 353, whose signature is that?

**MR MOKOENA:** It is my signature.



**ADV PRETORIUS SC:** And the document at page 336 to 353 is your affidavit?

**MR MOKOENA:** It is my affidavit.

**ADV PRETORIUS SC:** And are the contents of this affidavit as far as you concerned at least true and correct.

**MR MOKOENA:** Correct.

**ADV PRETORIUS SC:** Mr Mokoena are you currently employed?

**CHAIRPERSON:** I am sorry, do you want me to admit it  
10 Mr Pretorius?

**ADV PRETORIUS SC:** Sorry yes Chair please.

**CHAIRPERSON:** The affidavit deposed to Mr Mpho Moses Mokoena appearing from page 336 to 353 of Bundle FS12 is admitted and will be marked as Exhibit – is UU, UU3?

**ADV PRETORIUS SC:** Yes Chair, thank you.

**CHAIRPERSON:** UU3, okay alright.

**ADV PRETORIUS SC:** Mr Mokoena you may be referred to somewhere in the papers as Gift Mokoena but another name?

20 **MR MOKOENA:** It is my other name.

**ADV PRETORIUS SC:** Are you currently employed?

**MR MOKOENA:** I am currently unemployed.

**ADV PRETORIUS SC:** Between July 2009 and December 2011 what position did you occupy?

**MR MOKOENA:** I was occupying a position of Head of the

Department for Human Settlements in the province of the Free State.

**ADV PRETORIUS SC:** To whom did you report in that capacity?

**MR MOKOENA:** I reported to Mr Mitzembenzi Zwane.

**ADV PRETORIUS SC:** And what position did he occupy?

**MR MOKOENA:** He was my LEC for Human Settlements.

**ADV PRETORIUS SC:** If you could go to paragraph 5 please on page 337, when did you join the Free State  
10 Provincial Government?

**MR MOKOENA:** I joined the Provincial Government of the Free State in 1995.

**ADV PRETORIUS SC:** And you've told the Chair that you were appointed as Head of Department of Housing of Human Settlements in July 2009.

**MR MOKOENA:** Yes, that is correct.

**ADV PRETORIUS SC:** And how did it occur that your appointment came to an end in December 2011?

**MR MOKOENA:** In December 2011 I resigned, due to the  
20 pressure that I was feeling as the Head of the Department, especially from our Premier, Mr Ace Magashule.

**ADV PRETORIUS SC:** Could you go into a bit more detail please, what pressure was this?

**CHAIRPERSON:** Maybe before he does so Mr Pretorius, what were your qualifications at the time you became HOD

Mr Mokoena?

**MR MOKOENA:** My qualifications were Master of Science in Development and Planning.

**CHAIRPERSON:** Yes, okay, thank you.

**ADV PRETORIUS SC:** Right you were describing the pressure which you experienced which led to your resignation in December 2011?

**MR MOKOENA:** Yes, the pressure I meant I experienced at that stage was that we were under a state of ensuring  
10 that we turn the houses, the material that we had into houses, but at the same time when we go out on the outreach programme called Operation Hlasela the Premier would still be allocating and announcing radically and that would happen even if we sat down in the session where we brief him but we don't have any additional budgets for those allocations but he will continue to go and allocate, announce allocations, new allocations everywhere we go and on top of that he was also pressurising us to build bigger houses but the amount of money that we had from  
20 National is for only the 40m<sup>2</sup>, that was the biggest pressure on me. I wanted ...[intervenes]

**CHAIRPERSON:** Sorry, sorry, try and look this side so I can hear your story so you – are you saying that the pressure that you felt which drove you to resign was that the Premier of the Province, Mr Magashule, was making

announcements to the public that your department would build bigger houses than you were able to build or that you had funding for.

**MR MOKOENA:** That's correct.

**ADV PRETORIUS SC:** Is that beyond the thing that constituted pressure that he kept on making those announcements or is there something else?

**MR MOKOENA:** Mainly those are the two key pressures that I was feeling, because my main pressure was to  
10 ensure that the material, the building materials that we had already purchased as a department should be converted into houses as per our agreement in February 2011 with the Minister, because certain Minister said, Mr Tokyo Sexwale said follow the money and turn those building materials into houses, so when we were busy trying to do that with the less capacity because we're only about one year old, because it was a new department that started in 2009 so in 2010 we were just one year old, so we were still trying to grapple with own capacity, to build our own  
20 capacity in terms of the technical side, as well as our capacity in terms of project management, so we were still very weak at that stage, so when we are busy with that he continued to allocation on the other side sporadically, outside of our budget, so that for me was a very big pressure.

**CHAIRPERSON:** Okay Mr Pretorius.

**ADV PRETORIUS SC:** So in short, the pressure you experienced, which led to your resignation was that there was an expectation placed upon you by the Premier to build more houses than you had funds and capacity for and bigger houses than you had funds and capacity for?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** And these demands were public demands as I understand it?

10 **MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Alright, you mentioned an operation, is that spelt Hlasela?

**MR MOKOENA:** That's correct Operation Hlasela.

**CHAIRPERSON:** Operation Hlasela?

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** Ja, that's just for the transcriber. After your resignation as Head of Department what position did you then occupy?

20 **MR MOKOENA:** After my resignation I became HOD for Human Settlements in our newly established Mangaung Metropolitan Municipality.

**ADV PRETORIUS SC:** So you moved from the Province to a municipality?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** What was the position in October

2010 in relation to the budget that had been allocated by National Department and Treasury for the Construction of Houses.

**MR MOKOENA:** We were under-spending on our budget, we were level about 10% of our expenditure to the R1billion that was granted to us as a province.

**ADV PRETORIUS SC:** It is a question that arose earlier, can you assist the Chair and tell the Chair by October 2010 how many houses had been built for that particular period?

10 **MR MOKOENA:** I won't be having the figures right now, because I think at that time we were only at, we had just started putting up our war room so I do not have figures right now.

**ADV PRETORIUS SC:** Were there any houses built by that time?

**MR MOKOENA:** Not yet.

**ADV PRETORIUS SC:** So no houses by October 2010.

**MR MOKOENA:** October 2010 there were no houses here.

20 **CHAIRPERSON:** Is that something you remember quite well or is it something that you are not sure about that as at October 2010 the Department had not built any houses under that project?

**MR MOKOENA:** I think my recollection is correct but we had not built at that stage and we had a problem because we didn't have service providers appointed yet.

**CHAIRPERSON:** The service providers had not yet been appointed.

**MR MOKOENA:** As contractors yes.

**CHAIRPERSON:** Who would have built the houses?

**MR MOKOENA:** Who would have built the houses.

**CHAIRPERSON:** So obviously if no service providers had been appointed there could not be any houses built.

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** Is it possible that – well if you had used  
10 10% of the budget allocation for that project and I understand that the budget was about R1.2 or R1.3million, billion, I'm sorry, billion, if you had spent 10% it seems that would have – that meant you must have spent less than R200million, just over R100million, is that right?

**MR MAKOENA:** That is correct, it would have been on issues like foundations for instance, not a full house, just a few foundations.

**CHAIRPERSON:** So there may have been foundations that had been built or erected but no houses would have  
20 been completed.

**MR MAKOENA:** That is true.

**CHAIRPERSON:** And you are sure about that?

**MR MAKOENA:** And I am sure about that.

**CHAIRPERSON:** Yes, now if the service providers had not been appointed who would have built the foundations, or

erected the foundations?

**MR MAKOENA:** Okay I think I am running ahead of myself.

**CHAIRPERSON:** Yes.

**MR MAKOENA:** Yes, okay I get the point. By October ...[intervenes]

**CHAIRPERSON:** 2010.

**MR MAKOENA:** That less than 10% was not on product, it was because we didn't have a service provider, so it was  
10 not on product.

**CHAIRPERSON:** It was not on houses?

**MR MAKOENA:** It was not on houses yet.

**CHAIRPERSON:** What was the 10% spent on, of the budget?

**MR MAKOENA:** I can't recall but it might have been on ...[indistinct] as well as ...[intervenes]

**CHAIRPERSON:** But it was not on the houses?

**MR MAKOENA:** It was not on houses.

**CHAIRPERSON:** And you are sure about that?

20 **MR MAKOENA:** I am sure about that.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Yes, there would have been expenditure on title deeds, surveys, basic services and the like?

**MR MOKOENA:** Something like that, correct.



**CHAIRPERSON:** Is there any reason why whoever followed you, succeeded you as HOD, would not have found it easy to establish that simple fact that as at October no houses had been built, bearing in mind the information that would have been there, as far as you know, is there any reason why it would have been difficult for the next HOD to know that as at that time actually no houses at all had been built?

**MR MOKOENA:** The information was available, I don't  
10 think it could have been difficult to get that information.

**CHAIRPERSON:** Yes, it should not be difficult, should not have been difficult?

**MR MOKOENA:** Should not have been difficult.

**CHAIRPERSON:** And the fact that no suppliers had been – no service providers had been appointed before October 2010 that also should have been easy to establish?

**MR MOKOENA:** Correct.

**CHAIRPERSON:** Yes, okay, alright.

**ADV PRETORIUS SC:** You have just told the Chair Mr  
20 Mokoena that by October 2010 six or so months before year end only 10% of the budget allocated had been spent. What was their reaction to that situation at the National Department of Human Settlements, I am referring to paragraph 8 on page 339 of your ...

**MR MOKOENA:** The reaction was that we are under-

spending and that they are going to withdraw the amounts of amount that we have because we cannot lose out on that money just because we are not spending, because we don't give – the performance of province.

**CHAIRPERSON:** I am sorry Mr Mokoena, you will have to raise your voice and as far as possible look this side as well, I know you have to look at the person who is putting questions to you but just raise your voice, I want to hear that story properly.

10 **MR MOKOENA:** My apologies, I thought that my voice was audible, I will try to be louder.

**CHAIRPERSON:** Yes, okay.

**MR MOKOENA:** What I was just saying is that that situation meant that the National Department of Human Settlements that informing us that we are down-scheduled in terms of our performance and therefore they said to us we will give you notice that we are going to withdraw a particular amount from your budget, which you are not going to get, we are going to withhold it in the National  
20 Department so that it can be given to other provinces that are performing, so that is what I wanted to say.

**CHAIRPERSON:** Ja, okay.

**ADV PRETORIUS SC:** What happened then during October 2010, as you've described in paragraph 9?

**MR MOKOENA:** What happened then was that

...[intervenes]

**CHAIRPERSON:** Or maybe – I am sorry Mr Pretorius, maybe briefly are you able to say why your department had not been able to build houses six months into the financial year, because by October that was six months into the financial year, why is it that you had not been able to build even one house, why was it that you had not appointed service providers on time, because you were the HOD.

**MR MOKOENA:** As far as I can recall it the two key things  
10 that need us not to perform at that stage, the first one was that we had advertised the tender, we closed the tender and did all the processes only to find out we took too long and the validity period expired, so that was the first part. The second part ...[intervenes]

**CHAIRPERSON:** And the period expired?

**MR MOKOENA:** The period of the tender expired.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** The other part as far as I can recollect is that we heard as we came in that decision that was before  
20 us they had allocated or they had got into the budget of 2009 and the budget of 2010 so they had already appointed contractors, so those contractors had taken us to court, so that was delaying us as well, so those are the two things that I can recollect that delayed us before October 2010.

**CHAIRPERSON:** Of course the failure to do whatever was necessary in order to make sure that by the time the tender period expired everything had been done, the failure to do that you must take responsibility, must you not, because you were the HOD?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** Yes, okay. Mr Pretorius?

**ADV PRETORIUS SC:** Why was there that delay in completing the tender process before July 2010?

10 **MR MOKOENA:** I can't recall right now what was the delay but I think we had too many tenders, we had too many tenders that were coming, that came in and so I think the delay was in processing those tenders.

**ADV PRETORIUS SC:** In any event you were dealing with the October 2010, what happened, was there a meeting?

**MR MOKOENA:** In October 2010 there was a special meeting called by Mr Zwane, who was our MEC at that stage, he called to say that he wanted us to meet because he had a solution, or a problem of non-spending on the  
20 grant.

**ADV PRETORIUS SC:** Before you go there where did this meeting take place?

**MR MOKOENA:** This meeting he organised in his boardroom, the meeting took place in his boardroom.

**ADV PRETORIUS SC:** In Bloemfontein?

**MR MOKOENA:** In Bloemfontein.

**ADV PRETORIUS SC:** Who was present at the meeting?

**MR MOKOENA:** In the meeting mainly it was my managers, and the CFO we were still sharing, the CFO at that stage we had our CFO was also the CFO for Local Government, that was Ms Sepati and under ...[intervenes]

**ADV PRETORIUS SC:** Dlamini?

**MR MOKOENA:** Ms Sepati Dlamini ja, and then it was Ms Manite Mogele on my side and then on the side of the  
10 MEC's office it was ...[indistinct] who was the advisor to the MEC at that stage and then also from the MEC's side was Ms ...[indistinct] Motahu who was the MEC's PA, and then on my side also there was Mr Kaizer Maxatshwa and Mr Koloj, Kabelo Koloj

**ADV PRETORIUS SC:** Right Mr Tsoametsi just for the record is that spelt Tsoametsi?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** We will talk of him later.

**CHAIRPERSON:** And this was – was this in October when  
20 this meeting took place?

**MR MOKOENA:** As far as I can recollect it was in October indeed Chair.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** And what was the purpose of the meeting?

**MR MOKOENA:** The purpose of the meeting was to come and listen to his proposed solution to our problem.

**ADV PRETORIUS SC:** Alright, so what was the problem?

**MR MOKOENA:** Our problem was that we are not spending on our human settlement grant.

**ADV PRETORIUS SC:** And who proposed this solution?

**MR MOKOENA:** The solution was proposed by the MEC, Mr Zwane.

**ADV PRETORIUS SC:** And as far as you were aware who  
10 thought of or devised the solution?

**MR MOKOENA:** As far as I could ask in the meeting I realised that he was saying that he also got an advice, that's why he came with that, he got advice, expert advice but there was asking him who is this advisor, where did you get this advice from, he did not want to mention, because as a person who was working with almost all departments, all provinces I would have known who might have spoken to him about it, because for me it was illegal, and what is worse is that as I am sitting in the meeting the  
20 tensions that – I am the only one who is asking questions of clarity who is talking to him, as if the meeting is between me and him and all others are quiet, so I think that for me said that it looks like there was a discussion before, all those who were in the meeting with me knew about what was going to proposed in the meeting, and I

was the only one who didn't know about what was going to be proposed in the meeting.

**CHAIRPERSON:** Maybe, it may be that the other people who I assume were junior to you, were leaving it to you as head of department to ask Mr Zwane questions on the matter. Isn't that also a possibility?

**MR MOKOENA:** That could also be a possibility but just for example when it comes to the CFO, the CFO is – the CFO's strong point is supply chain management, issues of  
10 procurement is known more by the CFO than us as HOD's, so I expected the CFO to come in and say this is illegal in terms of the procurement because even from that side I didn't get any support.

**CHAIRPERSON:** Mr Pretorius?

**ADV PRETORIUS SC:** You say that Mr Zwane informed the meeting that he had a solution for the problem?

**MR MOKOENA:** Exactly.

**ADV PRETORIUS SC:** What was that solution?

**MR MOKOENA:** The solution was that we must go out and  
20 buy materials, building material, for the service providers so that service providers cannot be held up in terms of getting on the ground, getting on site to start working faster, that was his way of putting this solution in front of us.

**ADV PRETORIUS SC:** Did he mention anything about

invoices?

**MR MOKOENA:** At that stage no, he didn't mention any invoices.

**ADV PRETORIUS SC:** Have a look at paragraph 11 please of your statement.

**MR MOKOENA:** Okay, you are saying that his plan was we will get these materials and these materials will be managed in the way that the contractors would get the invoices and then go to the material suppliers, get the  
10 invoices from the material suppliers and then come back to us and we signed with them and ensure that they get materials delivered to them, but not in too much details, I was just saying that there must be some invoices that must show that how material or building material that must go out.

**ADV PRETORIUS SC:** Did you ever any occasion to question the validity of the invoices during the implementation of the plan?

**MR MOKOENA:** I think at this stage we were still was  
20 talking to him and because I was so in my uncomfot on the legality of the process.

**ADV PRETORIUS SC:** Alright, well let us get to that then.

**MR MOKOENA:** Then we are agreed that – he said that he was going to send Mr Tsoamatsi to go and do further research because I was adamant this is illegal.



**ADV PRETORIUS SC:** Yes perhaps we are getting ahead of ourselves, we should slow down a little

**CHAIRPERSON:** I would like ...[intervenes]

**MR MOKOENA:** ...[Indistinct – speaking simultaneously.]

**CHAIRPERSON:** Mr Pretorius I would like him to finish telling me about that meeting who said what, how did it conclude before we move further.

**ADV PRETORIUS SC:** Yes, the invoice issue arose in the statement and in the course of the meeting but – Chair,  
10 please, and in fact you are quite correct Chair.

**CHAIRPERSON:** Hm.

**ADV PRETORIUS SC:** From the beginning what happened at that meeting? Who started speaking; whose idea was it; what was the idea and then your intervention and the response to your intervention?

**MR MOKOENA:** Thank you. When we got to the meeting in the board room, he gave us his [00:00:21] his recommendation of proposed solution. And his solution was that we are supposed to buy materials; building materials so  
20 that we can ensure that the contractors are not delayed. The schedules of implementation or of building houses not delayed by the time they start building. And that what will be managing those materials is invoices. Then I said but this is illegal you cannot pay first before you get service. That is what I know about the government. He said, no this is being

done in other provinces; this is legal. Then I said, I am not comfortable with it. I would not agree that we do this plan of yours because it is bordering on illegality. Then he said, Mr Tsoametsi is going to go out – he was given a task to go and research and come back with the document which will be an internal memorandum which will be guiding these strategies that he is giving to us. This plan that he is giving to us. And so the meeting ended at that. And when the meeting ended, I called him back into the board room.

10 **CHAIRPERSON:** Before you go back to the board room is there anybody in the meeting other than yourself and Mr Zwane who spoke? Did any other person speak ...

**MR MOKOENA:** As far as I could...

**CHAIRPERSON:** Anything of substance? Obviously, I am not talking about greeting.

**MR MOKOENA:** As far as I can recall it was only me and the MEC.

**CHAIRPERSON:** Yes. The others were ...

**MR MOKOENA:** They were not required.

20 **CHAIRPERSON:** Yes. And you say the meeting ended on the basis that Mr Tsoa...

**MR MOKOENA:** Metsi.

**CHAIRPERSON:** Yes was going to go and do some research about this solution?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** And prepare a document – an internal document?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** That would then be circulated?

**MR MOKOENA:** That is correct Chair.

**CHAIRPERSON:** Yes okay alright continue.

**ADV PRETORIUS SC:** Just if I may Chair? Before you go to the meeting with the MEC after this general meeting may I ask you please who gave the instruction to Mr Tsoametsi to go and research the legitimacy of the plan?

**MR MOKOENA:** The instruction came from the MEC. Because Mr Tsoametsi was the advisor to the MEC.

**ADV PRETORIUS SC:** So as I understand your evidence it was not Mr Tsoametsi's advice that started the whole idea?

**MR MOKOENA:** No it was not.

**CHAIRPERSON:** Well do you know that? Because you said Mr Zwane did not want to disclose to you the identity of his advisor who gave him this advice and you are saying Mr Tsoametsi – Tsoametsi – is it Tsoametsi?

**MR MOKOENA:** Tsoametsi.

**CHAIRPERSON:** Ja you saying Mr Tsoametsi was his advisor but you are saying that the idea did not originate from Mr Tsoametsi; how do you know that?

**MR MOKOENA:** Let me hasten to say I can correct it. I hear the Chairperson.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** Because we did not get to know who is this person who advised the MEC.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** To come with this – with this plan.

**CHAIRPERSON:** Ja.

**MR MOKOENA:** If he did not mention it and now, he is asking – his tasking Mr Tsoametsi to go and do the research.

**CHAIRPERSON:** And research it ja. But you do not know  
10 whether this might be an idea...

**MR MOKOENA:** They spoke before the meeting.

**CHAIRPERSON:** That came from him or not.

**MR MOKOENA:** You are correct.

**CHAIRPERSON:** Okay.

**MR MOKOENA:** I withdraw that part.

**ADV PRETORIUS SC:** Well let us just clarify that. The  
evidence this morning and yesterday was that Mr Tsoametsi  
produced a memorandum and it was said that that was the  
origin of the idea. Now the memorandum – the only  
20 memorandum we know of authorised by Mr Tsoametsi is the  
one you refer to in paragraph 15 of your affidavit. On page  
243, do you see that?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Right. Now leave aside what  
discussions might have taken place before the meeting. The

memorandum was that the first and the origin of the plan or did as far as you were aware were there some preceding discussions about it before the memorandum?

**MR MOKOENA**: As far as I am aware the task to Tsoametsi came from the MEC from the meeting in the board room which was a response to my questioning the legality and the illegality of the plan.

**CHAIRPERSON**: So is that memorandum the document that Mr Tsoametsi produced pursuant to being asked by Mr  
10 Zwane to go and do research?

**MR MOKOENA**: That is correct Chair.

**CHAIRPERSON**: Okay.

**ADV PRETORIUS SC**: And if one looks at page 355 of FS12 what document is that?

**MR MOKOENA**: That is exactly the document we are talking about.

**ADV PRETORIUS SC**: Right. The date on the 25 November 2010.

**MR MOKOENA**: That is correct.

20 **ADV PRETORIUS SC**: Now we have looked at this document and it perhaps not necessary to go through the whole document but this does not appear to be an opinion on the legality of the plan at all. In fact, it assumes the legality of the plan and says how the plan should be implemented. Am I correct?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** To your knowledge was there ever a document prepared advising on the legality of the plan?

**MR MOKOENA:** To my knowledge this is the only document that was prepared. This went from the MEC's meeting in the board room to ensure that we implement his plan. These are the only document.

**CHAIRPERSON:** I see from this document.

**MR MOKOENA:** And Chair.

10 **CHAIRPERSON:** I see from this document that Mr Tsoametsi is described as Deputy Director General. Now you mentioned earlier on that he was an advisor or – to Mr Zwane. I take it that you cannot be advisor to the MEC and be Deputy Director General, am I right?

**MR MOKOENA:** Chair you are correct. But sometimes there are things that are happening on the ground that are not necessarily according to how things should be traditionally. He came to work into the MEC's office as an advisor. He was residence inside the MEC's office. But then sometimes  
20 a position that he was holding according to the structure of the department were the DDG post. So sometimes that for an example as I was the HOD the DDG for my Human Settlements was another person. He never [00:07:56] from the first year up until the last year I left. But she was in our structure for Human Settlement as a DDG.

**CHAIRPERSON:** But...

**MR MOKOENA:** But she was working somewhere else.

**CHAIRPERSON:** But ...

**MR MOKOENA:** Outside.

**CHAIRPERSON:** The Department – your department at that time of Mr Tsoametsi how many DDG posts did it have?

**MR MOKOENA:** It only had one DDG post which was occupied by a person who was not handling anything to do with Human Settlements.

10 **CHAIRPERSON:** Yes.

**MR MOKOENA:** So I just – I was just using an example about the conflating of the DDG Tsoametsi as the post in the structure as against him working in the MEC's office advising the MEC.

**CHAIRPERSON:** You see my understanding about advisors to Ministers and I assume that would apply to MEC's evidence that I have heard suggest that you know an advisor to a Minister which I assume would be the same with an advisor to a MEC you know does not get involved with the  
20 operations of the department. Those are left to the Head of Department or to the Director General.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** And he or she is there to just advise the Minister or MEC.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** Now that – that has given me the impression that when you are an advisor to the Minister you occupy a particular space that you are not – you cannot be Deputy DG of the department because that is now operations. Is the position that simply he was paid at the...

**MR MOKOENA:** DDG.

**CHAIRPERSON:** Level of DD?

**MR MOKOENA:** That is correct Chairperson.

**CHAIRPERSON:** Which did not necessarily mean that he  
10 was occupying the position of DDG in your department.

**MR MOKOENA:** In the MEC's office. Because the MEC was the MEC for both departments.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** He was the MEC for Local Government as well as the MEC for Human Settlements.

**CHAIRPERSON:** Yes but was there a DDG post that he was occupying as far as you know?

**MR MOKOENA:** He was occupying a DDG post in Local Government.

20 **CHAIRPERSON:** Yes.

**MR MOKOENA:** But working in the MEC's office.

**CHAIRPERSON:** It seems quite complicated. Maybe we do not need to understand it for purposes – present purposes Mr Pretorius.

**ADV PRETORIUS SC:** Yes perhaps there have more serious



irregularities we have to deal with.

**CHAIRPERSON:** It is just that of course when...

**ADV PRETORIUS SC:** Not that that started...

**CHAIRPERSON:** When there is a blurring of roles sometimes that is where problems start.

**ADV PRETORIUS SC:** Exactly.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Okay alright.

10 **ADV PRETORIUS SC:** In any event if one looks briefly at the MM2 at page 355 of FS12 I do not intend to take you through it in any detail but it is clear from the background section on page 355 that it assumes that the decision to implement the plan – the intervention strategy it is called had already been taken.

**MR MOKOENA:** Exactly.

**ADV PRETORIUS SC:** And it then goes on to set out how that would be implemented by setting out the responsibilities of the various parties. That is the contractor, supplier and  
20 department.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Right we will come back to that in a moment and its signature. But that document was presented to you on the 25 November 2010, correct?

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** Let us go back to the meeting that took place in Bloemfontein during October 2010. You say that the plan was put as the plan of the MEC. It was tabled; you responded to it and questioned its legality. Mr Tsoametsi was then mandated to go and prepare a document as you say to do some research regarding the legitimacy of the plan. We have looked at that document that you say is the – that document. You then referred the Chair to a private meeting you held with the MEC after this meeting.

10 Would you tell the Chair about that please?

**MR MOKOENA:** Thanks very much. Immediately after the meeting when everyone stands up to go out of the meeting – out of the board room then I got – I approached the MEC and say MEC can we have a word please? Then we go back into the board room; we sit down. I still say to him that

1. I feel like the plan that you are bringing is illegal.

2. I thought that we are going to work as we traditionally used to. When he has got an issue, he calls me as the HOD we talk first about it so that when we talk to other  
20 colleagues in my department then at least I know what it is they are going to be talking about.

That is the protocol traditional that we have been using in the Province but he did not approach it that way. So that was the two issues that I wanted to raise with him. And then what happened is that he said then to me, look we have

discussed about this. This is my plan and it is going to happen. We are going to implement it. But if you have a problem with it you just submit your resignation letter and know that once you have submitted your resignation letter you will get out on the street and you will be poor. Your house will be taken back by the banks. Your car. Your children will be out of school and he stood up and left me sitting in the board room. But what he was saying [00:14:04] and it is like someone like who is boasting. So we did not  
10 finish that but in a correct way. I think it was frustrating. Then I left I went to my office.

**ADV PRETORIUS SC:** When he spoke to you in this manner that you have just described to the Chair did he use a Sotho expression?

**MR MOKOENA:** Yes he used a Sotho expression.

**ADV PRETORIUS SC:** Well would you tell the Chair what that expression was?

**MR MOKOENA:** That expression in Sotho he was saying that ...

20 **CHAIRPERSON:** Say it in Sotho first and then you can translate it.

**MR MOKOENA:** It was something like [African language] meaning that you will be poor, you will be like grey; like dust [African language]. So meaning that he is saying what is going to happen to me after I have resigned.

**CHAIRPERSON:** Hm.

**MR MOKOENA:** He said it was the three that was going to be in abject poverty in short.

**CHAIRPERSON:** Did he not say anything about shoes?

**MR MOKOENA:** Yes that is exactly the – when I – [African language]. So I translate it here into figuratively and not – literally as he said it.

**CHAIRPERSON:** Ja.

**MR MOKOENA:** Because I wanted it to be understood the  
10 way he was putting it.

**CHAIRPERSON:** Ja. Just repeat that what is – but it means literally in what he means in substance.

**MR MOKOENA:** In Sotho he was saying [African language]. Meaning that you will be walking next to your shoes you will not walk in your shoes. There will be no shoes to walk in in other words.

**CHAIRPERSON:** Okay alright.

**MR MOKOENA:** Yes. That is what I was trying to say. That is why I wanted to capture it in that way so that I do not  
20 forget it.

**CHAIRPERSON:** Yes okay.

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** It may seem pretty obvious but what conclusion did you draw from his discussion with you at that private meeting as to what would happen to you if you did

not comply and refuse to implement the plan?

**MR MOKOENA:** It was obvious that he was saying that I must resign because I do not want to implement his plan. So it was a threat to keep me out of the post I was in or out of the job. Simply that is how I understood it.

**ADV PRETORIUS SC:** Right.

**CHAIRPERSON:** But he did not say he would fire you?

**MR MOKOENA:** He said I must submit...

**CHAIRPERSON:** He said you...

10 **MR MOKOENA:** My resignation.

**CHAIRPERSON:** He said if you did not want to implement the plan or the strategy you would have to submit your resignation letter?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** The document we know from your evidence was ultimately prepared and presented on the 25 November 2010, correct?

**MR MOKOENA:** That is correct.

20 **ADV PRETORIUS SC:** Was it shown to you?

**MR MOKOENA:** The document was brought to me in my office by Mr Tsoametsi.

**ADV PRETORIUS SC:** Right. Did you read the document?

**MR MOKOENA:** I went through the document. I read the document. I still had – I still was uncomfortable.

**ADV PRETORIUS SC:** Right. Did the document manage to convince you of the legality of the plan?

**MR MOKOENA:** Not at all. That is what – that is what frustrated me therefore I said to him no I cannot agree with this document it is still not saying anything about the legality and the illegality of this plan. Then he took the document went back to the office and then – the MEC called me. As I got in there he said, have you changed your plan? Are you going to submit your resignation letter now? Then I realised  
10 that what you are saying to me is that earlier on I said you must submit your resignation letter if you do not want to go with this plan. Now he is talking about the plan again. So it is almost three [00:17:59] down the line. So I realise that he is still holding onto that that I must submit a resignation letter if I do not want to implement this plan.

**CHAIRPERSON:** I am sorry. I am sorry. I think I missed something somewhere. Mr Tsoametsi brought this document to you.

**MR MOKOENA:** That is correct Chair.

20 **CHAIRPERSON:** Do you remember when it was when he brought the document to you?

**MR MOKOENA:** It was the 25<sup>th</sup>.

**CHAIRPERSON:** It was the 25<sup>th</sup> November?

**MR MOKOENA:** Yes Chair.

**CHAIRPERSON:** And what was the purpose of him giving

you this document? I see it was addressed to you.

**MR MOKOENA**: The purpose was for me to sign and approve it.

**CHAIRPERSON**: And approve the...

**MR MOKOENA**: For implementation.

**CHAIRPERSON**: The – what was to be done.

**MR MOKOENA**: As what to be done.

**CHAIRPERSON**: And the document sought to spell out how the plan or strategy would be implemented.

10 **MR MOKOENA**: Exactly.

**CHAIRPERSON**: Alright. Did you have a discussion with Mr Tsoametsi at that time when he brought this document?

**MR MOKOENA**: We did. We discussed it.

**CHAIRPERSON**: And did you say that you still felt uncomfortable?

**MR MOKOENA**: I did.

**CHAIRPERSON**: And did he say anything to make you believe that there was nothing illegal about the plan?

**MR MOKOENA**: He could not convince me.

20 **CHAIRPERSON**: Ja but did he say anything? Did he try to persuade you?

**MR MOKOENA**: He tried to persuade me but it was empty because if you give a document the document does not say what you should be saying.

**CHAIRPERSON**: Ja. Yes.

**MR MOKOENA:** I cannot listen to what you are saying which is not in the document.

**CHAIRPERSON:** Yes. Yes.

**MR MOKOENA:** Because it will incorrect.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** So then we – I did not agree with him then he took the document he went back to the MEC's office.

**CHAIRPERSON:** And how did the meeting – your meeting with Mr Tsoametsi come to an end? How did it conclude?

10 **MR MOKOENA:** We could not agree so he left.

**CHAIRPERSON:** He left your office without the two of you agreeing.

**MR MOKOENA:** He left the office. Without me agreeing.

**CHAIRPERSON:** And – and what was your way forward after he had left?

**MR MOKOENA:** Then I got a call to come to the MEC's office.

**CHAIRPERSON:** Oh immediately?

20 **MR MOKOENA:** Immediate. Immediately. When I got to the MEC's office the MEC is asking me why I am not signing the document. I said no I am not comfortable with that document. He said but....

**CHAIRPERSON:** And you made it clear to Mr Tsoametsi you are not going to sign the document?

**MR MOKOENA:** I had made it clear to him.



**CHAIRPERSON:** Okay alright.

**MR MOKOENA:** That is why he went to the MEC.

**CHAIRPERSON:** So – oh okay I think that is what I missed. So – so the MEC called you to his office. You went there. He asked you why you were not prepared to sign the document.

**MR MOKOENA:** I told him that this document is not telling me anything that shows that this is legal in terms of us implementing it.

10 **CHAIRPERSON:** Yes.

**MR MOKOENA:** He said this is my plan you either sign this sign this document or you submit my letter. I asked you a letter earlier on but if you do not agree with me on my plan submit your resignation letter.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** So I think when I heard that I realised that okay it means he is still putting me into the same corner. Then I signed it [00:20:45] in his office.

20 **CHAIRPERSON:** [Coughing] excuse me. Was – was that meeting just between the two of you or was Mr Tsoametsi also present?

**MR MOKOENA:** No it was now only me and the MEC.

**CHAIRPERSON:** It was only the two of you?

**MR MOKOENA:** I think Mr Tsoametsi had left the document with the MEC.

**CHAIRPERSON:** Oh okay. Did you not take the document at all or you did keep a copy and Mr Tsoametsi left with another copy? When Mr Tsoametsi left your office earlier did you keep a copy of the document or did you not keep any copy?

**MR MOKOENA:** He came with one document.

**CHAIRPERSON:** He came with – he came with one?

**MR MOKOENA:** He came with one that is why he left with that same one.

**CHAIRPERSON:** And left with it.

10 **MR MOKOENA:** Yes Chair.

**CHAIRPERSON:** Okay. So – so you had this meeting with Mr Zwane. So he said he reminded you that he had told you that if you were not prepared to implement his plan then you must – you should submit your resignation letter?

**MR MOKOENA:** Resignation letter yes.

**CHAIRPERSON:** And you had not obviously submitted any resignation letter up to that point? So what did he say in the light of that?

20 **MR MOKOENA:** In the light of that I thought that he was saying to me so if you do not sign then bring me my letter.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** I think that is what he was saying. So for me they are saying I must resign.

**CHAIRPERSON:** And how did your meeting end? On what basis did you conclude that meeting?

**MR MOKOENA:** We concluded the meeting by me signing. I signed that document.

**CHAIRPERSON:** Did you sign it in front of him?

**MR MOKOENA:** Inside of – in front of him.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** Yes.

**CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** Why did you sign it?

**MR MOKOENA:** Because I had to resign if I do not want to  
10 sign the document.

**CHAIRPERSON:** Why did you not say MEC I am sorry this is illegal I am not prepared to do – to sign it and I am not going to give you a resignation letter because there is nothing to resign for?

**MR MOKOENA:** I think that did not come my way because for me it was only – it is either you go with my plan or you resign. I looked at it as either or. I did not look at the other way in between.

**CHAIRPERSON:** But you knew did you not that you could  
20 not be dismissed for refusing to do something illegal, is it not?

**MR MOKOENA:** Yes I knew.

**CHAIRPERSON:** You knew that?

**MR MOKOENA:** Yes.

**CHAIRPERSON:** So if you refused to submit a letter or

resignation he would have to dismiss you and you would have known that he could not dismiss you for refusing to do something illegal.

**MR MOKOENA**: I know Chair.

**CHAIRPERSON**: Yes. So why did you not adopt that position namely I am sorry MEC this is illegal I am not going to be party to it and I am not giving you a resignation letter?

**MR MOKOENA**: I think that is what I should have done but I missed on it because I thought that if I do not sign it it  
10 means I must come with my resignation letter to him.

**CHAIRPERSON**: Yes.

**MR MOKOENA**: Because that was for the second time now that he is telling me to bring this – one letter if I do not go with him according to his plan. So for me I think my – my thinking – my flow of thoughts was now locked on two things. It is either I submit your resignation letter and go or you sign the document and then the plan goes.

**CHAIRPERSON**: Mr Pretorius.

**ADV PRETORIUS SC**: This was now the 25 November  
20 2010?

**MR MOKOENA**: Correct.

**ADV PRETORIUS SC**: There was a builder's holiday to come on the 15 December 2010 for a month?

**MR MOKOENA**: That is correct.

**ADV PRETORIUS SC**: So effectively ...

**CHAIRPERSON:** At three weeks.

**MR MOKOENA:** Three weeks yes.

**ADV PRETORIUS SC:** Ja there were four months left in the year – three weeks of which would be a builder's holiday. So just over three months left in the year.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** And as I understand your evidence correct me if I am wrong because I may have misunderstood you that by this time still before the plan had been devised  
10 and the document signed no houses had been built?

**MR MOKOENA:** No houses have been built by this time still.

**CHAIRPERSON:** This is now in November?

**MR MOKOENA:** This now is in November yes.

**CHAIRPERSON:** Ja okay.

**ADV PRETORIUS SC:** In paragraph 20 you say shortly after your meeting with the MEC. That is the meeting where – well

**MR MOKOENA:** The ...

**ADV PRETORIUS SC:** Either the meeting in Bloemfontein or  
20 the meeting where you signed the document, they may both have been in Bloemfontein but in any event did Mr Zwane approach you with a list of contractors?

**MR MOKOENA:** Yes he approached me with a list of contractors a week later. He said here is the list of my contractors that I want you to approve. I want you to call to

come in so that they start implementing construction of these houses.

**ADV PRETORIUS SC:** Now the list that he gave you were those builders in other words contractors meaning builders or were there suppliers on that list?

**MR MOKOENA:** It was only contractors on that list.

**ADV PRETORIUS SC:** Did you notice anything about the list?

**MR MOKOENA:** My glance on the list was that I saw many  
10 companies that I saw for the first time. I know the persons who have been working in the Province for years. I could realise that no there is something wrong here. When I asked him why do you have so many new contractors with so many units because for us a new contractor would give 200 and less not more than 200. He said this is my plan. This is the document that I have the power to allocate and these are the people I am allocating to.

**CHAIRPERSON:** Well – was he correct to say he had power to allocate?

20 **MR MOKOENA:** He has power to allocate he is the political – is the executive authority's power. It is not the DG's power.

**CHAIRPERSON:** He had – he had power to allocate which contractors get what job?

**MR MOKOENA:** Construction job.

**CHAIRPERSON:** Yes he had that power as an MEC?

**MR MOKOENA:** As MEC yes they have got power to allocate projects to contractors.

**CHAIRPERSON:** Oh I thought that that would be the job of a DG and his or her officials and not a politician.

**MR MOKOENA:** Well he – but tradition would have been – been all along of that. We used to prepare a list where the other MEC's before him looking at the performance which either contractors were not performing and then try to grade  
10 them and give them more [00:27:42] so that we can have more performance on the ground so that we can protect our own grant. And then the new ones we will give them lesser so they get in the groove of construction and once they understand construction then we will increase as it goes. But now this time he told me that his list is close to his chest and then when he brings the list the list of many people that I do not know. Many contractors that I do not know.

**CHAIRPERSON:** I am sorry are you saying that prior to him being an MEC for the Department of Human Settlements  
20 there was a practice in terms of which in the department you would show the list of contractors to the MEC whoever the MEC happened to be.

**MR MOKOENA:** That is correct Chair.

**CHAIRPERSON:** And the MEC would then allocate – indicate which – which contractors should be given jobs.

**MR MOKOENA:** According to our recommendation that we have submitted. We were the ones who were...

**CHAIRPERSON:** You would make recommendations?

**MR MOKOENA:** It originates with us as officials it goes to the MEC. That is how we used to do it with all other MEC's before him.

**CHAIRPERSON:** Yes. So – but what you were doing as officials was making recommendations to the MEC?

**MR MOKOENA:** That is correct.

10 **CHAIRPERSON:** And the MEC would have the final say?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** As to who should be given which tender or which job?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** And who was the MEC before – for Human Settlements before Mr Zwane?

**MR MOKOENA:** Before Mr Zwane it was Mr Mafereka.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** Yes.

20 **CHAIRPERSON:** And so with Mr Zwane you did the same?

**MR MOKOENA:** With Mr Zwane we did not because he said he was going to do it himself.

**CHAIRPERSON:** Oh you did not make recommendations he came with his own list?

**MR MOKOENA:** Yes his own list.



**CHAIRPERSON:** And he said that is my list?

**MR MOKOENA:** That is his list. That is correct.

**CHAIRPERSON:** Okay. Mr Pretorius.

**ADV PRETORIUS SC:** Yes. The evidence you have just given is let me put it - and it seems to me you are referring to a practise rather than a law or a regulation.

**MR MOKOENA:** Just a practise, yes.

**ADV PRETORIUS SC:** Because the first point that must be made is that no minister of MEC would have the power to  
10 appoint contractors. That must be done through a proper competitive process.

**MR MOKOENA:** On the procurement.

**ADV PRETORIUS SC:** The procurement law and regulations and policy must be followed.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** So we are dealing here with an appointment process that takes place in absence of the procurement process.

**MR MOKOENA:** That is true.

20 **ADV PRETORIUS SC:** My understanding and please correct me if I am wrong, but apart from a formal approval that might be required, an MEC as MEC, member of the Provincial Cabinet would have no power to appoint contractors at any stage of the process. It is a matter of law.

**MR MOKOENA:** It is a practise, not law. You are correct.

**ADV PRETORIUS SC:** In any event, he says here is a list of a 106 contractors, right?

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** Did he give you an instruction at the same time he presented the list to you?

**MR MOKOENA:** That is correct. He gave me an instruction. He said: Here is the list. These are the contractors that I want. They will be able to construct the houses in the province.

**ADV PRETORIUS SC:** Yes. You have told the Chair that  
10 you have looked at the contractors that were listed and you raised some questions in your own mind and you communicated your concerns to the MEC.

**MR MOKOENA:** Correct.

**ADV PRETORIUS SC:** And you said something about unknown contractors been given a high number of houses to build. Will you just detail that for the Chair, please?

**MR MOKOENA:** Thank you. My argument and as well as our colleagues always would say that if you want to have performance so that we always get better percentage in  
20 terms of budget at national, we must perform better.

So we must allocate more units to the best performing contractors in the province. So that is what I raised with him and he said: This is my plan and this is the list of the contractors that are going to implement my plan.

**CHAIRPERSON:** H'm. Continue.

**MR MOKOENA:** And so then, I had to go and sit down and look at all of them and then I checked with my team and they said but they also did not know most of the contractors on the list.

**CHAIRPERSON:** Was this list written on a paper, I take it?

**MR MOKOENA:** It was on a paper.

**CHAIRPERSON:** Yes. And it was 106 contractors all together?

**MR MOKOENA:** That is correct.

10 **CHAIRPERSON:** Was your understanding that he meant that these were the only contractors who are supposed to be given the job?

**MR MOKOENA:** That was my understanding Chair.

**CHAIRPERSON:** And in the document that he gave you, was it already indicated how many houses, some of them must be given to build?

**MR MOKOENA:** The units were already allocated.

**CHAIRPERSON:** Were the units allocated to all the 106?

**MR MOKOENA:** All 106.

20 **CHAIRPERSON:** So it was a complete plan as to who must build how many houses?

**MR MOKOENA:** Complete. That is correct.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** Correct Chair.

**CHAIRPERSON:** Okay, okay.

**ADV PRETORIUS SC:** At the bottom of page 344, you refer to six contractors.

**CHAIRPERSON:** Mr Pretorius, if we do have that document here, it will be good to see it but if we do not, then it would be good to find out whether it still exists somewhere, the document that Mr Mokoena was given by Mr Zwane.

**ADV PRETORIUS SC:** Yes. I am told that we do not have that document but we will certainly make enquiries. It could be mentioned in one of the reports and we will research that.

10 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Otherwise, we will try and find it.

**CHAIRPERSON:** Yes, yes.

**ADV PRETORIUS SC:** What happened to that document Mr Mokoena?

**MR MOKOENA:** Well, after that you have to start calling those contractors to come in.

**ADV PRETORIUS SC:** No, I am sorry.

**MR MOKOENA:** Oh.

**ADV PRETORIUS SC:** Maybe I did not make myself clear.

20 **MR MOKOENA:** Yes?

**ADV PRETORIUS SC:** The document itself, the piece of paper, what happened to the piece of paper? Because the DCJ is interested in seeing that document.

**MR MOKOENA:** That list came to me. I had to implement it.

**ADV PRETORIUS SC:** Yes.

**MR MOKOENA:** I had to give it to our Project Management Unit to start now calling those people and ensuring that they get onsite in different municipalities so that we can steer up the process.

**ADV PRETORIUS SC:** Yes. So ...[intervenes]

**CHAIRPERSON:** Do you by any chance have it somewhere yourself or other than what may be in the department?

**MR MOKOENA:** Unfortunately, I did not take any document  
10 when I left the office, you know, in the province.

**CHAIRPERSON:** Oh, okay. Was it handwritten, was it typed, the names ...[intervenes]

**MR MOKOENA:** It was typed.

**CHAIRPERSON:** The names were typed?

**MR MOKOENA:** The names were typed.

**CHAIRPERSON:** Okay.

**MR MOKOENA:** And the units were typed.

**CHAIRPERSON:** Okay. Not signed?

**MR MOKOENA:** Not signed.

20 **CHAIRPERSON:** Okay. Well ...[intervenes]

**MR MOKOENA:** Certain list did not have any space for signing.

**CHAIRPERSON:** Was it on the letterhead of the MEC's office or not?

**MR MOKOENA:** It was on a ...[intervenes]

**CHAIRPERSON**: Plain paper?

**MR MOKOENA**: ...plain paper.

**CHAIRPERSON**: Okay alright.

**MR MOKOENA**: Yes, Chair.

**ADV PRETORIUS SC**: You have told the Chair Mr Mokoena that you raised your concerns about the contractors on the list, including concerns about the number of houses allocated to particular contractors.

**MR MOKOENA**: That is true.

10 **ADV PRETORIUS SC**: What was the response of the MEC to you raising these concerns?

**MR MOKOENA**: The MEC said that he is going to work with us and ensure that he goes on the ground to speed up the process. You can change that document so if anything, that is improved. In fact, we help the contractors to deliver quickly.

**ADV PRETORIUS SC**: Was he amenable as far as you to revising the names of the names of the contractors on the list?

20 **MR MOKOENA**: He was not amenable to revise it.

**ADV PRETORIUS SC**: Did he say as much?

**MR MOKOENA**: He said as much.

**CHAIRPERSON**: Did you... you said that some of the contractors whose names were on the list were contractors that you did not know.

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** Is that right?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** Was it just some or was it most that he did not know or are you not able to remember?

**MR MOKOENA:** It could be around ...[intervenes]

**CHAIRPERSON:** Many of them?

**MR MOKOENA:** Many of them.

**CHAIRPERSON:** You might not recall how many but  
10 ...[intervenes]

**MR MOKOENA:** I may not recall out of the 106.

**CHAIRPERSON:** And ...[intervenes]

**MR MOKOENA:** If I see the list, I can tick them. I can highlight them.

**CHAIRPERSON:** You can tick. Yes, yes. Out of a 106, do you think that there were maybe more than 50% that you did not know?

**MR MOKOENA:** I think there might have been around 40/45.

20 **CHAIRPERSON:** Oh, around 40/45 that you had never heard of?

**MR MOKOENA:** That I have never seen before.

**CHAIRPERSON:** Yes. You said that normally you used to, the principle that you followed in allocating construction work before was that those contractors who had a history of

performing well when doing this kind of job for the department, you would give them more houses to build.

**MR MOKOENA**: That is correct, Chair.

**CHAIRPERSON**: Was that principle followed in the allocation of houses that was reflected in the document that Mr Zwane gave you?

**MR MOKOENA**: Chair, it was not followed.

**CHAIRPERSON**: Are you able to say what principle was followed? Was it the opposite of that principle or it was not  
10 necessarily the opposite but it was a mixture?

**MR MOKOENA**: It was a mixture.

**CHAIRPERSON**: Yes. Okay alright.

**MR MOKOENA**: Because it looks like he took from the list of those... the tenders that expired.

**CHAIRPERSON**: Yes.

**MR MOKOENA**: As well as from the CSD, from the Central Database. It was taken from all over.

**CHAIRPERSON**: Yes.

**MR MOKOENA**: Others were not appearing anywhere.

20 **CHAIRPERSON**: Yes.

**MR MOKOENA**: They not appearing in the database, they are not appearing in our provincial list.

**CHAIRPERSON**: Ja.

**MR MOKOENA**: Those contractors that we used every year and they were not also appearing on the tender. So when



we looked at them, it was such a mix.

**CHAIRPERSON:** So are you saying that when you looked at the list, you were able to recognise that some of the contractors on the list were you on your database of the department.

**MR MOKOENA:** That is correct. We used that.

**CHAIRPERSON:** But you... are you saying that there were some who were not on your database and you did not know where he got them from?

10 **MR MOKOENA:** That is true Chair.

**CHAIRPERSON:** Okay alright. Thank you.

**ADV PRETORIUS SC:** Before we move on, just two points, please. At this stage, how long had you been working in the Department of Housing of the Department of Human Settlements in the Free State?

**MR MOKOENA:** At this stage, I think... I started in 1995.

**ADV PRETORIUS SC:** About 15-years?

**MR MOKOENA:** Almost 15-years, yes.

20 **ADV PRETORIUS SC:** Yes. And during that time, did you come to know of the contractors who were good performers and those who were not?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** So you were able to make an informed judgment of that list, correct?

**MR MOKOENA:** That is true.

**ADV PRETORIUS SC:** The second point is, there has been evidence in the last few days Mr Mokoena of the context with in which these events would have taken place and that is the earlier tender process which had been abandoned.

You mentioned it now in your evidence. And a number of categories of bidders formed part of the database, including those who failed the bid process.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** And including those who were judged  
10 incompetent to be given work, correct.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Those ...[intervenes]

**CHAIRPERSON:** Make sure that you speak loud enough for the mic to capture what you say Mr Mokoena.

**MR MOKOENA:** Thank you, Chair.

**CHAIRPERSON:** You said correct to the last question that Mr Pretorius asked you, is that right?

**MR MOKOENA:** That is true.

**CHAIRPERSON:** Okay.

20 **ADV PRETORIUS SC:** And amongst the 106 contractors, were there those that had been disqualified during the bidding process or can you not remember?

**MR MOKOENA:** I cannot remember Chair.

**ADV PRETORIUS SC:** I think that fact emerges from the reports and we have summarised some of that of your benefit

Chair. In any event, at the bottom of page 344, Mr Mokoena you refer to the names of some of the contractors. Could you tell the Chair about that, please?

**CHAIRPERSON:** Is that page 344?

**ADV PRETORIUS SC:** 344 of Bundle FS12, the last paragraph on that page.

**MR MOKOENA:** Thank you. As they were implementing the project or his plan, we realised that there were three companies that were very close to him. Close to him, I  
10 mean, when our guys go on site, we find them in those and not many times in other projects but many times in these projects.

So then they started saying to me: We are worried that... it looks like the MEC has got a close relationship with these contractors. Then out of the thin air, I have been given three names that I could recall. Aleatory, Quinoa Property Developers and Renate Properties.

**ADV PRETORIUS SC:** Now you say these developers were very close to Mr Zwane in your own words but you do not  
20 really give the basis of that conclusion. On what basis could you conclude that?

**MR MOKOENA:** ...[intervenes]

**CHAIRPERSON:** So in other words, what makes you say ...[intervenes]

**MR MOKOENA:** They were close.

**CHAIRPERSON:** ...they were close to him or he was close to these contractors?

**MR MOKOENA:** It was just a physical closeness.

**CHAIRPERSON:** H'm?

**MR MOKOENA:** Not just the physical closeness but the functional closeness in terms of the ...[intervenes]

**CHAIRPERSON:** Ja, in terms of their relationship.

**MR MOKOENA:** Ja, I say so because there were these from Mpumelelo, from the area where he comes from. Number 1  
10 and number 2. When we were going around in different areas on Operation Hlasela Programme, the premier, as I have earlier alluded, would allocate or announce some new sporadic allocations.

And then you realise that at the end of the day, the people are based in the Free State. The contractors that were given those jobs of Operation Hlasela houses were these three.

I think of Harrismith. I think of Senekal and I think Vrede. So on top of the allocation that they are in the list,  
20 this is where they were carrying also under the allocations from Operation Hlasela Project.

And also, the third point. I think, Aleatory and Quinoa were also allocated the Restitution Housing Project in Ode(?). So it means, it the most three layers that makes me think that it means there is some kind of closeness here.

**CHAIRPERSON:** But was he the one allocating them, houses to build under the Operation Hlasela Project?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** He was the one allocating that?

**MR MOKOENA:** Yes, he was the one allocating there.

**CHAIRPERSON:** Oh, okay.

**MR MOKOENA:** And maybe sometimes me and him were saying to the premier that we do not have subsidies. You must not allow this. Even sometimes when the premier  
10 announced, he comes back again to allocate those to him, his close companies.

So it means, he is just saying to me, we are together. By saying to the premier we do not have any budget for these allocations but give it some time. He goes back to use the same thing that he was doing to allocate for himself these contractors.

**ADV PRETORIUS SC:** Well, it may be that from what you said, one could conclude that these contractors were favoured by being given contracts at all three levels but  
20 being very close to Mr Zwane implies something more than that or must be limited to what you have said is the reason?

**MR MOKOENA:** Chairperson, for me, if you allocate so many units, the newly established contractors, not just that the overbearing them, it means also that there is something that brings you close to them. Although I cannot vouch. We

have not seen anything but it means there is also some benefits that comes from that.

**ADV PRETORIUS SC:** So apart from the fact that these contractors appeared to be favoured by Mr Zwane in his allocation of the housing contracts, you have no other evidence of closeness.

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** Correct?

**MR MOKOENA:** Yes. But I think there should have been a  
10 benefit.

**ADV PRETORIUS SC:** Well, that is your assumption.

**MR MOKOENA:** That is my assumption.

**ADV PRETORIUS SC:** You have no evidence of that.

**MR MOKOENA:** No evidence about that.

**ADV PRETORIUS SC:** Good. Because it is a serious allegation.

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** But you also mentioned here that Mr Zwane communicated to you the need to expedite process  
20 payment. What was that all about?

**MR MOKOENA:** Okay that was on the subsidy section on that list.

**ADV PRETORIUS SC:** Right?

**MR MOKOENA:** So wherever they were building with these contractors and contractor in Kroonstad, they would call me

and say, this contractor that submitted their claims, make sure that you speed up their claims. Speed up the processing of those claims.

But with other contractors it was not coming to us to pressurise us to ask us to expedite the processing.

**ADV PRETORIUS SC:** Yes. But quite apart from the allocation of contracts to particular contractors, is it the job of the MEC and your experience to be involved in expediting payments to these contractors?

10 **MR MOKOENA:** Not at all. Not at all Chair.

**ADV PRETORIUS SC:** What was your conclusion about whether this was regular or irregular?

**MR MOKOENA:** My conclusion was that there was a relationship that was beyond just a functional procedure. That is, I was talking about benefits.

**ADV PRETORIUS SC:** Paragraph 21, you talk about tenders and instructions of the MEC. What was that? I think you have already given this evidence. Is there anything to add, paragraph 21.

20 **MR MOKOENA:** Yes, I have already given this evidence about the projects.

**ADV PRETORIUS SC:** Yes. And you have given the evidence in paragraph 22 about how in your department you would work on a grading system.

**MR MOKOENA:** That is true.

**ADV PRETORIUS SC:** And award contracts consistent with that grading system.

**MR MOKOENA:** Their performance.

**ADV PRETORIUS SC:** That was not followed in this allocation.

**MR MOKOENA:** Not at all.

**ADV PRETORIUS SC:** Well, what do you say there at the bottom of page 345? You provide some more detail.

**MR MOKOENA:** [No audible reply]

10 **ADV PRETORIUS SC:** I think you have given this evidence but perhaps just for completeness so that we do not leave anything out. What do you say there in the last part of paragraph 22?

**MR MOKOENA:** In the last part of 22, all I am saying there is that these six contractors, when you look at the span of the work that they were doing, they were doing more than 500 per contractor per day but they knew.

And for me within that capacity to do, to deliver on this, I think it is just because they wanted more money to be  
20 reallocated to them because at that time, the subsidy house was roundabout R 55 000,00 per unit.

**CHAIRPERSON:** Was that R 55 000,00 at the end of page 345, is R 55 000,00 per unit?

**MR MOKOENA:** R 55 000,00 per RDP unit.

**CHAIRPERSON:** Yes, okay.



**MR MOKOENA**: Yes, Chair.

**ADV PRETORIUS SC**: So if you allocate ...[intervenes]

**MR MOKOENA**: Five hundred multiply by ...[intervenes]

**ADV PRETORIUS SC**: You get about 275 million.

**MR MOKOENA**: Yes.

**ADV PRETORIUS SC**: Really?

**MR MOKOENA**: Yes.

**ADV PRETORIUS SC**: It is a lot of money.

**MR MOKOENA**: Yes.

10 **ADV PRETORIUS SC**: R 55 000,00 times 500. I am sure someone can work it out for me. But it is a lot of money.

**MR MOKOENA**: It is.

**ADV PRETORIUS SC**: Right. This programme then, you say in paragraph 23, again with the signing of contracts with the contractors. When did that take place?

**MR MOKOENA**: Mainly from November after the signing of that document of 25 November.

**ADV PRETORIUS SC**: Right. And once these contracts had been signed, how did the plan continue to be implemented?

20 **MR MOKOENA**: As the plan was implemented in a way that the advertise(?) contract. It needs the material supplier. Will have a contract... will enter into a contract with the department as well as with the contractor through the sessions.

So they start delivering the materials to the contractor

on site and then when the... when we pay... when the contractor claims and the money goes back to the material supplier because the material supplier supplies.

**ADV PRETORIUS SC:** Alright. We have learnt in the review application of the papers of the detail of the three chairs of contract.

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** The first being the contract with the contractor, the second being the try-part(?) contract for the  
10 supplier and delivery of materials.

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** And the third being the cession agreement. But I do not want to go back through those detailed agreements.

**MR MOKOENA:** Okay.

**ADV PRETORIUS SC:** So if I understand what you are saying that pursuant to this contractual arrangement of cessions and supply agreements and contracts with contractors, materials were delivered.

20 **MR MOKOENA:** Yes, that is true.

**ADV PRETORIUS SC:** To the contractors. And the claim was made against the department against which claim the department paid.

**MR MOKOENA:** That is true.

**ADV PRETORIUS SC:** Now was... were you satisfied when

you received the claim in the form of an invoice or how ever that in fact the materials had been delivered?

**MR MOKOENA**: That is why I had reservations from the beginning because I knew that when it comes to invoices, you can never be sure about any invoice that we are getting because some invoices will be inflated, the prices will be changed from area to area, from region to region.

So I think I had a fear that we were not going to be able to control that because if we have enough stuff, we have  
10 enough technical people. So the authenticity of these invoices was always a reservation for me.

**ADV PRETORIUS SC**: Yes. And that is a subject matter of later investigations.

**MR MOKOENA**: Yes.

**ADV PRETORIUS SC**: Just ...[intervenes]

**CHAIRPERSON**: I am sorry Mr Pretorius. Just to try and follow and this is as Mr Pretorius just said, it was something that was covered in the review application but I just want to have clarity in my own mind.

20 You have a material supplier, you have a contractor, a building contractor and you have the department. Now in terms of Mr Zwane's solution of strategy, the material supplier would supply the material or deliver material to the contractor.

**MR MOKOENA**: That is true.

**CHAIRPERSON:** And then the contractor would then issue an invoice to the department.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** And then on the basis of that, the department would then pay the contractor.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** Or the material supplier.

**MR MOKOENA:** Will pay the material supplier.

**CHAIRPERSON:** Okay so the department will pay the  
10 material supplier.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** But it would do so without checking whether the material had been delivered.

**MR MOKOENA:** And whether the material and the invoice are in sync.

**CHAIRPERSON:** Match. Ja.

**MR MOKOENA:** That is where the problem was.

**CHAIRPERSON:** Yes. But of course, if the department wanted to check, they could check that, is it not?

20 **MR MOKOENA:** If we had capacity we could check.

**CHAIRPERSON:** If the capacity to check.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** But did the department also asked the contractor to certify or confirm in writing that the material had been delivered?

**MR MOKOENA:** I think that is what our technical people were doing with the contractors.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** To get all the materials that he needed from this material supplier according to this invoice.

**CHAIRPERSON:** H'm.

**MR MOKOENA:** Because the invoice were brought to us by the contractors from the material suppliers.

**CHAIRPERSON:** Yes.

10 **MR MOKOENA:** They checked that part.

**CHAIRPERSON:** So your department would have something from the contractors saying: Yes, the material has been delivered.

**MR MOKOENA:** That is true.

**CHAIRPERSON:** Whether that was factually true or not, would be something that you did not know.

**MR MOKOENA:** Correct, Chair.

**CHAIRPERSON:** Okay alright.

20 **ADV PRETORIUS SC:** Well, we have heard evidence and again one does not want to go back into the complexity of the relationship between these three chairs of agreement. But we have heard evidence that, firstly that the agreements of cession were used as documentation to justify the payments.

**MR MOKOENA:** That is true.

**ADV PRETORIUS SC:** And we have also heard evidence that the document required to verify a payment such as the certification of receipt by the contractor. Those were not always present when payment was made.

**MR MOKOENA:** Were not always available.

**ADV PRETORIUS SC:** Is that correct?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Right.

**MR MOKOENA:** I think that is exactly the problem that we  
10 had because we were still a new department. We did not have sufficient staff, sufficient capacity that could do this very well. So I was right in the beginning not in agreement with this type of plan to be implemented because it overwhelmed us.

**ADV PRETORIUS SC:** Yes. But of course, the original agreement and the standard form arrangement of the relationship between the contractor and the department had its own safeguard because the contractor would have to source the materials.

20 **MR MOKOENA:** H'm.

**ADV PRETORIUS SC:** The contract would have to pay.

**MR MOKOENA:** That is true.

**ADV PRETORIUS SC:** And if there was anything untoward in that relationship, the contractor would suffer ...[intervenes]

**MR MOKOENA**: That is true.

**ADV PRETORIUS SC**: ...if the contractor had now to pay for materials that had pay for materials that were not even delivered, correct?

**MR MOKOENA**: That is true.

**ADV PRETORIUS SC**: So the contractor would in its own interest check that supplies were actually delivered in correct quantities of the correct quality because it ultimately is responsible for payment.

10 **MR MOKOENA**: That is correct.

**ADV PRETORIUS SC**: And only after a milestone has been reached, can the contractor then claim for those materials from the department, correct?

**MR MOKOENA**: That is true.

**ADV PRETORIUS SC**: So that system has its own inherent safeguards.

**MR MOKOENA**: Yes.

**ADV PRETORIUS SC**: None of those safeguards existed or very few of those safeguards existed in this new plan. Is  
20 that correct?

**MR MOKOENA**: No, they were not ...[intervenes]

**ADV PRETORIUS SC**: And that was your concern.

**MR MOKOENA**: Ja, that was my concern. Yes.

**ADV PRETORIUS SC**: You say in the third paragraph, not the third numbered paragraph on page 346, that during the

period November 2010 to February 2011, an amount was spent in pursuance of this plan of supplying materials and paying materials supplies. How much was that?

**MR MOKOENA**: Rounding it off to R 500 million. That was first a bit below R 500 million.

**ADV PRETORIUS SC**: But this plan of paying suppliers to supply materials to contractors cost in a short period of time R 500 million.

**MR MOKOENA**: That is correct.

10 **ADV PRETORIUS SC**: And do I understand correctly, this would then be... or what was the purpose of spending the money? Let me not put words in your mouth.

**MR MOKOENA**: The purpose of spending the money was to ensure that this money is not withheld by the Department of Human Settlements. It was to circumvent that, according to him.

**ADV PRETORIUS SC**: I would like to show you, if I may, another document which you do not mention in your statement but before I show you that document. The  
20 position now is, November/December 2010, no houses have been build and the department's plan is to pay half a billion rand and more to suppliers in order to avoid losing the money.

**MR MOKOENA**: That is correct.

**ADV PRETORIUS SC**: Correct?



**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** If you look behind you, please and file or Bundle FS14, and if you would please go to page 226?

**MR MOKOENA:** 226?

**ADV PRETORIUS SC:** Yes. The document on the right hand side of that page, begins there, at least.

**MR MOKOENA:** Yes, sir.

**ADV PRETORIUS SC:** That one. Do you recognise that  
10 document?

**MR MOKOENA:** I do.

**ADV PRETORIUS SC:** What is it?

**MR MOKOENA:** It was our expenditure recovery plan.

**ADV PRETORIUS SC:** How did that document come to exist?

**MR MOKOENA:** This document came to exist after we had started working through our war room.

**ADV PRETORIUS SC:** Alright, we will get to the war room later.

20 **MR MOKOENA:** Okay.

**ADV PRETORIUS SC:** That war room we have learnt was a series of meetings that devised and monitored the implementation of the expenditure – the advance payment plan, correct?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Alright. So – and we have heard from other sources about this document. If I could take you please to the document at FS14, 233. It is headed Cash Flow Projection. Now more or less what was the date of this document? When would it have been compiled?

**MR MOKOENA:** Compiled around October.

**ADV PRETORIUS SC:** October 2010?

**MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** And if you look at the cash flow  
10 projections, we can go through it in detail, if you like, but in summary what those projections represent is the completion of several thousand houses or units at a total cost of R1 billion. Do you see that?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Was there any hope on earth that this could ever have been achieved? Or perhaps I should phrase my question more neutrally. What prospect was there of this being achieved if it were made in months of the financial year?

20 **MR MOKOENA:** Ja, you have got me there. I think the projections were made with the understanding that we are going to speed up in terms of getting our capacity but we were thinly stretched, I must agree. If you do not have a capacity in technical circumstances you do not have sufficient capacity in project management, we are not

going to get to that level. I think this is the amount that was allocated to us, we were trying to work from the allocation backwards.

**ADV PRETORIUS SC:** I see. So you were saying look, we have been allocated ...[intervenes]

**MR MOKOENA:** 1.2.

**ADV PRETORIUS SC:** ...over a billion rand, this is how we would like to spend it.

**MR MOKOENA:** Exactly.

10 **ADV PRETORIUS SC:** Is that...?

**MR MOKOENA:** That is some kind of a map for us.

**ADV PRETORIUS SC:** But was it realistic?

**MR MOKOENA:** It was not realistic. Not realistic.

**ADV PRETORIUS SC:** Right.

**CHAIRPERSON:** How was that helpful in the context of the real problem that you were trying to deal with namely to do a wish list or a wish programme to say by end of March 2011, end of the financial year, we should have spent the whole R1,3 billion that has been allocated to us?

20 Now let us work backwards and see how we would like – what milestone we would like to achieve between now, October 2010 and March 2011. How was that going to help you?

**MR MOKOENA:** Chair, I think here we were working without being focused. I think here we were working based

on the funds that we have and to say from these funds what are the things that we could do and then we looked at dividing the milestones of payments per unit, foundations – so many foundations, this is how much we can spend. Then when we come to expenditure on the whole place, if you can build so many whole places, how much you can pay. So I think it was helping us in terms of looking at what are the tangible milestones that we could achieve. But we knew that we are not going to spend the whole 1  
10 billion.

**CHAIRPERSON:** Yes but how was that exercise of preparing this document if it was prepared on that basis going to help you because what you should be looking at, I would imagine, is given our capacity, given the short time left before the end of the financial year, given the allocations we have, what can we realistically achieve? Let us prepare a document that will reflect what we can realistically achieve. If you were talking about such a document, I would understand but, as I understand what  
20 you are saying, that is not what you were seeking to do, you were seeking to say what would be nice to achieve with this R1,3 billion in three months? It would be nice to achieve so many houses, to build so many houses in January. It will be nice to build so many houses in February and it would be nice to build so many houses by

end of March, but it does not help anyway.

**MR MOKOENA:** You are correct, Chair.

**CHAIRPERSON:** So why were you doing it?

**MR MOKOENA:** I thinking we taking an exercise(?) trying to look at when we throw our eyes(?) right at the end and say we wanted to have so many – or build so many foundations, so many units by March. If we cannot achieve that, where else are we going to fall to? We were looking at it in terms of projection and rather(?) than in terms of  
10 what we can achieve. I agree that it is not practical.

**CHAIRPERSON:** But did you not ...[intervenes]

**MR MOKOENA:** Given the time and the capacity that we had.

**CHAIRPERSON:** Okay, Mr Pretorius?

**ADV PRETORIUS SC:** Well, you have used the words unfocused, impractical and unrealistic but at this time you were engaged with a different project and that is the material supply expenditure of over half a billion rand, correct?

20 **MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** You were not engaged in this project that you see on the paper.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** But this was a document that was to be given to National, not so?

**MR MOKOENA:** Yes, it was.

**ADV PRETORIUS SC:** Was the purpose not to persuade National not to take your money away?

**MR MOKOENA:** That is true. That is true.

**CHAIRPERSON:** Well, that being the case, Mr Mokoena, you were misrepresenting to the National Department. You were saying to them we are capable of achieving this and we are going to achieve it, it is realistic, so that if they bought that story they would not take the money away but  
10 you knew that that was not true, did you not?

**MR MOKOENA:** We did, we knew.

**CHAIRPERSON:** So why did you misrepresent the facts to them?

**MR MOKOENA:** I do not have an answer for that.

**MR MOKOENA:** I do not have an answer for that, Chair.

**CHAIRPERSON:** I mean, it is concerning because you were the HOD, that is a very responsible position and you have certain responsibilities, you are dealing with taxpayers' money under your leadership. The department  
20 had not built a single house by October 2010, six months into the financial year and now you are coming up with a document that misrepresents the situation, you put – you send it to the National Department in order to prevent the National Department from taking money and giving it to other provinces who are prepared to work. That was

wrong, is it not?

**MR MOKOENA:** It was wrong.

**CHAIRPERSON:** It should not have happened.

**MR MOKOENA:** That was wrong, Chair, I agree.

**CHAIRPERSON:** Are you sorry about having done this?

**MR MOKOENA:** I am sorry about that, we should not have misrepresented the facts.

**CHAIRPERSON:** Okay.

**MR MOKOENA:** Because we did not have capacity for  
10 this, that we put in here.

**CHAIRPERSON:** Mr Pretorius?

**ADV PRETORIUS SC:** Yes, I am sure that in time the Chair will appreciate and will express his appreciation for your frankness. Thank you.

**MR MOKOENA:** Thank you.

**ADV PRETORIUS SC:** Of course, one does not have to emphasise or even mention the prejudice that these actions and misappropriation of monies caused for the people who deserved to have decent housing.

20 **MR MOKOENA:** That is true.

**ADV PRETORIUS SC:** What happened then in November and December?

**CHAIRPERSON:** Before that, before you answer that question, Mr Mokoena, of course if you had stood your ground and said I am not going to be party to this, this is

illegal and you let Mr Zwane do whatever he wanted to do, if he wanted to fire you, let him do that, if he wanted to do that or you reported this to National Department, maybe other authorities within the province, but National Department, it may be that the National Department would have taken the money and therefore the money would not have been paid to suppliers and would not have disappeared as it seems to have happened, over R500 million. You appreciate that?

- 10 **MR MOKOENA:** Chairperson, I know that in life there are other – there are decisions that you make that you say I am correcting this decision but the other decision that you make that you realise that on hindsight, this decision I should not have taken because now I can see that – the wrongs that came out of that decision, worse than if I said no. If I said no to this, we could have saved this money, some houses would have been built in other provinces because we are also gaining from other provinces that were not building, were not performing. Because we are
- 20 smaller province but our budget was bigger because in the years that we have been building, we have been performing, building about 9 000 to 10 000 units every year.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** So that is how we are getting this money,



which was bigger than other provinces that were almost our size, Mpumalanga and North West. We are getting money more than them. So I am sorry about that, I think this should not have happened.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** In hindsight I think I should not have taken that decision.

**CHAIRPERSON:** Okay. Mr Pretorius?

**ADV PRETORIUS SC:** Mr Mokoena, in November and  
10 December or rather, in December, did you take leave?

**MR MOKOENA:** Correct, Chair, I took leave in December.

**ADV PRETORIUS SC:** What was the instruction of the MEC about leave for your department's employees during that time?

**MR MOKOENA:** The instruction of the MEC was that no one must take leave for December vacation because he wanted us to implement this plan. But as we have spoken, that this plan came in October and my leave, specially the cruise that I was taking, we had already paid – we paid in  
20 June, so the plan was done six months before so I could not cancel it because if I cancelled it, I was going to lose out on the money I had paid.

**ADV PRETORIUS SC:** Right, you took leave?

**MR MOKOENA:** I took leave.

**ADV PRETORIUS SC:** And who did you appoint to act in

your place during the time of your leave?

**MR MOKOENA:** I appointed Mr Kaizer Maxatshwa.

**ADV PRETORIUS SC:** And what was the response of Mr Zwane to that?

**MR MOKOENA:** Mr Zwane's response was that he cannot work with Mr Maxatshwa, he does not want me to appoint Mr Maxatshwa to act, he wants me to appoint Ms Maniki(?) Mokhele to act on my behalf.

**ADV PRETORIUS SC:** And did that happen?

10 **MR MOKOENA:** And I had to do that, Chair.

**ADV PRETORIUS SC:** So you had two HODs during that time?

**CHAIRPERSON:** I am sorry. You were good earlier on to give a spelling of some of the names. I do not think we gave yesterday, Maxatshwa's spelling for the record, for the transcribers. Maybe let us do that.

**ADV PRETORIUS SC:** Yes, it is M-a-x-a-t-s-h-w-a, is that correct?

**MR MOKOENA:** That is correct.

20 **ADV PRETORIUS SC:** And Kaizer is K-a-i-z-e-r, is that correct?

**MR MOKOENA:** That is correct, Chair.

**ADV PRETORIUS SC:** And Ms Mokhele, M-o-k-h-e-l-e.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** During that time then, the

payments that were made, by whom were they approved?

**MR MOKOENA:** It was approved by Maniki Mokhele.

**ADV PRETORIUS SC:** Are you able to comment on what you describe here as deliverables, in other words the actual success of the project or is that something we must leave to the investigators?

**CHAIRPERSON:** Have you gone back to his affidavit?

**ADV PRETORIUS SC:** Yes, I have, page 347.

**CHAIRPERSON:** Okay. This other file we can...

10 **ADV PRETORIUS SC:** Yes, please, Chair.

**CHAIRPERSON:** We will not need it for some time. Okay, yes, thank you, page 347.

**MR MOKOENA:** Chairperson, in summary, what I am saying here is that after then all this, implementing this plan, the only thing that we could say we could have done, there was not a single project that was completed. Instead we had many more foundations in different areas in the province rather than complete houses and too few were built(?). So for me we did not achieve anything in terms of  
20 complete projects although we spent so much money on materials that we bought and in the running up and down paying for the officials to go and do inspections and all that but we did not achieve what we were supposed to achieve. That is in short what I was saying about our performing.

**CHAIRPERSON:** I see here you say that you ended up having – the department ended up having two acting HODs during your absence.

**MR MOKOENA:** That is correct, Chairperson.

**CHAIRPERSON:** Is that right?

**MR MOKOENA:** That is correct, it should not be like that.

**CHAIRPERSON:** Because there is only one post.

**MR MOKOENA:** There is only one post. I had appointed Maxatshwa but I could not go back to him physically and  
10 get the letter back.

**CHAIRPERSON:** Yes.

**MR MOKOENA:** So I had to write another letter, another acting letter for Maniki Mokhele, so therefore there were two letters of acting but I contacted Mr Maxatshwa and said no, that the MEC has asked me to withdraw your letter of acting and give Maniki Mokhele a letter of acting. So he was aware, I informed him. But the letter physically is still with him. So that is why I am saying officially  
...[intervenes]

20 **CHAIRPERSON:** But were they both paid as acting HODs?

**MR MOKOENA:** No, Chairperson.

**CHAIRPERSON:** Only one person?

**MR MOKOENA:** Only one person.

**CHAIRPERSON:** Ms Mokhele?

**MR MOKOENA:** Mokhele, that is true, Chair.

**CHAIRPERSON:** So is the position that although you did not withdraw Mr Maxatshwa's appointment as acting HOD but you told him verbally?

**MR MOKOENA:** That is correct.

**CHAIRPERSON:** That the actual acting HOD would be Ms Mokhele?

**MR MOKOENA:** That is true, Chair. Correct.

**CHAIRPERSON:** Okay, so it would therefore not be  
10 correct, would it be to say they were both acting HODs because you might not have withdrawn the acting appointment in writing but you effectively told Mr Maxatshwa that the acting – the real acting HOD would be Ms Mokhele.

**MR MOKOENA:** Ms Mokhele.

**CHAIRPERSON:** Is that right?

**MR MOKOENA:** That is correct. I think he was just showing that where I had two sent letters to two different people at the same time although I had already spoken to  
20 Mr Maxatshwa that he was not the one who was acting.

**CHAIRPERSON:** Ja. Okay, alright.

**MR MOKOENA:** But because of the MEC who does not want to work with this person, that he wants to work with that person, for me I think it was not correct because they are both working in his department.

**CHAIRPERSON:** Okay.

**MR MOKOENA:** Thank you, Chair.

**ADV PRETORIUS SC:** Thank you, Chair. Mr Mokoena, under the heading Deliverables do I understand in summary what you are saying is that some houses were built up to foundation stage?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** But no more, no complete houses in this period.

10 **MR MOKOENA:** There were no completed houses, that is correct.

**ADV PRETORIUS SC:** And, of course, NURCHA was then appointed to attempt to remedy the situation, is that correct?

**MR MOKOENA:** Chair, I must say in meetings at National Department they realised that I had this problem and NURCHA was part of us in those meetings where I was putting our position that we have a problem, we do not have capacity in terms of monitoring our project. When  
20 NURCHA came to us and said we are here to help you then we signed an SLA with NURCHA, then they started helping us, working very closely in our war room because we wanted to build our own capacity in that way. Thank you, Chair.

**ADV PRETORIUS SC:** On page 348 under the heading

Meeting with the National Minister of Human Settlements you described a meeting that took place in February 2011.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Was this meeting elsewhere referred to as the Welkom meeting?

**MR MOKOENA:** No, this meeting was held in the honourable Minister's office in Pretoria.

**ADV PRETORIUS SC:** Alright. But if you could help us please, do you recall a Welkom meeting?

10 **MR MOKOENA:** I am not sure.

**ADV PRETORIUS SC:** Alright, then we will have to find out about that meeting from someone else. So do not concern yourself with that. Tell us about the meeting that happened during February 2011 please. Who attended?

**MR MOKOENA:** As far as I can recall it was myself, our new CFO, the late Mr Hattingh and Mr Tsoametsi, Muso, from the officials' side and then the MEC himself and in the meeting at National it was then himself, Mr Sexwale and the Director General Mr Thabane Zulu.

20 **ADV PRETORIUS SC:** Right, what was the purpose of the meeting?

**MR MOKOENA:** The purpose of the meeting was the Minister wanted to talk to us about this delivery model that we were implementing. That was the purpose of the meeting. He wanted us to discuss it.

**ADV PRETORIUS SC:** Yes, prepayment model.

**MR MOKOENA:** Prepaying of material.

**ADV PRETORIUS SC:** What did he say?

**MR MOKOENA:** He said he does not agree with this, we must stop it immediately, he was not aware that this was happening, he only got word of it in January but now must not continue, we must stop where we are which was February when we met him and we agreed that February month end we will never hand out any further advance on building materials.

10

**ADV PRETORIUS SC:** Now you knew prior to February 2011, Mr Mokoena, that the National Department of Human Settlements and Treasury was concerned about expenditure.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** You have told the Chair already about the expenditure recovery plan what misrepresentation had been made to National in that regard but was it ever told to National or ever reported to National that this prepayment scheme had been devised and was in force? Did you ever say to them in October that the scheme had been devised and they should know that this scheme with all its question marks was taking place?

20

**MR MOKOENA:** I think when we were still submitting our



recommended strategy, which was recovery plan, they rejected it.

**ADV PRETORIUS SC:** But you continued nevertheless?

**MR MOKOENA:** We continued nevertheless.

**ADV PRETORIUS SC:** Did you ever tell them that despite their rejection of the plan you were still going to continue with it?

**MR MOKOENA:** No, we did not.

**CHAIRPERSON:** At the February meeting with the  
10 National Minister – because I think you already asked on that, Mr Pretorius, is that right?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** You said you agreed to stop the payments. When you said that, did that include MEC Zwane also agreeing or you were talking about yourself?

**MR MOKOENA:** It was including MEC Zwane.

**CHAIRPERSON:** He also agreed?

**MR MOKOENA:** He also agreed.

**CHAIRPERSON:** Okay.

20 **ADV PRETORIUS SC:** Did he – before he agreed, did he engage the National Minister at all?

**MR MOKOENA:** Yes, in the meeting he engaged the Minister about the legality of the plan and all that. We discussed and the Minister said no, I will not agree to it. I hear you but this is not correct.

**ADV PRETORIUS SC:** Did the MEC attempt to persuade the National Minister that the plan was legitimate?

**MR MOKOENA:** He did try in the meeting but he did not succeed – we did not succeed, in fact.

**ADV PRETORIUS SC:** Right. And in attempting to persuade the National Minister of the legitimacy of the plan did the MEC refer to any document?

**MR MOKOENA:** No, he did not refer to any document.

**ADV PRETORIUS SC:** Alright, just have a look – if we  
10 have to correct this we have to correct it but if you look at the second last paragraph on page 348 you there refer to the Tsoametsi document.

**MR MOKOENA:** Okay. No, he did not mention the document, he just spoke about his plan without mentioning the document.

**ADV PRETORIUS SC:** Alright, so he did not mention that document.

**MR MOKOENA:** He did not mention the document in the meeting.

20 **CHAIRPERSON:** Well you – it might be necessary to just clarify that because I think your affidavit says he did.

**MR MOKOENA:** Okay.

**ADV PRETORIUS SC:** Yes, well let us go there. In your statement at page 348, paragraph 27, you deal with the meeting that we are discussing now.

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** The meeting that took place in the office of the National Minister Sexwale, correct?

**MR MOKOENA:** Ja.

**ADV PRETORIUS SC:** You say that:

“During the meeting the Minister said he heard that we were paying advance and that same must be stopped as it is illegal and it could not happen whilst he is the Minister of Human Settlements.”

10 **MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** That happened?

**MR MOKOENA:** That happened.

**ADV PRETORIUS SC:** Yes. So the Minister did not say you told me, he said he had found out.

**MR MOKOENA:** He found out.

**ADV PRETORIUS SC:** Yes. In the second sentence you say:

20 “In this regard the MEC said we had a document showing that it was legal to make the advance payments. For reference purpose he was referring to the document attached to my affidavit as annexure MMM2. The Minister, however, insisted that we stop the payment.”

Now there is the reference you make to that document, is that correct?

**MR MOKOENA:** That is not correct, I think I should pull up the reference, I think I was summarising what you are saying, he was talking about this document as a way of trying to debate with the Minister but without saying that we have a document. He did not mention it. So it [indistinct] 27.17 wanted to show what I am talking about here.

**ADV PRETORIUS SC:** Alright, so you inferred that what he was referring to was that document?

10 **MR MOKOENA:** I inferred it.

**ADV PRETORIUS SC:** Yes and we looked at that document, that document does not say anything about legality, it presumes the legality.

**MR MOKOENA:** It does.

**ADV PRETORIUS SC:** Alright.

**CHAIRPERSON:** It might be helpful if you did a supplementary affidavit just to correct that.

**MR MOKOENA:** Correct it. Okay, thank you, Chair.

**CHAIRPERSON:** Ja, I think they will assist you.

20 **ADV PRETORIUS SC:** You say in the last paragraph that in view of the meeting and what happened at the meeting you had to give an undertaking as the accounting officer in the Free State that we would stop the advance payments. Did you give that undertaking?

**MR MOKOENA:** I gave that undertaking in that meeting.

**ADV PRETORIUS SC:** And did you stop those payments?

**MR MOKOENA:** And I stopped those payments in February 2011.

**ADV PRETORIUS SC:** Well, there is some evidence or some allegations at least that the payments continued after that. Do you know anything about that?

**MR MOKOENA:** No. After February 2011?

**ADV PRETORIUS SC:** Yes.

**MR MOKOENA:** Let us see if I can be reminded.

10 **ADV PRETORIUS SC:** Well, there is evidence to the effect that the payments continued – or at least there are allegations to the effect that payments continued after February 2011 to suppliers pursuant to the scheme. Do you know anything about that?

**MR MOKOENA:** No because during the time when there were contractors coming to my office with material suppliers, it was after February and I told them that I will not sign anything, this is has stopped. So I am surprised if that happened.

20 **ADV PRETORIUS SC:** Well, have a look at the next page, page 349, paragraph 28. Just have a look at that and tell the Chair what you say about those three lines there.

**MR MOKOENA:** Okay, here what I am saying is that although it came from the meeting at National with the agreement and the undertaking that we will not give out

new contracts in terms of advance for materials for the projects the MEC, when we got home, started asking me to allocate to new then I said no, we cannot do that. I think that is what I was mentioning here is that he wanted us to continue although we had made an undertaking that we were going to stop this system. I think maybe I did not put it correctly there.

**ADV PRETORIUS SC:** Alright.

**CHAIRPERSON:** Sorry I missed out, I missed that, what  
10 is it that you say you didn't put correctly?

**MR MOKOENA:** All that I am trying to say is that coming from the meeting where we took an undertaking – we made an undertaking with the Minister that we are going to stop this scheme of advance ...[intervenes]

**CHAIRPERSON:** Advance payments.

**MR MOKOENA:** Advance payments.

**CHAIRPERSON:** Mmm?

**MR MOKOENA:** Then ...[indistinct] came to me after that, asking me to do that revenue contractors, then I said no  
20 ...[intervenes]

**CHAIRPERSON:** To make advance payments to some ...[intervenes]

**MR MOKOENA:** Yes to continue with this scheme.

**CHAIRPERSON:** Yes, yes.

**MR MOKOENA:** And I said no.

**CHAIRPERSON:** Okay.

**MR MOKOENA:** And then we stopped there.

**CHAIRPERSON:** Okay, he didn't try further?

**MR MOKOENA:** He didn't try further.

**CHAIRPERSON:** Okay.

**MR MOKOENA:** But here I think what I was saying here is what we have already mentioned that there were contractors in his list that were close to him. I think I might have misplaced it here because we had already  
10 discussed it on the other side. I am sorry about that.

**ADV PRETORIUS SC:** So is it correct that Mr Zwane insisted that you continue paying contractors?

**MR MOKOENA:** He insisted that we must continue with the scheme.

**ADV PRETORIUS SC:** The scheme, the prepayment scheme?

**MR MOKOENA:** The payment scheme and then ...[intervenes]

**ADV PRETORIUS SC:** And you said no?

20 **MR MOKOENA:** Yes.

**ADV PRETORIUS SC:** Were there other payments that had to be made that were of a regular nature or milestones being reached and the like?

**MR MOKOENA:** For the regular nature yes we had – we continued with that.

**ADV PRETORIUS SC:** And you continued those payments?

**MR MOKOENA:** Those payments, we didn't agree to any new contract after that, after February month.

**ADV PRETORIUS SC:** Well did you pay in terms of existing contracts before supplies were delivered? Did you make any prepayments after February in terms of existing agreements to do so?

**MR MOKOENA:** No.

10 **ADV PRETORIUS SC:** Alright, you only paid the regular contractors milestone achieved payments?

**MR MOKOENA:** That is correct.

**ADV PRETORIUS SC:** Chair I am almost finished but there are a number of issues that I must still put to Mr Mokoena arising out of the last two days evidence, and I would like an opportunity just to check my list, I could go on, but it might require me to come back tomorrow anyway and in any event we will finish tomorrow with the witnesses set down for tomorrow.

20 **CHAIRPERSON:** Yes, okay is the next witness after Mr Mokoena on Friday or is there one tomorrow?

**ADV PRETORIUS SC:** No tomorrow ...[indistinct – microphone off] yes I don't intend, unless I am directed otherwise Chair calling Mr Kolozi because all that he does is confirm what Mr Maxatshwa says.



**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So we will finish in time tomorrow with those witnesses.

**CHAIRPERSON:** Okay so tomorrow another witness will be Mr Maxatshwa.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay and then Friday it will be another witness?

**ADV PRETORIUS SC:** Yes.

10 **CHAIRPERSON:** Okay no that is fine, let us adjourn then for today and then resume tomorrow at ten o'clock.

**ADV PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** So we will adjourn Mr Mokoena, we will resume at ten o'clock tomorrow morning.

**MR MOKOENA:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 23 SEPTEMBER 2020**

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