

**OUTA'S ANALYSIS OF THE TIMELINE OF
EVENTS REGARDING CETA'S ALLEGATIONS
AGAINST THE WHISTLEBLOWER, TUMISO
MPHUTHI**

28 JULY 2025

OUTA's INTERVIEW WITH MS TUMISO MPHUTHI

1. On 4 June 2025, the CEO of the Organisation Undoing Tax Abuse (OUTA), Mr Wayne Duvenage, conducted an interview¹ with an employee of the Construction Education and Training Authority (CETA), Ms Tumiso Mphuthi. Ms Mphuthi was a Senior Supply Chain Manager at CETA and a BAC advisor. As a BAC advisor she did not have voting and signing authority and only provided the committee with advice related to procurement regulations as and when required.
2. During the interview, Ms Mphuthi told Mr Duvenage about:
 - several Supply Chain Management (SCM) irregularities;
 - two forensic investigations that were done at CETA and the outcomes thereof; and
 - how she was intimidated, victimised and suspended twice after she informed the investigators and the members of the Accounting Authority (AA) about the SCM irregularities at CETA.

CETA MEDIA STATEMENT

3. After the release of OUTA's interview with Ms Mphuthi, CETA published a statement on 8 June 2025 in the Sunday Times. A copy of this statement is attached hereto as **Annexure A**.
4. CETA stated that:
 - the CCMA's ruling that was handed down on 27 May 2025, vindicated CETA and allowed them to proceed with a disciplinary hearing against Ms Mphuthi;
 - the CCMA Commissioner found that the disclosures made by Ms Mphuthi were not sincere, honest or in good faith;

¹ <https://www.youtube.com/watch?v=VHBWFxxybxc&t=2069s>

- the disclosures made by Ms Mphuthi, were made after the allegations were already reported on, in a forensic investigation;
 - they were looking forward to engaging with OUTA to ensure that OUTA behaves in a manner that builds trust in their work and holds government entities to account;
 - they distanced themselves from any third parties mentioned in the interview and affirmed their commitment to a clean administration and governance.
5. CETA assured the public that its procurement processes underwent thorough vetting through independent probity audits and that there were, up to now, no findings of non-compliance.

ANALYSIS OF FORENSIC INVESTIGATIONS AT CETA

6. OUTA prepared a full analysis of all CETA's SCM irregularities from the time the Department of Higher Education and Training (DHET) conducted an investigation into alleged irregularities based on a formal complaint by the erstwhile CEO of CETA, Ms Sonja Pilusa in 2019, to date. It is important to follow the events that took place, to fully understand the historical and current situation of Ms Mphuthi and other officials.
7. DHET appointed Gobodo Forensic and Investigative Accounting (Pty)Ltd (Gobodo) to investigate the allegations made by Ms Pilusa. Gobodo found several irregularities in the SCM process and made recommendations to CETA.
8. The Gobodo investigation led to another forensic investigation into the SCM irregularities. During October 2020, Duja Consulting (Pty)Ltd (Duja), a consulting firm who specialised in forensic and audit investigations, was appointed to conduct a comprehensive forensic investigation into CETA's affairs, including but not limited to SCM irregularities. The investigation was completed in October 2021 and the final Duja forensic report was given to the Minister of Higher Education on 5 November 2021.

9. CETA was placed under administration from February 2020 until February 2022 when a new board and CEO were appointed. From the time of appointment of the new board and executives until the end of the 2023/24 financial years, CETA received qualified audits every year from the Auditor General of South Africa (AGSA).
10. On 14 May 2025, CETA appeared before the Higher Education Portfolio Committee in Parliament to report on the progress made in the implementation of the findings of the Duja report. To date, the Duja Forensic Report has not been made public or shared with the Portfolio Committee.
11. For purposes of OUTA's analysis and to obtain a holistic view of the events that occurred at CETA from 2018 to date, the following documents were perused and analysed:
 - 11.1 Gobodo's Forensic and Investigative Accounting investigation report of **17 May 2019**, commissioned by the Department of Higher Education and Training into the possible abuse of power and authority at CETA ("Gobodo Report") – **Annexure B**
 - 11.2 Ms Tumiso Mphuthi's formal disclosure of improprieties pertaining to violation of procurement at CETA dated **22 August 2019**. ("Mphuthi Protected Disclosure") – **Annexure C**
 - 11.3 Ms Tumiso Mphuthi's notice of immediate suspension from work issued by the former CETA Administrator, Mr Sabelo Wasa on **20 February 2020** ("Mphuthi Suspension Notice") – **Annexure D**
 - 11.4 Ms Tumiso Mphuthi's upliftment of suspension notice issued by the former CETA Administrator, Mr Sabelo Wasa on **19 August 2020** ("Mphuthi's Upliftment of Suspension letter") – **Annexure E**

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- 11.5 Duja Consulting draft report on the forensic investigation into alleged irregularities at CETA dated **7 June 2021** (“Draft Duja Report”) – **Annexure F & Annexure G**
 - 11.6 Consolidated summary table of the Duja Report with recommendations and action plans prepared for CETA by Toka Machabaphala Inc (“Machabaphala Report”) on **31 July 2023** – **Annexure H**
 - 11.7 CCMA ruling on **27 May 2025** by CCMA Commissioner Maputle Mohlala in the matter between Tumiso Mphuthi and CETA with case number GATW – **Annexure J**

GOBODO REPORT

- 12. On 7 June 2018, the former CEO of CETA, Ms Sonja Pilusa addressed a letter to the Minister of Higher Education to formally report attempts made by the CETA chairperson, Mr Raymond Cele, to unduly influence tenders for the biometric system for learner administration and learner tablets. After receiving this complaint by the CEO, the DHET initiated an investigation to ascertain and determine the validity and/ or veracity of the allegations. DHET appointed Gobodo Forensic and Investigative Accounting (Pty)Ltd to conduct the investigation.
- 13. Ms Pilusa alleged that Mr Cele contacted and met with her on several occasions when he requested her to ensure that tenders related to the biometrics system, the tablets for learners, and the project management of the building of the CETA offices were awarded to certain companies.
- 14. During its investigation into these tenders, Gobodo also investigated the procurement processes followed by CETA to determine if it complied with CETA’s SCM policies.
- 15. Gobodo found that there was insufficient evidence to corroborate the allegations that the chairperson provided the names of specific companies to

the CEO for consideration of the award of tenders to help fund political activities.

16. Gobodo, however, identified various irregularities in relation to the procurement process followed by CETA in respect of tenders for learner tablets and biometric systems, and the project management of the construction of the CETA's head office.
17. The findings of Gobodo are important for purposes of this report. Gobodo identified *inter alia* the following irregularities:
 - 17.1 Bids were advertised for a period less than what was prescribed in the CETA SCM policy;
 - 17.2 The number of bids submitted at the closing of the tender differed from the number of bids evaluated by the Bid Evaluation Committee (BEC);
 - 17.3 The BEC minutes for 29 June 2018, recorded that 2 BEC members submitted apologies for the meeting, but the same members were recorded to have evaluated the submitted bids;
 - 17.4 The BEC applied a scoring model and evaluation criteria inconsistent with what was stipulated in the tender advertisement. In one instance, 2 bidders attained the stipulated threshold of 70% but the tender was recorded as a non-award. CETA stated that none of the bidders attained the stipulated threshold.
 - 17.5 The scoresheets of the BEC were altered by Lungisile Kuzana on instruction from the Bid Adjudication Committee's (BAC) chairperson;
 - 17.6 The BAC recorded that there were no discrepancies in how the BEC scored the bidders on their bids although the BEC scored bidders contrary to what was stipulated in the tender;
 - 17.7 The BEC incorrectly allocated full points to Grayson Reed for its previous experience;

- 17.8 The BEC failed to detect that Grayson Reed only quoted for 10 000 learners and not for the full scope of work stipulated, namely 50 000 learners. It resulted in Grayson Reed being awarded the tender at a much lower price than other bidders who tendered for 50 000 learners.
18. In general, Gobodo also found that:
- 18.1 An unhealthy environment existed within CETA and that individuals were reluctant to talk freely out of fear of being victimised;
- 18.2 A concerted effort was made by individuals within CETA to cover up irregularities;
- 18.3 The procurement division within CETA was dysfunctional and that that attributed to the interference by other individuals in the SCM process;
19. Gobodo made the following recommendations:
- 19.1 Disciplinary actions against the members of the BEC.
- 19.2 The BEC/ BAC to explain to CETA management, the discrepancies between the number of bids recorded in the opening register and the number of bids evaluated;
- 19.3 The BEC/ BAC to explain to CETA management how 2 BEC members could evaluate tenders when they submitted apologies for their non-attendance of the BEC meeting;
- 19.4 All the members of the BAC ought to submit written explanations why disciplinary action should not be taken against them for their failure to detect that the BEC evaluated bids in a manner inconsistent with the terms and conditions as advertised.

20. The Gobodo report was submitted to Mr Maliviwe Lumka, Chief Director of SETA Coordination at the Department of Higher Education and Training on 17 May 2019.
21. OUTA was advised by Mr Wasa, the CETA Administrator at the time, that all the Gobodo recommendations were implemented.
22. Ms Mphuthi informed OUTA that during the Gobodo investigation she reported more irregularities than those investigated by Gobodo but she was advised to make a protected disclosure as the irregularities did not fall within the scope of the Gobodo investigation.

PROTECTED DISCLOSURE – TUMISO MPHUTHI

23. On 22 August 2019, Ms Mphuthi submitted a protected disclosure to the chairperson of CETA's Audit and Risk Committee, Mr Victor Nondabula, and the chairperson of CETA's Governance and Strategy Committee, Ms Govender.
24. In her protected disclosure, Ms Mphuthi disclosed misconduct and irregularities that took place within CETA's procurement space. She also disclosed that she could not make a disclosure to her executives as she feared that the misconduct and irregularities would be swept under the carpet and that she would be victimised. This statement by Ms Mphuthi was in accordance with the general findings of the Gobodo report that an unhealthy environment existed within CETA and that individuals were reluctant to talk freely out of fear of being victimised.
25. Ms Mphuthi informed OUTA that she made the protected disclosure on advice from a Gobodo investigator and that she did not have knowledge of the contents of the Gobodo report when she submitted her formal disclosure. She saw the Gobodo report for the first time in January 2020 when it was handed

to the implicated individuals in order to make representations to CETA (as recommended in the report).

26. In her protected disclosure, Ms Mphuthi disclosed the following irregularities:
- 26.1 Twelve tenders were advertised with a closing date of 31 January 2018. SCM were instructed by the CFO (Ms Velile Ndlovu), to take all tenders to her office and that the tenders should not be opened or registered publicly. SCM were also instructed to hand over the submission register to the CFO. Most of the tenders were kept in the CFO's office and were cancelled without being evaluated;
 - 26.2 The CFO added submissions by bidders after the closing date to the submission register. The CFO confirmed that it was her handwriting in the register;
 - 26.3 Bidders who did not attend the compulsory briefing sessions, were evaluated instead of being disqualified. In one instance, Dataproof, who did not attend the compulsory briefing session, was awarded a tender;
 - 26.4 The BEC re-scored a preferred bidder (Deloitte), which led to another bidder (Dataproof) being appointed. Ms Mphuthi reported this incident to the CFO and advised the CFO that the tender should be re-advertised and re-evaluated. The CFO ignored Ms Mphuthi's advice;
 - 26.5 During another tender, bids were not opened in public and Net15/ Signatel was added to the submission register by the CFO. Net15/ Signatel was ultimately awarded the tender without even attending the compulsory briefing, while EOH, who was cheaper and attended the compulsory briefing session, was disqualified. Ms Mphuthi was not part of the BAC for this tender;
 - 26.6 The tender documents for the panel of legal firms were not opened in public and the BEC re-scored the initial recommended bidders. Ms Mphuthi was also not part of the BAC for this tender;

- 26.7 On the LAN and VOIP infrastructure and maintenance tender, an additional bidder's name (Dataproof Communications) was added to the submission list. Dataproof did not attend the compulsory briefing but still was evaluated and eventually awarded the tender. Ms Mphuthi was not part of the BAC for this tender;
- 26.8 The tender for the procurement of tablets for learners, was not advertised for 21 days and the BEC was instructed to re-score or adjust the scores to ensure that there was no appointment. This was done after 2 bidders passed the functionality phase;
- 26.9 The initial tender for the provision of toolkits to learners was cancelled without being evaluated and was re-advertised. The tender was however not advertised for the required 21 days. Two bidders passed the functionality phase, but the BEC was instructed to re-score or adjust the scores to ensure there were no appointment made;
- 26.10 A certain company was not compliant with National Treasury's Central Suppliers Database (CSD) regulations. The procurement process was put on hold to give this specific bidder the opportunity to become CSD compliant;
- 26.11 Ms Mphuthi was requested to source quotations from law firms who were not on CETA's legal services panel. When she asked why additional law firms were sourced when there was an existing legal panel, she was ignored. When she pointed out that to appoint additional law firms on the legal panel, a deviation must be approved by Treasury, Ms Mphuthi was requested to refrain from sending a deviation request to National Treasury. Ms Mphuthi reported this to DHET;
- 26.12 The deviation was approved by Treasury when it was requested by the CFO. However, the CFO did not inform Treasury in her application that she was the person to be disciplined and the one who misled Treasury;

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- 26.13 Ms Mphuthi also disclosed to the Audit and Risk Committee that her subordinates were given instructions by the CFO to perform irregular acts.
27. The full disclosure of Ms Mphuthi is attached to this report to give the reader a complete view of exactly what Ms Mphuthi reported to the members of the Accounting Authority.

NOTICE OF IMMEDIATE SUSPENSION FROM WORK

28. On 20 February 2020, CETA's Administrator informed Ms Mphuthi that, pursuant to the Gobodo investigation and based on the recommendations made by the Gobodo investigation, she was suspended with immediate effect.
29. In the suspension letter it was stated that there were specific recommendations made by Gobodo that pertained to Ms Mphuthi. The recommendations were:
- 29.1 In relation to tender for learner tablets (Bid No 026-2017/2018): As an SCM representative she must be requested to submit written explanations as to why disciplinary action should not be taken against her for her failure to detect that in evaluating the bids, the BEC had done so in a manner that is inconsistent with the terms and conditions as advertised.
- 29.2 In relation to the tender for a project manager for the procurement of land, design of plans and construction of CETA's head office (Bid No 022-2017/2018): As an SCM representative she must be requested to submit written explanations as to why disciplinary action should not be taken against her for her failure to detect that in evaluating the bids, the BEC had done so in a manner that is inconsistent with the terms and conditions as advertised.
- 29.3 In relation to the tender for biometric learner attendance system (Bid No 013-2017/2018): As an SCM representative she must be requested to submit written explanations as to why disciplinary action should not be taken against her for her failure:

- 29.3.1 to detect that in evaluating bids, the BEC had done so in a manner that is inconsistent with the terms and conditions as advertised; and,
- 29.3.2 to recognise that Grayson Reed had not quoted as per the stipulated scope of work.
- 30. Ms Mphuthi was given the opportunity to submit written explanations to the administrator on or before 25 February 2020.
- 31. Mr Wasa acknowledged in his suspension letter to Ms Mphuthi that there was a culture of fear and mistrust under the leadership of the previous CETA administration. He assured Ms Mphuthi that he subscribed fully to the values and principles as set out in the Constitution of the Republic of South Africa for the governing of the public administration and that Ms Mphuthi would be treated fairly, equitably, without bias and with a high standard of professional ethics.
- 32. Ms Mphuthi duly submitted her written explanations to the Administrator as requested.

UPLIFTMENT OF SUSPENSION

- 33. On 19 August 2020, Mr Wasa informed Ms Mphuthi that her suspension was uplifted with immediate effect.
- 34. Mr Wasa informed Ms Mphuthi that to ensure absolute independence he referred her representations to an independent advocate to give an opinion and make recommendations to him. The recommendations from counsel were that Ms Mphuthi's representations should be accepted and that no disciplinary action should be taken against her.
- 35. Mr Wasa informed Ms Mphuthi that he accepted the recommendations from counsel and that Ms Mphuthi's suspension was lifted with immediate effect.

36. After receiving independent legal advice, the administrator was not prepared to take disciplinary action against Ms Mphuthi and she was cleared of all allegations, findings and recommendations in the Gobodo report.

DUJA REPORT

37. On 7 June 2021, Duja Consulting presented a draft investigation report to CETA's administrator, Mr Sabelo Wasa. The investigation was done on instruction from CETA's administrator and the investigation commenced in October 2020. The final Duja investigation report was completed and handed over to CETA in October 2021. The final report was given to the Minister on 5 November 2021.
38. The scope of the Duja investigation was to investigate matters for the period 1 January 2018 until January 2020 and was broken up into the following focus areas:
- 38.1 Focus Area 1 – Supply chain management
 - 38.2 Focus Area 2 – Core business accreditation and certification
 - 38.3 Focus Area 3 – Gobodo and NSA investigation reports
 - 38.4 Focus Area 4 – Improper/ corrupt/ irregular relationships with stakeholders
 - 38.5 Focus Area 5 – Human resources malpractices
 - 38.6 Focus Area 6 – General
39. For the purposes of this report/ statement, OUTA concentrated on the investigations, findings and recommendations of Focus Area 1.
40. The Duja investigation team reported that they interviewed Ms Mphuthi on 10 November 2020. During this discussion, Ms Mphuthi informed the investigators that she had been victimised before by CETA's management due to her cooperation with investigators and that she had been moved from her position before because of her honest disclosure during these investigations, specifically her disclosures regarding the previous CFO.

41. Ms Mphuthi also informed the investigation team that she was part of CETA's SCM since 2012 and that she was promoted to a senior SCM manager in 2018. As a BAC advisor she did not have voting and signing authority and only provided the committee with advice related to procurement regulations as and when required.
42. Ms Mphuthi further informed the investigation team that Ms Ndlovu, the CFO, instructed the SCM that all bid responses were to be moved to her office and that there would be no more public opening of bids. The CFO's instruction was confirmed by several other CETA officials. Ms Mphuthi stated that she was uncomfortable with the CFO's instruction as it is a violation of Chapter 4 paragraph 4.10 of the National Treasury Guide of 2004.
43. According to the Duja report, Ms Mphuthi raised her concerns with the CEO of CETA, Ms Pilusa, as well. The CEO then phoned a counterpart at Services SETA who allegedly informed the CEO that Services SETA also stored their bid documents in the CFO's office. The CEO instructed Ms Mphuthi to follow the CFO's orders although it was the incorrect procedure. According to the Duja report Ms Mphuthi confirmed that she did not escalate this issue to the Accounting Authority.
44. Ms Pilusa stated in an interview with the Duja investigators that she went to the CFO's office on several occasions and saw multiple bid files all over the floor. She urged Ms Ndlovu to move the files to the SCM unit.
45. Ms Mphuthi stated that by carrying out the orders of the CFO and CEO, there was a tremendous ripple effect on the bid evaluation process. It resulted in bids being cancelled for reasons like "*due to change in specifications*" given by the CFO. Notification letters to at least 10 bids that were signed by the CEO Ms Pilusa, read that the bid was cancelled "*due to change in specifications*".
46. She also informed the investigators that she established that there were bidders who did not attend compulsory briefing sessions but their bids would

still be evaluated. She was, for example, on one occasion instructed to contact the bidder and to request them to come in and sign the register as if they attended the briefing session. She reported this to the CEO.

47. It appears that throughout the investigation conducted by Duja, Ms Mphuthi gave her full cooperation to the investigation team.
48. During an interview, the former CEO Ms Sonja Pilusa stated that she and Ms Mphuthi did not get along on a personal level but that she held Ms Mphuthi in high regard as an SCM professional.
49. The Duja investigators investigated and reported on 24 bids and Duja identified irregularities in all 24 bids. The irregularities identified were *inter alia*:
 - 49.1 Tenders were not advertised for 21 days;
 - 49.2 Bid register was not signed by 2 SCM officials;
 - 49.3 Bid response documents were not opened in public and bid documents were stored in the CFO's office;
 - 49.4 Late bid submissions were added to the opening register;
 - 49.5 Late bid submissions were evaluated;
 - 49.6 Compulsory briefings were not attended by bidders but their bids were still evaluated;
 - 49.7 No SCM advisor was present during BEC meetings;
 - 49.8 There were no audio recordings of BEC meetings;
 - 49.9 Minutes were taken of some BEC meetings;
 - 49.10 Minutes of some BEC meetings were tampered with;
 - 49.11 Incorrect scoring of bids;
 - 49.12 Re-scoring of bids;
 - 49.13 Incomplete bid documents were still being evaluated;
 - 49.14 The BEC chairperson would attend and participate in BAC meetings;
 - 49.15 Tampering with pricing on bid documents;
 - 49.16 There was no award letter or contract for a high value tender; and,
 - 49.17 Requestor (i.e the end user) for a service was participating in the BAC.

50. Based on the Duja findings, it was recommended that CETA consider instituting appropriate disciplinary action against the following officials:
- 50.1 SCM officials who advertised bids for less than 21 days to respond;
 - 50.2 SCM officials who failed to open bids in public;
 - 50.3 Mr Kuzana for the instances where he completed and signed the bid submission register on his own in the absence of another official;
 - 50.4 Ms Ndlovu for the bid where she added names of bidders to the register after completion of the register by SCM;
 - 50.5 Members of the BEC who evaluated bids of bidders whose names were not recorded in the bid submission register;
 - 50.6 Members of the BEC who proceeded with BEC meetings in the absence of an SCM advisor;
 - 50.7 Members of the BEC who evaluated bids or bidders who ought to have been disqualified because they did not attending the compulsory briefing sessions;
 - 50.8 Members of the BEC who approved the report to the BAC stating that all bidders attended the compulsory briefing sessions, while knowing that some of the bidders did not in fact attend the said compulsory briefing sessions;
 - 50.9 SCM officials who were aware of breaches of SCM processes and failed to report same to the Accounting Authority;
 - 50.10 Ms Ndlovu and Ms Senkoto who acted in an unethical manner in procuring the services of OMT;
 - 50.11 Ms Senkoto who issued a purchase order for the appointment of TNI Superior General Trading, irregularly.
51. Duja also stated that where their recommendations refer to categories of offences, the details of individual offences must be confirmed with its investigation team prior to the institution of charges against specific individuals.
52. The final Duja report was submitted to CETA in October 2021 and was tabled with the minister in November 2021. OUTA is only in possession of the final **draft** report that was submitted to CETA in June 2021.

53. According to media reports and the Higher Education Portfolio Committee meeting in Parliament, the Duja investigation was done at a cost of approximately R18 million. To date, the final report has not been released to the public or submitted to Parliament.
54. The Director General said to the Higher Education Portfolio Committee that the DHET appointed a legal team to work in conjunction with the CETA legal team to establish the way forward on the recommendations of the Duja report.
55. It also came to OUTA's attention that CETA requested at least 2 further legal opinions on the Duja report. The costs of these legal opinions are unknown and should be determined by the AGSA. The legal opinions of Adv Johann Engelbrecht SC and Toka Machabaphala will be discussed hereunder in this report.
56. OUTA is concerned that the findings and recommendations of a costly forensic report (and 2 legal opinions) have not been implemented almost 4 years after it was finalised. The accounting authority and executive management of CETA who were responsible for the implementation of the report and consequent management, must be held accountable for their inactions and it should further be determined if any of the costs involved were fruitless and wasteful expenditure.

CONSOLIDATED SUMMARY OF THE DUJA REPORT BY TOKA MACHABAPHALA INC

57. CETA requested 2 legal opinions on the investigations, findings and the implementation of the recommendations in the Duja report.
58. In July 2023, Toka Machabaphala Incorporated, an attorney's firm based in Boksburg was instructed to provide CETA with a legal opinion on the implementation of the Duja report.

59. OUTA is in possession of the consolidated summary table of the Duja investigation report with the recommended action plans as prepared by Toka Machabaphala.
60. From this summary, it appears that CETA also requested a legal opinion from Adv Johann Engelbrecht SC. The opinion of Adv Engelbrecht SC was evaluated by Toka Machabaphala and incorporated in his summary. It was noted by Machabaphala that Adv Engelbrecht SC gave his opinion on the final draft report of 7 June 2021 (similar to the report in OUTA's possession) and not the final report dated 25 October 2021.
61. Adv Engelbrecht's legal opinion was summarised as follows:
- 61.1 The Duja draft report is far from complete, lacks essential information and is very vague and should have no effect until completion of the investigation;
 - 61.2 The report will only be complete if detailed interviews were conducted with all former board members;
 - 61.3 In general, Duja's findings were based on unsupported speculations and that no proper foundation was laid for such unclaimable accusations;
 - 61.4 The report failed to elaborate and explain the grounds for the doubts created that the documents were tampered with prior to the evaluation by the BEC;
 - 61.5 Most of the allegations/ findings were made from unreliable witnesses and unreliable sources, with no legal basis to impose disciplinary action;
 - 61.6 Considering the time that has elapsed since the alleged improper conduct was alleged to have been committed, it would be unfair to recommend any disciplinary or criminal action.
62. Toka Machabaphala provided an analysis on the findings of Adv Engelbrecht's opinion and made general recommendations to CETA. This can be summarised as follows:
- 62.1 Duja Consulting confirmed that the opinion of Adv Engelbrecht SC was taken into consideration in the final Duja report;

- 62.2 Machabaphala criticised the opinion of Adv Engelbrecht SC and stated that the criticisms made by the SC were made without reference to specific findings and it was difficult to determine if he referred to all findings or specific findings;
- 62.3 Machabaphala stated that they made follow-up recommendations that were contrary to those of Adv Engelbrecht SC;
- 62.4 CETA and DHET should consider that Duja Consulting did not perform the investigation in the capacity of registered auditors and that the report did not constitute an audit report;
- 62.5 The scope of the Duja investigation was limited to the analysis of documentation and information provided by CETA and therefore all the recommendations were based on the documents and information provided by CETA;
- 62.6 Given that Duja Consulting was not a legal firm, CETA and DHET must seek legal advice to interpret the recommendations beyond the recommendations made by Toka Machabaphala in this consolidated summary;
- 62.7 It was noted by Machabaphala that Duja made general recommendations and if a decision was made to take disciplinary action against individuals it must be confirmed with the Duja investigation team;
- 62.8 The Duja investigators were willing to serve as witnesses in any consequence management proceedings subject to being paid extra for the time they might spend on it; and,
- 62.9 Duja also agreed to compartmentalise its report so that it could be released to only the implicated and affected individuals subject to being paid extra for the time they might spend on it.
- 63. To date the Duja report has not been made available to any of the implicated individuals.
- 64. Before the follow-up findings and recommendations of Toka Machabaphala are discussed, it is important to analyse the general comments made by Machabaphala.

65. Most notable from Machabaphala's analysis and follow up recommendations, is the fact that he recommended that CETA and DHET get a legal opinion to interpret the recommendations of the Duja report, because Duja was not a legal firm. This recommendation is difficult to understand because CETA already got a legal opinion from a Senior Counsel and with the analysis by Machabaphala himself, received a second legal opinion.
66. It appears that CETA was searching for a legal opinion that would suit them and that was in line with their own beliefs on how they should proceed. This is further illustrated by the fact that from 2021, when the final Duja report was received, to date, CETA has not implemented a single recommendation and did not take Adv Engelbrecht SC or Toka Machabaphala's opinions in consideration. This surely speaks to a waste of taxpayers' money.
67. Machabaphala considered specific issues and recommended certain actions to be taken against officials. A summary of that is noted below:
- 67.1 Failure to advertise tenders for 21 days for several tenders
- 67.1.1 Machabaphala rejected Adv Engelbrecht SC's advice and recommended that disciplinary action should be taken against SCM members who were part of the BEC and BAC for the specific bids. It is important to note that the Gobodo report also recommended disciplinary action against the implicated officials for the same offence. Ms Mphuthi who was implicated by the Gobodo report, submitted explanations for this alleged irregularity and was cleared of all wrongdoing by Gobodo;
- 67.1.2 Machabaphala recommended a timeline of between 1 August 2023 and 30 October 2023 for action but warned CETA that when they take disciplinary action, the potential prejudice against employees given the delay of more than two years since the findings were made, must be taken into consideration. To date, none of the Duja report's recommendations have been implemented.

67.2 Failure to open bids in public on the closing date

67.2.1 The Duja report found that several SCM officials told the investigation team that on instruction from the CFO, Ms Ndlovu, bids were not opened in public anymore.

67.2.2 Machabaphala stated that the Duja report relied heavily on the protected disclosure by Ms Mphuthi to investigate this allegation and that he was of the opinion that the statement by Ms Mphuthi was not a protected disclosure. Machabaphala did however admit that statements from other employees supported this allegation.

67.2.3 Although Machabaphala initially recommended disciplinary action against SCM officials who failed to report this irregularity, he later contradicted himself and stated that no disciplinary processes should be considered other than to review the CETA SCM policy on who should be opening bids in public.

67.2.4 Again, Machabaphala recommended a timeline of between 1 August 2023 and 30 October 2023 for action but warned CETA that when they take disciplinary action, the potential prejudice against employees given the delay of more than two years since the findings were made, must be taken into consideration.

67.3 Adding bidder names to bid the submission register after the register was signed off.

67.3.1 The Duja report found that the CFO, Ms Ndlovu, added names of bidders to the register after SCM officials completed and signed the register off. This allegation was made by Ms Mphuthi but Ms Ndlovu admitted that she added 2 bidders on the register after the register was completed and signed off.

67.3.2 Machabaphala confirmed the findings in the Duja report and agreed that it was irregular for Ms Ndlovu to add names to the register after it was completed

and signed off but added that because Ms Ndlovu was not in the employ of CETA anymore, no tangible action could be taken against her. He further recommended that CETA report the consequential irregular expenditure that might have occurred, to the AGSA for recovery of funds from the two bidders whose names were added by Ms Ndlovu, if a loss indeed occurred.

67.4 BEC's evaluation of bids that were not listed in the bid submission register

Machabaphala agreed with the findings of the Dujia report that disciplinary action should be taken against BEC members who evaluated bids that were not in the bid register. Those still employed by CETA should be subjected to disciplinary actions with an action date between 1 August 2023 and 30 October 2023. He, however, added that some of the implicated BEC were no longer employed by CETA and therefore no tangible action could be taken against them.

67.4.1 Machabaphala cautioned CETA against taking disciplinary action against employees who were already disciplined in terms of the Gobodo report to avoid *res judicata* (a matter already judged) being raised by these employees.

67.5 Bid evaluation meetings proceeded without the SCM advisor present

67.5.1 Several bids were evaluated without a member of SCM present which was in violation of CETA's SCM policy.

67.5.2 Machabaphala considered this to be a minor violation that would not render the bid process invalid and recommended a minimal penalty in the form of a warning with an action date of 30 October 2023.

67.6 Failure of bidders to attend compulsory meetings

67.6.1 BEC members evaluated several bids where the bidders failed to attend compulsory meetings. The Dujia report found that there were 3 bidders who

did not sign the attendance register of the compulsory meetings. Furthermore, the names of 2 of the 3 bidders who did not attend compulsory briefings, were also not written in the bid opening register.

67.6.2 Machabaphala agreed with Adv Engelbrecht SC and the Duja report that these bidders should have been disqualified and their bids should not have been evaluated. Machabaphala also indicated that one of the bidders who did not attend a compulsory briefing was still on CETA's list of service providers.

67.6.3 Machabaphala recommended that the BEC members who evaluated the bids of bidders who did not attend compulsory briefings and who still are employed by CETA, should be disciplined and that CETA must consider taking the contracts with these bidders on review.

67.6.4 The action date proposed by Machabaphala was between 1 August 2023 and 30 September 2023.

67.7 Non-reporting of failure of bidders to attend compulsory briefings

67.7.1 Members of the BEC failed to inform the BAC in their report that certain bidders did not attend the compulsory tender meetings.

67.7.2 Adv Engelbrecht SC was of the view that some members of the BEC knew that some bidders failed to attend the compulsory briefings but that their failure to report it was possibly due to other factors present at CETA. He did not elaborate on this, but it was reported by several other CETA officials that there was a atmosphere of fear at CETA and that that could be the factors Adv Engelbrecht SC was referring to.

67.7.3 Machabaphala and the Duja report recommended that disciplinary action must be taken against the BEC members who failed to report that some bidders did not attend the compulsory briefings and who are still in the employ of CETA with an action date between 1 August 2023 and 30 October 2023.

67.8 Failure to report the violation of SCM processes to the accounting authority

67.8.1 The Duja report found that SCM officials, more specifically Mr Kuzana and Ms Mphuthi, were aware of breaches of the SCM processes but failed to report it to the accounting authority.

67.8.2 Adv Engelbrecht SC was of the view that Mr Kusana might not have been aware of any breaches and that the failure to report breaches was due to other root causes at CETA. Machabaphala rejected the opinion of Adv Engelbrecht SC and described it as vague without any elaboration. Machabaphala was of the view that when officials became aware of any breaches in the SCM process it must be reported to the accounting authority in writing. He also referred to an audit report by Ntumba and Associates that advised CETA to take steps against such officials.

67.8.3 Machabaphala recommended that disciplinary action be taken against Mr Kuzana and Ms Mphuthi with an action date of between 1 August 2023 and 30 October 2023.

67.8.4 Notwithstanding the arguments regarding the formal disclosure of Ms Mphuthi and whether it can be classified as a protected disclosure or not, it is a fact that she reported the SCM irregularities to the accounting authority in writing as prescribed. The formal disclosure by Ms Mphuthi was even used as a basis for Duja to conduct its investigation.

67.9 Irregularly appointed service provider for CEO psychometric assessments

67.9.1 On an instruction by the CFO, Ms Ndlovu, Ms Senkoto appointed and effected payment to a service provider. The Duja report and Machabaphala argued that this was unethical and improper conduct. It was further found that Ms Mphuthi instructed Ms Senkoto to proceed.

- 67.9.2 Machabaphala recommended to CETA that they should institute disciplinary action against Ms Senkoto and Ms Mphuthi. He did not recommend any action against Ms Ndlovu because she was not in the employment of CETA anymore. It was also recommended that civil proceedings be instigated against the service provider to collect the payment. An action date of between 1 August 2023 and 30 October 2023 was suggested.
68. OUTA is not in a position to give an opinion on the correctness of the recommendations made by Duja Consulting, Adv Engelbrecht SC or Toka Machabaphala, but it is extremely concerning that CETA has been in possession of a investigation report for almost 4 years and still failed to implement any of the recommendations.
69. It is important to note that Machabaphala suggested dates to CETA for the implementation of recommendations of the Duja report, which was ignored by CETA. The question is: why did CETA spent millions of rands on an investigation and legal opinions if the report and opinions were only going to gather dust?

SECOND SUSPENSION OF MS TUMISO MPUTHI

70. On 1 June 2023 and before CETA received the opinion of Toka Machabaphala, the CEO suspended Ms Mphuthi. In September 2023, she received a chargesheet and was only then officially informed that she was charged with 20 charges of misconduct.
71. On 21 June 2024, Ms Mphuthi submitted a second formal report to CETA's accounting authority. She stated clearly that this report was not submitted to intervene or to influence the disciplinary process but to report the violations of internal processes, timeously. She submitted the report to safeguard the integrity of the organisation, as expected by her employer. In this report she *inter alia* reported the CEO for interfering with SCM processes.

72. On 5 August 2024, she received a supplementary chargesheet with an additional 42 charges. To date, the accounting authority has not replied or responded to Ms Mphuthi's allegations.
73. OUTA cannot reveal the charges or the chargesheets, or comment on the charges because the disciplinary hearing is still ongoing. It is however safe to say that some of the charges are based on the Gobodo recommendations for which Ms Mphuthi has been cleared in 2020 by CETA's administrator.

CCMA APPLICATION IN TERMS OF SECTION 188A

74. On 10 July 2024, Ms Mphuthi filed an application in terms of section 188A (11) of the Labour Relation Act 66 of 1995 for an inquiry by an arbitrator. The section provides that despite subsection (1), if an employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act 26 of 2000), that employee or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the employee.
75. The chairperson halted the disciplinary hearing that had commenced against Ms Mphuthi on charges of misconduct. He ruled that an inquiry in terms of section 188A (11) had to occur in terms of six of the charges on the first chargesheet preferred against Ms Mphuthi. The six charges were those that were raised by Ms Mphuthi as constituting protected disclosures.
76. On 1 August 2024, the CCMA Commissioner ruled that the parties had to submit written submissions because CETA held the position that the CCMA was only to determine whether the protected disclosure was indeed a protected disclosure as alleged by Ms Mphuthi, or not, while Ms Mphuthi argued that the CCMA proceedings halted the disciplinary hearing and that the CCMA should hear the matter in its entirety.

77. Before the CCMA commissioner could hear oral arguments on the issues raised by him, CETA served an additional 41 charges on Ms Mphuthi. She argued that some of the new charges also related to her protected disclosure.
78. During oral arguments, CETA's legal representative stated that *"the employer instituted disciplinary hearing against the employee as a consequence of findings made in various investigation reports"* and confirmed that the institution of disciplinary proceedings against Ms Mphuthi was as *"a result of the investigation reports"*.
79. The above statement clearly indicated that although Ms Mphuthi was cleared of any misconduct in the Gobodo report and the Duja report was not implemented yet, CETA used the findings of Gobodo and Duja reports to compile charges against Ms Mphuthi,
80. CETA further argued that: *"The inescapable conclusion is that CETA had already started the process of looking into her conduct and to avoid liability the employee made a protected disclosure. It is not that there was an honest and sincere disclosure when she was charged following the disclosure"*. This statement referred to the formal report Ms Mphuthi submitted to the accounting authority on 1 June 2024.
81. On 27 May 2025, almost 3 years after Ms Mphuthi was suspended, the CCMA commissioner Mr M. Mohlala, ruled as follows:
- 81.1 The CCMA did not have jurisdiction to arbitrate this matter in the absence of a Section 118A (1) referral;
- 81.2 The specific charges alleged to be forming part of protected disclosures were not made in good faith and thus the employee could not be protected against a disciplinary hearing on those charges; and,
- 81.3 The employer was within its rights to proceed with the disciplinary hearing on all charges preferred against the employee.

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82. OUTA does not challenge the CCMA ruling in this report. This is a legal matter that must follow its course and a final ruling in this matter will bring closure to the matter.
83. What is concerning is that after Ms Mphuthi submitted her second formal disclosure to CETA's accounting authority, she was issued with approximately 40 additional charges related to what she reported to the accounting authority.

OUTA'S RESPONSE TO THE CETA MEDIA STATEMENT

84. OUTA does not challenge the CETA media statement on the existence of a CCMA ruling or the findings by the CCMA. A disciplinary hearing is taking place and Ms Mphuthi needs to defend the charges brought against her.
85. It is however OUTA's opinion that CETA is on a witch hunt against Ms Mphuthi. The disclosures she made were made with the intent of informing the accounting authority about irregular practices that took place and is still taking place at CETA.
86. From the CCMA ruling it appears that CETA's legal representative mentioned "*forensic investigation reports*" (plural) during his arguments. There are only 2 forensic investigation reports with regards to SCM irregularities, namely the Gobodo report and the Duja report.
87. As shown in OUTA's analysis and timeline of events, Ms Mphuthi was cleared on all allegations against her in the Gobodo report. Even Toka Machabaphala, the attorney that CETA appointed to advise them on findings of the Duja investigation, warned CETA that it should take caution to discipline employees who were already disciplined in terms of the Gobodo report.
88. It is also evident from OUTA's analysis and the confirmation given in Parliament by the DHET Director General that the Duja investigation report

was not cleared for implementation. The Duja report was not shared with implicated individuals and ought not to be used to charge CETA officials.

89. During the interview between Mr Duvenage and Ms Mphuthi, these matters were raised but CETA conveniently chose not to provide the readers with the full picture.
90. CETA also mentioned in its statement that it distanced itself from the names of other individuals mentioned in the Duvenage/ Mphuthi interview. The fact is that the business relationship between the current CETA's CEO, Mr Shezi and Mr Andile Nongogo who was fired from NSFAS based on irregularities that took place at Services SETA and NSFAS, cannot be ignored. The fact that CETA appointed some of the same service providers as Services SETA against whom criminal investigations are ongoing, can also not be ignored.
91. It is also a fact that Nehawu lodged complaints against the Mr Shezi with the minister and informed the portfolio committee about alleged irregularities involving CETA's CEO. There is also an ongoing investigation based on issues first raised by Ms Mphuthi in her second disclosure.
92. OUTA is always in support of legal proceedings where necessary but cannot stand by and do nothing when whistleblowers are targeted and discriminated against.
93. OUTA welcomes CETA's commitment to clean administration and good governance. However, for the past 3 years CETA has not demonstrated any progress in achieving a clean audit report.
94. It is further an absolute disgrace that an entity uses taxpayers' money to appoint forensic investigators and legal specialists without acting on the findings of the investigations. This is a tendency that OUTA also witnessed at other SETAs and it appears that the suspension of officials while forensic investigations are ongoing is a tactic being used to get individuals who are making it difficult for entities to proceed with irregular actions, out of the way.

COMMENTS BY THE OUTA CEO

95. As the OUTA CEO, it is my belief that the current CETA CEO – Mr M Shezi, is wasting tax-payers SDL funds on advertisements in the media, to denounce OUTA's work and the exposé by Ms Mphuthi, which is an attempt to deflect or cover-up the truth. We believe that a thorough and independent assessment of our claims and those made by Ms Mphuthi, as reflected in this report, will reveal the misinformation being propagated by the Executive Management at CETA and exonerate Ms Mphuthi from the claims made to have her suspended and removed from CETA.
96. What is simply outrageous, is that the allegations of serious tender manipulation and contractual awards - as presented by Ms Mphuthi - have not transpired into any meaningful consequences against perpetrators, nor have these irregular contracts been cancelled.
97. Of significant concern to us, is the culture of fear and intimidation that has permeated the CETA, which is a matter that could have been evaluated by the board - through the conduct of an internal ethics and culture evaluation by a professional external entity – with the assurance of anonymity and confidential input by the staff.
98. It appears to us that the current Executive Management at CETA are trying to influence the outcome of a disciplinary hearing against Ms Mphuthi, by insinuating her disclosures fell outside that of a protected nature, when in fact she had been cleared of charges against her and reflected in the Gobodo report. The additional evidence provided by Ms Mphuthi, whether protected or not, must be taken at face value and investigated.
99. We call on the authorities to ensure that Ms Mphuthi and others who have been deliberately and / or wrongfully dismissed or suspended from CETA, be protected from this abuse of power. There has been sufficient significant

evidence provided by Ms Mphuthi and others to have the CEO, Mr Shezi suspended whilst an independent investigation takes place into his conduct.