

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

25 SEPTEMBER 2020

DAY 271



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

25 SEPTEMBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 25 SEPTEMBER 2020

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair. Yes Chair.

CHAIRPERSON: Okay. Let us start.

ADV PRETORIUS SC: Ja we ask to call Mr Mosebenzi Zwane.

CHAIRPERSON: Yes thank you.

ADV PRETORIUS SC: He is present.

10 **CHAIRPERSON:** Will you administer the oath or affirmation?

REGISTRAR: Please state your full names for the record.

MR ZWANE: Mosebenzi Joseph Zwane.

REGISTRAR: Do you have any objections to taking the prescribed affirmation?

MR ZWANE: No.

20 **CHAIRPERSON:** Do you solemnly affirm that 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, I truly affirm.

MR ZWANE: I truly affirm.

CHAIRPERSON: Thank you very much. Mr Zwane I know that you had requested through your attorneys that you be allowed by the commission to come to the commission and deal with all the issues that may relate to you but the

request could not be granted because of simply the way the commission operates.

The commission would have liked that everyone comes before it once and deal with all issues but it is not practical most of the time because in regard to people like you your name is mentioned in different work-streams of the commission and there are different teams working in different work-streams.

10 So I just want you to know that I am aware you made that request and that it was considered but there are challenges.

But you would have seen also that there are many other people who have come before the commission more than once to deal with issues I am sure. Thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. Mr Zwane you have before a bundle; Bundle FS12 do you have that bundle? If you would go to page 459 of that bundle please.

20 **MR ZWANE:** 459?

ADV PRETORIUS SC: Yes please. Right. That appears to be a sworn statement of yourself, correct? That document goes through to page 508 where there is a signature.

CHAIRPERSON: Have you explained to the black – to him the black numbers and the red numbers.

ADV PRETORIUS SC: Yes we have.

CHAIRPERSON: Oh okay.

ADV PRETORIUS SC: Just to remind you Mr Zwane the black numbers in the top left hand corner.

MR ZWANE: 500 and?

ADV PRETORIUS SC: 8. There is a signature there; whose signature is that?

MR ZWANE: Chair this is the signature belonging to me.

CHAIRPERSON: Yes. I am sorry Mr Pretorius what is the
10 page you referred him to?

ADV PRETORIUS SC: 508. I trust it is the same page in your bundle.

CHAIRPERSON: Yes well I am asking because I see his statement at 459 on my – on my bundle. So let me go to 508. Yes okay alright.

ADV PRETORIUS SC: That is your signature on page 508?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: The sworn statement from page 459 and continuing to page 508 is that your sworn statement?

20 **MR ZWANE:** That is correct Chair.

ADV PRETORIUS SC: As far as you are concerned the contents of that statement are they true and correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: There is one more document which is part of the same exhibit. Chair and before admitting the

exhibit perhaps we should go there? If you go to page 615. Do you have it?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: That document is a document headed Reply to questions from E Lambrechts dated 10 June. What happened was the investigators asked certain questions of you and you replied to these questions in this document. There is a signature at page 165 of that document – sorry page 622 of that document. The last
10 page in the bundle.

MR ZWANE: That is my signature.

ADV PRETORIUS SC: That is your signature. And the answers were they not in a sworn statement to the questions contained in this document; are they true and correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Those documents Chair form part of Exhibit UU9 may they be admitted please?

CHAIRPERSON: Well there is first the statement or
20 affidavit starting at page 459. That affidavit is a standalone affidavit but has certain annexures [not audible].

ADV PRETORIUS SC: Correct Chair.

CHAIRPERSON: Do the annexures include the response – the replies to the questions that you have just dealt with at

the end or does that document stand alone?

ADV PRETORIUS SC: No Chair that is why I referred to it separately. The affidavit pre-dates the reply to the questions.

CHAIRPERSON: Yes. So that would mean that the affidavit and its annexures would be an exhibit on its own and then that reply would be separate exhibit on its own.

ADV PRETORIUS SC: Yes together with the questions so perhaps that should be Exhibit UU10.

10 **CHAIRPERSON:** Ja I think we should – we should identify the document that contains the questions as well because then it would also be a document on its own. I think it seems to start at page 609 is that right?

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: Okay. Let us start with the – the affidavit or statement starting at page 459. You propose that that should be admitted – should be marked Exhibit UU8?

ADV PRETORIUS SC: UU9 Chair.

20 **CHAIRPERSON:** UU9. Mr Mosebenzi Joseph Zwane's affidavit starting at page 459 is admitted and together with its annexures will be marked Exhibit UU9. And then I think the next one would be the document with the – with – which posed certain questions to him that is – is it at 609? Yes. The document which appears or starts at page 609 is admitted and will be marked Exhibit UU?

ADV PRETORIUS SC: 10.

CHAIRPERSON: 10.

ADV PRETORIUS SC: That is the document that goes through to page 622.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: The questions and answers.

CHAIRPERSON: Yes. And then ...

ADV PRETORIUS SC: I was suggesting Chair that the questions and answers be admitted together – part of the
10 same Exhibit.

CHAIRPERSON: I do not think so because they are not written by the same person. I think the...

ADV PRETORIUS SC: Well that is fine Chair then 609 to page 614 will be Exhibit UU10.

CHAIRPERSON: Yes. And then the – and then Mr Zwane's reply to those questions starting at page 615.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Will be admitted and marked Exhibit UU11?

20 **ADV PRETORIUS SC:** 11.

CHAIRPERSON: 11. Ja okay.

ADV PRETORIUS SC: Chair I have just been told by those that are responsible for this task that there is already an Exhibit UU10.

CHAIRPERSON: So we will – may need to make it ...

ADV PRETORIUS SC: 9A and 9B.

CHAIRPERSON: Ja. So we will change then the document starting at page 609 which were the questions that were sent to Mr Zwane's attorneys. We will amend that it will be marked Exhibit UU9A. And the document containing Mr Zwane's response to that starting at page 615 will marked Exhibit UU9B.

ADV PRETORIUS SC: Yes thank you Chair.

CHAIRPERSON: You may proceed Mr Pretorius.

10 **ADV PRETORIUS SC:** Thank you Chair. Mr Zwane your affidavit which has just been admitted and the answers to the question deal with a number of topics as we now know. The purpose of the questions today however is to deal only with the housing project that occurred during 2010 and 2011 in the Free State and at that time you were MEC for the department which went through various name changes but we have referred to it as the Department of Human Settlements. Is that correct?

MR ZWANE: That is correct Chair.

20 **ADV PRETORIUS SC:** We know that the facts underlying the housing project through that period have been the subject matter of a number of investigations and many of those facts correct or incorrect in fact are public knowledge, we know that. Correct?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: However, there are two issues that we would like to concentrate on and have concentrated on largely at least in this week of evidence and that is the context within which the advance payment project took place and that is the housing contracts or lack thereof in the first place and the second is the question of accountability. And it is really those that – those issues that we will be largely covering. There was during 2010 and 2011 a Public Procurement Process that was embarked
10 upon by the department and that involved a tender for the construction of houses in the Free State Province, correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: The funding for that project – that housing project would have come from the National Fiscus, correct?

MR ZWANE: Correct Chair.

ADV PRETORIUS SC: And the funding was controlled – granted in the first place and controlled in the second place by the Provisions of the Division of Revenue Act we
20 have referred to it as DORA. Correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Yes. Other prescripts as well but that one in addition. It was necessary as I understand it to go out on a new tender process for the construction of houses because a decision had been made by the Premier

and the Cabinet that the houses should be larger than originally planned. Is that correct?

MR ZWANE: Well Chair I think the two are separated. Normally each year the Department of Human Settlement as it was called by then would actually build houses. The issue of bigger and better houses was a separate issue added to a normal process that would be followed when building houses in terms of the data base. I was informed when I was there.

10 **ADV PRETORIUS SC:** Alright well let us just deal with the facts briefly and by way of introduction to the questions that we would like to put to you Mr Zwane. There was in fact a Public Procurement Process that took place in the first half of the 2010/2011 financial year.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: What happened is that at the time the bids – the various bids that were presented by various contractors were presented and adjudicated the tender period – the tender validity period had expired. Correct?

20 **MR ZWANE:** As I was told Chair.

ADV PRETORIUS SC: And a decision was then made to abandon that process. Were you told that as well?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: And ...

CHAIRPERSON: You can keep your microphone on Mr

Zwane.

MR ZWANE: Okay.

ADV PRETORIUS SC: We know that the tender closed on the 16 April 2020 all that is part of the evidence and the really public record. That the bid adjudication committee considered the bids and the evidence has been that a number of bids were disqualified. Let me just put the numbers to you for the record.

According to the information that we have and the
10 evidence that we have received 361 bids were received.
105 were disqualified for basic bid compliance reasons.
147 were disqualified because they did not meet the
minimum functionality threshold. 109 bids of the 361
including 81 from established contractors and 28 from
emerging contractors were recommended to the bid
adjudication committee to be adjudicated on price.

Right and that was the results of the bid evaluation
committee's work. They categorised the bids and sent
them on to the bid adjudication committee which then met
20 on the 28 July 2010.

Now you may not recall the figures but that is the
evidence. Are you happy to accept that?

MR ZWANE: Well I do not know that evidence Chair.

ADV PRETORIUS SC: Right.

MR ZWANE: It was not brought to my attention.

ADV PRETORIUS SC: Well that is in fact the evidence.

The bid adjudication committee then met on the 28 July 2010 and at that meeting it was noted that the tender validity period had lapsed. That committee resolved that the tender should be cancelled and a data base of service providers and I presume a new data base of service providers should be established. Correct?

MR ZWANE: As I was told Chair.

ADV PRETORIUS SC: As you were told. Now the first
10 question which arises is I presume that throughout this process you were receiving reports in your capacity as MEC for Human Settlements as to this process, were you?

MR ZWANE: No Chair.

ADV PRETORIUS SC: You were not?

MR ZWANE: I was not. I was expecting a final report on the final outcome because that would determine the date of us starting the building of houses.

ADV PRETORIUS SC: Right. By 28 July 2010 it must
20 have been of some concern to you that no houses had yet been built under the allocation that had been granted for that year?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Were you told that the Public Tender Process had been abandoned and that a data base would be created?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: And did you agree to that process?

MR ZWANE: Yes I did – I did agree to the process.

ADV PRETORIUS SC: Right. Now why was the tender process simply abandoned and not corrected?

MR ZWANE: I may not know the details Chair but when I asked what is going to be the difference I was told that the data base has been used by previous MEC's before me to construct houses so there will be no issue at all about the data base.

ADV PRETORIUS SC: Well this is a new contract. It is to build different houses. The contract required a process to be embarked upon.

MR ZWANE: That is correct Chair but you will remember earlier on I indicated that the two processes were not categorised under the same kind of understanding. The process of the tender of building houses was as a normal tender which will be entered into year by year. And the process of building – building bigger houses was not going to be part of the specification that were done in terms of calling for a tender of building houses. As far as I can remember.

ADV PRETORIUS SC: Yes but we know do we not Mr Zwane that this new data base comprised of the parties who had bid in the new tender process in 2010. So these

were new entrants onto the scene and they were being allowed onto the scene without any formal tender process having being embarked upon in respect of their admission at least.

MR ZWANE: Let me say after the tender was abandoned and the data base was followed there were requirements that were made by EXCO which is the executive of Free State that our data base should include categories that were not there before some of them.

10 It should include young people that would of course come in with less experience or no experience at all. It should include the disabled which were not there earlier on. It should also pick on women which were there but in a smaller number.

 Of course the experienced that were there all these years and it should also consider the geographical spread of the Province because the Province is divided into five regions if I recall well.

 And those were the issues that the data base has –
20 had to consider and surly considering those issues indeed there would be new entrants in the data base Chair.

ADV PRETORIUS SC: Alright let us go back a step. The first group of contractors that formed this new data base that was established in 2010 would have been the contractors who bid during the lawful tender process,

correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: That included those who were disqualified during the course of that process. Correct?

MR ZWANE: I did not go to those details Chair. All what I requested from the Accounting Officer and the officials is that as they compiled the data base they should look into these categories and of course they would go back and look at the tender that was abandoned. Not only that the
10 data base had also experienced contractors I want to believe that may not have been in this tender process.

ADV PRETORIUS SC: Well that is the evidence. Are you saying you were unaware of the inclusion of disqualified bidders on the data base?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: So this happened despite the fact that you appeared to have controlled the process this happened without your knowledge?

MR ZWANE: I did not control the process Chair. The
20 process was required to be approved by me but the details in terms of how the data base was compiled I gave the feedback from EXCO and allowed the officials to do that and bring the product to me.

ADV PRETORIUS SC: Well did you ask them how this data base was eventually composed?

MR ZWANE: I cannot exactly recall that Chair but what I recall is that when the data base – when the final list from the data base was presented to me I had to go through it and checking what I have requested them to try and comply with because that was the decision by the EXCO.

ADV PRETORIUS SC: Alright so the EXCO that is chaired by the Premier?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: The EXCO said that a new data
10 base must be composed or compiled. It must comply with certain requirements and that instruction was passed onto you I understand. Is that correct?

MR ZWANE: The EXCO said that the – the data base that we are going to be developing should take into consideration the categories as I have said them which may actually in – in a nutshell be called the previously disadvantaged.

ADV PRETORIUS SC: Yes. Alright. You were given an instruction by the Provincial EXCO which is a committee of
20 the Provincial Cabinet chaired by the Premier Mr Magashule, correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: You were told to compile a new data base that complied with certain requirements communicated to you, is that correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: You then gave those instructions to officials to compose this data base of bidders in their discretion.

MR ZWANE: The officials which were there Chair have been long in that department. It is them that would actually take me through the processes as they did when the –when the tender failed.

ADV PRETORIUS SC: Right.

10 **MR ZWANE**: And I could not dictate to them in terms of the nitty gritty's because from where I was seated that was an administrative issue.

ADV PRETORIUS SC: The point I am making, is that these nitty-gritties were quite important. These were the decisions that decided or resulted in people being admitted to the database. A discretion of an official, not an open tender process. Correct?

MR ZWANE: That is correct, Chair.

20 **ADV PRETORIUS SC**: And did they report to you as to how they exercised their discretion?

MR ZWANE: No, they did not.

ADV PRETORIUS SC: Did no one say to you but you cannot do it this way?

MR ZWANE: No.

ADV PRETORIUS SC: You cannot give contracts for the

expenditure of state funds for the construction of houses without going through a proper procurement process. Did no one say that to you?

MR ZWANE: It is them that suggested Chair.

ADV PRETORIUS SC: Who? The officials?

MR ZWANE: The officials. That throughout the years the database has been used in the department by my predecessors and as a newcomer I agreed with that process for as long as it was going to help us move forward, building
10 houses.

ADV PRETORIUS SC: Yes but here Mr Zwane, this is a new database.

MR ZWANE: Yes.

ADV PRETORIUS SC: It has been created after a tender process has been abandoned, correct?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: It has been populated at the discretion of officials although guidelines have been given to you by cabinet. Correct?

20 **MR ZWANE**: That is correct, Chair.

ADV PRETORIUS SC: No formal tender process, therefore, would proceed the granting of a contractor any particular contractor on the database, correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: That is unlawful. Were you never

aware of that?

MR ZWANE: No, I was not aware of it. As I have said earlier on, I was told that this has been the process that has been followed. I even asked, based on what, is it a PFMA process? They told me it is a process under Housing Act.

ADV PRETORIUS SC: Who told you that?

MR ZWANE: The officials.

ADV PRETORIUS SC: Which officials? Can you name them?

10 **MR ZWANE**: The HOD at that particular time was ...[intervenes]

ADV PRETORIUS SC: Is Mokoena?

MR ZWANE: Mpho Mokoena. The CFO was Ms Seipati Dlamini. Those were the anchor in terms of the department.

ADV PRETORIUS SC: So you say Mr Mokoena and Ms Dlamini told you that it was perfectly in order to just create a database at the discretion of officials without going through a formal tender process before construction contracts were awarded? And you believed them?

20 **MR ZWANE**: They said to me, the database, as I was interrogating, should be advertised through different processes but the database has been used all these years before I arrived. So I believed that because I was not there Chair.

ADV PRETORIUS SC: Yes but you are talking about a

database that preceded your arrival as MEC, correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: In 2010/2011. We are talking about a new database.

MR ZWANE: In my understanding Chair, as I was informed, the database of the previous years would have followed what the officials followed when they were developing a database of 2010.

ADV PRETORIUS SC: Yes. Well, we are not looking at that
10 for the moment because we know that in the 2010/2011 new database, new contractors were admitted. Correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: There is no evidence of any formal tender process, public procurement process and I stress public procurement process, having been followed. Now you say that you were assured by officials that this was lawful. Did you check that?

MR ZWANE: No, I did not check it Chair.

CHAIRPERSON: Let me ask this question. Before the
20 tender process that was abandoned, was there, to your knowledge, a database of contractors that the department was keeping?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay and ...[intervenes]

MR ZWANE: I was told.

CHAIRPERSON: That is how you were told?

MR ZWANE: Yes.

CHAIRPERSON: And then there was a tender, an open tender process, that was embarked upon with special reference to the 2010/2011 allocation?

MR ZWANE: Yes, Chair.

CHAIRPERSON: And that process was then... that process, before it was abandoned, had included a determination by the relevant committee of who met the minimum
10 requirements among those who put in bids and who could... who could see that. Is that right?

MR ZWANE: That is ...[intervenes]

CHAIRPERSON: So there were those who were disqualified because they did not meet the minimum requirements and there were those were judged as eligible in meeting those requirements. Is that right?

MR ZWANE: That is right, Chair.

CHAIRPERSON: Yes. And then the... then that process was abandoned because, as I understand it from other
20 witnesses who have come before you, the tender period had expired. Is that right?

MR ZWANE: Yes, Chair.

CHAIRPERSON: Yes. Now the discussion about a database, as I understand it, it may be a new database, seems to have happened after the open tender process has

been abandoned. Is that right?

MR ZWANE: That is right, Chair.

CHAIRPERSON: In terms of what you were told or in terms of your understanding, the contractors who would be on the database that was contemplated when the... when you gave instructions to the officials after being instructed by the executive council, who was it going to include?

Was it going to include those who may have been on the database before the open tender process happened and
10 those who had put in bids in response to the open tender process. What was your understanding who would be included in the database that was being contemplated?

MR ZWANE: Well, as I said earlier on Chair, the detail that the Chair is talking about in terms of the numbers, who qualified, who did not qualify was not brought to me.

The information that is presented to me... I would have said to the officials: Go, develop a database of those who qualify. Bring it to me.

Let us go through it together and just check whether the
20 criteria that the Exco has requested us to align our ourselves with has been met. And then approve the database and start the building of the houses.

CHAIRPERSON: But obviously you had a certain understanding when Exco effectively gave you certain instruction about this... about the compilation of a database.

Was your understanding that this was going to be a newly created database?

MR ZWANE: Yes, Chair. That is correct, Chair.

CHAIRPERSON: Yes okay. And was your understanding... what was your understanding as to who would qualify to be in this database that Exco asked you to ask the official to put together?

MR ZWANE: The process of tendering, as this process was starting, was a process that I welcomed as an MEC.

10 **CHAIRPERSON**: Yes.

MR ZWANE: The process was not abandoned because of me. It was abandoned because of these reasons that officials have put here. It was not controlled by me(?).

CHAIRPERSON: H'm, h'm.

MR ZWANE: I then went back and asked: Are you going to re-advertise the tender? Then I was told that no there is a database that has been used by previous MEC's that were here before you and it is pretty legal.

20 Then I requested the officials to go through and develop that database and bring the final product so that we check the criteria that Exco has set for us and approve the list.

CHAIRPERSON: Was your understanding that in creating that database, the officials were limited to the contractors who were already on the database of the department? Was your understanding that they were not limited to those

contractors? They could actually go out of that database and bring in who... bring into the database other contractors?

MR ZWANE: My expectation Chair was that where they meet up with hiccups that will require them to go outside the law ...[intervenes]

CHAIRPERSON: The system database.

MR ZWANE: Ja. They would come back and report so that we find a solution to that.

10 **CHAIRPERSON:** Yes.

MR ZWANE: But if they bring a database, as I have requested, and I check that the database is according to the criteria that we have set, I approve that database.

CHAIRPERSON: Yes okay. So would it be correct therefore to say maybe subject to whatever requirements, the officials were not limited in any way in terms of who they could put on the list on the database?

MR ZWANE: I may not know that detail Chair.

CHAIRPERSON: Yes.

20 **MR ZWANE:** Because in their presentation, they have been dealing with this database.

CHAIRPERSON: Yes.

MR ZWANE: They knew how to go about dealing with this database ...[intervenes]

CHAIRPERSON: Yes, yes.

MR ZWANE: ...in a manner that is within the prescripts of the law.

CHAIRPERSON: Yes.

MR ZWANE: So I expected officials to go and follow that procedure and bring the final product to me.

CHAIRPERSON: But in the end, whatever list you were given, you accepted that in could be... it could include contractors who had not been in the database of the department before.

10 In other words, when new entrance into the database. Of course, you expected that you wanted to see contractors that were run or owned by women, people with disabilities and young people included in that list as well.

MR ZWANE: Those people who will meet the criteria as said by Exco ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: ...in my thinking ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: ...and my understanding ...[intervenes]

20 **CHAIRPERSON:** Yes.

MR ZWANE: ...were part of the people who had tendered.

CHAIRPERSON: Yes.

MR ZWANE: And when the tender was abandoned, it means those people who were part of this scope because I have not even seen the database before which was in existence.

CHAIRPERSON: H'm?

MR ZWANE: So when I said they should go back and when they brought the final product to me, I thought they were able to find everybody they need in terms of the criteria within the prescripts of the law.

CHAIRPERSON: Okay. I thought that last part, you were going to say within the group of contractors who were either already on the database or who had put in bids, but that is not what you mean because I think you did say they could
10 get somebody who... other people who were inside who had not put in bids and who were not on the database already. Is that right?

MR ZWANE: [No audible reply]

CHAIRPERSON: You had no problem if somebody, if they brought a contractor or contractors who had not put in bids and who had been on the database of the department, as long as they enhanced the issues that you had... that Exco had been concerned about, namely women, people with disabilities and young people.

20 **MR ZWANE:** I would definitely have asked them what criteria they follow ...[intervenes]

CHAIRPERSON: They followed, ja.

MR ZWANE: ...in getting these people outside.

CHAIRPERSON: Okay.

MR ZWANE: I would have definitely raised that question.

CHAIRPERSON: Yes okay. Mr Pretorius.

ADV PRETORIUS SC: It seems then that during 2010, in fact, in April 2010, a lawful public procurement process was embarked upon by the department in order to identify contractors who will build low-cost housing in the Free State Province. That we have established. Correct?

MR ZWANE: According to my knowledge Chair.

ADV PRETORIUS SC: Yes.

MR ZWANE: As they... as that was reported to me.

10 **ADV PRETORIUS SC:** Yes alright. We have several witnesses who said that it is a matter of public record. That process was abandoned for whatever reason. That is also a matter of public record now. You know about its abandonment, correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: The resolution of that situation is one aspect that we will deal with. The other aspect is I understand that cabinet or the Exco of the provincial cabinet made a decision that a new database should be created,
20 comprising of people from various categories. That instruction was then given to you. Correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: And on receipt of that instruction you instructed your officials to populate the database but they did so in their discretion under your instruction, correct?

MR ZWANE: No, that is not correct Chair.

ADV PRETORIUS SC: How would they identify it?

MR ZWANE: On receipt ...[intervenes]

ADV PRETORIUS SC: And who identified it?

MR ZWANE: On receipt of the instruction by Exco, I went back to my officials. I related this... the instruction. A tender process was opened and later abandoned because of the reasons that have been given here to date, the reasons not caused by me.

10 Then after the process I requested a report in terms of a way forward. That is when this issue of a database was raised to me by the officials. I did not ...[intervenes]

ADV PRETORIUS SC: By?

MR ZWANE: By the officials, the HOD. I did not ask a database from nowhere. The issue was brought to me. It was given to me as an information that the department has been following all these years a database in building houses. And I then requested them to develop that database, taking into consideration a criteria that Exco has requested us to
20 follow.

ADV PRETORIUS SC: So who would go out and identify contractors to put them on the database by applying the criteria given to you by Exco?

MR ZWANE: That function is a function that is assigned to the accounting officer, held by his or her senior officials

Chair. That is why I committed(?) it and settled it with him.

ADV PRETORIUS SC: So in the discretion of the HOD, on your evidence, and in the discretion of officials who reported to the HOD, contractors would be identified and put on the database?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: And you were informed that that was entirely legal?

MR ZWANE: That is what I was told.

10 **CHAIRPERSON:** What was your understanding of the implications or the facts of a contractor being put on the database, for example, in terms of being given a contract or a job?

MR ZWANE: I did ask that question Chair.

CHAIRPERSON: H'm?

MR ZWANE: You will remember I responded to that question earlier on that when I asked that question, I was even told that what was being followed is the act that is called the Housing Act and this...

20 The development of new database have been a process that was undertaken before I arrived.

And having that information, I could not detect that particular time anything illegal about this process because I am told by the person who has been there about... who has spent 15-years with this process and nobody has challenged

this process before.

And he says, this is the process that we have been following. Then I gave them permission to follow that process and develop a database as they would normally do.

CHAIRPERSON: Is that Mr Mokoena who was HOD who told you that?

MR ZWANE: Yes, Chair.

CHAIRPERSON: So he is the person who said, we can use a database as opposed to an open-tender process to award
10 contracts?

MR ZWANE: Yes, Chair.

CHAIRPERSON: And you said that there was something that was... could be done under the Housing Act?

MR ZWANE: He said that it is something that they have been doing ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: ...all these years with the previous ...[intervenes]

CHAIRPERSON: MEC's.

20 **MR ZWANE**: ...MEC's before me.

CHAIRPERSON: Yes.

MR ZWANE: Yes, Chair.

CHAIRPERSON: But I thought you also said, he said doing things that way was what was provided for in the Housing Act.

MR ZWANE: Yes, Chair. That is what I said.

CHAIRPERSON: That what you said.

MR ZWANE: Yes.

CHAIRPERSON: Yes, yes. Okay. But in going back to my question. I understand what you have just said and it is important. Was your understanding that once a person or a contractor had been placed on the database in this manner that was suggested by Mr Mokoena, there would... they could then be given jobs by the department without any
10 further process or public process? Or was your understanding that there could or there would still be some open competitive process?

MR ZWANE: My understanding is that they would develop this database. After the database is developed, then the people will be brought forward. Those who have not... no capacity, the department will devise means to be able to capacitate them in the process of developing, the moving forward but work would start.

CHAIRPERSON: Yes.

20 **MR ZWANE:** Yes.

CHAIRPERSON: So your understanding was that, once they were on the database, then subject to the department helping some who needed to be capacitated and so on, subject to that, they would be given work?

MR ZWANE: That was the understanding which was given

to me Chair.

CHAIRPERSON: And that was given by Mr Mokoena?

MR ZWANE: Yes.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Under your watch Mr Zwane, R 1.4 billion was allocated for the construction of low-cost housing. Correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: I would imagine that wherever the
10 execution of particular tasks lay that as MEC you would be
accountable for the lawful of the expenditure of that money.
Let alone the efficient and successful expenditure of that
money, correct?

MR ZWANE: My duty, according to the law Chair, was to
receive reports in terms of the expenditure of that money.
The accounting officer will be responsible for the
management of the finances of the department in an
effective and efficient manner.

ADV PRETORIUS SC: And lawful.

20 **MR ZWANE**: And any unauthorised expenditure, he had all
the right to actually stop or allow it. If he allows it... In fact,
the law says, when there is any instruction given even by the
authority that has financial implications, that instruction
should be given in writing.

And the accounting officer, if he or she does not agree

with that decision, must in writing advise the authority that that decision can actually have the unauthorised issues.

If the executive persuade or instruct further that this decision, unlawful decision should be done, that should be reported by the accounting officer to National Treasury, Provincial Treasury if we are in the province and the office of the Auditor General to ensure that he covers himself.

Those, according to law, are the powers given to the accounting officer. So if I get a report from the accounting
10 officer that says that we are still on tract on this matter, I interrogate the report in terms of my knowledge and if I am satisfied and he is happy about the report, then we continue.

ADV PRETORIUS SC: Right. Well, two questions arise. The first is, that this has been put to Mr Mokoena that he was the accounting officer and he was, to use the term, accountable in terms of the Public Finance Management Act for what happened under his watch. Correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: Is there any explanation as to why
20 he was not held accountable for what happened in 2010/2011?

MR ZWANE: Well, Chair I must indicate that until I left the department in 2011, this matter of the illegality of the database had not been brought to the fore by anyone. The instructions which would have brought this thing to my

attention was Treasury and the audit report and...

So at no stage I had ignored it as far as I can remember. A report that points to that direction that this issue has to be attended to and then I ignore. No. I do not recall myself ignoring such a report Chair.

ADV PRETORIUS SC: Have it been drawn to your attention that anything in the course of the execution of public procurement during 2010/2011 was unlawful, what would you have done?

10 **MR ZWANE:** I would have acted ...[intervenes]

ADV PRETORIUS SC: How?

MR ZWANE: ...on the report based on the seriousness of what has happened which is illegal. The people who were advising me, the accounting officer is head of the pack, would have accounted for whatever irregularity.

ADV PRETORIUS SC: Okay but what would you have done as MEC had you been told during the course of 2010/2011 that what was being done within the department was illegal? What would you have done?

20 **MR ZWANE:** We would have stopped it.

ADV PRETORIUS SC: You would have stopped it?

MR ZWANE: Ja, I would have stopped it immediately Chair. My interest was not that much in the names of the people appearing on the database. My interest, as I related it to the officials, was that there should be service delivery on the

ground as we had promised people.

Remember, according to the PFMA, my role is to take the needs of the majority of the people and serve. Turn that needs, those needs into a policy, determine the outcomes and hand it over to the accounting officer for implementation and the determination of the outputs. I would have done exactly that Chair.

ADV PRETORIUS SC: Well, as I understand, you describing the role of an MEC, it is a matter of formulating policy and
10 then handing it to the officials for the execution of that policy. Very broadly speaking, that is how you described it. Do I understand that correctly?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: Alright. Just to summarise so we can move forward. Mr Zwane, we have two things occurring in the procurement process in the Free State in 2010/2011. First, we have a public procurement process which is abandoned and the creation of a new database, correct?

MR ZWANE: That is correct, Chair.

20 **ADV PRETORIUS SC:** Second, we have a decision from Exco saying that various categories of persons must be identified and placed onto a database, correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: That latter instruction from Exco went via to you to the officials in your department. Am I

correct?

MR ZWANE: To just set the record straight. Exco is attended by both the MEC and the executive but in terms of the responsibility of the implementation of the Exco decision, the MEC will have to carry that responsibility to go back to Exco.

CHAIRPERSON: I am sorry Mr Zwane. You might have to clarify something. You have just made a statement that Exco is attended by both the MEC and the executive. Now Exco
10 stands for Executive Council. Those are the MEC's of the provinces and the premier. Is that right? That is an Exco?

MR ZWANE: That is...

CHAIRPERSON: Am I right?

MR ZWANE: You are right Chair.

CHAIRPERSON: Yes. So to say Exco is attended by both the MECs and the executive, are you referring to the HODs?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay, alright.

20 **MR ZWANE:** HODs in the Free State ...[intervenes]

CHAIRPERSON: Ja, of the different departments.

MR ZWANE: Of the department – different departments would normally form part of the Exco meeting.

CHAIRPERSON: Part of the Exco, yes.

MR ZWANE: Yes.

CHAIRPERSON: Is that all the time or only when there are certain issues that they need to deal with.

MR ZWANE: In the Exco Free State most of the time unless the Premier specify that in this Exco we will need only the MEC.

CHAIRPERSON: Yes.

MR ZWANE: But most of the times we both attend.

CHAIRPERSON: But just to make sure that we are all on the same page when we make – when we use these terms.

10 **CHAIRPERSON:** When we talk about Exco, strictly speaking, that is the Premier and the MECs only but anyone else who attends an Exco meeting attends ...[intervenes]

MR ZWANE: By invitation.

CHAIRPERSON: By invitation. But otherwise, when you say Exco, you are not including HODs, you are talking about the Provincial Executive Council but other people may be invited and others might have a standing invitation to attend unless excluded, is that right?

MR ZWANE: That is correct, Chair.

20 **CHAIRPERSON:** Okay, so when we say Exco we are referring to the Premier and his MECs but other people may attend on invitation.

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay.

MR ZWANE: The point I was making is that in the Free

State ...[intervenes]

CHAIRPERSON: Yes, most of the time the HODs would attend.

MR ZWANE: The HODs were part of the standing invitation to the Exco.

CHAIRPERSON: Yes, yes, okay. No, that is fine.

ADV PRETORIUS SC: The Exco meeting to which you have referred, Mr Zwane, more or less when did that take place?

10 **MR ZWANE:** When I may not recall exactly, Chair, but it was earlier in the year because in the State of the Provincial Address, if I recall well, the Premier of the Free State Province announced that the province will be building bigger and better houses and immediately after that State of the Province Address departments will then pick up what they need to do. Go back and devise means to implement. So normally the State of the Province Address is around February. So around February/March, I should think.

ADV PRETORIUS SC: And there would be minutes of that
20 meeting presumably?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: So that raises a further question, if in February/March Exco is saying go and populate a database of contractors to build houses in 2010/2011, how did it come about that in April a public procurement

process was taking place? It seems that there were two parallel processes. Rather strange.

MR ZWANE: Well, Chair, that question I think will be best suited to be answered by the accounting officer because normally once we as politicians have made a decision, he has to implement. But I must indicate to this Commission that after the State of the Province Address, different departments must then follow suit in making budget statement policy.

10 That is a process that is followed by each and every department and after that process, the public announcement, like in the State of the Province Address by departments, then HODs have to start implementing according to the budget statement policy of the department. In my own thinking is that it could have been possible that the time which was wasted was between the State of the Province and the budget policy statement of the department because I cannot recall exactly when was our budget statement, the policy, the date of that
20 statement.

ADV PRETORIUS SC: Well, fortunately we are dealing for the moment at least with the Human Settlements Department and we are dealing with the procurement process. Do I understand it correctly that prior to April 2010 there was an instruction given by Exco to the Human

Settlements Department who populated database in accordance with certain criteria which were named? Do I understand your evidence correctly?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: And at the same time in April 2010 a public procurement process, tender process, was embarked upon to identify contractors for the construction of low cost housing in the Free State Province, correct?

MR ZWANE: That is correct.

10 **ADV PRETORIUS SC:** Did you understand that there were two parallel processes happening?

MR ZWANE: Namely?

ADV PRETORIUS SC: A database is being created which is populated under the instruction of Exco at the discretion of officials and the HOD on the one hand who could be given work. And on the other hand, a public procurement process is taken place where tenderers would be evaluated according to certain criteria and then would be given work on the basis of that evaluation.

20 **MR ZWANE:** That is not correct.

ADV PRETORIUS SC: Well, then ...[intervenes]

CHAIRPERSON: Ja, he is asking for your understanding, what was your understanding of it.

MR ZWANE: My understanding on this matter, as I have said earlier on, is that the first process that went to a point

where it was abandoned ...[intervenes]

CHAIRPERSON: Open tender process?

MR ZWANE: It is an open tender process. It was not a parallel process. It went ahead until it was abandoned. When this process was abandoned, I requested for a way forward, as I had said earlier on, that is when the issue of the database was raised.

CHAIRPERSON: Well, that is something I really would like clarification on because earlier on I was under the
10 impression that the meeting where Exco gave the instruction you have talked about was – or took place after the open tender process had been abandoned.

So I thought okay, so it means that Exco was updated as to what was happening that the tender process was abandoned and then was told that here is a way in which it is sought to address the issue and then they make their own suggestions.

But you have, in answer to Mr Pretorius' questions, you have said that meeting actually happened much earlier
20 in the year so that does appear on the face of it to suggest two parallel processes but that might be a I misunderstanding. So his question really is how – what did it mean to be put on the database when there is an open tender process where people are being invited – contractors are being invited to tender. That is where I

think the question is.

MR ZWANE: Let me try and explain it in terms of how I understand it, Chair. The Exco, as the decision chain, did not prescribe to the department what way to follow. What Exco requested is that the final product – you may call it a list because I think what may be an issue here is this word database.

CHAIRPERSON: Ja.

MR ZWANE: The final product – let us for the purpose of
10 the ...[intervenes]

CHAIRPERSON: The final list.

MR ZWANE: Ja, let us say it is a final list. The final list must include the criteria that Exco has given.

CHAIRPERSON: Has specified.

MR ZWANE: Yes. And Exco does not say to us for the final list you must go the route of open tender or database. This is what Exco wants, we move, there is an open tender that has been abandoned and then an issue of the database is raised and that issue is being followed and
20 that issue produces a list that Exco has requested.

So with Exco we were not discussing the mechanism of how to move forward in the production of the final list, we were supposed to follow what is within the law and once we have done that, Exco – the list will be taken to Exco for a check whether the criteria has been followed

and we start the process of delivering houses.

CHAIRPERSON: So was Exco's concern that ultimately the list that – the list of contractors who would be awarded contracts would take account of the requirements that they specify. How that list came about was left to the officials, is that right?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Why would – if there is an open tender process without a database, contractors who wished to put
10 in bids would be able to put in bids and that would include contractors that were run by women or owned by women – contract – and people with disabilities and young people. So, in other words, without talking about a database, you would still – the open tender process could still produce a list that would satisfy the requirements that Exco had in mind, is that not so?

MR ZWANE: That is so, Chair.

CHAIRPERSON: Yes. So why did Exco not leave the whole issue of the final list that has got to them to the
20 open tender process that I assume they knew would be followed?

MR ZWANE: Exco did not stop the open tender, Chair.

CHAIRPERSON: Yes. No, no, I accept that it did not, at least for now.

MR ZWANE: Yes.

CHAIRPERSON: I am just asking the question. They must have known that in order for the Provincial Department of Human Settlements to build houses with the funding that came from the National Department, this conditional allocation, they must have known that an open tender public process would be initiated. Am I right in thinking along those lines?

MR ZWANE: Well, not entirely, Chair.

CHAIRPERSON: Not entirely.

10 **MR ZWANE:** Taking into account that we were told – and this is what I related also to Exco.

CHAIRPERSON: Yes.

MR ZWANE: That there has been a process that was followed by this department throughout all these years.

CHAIRPERSON: To use the database without an open tender?

MR ZWANE: To use the database, ja. Ja, ja.

CHAIRPERSON: Oh, okay, so – because I must have I
20 the abandonment of the open tender process when you were asking for the way forward, but from what you say you were told actually even before the open tender process was initiated, is that right?

MR ZWANE: Told by...?

CHAIRPERSON: The officials.

MR ZWANE: I am saying I was new in Exco, there were MECs who have been there before myself. They knew these processes, that is why I am saying not entirely.

CHAIRPERSON: Yes, okay.

MR ZWANE: Yes.

CHAIRPERSON: What you have just – what you have told me is that in terms of what Exco knew, you said it was not – I was not entirely correct to think that Exco would have known that the building of houses would be preceded by an
10 open tender process and then you said because they also knew and you told them that you had been informed that in the past the database had been used instead of an open tender process. That is my understanding of what you said, am I right?

MR ZWANE: I told them after I was told by the official after the tender – open tender process had been abandoned.

CHAIRPERSON: Yes. Okay, you only told Exco about what the – about the use of the database in the place of an
20 open tender after the tender process had been abandoned.

MR ZWANE: Yes.

CHAIRPERSON: Yes. Prior to the open tender process happening, being initiated, were you aware of that position irrespective of your source of information, namely that before you – the department did – or would sometimes use

the database in the place of an open tender process to award contracts?

MR ZWANE: No, Chair.

CHAIRPERSON: You did not know that?

MR ZWANE: No, I did not know.

CHAIRPERSON: Okay. Do you know whether Exco knew that at the time they gave the instructions about the database?

MR ZWANE: On this I presume that on the strength that
10 some of my colleagues have been there.

CHAIRPERSON: Ja.

MR ZWANE: And I was told that these processes have been taking place.

CHAIRPERSON: Yes.

MR ZWANE: All these years.

CHAIRPERSON: Ja.

MR ZWANE: I presume that some of my colleagues in the Exco knew.

CHAIRPERSON: Yes.

20 **MR ZWANE**: Yes, Chair.

CHAIRPERSON: Okay. So going back to what Exco contemplated would happen, because you were part of Exco, when it gave instructions about the creation of a database, I was suggesting to you that Exco would have known that before the department would award contracts

for the building of houses there would be an open tender process. Is my thinking of what they knew correct?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: That is correct.

MR ZWANE: Yes.

CHAIRPERSON: Now the question that arises, is if they knew that there was going to be an open tender process where everyone would be invited to put in bids if they could build houses, why did they not leave the question of
10 the list to be determined through that process rather than say then the department must create a database that would take care of the requirements that they specified. Why was that necessary?

MR ZWANE: Chair, I thought I tried to explain this before, that ...[intervenes]

CHAIRPERSON: Yes, you may have tried and I did not understand. Please try again.

MR ZWANE: Ja, okay.

CHAIRPERSON: Ja.

20 **MR ZWANE:** Let me give it a try again, Chair. Exco was interested in the final product, that is the list. I may have ...[intervenes]

CHAIRPERSON: Yes, you said that, ja.

MR ZWANE: ...this database before. They were only interested in the final product, which is the final list and

that the process of obtaining the final list was a process of the department.

That is why the department followed an open tender until it was abandoned. And when this process was abandoned, I asked for a way forward not from Exco but from my official. That is when the issue of a database was raised. And after some explanation we agreed that a database should be followed.

10 I reported at that moment to Exco because I had to report progress in terms of when are we building houses. I reported that there has been this issue and here are the reasons and this is the way forward as suggested and Exco agreed with that way forward.

CHAIRPERSON: That way forwarded being ...[intervenes]

MR ZWANE: Database.

CHAIRPERSON: Using the database in the place of an open tender process?

MR ZWANE: Yes, that has been abandoned.

CHAIRPERSON: That had been abandoned, yes.

20 **MR ZWANE:** Yes.

CHAIRPERSON: So the meeting of Exco that happened prior to the initiation of the public tender process, is there a meeting at which – that is prior to the initiation of the open tender process, is there a meeting at which Exco talked about a database for the department because

initially, what you have just told me, is in accordance with my initial understanding of what you were saying.

MR ZWANE: Yes, ja.

CHAIRPERSON: But then there was a time when you were answering certain of Mr Pretorius' questions and I understood you to be saying Exco actually gave that instruction not long after the State of the Province Address.

MR ZWANE: That was in connection with the statement of
10 bigger and better houses, Chair.

CHAIRPERSON: Yes, yes.

MR ZWANE: That statement was made in the State of the Province Address. In the State of the Province Address the details of open tender database are not part of that State of the Province Address. It was the size of the houses, the – in look of the houses because ...[intervenes]

CHAIRPERSON: The size and the quality.

MR ZWANE: Ja, size and quality aspects like ceiling and bath inside. Those were the issues that were announced in
20 around February/March, as I have said to Mr Pretorius.
Yes.

CHAIRPERSON: But my question is whether there was a meeting of Exco that took place after the State of the Province Address but before the initiation of the open tender process at which Exco gave an instruction that the

department should put together a database or was there no such meeting where such a thing was said?

MR ZWANE: No, I cannot recall that, Chair.

CHAIRPERSON: Okay, so the only time when you talked to – when you have testified about Exco giving instructions that the department should compile a database, that is after the open tender process had been abandoned.

MR ZWANE: Yes, Chair.

CHAIRPERSON: Okay, alright. Thank you. Mr Pretorius,
10 I see that we are at nearly twenty five past. Do you want to ask questions before we take the adjournment?

ADV PRETORIUS SC: Take the short adjournment, Chair.

CHAIRPERSON: Ja, okay. Let us take the tea adjournment, we will resume at twenty to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV PRETORIUS SC: Thank you Chair. It will help us
20 move forward Mr Zwane if we got the sequence of events right. You spoke about an EXCO meeting towards the beginning of the year before April 2010, do you recall that?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: I understood your evidence earlier to be that it was at that meeting that EXCO said establish

a database and make sure that certain categories of contractor appear on that database. It seems that I understood you wrong, or you were wrong, either, correct?

MR ZWANE: But I have since tried to clarify that ...[intervenes]

ADV PRETORIUS SC: So let us clarify that.

MR ZWANE: It was the usage of database maybe in a confusing way. I should have said it was in that meeting where EXCO said other final list not a database, final list
10 should include the categories I have mentioned your young people, woman, disabled and the experienced.

ADV PRETORIUS SC: And that would have been said prior to April 2010 to all the HOD's. Correct?

MR ZWANE: In the presence of all the HOD's, yes.

ADV PRETORIUS SC: Was it said in reference to housing alone or all contracting across the province?

MR ZWANE: I cannot just recall the other agenda items Chair.

ADV PRETORIUS SC: No what I am saying is the interest
20 that EXCO had in making sure that the province contracted with people for example with disabilities. Did that apply to human settlements or did it apply across the board to all provincial departments?

MR ZWANE: It applied across the board, Chair.

ADV PRETORIUS SC: Alright. We know that after that

your department determined to go out on public tender in order to populate a category or categories of contractor for the award of housing contract. Correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: We know that that tender process collapsed.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: The question is why was it not reinstated or corrected?

10 **MR ZWANE:** Well that was supposed to be the furnishing of the accounting officer as he was the one who in the first place initiated it and as it collapsed, we were not involved as politicians in terms of this collapse. As I have said earlier on I requested to know the way forward after the abandonment of the open tender that is when this issue of the database was raised.

ADV PRETORIUS SC: Does the housing code give the MEC any responsibilities in respect of procurement that you know of?

20 **MR ZWANE:** I have not seen it myself Chair but from what I have been told and what has been happening at least in the Free State Province that is correct.

ADV PRETORIUS SC: Alright we will come to the detail and we must first establish in relation to your answer to an earlier question that it is the Housing Act or the housing

code that permits the appointment of contractors via a database we will check that and come back to it.

CHAIRPERSON: Before you proceed Mr Pretorius I am not sure that I understood what you were saying is correct in your last answer to Mr Pretorius. He asked a certain question and you said you had not seen – about the code and you said you had not seen it for yourself but you had been told according to what you had been told that is correct. So what is correct?

10 **MR ZWANE:** It is Chair correct that according to the Housing Act the MEC was responsible for the service providers that will ultimately construct houses.

CHAIRPERSON: Responsible for them meant responsible for selecting them or responsible to do what about them? As you understood the position.

MR ZWANE: As I was told and I then became to understand that the final approval of that list will lay with the MEC.

CHAIRPERSON: Yes, okay alright. Mr Pretorius at least
20 now I understand what you and Mr Zwane was saying was correct.

ADV PRETORIUS SC: So far we have early in the year an instruction by EXCO to all departments to make sure that provincial contracts awarded by the Free State government should include people in various categories including

matters related to youth, disability and alike. Correct?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Okay let me just make sure I understand I think this part keeps on getting confusing a bit. Now you remember earlier on I asked you the question whether there was ever anything of EXCO prior to the initiation of the public open tender process in which EXCO said there must be a database that met the requirements that you have been talking about. I understood you to be saying
10 you could not remember that there was an EXCO meeting at which that was said. Is my understanding of your evidence correct?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Yes, so whenever you talk about EXCO instructing the department to compile a database or list that met the requirements in terms of woman, people with disabilities, young people and so on. You are talking about a meeting that happened after the open tender process had been abandoned.

20 **MR ZWANE:** The statement by EXCO in terms of the criteria not the database.

CHAIRPERSON: Yes.

MR ZWANE: Has been repeated statement in EXCO meetings. The product of the final list of the department that was constructed out of a database. EXCO was told

about it only after the abandonment of the open tender process.

CHAIRPERSON: Yes, okay. So you are saying that prior to the initiation of the open tender process EXCO had spoken in general terms and said in effect all government departments must make sure that their database or their list of service providers should meet the requirements that we have talked about.

MR ZWANE: Yes, Chair but that issue was like a
10 manifesto if I have to times.

CHAIRPERSON: Yes, they kept on talking about it this, ja.

MR ZWANE: This is what we aspired to achieve.

CHAIRPERSON: Yes.

MR ZWANE: As a province.

CHAIRPERSON: Yes.

MR ZWANE: Different departments as you engage into activities that will give people work please make sure that our aspiration is met, yes.

20 **CHAIRPERSON:** Okay, alright.

ADV PRETORIUS SC: Chair I appreciate your assistance in this matter but if I could just get a chance to get the sequence right.

CHAIRPERSON: I am going to let you get a chance, I am also trying to make sure I follow Mr Pretorius.

ADV PRETORIUS SC: As I understand your evidence now and I am not going to deal with what evidence you have given earlier this morning Mr Zwane precisely now. As I understand your evidence prior to April 2010 the EXCO gave an instruction to all departments across the board to ensure that contracts were given to people in various categories. Correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: That was not anything specific for
10 housing.

MR ZWANE: No.

ADV PRETORIUS SC: Nor was it specific for any particular process that was embarked upon.

MR ZWANE: Correct Chair.

ADV PRETORIUS SC: And in particular it was not a reference to a database as I understand you now.

MR ZWANE: Correct Chair.

ADV PRETORIUS SC: I understood you before but the record will show what was said and not said before. 26 of
20 April comes along and your department and your HOD initiate a public procurement process. Correct?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: That process collapses. Correct?

MR ZWANE: Correct.

ADV PRETORIUS SC: Out of the collapse of that process

it is determined to compose a new database. Is that so?

MR ZWANE: That is correct.

ADV PRETORIUS SC: After that did EXCO intervene in any manner whatsoever to give any instruction or to receive any report and comment. What did EXCO do after that?

MR ZWANE: We went to EXCO and reported after I met with my officials and having been phoned about it, the database. So I reported according to that the open tender
10 has been abandoned and this is the new information that I have that is going to be followed and that was accepted by EXCO.

ADV PRETORIUS SC: Did they give any further instruction?

MR ZWANE: No.

ADV PRETORIUS SC: So EXCO knew firstly that a database had collapsed and secondly that...[intervene]

CHAIRPERSON: The open tender system had collapsed.

ADV PRETORIUS SC: Yes, you are quite right Chair I
20 should not be adding to the confusion and EXCO knew that an open tender process had collapsed and that a new database was to be composed.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: And they knew that because you reported that to them?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: And there should be a minute of that meeting as well. When did that meeting take place?

MR ZWANE: I cannot remember when but it was after the collapse of the open tender process. I cannot remember quite specifically the...[intervene]

CHAIRPERSON: Are you able to remember the month maybe?

MR ZWANE: It was well after April

10 **CHAIRPERSON:** Well after April.

MR ZWANE: Yes.

CHAIRPERSON: Could it be October, September?

MR ZWANE: Ja, I think earlier than that.

CHAIRPERSON: Earlier than that.

MR ZWANE: Ja, earlier than that.

ADV PRETORIUS SC: Well We know that the decision of the bid adjudication committee that decided what should happen or what should be proposed to happen after the collapse of the tender process that meeting took place on
20 the 28th of July 2010.

MR ZWANE: I think it did.

ADV PRETORIUS SC: Now that decision is recorded and if you wish to look at the minutes I am happy for you to do so but the minutes of that meeting read:

“The committee recommends that different

databases be consolidated and used as a source of service providers i.e. departmental database, provincial centralised database, quadrem database as well as the list of suppliers who tendered for this tender.”

Do you recall that? Do you want to see the document?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: If you look at FS14 it is the bundle behind you.

10 **CHAIRPERSON**: There is a bundle – somebody will assist you Mr Zwane.

MR ZWANE: FS14?

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Page 295. Do you have that page there?

MR ZWANE: Yes, sir, yes I do Chair.

ADV PRETORIUS SC: You see under the heading seven new matters.

MR ZWANE: 290...[intervene]

20 **ADV PRETORIUS SC**: We are in the black numbers, FS14, 295.

MR ZWANE: 295, under?

ADV PRETORIUS SC: New matters.

MR ZWANE: Arising from the minutes.

ADV PRETORIUS SC: Item seven of the minutes.

MR ZWANE: Yes, Chair item seven new matters, yes.

ADV PRETORIUS SC: Right. The print is small but we can struggle through it. 7.1 there is a little arrow marked next to it reads:

“Evaluation of tender - there is a reference – for the construction of BNG houses in the Free State through project linked.”

MR ZWANE: Yes.

ADV PRETORIUS SC: Reads:

10 “The Chairperson indicated to the committee that the tender has been evaluated but due to the fact that the validity of the tender has expired and they cannot adjudicate they have to cancel the tender. However, in order to spend the money appropriately they have to use the suppliers on different databases.”

And then the resolution:

20 “Cancellation of tender is recommended due to the expiry there of. The committee recommends that different databases be consolidated and used as a source of service providers i.e. departmental database, provincial centralised database, quadrem database as well as the list of all suppliers who tendered for this tender.”

Several points arise out of that minutes Mr Zwane that I

would like to ask you about. The first is that it is apparent from this minute that this committee believed that because the validity of the tender had expired they had to cancel the tender. It seems that they were of the view that the tender had to be cancelled and could not be rectified in any way. I just want to say to you that on our researches that is simply an incorrect statement of the law.

CHAIRPERSON: Well I am not sure Mr Pretorius whether the minutes can be or should be read as reflecting that
10 they thought they were obliged to cancel.

ADV PRETORIUS SC: Well...[intervene]

CHAIRPERSON: As opposed to just deciding what they thought was the correct way forward.

ADV PRETORIUS SC: The wording is I suppose one could use the word I think in different senses.

CHAIRPERSON: No, Mr Pretorius on reflection you may be right because it says there they have to cancel.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: I think you may be right they may regard
20 themselves as obliged to cancel in the circumstances.

ADV PRETORIUS SC: Yes, they go further to say however in order to spend the money appropriately they have to use suppliers on different databases.

CHAIRPERSON: Yes, so they may have thought that was the only way, they could go forward.

ADV PRETORIUS SC: Yes and if that was what they thought they were incorrect. Were you are of that, did you read these minutes?

MR ZWANE: As I have said earlier on Chair that the details of what was happening administratively was not brought to me.

ADV PRETORIUS SC: This is a fundamental recommendation Mr Zwane it saying no more open tender process we throwing that overboard we are just going to
10 point people to a database. That is a fundamental procurement decision it is not a matter of administrative details.

MR ZWANE: As I understand it Chair and I want to repeat what I have said earlier on. This was a process that would give that final product of a final list. I have said earlier on that what I had requested from the HOD Mr Paul Mokoena was to follow the processes open a tender bring the final list.

In terms of what happens to the committees there
20 different committees that is not normally brought to the attention of us as politicians unless there are problems and I did allude to the fact that if I am correct after the collapse of the tender process when I asked for a way forward a database approach was suggested to me. So I did not know about this minutes Chair I must put it on

record.

CHAIRPERSON: But let us leave aside the minutes what you were told is that the open tender process had been abandoned...[intervene]

MR ZWANE: Yes, Chair.

CHAIRPERSON: And when you asked for the way forward you were told that that database would be used and on your own understanding contractors who would be put on the database would be given contracts subject to
10 assistance from the department with regard to capacitation of those who might have needed capacitation.

Now I think the question that Mr Pretorius raises a question I was going to ask you when you were told that the open tender process would not be pursued further and a process would be followed that was suggested to you, that was recommended that would not actually involve an open tender process.

Did you not ask the question but you people initiated
20 an open tender process because you must have recognised that this was a matter that required to go through an open tender process. How can you now say let us leave that process and follow a process that is not transparent that is not open. Did you not ask that question?

MR ZWANE: Ja, I did allude to the fact that I asked Chair.

CHAIRPERSON: Yes and what was the – and the answer you were given was that this practice of using a database in the place of an open tender had been used before.

MR ZWANE: I even went further to say according to which law.

CHAIRPERSON: Yes.

MR ZWANE: And I was given a response that according to the Housing Act.

CHAIRPERSON: Yes.

10 **MR ZWANE:** Yes, Chair so I did not have a reason not to believe people who were interviewed, appointed, gone to school to ensure that the procedures of the PFMA and other laws governing in this process of procurement are followed. I took it in good spirit that I am being advised by the right people, yes Chair.

CHAIRPERSON: But did you ask to see the relevant provisions of the Act because it seems to me this ought to have sounded very strange to you because when the department decided to initiate an open tender process they
20 were not doing that because they thought it is a nice thing to do, they did that because they were obliged by the law to do so. Now suddenly because certain things did not happen, they say we are abandoning that and we will do things differently. It seems to me that as the MEC you – I would expect that you would say there is something that I

do not understand here. In the first place why did you not use the database process if this matter did not require an open tender process. Now you abandon an open tender process, you go into a process that I have never heard of, I am hearing from you for the first time.

MR ZWANE: They explained that as I have explained earlier on Chair in fact when I asked them at each was the time wasted if I had known before that there was a shorter...[intervene]

10 **CHAIRPERSON:** Process.

MR ZWANE: Process for us to build houses we could have followed that process after hearing that there is a process and I want to believe that the issue of money taken at a later stage would have been avoided. But after asking this questions and answers being given to me I agreed with them and we closed it there and I reported back to EXCO that this is the process you are going to follow and that there was no concern raised at that level also which would have made me to reconsider what the
20 officials has told me. So that is how the process unfolded, Chair.

CHAIRPERSON: You did not think it was such an important matter that you should see the relevant legal provisions about the Housing Act yourself to satisfy yourself that what they were recommending was really in

accordance with the law.

MR ZWANE: Well Chair...[intervene]

CHAIRPERSON: Or to seek legal advice.

MR ZWANE: The first process of an open tender I did not question. I was told by them and I allowed them to proceed. When they came back explained, gave me reasons I also allowed them to proceed. At that time, it did not dawn to me that I could get deep into the issues of getting an opinion beyond the people who some of them
10 had a background of law. I did not see it that way so I considered and said let us proceed.

CHAIRPERSON: Okay, Mr Pretorius.

ADV PRETORIUS SC: As I understand your evidence Mr Zwane you were informed by your officials that a database would be established, a new database were established and you accepted their decision.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: You did not independently take steps to check whether this was a lawful process or not?

20 **MR ZWANE:** That is correct Chair.

ADV PRETORIUS SC: You believed however that these provisions existed in the Housing Act you say.

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: We will come to those in due course but just as a HOD would be accountable expressly

in terms of the Public Finance Management Act or what happens under his watch with financial implications I presume you accept that in so far as you approved the establishment of a new database in the place of a collapsed tender process you would accept accountability for any error in that process that would have resulted in an unlawful procurement process following. If it was unlawful.

MR ZWANE: If it was unlawful the accounting officer will carry full responsibility of his actions.

10 **ADV PRETORIUS SC:** And the MEC is not accountable at all?

MR ZWANE: The MEC's duty as I have expressed that before Chair once I have taken the accounting officer the needs of the people and the outcome he implements and demands the output. Section 64 of the PFMA states very clearly that if there is any unauthorised expenditure.

If it happens because of my instruction now as an MEC and the HOD did not bring this to my attention in writing that the activity or the exercise you are engaging
20 yourself in will result in an authorised expenditure, he takes full responsibility because it is his duty to manage the finances of the department effectively and efficiently and where there are illegalities it is his duty to ensure that those illegalities does not happen. Now in the case where the HOD comes to me as an authority and say, here is the

report; this is how we are going to implement. I may have not read further the law but that means that HOD is comfortable with the activity taking place. And if there is any wrong once this wrong is reported my duty is to take action as a politician. Because I cannot be running to all the department checking laws and so forth. It is an administrative Accounting Officer's duty to do that. My work is to play off as a true reports.[?] The reports that are generated by the HOD and if those reports at a particular time are not precise
10 and correct once that is brought to my attention then I have to act to the person who it – who misled me or gave me the reports. That is how I understand it Chair.

ADV PRETORIUS SC: Alright. We understand and we have dealt with the responsibilities of an Accounting Officer in this case Mr Mokoena in terms of the Public Finance Management Act. So much is clear and has been dealt with. My question is a slightly different one.

MR ZWANE: Okay.

ADV PRETORIUS SC: Here we are dealing with the
20 expenditure – planned expenditure of R1.4 billion. As MEC if during the period you hold that office or that position an unlawful procurement process takes place is the MEC not accountable at all?

MR ZWANE: If – if the MEC knowingly allowed this illegal activity to take place then the MEC also will be held

accountable by the Premier if that happened in his watch and he will [00:02:32].

ADV PRETORIUS SC: Well the suggestion that we make from this side of the room and it has been put to you too by the Chair is that perhaps given the enormity of the budget here when you were told that a Public Procurement Process had collapsed and a data base was to take its place you should have taken steps to check the law either yourself or by taking proper legal advice. That is the proposition that
10 we wish to put to you.

MR ZWANE: I thought reporting this matter to EXCO as I have said where different MEC's and Heads of Department sits was a mechanism to find comfort in the process and that process did go through that structure.

ADV PRETORIUS SC: You say you heard that other MEC's had used the data base structure therefore you felt comfortable in you doing the same. Do I understand the point correctly?

MR ZWANE: No. I said I presume that other MEC's knew
20 about the data base because they were not new in the Provincial Department. As we were told earlier on that the data base was used in the previous years.

ADV PRETORIUS SC: Yes.

MR ZWANE: So they – they should have known I presumed.

ADV PRETORIUS SC: Yes but...

MR ZWANE: That they should have known about this matter before I came.

ADV PRETORIUS SC: Yes well I am not sure who you are referring to when you talk about other MEC's but we know that your justification for using a data base in this instance emanates from the Provisions of the Housing Act you say which would not concern MEC's and other departments necessarily.

MR ZWANE: Well Chair what I was trying to indicate is that
10 this matter would be reported – houses were built in the Free State using the data base and my experience is that everybody will know what everybody is doing because of the reports that will be tabled in the – in the EXCO that was in that spirit.

ADV PRETORIUS SC: Right. We know that the recommendation of the bid adjudicating – adjudication committee which we have just referred you to Mr Zwane was ultimately accepted. It was signed off by the HOD. You understand – you know that?

20 **MR ZWANE:** No I do not know that.

ADV PRETORIUS SC: Alright well let us put it to you. Have you still got...

MR ZWANE: Yes.

ADV PRETORIUS SC: Page 295 of FS14.

MR ZWANE: 295.

ADV PRETORIUS SC: If you just turn over the page ...

CHAIRPERSON: What page?

ADV PRETORIUS SC: 295 FS14 is the recommendation.

CHAIRPERSON: Yes. I am at 295.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Must I go to another page?

ADV PRETORIUS SC: Over the page to 297.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: The decision of the committee is
10 recorded.

MR ZWANE: I have 2 – I have 2 295's here.

ADV PRETORIUS SC: Well that is unfortunate.

MR ZWANE: What is the heading?

ADV PRETORIUS SC: Could you go to page 297.

MR ZWANE: Is this the one?

ADV PRETORIUS SC: Yes the 295 was the red 295 we are
dealing with the black numbers only.

MR ZWANE: The black – okay. Okay.

ADV PRETORIUS SC: FS14 297 you will see the
20 committee's decision as best I can read it is recorded in
handwriting there. You see that?

MR ZWANE: I see that but I cannot read it.

ADV PRETORIUS SC: Yes well it is cancellation of the
tender is recommended during – due to the expiry thereof.
The committee recommends that the following departmental

data bases be consolidated and there is some writing that follows and to include those who tendered. But the point I want to put to you is that that was recommended as the decision by the Chairperson Departmental Bid Adjudication and approved by the Accounting Officer on the 30 July 2010. You see that?

MR ZWANE: Yes I see it.

ADV PRETORIUS SC: Yes. Well we know that matters proceeded along the lines of a data base because you say
10 you told EXCO that. The decision all I am putting to you the decision was approved. The recommendation of the bid adjudication committee was approved. Are you happy to accept that?

MR ZWANE: Yes. I can see it now Chair.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: And at the meeting of EXCO where the use of the data base in the place of an open tender process was approved not a single person said hang on, should we not get legal opinion or legal advice as to whether this is lawful?

20 **MR ZWANE**: That is correct Chair.

CHAIRPERSON: The Premier did not do so. All the other MEC's did not do so and I assume there would have been a lot of HOD's also there. Nobody ever said hang on.

MR ZWANE: That is correct.

CHAIRPERSON: Yes. Mr Pretorius.

ADV PRETORIUS SC: It was then decided after the collapse and abandonment of the tender process to proceed by way of a data base so much we have established, correct?

MR ZWANE: Yes.

ADV PRETORIUS SC: The justification and legality of that decision we will address in due course including what the Housing Act says about the MEC's responsibility. But that is – if that is to hand I can put it to you? The duties of a MEC in terms of Part 3 Provincial Government of the Housing Act
10 not the Housing Code appear in Section 7.3 of the Housing Act. Did you know that the Housing Act stipulates what the duties of a MEC are in relation to the Provision of Housing?

MR ZWANE: No Chair.

CHAIRPERSON: I am sorry Mr Pretorius have we got that in one of the bundles, the Housing Act?

ADV PRETORIUS SC: Yes it is in one of the bundles. I am told only the Code we will print it out and we will deal with it after the long adjournment.

CHAIRPERSON: Okay.

20 **ADV PRETORIUS SC:** But let me just say this Section 7.3c says:

“That a MEC.”

Well 7.3 says:

“An MEC must

a.Administer every National Housing Program

and every Provincial Housing Program which is consistent with National Housing Policy and Section 3.2b and for this purpose may in accordance with that program and the prescripts of contained in the Code – and that is the Housing Code – approve:

1. Any projects in respect thereof and
2. The Financing thereof out of money paid into the Provincial Housing Development Fund as contemplated in Section 12.2.”

10

Section 3b reads:

“Determine Provincial Housing Development Priorities in accordance with National Housing Policy.”

Section 3c reads:

“Apply Procurement Policy in respect of Housing Development determined by the Minister in terms of Section 3.2c and d - administer the assets contemplated in Section 14.”

20

Now we can get the whole Act we can give you a chance to read it during the long adjournment but did you know that the MEC had particular responsibilities and would be accountable for these items listed in Section 7. Did you know that at all?

MR ZWANE: As I have said I was told so in terms of the data base. I did allude to the fact that the – I had not had a chance myself to go through the details of this Act.

ADV PRETORIUS SC: Yes but one would have understood it as common sense let alone legal obligation that a MEC would make himself or herself aware of the duties that the law provides in respect of the matters under his or her control.

MR ZWANE: That is correct Chair and – but I should
10 indicate that I had familiarised myself with the constitution of South Africa. I have – I had also familiarised myself with the PFMA that is why I have been quoting it. It is only when the issue of the data base was raised when I was told by the Housing Act and you would recall that at some point later on the Auditor General recommended that everybody should follow PFMA. So in terms of where I am sitting I had gathered sufficient information that will make me be able to lead effectively and do what I was supposed to do.

ADV PRETORIUS SC: Yes well the proposition I put to you
20 Mr Zwane would apply as a matter of general principle. But in this case of course the report to you that one could use a data base in order to provide work to contractors for the expenditure of money allocated to housing R1.4 billion was justified by the Housing Act. Perhaps that was the occasion to check the Provisions of the Act and see there what your

responsibilities were.

MR ZWANE: I – it did not come to mind at that particular time Chair except to say at a later stage when this issue was interrogated at the level of the Auditor General it then dawned that we should follow the PFMA which I had familiarised myself with. And I must say Chair that for the period I have been in – in the Department of Human Settlement the issues we talking about is less than a year basically from the point where I was introduced to this
10 Housing Act and my departure from that department. I am sure if I had stayed longer, I would endeavour to acclimatise myself with different – other Acts and Codes as they are found.

ADV PRETORIUS SC: Yes well the functions of the Auditor General aside one would have thought that the duty on Cabinet officials would be for them to determine their responsibilities in terms of the law at the time they took office let alone at the time R1.4 billion was about to be spent.

20 **MR ZWANE:** Would I be wrong presuming Chair that I was sufficiently covered by the PFMA? What was my ...

ADV PRETORIUS SC: Well I do not want to debate the law with you. The PFMA does make the Accounting Officer responsible for financial matters under that person's control. There is no doubt about that.

MR ZWANE: Yes.

ADV PRETORIUS SC: That accountability can also not be avoided through delegation or instructions as you have reasonably and fairly pointed out. But that does not mean to say that MEC's have no responsibilities and have no accountability and that is the point I am raising.

MR ZWANE: I hear you Chair.

ADV PRETORIUS SC: Let us move on then subject to coming back to the Act because I think in fairness, we must
10 look at the whole Act before calling you to account in terms of that Act. In late October we understand that the National Department of Human Settlements raised the issue of under-
spending in terms of the DORA allocation with yourself on the one hand and the Provincial Department on the other. That I do not understand to be controversial.

MR ZWANE: The – on the 14 October the Minister raised an issue of low expenditure by three provinces Chair. And on the 18 October, we had the teleconference about this matter. And in that meeting we were requested to come up with
20 recovery plans as different provinces, that is correct.

CHAIRPERSON: Before you go – have you finished your answer?

MR ZWANE: Yes.

CHAIRPERSON: Okay before you go further Mr Pretorius I just want to go back a little bit. The abandonment of the

open tender process were you told what the reason was why it was being abandoned or why it had collapsed?

MR ZWANE: If I recall well Chair it was because the tender period or the date has – had expired.

CHAIRPERSON: Yes.

MR ZWANE: That was one of the reasons I cannot just remember.

CHAIRPERSON: Yes.

MR ZWANE: The top of my head other reasons yes.

10 **CHAIRPERSON**: Yes. Did you – were you told why the management had allowed that period to expire without finishing what needed to be done in terms of that open tender process? Because you were now finding yourselves as a department at a time when you had to think of another forward because an open tender process that had been initiated was not being pursued. Did you – did you find out why was – why are we in this situation? Who is responsible for this? Is there somebody who did not do his or her job and call for an explanation?

20 **MR ZWANE**: If I recall well Chair I was told that the amount of tenders that had been forthcoming was huge. So the – this period lapses when people were trying to sort that out and I could not argue with that further because if I did argue with it further in terms of my own understanding it would have prejudiced the fair administration of that process.

CHAIRPERSON: Did you ask whether the period of the tender could have been extended to give the officials more time to deal with the huge number of bids?

MR ZWANE: I think at – at issue for all of us Chair as I have indicated earlier on.

CHAIRPERSON: Hm.

MR ZWANE: That one of the concerns I raised was that after they had raised this new method is that we had waited for this time all along thinking that it is the only mechanism
10 that will lead us to a proper legal outcome.

So the issue of me suggesting the way forward at that level I would have seen it at that point as interfering within administration. I thought it was correct for me to request them to lead me where to now.

That is why asked them about the way forward that we do when these tenders has been abandoned because of the reasons you are telling me and should they have wished to extend I would not have stood against that wish at that particular point.

20 I would have raised issues of course that they should ensure that we do not spend as much time as we have spent before because of service delivery but I would not have stopped that process going to that direction.

CHAIRPERSON: Yes. No what I have in mind is – would not have been interference on your part. It would have been you

wanting to hold for example the HOD accountable.

So what I am talking about is did you not ask the HOD or the Officials because you saw that there was a huge number of bids that you had to sort out you must at some stage have realised before the tender period expired that you were not going to make it.

Could you not have extended the period to allow yourselves enough time so that we do not – because if you – if you could have done that and you had done that, we would
10 not find ourselves where we are now. That is the question I am asking you whether you did not ask that question.

MR ZWANE: No I did not.

CHAIRPERSON: The extension being prior to the expiry not after.

MR ZWANE: I did not Chair.

CHAIRPERSON: You did not ask that question?

MR ZWANE: No I did not.

CHAIRPERSON: Okay. But on reflection you think you should have asked it?

20 **MR ZWANE**: No.

CHAIRPERSON: Sitting there?

MR ZWANE: Having known that that was legal to get into an ongoing tender that has a timeframe and extend that timeframe I would have – I would of course asked that question.

CHAIRPERSON: You would have asked that question?

MR ZWANE: Ja I would have asked that question.

CHAIRPERSON: Yes.

MR ZWANE: But I did not know the legalities.

CHAIRPERSON: Yes.

MR ZWANE: As I kept on asking them about legalities.

CHAIRPERSON: Okay. Yes.

MR ZWANE: So I was not sure about the legality of that question that is why it did not even dawn to me to ask.

10 **CHAIRPERSON:** Okay.

MR ZWANE: What I was not sure about myself.

CHAIRPERSON: Okay alright. Mr Pretorius I interrupted you.

ADV PRETORIUS SC: Thank you Chair. You have told the Chair that during October or November 2010 the National Department of Human Settlements raised with your department the issue of the under-spending of the DORA allocation.

MR ZWANE: That is correct Chair.

20 **ADV PRETORIUS SC:** And you have told the Chair that you were told by the National Minister I think.

MR ZWANE: That is correct.

ADV PRETORIUS SC: That you should prepare an expenditure recovery plan. Is that correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: How did your department go about doing that and what was your role in this process?

MR ZWANE: I requested for a meeting with the officials.

ADV PRETORIUS SC: Which officials?

MR ZWANE: HOD including senior officials and related this information to them and requested them to come up with a recovery plan because we were supposed to submit that recovery plan to the Minister.

ADV PRETORIUS SC: Right. Do you know in what set of
10 meetings the Expenditure Recovery Plan was devised?

MR ZWANE: Can you repeat the question Chair?

ADV PRETORIUS SC: Do you know in what set of meetings or what forum this plan was devised?

MR ZWANE: I ...

ADV PRETORIUS SC: Well let me put it differently. What group of persons devised this plan?

MR ZWANE: The recovery plan I did not get into details. I requested the HOD and his team to develop the recovery plan.

20 **ADV PRETORIUS SC:** Alright so what happens as I understand it is the National Minister speaks to you; says you have not spent money in terms of your DORA allocation. If you do not want the money taken away you had better submit an Expenditure Recovery Plan to me.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: Was any deadline set – can you recall?

MR ZWANE: There was a subsequent meeting where this recovery plans were to be submitted and that we had to – the meeting was called for the 19th if I am correct.

ADV PRETORIUS SC: Of November?

MR ZWANE: Of November for us to talk about this matter and look at the recovery plans.

ADV PRETORIUS SC: Alright we will come to the – that
10 meeting in due course. You were – did you attend the meeting of the 19th November?

MR ZWANE: No Chair.

ADV PRETORIUS SC: What was the reason for that? Well put it this way were you an invitee?

MR ZWANE: Yes.

ADV PRETORIUS SC: In the ordinary course you would have attended?

MR ZWANE: Yes.

ADV PRETORIUS SC: Yes. Alright so is it your evidence
20 that the Expenditure Recovery Plan was developed by persons within the department and you took no part in the development of that plan. Do I understand it correctly?

MR ZWANE: Before I answer that question, may I ask for a personal break Chair?

ADV PRETORIUS SC: Sure.

CHAIRPERSON: Okay. Should we – I am sorry should we take lunch already or should we – how much time do you need?

MR ZWANE: Just five minutes.

CHAIRPERSON: Just five minutes. Oh maybe we should just take five minutes. We will adjourn for five minutes.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

10 **CHAIRPERSON**: You may proceed Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: I think you had the question that the witness was still to answer.

ADV PRETORIUS SC: The question ...[intervenes]

CHAIRPERSON: Do you remember, Mr Zwane.

MR ZWANE: No, Chair.

CHAIRPERSON: [laughing] Mr Pretorius, do you remember the question you had asked?

20 **ADV PRETORIUS SC**: I am equally at a lost Chair. Let us take a step back. [laughing]

CHAIRPERSON: [laughing] Would you like to repeat it?

ADV PRETORIUS SC: No, I just... I think we need to take a step back.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: What had occurred is that the

national minister had spoken to you in relation to the perceived under spending, step one. Step two, he asked you to device or to produce an expenditure recovery plan, correct?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: You then approached your head of department, I presume your officials, you said, to device this plan. And I asked you, who actually devised this plan and what was your involvement in the devising of the plan.

10 **MR ZWANE**: The development of the recovery plan was developed by the HOD and his senior officials.

ADV PRETORIUS SC: Did you take any part in the development of that plan?

MR ZWANE: No, I did not Chair.

ADV PRETORIUS SC: Did you see the outcome?

MR ZWANE: Yes, I saw the outcome.

ADV PRETORIUS SC: Alright. If I can just show it to you, please?

MR ZWANE: [No audible reply]

20 **ADV PRETORIUS SC**: It exists in various places but it is attached to the statement of mister... the founding affidavit of Mr Mokhesi. If you will bear with me for a moment Chair, please?

CHAIRPERSON: [No audible reply]

ADV PRETORIUS SC: At Bundle FS14. If you could there

again, please? I think it is on your right hand side there at page 226.

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: Before we get there. Witnesses this week have said that you took part in meetings of the War Room at which this plan was developed. Do you have any comment?

MR ZWANE: The meetings of the War Room were the meetings where the officials would deal with the progress, highlight any challenges and fix it. I would go to that meeting as and when needed by the meeting but I do not recall myself participating in the recovery plan.

Except to say, I went to a meeting where I had to get an update as to what are we going to do as we had started late in terms of building houses even long(?) before this issue.

Because the War Room was not a result of the recovery plan. It was a structure that was there to ensure that we do what we are supposed to do.

ADV PRETORIUS SC: Yes. The War Room, as I understand what you saying, was there to monitor the implementation of the advance payment exercise.

MR ZWANE: No, Chair. But... I am sorry. I am sorry.

ADV PRETORIUS SC: Alright.

MR ZWANE: Or you done?

CHAIRPERSON: Yes, just explain?

MR ZWANE: The War Room started earlier than this issue of advance payment. If you allow me Chair maybe to give some details?

CHAIRPERSON: [No audible reply]

MR ZWANE: The issue of advance payments came as a result of a meeting that was held with contractors. I think, if I am not mistaken, the meeting was in Welkom.

CHAIRPERSON: That is the Welkom meeting, yes.

MR ZWANE: And in that meeting, the department had gone
10 back to request the contractors to commit themselves in ensuring that they work on weekends to try and catch up because of the earlier issue we were talking about.

And the contractors in that meeting raised then an issue of the builders' holiday that we are fast approaching, the builders' holiday.

Even if we liked, would at some point, will have to stop because there was no material. That issue was raised there and not only the issue of advanced payment. If I recall, in terms of the information I have, there were different
20 suggestions there.

One of the suggestions, of course, was that the department should bring its part, not only to want contractors to commit themselves in terms of working on weekends and during the holidays, they should be able to engage the suppliers.

The suppliers should supply the material that will be needed during the time when... during the builders' holiday. That means that was to actually take place during December early January kind of arrangement.

Supply the material that is going to be needed. Upon the receipt of the material, the contractor will be given an invoice but it will be shown to the department and the department will verify whether indeed that material has been supplied before asking them to pay. Then the other one was
10 this one of advance payment.

So that meeting of Welkom did not conclude on that matter as it was a broad meeting. When we were in Bloemfontein, there was a meeting called where these issues were discussed to see if we can be able to commit and find a solution, a lasting solution.

In that meeting, somebody raised an issue that the issue of advanced payment has been done by Nurcha in one of their projects.

ADV PRETORIUS SC: Would you spell that entity, please?

20 **MR ZWANE:** Well, Chair ...[intervenes]

CHAIRPERSON: That is for the transcripts.

MR ZWANE: Well ...[intervenes]

CHAIRPERSON: N-u-r-c-h-a?

MR ZWANE: No, let me not commit myself into spelling.

CHAIRPERSON: [laughing]

MR ZWANE: Because of time lapse, I might be seen not ...[intervenes]

ADV PRETORIUS SC: It is not calling to you to...

MR ZWANE: [laughing]

ADV PRETORIUS SC: It is simple to assist the transcribed ...[intervenes]

MR ZWANE: No, I would not find the correct spelling.

ADV PRETORIUS SC: Is it n-e-r-c-a-k?

MR ZWANE: I think so. I think so. So then I requested as
10 a conclusion of this meeting in Bloemfontein, I requested two
officials to go and develop a document that I called an
opinion. The officials I requested was the HOD and Mmuso
Tsoametsi.

I should explain at this moment why I did put Mmuso
Tsoametsi because under normal circumstances I would have
said HOD.

My recollection is that Mmuso Tsoametsi was in the
Welkom meeting and despite that, his background is also a
legal background. That hence I called the document in my
20 affidavit a legal opinion.

So I said: Go and develop and opinion around this... all
the suggestions and it should be a legally sound document
so that we can be able to respond to these challenges that
are raised by contractors.

And that was the conclusion of the meeting Chair. I do

not if... maybe I should just conclude, if you allow?

CHAIRPERSON: [No audible reply]

MR ZWANE: So a document was then developed and submitted to the HOD by ...[indistinct] Maxatshwa as you would see in the document and the HOD approved that document.

I believe it is that document that I have referred it as a legal opinion and I have explained why that gave that to agreements with the contractors. So that document, to my
10 understanding, is a separate matter to the recovery plan.

ADV PRETORIUS SC: Well, my question actually was dealing with the recovery plan.

MR ZWANE: Ja.

ADV PRETORIUS SC: We will get to the advance payments.

MR ZWANE: Ja. That is why I am going backwards.

ADV PRETORIUS SC: Yes.

MR ZWANE: I want to explain.

ADV PRETORIUS SC: Ten minutes later. Let us stick to the
20 recovery plan.

MR ZWANE: Thank you very much Chair. My understanding of the recovery plans, as I explained to the HOD at that particular time. It will deal with the milestones, how we are going to recover from the slumber that we are in as a province? Is it practical that we will be able to recover

and ensure that the money is utilised for what it was intended to.

The money in the Free State was intended to benefit the poor, the disadvantaged, the homeless, people of respect(?). So the recovery plan was to ensure that, if we can, we should be able to deal with that issue and each will have milestones and it will have expenditure.

And those issues, by enlarge, are issues that will relate to administration. As I have explained that matter, I thought
10 I had but not as well understood and it was not a complex matter. It just needed data and people to rearrange themselves in terms of how are they going to commit themselves.

Because one of the commitments people had to do was to try and interfere with their plans of that particular builders' holiday, December holiday. So I left it to the officials by enlarge. I think I am done Chair.

ADV PRETORIUS SC: You have obviously thought very carefully, both about the expenditure recovery plan and the
20 advanced payment system. But let me ask this Welkom meeting. When did it take place?

MR ZWANE: The contractors were already on site. I think it should have been later October/November.

ADV PRETORIUS SC: So in October/November, contractors raised certain issues and make certain proposals and it is

arising out of that that the advanced payment system, according to you, progressed?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: Correct?

MR ZWANE: Correct.

ADV PRETORIUS SC: Let us go back to the ERP. When did, do you recall, Minister Sexwale speaking to you about the preparation and submission of an expenditure recovery plan?

10 **MR ZWANE**: There was a meeting of all the MEC's together with the minister. And that meeting, to my recollection was, on the 18th of October.

ADV PRETORIUS SC: 18th of October?

MR ZWANE: Yes.

ADV PRETORIUS SC: Or 18th of November?

MR ZWANE: 19th of November, there was a meeting ...[intervenes]

ADV PRETORIUS SC: Yes.

MR ZWANE: ...where recovery plans ...[intervenes]

20 **ADV PRETORIUS SC**: Was presented?

MR ZWANE: ...was supposed to be presented. It is the meeting which I did not attend.

ADV PRETORIUS SC: Yes, was there no prior request in terms of a written communication or a verbal communication from the national minister to you or to your office saying, you

are under spending. Please present an expenditure recovery plan.

MR ZWANE: Before the 19th ...[intervenes]

ADV PRETORIUS SC: Before the 18 October meeting.

MR ZWANE: I cannot recall that Chair.

ADV PRETORIUS SC: Alright. What happened at the meeting of 18 October? Was this a MINMAC meeting.

MR ZWANE: I do not ...[intervenes]

ADV PRETORIUS SC: Ministers and HOD's. Sorry to
10 interrupt.

MR ZWANE: 18th of October?

ADV PRETORIUS SC: Yes.

MR ZWANE: It was a meeting... it was.. ja, it was a MINMAC.

ADV PRETORIUS SC: Right.

MR ZWANE: You are right.

ADV PRETORIUS SC: What happened at that meeting?

MR ZWANE: The minister raised his concern about this matter and requested that we should submit recovery plans
20 as well as how we are going to move forward. Otherwise, a particular portion, certain portion of the budget allocated to the provinces will have to be taken.

ADV PRETORIUS SC: Was the meeting in your boardroom during October 2010, where you spoke to your officials about the expenditure recovery plan? In other words, did you

follow up that meeting with your own instructions to your officials?

MR ZWANE: On the recovery plans, we did not have more(?) meetings on the recovery plans. I think we had two, three meetings on the suggested opinion, as I call it here. This is to be determine, which is part of this document Chair. Because there were no really issues on the recovery plan if I recall. Unless, you will refresh me.

CHAIRPERSON: That document you refer to as the opinion,
10 you recall that is the one that is dated 25 November?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay alright.

ADV PRETORIUS SC: The evidence of other witnesses has been that you participated in the preparation of the plan. You say you did not participate in the preparation of the plan.

MR ZWANE: I did not recall... maybe I should say, I would normally participate where there are issues that I think looking at the first meeting, we need to clarify or to observe
20 other things.

As I have earlier on said, my bone of contention here is not about my participation on this recovery plan. I could have gone in the meeting once or twice. I cannot recall exactly Chair.

What I want to put on record is that there were no big

issues in terms of the development of that plan as far as I can remember.

ADV PRETORIUS SC: Now over what period was this plan being implemented, designed or being prepared, rather? As I understand it, it would have been during the course of October and November 2010. Would that be a fair summary?

MR ZWANE: The recovery plan would have been prepared after the 18th of October.

ADV PRETORIUS SC: And into November?

10 **MR ZWANE:** Into November, yes.

ADV PRETORIUS SC: Alright.

MR ZWANE: I just cannot recall when was it completed.

ADV PRETORIUS SC: Would that be a convenient time, Chair?

CHAIRPERSON: Yes. We will take the lunch adjournment and we will resume at five past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Continue. Do I still need the recovery plan in front of me?

ADV PRETORIUS SC: Yes, Chair, we are going to get there in a moment.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Just a small digression in the meanwhile, Chair. We have had occasion to look at the

housing at ...[intervenes]

CHAIRPERSON: At some stage I think we had a sanitizer for the witness that would be there. If it is available it should be made available to him. Yes, continue, Mr Pretorius.

ADV PRETORIUS SC: Thank you. Mr Zwane, at some stage this morning you referred to the provisions of the Housing Act as being the source of the power to use a database for the allocation of housing contracts. You
10 recall that evidence?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: I have obtained a copy of the Act and we have put a copy before you and before the Chair. If you go to Section 3 please, under the head National Government, Section 3cA obliges the National Minister to determine a procurement policy by not later than April 2002 which is consistent with Section 217 of the Constitution in relation to housing development.

20 So the first point I wanted to put to you that any power that the National Minister has to determine a procurement policy is constrained by the provisions of Section 217 which require open tender processes, open procurement processes. You know Section 217, you mentioned it this morning. Correct?

MR ZWANE: Of the Housing Act?

ADV PRETORIUS SC: No, Section 217 of the Constitution

MR ZWANE: Yes, yes.

ADV PRETORIUS SC: So anything the National Minister does in relation to procurement must be consistent with Section 217 of the Constitution. You know that? Well, you do now, correct?

CHAIRPERSON: I am sorry, Mr Pretorius, you were reading from Section 3.

ADV PRETORIUS SC: Section 3cA.

10 **CHAIRPERSON:** Oh, okay. Thank you. 3cA?

ADV PRETORIUS SC: Yes, Chair. Sorry, 3(2)(c)A.

CHAIRPERSON: Can you see it, Mr Zwane?

MR ZWANE: Yes, I can see, Chair, except to say my not wearing spectacles.

CHAIRPERSON: You are...?

MR ZWANE: Except to say my not wearing spectacles in this case is actually disadvantaging me between the three of us.

CHAIRPERSON: Oh.

20 **MR ZWANE:** This thing is too small for me. So you ...[intervenes]

CHAIRPERSON: Oh, you do not mean you normally need reading spectacles you just think that we are advantaged?

MR ZWANE: You are advantaged, Chair, yes, that is what I am thinking, but I will try and follow.

CHAIRPERSON: Okay.

MR ZWANE: Yes.

CHAIRPERSON: At some stage I had asked officials to have a lamp next to the witness so that we – the lighting could be improved but you say you can read but you read with difficulty?

MR ZWANE: I can read, Chair. You must pardon me when I am slow.

CHAIRPERSON: Okay. No, that is fine, that is fine.

10 **MR ZWANE:** Yes, thank you.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In relation to procurement there is nothing in this Act which would permit procurement without a compliance with the Constitution and procurement law. There are no exceptions in this Act. Do you accept that?

CHAIRPERSON: Well, I get what Mr Pretorius is doing, Mr Zwane, I think you said you had never seen this Act before.

MR ZWANE: That is correct.

20 **CHAIRPERSON:** You are seeing it for the first time. If you got it only now as I have got it, you have not obviously had time to go through it, therefore you cannot say yes or no but what he is saying is he has looked – he has gone through it. That is what he is putting to you and you might be able to say look, if you say so, I cannot dispute it

because I have not looked at it but I do not know what the Act says. Or you might say no, I know that there are exceptions and I just need more time to look at it.

MR ZWANE: No, thank you, Chair. If I may, I think the Chair is correct, I did allude that I did not find time to go through this piece of legislation.

CHAIRPERSON: Yes.

MR ZWANE: And I think it will be fruitful for this Commission and what I am going to say for to also
10 acclimatize myself with this Act otherwise I may say something that I really do not mean.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Alright, that fine.

CHAIRPERSON: No, I think what should happen is after today maybe arrangements can be made for you to depose to an affidavit to say you have had a look at it and maybe you have even sought legal advice, your understanding is that yes, there are no exceptions or yes, there are exceptions or you make whatever comment. Mr Pretorius
20 will be able to say this is what we would like to hear you on. Is that alright?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I am nevertheless going to ask you certain questions, some of a factual nature to alert you to

the issues that we would like you to have regard to when you read the Act. So if you would look please at Section 3(2)(c)A ...[intervenes]

CHAIRPERSON: You might to make a note of the issues, have you got a pen and paper?

MR ZWANE: Yes, I do, Chair.

CHAIRPERSON: Ja, okay, okay.

ADV PRETORIUS SC: You can just mark the sections 3(2)(c)A which, as we read it obliges the Minister to
10 determine a procurement policy, that is the National Minister. But that must be consistent with the provisions of Section 217 of the Constitution and not exceptional to the provisions of 217. Right?

So if there was any database – and I want to put this to you and you can look at the Act in relation to this proposition, if there is any use of a database that database would have to be established by a fair and transparent tender process or procurement process. You can just think about that, do not have to answer now.

20 **CHAIRPERSON:** So it is a proposition that when later on you read the Act you must think about to say what will be your response to that proposition. Okay.

ADV PRETORIUS SC: So nothing in this Act permits the appointment of a contractor in execution of a housing project to be done other than to a proper constitutionally

compliant procurement process. The proposition derived from that is that if there is to be a database that database will have to be established by such a fair procurement process.

The part 3, Section 7 and following deals with the duties, obligations and powers of Provincial Government. If you could just page on to that please? And Section 7.3 deals specifically with the obligations of an MEC. Do you see that?

10 **MR ZWANE**: Yes.

ADV PRETORIUS SC: And it says:

“An MEC must...”

Does not give you any discretion, says you must.

(a) Administer every national housing programme and every provincial housing programme which is consistent with National housing policy and,

(b) And for this purpose, may in accordance with that programme and the prescripts contained in the code approve any projects in respect of
20 thereof.

(ii) The financing thereof out of money paid into the Provincial Housing Development Fund as contemplated in Section 12.2.”

In short, that section, 7.3 (a) obliges the MEC to administer National Housing Programmes and to approve

the financing of National Housing Programmes and Provincial Housing Programmes. Do you see that?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: Were you aware of that during 2010 and 2011?

MR ZWANE: As I am saying, Chair, I had not read this but I was told in terms of what I alluded earlier this morning.

ADV PRETORIUS SC: Section 7.3 (c) says that:

10 “An MEC must apply procurement policy in respect
 of housing development determined by the Minister
 in terms of Section 3(2)(c).”

Now are you aware of any procurement policy determined by the Minister?

MR ZWANE: Procurement policies?

ADV PRETORIUS SC: Yes. That is what you must apply in terms of this Act, the Act that you relied on to say you could just use a database.

MR ZWANE: May I...?

ADV PRETORIUS SC: Yes please.

20 **CHAIRPERSON**: Yes.

MR ZWANE: Seemingly we are getting into what I thought we are not going to get into, Chair.

CHAIRPERSON: Oh, no, I think what Mr Pretorius is doing, he accepts that you have not read the Act and he accepts that at that time in 2010 you had not read the Act

but as I understand from him he is just asking in terms of your knowledge even without having read the Act whether you had such an understanding, that is my understanding, based on whatever else other than the Act.

MR ZWANE: I had alluded earlier on, Chair, that I have not read this piece of legislation.

CHAIRPERSON: Yes.

MR ZWANE: I think from where I am seated it goes without saying that as we go deep into Sections this and
10 this, I would not be able to fairly and fruitfully assist this process.

CHAIRPERSON: Yes. Now, Mr Pretorius, I may have I misunderstood your question. Were you asking him whether he was aware of a provision in the Act?

ADV PRETORIUS SC: No – well, that too, but we have a general answer to that. The answer is no, I was not aware.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I had not read the Act.

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** But this provision refers to a procurement policy of the Minister and I am asking him if he was aware of any such procurement policy. He might not have been alerted to the duty to follow it because he had not read the Act but he might have known of it.

CHAIRPERSON: Okay, I think this question is a little

different, Mr Zwane, he has just asked - Mr Pretorius is just asking you whether you were aware of such a policy in 2010.

MR ZWANE: No, Chair.

CHAIRPERSON: You were not aware.

MR ZWANE: If I was aware, I would have insisted that it should be followed.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Let us go then to 7.4 (a). 7.4 (a)

10 says:

“The MEC must establish a panel of not more than six persons to advise the MEC on any matter relating to housing development.”

4(b) says:

“A panel shall consist of one or more fit and proper persons who have knowledge, qualifications or experience in the field of housing development.”

During 2010 and 2011 did you establish such a panel?

That is a factual question.

20 **MR ZWANE:** The fact is that, as I have said, I did know that I was supposed to establish such a panel, Chair.

ADV PRETORIUS SC: So had you read the Act and had you applied its provisions you would have had a panel of not more than six experts to advise you on any matter relating to housing development and presumably that

includes procurement.

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: And then Section 5, you will recall earlier when taking Mr Mokoena to task in terms of the provisions of Section 51 of the Public Finance Management Act you made it very clear that even though an accounting officer may delegate or he may follow and correct orders, he is ultimately the accountable person. Correct?

MR ZWANE: That is correct.

10 **ADV PRETORIUS SC:** Those provisions, interestingly, are mirrored in Section 7.5 of this Act which reads:

“The MEC may, subject to any conditions he or she may deem appropriate in any instance, delegate any power conferred on him or her by the Act or be assigned any duty imposed upon him or her by this Act...”

But then it continues.

20 “...to any officer or employee in the department responsible for the administration of housing matters in the province either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies provided that the delegation of assignment does not prevent the person who made the delegation or assignment from exercising that power or performing that duty

himself or herself.”

So the power to exercise any duty under this Act, whatever it may be, remains with the MEC. Do you see that?

MR ZWANE: I see it, Chair, and from where I am seated I think with due respect, this process is not taking shape as I understood you to be advising. What the evidence leader is doing is leading me through this document that I have not familiarised myself and I must be on record in saying yes or not.

10 **CHAIRPERSON:** Ja.

MR ZWANE: And I do not think that is fair.

ADV PRETORIUS SC: Yes, well, Mr Zwane, with equal respect in return, the reason I am putting them to you is so that you can focus on them in your response.

CHAIRPERSON: When you response, after the reading the Act.

ADV PRETORIUS SC: I am just alerting you to certain provisions.

20 **CHAIRPERSON:** So he is not asking you for an answer now, he just wants you to note what areas, what issues he is interested in getting an answer from you on. That is why I was saying to you earlier on you might need a pen and paper so that you record the issues that he would like an answer on but not that he wants an answer now. Later one when you depose to an affidavit that can be dealt with it.

Of course, Mr Pretorius, another way might be that something in writing could be sent to his attorneys to say these are the areas he must deal with in his affidavit but this is another way of dealing with it.

ADV PRETORIUS SC: Yes. So we can do that in addition.

CHAIRPERSON: Yes, okay. So I think what will be done, Mr Zwane, is that after today Mr Pretorius will send to your attorneys all the issues that he would like you to deal with
10 in an affidavit after you have read the Act. Okay?

MR ZWANE: I accept, Chair.

ADV PRETORIUS SC:

CHAIRPERSON: Of course what I do what to ask, Mr Zwane, is this. Was it after the general election of 2009 that you were appointed as MEC for Human Settlements or was it during that term, not at the beginning of that term? In other words, had you been MEC in this department from immediately after the elections in 2009 or did you come in in 2010 or late in 2009?

20 **MR ZWANE:** I came after the elections, Chair.

CHAIRPERSON: Yes. So in April 2010 when the open tender public process was initiated you had been in the department close to a year or thereabouts because the elections in 2009 ...[intervenes]

MR ZWANE: Less than a year.

CHAIRPERSON: Ja, that is more or less, ja, less than a year, or just short of a year, maybe two months short of a year or so.

MR ZWANE: We were appointed around – ja, June, July.

CHAIRPERSON: Yes, yes.

MR ZWANE: Ja.

CHAIRPERSON: Now as at April 2010, do you know whether at that stage, around April 2010, you had heard that there was an Act of Parliament called the Housing Act
10 or do you not remember whether you had heard that such an Act existed?

MR ZWANE: Maybe I should allude to the fact, Chair, that as I was appointed, I had an experience of the municipality.

CHAIRPERSON: Yes.

MR ZWANE: And the municipality deals by and largely with MFMA.

CHAIRPERSON: Yes.

MR ZWANE: And when I got to the Province, I then
20 familiarised myself with the PFMA which to me would have been reasonable to say it replaces the MFMA because I am now in the Province. I said earlier on that when I was informed by the Housing Act is when I had asked about the way forward after the open tender was abandoned.

CHAIRPERSON: Yes.

MR ZWANE: And that was around after April in 2010.

CHAIRPERSON: That maybe would be June, July, August, around about.

MR ZWANE: Around that time, Chair.

CHAIRPERSON: Yes, yes.

MR ZWANE: No, this can actually be done under the Housing Act because I was asking where does this come from because I am familiar with the PFMA. That is when I learnt about ...[intervenes]

10 **CHAIRPERSON:** The Housing Act.

MR ZWANE: The Housing Act.

CHAIRPERSON: For the first time.

MR ZWANE: Ja. Yes, Chair.

CHAIRPERSON: Yes. You see, it is a matter of concern to me and I just want to raise with you so that you can comment on it, it is a matter of concern to me that there would be an Act and it is called the Housing Act that applies in the provinces as well that the MEC responsible for Human Settlements does not know about for more than
20 a year in office. So it is a matter of concern to me to say what brings about such a situation because an MEC - of course he might not be a lawyer, but an MEC who comes in, same thing with a Minister who comes into a certain portfolio, one would expect that they would want to be informed of all legislation that is relevant to the their

portfolio so that they are familiar with them both for purposes – for their own purposes but also for purposes of maybe performing oversight over the HOD and so on. Do you have something about that concern that I have?

MR ZWANE: Chair, I hear the concern you say. Normally the process is that when you arrive in a particular department you are welcomed in that department by the head of the department and with time your first induction will be to be given tools that you are going to work around.

10 Tools like your Constitution, what affects us in this department, Section so and so.

Above the general oversight responsibilities of a politician, it will be PFMA in the main. I remember when I was still the municipality, I was introduced to something called GRAP, you know? It is a process that is undertaken when you are yourself be welcomed in the department and in that process you then take heart to what has been given to you because at that point, you may not know the Housing Code and the Housing Act and other policies that
20 might be there forming part of what you need to know unless you are taken into speed on these issues and that process did take place, Chair, to me, acclimatise this and this and that is ...[intervenes]

CHAIRPERSON: Led by the HOD by any chance?

MR ZWANE: Under normal circumstances there should be

a handover report by the person who was there.

CHAIRPERSON: The previous MEC?

MR ZWANE: The previous MEC. But then the HOD come in hand to provide the tools of trade in terms of the law and here we worked in terms of this and this and this is what happens when we developed these issues.

The difficulty, Chair, at that particular time, you may not know as a politician generally that I have to go through this one and this one and this one. So that is how this happens and I may also want to say if you take 2009/2010, thereabouts, would take at heart that our oversight would not mean you are delving deep into issues of the legislation because there are people who will help you from time to time in terms of those legislation to ensure that the department, the activities, are within, are in line with what needs to happen in that department and that is how the situation was. So really just want to say to you I hear your concern but I also want to paint this picture that that was the situation at that particular time.

CHAIRPERSON: So would I be right to understand your evidence as saying although that process that you are talking about did take place when you came to the department in 2009, nobody drew your attention to the existence of the Housing Act during that process?

MR ZWANE: No, Chair, it is correct.

CHAIRPERSON: Nobody.

MR ZWANE: Nobody.

CHAIRPERSON: And you are sure about that? And you are sure that definitely nobody did that?

MR ZWANE: As I say, Chair.

CHAIRPERSON: Yes. Did the HOD or some of the officials give you maybe a pack or file that all the existing policies of the department that you might have to know about including legitimisation? Maybe PFMA they put in
10 but they did not put in the Housing Act. Did they do anything like that?

MR ZWANE: I may not recall in terms of the package, Chair, but in my recollection, I did get that.

CHAIRPERSON: In your...?

MR ZWANE: In my recollection.

CHAIRPERSON: You did that yourself?

MR ZWANE: No, I did get ...[intervenes]

CHAIRPERSON: Oh, you did get a pack, ja.

MR ZWANE: Yes, Chair.

20 **CHAIRPERSON:** Ja. Okay, alright. But you obviously understand why I have this concern because you have to kind of perform oversight over the HOD. You understand that?

MR ZWANE: I understand that concern, Chair.

CHAIRPERSON: Yes, okay.

MR ZWANE: I was just saying...

CHAIRPERSON: This is how it happened.

MR ZWANE: This is how it happened.

CHAIRPERSON: No, no, I understand. Mr Pretorius?

ADV PRETORIUS SC: Mr Zwane, the Chair has been very polite in this regard but as MEC you were tasked with the expenditure on low cost housing for poor people, as you have emphasised, of an amount of R1.4 billion. It is a massive responsibility.

10 **MR ZWANE:** That's correct Chair.

ADV PRETORIUS SC: It must have been known to you that that expenditure should take place efficiently and effectively on the one hand and lawfully on the other, correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: We know now that that was not done, we may argue that but that is certainly the evidence that we have heard thus far. Surely it is not too much to ask of an MEC who comes into office that that MEC takes
20 the responsibility on himself or herself and does not leave it to anybody else to make sure that there is an awareness of all the laws that apply in this process to spend R1.4billion.

MR ZWANE: Well as I explained earlier Chair that under the PFMA as I explained it the functions that were given to

me and this was not one of the functions given to me. These were the functions given to the accounting officer and as we speak PFMA if I am correct is a piece of legislation that was developed in 1999, 1998 there about. It was also a piece of legislation that was used.

Now my impression and my understanding is that this

does not suggest that at this particular time we are putting aside what the PFMA is saying and only concentrating on
10 what the Housing Act is saying. I have alluded to this Commission earlier on that I based my understanding on the PFMA and I have explained just now that due to my background of the municipality from the MFMA, graduating from the MFMA I had to according to myself with the PFMA and I have explained this issue and I also take note of the fact that I did not acclimatise myself with this with this Housing Act as I have explained that it came to my attention when.

All what I did and I thought to the best of my ability
20 is to ensure that PFMA was followed to the latter and so if that was not sufficient then I need to hear that from this Commission. All that I am saying is that I did my best under the understanding of what PFMA says we must be able to do as politicians. Thank you.

ADV PRETORIUS SC: Yes, well if the PFMA deals with

procurement at all it says that procurement must follow the law.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: You were an MEC appointed to deal with housing.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: There was at the time a Housing Act.

MR ZWANE: That is correct Chair.

10 **ADV PRETORIUS SC:** You did not read the Act. Correct?

MR ZWANE: I did not read the Housing Act.

ADV PRETORIUS SC: Had you read the Act you would have been alerted to your duties under the Act number 1, correct?

CHAIRPERSON: Well I am sorry Mr Pretorius before coming to reading the Act you did not know that the Housing Act existed.

MR ZWANE: That is correct Chair.

CHAIRPERSON: Yes.

20 **MR ZWANE:** You see the one issue that we debated for some time Chair and I have not raised this issue. What would have superseded one another in terms of PFMA and the Housing Act when we are dealing with human settlements and houses because at some point there was a workshop that was giving a clear explanation of the

difference between a house and a human settlement?

The department has changed it is a new department it is here the MEC comes follows PFMA at a later stage he is been told that there is this Act that is called the Housing Act in the middle of the year when things are already happening. Reasonably I thought it was reasonable enough for anybody who will follow what I did at that particular time to say I was an MEC that followed the prescripts of the law as much as I could understand them
10 and it is clear that I could not read this law because at that particular time I did not know about it.

If I had read the law and found some explanations in terms of what the exercise we are doing today maybe I would have come to a different conclusion but at that particular time I thought I was doing my job diligently.

ADV PRETORIUS SC: All I want to do is establish the facts not for me to judge it is for the Chair to judge but let us just go back to the facts. When you were appointed
20 MEC and well into you term of office for about a year you did not know that there was a Housing Act.

MR ZWANE: That is correct.

ADV PRETORIUS SC: I am not sure that that improves the position but we will make submissions in that regard. Had you been aware of the Act and had you made yourself

aware of the Act and read it you would have been aware of the duties rested upon an MEC in terms of housing. Correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: You would also have had the benefit of a committee of experts to assist and advise you. Correct?

MR ZWANE: I would have been clearer in terms of who is here doing what appointed by whom because the reason I
10 said maybe it is correct for me to get enough time dealing with the same things because there were people who were dealing with the legal matters I did not know how they were appointed but they were there as officials.

It might happen that I did not appoint them myself but people were there. Now I was trying to run away from a situation where I will answer based on what I know when this Act is actually revealing other facts which is I must go back and acclimatise myself and give a proper answer I submit Chair.

20 **ADV PRETORIUS SC:** I would have thought the question was capable of a straight forward answer. The Act obliges the MEC to appoint a committee of experts. Correct?

MR ZWANE: This one yes.

ADV PRETORIUS SC: You did not do so, had you read the Act presumably you would have done so. Correct?

MR ZWANE: Yes.

ADV PRETORIUS SC: Let us deal with the ERP then if we may it appears at Bundle 14...[intervene]

CHAIRPERSON: I am sorry Mr Pretorius because I think you are moving away from the Act.

ADV PRETORIUS SC: Yes, I am.

CHAIRPERSON: Ja, maybe it might be difficult to find the right adjective but it is rather shocking to me Mr Zwane that the Free State Province has a situation where the MEC
10 for housing does not know for over a year in that office that there is a Housing Act in the country that applies to his portfolio.

As to who should be blamed for that that might be another question but on its own it is something that is a little shocking to me and one would have thought that to say the least the HOD would know about that and would have made sure that the MEC knew and the legal people within the department would have made sure that probably the MEC also should have known about that but maybe that
20 might be a matter for debate. So there is that part but then this is another part for me going back to when you were told for the first time about the Housing Act now this is when the open tender process had been abandoned and you were asking the officials what is the way forward and they said we can use the database and they said that is

permissible under the Housing Act.

Now I would have thought that with your knowledge of the PFMA which you have testified to your reaction would be now under the PFMA in terms of as the legislation that I know to be applicable. I do not remember that this would be permissible if you people now tell me that there is another Act that allows this it means you are telling me something very important that I did not know about and I would like to see the Act I would like to see those
10 provisions because I have always understood that the PFMA does not allow for this kind of thing.

But you are telling me forget about the PFMA there is another Act that allows this. I would have thought that you would say precisely because you did not know about this Act they are telling you something new you would want to see that Act and see those provisions to add to your knowledge for going forward to say now I know exactly how – that there is another Act that I knew nothing about I am surprised that I am hearing about it more than 12 months
20 after I became MEC I am being told about it for the first time. Before I go further I want to see that what the officials are telling me is true because they never told me all these months about this Act and now they are telling me about a new Act that applies here I want to see that actually I want to know from them how come you have

never told me about this Act. That is the kind of reaction that I would have expected. What do you say to that?

MR ZWANE: Chair I hear what the Chair is saying I always kept that in mind because we normally plan for every year for this kind of activity appointment of the service providers. What I did and at that particular time which I thought was sufficient and was not questioned either at any level was to submit these ideas to the collective of the executive that there is this situation that
10 the tender has been abandoned and the proposal is that we are following a database that will consider different processes.

The EXCO agreed to this so when I went back to Implement it was no longer a decision of one person who is an MEC in this case me, it was a decision that has been endorsed by the collective that will also include the HOD's of all the province. It did not dawn to me at that particular time that there could be something untoward this procedure that has actually been adopted by the whole executive
20 including these people who think they are there to advise us. So that is my response to the concern the Chair is raising.

CHAIRPERSON: And of course I think I may have mentioned this before it is also strange to me that at this EXCO meeting the Premier and about eight other MEC's I

think there are normally ten...[intervene]

MR ZWANE: There are ten Chair.

CHAIRPERSON: Ja, ten MEC's.

MR ZWANE: We were ten all in all, yes.

CHAIRPERSON: But nine MEC's and maybe about ten HOD's and the DG of the province in this meeting not a single person says is this, would this be lawful you know. But I have put that to you I am just repeating that I have got that concern but you will go through the

10 Act...[intervene]

MR ZWANE: I will Chair.

CHAIRPERSON: When you go through the Act you must also remember that when I will at the sections that Mr Pretorius has referred to something says to me if only you, the MEC, had said please give me that Act you are talking about and you went through it, you would have picked up that it doesn't seem to say what the officials said to you it says, but you haven't read it, when you read it just bear in mind that concern.

20 Okay Mr Pretorius.

ADV PRETORIUS SC: Of course Mr Zwane it was the poll of the Provincial Cabinet, including all the MEC's under the guise of Exco that should be held accountable for what happened but not a comforting thought. So I understand that what you are saying is that these decisions including

the database decision were approved by the whole cabinet, all the MEC's, no one spoke out against it, and that somehow makes the situation more understandable, I am afraid it makes it far worse.

MR ZWANE: Are you expecting my comment Chair?

CHAIRPERSON: He is asking for your comment ja, if you have got any, you might not have any.

MR ZWANE: Well I do not have a comment at this stage
Chair thanks.

10 **CHAIRPERSON:** Alright.

ADV PRETORIUS SC: May I now move onto the ELP
Chair.

CHAIRPERSON: Yes Mr Pretorius.

ADV PRETORIUS SC: Mr Zwane would you look at FS14
please at page 226, I think it's the one on your right hand
side.

MR ZWANE: What page?

ADV PRETORIUS SC: The FS14, page 226.

MR ZWANE: Okay yes, on ...

20 **ADV PRETORIUS SC:** Do you recognise this document?

MR ZWANE: Yes Chair I do.

ADV PRETORIUS SC: You do, okay before going into the
detail of that document I want to refer to a passage in your
own affidavit, and I am going to ask you please to go to
Bundle FS12 at page 493.

CHAIRPERSON: Is that FS12?

ADV PRETORIUS SC: FS12 Chair yes.

CHAIRPERSON: And what page?

ADV PRETORIUS SC: 493.

CHAIRPERSON: And 14 I must keep open or I must close
Mr Pretorius, Bundle FS14?

ADV PRETORIUS SC: Well we are going back there
Chair.

CHAIRPERSON: Oh we're going back there, okay what
10 page?

ADV PRETORIUS SC: After a few minutes.

CHAIRPERSON: What page on FS12?

ADV PRETORIUS SC: 493 Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Paragraph 93 of your affidavit if I
may just read it to you and then ask a question or two.
You say I confirm that during December/January 2010, I
presume you mean December 2010/January 2011, when I
was overseeing the construction of these houses I saw
20 positive steps taken by contractors in order to comply with
the Department instructions and I can confirm that even
though I do not have the exact figures I had opened plus
minus 50 completed houses and there were many
structures which were on foundation stages, wall level
milestone, and roof level milestone which would have been

completed had they been further two to three months. I presume that should read had they been further two to three months. Do you recall putting that evidence before the Chair in that affidavit?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: So it seems to me that during the period December 2010/January 2011 you opened approximately 50 completed houses.

MR ZWANE: Approximately yes that is correct Chair.

10 **ADV PRETORIUS SC:** And you say there were many structures at foundation stage, wall level milestone and roof level milestone which would have been completed in a further two to three months?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Well the further two to three months is that the – is that further two to three months after the end of the financial year or further two to three months after January 2011, I think that December, January 2010 is meant to be December 2010/January 2011 is that correct.

20 **MR ZWANE:** That is correct, that is correct.

CHAIRPERSON: Yes, so when you say further two or three months is that after the financial year or is that after January?

MR ZWANE: The process was actually stopped Chair, around mid-January.

CHAIRPERSON: About mid-January?

MR ZWANE: Yes.

CHAIRPERSON: Oh so when you say had that been two to three further months you mean from mid-January?

MR ZWANE: If we had gone ...[intervenes]

CHAIRPERSON: If it had been allowed to go on for another two to three months after mid-January?

MR ZWANE: Yes it would have been, I think we would have covered a lot of ground.

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: 50 houses at R76 000 a house and forgive my maths it is approximately R3.6million.

MR ZWANE: Well Chair if I may in my own affidavit just to take this point further, I may check there is a statement that was made to this effect which I want to believe will assist this information ...[intervenes]

CHAIRPERSON: Yes you can take us to that statement if you are able to.

20 **MR ZWANE:** If you give me a moment I should be ...[intervenes]

CHAIRPERSON: If you tell Mr Pretorius what the statement says he might be able to find it quicker.

ADV PRETORIUS SC: Is it the annexure to this letter to National?

MR ZWANE: No it is a media statement ...[intervenes]

CHAIRPERSON: You say it is a media statement that you are looking for?

MR ZWANE: Yes.

CHAIRPERSON: Is that the one that was in response to the National Minister's media statement or was it another one?

MR ZWANE: I think so Chair.

CHAIRPERSON: There was a time when the National Minister issued a media statement about taking away some
10 two hundred and sixty something million from the province, in response to that the Department issued its own media statement, that is the one you are talking about?

MR ZWANE: That is the one I am talking about.

CHAIRPERSON: Okay Mr Pretorius I think it is in whatever bundle it is in it is somewhere towards the end of the bundle that media statement. It might be in the bundle that has got Mr Mchachwa's affidavit.

MR ZWANE: It is 596, page 596.

CHAIRPERSON: Is that of FS12?

20 **MR ZWANE:** Yes Chair.

CHAIRPERSON: 526?

MR ZWANE: 596 Chair.

CHAIRPERSON: Okay. Well at least I think I was right about one thing, I said whatever bundle it is in, it is towards the end of the bundle. Yes, I have got it, have

you got it Mr Pretorius? Mr Pretorius have you got it?

ADV PRETORIUS SC: I have it Chair.

CHAIRPERSON: Okay, what is the point you wanted to make Mr Zwane?

MR ZWANE: I just want to make a point Chair that this document was written by the Department, not by me. This document alludes to the fact that I have in my own affidavit that a number of house were concluded, in fact it goes on to even give a number of houses that were concluded,
10 which are even more because you will remember in my statement I had said I cannot remember properly what has happened, but if you go through this statement it will tell you that during the physical department of Human Settlement engaged the Minister of National Department in this regard we firmly believe – I am sure you see that paragraph, during this financial year ...[intervenes]

CHAIRPERSON: Are you on page 596 or 597?

MR ZWANE: It will be 597 Chair.

CHAIRPERSON: Oh yes, ja. The paragraphs are not
20 numbered but you can tell us which one from the top that you are reading from. Well where it says during this financial year, that's the third paragraph from the ...[intervenes]

MR ZWANE: Yes that's the third paragraph.

CHAIRPERSON: Yes okay.

MR ZWANE: Yes. During the financial year the Department has set a national trend by building between 50 and 60 square metres houses, a total of 10 different designs of the RDP houses has been developed with the assistance of Truman Engineers. As part of bold initiative of Operation Hlasela the Province say this delivery ...[indistinct] new RDP houses are equipped with – the details is there Chair.

The following paragraph reads:

10 “Our groundbreaking housing projects in Marabastad, Kroonstad is a case in point similar, bigger and better RDP houses have also been built.”

And then it went on ...[indistinct] those are different areas where these houses were built in that financial year. Then the following paragraph it says:

20 “On Christmas Day Human Settlement MEC Zwane handed over 100 houses in ...[indistinct] in the Eastern Free State, in the nearby town of Ficksburg another 100 houses were handed over to beneficiaries on Christmas Eve.”

All that I am trying to say Chair this piece of information will corroborate what I am saying and from the Department independently. I have not verified the numbers, the point I am making here is that indeed houses were built and we

opened houses during Christmas, during those holidays we opened houses that is the point I was trying to make.

CHAIRPERSON: I think for the sake of completeness one should go to the next paragraph. It says:

“On New Year’s Day MEC Zwane handed an additional 250 houses in Vrede, a total of 600 houses were handed over to beneficiaries in various towns during December alone in Buchabero, six houses were handed over to elderly beneficiaries as these have been prioritised on our beneficiary list. In Bloemfontein 20 elderly beneficiaries also received houses on Christmas Day.”

It would appear that in terms of what this media statement of the department is saying, and you have made the point that you did not write the statement yourself, it seems that according to this media statement whereas you were saying that – or I understood your affidavit to say you – during December you handed over about is it 250 houses or 50 houses I cannot remember?

ADV PRETORIUS SC: 50.

CHAIRPERSON: 50 it looks like the department is giving much bigger figures in terms of how many houses you handed over which had been completed during December up to New Year – New Years’ Eve. It talks certainly – it looks like more than 4 maybe more than 400 – 300 I am not sure.

Is that your understanding as well that they are giving much higher figures than yourself?

MR ZWANE: Yes. In my affidavit Chair before I arrive at the figures, I said I confirm that even though I do not – I do not have the exact figures this is the rough estimation I am giving.

CHAIRPERSON: Yes. Yes.

MR ZWANE: Now I am saying in a statement that was not from me which I do not have any reason not to believe.

10 **CHAIRPERSON**: Hm.

MR ZWANE: Houses were built during that time and at a much higher rate.

CHAIRPERSON: Ja.

MR ZWANE: Than what I had said in the statement. That is the point I was illustrating.

CHAIRPERSON: Okay. Okay. Does it mean that...

ADV PRETORIUS SC: So your affidavit...

20 **CHAIRPERSON**: I am sorry Mr Pretorius. Does it mean that as you sit there you have no recollection yourself of how many houses were completed and you handed over during December and January? In other words, to what extent the figures given by the department in this media statement are close to the truth. Is that something you do not know?

MR ZWANE: No I am not too sure about that Chair.

CHAIRPERSON: Yes

MR ZWANE: I do not have a...

CHAIRPERSON: Yes.

MR ZWANE: Proper recollection.

CHAIRPERSON: Yes okay.

MR ZWANE: Of the exact amount of houses.

CHAIRPERSON: Yes.

MR ZWANE: That were built during that time.

CHAIRPERSON: Ja.

MR ZWANE: All what I was illustrating is a point that the
10 correctness of the affidavit that houses were built during that
time.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I am afraid again however polite the
exchange is Mr Zwane your affidavit is clear. If you go to
paragraph 93 you say:

“I had opened plus minus 50 completed
houses.”

And you refer to the period December to January 2010. Now
can we place any reliance on that statement at all?

20 **MR ZWANE**: If you read the statement in full – if you read
that paragraph in full Chair I did elude to the fact that I had
eluded to the fact that I am not too sure. I am saying here I
can confirm that even though I do not have the exact figure
this is what I am saying. I had opened plus minus – that is
on an estimation.

ADV PRETORIUS SC: Yes but – but Mr Zwane please.

MR ZWANE: Okay.

ADV PRETORIUS SC: Let us just look at what you say.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: You do not have the exact figures.

“I had opened plus minus 50 completed houses.”

MR ZWANE: Yes.

ADV PRETORIUS SC: Can we apply any reliance to that statement at all?

10 **MR ZWANE:** I think what it should ...

ADV PRETORIUS SC: Must be disregard it?

MR ZWANE: What should be noted is that I was not too sure in terms of the number of houses.

CHAIRPERSON: Well your...

MR ZWANE: That were completed.

CHAIRPERSON: Your estimate – your estimate Mr Zwane would be quite horrible if in fact you had opened 400 houses but you said you thought you had opened plus minus 50, would you not agree?

20 **ADV PRETORIUS SC:** Well I – can I just add to that Chair.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: I have just done some arithmetic. This letter of the Department talks about 1250 houses being opened in that period. So there is just no possibility of I am not too sure plus minus 50 being reconciled on any version

with 1250 in this letter. One of them is wrong. It is not a mistake. It is not a bad estimate. It is simply grossly incorrect. What do you say to that?

CHAIRPERSON: You see Mr Zwane on the evidence that has been placed before me.

MR ZWANE: Yes Chair.

CHAIRPERSON: You were very concerned or you were very keen that the departments build as many houses as possible. So concerned were you or so keen were you that you even
10 decided not to take a break during the December/January Christmas period because you wanted to be there to make sure that houses were built.

And of course this came against the threat I think of the National Minister or Department that money would be taken away from the department if it did not indicate a clear plan that it would be able to spend to improve its spending – expenditure considerably. Now you take – you decide I am not going on holiday I want to see this – these houses being built.

20 So I do not expect that somebody who is so keen to make sure that houses are built is not going to know how many houses had been completed by the time he was stopped in mid-January from continuing with this very important job. I expect that you would know to say we had built – we have completed so many houses.

This is the number of houses that had not been completed bla, bla, bla. But now if you have the MEC saying by mid-January we had completed I think plus minus 50 and you have the department talking about – Mr Pretorius talked about 1000 but at least I think not less than 400. Those are two vastly different figures. How – how is it possible that you would not be able to say no, no, no but the department has got it wrong.

10 There is no way we have completed so many. Or I realise I think I was completely wrong. I mean we are X number of years later at some stage or another you would have wanted to know what the truth is you know. We were stopped from building houses in mid-January we were on track. This – this is the number of houses we had completed.

MR ZWANE: Chair the – the question that was put to me when I made my statement was not in terms of the – the number of houses which were built. I of course agree that there is a vast difference in terms of the number.

20 I agreed. The statement was not about that. The statement was that was there any progress made during the time which you took off and tried to speed up the delivery on the ground? I thought I was being fair to say in my statement houses were built. I am not sure because I had not gone back to records. The statement is done now and

this thing was in 2010/2011.

But I put to the commission that there were houses which were – which I opened – I opened. Meaning that my statement as I understand it does not even include the total number of houses that were there. I opened these number of plus minus this number of houses during December. Because I was working.

I went and gave – gave the keys to all our people to come in. I did not go to the number that they are saying. If
10 you are going to ask me the next question that did, I verify the number I will be honest with you to say no I did not verify that number. All what I was illustrating is that during my oversight I did open houses and to my best recollection plus minus I went to these number of houses.

My understanding of that statement Chair is not to say these were the total number of houses that were built.

CHAIRPERSON: That were completed.

MR ZWANE: Were completed during that process.

CHAIRPERSON: Hm.

20 **MR ZWANE:** These are the numbers I went on my oversight and interacted with people. Number – the houses that I have seen and I was happy and people were there were happy. I thought I was trying to illustrate that point and if that point comes across with all humility negatively my intention was to illustrate the commitment that we undertook and my work as

a person at that particular time.

CHAIRPERSON: Hm.

MR ZWANE: I did not think that the – the question was saying what was the total amount of all the houses.

CHAIRPERSON: Hm. Hm. Yes but I would like to know that now. Do you know how many houses had been completed by the time you were stopped from building houses in mid-January?

MR ZWANE: No Chair I do not have – I do not have that
10 statistics with me.

CHAIRPERSON: Yes. Did you ask for that information at the time you have forgotten it is now or you did not ask for it even at that time from the officials?

MR ZWANE: I had asked the information Chair even as late as – of this week. What I got when I called – because I knew I anticipated that discretion will come that the file that could have correct statistics.

CHAIRPERSON: Information.

MR ZWANE: Ja they do not see it.

20 **CHAIRPERSON:** They said they could not find the file.

MR ZWANE: They could not find the file. I did ask for that file because I wanted – when I saw this media statement, I read my affidavit. I thought I should get the correct figures from the department and I did send an email trying to reconcile this so that I give a proper answer.

CHAIRPERSON: Hm. Okay.

ADV PRETORIUS SC: Well if one backs to paragraph 93 Mr Zwane where you mention 50 completed houses plus minus. As I understand the intention of that statement was to show how much had been achieved by the department under your watch during December/January 2010. We know December 2010/January 2011 that was the purpose clear from the statement here. You were trying to say – place on record what the department had achieved during that period. And

10 you say if I may take the point a bit further:

“I had opened plus minus 50 completed houses and there were many structures which were on foundation stages, wall level milestone and roof level milestone which would have been completed had there been a further two to three months.”

That on the face of it is a clear intention to give the best picture of the state of progress during December/January 2010. You do not say here there might have been another
20 3000 houses close to completion – completed anyway – handed over.

MR ZWANE: No I could not say that Chair because I did not have that information with me.

ADV PRETORIUS SC: Oh. So when was this affidavit signed let us just check that? It was signed in 2019 was it?

When was it signed? 15 September 2019. That is when you made this statement.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: I want to suggest to you that your statement may be the correct reflect of events because I also want to suggest to you that the press release issued by the Department is grossly exaggerated. That by the admission of the HOD and Mr Maxatshwa. What do you say to that?

10 **MR ZWANE**: I have eluded Chair earlier on that this was not written by me and so I – I am currently not in a position to have an objective judgment of this statement.

ADV PRETORIUS SC: Well let us say at least that if the facts in paragraph 93 are anywhere near the correct position that media statement would have been a gross exaggeration. Would you at least admit that?

MR ZWANE: The – the – the only small challenge I had with the media statement Chair if I may allude to it is the timing of it because it is a reactionary kind of document which may
20 in some instances lack objectives. But in terms of the precision of the statement I cannot vouch to it that is why up front I had said the point I was trying to illustrate here when I refer you to this statement was not about numbers. It was about the fact that houses were built during that time. I eluded to that statement earlier on Chair.

ADV PRETORIUS SC: Yes. Well lacking objectivity is perhaps the politest description of the projections of the department in relation to what would have been achieved by year end. But let us look at what the media statement actually says on page 596. It is dated the 26 January 2019 and it says in paragraph 1: By the way before we got there to what it says did you approve this statement before it was issued?

MR ZWANE: I – I normally do not approve a statement that
10 is not from my office. The HOD does in terms of the PFMA these are the people that are administered by him.

ADV PRETORIUS SC: Alright. Let us look at paragraph 1. Paragraph 1 says in a public media statement in response to a decision taken by the National Department.

“The Free State Department of Human
Settlements will not under-spend funds
allocated for Human Settlements
Development in the current financial year.
By the end of the financial year in March the
20 Department would have spent 100% of all
conditional grant funding allocated for
Human Settlements Development. That is an
amount of approximately R1.4 billion.”

Now in another form that statement was put to the HOD Mr Mokoena at the time and as well as to Mr Maxatshwa who

was on the ground in the construction of houses. You know that correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: They have conceded that that – to put it at its mildest was a gross exaggeration and could never have been achieved.

MR ZWANE: Well I am just – I just – opportunity arising would have been, why would they have kept quiet when the statement was issued? Because the executive management
10 would not allow any media statement that is in the direct opposite of what is happening in the department to test he should ...

ADV PRETORIUS SC: Well firstly it is in direct opposite of what you said in your statement but secondly, they gave the reason to the Chair. They said it was to avoid forfeiting money to the fiscus. That was the purpose of that representation.

MR ZWANE: Well let me say Chair that – that was never brought to my attention. Why – our main aim as politicians
20 me seated here – my main concern was not money. I want to put it to this commission.

My main concern was the people who were promised houses and money was there for them to own at least and have a shelter and those people are going to lose. And in so saying I thought that officials would do their best to achieve

what we could achieve and where we cannot achieve come back and say to me this is how far we have gone and we could not achieve to build the total number of houses we were supposed to build because of time frames and so forth. I would have accepted that.

So if they say a statement was issued to try and deal with those issues having an opportunity, I do not see how this statement would have helped. Because the reality of the matter is that the National Department and the Minister will
10 be guided by milestones what has been happening practically and that will be taken not out of the statement it will be taken out of BAS which was the system – financial system which was used at that particular time and that mention will be made.

So issuing such a statement and come and say the statement was meant to try and mitigate. From where I am seated Chair will be mild because if you wanted to try and achieve the only way of doing that was to go to the ground, do the best that we can and achieve what we can achieve. If
20 we failed allow the money to go back because we could not keep money if we could not perform. That was as simple as that.

ADV PRETORIUS SC: But throughout this morning and this afternoon's evidence you have deferred to your officials in regard to the facts. In fact in the last half an hour you have

made it clear that you did not have all the facts.

That is why you say you could make a statement as you made regarding the 50 houses and it was the people on the ground that knew the facts. They have come to this commission this week and they have said these projections that they would spend 100% by the end of the year were grossly exaggerated.

And they have said there was no chance that these figures would have been met. And they said the reason for
10 the misrepresentation was to ensure the money was not lost. They have told the Chair that. They are the ones that you say would know the facts. You say you did not know the facts. Why would they be lying to the commission? What purpose would it serve for them to do so?

MR ZWANE: I am saying Chair if I may? That I have eluded that I was not part of this statement. I am saying from where I am seated if I were them rather than issuing a statement that is incorrect that will stay as a record that we need to talk about here.

20 I would rather preferred a route that will go down and do the actual job and when the time comes we surrender what we need to surrender if we need to surrender. Because in terms of the recovery plan if I recall well the recovery plan was also in line with this statement that now we will be able to achieve what we need to achieve.

So I can see now that the statement lacks objectivity, I have said that and however I do not accept their reasons in that – that was the right way to – to actually do things. I do not accept that reason that is what I was trying to say.

ADV PRETORIUS SC: Alright. Well if you look at the statement the third last paragraph reads:

“The department is on track to build a total of
10 500 RDP houses.”

You see that?

10 **MR ZWANE:** Yes.

CHAIRPERSON: And that must have meant it was on track to build those – that number of houses by end of the financial year.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Right. Well let us look at FS14 page 225 please.

CHAIRPERSON: Is that the Recovery Plan?

ADV PRETORIUS SC: That is FS14.

MR ZWANE: Page 225.

20 **ADV PRETORIUS SC:** Page 223 that is the page that I want to refer Mr Zwane to is on page 225. You recognise that document?

MR ZWANE: [not speaking into the microphone].

ADV PRETORIUS SC: Did you sign that document?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: What is this document?

MR ZWANE: 2010/2011 housing allocations.

ADV PRETORIUS SC: Right so it was the intention I understand it to build the houses in this allocation list during the financial year, correct?

MR ZWANE: Correct Chair.

ADV PRETORIUS SC: The total of the allocations appears on page 225 and it reflects a figure of 20 950. Do you see that?

10 **CHAIRPERSON:** It is not easy to see that figure. I thought that it is ...

ADV PRETORIUS SC: It is not easy to see it.

CHAIRPERSON: It was 1 350 because it is shaded.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But it is 209 either 50 or 60.

ADV PRETORIUS SC: Ja. Our reading is 29 – 20950 but I am happy to settle for 2090.

CHAIRPERSON: Hm. Ja. Are you able to read that figure Mr Zwane?

20 **MR ZWANE:** With all the difficulties that is presented to me Chair.

CHAIRPERSON: Okay yes what is certainly 20 900 and either 50 or 60.

MR ZWANE: Ja.

ADV PRETORIUS SC: So when the – and that was the

projected allocation for the financial year. You have said that.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: So when the press statement says they are on track to build 10 500 houses that is give or take 200 houses half of the intended allocation. Correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: Anyway we dealt with the media statement Mr Zwane at your instance. If I could take you
10 back please to the Expenditure Recovery Plan.

CHAIRPERSON: Before that Mr Pretorius. Mr Zwane you said this media statement was prepared by the department and not you. I take it that it would have been approved by the Head of Department to say the least. Is that right?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Did you see it before it was published – sent out to the – into the media?

MR ZWANE: No I did not Chair.

CHAIRPERSON: The Head of Department did not let you
20 see it before it went out to the media?

MR ZWANE: No I do not recall being invited to see this.

CHAIRPERSON: Yes.

MR ZWANE: Before it went out in the media.

CHAIRPERSON: You do not recall having seen it before it went out into the media you or you do recall that it was not

given to you before it went out?

MR ZWANE: It was not given to me Chair.

CHAIRPERSON: It was not given to you?

MR ZWANE: No it was not.

CHAIRPERSON: But I guess you – I guess you would have become aware of it once it had been published in the media?

MR ZWANE: Yes Chair I would have been.

CHAIRPERSON: You would have been yes. Now apart from reading whatever the media wrote after receiving it I take it
10 that you would have been favoured or you would have asked for the actual full copy of the statement?

In other words you – you would not have been content to just read what the newspaper – newspapers say the statement said. You would have said I want to see the actual statement or they would have – the officials would have given that to you on their own – the actual statement.

MR ZWANE: Well Chair it – that is not normal in the course of us doing work. What we normally do.

CHAIRPERSON: Hm.

20 **MR ZWANE**: Which may be in hindsight not complete. If a statement has been given and we have not seen it and it is grossly incorrect you call the HOD and raise your issue – your dissatisfaction and find a way forward in terms of what do you do next. On the hindsight Chair, because we are discussing this matter, this statement was actually given

despite the fact that the department had issued a letter in 2011, January on the 12th. I think the letter is attached here also. Should you wish to go to the letter.

CHAIRPERSON: Yes. We can look at it if you think there is something important, a point that you ...[intervenes]

MR ZWANE: There is something important but let me raise it.

CHAIRPERSON: Ja.

MR ZWANE: We will go to the later if ...[intervenes]

10 **CHAIRPERSON**: Later.

MR ZWANE: ...if you want us to do that. The BG had written to the HOD, indicating ...[intervenes]

CHAIRPERSON: The Director General of the National Department ...[intervenes]

MR ZWANE: Yes.

CHAIRPERSON: ...had written to the HOD of your department?

MR ZWANE: Yes.

CHAIRPERSON: Yes.

20 **MR ZWANE**: Indicating that on the 12th...[intervenes]

CHAIRPERSON: Of January 2011?

MR ZWANE: Yes.

CHAIRPERSON: Yes.

MR ZWANE: A decision had been arrived at to start the allocation of February and March, right?

CHAIRPERSON: H'm.

MR ZWANE: Now if you look at that and we already consoled(?) with the reason that was given earlier on by the leader of evidence that when the HOD was here, there is... the intention was to try and secure the fund. A letter...

He was already with a matter from the Director General written on the 12th of January that we are not going to allocate you for the month of February and March.

I just want to bring that to the attention that... and there
10 was a lot happening at that level which I happened to know about at a later stage.

And which I am struggling to reconcile where I am seated. I thought I should bring that also to the fore so that, as the Commission sees(?), the Commission should also consider what I am saying.

CHAIRPERSON: No, no. Definitely it will and I know the letter you are talking about. I have read it. But my question was whether after the media statement of the department had been issued to the media, either you asked for a full... a
20 copy of the full statement to be brought to you or whether the department on its own without you even asking, furnished you with this statement, full statement.

MR ZWANE: I recall when I... what I requested was the... to be taken through the progress.

CHAIRPERSON: Ja.

MR ZWANE: Because to me what was important was, are we achieving what we need to achieve?

CHAIRPERSON: H'm?

MR ZWANE: And I was taken ...[intervenes]

CHAIRPERSON: Please raise your voice. It has gone done now. Ja, I think it has been a long day.

MR ZWANE: And naturally Chair, I have a soft voice.

CHAIRPERSON: [laughing] Yes okay.

MR ZWANE: In hindsight, I should have taken the advice
10 that I should come... they got another ...[indistinct]

CHAIRPERSON: [laughing] Ja.

MR ZWANE: Chair ...[intervenes]

ADV PRETORIUS SC: To ...[indistinct] ...[intervenes]

MR ZWANE: [laughing] I requested that they should take me through the progress Chair.

CHAIRPERSON: That is now the HOD and senior officials?

MR ZWANE: Yes.

CHAIRPERSON: H'm.

MR ZWANE: Because to me, at that particular time, not
20 knowing the intention, I thought: Wow! It means it was done actually performed what was there.

And I should indicate Chair that HOD was not here during that December despite the fact that where I(?) had indicated the seriousness of this issue that people will lose what they were going to benefit.

I gave into his request by arrangement. And so I thought he was briefed properly when he comes back. But then I was given figures and ...[intervenes]

CHAIRPERSON: I am not preventing you from telling me what happened but I just remind you of my question. Namely, whether after this media statement had been issued to the media. In way or another, you did have sight of the full statement, whether because you requested it or whether the officials out of their own gave you a copy of the full
10 statement.

MR ZWANE: If I recall it, it was hundred percent or there about put in the media. The media did not select... the media will no more ...[intervenes]

CHAIRPERSON: Oh, okay. Okay.

MR ZWANE: Ja.

CHAIRPERSON: Okay.

MR ZWANE: Yes.

CHAIRPERSON: So you saw the full statement ...[intervenes]

20 **MR ZWANE:** I saw it from the media, yes.

CHAIRPERSON: Yes, okay. And that would... this statement is dated 20 January 2010. Oh, I am sorry. They must have meant 2011.

MR ZWANE: Yes, this is 2011 Chair.

CHAIRPERSON: Because it is stated 2010.

MR ZWANE: No, the second paragraph is correct.

CHAIRPERSON: Yes. No, what I am thinking. I see, at the top there, it says twenty... on page 596 says 20 January 2010. So I am saying, it must be because sometimes when it is January, people keep on using the previous year when they made this. This could only have been January 2011. Is that right?

MR ZWANE: Paragraph number 2 corrects that mistake Chair.

10 **CHAIRPERSON**: Okay.

MR ZWANE: I saw that mistake but it is corrected in paragraph 2.

CHAIRPERSON: Yes.

MR ZWANE: Which says ...[intervenes]

CHAIRPERSON: Okay.

MR ZWANE: ...as of the date 20 January 2011.

CHAIRPERSON: Ja, okay alright.

MR ZWANE: It was previous Chair.

20 **CHAIRPERSON**: So you saw these figures and you say as a result of having read this media statement that came from the department, you asked officials to take you through the process and you wanted to be given a full update given the media statement that had been issued. Is that right?

MR ZWANE: Yes. Yes, Chair.

CHAIRPERSON: Yes. Okay. The one part which I have

some or one of the parts I have some difficulty with, with which I want to you get a chance to deal with is that it seems you... When the process was stopped in mid-January or soon thereafter, you did not know how many houses had been completed.

Now that is a little strange to me because I think in your affidavit you say that you reported back to the... back to Exco after the holidays.

And I would have thought that you would have made
10 sure you knew how many houses had been completed so that you would report accurately. Do you want to say anything on that?

MR ZWANE: I get the point that the Chair is raising.

CHAIRPERSON: Yes, yes.

MR ZWANE: In terms of my understanding Chair. When I went to Exco, it was not at the time when this project did stop. It was at the time when I was going to report the work that was done, the progress made during the holidays when I had the chance. I did not went to report that.

20 I understand the question raised by the Chair to be saying, every time when the project was stopped, did you know the figures? I am saying no. And that is the different time from the time when I went to Exco to report.

CHAIRPERSON: Did you report to Exco before mid-January or after?

MR ZWANE: I had raised the point Chair that the letter by Mr Thembani Zulu, the DG, the former DG at that particular time. I was not privy to the letter.

CHAIRPERSON: H'm?

MR ZWANE: So when I reported, I did not know that a letter has already been issued. If I am ...[intervenes]

CHAIRPERSON: That is now the letter of the 12th of January?

MR ZWANE: Ja.

10 **CHAIRPERSON**: Yes.

MR ZWANE: It did not get to my attention. So then I reported to Exco. I was under the understanding that we are still continuing and we may reach the target.

CHAIRPERSON: But was it before mid-January when you reported to Exco?

MR ZWANE: I think so.

CHAIRPERSON: Or after?

MR ZWANE: No, I think so Chair.

CHAIRPERSON: Yes, okay.

20 **MR ZWANE**: Because normally we will open the first week late or early second week.

CHAIRPERSON: Of January?

MR ZWANE: Yes.

CHAIRPERSON: Yes.

MR ZWANE: And then we begin to... during that week, we

will meet at Exco.

CHAIRPERSON: Yes.

MR ZWANE: Where we commit(?) the way forward. And that is when we will be able to... can present.

CHAIRPERSON: Yes.

MR ZWANE: Yes.

CHAIRPERSON: Now, your report to Exco about progress made, would it have been in writing or would it have been a verbal report?

10 **MR ZWANE**: It would have been in writing. You normally write a memo Chair.

CHAIRPERSON: Yes.

MR ZWANE: Or if the Exco was hastily called as normally... that is the case in January and you are asked to report, you then can have a report with you and report to Exco they will accept.

CHAIRPERSON: H'm, h'm.

MR ZWANE: Yes.

20 **CHAIRPERSON**: H'm. Okay. When you... when the officials took you through the process at your request after they have issued this media statement, the figures that were in the media statement, were they vastly different from your understanding of the progress that had been made or were they not?

MR ZWANE: Well, Chair as a person who was on the

ground, myself, as I have alluded earlier on, that I did not touch base with all the corners of the province because building was happening in all the corners of the... Maybe I should allude to the fact that these figures were much higher than what I would have presented ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: ...as a person. Ja.

CHAIRPERSON: Yes.

MR ZWANE: Yes.

10 **CHAIRPERSON**: Obviously, that would have been of concern to you? Namely, that the figures that are being... that the department had told the public, were vastly different from your understanding of the progress that had been made.

MR ZWANE: That is correct, Chair.

CHAIRPERSON: And did you raise these with the officials, including the HOD, to say, your figures are vastly different from my understanding of the progress that we have made and I am the one who was here during the holidays. How
20 come? Show me that your figures are correct and mine are not correct because we cannot mislead the public. Did you say that?

MR ZWANE: We actually had a meeting because my approve(?) was not what the Chair's relation...[intervenes]

CHAIRPERSON: [laughing] Is mine confrontational?

MR ZWANE: Well, Chair the understanding is, if sometimes you do that, you... the best way of doing it is to want to get evidence. So I took that route.

That: Well, okay. I mean, I did not go to all these corners and I may not have a clear picture but I was on the ground. Let us bring the figures and try and reconcile. It is during that meeting where we had some/sharp(?) discussions took place.

I think it was around the end or early February of these
10 issues. Now I remember when I was supposed to take...
draw up a programme to go and see what is on the ground
myself.

And subsequently, I was then from that department, I think around the 8th/9th of February. But otherwise, there was a programme that we will go together and verify these numbers.

Because I believed that as much as I was interrogating the report, what was going to be of importance is to try and see what is on the ground. And I think that roster was done.
20 It was going to be the roster that will take me through to
March.

Because in March, had I stayed, I would be making a new policy statement and that policy statement was going to be informed about what I have seen on the ground despite those that I opened myself. And unfortunately, I could not

proceed Chair. As I have said, I had to go to another department.

CHAIRPERSON: Well, it is rather strange to me that in regard to a matter where the national minister had spoken to you in regard to a matter about which the national minister had spoken to you namely the under-expenditure or performance of the department in spending the conditional allowed allocation.

The department should issue a statement such as this
10 giving vastly different figures from what you understood to be the position and they do not check with you. Or they do not say, before we issue it, this is what we are going to be saying to the public.

And indeed, actually, when you look at the statement more than the public, it seems to have been a response to the national minister's statement to say, you say you are going to take away money from us.

We are saying, no we are not going release any money or we not going to allow that because we are doing very well.
20 But you say they issued that without telling you what they are going to tell the public beforehand.

MR ZWANE: The... if I participated in the compilation of the statement Chair.

CHAIRPERSON: H'm?

MR ZWANE: And this is not how we normally communicate

amongst ourselves as leaders.

CHAIRPERSON: H'm.

MR ZWANE: I am a firm believer of persuasion.

CHAIRPERSON: H'm.

MR ZWANE: Eye-to-eye. Say my view. And if I am defeated, accept the outcome of the meeting.

CHAIRPERSON: H'm, h'm.

MR ZWANE: I am not a believer in standing out there and making my point. When you had called me in the meeting...
10 the minister had called to ask to a meeting. Raised this point professionally with us. And the minister has powers at the end of the day to implement according to his programme.

If we were to try and convince the minister the best way was not to go to the media. I put it here. That is why I raised it earlier on.

And the best way was to try and persuade the minister and that best way would have been informed by the problem I had suggested that I have seen this thing. This is how far we have moved. Give us a chance, we will finish.

20 I was reluctant myself to immediately, according to the report that I have, act against all four. Because I thought having a concrete evidence of what is on the ground, will actually put me in a better place to can speak with the minister going forward. But I do get your point Chair. The point you are raising.

CHAIRPERSON: Yes. Mr Pretorius.

ADV PRETORIUS SC: This afternoon sometime, you mentioned a letter from the National Department of Human Settlements dated the 12th of January. It is a letter that was addressed to eh head of department in the Free State and it is dated the 12th of January.

That was the national department giving notice to the provincial department that the further allocations were being stopped. You recall you spoke of that letter?

10 **MR ZWANE:** That is correct, Chair.

ADV PRETORIUS SC: Was that letter drawn to your attention?

MR ZWANE: As alluded. No, Chair.

ADV PRETORIUS SC: Sorry?

MR ZWANE: As I have alluded earlier on that I did not know about this letter.

ADV PRETORIUS SC: Yes.

MR ZWANE: I only found out later.

ADV PRETORIUS SC: ...[intervenes]

20 **CHAIRPERSON:** Found later before you left the department?

MR ZWANE: No.

CHAIRPERSON: After you had left the department?

MR ZWANE: After I had left the department.

CHAIRPERSON: Oh.

ADV PRETORIUS SC: Did you know that payments had been halted?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: Surely, I mean, one would have expected and there are many unexpected things that did happen. I will concede that immediately. But one would have expected that having received notification that payments are being stopped, you would have been told.

MR ZWANE: I have raised the issue of the letter myself
10 Chair.

ADV PRETORIUS SC: Okay.

MR ZWANE: And I have said, I did... I do not see a point why the statement in the first place was issued when this letter was there.

Because there... with all respect, the leader of the evidence had just said, the officials I am speaking about were here, right?

And this is what they said. And to go back and direct... this letter was meant to try and secure the funds not to be
20 taken. Now, I am saying to this Commission.

When I came across this letter that I am being asked about, I did not see the wisdom of issuing a media statement.

I mean, the letter was there. The allocation was taken already. As I have alluded, I would have done it differently

Chair and... but the fact...

Upon the point you are asking me through you Chair is that, did I know about this letter? I said no I did not know. Had I known, I would have reported to Exco and ensured that that process is duly stopped.

ADV PRETORIUS SC: Yes. Well, Mr Zwane the media statement itself explains its purpose and that is to respond to a media statement issued by the national department quite critical of the provincial department. That is what it says.

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

ADV PRETORIUS SC: But anyway. I do not want to...[intervenes]

MR ZWANE: I ...[intervenes]

ADV PRETORIUS SC: It is not your statement.

MR ZWANE: I have answered that Chair.

ADV PRETORIUS SC: I do not want to go into the motive of this statement.

MR ZWANE: Ja, I have answered it to say, I would have done it differently.

20 **ADV PRETORIUS SC:** Yes.

MR ZWANE: And I in detail explained my way of doing things. As a leader in that department, I would have done things differently. And that is what I have said.

CHAIRPERSON: Is your understanding of that media statement the same as mine?

As I read the statement, it seems to me that the department was adopting a rather confrontational approach towards the national department or national minister to say, you want to take money from us because you say we are not performing. We want to tell you that we are performing and we do not agree with what you are saying.

Is your interpretation the same as mine of what the statement is about? Or have you got a different understanding or interpretation?

10 **MR ZWANE**: In my own words Chair, I have said I would have preferred the statement to be polite.

CHAIRPERSON: Yes.

MR ZWANE: This is what I have said.

CHAIRPERSON: So... yes.

MR ZWANE: The...[intervenes]

CHAIRPERSON: You would have wanted it to be conciliatory?

MR ZWANE: If your provincial department, there is no way you can stand against your own government, your own
20 minister who have allocated to you and it is up to you to deliver and you have challenges and you resort back... begin to be confrontational as the Chair says.

What... how would that help you in the process? Because the best way was to try and engage or adhere, meaning, that the minister has all the powers to take and

then ignore the statement. The statement would have never scared(?) the minister as far as I know the minister.

CHAIRPERSON: Thank you. Mr Pretorius.

ADV PRETORIUS SC: If we can go Mr Zwane, finally, to the document FS14 page 226.

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: You said you recognised this document as the expenditure recovery plan for 2010/2011 prepared by the Department of Human Settlements, Free
10 State.

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: It must have predated November 2010 because we know it was presented to a MINMAC meeting in November 2010.

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: Correct?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: This document originated before
19 November 2011?

20 **MR ZWANE:** Yes, that is correct.

ADV PRETORIUS SC: Okay.

MR ZWANE: That is correct.

ADV PRETORIUS SC: Were you made aware of the contents of this document? After all, this document was prepared on your instruction, having received that instruction

from the national minister.

MR ZWANE: This... the statement you are talking about and the recovery plan were not developed all at the same time. The recovery plan took into consideration the allocation, the earlier allocation made by the department. And this allocation was then included to be part of the recovery plan in terms of how I understand the sequence of events.

ADV PRETORIUS SC: Yes but was this the plan that emerged from the exercise you instructed the officials of the
10 department to do?

MR ZWANE: I believe so Chair.

ADV PRETORIUS SC: Alright. Let us go to FS14, page 234, please.

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: Now there have been various statements made by witnesses this week as to the projections listed on page 234 of FS14 and I would just like to put them before you.

The projections for cash flow expenditure showed that
20 there would have been by November 8500 foundations and an expenditure in respect of those foundations of R 170 million. Do you see that?

MR ZWANE: Are we talking about... where are we now? I am lost here, Chair.

ADV PRETORIUS SC: Sorry, go to page 234, please.

MR ZWANE: Of the black numbers?

ADV PRETORIUS SC: Yes.

MR ZWANE: I like going to the red numbers. I do not know why.

ADV PRETORIUS SC: [laughing]

MR ZWANE: Yes, I found that.

ADV PRETORIUS SC: It is a luxury today.

MR ZWANE: [laughing] Ja, sorry Chair.

CHAIRPERSON: I think he wants you to repeat your
10 question, Mr Pretorius.

ADV PRETORIUS SC: Yes. This cash flow projection in this document presumable prepared during November of October of 23010, says that by November 2010, 8500 foundations would have been laid.

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: An expenditure of R 170 million. 3500 wall plates would have been erected at an expenditure of R86 593 500. Was that achieved? Was it remotely achievable when in January on the most favourable
20 projections in the press statement they were only on track to complete 21 500 houses by the end of March. But anyway, let me not enter into comparisons at the moment, let me just ask you, Mr Zwane, the plain question, was that achievable? Was it achieved?

MR ZWANE: Chair, if I may say, looking back at the

recovery plan interrogating it thoroughly, it has loopholes.

ADV PRETORIUS SC: It has?

MR ZWANE: Loopholes. Loopholes like it was ambitious document which I would have understood at that particular time that people would have had to put their shoulder on the blade to ensure that this is achieved and I think it is a well-known fact that that was not achieved.

ADV PRETORIUS SC: So whatever adjective we use and many adjectives have been used this week, loopholes is a
10 new one. Is it fair to say that this is not realistic or accurate?

MR ZWANE: I think so, Chair.

ADV PRETORIUS SC: We know at least that the purpose of this plan was to respond to the Minister's directive that such a plan be provided so that they could consider whether funds should be withheld or not, correct?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Do you know whether the figures that were put into this plan at page 233, that is the page we are
20 looking at, do you know whether before those figures were put in there in terms of how many houses would be at foundation stage, how many would be wall plate, how many completions? Do you know whether somebody did the necessary homework, practical homework whether this could be done at a practical level looking at all the issues?

Do we have – have we appointed contractors, are the contractors we have appointed – will they be able to do this within such and such a time? Are there processes that must be followed? Will they not cause delays? Or did somebody just sit in the office and put in a wish list to say this is what we wish to achieve?

MR ZWANE: Well, Chair, I think this process included a number of stakeholders and contractors should also have been consulted and on the strength of those consultations,
10 I believe this document was then developed. As I have said, I have not entirely been in the process of the development of this document but as things stands today you can see that this was an ambitious document, to say the least, but people had committed that with all the resources we have in place, this is achievable, as I was informed by the HOD and I accepted that explanation,
Chair because all what this explanation had said to me and it meant at that particular time is that anyway, we cannot deceive the Minister by being ambitious, the reality is
20 going to come when a financial report is given to the Minister. The reality will be there and the Minister will make a determination based on that reality.

What I saw this document doing at that particular point in time was to push officials and everybody harder to try and achieve. Although I would have preferred a

document that would have been specific to the point but I must say in this Commission that having attended a meeting with contractors and so forth, some of the issues they would say they would be able to achieve, they would not achieve at the end of the day. I think I must make that point.

CHAIRPERSON: But when you were given this document did you say to the officials, for example, you people are saying by December the department will have completed
10 building 3 000 houses, tell me how you are going to achieve that? Persuade me that what you have written here is convincing. How are you going to achieve, we – I do not know what month you were talking about, let us say maybe it was October or maybe September when you were given this but we know it was before 19 November or early November.

Did you say explain to me how that is going to be achieved because when we say to the Minister or when we say to the public by end of December – or when I say to
20 Exco by end of December we will have built 3 000 houses, if they ask me or if the National Minister asks me how are you going to achieve that in circumstances where over six months before October of the financial year you had not built a single house, from what I have been told by the witnesses, from this allocation, not from previous

allocations? Did you ask that question, say tell me how you are going to achieve that, let me see whether you are talking about something achievable?

MR ZWANE: As I have alluded, Chair, the stance I took was to say to the officials, is this what you think you can achieve? Can I hold you accountable to this? And they did agree that you can hold us accountable. If I recall I even went to the extent of saying there will be repercussions we you do not achieve according to what you
10 are presenting to me and we agreed. Hence most of the officials committed themselves and worked during holidays and I left it at that.

CHAIRPERSON: Am I correct then in understanding your answer to my question to be that you did not ask the question of how they would achieve but you asked for an assurance that they would achieve these figures and you said well, if they are not achieved there will be consequences?

MR ZWANE: That is correct, Chair.

20 **CHAIRPERSON:** Okay, alright. Mr Pretorius?

ADV PRETORIUS SC: We have evidence, Mr Zwane, that this expenditure recovery plan was presented to a technical Minmec meeting on the 28 October 2010. Technical Minmec we have learnt is a meeting of officials that the department and other officials, Director Generals

of Deputy Director General dealing with operational matters, correct?

MR ZWANE: Correct, Chair.

ADV PRETORIUS SC: According to the evidence of Mr Maxatshwa, he said that at that meeting the ERP was questioned and it was certainly not accepted. Do you have any knowledge of that?

MR ZWANE: No, Chair.

ADV PRETORIUS SC: It was presented again at the
10 technical Minmec meeting the following month on the 18
November 2010. We have the minutes of that meeting, that
is in bundle FS12 at 309.

MR ZWANE: 309?

ADV PRETORIUS SC: Yes. If you look at paragraphs
3.2.2 under the heading Free State Province, the minute
reads:

“The plan, as presented, does not demonstrate the
ability of the province to spend the R1.42 billion
from now until the end of March 2011.”

20 Do you see that?

MR ZWANE: Can I be helped Chair?

ADV PRETORIUS SC: Paragraph 3.2.2 on FS12, 309. If
you want a red number I will give it to you.

MR ZWANE: Oh, FS12.

ADV PRETORIUS SC: I am just waiting for you to say you

have enough for the day, sir.

MR ZWANE: I am with you, Chair.

ADV PRETORIUS SC: You see paragraph 3.2.2 on that page? It says:

“The plan, as presented, does not demonstrate the ability of the province to spend the R1.42 billion from now until the end of March 2011.”

It seems to be the consensus but this was expressed as early as November 2010. Do you see that?

10 **MR ZWANE:** Yes.

ADV PRETORIUS SC: What I wanted to ask you was the evidence says that that was reported back to you. Was it?

MR ZWANE: No, Chair.

CHAIRPERSON: That statement should not surprise you, Mr Zwane, should it, namely that the plan, as presented, does not demonstrate the ability of the province to spend the R1.4 billion from then until March 2011 because the plan that we have been talking about did not indicate how those figures would be achieved, it just puts the figures
20 almost like the targets but did not say now those targets would be achieved. So I am saying in the light of that, this statement should not surprise you. Do you agree?

MR ZWANE: I said earlier on when I looked at the plan, interrogated it, I found it to be a very ambitious plan.

CHAIRPERSON: You found it..?

MR ZWANE: And ambitious plan.

CHAIRPERSON: Yes, yes, yes.

MR ZWANE: I did raise that point earlier on, Chair.

CHAIRPERSON: Yes. No, no, you did.

MR ZWANE: Yes.

CHAIRPERSON: But what I am saying is, when the Minmec or whatever the body was that met here, which included the Director General of the National Department, when this meeting says the plan, as presented, does not
10 demonstrate the ability of the province to spend the R1,4 billion from then until the end of March 2011. When the plan does not have anything to say how these targets would be achieved, one should not expect it to be persuasive because the National Department would be saying we can see that you are telling us that you are going to achieve 3 000 houses by end of December that would be completed but you have put nothing that persuades us that you are right in thinking that you will achieve that. You accept that?

20 **MR ZWANE:** I understand it.

CHAIRPERSON: You understand that.

MR ZWANE: I understand, Chair.

CHAIRPERSON: Okay, alright.

MR ZWANE: That the plan lacked the how.

CHAIRPERSON: Yes, the plan lacked the how, ja.

MR ZWANE: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: The technical Minmec meeting held on the 18 November, you were not an invitee to that meeting, I understand.

MR ZWANE: That is correct.

ADV PRETORIUS SC: We know that that meeting said what it did about the plan being unachievable or not demonstrating that it was achievable, that was minuted.

10 **MR ZWANE:** Would you have been recipient of those minutes?

MR ZWANE: No, Chair.

ADV PRETORIUS SC: Right. It was followed by a meeting the next day of Minmec, not technical Minmec but Minmec. Who attends Minmec meetings?

MR ZWANE: The Minister attends, Chair.

ADV PRETORIUS SC: Sorry? The MEC and the Minister.

MR ZWANE: The MEC and the Minister attends.

ADV PRETORIUS SC: Ja, so the MECs of the various departments around the country plus the National Minister.

20 **MR ZWANE:** That is correct.

ADV PRETORIUS SC: We understand that you did not attend that meeting.

MR ZWANE: That is correct.

ADV PRETORIUS SC: But would you have known – well, you must have known that that meeting was going to

address important issues for your department including the matter of the budget, correct, the funds?

MR ZWANE: That is correct.

ADV PRETORIUS SC: You would have received the minutes of that meeting.

MR ZWANE: I would have received the report.

ADV PRETORIUS SC: And did you receive a report?

MR ZWANE: From the officials when coming back.

ADV PRETORIUS SC: Yes, who actually did attend on
10 behalf of the department.

MR ZWANE: On behalf of the HOD because the HOD on behalf of the department was supposed to be there.

ADV PRETORIUS SC: And he was not?

MR ZWANE: Yes.

ADV PRETORIUS SC: So Mr Maxatshwa attended, is that right?

MR ZWANE: Yes.

ADV PRETORIUS SC: Did he report back to you?

MR ZWANE: Mr Maxatshwa will actually report to the
20 HOD, not to me.

ADV PRETORIUS SC: Did the HOD then report to you?

MR ZWANE: The HOD reported that in my knowledge they needed to readjust something in terms of the recovery plan, as the report the feedback from the meeting which I said go ahead and do.

ADV PRETORIUS SC: Alright. The evidence that was given this week, Mr Zwane, was that the technical Minmec rejection of the plan and its observation was confirmed by the National Minmec and that minute appears at page 314 of FS12 and if you would go to page 319 please?

MR ZWANE: 319.

ADV PRETORIUS SC: By the way, did you attend any Minmec meetings during your term?

MR ZWANE: Yes, I did, Chair.

10 **ADV PRETORIUS SC:** You did?

MR ZWANE: Yes, I did.

ADV PRETORIUS SC: But this one not.

MR ZWANE: Ja, this one I did not, Chair.

ADV PRETORIUS SC: If you look at page 319 you will see:

20 “Provincial Expenditure Reports on the Integrated Housing and Human Settlements Development Grant and Delivery Trends for the Period Ended 31 October 2010. The meeting noted a presentation by a Mr Mnyane.”

Who was he? Who is he? Do you know who he was at the time?

MR ZWANE: Mr Mnyane?

ADV PRETORIUS SC: Does not matter.

MR ZWANE: I do not recall that name, Chair.

ADV PRETORIUS SC: In any event, paragraph 3.2 says:

“Minmec agrees with the following recommendations of technical Minmec in relation to the interventions around expenditure patterns, shifting of funds from nonperforming provinces in the interest of services delivery. Provinces must invest more on planning.”

And thirdly:

“Approval processes in the provinces must include consideration for bulk infrastructure.”

10 Now that is obviously a cryptic minute, information from Mr Maxatshwa, who attended a meeting, was firstly that the expenditure recovery plan was not accepted. Secondly, that this was ultimately reported to you.

MR ZWANE: This was widely covered even on the media, I must allude to that fact. There were processes that followed that meeting because if you read the letter that I referred to from DG Thabane Zulu dated the 12 January, it says:

20 “Despite the fact that you have been given seven days in January to try and convince us why funds should not be taken, we now provoke (sic) the following the sections according to the DORA Act and we will not allocate anymore to you.”

That was in January 2011, closing this matter, bringing finality to the matter. I did not understand this meeting to

be saying as of the 19 November we should surrender all the money. As I am indicating, that that letter was actually saying you may have failed in convincing the department within seven days and that is when the final allocation was taken and I have alluded to the fact, Chair, that I did not know about that letter earlier on and if there would be a question that says you continued after that, I think that will be understood in that context.

ADV PRETORIUS SC: Would you please go to FS12 page
10 255?

MR ZWANE: 455?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Is that two double five?

ADV PRETORIUS SC: Two double five.

CHAIRPERSON: Of FS12.

ADV PRETORIUS SC: That appears to be a letter
addressed to yourself, Mr Zwane, it is dated, as is
apparent from page 257, the 9 December 2010 and it is
signed by the National Minister at the time, Mr Sexwale
20 and it seems that Premier Magashule may have been
copied but we do not know that but that signature of Mr
Sexwale seems to be the signature attached to the name
there. Do you see that?

MR ZWANE: I see that letter.

ADV PRETORIUS SC: Do you recall receiving this letter

dated the 9 December 2010?

MR ZWANE: Well, I see the letter, Chair.

ADV PRETORIUS SC: It says:

“This letter serves to notify you of the intention to withhold part of your 2010/2011 allocation due to the reported under spending in line with DORA 2010 stipulations provided by Section 16.1 (c).”

Again, did you receive this letter?

MR ZWANE: I think I received this letter, Chair, I think
10 so.

ADV PRETORIUS SC: It says, goes on to say – you will see a highlighted portion on page 256:

“As you may know, an assessment of your department’s recovery plan presented to the technical Minmec held on 18 November 2010 revealed that the plan does not demonstrate ability to spend the entire budget before the end of this current financial year.”

You were told that in the letter, correct?

20 **MR ZWANE:** That is correct.

ADV PRETORIUS SC: It does on to say:

“In view of under expenditure, the Minmec meeting held on 19 November 2010 considered the recommendations by the technical Minmec which indicates, amongst others, that funds should be

transferred to provinces that have shown the ability to spend.”

That would have been reported to you, apparent from the minute.

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: The letter goes on to say:

“Please be informed that an amount of R263 million will be withheld from your 2010/2011 allocation...”

MR ZWANE: Yes, Chair.

10 **ADV PRETORIUS SC:**

“...done with a view to request National Treasury to stop and reallocate such funding to other provinces that are in need of additional funding and have demonstrated a good spending performance.”

Correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: It goes on to say:

20 “You are therefore advised to submit written representation by 15 December 2010 as to why the allocation should not be withheld failure of which will result with funds being withheld for reallocation.”

And then in handwriting at the bottom of the page:

“Kindly treat this as urgent. Sincerely...”

And then it seems to me that that is the Premier’s

handwriting and his signature at the bottom of the page, is that correct?

CHAIRPERSON: You said Premier, you mean the Minister?

ADV PRETORIUS SC: No, I mean Premier, Chair.

CHAIRPERSON: Oh.

ADV PRETORIUS SC: I may be wrong but ...[intervenes]

CHAIRPERSON: Okay.

ADV PRETORIUS SC: It may be a note appended by the
10 Minister, it may be a note appended by the Premier, it is not clear.

CHAIRPERSON: Oh, okay. No, no, no, that is fine [inaudible – speaking simultaneously]

ADV PRETORIUS SC: Do you know whose handwriting that is?

MR ZWANE: No, I cannot recall, Chair.

CHAIRPERSON: Yes, alright.

ADV PRETORIUS SC: But anyway, whoever it was, it was someone senior to you.

20 **MR ZWANE:** It may appear that the letter was sent through the office of the Premier and it was then brought ...[intervenes]

ADV PRETORIUS SC: To you.

MR ZWANE: To you.

ADV PRETORIUS SC: Yes but whoever said what was

said there, there was an additional comment either from the Premier or from the National Minister that you should treat it as urgent, correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: Were any representations made? Well, let me ask you this first. Perhaps it is fairer to say did you receive this and when you received it, what did you do?

MR ZWANE: My officials were inundated with the
10 response, as I alluded earlier on, Chair, that even when a report came through the HOD, which was made by Mr Maxatshwa, I agreed that they should respond as a matter of urgency and in this case, the letter of the 12th will indicate our response to this matter because the letter of the 12th says we have not convinced the department in terms of this matter that we are dealing with, the National Department, so they are invoking the necessary sections of DORA to take the money to take the money.

CHAIRPERSON: Is your answer therefore to the question
20 that the department did not make a written response within the time given in this letter.

MR ZWANE: No the department was instructed to make written representations.

CHAIRPERSON: Yes but what I did ...[intervenens]

MR ZWANE: I think they did Chair, I think they did ja, I

may not recall the details ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: Ja, I may not recall the details thereof.

CHAIRPERSON: Would you have seen what they sent to the National Department as their representations of the department or would you not have seen that at the time?

MR ZWANE: In this case I take that at issue here was a recovery plan that was not convincing. There are two issues that needed to happen, to try and give up that
10 recovery plan to include the help-out which has been debated in this Commission and then to send it back to the National Government and see if they would accept this or not, and I – that is the instruction I have written Chair. I should raise this point that it is on record that when – it is not me who rejected the recovery plan. The recovery plan was rejected by National raising these pertinent issues, where officials were and when that gets reported to me I then said let's do everything in our power to ensure that we don't low on the basis of other presentation to the National
20 Department.

CHAIRPERSON: So is your answer to my question that you did not see the representations that may have been made?

MR ZWANE: I can't recall Chair.

CHAIRPERSON: You can't recall whether you saw it or

not.

MR ZWANE: Ja, no I can't recall.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Well I am not sure that the matter can be fairly left there Mr Zwane, this letter from the National Minister said we are going to deprive the department of over R200million unless you convince us that you can fairly and reasonably spend the money within the time. We know of no response and it seems to be
10 confirmed by the letter at FS14268 of the 12th of January to which you have referred, which says we haven't been furnished with reasons as to why the allocation should not be withheld because the time has now expired.

That is the important of the letter of 12 January, now can I suggest to you that our investigations and the evidence that we have given does not indicate any further expenditure recovery plan, revised expenditure recovery plan being submitted to the National Department, and the reason for that is simple that it just simply was not
20 achievable and that is consistent with all the evidence, including yours.

MR ZWANE: I may not deny that Chair but what I may raise at this point I was looking at when the letter was written and I can see that the deadline was the 15th of December 2010 and this letter was signed on the 5th of

December, at the office of the Premier, at that particular time. There were processes that had been put in place and some of the processes are the processes that we are deliberating on today.

In November there were processes that were put together, we met with the contractors, they suggested what ...[indistinct] they even went to work over weekends and we were going to work during December.

Now to me at that particular time and then not
10 disputing the fact that I can't have facts with me here, I
can't recall properly, to me there were tangible
programmes that would have been submitted to the
Minister and it would have been another story if we are
seated here and say the Minister rejected the presentation,
because that is what took place and everybody seems to
collaborate in terms of their testimony in this Commission,
that people worked in December, people worked during the
holidays and I may not recall why was this not presented to
the Minister as I say I can't clearly recall the events
20 around the matter.

ADV PRETORIUS SC: The advance payment system
which was under way at the time was in fact presented to
the Minmec meeting and was rejected, they warned against
its implementation, so the processes under way at the time
were cabled, were rejected, that's the first point, you may

wish to comment on that.

MR ZWANE: If those processes were then rejected Chair it will only be correct that our presentation as a province was rejected by National. It is a different story from saying recorded as saying there was no representation at all, and what I am trying to illustrate is that National has a prerogative to accept or reject in terms of the weight and that we respect as a province, that is the point I was trying to narrate here.

- 10 **ADV PRETORIUS SC:** Well the timing is important Mr Zwane, the advance payment system, and we will come to that in due course, was in fact rejected as early as 18 November by the Technical Minmec and that was reported to the Minmec meeting the following day on the 19th of November. But what one would have expected on receipt of the letter of 9 December 2010 from the National Minister warning about the intending stopping of funds, one would have expected if there was the remotest possibility of the expenditure recovery plan being successful and you being
- 20 aware of that one would have expected all efforts and every efforts to be made, however busy one might have been at this time in December, to make an urgent presentation to the National Minister saying hold it National Minister, we can do this, here is the proof, and that wasn't done. Do you have a comment?

MR ZWANE: I want to believe that this question Chair is related to the question that I have answered, that the presentations were done and rejected, and I think the point that may be raised is that was I aware at that particular time and I have alluded to the fact that the rejection thereof, of the internal memo which resulted ultimately to agreement I was not there, it was rejected around 19 November, because the question then becomes if it was rejected around 19 November this internal memo was only
10 finalised on the 15th of November. How possible is it that this memo would have been presented in the meeting of the 19th of November, maybe verbally, I can accede to that point but to the best of my knowledge I don't really recall such a report being presented to my table.

ADV PRETORIUS SC: It may not have been what as you have been ...[indistinct] been referred to as a legal opinion, we will come to that, but been presented to the meetings in November, in fact it was presented, the advance payment system idea was presented, the
20 memorandum may or may not have been presented, we don't know, but it was also rejected, it was said this is unlawful, you can't proceed with it, but I will come to that, we will come to that piecemeal Mr Zwane.

CHAIRPERSON: But before your next question going back to the issue of representations that may or may not

have been made by the department in response to the National Minister's letter that starts at page 255, are you saying that as you sit there you don't remember whether indeed the department made representations as a matter of fact, and you don't remember whether you did see such representations but you can't think why they would not have been made, what is the position?

MR ZWANE: What I am saying Chair is that I can't recall proper facts, what I recall is that there were activities.

10 **CHAIRPERSON:** Yes.

MR ZWANE: That were undertaken by the Province and those activities were feeds to be presented as an intervention to the challenges that we had.

CHAIRPERSON: But are you saying that the activities to which you now refer were meant to be brought to the National Department in response to this letter from the National Minister or are you simply talking about a different point?

20 **MR ZWANE:** The letter as it comes Chair it says the recovery plan has not been accepted in its current form.

CHAIRPERSON: Yes, ja.

MR ZWANE: That means the recovery plan should be altered.

CHAIRPERSON: Yes.

MR ZWANE: That was my understanding.

CHAIRPERSON: Mmm.

MR ZWANE: And beyond their recovery plan there were these activities that we were busy with that would be filtered and be able to answer that question that she has been raising, the how part, we know heard the how part of working on weekends, working on holidays, that is the how part, the National Department would have then had an opportunity to look at the practicality of the how part, that is why I am saying I don't see a point why would we have
10 not responded to the call by National because we were indeed doing something along the lines that the National Department of Human Settlement wanted us to respond. I can't just recall whether I saw that representation, that is what I am raising.

CHAIRPERSON: Yes, yes, but I would have expected that for such an important issue where the National Department was threatening to take away such a lot of money, 460 something million, I would have thought that the officials once they had prepared the representations would let you
20 have sight of them before sending them off, that would be your expectation as well?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Yes, but you don't recall that they did that?

MR ZWANE: I don't recall because you will remember

Chair that we were back and forth in terms of this matter, which had started earlier, correspondence, reporting here and there, I must say to this Commission we relied to the information that is there in the Department in terms of even documents, it does not mean that I recall everything that was, some of the information I could not get and as a result I cannot then say this happened or it did not.

CHAIRPERSON: Okay Mr Pretorius I see we are at five o'clock, shall we talk about how far we will all go.

10 **ADV PRETORIUS SC:** Can I just finish one point and then we can.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: Just on this because there is a new point to be made after this.

CHAIRPERSON: Ja, that's fine.

ADV PRETORIUS SC: To take what has been put to you by the Chair just one step further, this letter from the National Minister, addressed to you, you treat as urgent in December, giving an ultimatum, explain or lose the money
20 was the culmination of many months of planning and work. I would have thought that you would have made a point of ensuring that an answer was given, you would have instructed your officials to give you something and if you didn't get it you would have raised the roof. It is an important event now, you are going to lose R250million, all

your efforts of the year are going to come or be seriously prejudiced, you are given an ultimatum, you Mr Zwane is given an ultimatum, and I am talking now you in your official capacity, not an HOD or anyone else. You are told to respond by a certain time, this is a culmination of many, many months of planning and deliberation and reports, plans, you would inevitably in that position have made sure that there was a response firstly, and you would have remembered that.

10 **MR ZWANE:** Well Chair I can't see why I would have not acted in that manner. In fact, let me say in this Commission I have ignored an instruction to the best of my ability especially coming from the office of the Premier. What I am trying to narrate here is not whether I failed to act or not, I have said in my response I did not pick up any document to demonstrate what has happened, and I cannot recall now. Remember Chair with all respect that these are the issues that happened in 2010, we are in 2020. As important as they are it is reasonable to say I cannot
20 remember all of them.

I did not get any supplementary information that would even refresh my memory on this, but surely I should take that I did instruct my officials to act.

ADV PRETORIUS SC: Mr Zwane if there is any single event, the point I was trying to make, that would have been

remembered it was this event, and may I suggest that the reason why there was no response because there could be no response, the best as you have alluded to now was to say to the Minister but Minister we are working weekends, please don't take away our money.

MR ZWANE: I think Chair from where I am seated that would have been sufficient if we did not have any other reasons and that would depend on the Minister whether he accepts it or not. I think the point, unless I misunderstand
10 here, is not to point out at lack of coercion by the Department, it is to reflect on the events and their sequence as – did we try to alleviate the situation which needed to be alleviated, and I can't have proper facts to put on the table because there are no records as I am saying and I would have been glad to have been told by this Commission that your response was shallow, I would have accepted that, but I don't have that report to put on the table. That is what I am trying to say Chair, it is not here.

20 **CHAIRPERSON:** Do you remember whether you responded to this letter from the National Minister because the letter was addressed to you.

MR ZWANE: I am saying I cannot recall.

CHAIRPERSON: You cannot recall where ...[intervenes]

MR ZWANE: Yes, I have said that earlier.

CHAIRPERSON: Yes. Ja, it is quite concerning because the question of housing, the building of houses in your department during that time one has been made to believe through evidence that has been given here was very close to your heart. You had gone to the extent of saying I am not going on holiday during this December/January because you wanted to oversee the building of as many houses as possible before the end of the financial year.

Now here is the National Minister in effect
10 threatening to derail that plan by taking away about R260million. One would have thought that you would have said well I must respond to this letter, there must be representations that I make and you would have – even if you asked the officials to prepare them you would have wanted to see them and you would have responded to the Minister and say here are the representations or I know that the representations have been sent by the officials but maybe for convenience here is a copy for you, we mean
20 business when we say we want to perform much better than the past few months on this housing project, one would have thought that, and I know that it is a number of years after that, but somehow one would have thought that as you were going through documents and seeing this letter you would remember if you had responded to say I might not have a copy of the response but I know I responded to

this one, but you say you say you can't remember.

MR ZWANE: No, I can't.

CHAIRPERSON: Ja, okay. We are at eight minutes past five. From my side I am still happy to proceed, how is your situation Mr Pretorius, I am seated, you are standing the whole day.

ADV PRETORIUS SC: Yes, Chair that is a relevant factor to me only, it is not decisive of the way we go but there are other factors that I think are important. We have been
10 dealing with the expenditure recover plan, it was half the story, we still have to deal with the advance payment system, we have to deal with that from the very beginning, October 2010 onwards so it is a substantial amount of work to do. I think Mr Zwane's position should be taken into account, the fact is I think I have had enough but I am willing to accept any instruction that you give.

CHAIRPERSON: Yes, Mr Zwane how is your situation?

MR ZWANE: I think I am a ...[indistinct]

CHAIRPERSON: I think Mr Zwane is going to say I want
20 Mr Pretorius tired so let him ask me any questions when he is tired, I don't want him fresh.

MR ZWANE: No Chair he has taught me to listen to him, I argued with him earlier on and I discovered that I was wrong in terms of the arrangements. My belief is that we should take into consideration whatever the leader of

evidence has presented. It is about the quality of work that we must do and if we would push at a point where we just want to finish I believe it may not be fruitful to all of us, I think that is the response from me.

CHAIRPERSON: So I guess your response is you are available to continue but you think we must take account of Mr Pretorius situation?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Okay, your legal representative, I am
10 sorry, you are also available but you say we must take into account Mr Pretorius' situation was well, or you say he's strong we should continue. No, he doesn't have grey hair.

No Mr Pretorius I understand your situation and maybe based on what you say if we were to continue maybe we wouldn't have continued beyond six and I don't know whether we would finish if we continue but I am inclined to think ...[intervenues]

ADV PRETORIUS SC: No we are not going to finish by six
20 Chair, not at the rate we have been going. I mean if there was a suit change perhaps, unlikely.

CHAIRPERSON: Well you might have concerns about the rate but I am not complaining in terms of doing justice to the issues.

ADV PRETORIUS SC: Yes, that is important.

CHAIRPERSON: I think that is important and I think we

have been dealing with issues quite properly. If we stopped now and we would be able to continue – I think early next week there might still be a time, Monday we were talking about Mr Tsoametsi, but that was on the assumption that we would finish with Mr Zwane and you have another witness for Monday is that right?

ADV PRETORIUS SC: And Tuesday, but two o'clock Tuesday should do.

CHAIRPERSON: Three o'clock?

10 **ADV PRETORIUS SC:** Two o'clock, if we are able to continue early next week and finish Mr Zwane's evidence early next week, whether Tuesday or Monday, I will be happy, I will have no problem that we adjourn now. Mr Zwane would that be – if we look at your continuing at two o'clock on Tuesday would that be fine

MR ZWANE: Chair I understand the meaning of subpoena.

CHAIRPERSON: Of?

MR ZWANE: Of being subpoenaed I guess I don't have much of a choice, but I think it is fine, if I can just raise
20 one point Chair.

CHAIRPERSON: Yes?

MR ZWANE: If at all possible it would assist this Commission for me to also have the information that the Commission is having.

CHAIRPERSON: Oh yes, yes, what we ask questions on.

MR ZWANE: Yes, it may seem as if somebody is not answering properly, some of the information that is here I am seeing it for the first time.

CHAIRPERSON: No, no I think they will give the information to you if you didn't get it.

ADV PRETORIUS SC: Well particularly in relation to the advance payment system Chair, that's another reason why there should not be that complaint, that Mr Zwane should have the opportunity and may I suggest that the evidence
10 given by the witnesses this week is available on the website or we can make transcripts available if it is not on the website, and that is all that Mr Zwane would have to have regard to.

CHAIRPERSON: Yes, yes. So that will be given to you Mr Zwane after this and your legal representative will talk to Mr Pretorius and his team and arrangements will be made so that – you are not going to have a weekend this weekend, you are going to be reading.

MR ZWANE: It is not for the first time.

20 **CHAIRPERSON:** It is not for the first time.

MR ZWANE: Yes Chair.

CHAIRPERSON: So we are therefore going to adjourn the proceedings on the basis that you will come back at two o'clock on Tuesday next week and then we will finish, so if we need to go beyond four o'clock we will go beyond four

o'clock, is that fine?

MR ZWANE: That is fine Chair, so I will remember.

CHAIRPERSON: Ja, okay alright. Alright I think then we can stop here, thank you very much to everybody for your cooperation, we are going to adjourn for the day and on Monday we will hear the – will we start with Mr ... at ten Mr Pretorius.

ADV PRETORIUS SC: Mr Tsoametsi.

CHAIRPERSON: I am terribly sorry, I don't like people
10 mispronouncing my surname and I am sorry that I am
pronouncing somebody's surname wrong, yes, will we start
with him or with your other witness, or do you want to
decide that later?

ADV PRETORIUS SC: Mr Moketsi should not be a long
time and perhaps we should deal with that and then get
back into this matter.

CHAIRPERSON: Okay so on Monday I will hear the
evidence of Mr Moketsi and then your other witness, ja,
okay, alright.

20 We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 28 SEPTEMBER 2020