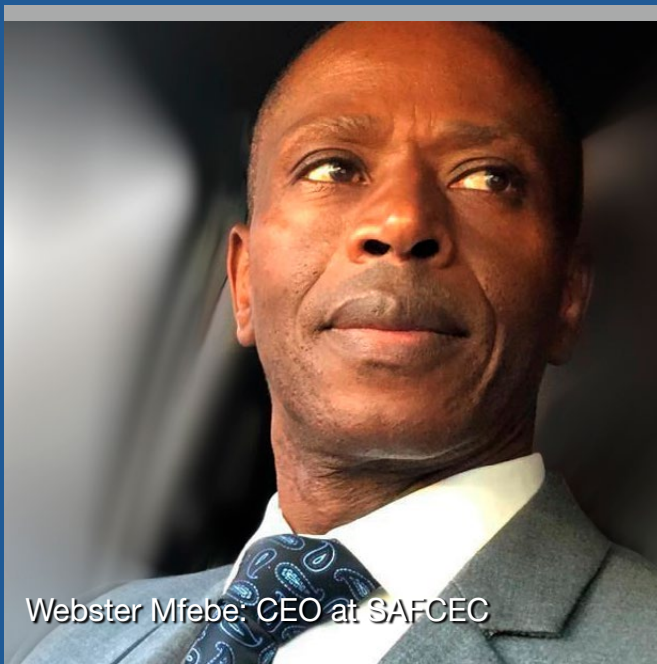


# CONQUERED, CAPTURED AND INCAPACITATED BY THE CONSTRUCTION MAFIA

**BY WEBSTER MFEBE:** , CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN FORUM OF CIVIL ENGINEERING CONTRACTORS



Webster Mfebe: CEO at SAFCEC

## Biography

Webster Mfebe, CEO of the South African Forum of Civil Engineering Contractors (SAFCEC) has won several awards in construction and leadership. He is also the Chair of the Limpopo Eco-Industrial Park and has accumulated a wealth of senior leadership and management expertise during nearly 40 years in the mining, construction and engineering industries. Webster has addressed international conferences on political and economic issues and has contributed to business intelligence articles in some publications.

The South African construction industry has become the new battlefield. A battlefield for the implementation of a fake radical economic transformation intended to benefit the narrow personal interests of the inner circle of emerging business leaders who propagate radical economic transformation (RET) whilst being self-serving. All this is at the expense of an industry and economy that is in an accelerated state of decline. Extortionate methods are employed to effect compliance with selfish demands in situations where rudeness - often accompanied by violence - is glaringly mistaken for radicalism. Added to which, the nonchalant attitude of law enforcement agencies has thus far proven to be a dismal disappointment, feeding into an unfortunate perception that the rule of law applies only to some.

There is however some encouragement. The President previously indicated concern enough to commit to meeting with the industry at an appropriate time in the near future. In addition, recent consultations with the then Minister of Economic Development (now Trade and Industry), Ebrahim Patel, as well as the new Minister in the Presidency, Jackson Mthembu, resulted in serious sentiment by Government's\* approach to remedying the issues faced by the construction industry. *\*The industry will also engage the new Minister of Public Works and Infrastructure, Patricia De Lille.*

At the very foregoing, it is fair to state that not all woes of the construction industry are attributable to the construction mafia. However, this violent construction-site disruption phenomenon accelerates the sector's demise as some of the largest employers are already in business rescue, with smaller firms

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crumbling alongside them, all the while shedding thousands of jobs that belong to South Africans, many of whom are underprivileged.

### STATE OF THE ECONOMY AND CONSTRUCTION INDUSTRY

According to Statistics South Africa, the economy contracted by 3.2% overall in the in first quarter of 2019. Almost all industries contracted when compared to the fourth quarter of 2018; manufacturing fell by 8.8%, mining by 10.8%, agriculture by 13.2% and electricity shrinking by 6.9%. Transport fell by 4.4%, trade was down 3.6% and construction declined by 2.2%. Government, on the other hand, grew by 1.2%, finance by 1.1% and personal services by 1.1%.

Again, the country is on the brink of recession. SA's economy slid into recession in the first half of 2018 after experiencing two successive quarters of negative economic growth. Growth gained pace in the third quarter. The results of the Quarterly Labour Force Survey (QLFS) for the first quarter of 2019 released by Statistics South Africa indicate that the official unemployment rate increased by 0,5 of a percentage point to 27,6% compared to the fourth quarter of 2018.

Of the 237,000-net decline in employment, the construction sector is responsible for 142,000



job losses, representing a whopping 60% of total job losses in the country. Considering that 40,7% of the 20,3 million young people aged 15-34 years were not in employment, education or training (an increase by 1,8 percentage points compared to the fourth quarter of 2018), it is reasonable to surmise that this in part explains why the majority of site disrupters are young people mostly at the receiving end of the most painful and tight grip of poverty, inequality and unemployment.

The construction industry, based on 2010 figures, is currently valued at approximately R200 billion, a stark difference to over R300 billion at its 2009 peak, following a global financial crisis in 2008. In a decade, construction has therefore lost R100bn of its value. Listed companies have lost just under 80% of their value since 2009. Construction contributes about four percent to the country's GDP and 12% to total employment, which makes it a disproportionate employer of unskilled and semi-skilled workers from communities mostly afflicted by unemployment and poverty. Construction and Agriculture are the two most labour-intensive economic sectors critical in driving mass employment in South Africa. Therefore, any disruptions in these two sectors affect the livelihoods of most South Africans, which is why government must act expeditiously to remove inhibitors to these sectors.

Of the 97,468 construction companies operating in the construction sector, 84,770 are graded at cidb entry-level one (a massive 87%). On one hand, this situation only heightens competition for an ever-shrinking construction cake, thereby creating a fertile ground for state capture, corruption and gangsterism as a means of survival. On the other hand, it presents an opportunity for massive transformation through inclusive economic participation that could be sustained through the availability of a consistent and reliable project pipeline. The surmountable infrastructure maintenance backlog immediately presents low-hanging fruit to contract-capable emerging enterprises, in addition to new projects that should ideally be executed in partnership with established contractors. During this, mentorship and skills transfer must be prioritised. However, the already qualified and competent black-owned construction companies should be directly contracted by both public and private clients without any need to be appended to any so-called established companies.

“ The total consolidated government spend over the **2019 medium-term expenditure framework (MTEF)** period is expected to be **R5.87 trillion, with budgets amounting to R1.83 trillion in 2019/20, R1.95 trillion in 2020/21 and R2.09 trillion in 2021/22** ”

#### **DEFILING THE GENUINE STRUGGLE FOR INCLUSIVE ECONOMIC PARTICIPATION**

There is a need to recognise and support the genuine struggles of underprivileged communities to ensure that they too become rightful beneficiaries of the dividend of democracy through an inclusive economic participation. More importantly however, we need to expose those who are defiling the genuine struggle for economic emancipation through extortionate methods to achieve selfish agendas with no benefit to those who remain economically disenfranchised and unemployed.

The government remains the biggest driver and source of economic empowerment through both regulatory and procurement processes. These are the two most powerful tools to effect genuine and orderly radical economic transformation as opposed to the fake and self-centred RET driven by self-created barons who conquer and capture construction sites with impunity, thereby incapacitating the sustainability and growth of the industry. The brain drain to greener pastures of the world by skilled construction professionals remains a serious challenge that not only compromises the industry's capacity but could result in its capability being at serious risk once an upswing is achieved.

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## KEY LEGISLATIVE INSTRUMENTS OF BLACK EMPOWERMENT IN SOUTH AFRICA

1. The Constitution is the overarching law, which in Chapter 13, Section 217, regulates procurement in terms of the undermentioned three subsections:
  - Section 217 (1) provides that when an organ of state contracts for goods or services it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
  - Section 217 (2) provides that subsection 1 does not prevent organs of state from implementing a procurement policy providing for (a) categories of preference in the allocation of contracts; and (b) the advancement of categories of persons disadvantaged by unfair discrimination.
  - Section 217 (3) provides that National legislation must prescribe a framework within which the policy referred to in section 217 (2) must be implemented.
2. The Preferential Procurement Policy Framework Act 5 of 2000 ("PPPFA") is the legislation which gives effect to Section 217 (3) of the Constitution. It allows black empowerment ratings, and how they are achieved, to be relevant and in some cases, necessary to enter into contracts with organs of state. In January 2017, the Minister of Finance published regulations as contemplated in Section 5 of the PPPFA (the "Regulations"). The Regulations provide formulae for how points may be allocated to empowerment scores in any given tender. While these formulae are important, the Regulations go further than simply allowing for extra points to be allocated based on an empowerment score. They also provide that an organ of state may apply prequalifying criteria to advance certain designated groups of persons. Such designated groups include (a.) tenderers with minimum BBBEE ratings; (b.) EMEs or QSEs; and / or (c.) tenderers who subcontract a prescribed 30% of a project awarded to EMEs owned at least 51% by various categories of persons. These 'categories of persons' include black people, black youth, black women, black people with disabilities and black people living in rural areas.
3. The Broad-Based Black Economic Empowerment Act 53 of 2003 (the "BBBEE Act") creates the legislative foundation for black empowerment scoring criteria and the issue of empowerment ratings.
4. The Employment Equity Act requires that employers implement employment equity plans which must include appropriate affirmative action measures with reference to demographics.



to learning and culture; social development; health; and community development.

A sizeable portion of this budget is earmarked for work to be performed by the private sector, notably, by procuring services through the tender-based system. This system is replete with fierce contestation and condemnation from sections of society. This is because some view it not only as a major source of empowerment to the previously disadvantaged through igniting inclusive economic activity, but also state capture, corruption and malfeasance across many government projects and a means by which genetically modified instant millionaires and billionaires are created.

There is a general feeling amongst the majority of underprivileged communities and empowerment target groups that the legislative instruments for Black Empowerment have only benefited a few well-connected individuals. As a result, the 30% requirement has become the ticking time-bomb and a rallying cry of “it’s our time to eat” as some communities and armed gangs believe that it should be given to them at all costs - whether or not they are competent to be subcontracted into a particular construction project in their localities.

Pre-Tender Community Engagements should be a primary responsibility of public-sector clients so that contractors can concentrate on building the planned infrastructure within budget, time and quality. This remains a contentious issue which needs urgent attention and clarification by authorities, but in the interim, contractors who need to subcontract targeted enterprises and groups should act in a transparent manner by engaging relevant stakeholders in the communities in which the project is located. This will ease tensions as those who are not selected will feel that at least the process of identifying competent enterprises was fair and transparent.

However, those engaged in mafia tactics will never be satisfied unless the selected subcontractor belongs to their own specific business forum, notwithstanding the fact that those awarded are also black and disadvantaged as they are. It is in this regard that law enforcement agencies must step in decisively to deal with lawlessness that presents itself in

extortionate conduct on the part of the mafias, where they participate in contracts, including bribery, at the barrel of the gun.

The accumulation of such wealth through extortion should, among other legislative measures, be dealt with in terms of The Prevention of Organised Crime Act, no. 121 of 1998 (POCA), which is one of several pieces of legislation in South Africa’s arsenal of anti-corruption and anti-money laundering legislation.

The purpose of POCA, amongst others, is to:

- Introduce measures to combat organised crime such as money laundering and racketeering activities;
  - Provide for the recovery of the proceeds of unlawful activity;
  - Provide for the civil forfeiture of property that has been used to commit an offence; and
  - Prescribe penalties for those found guilty of committing offences in terms of the Act.
- Section 38 of POCA, which makes provision for preservation of property orders - that is, an order prohibiting any person from dealing with any property in any manner, subject to the exceptions and conditions which are specified in the order.

The utilisation of the Prevention of Organised Crime Act (POCA) to deal with extortionate conduct will undoubtedly separate individuals engaged in the genuine struggle for economic emancipation from self-serving gangsters who pose a threat not only to the construction industry but also to the economy and state security.

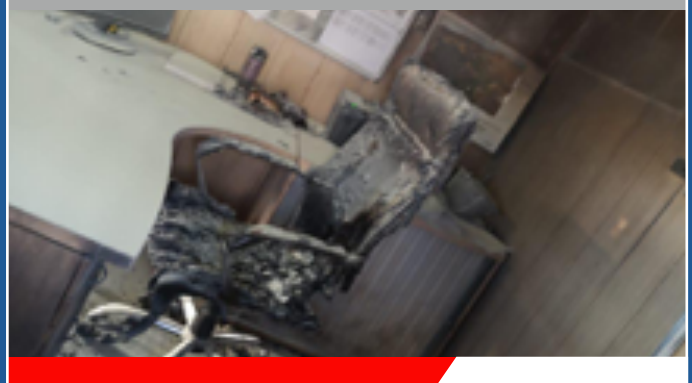
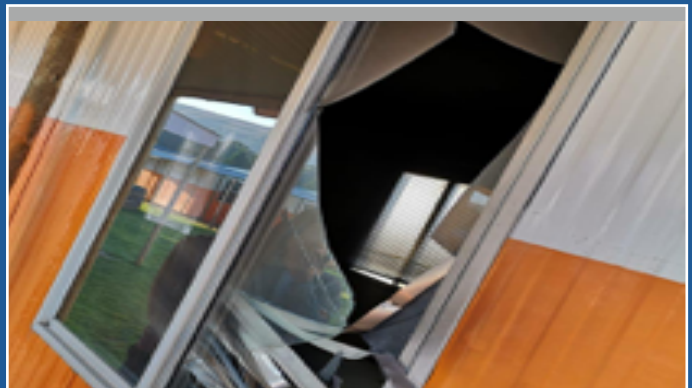
The National Prosecuting Authority (NPA) is well placed to lead the envisaged investigations through the implementation of POCA as well as investigate allegations that some powerful individuals in both the public and private sector, at local, provincial and national level, are complicit in illicit activities which some believe may explain a lack of decisive action as this could trigger unintended consequences.

However, recent engagements, in October 2019, between industry and the NPA added renewed hope that the lacklustre performance of law enforcement agencies to deal with this brazen criminality will be effectively addressed through the Prevention of Organised Crime Act, no 121 of 1998. This is

## RATIONALE FOR THE NATIONAL FOOTPRINT OF CHAOS

Through engagement with some business forums and interested parties in the project of radical economic transformation, the rationale for violence and site disruptions affecting projects valued between R27.5bn and R42bn nationally, depending on their intervals of intensity, were cited as follows:

- They are not “mafias” – the real mafias are those who are in positions of authority, who ignore them as disadvantaged black people and award tenders only to their friends, families and the already empowered entities.
- Some of those in authority, locally, provincially and nationally, “don’t care a hoot” about them; instead they steal whole or plagiarise parts of their business plans to help their local and foreign friends jump the queue at the expense of the struggling locals, notwithstanding the fact that government publicly commits to an inclusive economic transformation. Importantly, they challenge researchers to show how the so-called Economic Development Agencies, especially locally and provincially, have benefited the masses, save for the well-connected.
- The rot that is dug out in public in state commissions of inquiries emboldens them to take up arms to empower themselves, because leaders have already eaten.
- They challenge those who pin their hopes, including myself, on the ‘New Dawn’ by stating emphatically that for as long as state functionaries who have always been there during their past sufferings remain in their positions, with no consequence management, no renewal and rebuilding will ever take place. Instead, a new wave of looting and gatekeeping will ensue in a subtle and covert manner, thereby creating a public facade that the ‘New Dawn’ has arrived.
- They are not involved in site disruptions, but white-owned companies to which they are sub-contracted “treat them like dirt”, provide them with menial work, underpay and delay payment, and undermine their own senior, black employees in front of them. For that reason, they support the brave who take up arms, as they are not wired to partake in violence.
- They are tired of being ignored when it comes to the need for decent and adequate basic services within their communities and can no longer afford to simply accept being side-lined in their quest for inclusive economic participation.





intended to isolate organised criminal syndicates from genuine and methodically expressed demands of local communities' participation in projects that are located in their communities. A further meeting with the National Police Commissioner to consolidate discussions held with the NPA has been already agreed upon.

### **AN INDUSTRY UP IN FLAMES**

The photographs depicted in this article show an industry up in flames as a result of millions of Rands' worth of construction property destroyed by the construction mafia. Despite construction companies arming themselves with at least 51 court interdicts against disrupters, as well as the death of a contractor who was gunned down for refusing to co-operate, not a single person is known to have been charged since 2016.

### **WAY FORWARD**

All the reasons cited for causing such disruption and violence call for an urgent dialogue among all industry stakeholders and government to honestly and earnestly address these issues - no matter how sensational and frivolous they may seem. What is important to understand is that they are real in the eyes of those who have a lived experience.

Socio-economic transformation will always be at the centre of the National Agenda as a means by which the ills of inequality, unemployment and poverty are addressed. Those on the receiving end of these triple ills will extricate themselves through any means at their disposal up until and unless all social partners expeditiously find a lasting solution.

What is clear, though, is that the state has a constitutional obligation to maintain law and order and uphold the rule of law and the POCA. There is already consensus with the NPA in handling the matter within the purview of POCA. It must be said however, that throwing a book of law at disadvantaged people without throwing a book of opportunities at them will not achieve any significant results.

It is clear that the construction industry has become the new battlefield for fake radical transformation, including real grievances emanating from lack of participation from other economic sectors, as the

construction sector is seen as a low-hanging fruit for the downtrodden. It is therefore the people's industry of choice as evidenced by the nearly 100,000 registered businesses in the cidb database, 87% of whom are entry-level businesses. As the biggest employer of unskilled labour, if well supported with a sustainable and reliable project pipeline, the construction industry can indeed achieve the highest and quickest employment targets in order to ameliorate the dismal conditions of many South Africans.

Construction companies must also seriously consider the rationale of including violent site disruptions risk as part of their project costings.

Pre-tender community engagements should be the primary responsibility of public sector clients, not of the contractors.

Established construction companies must genuinely empower emerging construction and supplier enterprises not as a box-ticking exercise, but as positive and progressive culture within their organisations which, in turn, will boost the bottom line of their own companies and those empowered at the same time, thereby creating a desirable win-win situation.

If all stakeholders align and commit towards resolving the aforementioned issues in an honest, earnest and open manner, surely, we can prevent the construction industry from being conquered, captured and incapacitated. ☺