Metal Industries Collective Bargaining Summit: 24-25 May 2023

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Steel and Engineering Industries Federation of Southern Africa

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Lucio Trentini: Chief Executive Officer
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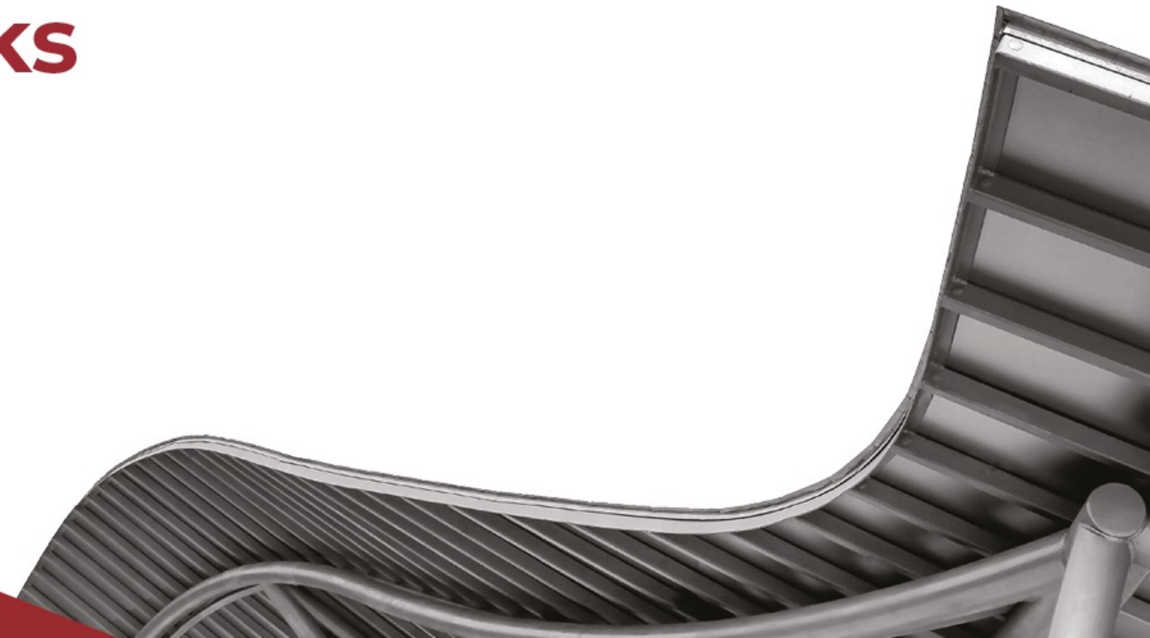
Welcome and introductory remarks



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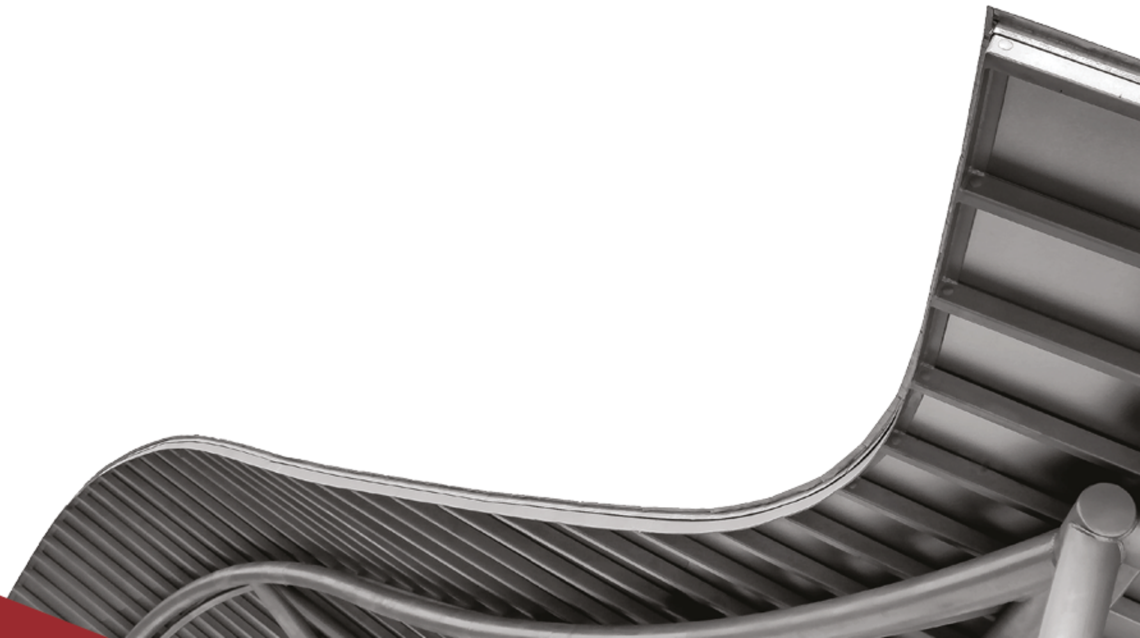
Steel and Engineering Industries Federation of Southern Africa

Elias Monage: President and Board Chairperson
SEIFSA

Opening Address



SEIFSA
Steel and Engineering Industries
Federation of Southern Africa

Dr David Masondo: Deputy Minister of Finance

Very tough times ahead if we do not turn this ship around – and fast.

– *"Government has a crucial role to play in shaping the economic future of South Africa – however, it cannot do it alone, labour market stability is a key contributing factor."*

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Steel and Engineering Industries Federation of Southern Africa

Presentation Outline

- **Metals and Engineering Sector Overview**
  - Production
  - Investment
  - Labour/Employment
- **Economic Outlook**
  - International
  - Domestic
- **M&E Sector Load Shedding Impact Assessment**
  - Employment
  - Investment
  - Input Costs
- **M&E Sector Revised Outlook**

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The Metals and Engineering Sector

- The sector constitutes 26.15% of the manufacturing sector based on output, representing the metal production, fabrication, the heavy engineering value chain and the plastics product sub-sector.
- The definition of the sector is as per the Metals and Engineering Industries Bargaining Council (MEIBC).
- The respective weights of the sub-sectors relative to total manufacturing and the rebalanced weights to indicate the sub-sectors weighting in the aggregated metals and engineering sector production index.
- The sector represents the real economy and the backbone of the industrial sector.

Sub-Sector	% of Manfacturing	M&E Weights (%)
Plastic products	2,29%	8,8%
Basic iron and steel products	2,82%	10,8%
Non-ferrous metal products	3,26%	12,5%
Structural metal products	1,98%	7,6%
Other fabricated metal products	3,35%	12,8%
General purpose machinery	3,46%	13,2%
Special purpose machinery	3,87%	14,8%
Household Appliances	0,73%	2,8%
Electrical machinery and apparatus	2,31%	8,8%
Bodies for motor vehicles, trailers and semi-trailers	0,71%	2,7%
Other transport equipment	1,37%	5,2%
Total M & E Sector	**26,15%**	**100,0%**

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The Metals and Engineering Sector

Economic Variable	2020	2021	2022
M&E Production (% growth/contraction)	-12,3%	27,2%	1,6%
M&E GDP (Rand biliion)	115,7	130,6	131,1
M&E GDP (% growth/contraction) (2015 Prices)	-23,9%	-0,8%	-6,5%
Manufacturing Sector Share of GDP (%)	15,0%	15,5%	14,8%
M&E Share of Manufacturing (%) – Value add	27,4%	27,2%	26,2%
M&E Share of GDP (%)	2,5%	2,6%	2,5%
M&E Capacity Utilisation (%)	66,6%	75,5%	75,8%
M&E Sector Input Cost Inflation (%)	12,4%	9,8%	13,1%
M&E Employment (number)	371 955	371 390	374 496
M&E Employment (% growth/contraction)	-5,1%	-0,2%	0,8%
Gross Earnings (Rand billion)	96,6	105,6	107,7
M&E Total Sales (Rand billion)	638,5	809,4	914,2
M&E Export Sales (Rand billion)	256,1	323,5	342,9
Export sales % of total sales	40,1%	40,0%	37,5%
M&E Imports (Rand billion)	347,4	416,6	471,1
M&E Trade Balance (Rand billion)	-91,3	-93,1	-128,2

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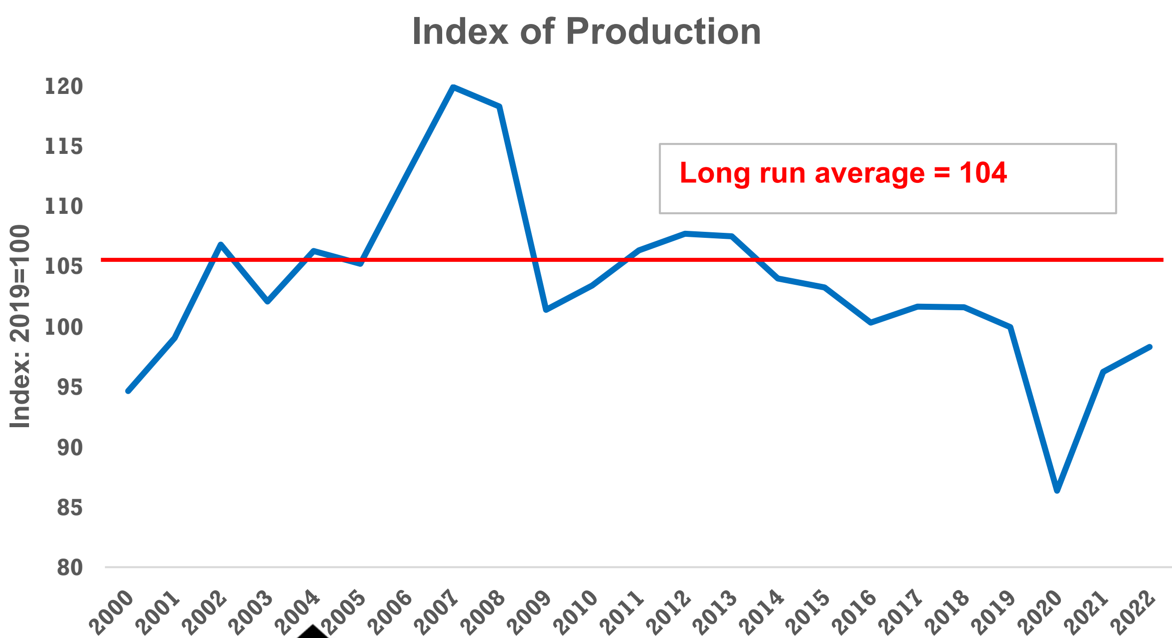
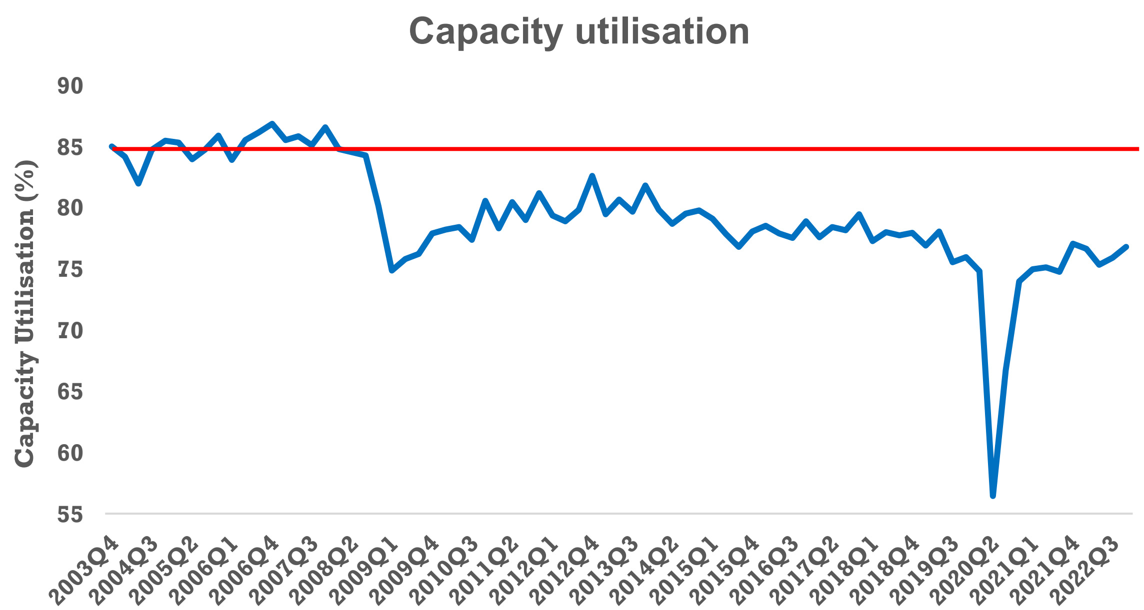
The Metals and Engineering Sector

- The sector has recorded a multi-year contraction in production since the 2008/9 financial crisis, recorded at a - 1,3% (CAGR)
- The bounce back from the Covid-19 pandemic was sharp, however, production is still 1,6% pre-covid levels and 5,2% below the adaptive moving average
- Output adjusted capacity utilisation was recorded at 76,2% (Q3 2023) and notably below the 85% optimal capacity level





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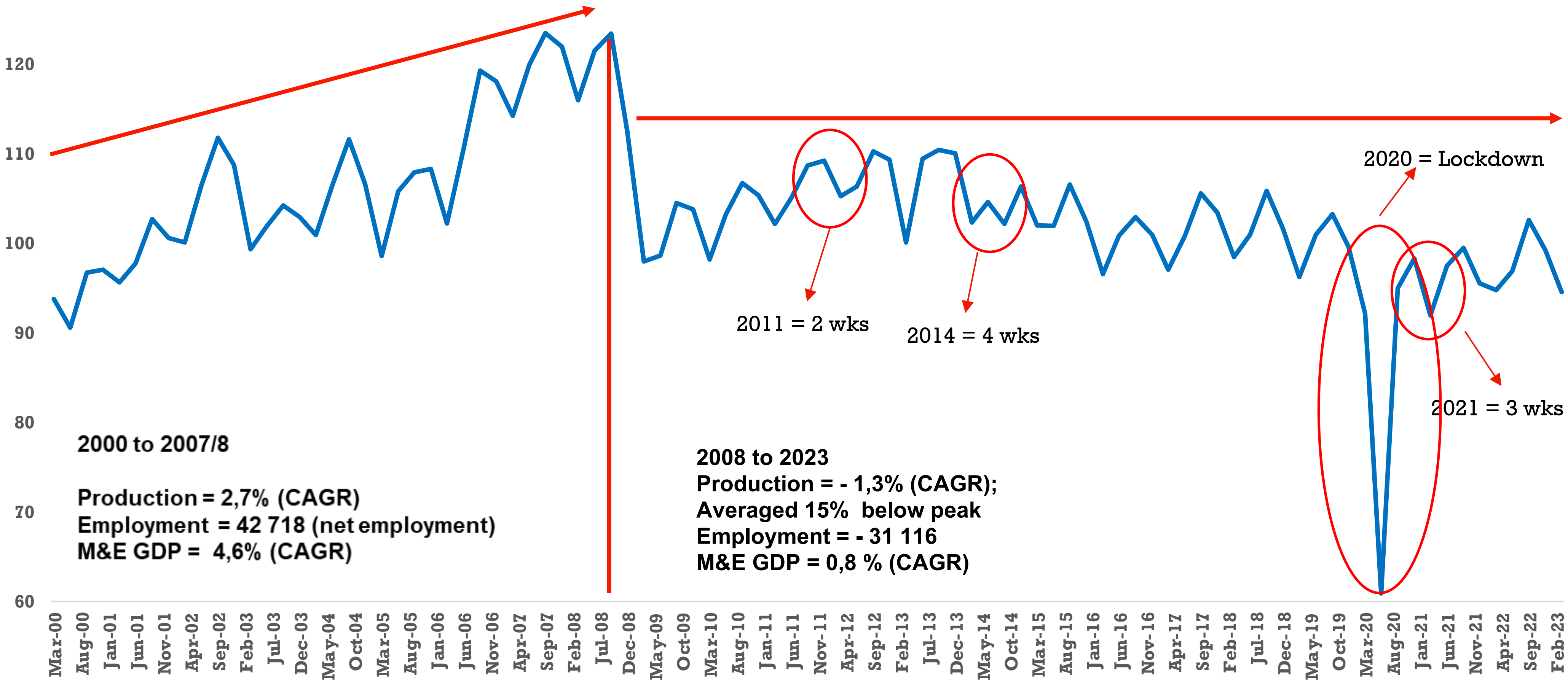
Index of Production M&E



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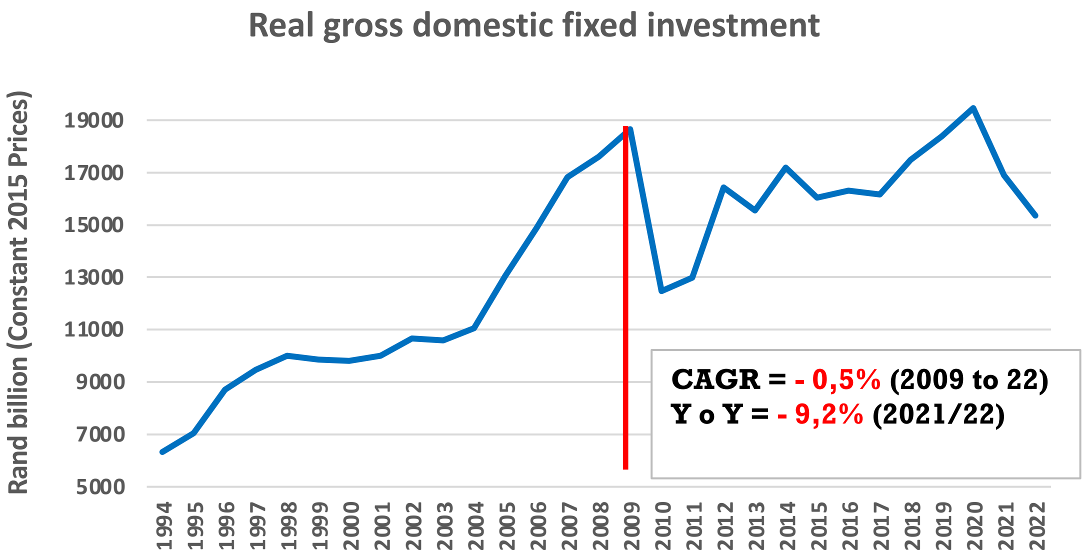
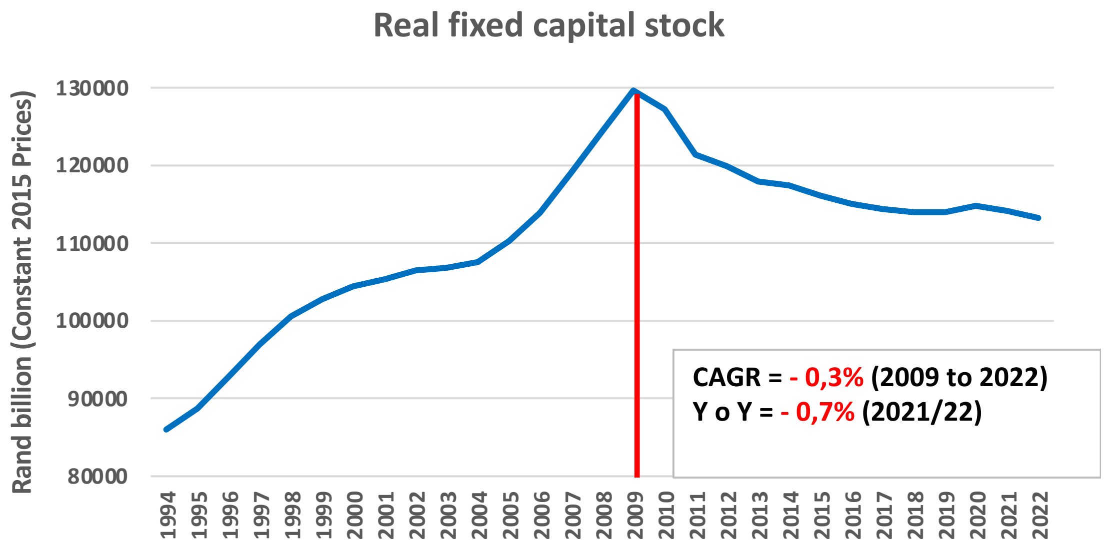
Investment

- Real gross domestic fixed investment declined by 9,2% in 2022.
- Fixed capital stock has also continued to deteriorate, as net investment has not been sufficient
- This presents long term risks to competitiveness





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Labour Input cost and M&E GDP

- In 2022, the sector employed 374 496 employees, of which 217 618 are factory workers.
- This represented a 0,8% (1064 employees) increase on the prior year
- Compensation of employees amounted to R107,7 billion
- Labour costs make up 18% of total input cost but 79% of metals and engineering sector GDP (classic pareto distribution).

Cost Basket	Total Mining
Intermediate Cost Basket	
Mining & quarrying	30,84%
Wood & wood products	0,44%
Coke & refined petroleum	1,24%
Basic chemicals	0,06%
Other chemicals	0,23%
Rubber products	0,05%
Metal products excluding machinery	23,34%
Machinery & equipment	3,30%
Electrical machinery & apparatus	0,28%
Transport equipment	0,29%
Electricity, gas & water	2,04%
Wholesale & retail trade	7,55%
Transport & storage	3,30%
Finance, insurance, real estate & business services	4,86%
Government and Community	0,33%
Other Intermediate Inputs	0,07%
Imported Intermediate Inputs	21,78%
Total Intermediate Costs (Ex Labour)	**100%**
Intermediate Costs	82%
Compensation of Employees	18%
Total Input Costs	**100%**

GDP Component	%
Compensation of Employees	79,1%
Consumption of Fixed Capital	13,9%
Net Surplus	7,0%
Total GDP	100,0%

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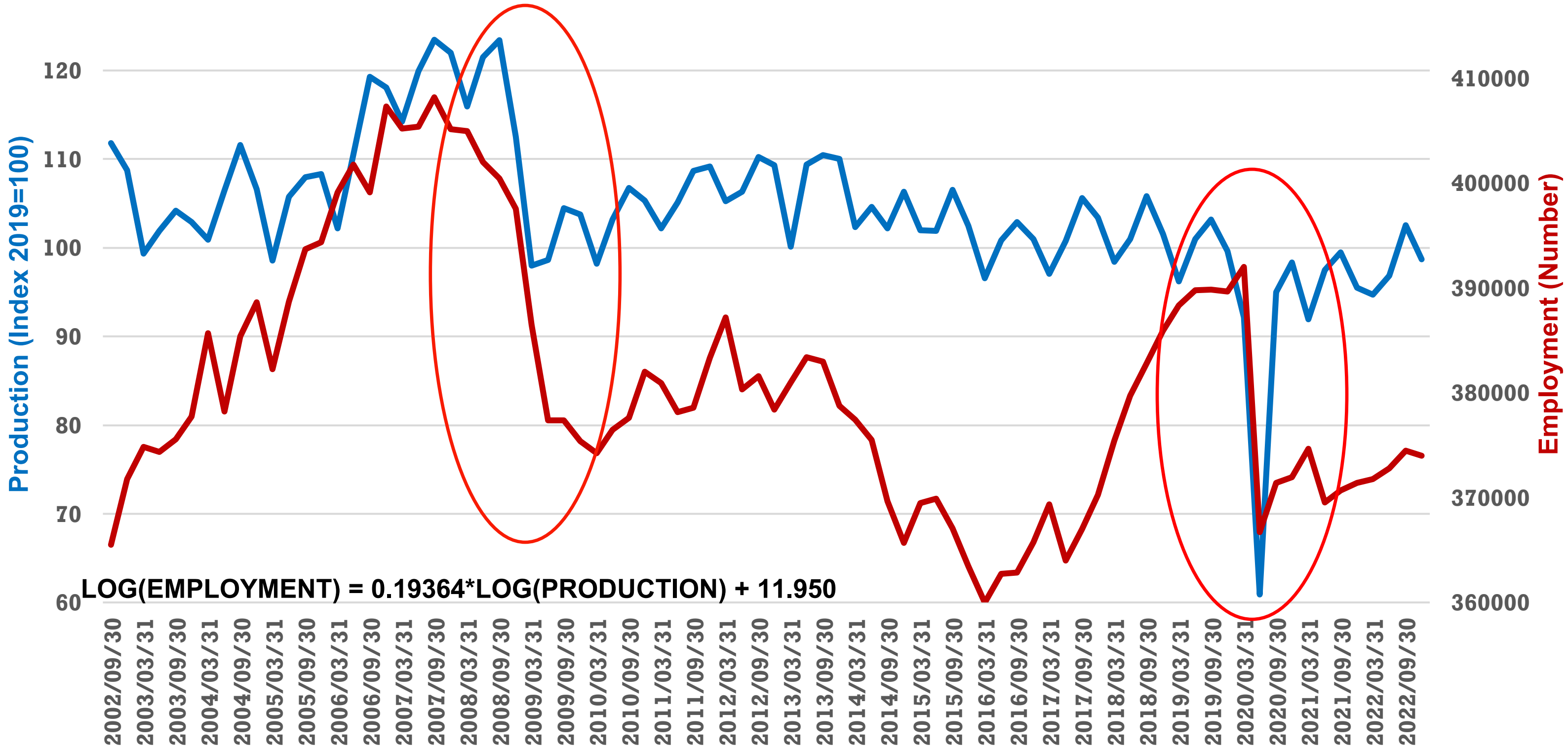
Production and Employment

- The link between production and employment has continued to weaken. Increases in production are no longer as a sufficient condition for increases in employment (5% increase in production for a 1% increase in employment)



Sub-Sector	(Year on Year %) 2022/2021
Plastic products	-0,6%
Basic iron and steel	-0,5%
Basic Non-ferrous metals	-3,4%
Casting of metals	3,6%
Structural metal products	-0,1%
Other fabricated metal products	-1,6%
General purpose machinery	1,8%
Special purpose machinery	2,2%
Household appliances	7,2%
Electrical machinery	0,4%
Parts and Accessories	4,4%
Transport equipment	-7,9%

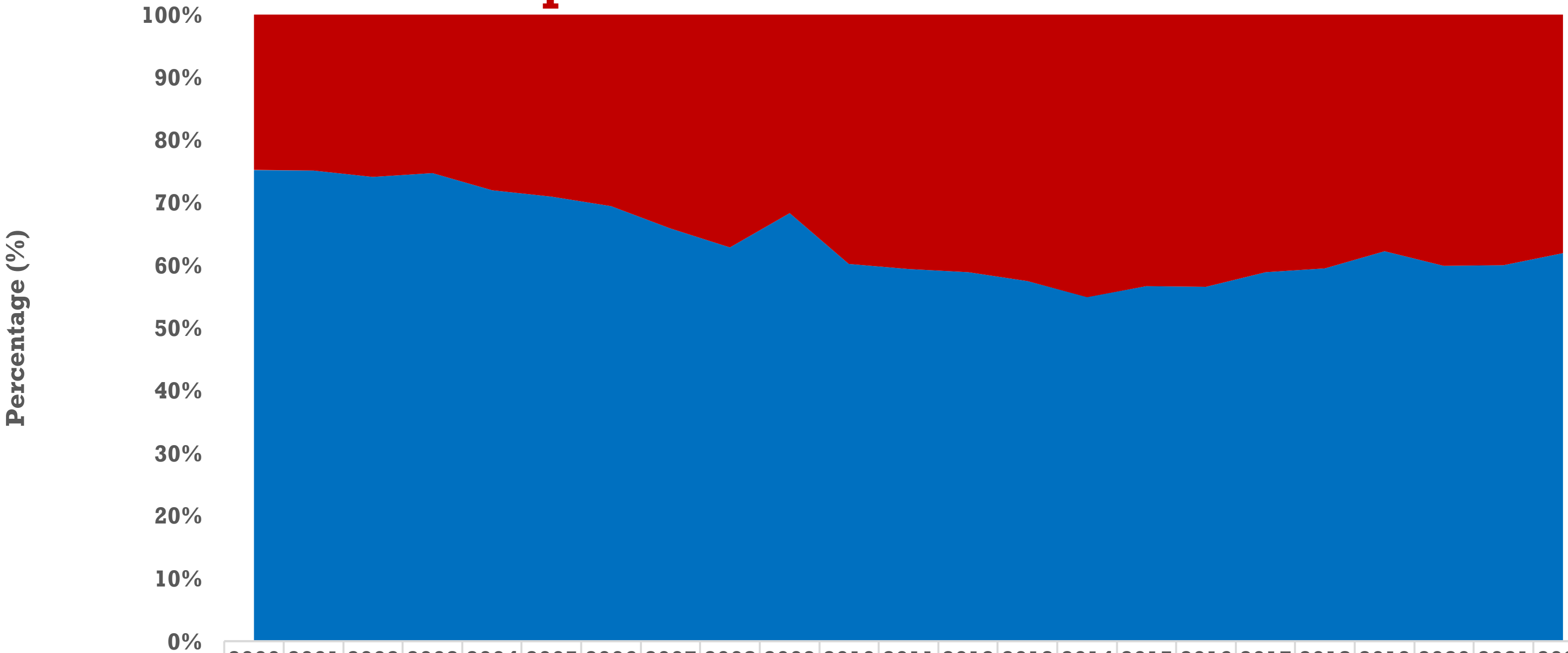
Dates	Production	Employment	
Dec 2019 to June 2020	-38,87%	-5,89%	
June 2020 to June 2021	60,1%	0,8%	
Dec 2019 to Dec 2022	-0,9%	-4,0%	- 15667 jobs

Outlook – Factors confronting the sector

Outlook – Factors confronting the sector

- The structure of the export to domestic sales split has shifted considerably over the last two decades in favour of exports.
- Globalisation has been a dominant economic narrative over the period in question therefore this trend is in line with expectation

Export Sales & Domestic Sales



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Export Sales	25%	25%	26%	25%	28%	29%	31%	34%	37%	32%	40%	41%	41%	43%	45%	43%	43%	41%	40%	38%	40%	40%	38%
Domestic Sales	75%	75%	74%	75%	72%	71%	69%	66%	63%	68%	60%	59%	59%	57%	55%	57%	57%	59%	60%	62%	60%	60%	62%

Continent	M&E Sector Export
Africa	39,6%
Asia	24,7%
Europe	21,8%
Americas	12,2%
Oceania	1,3%
Antarctica	0,0%
Not Allocated	0,4%
Total	100%

Outlook – International

- The global economic environment remains constrained and less supportive for demand in the medium term
- Stubbornly high inflation and higher interest rates for longer are a constraint to economic activity and investment
- Economic activity in SSA has been revised downward as fiscally vulnerabilities, as a result of higher financing costs, manifest (Ghana, Zambia and latest Kenya)
- Chinese economic growth is expected to rebound, however, much of the trade with the country is in primary products
- Geo-political tensions continue to plague the EU
- The United States is also expected to show a slower economic growth reading in the medium term (and concerns of AGOA re. South Africa raise risks to the outlook)
- Domestically supply side challenges (mainly the electricity crisis) have resulted in SA growth being revised down considerably. The same for the M&E sector's outlook

		Projections	
	2022	2023	2024
World Output	**3.4**	**2.8**	**3.0**
Advanced Economies	**2.7**	**1.3**	**1.4**
United States	2.1	1.6	1.1
Euro Area	3.5	0.8	1.4
Germany	1.8	−0.1	1.1
France	2.6	0.7	1.3
Italy	3.7	0.7	0.8
Spain	5.5	1.5	2.0
Japan	1.1	1.3	1.0
United Kingdom	4.0	−0.3	1.0
Canada	3.4	1.5	1.5
Other Advanced Economies[2]	2.6	1.8	2.2
Emerging Market and Developing Economies	**4.0**	**3.9**	**4.2**
Emerging and Developing Asia	4.4	5.3	5.1
China	3.0	5.2	4.5
India[3]	6.8	5.9	6.3
Emerging and Developing Europe	0.8	1.2	2.5
Russia	−2.1	0.7	1.3
Latin America and the Caribbean	4.0	1.6	2.2
Brazil	2.9	0.9	1.5
Mexico	3.1	1.8	1.6
Middle East and Central Asia	5.3	2.9	3.5
Saudi Arabia	8.7	3.1	3.1
Sub-Saharan Africa	3.9	3.6	4.2
Nigeria	3.3	3.2	3.0
South Africa	2.0	0.1	1.8

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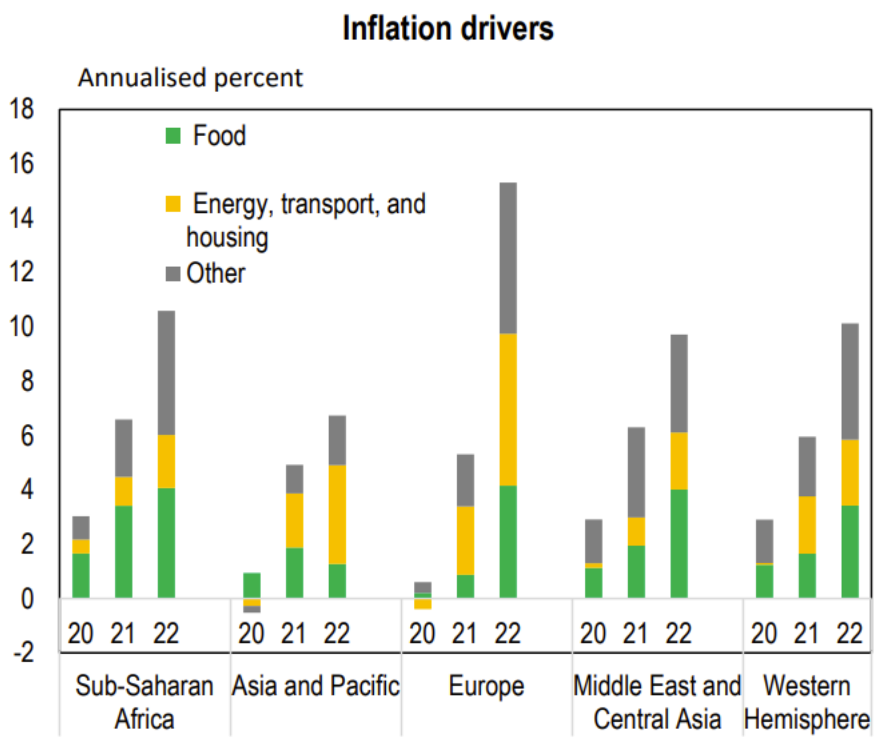
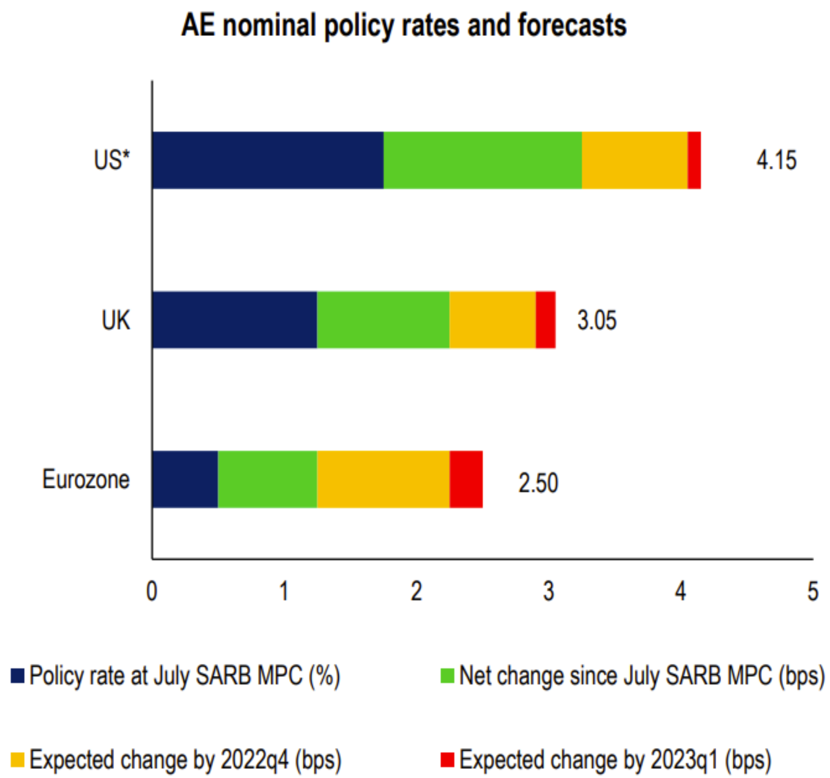
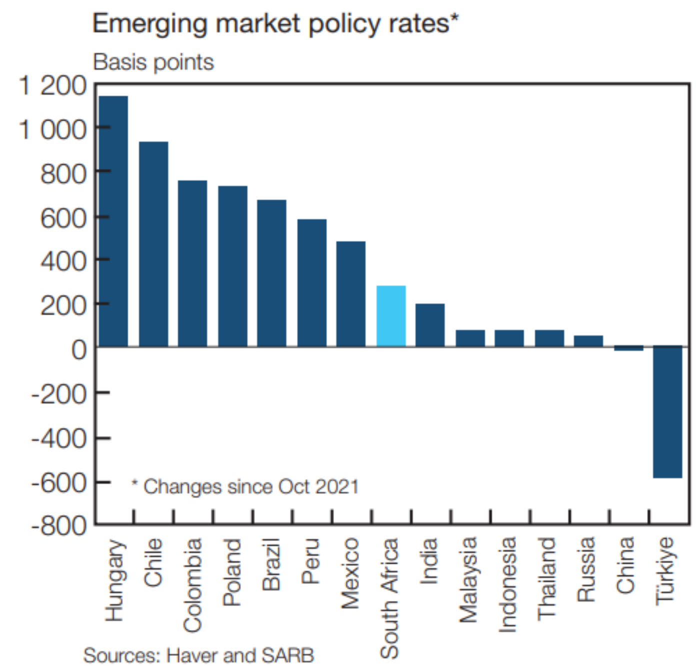
Outlook – International & Domestic

- Inflation remains stubbornly high as it has entrenched from headline inflation to core – higher rates for longer (this is a major global headwind)
- Domestic factors continue to push the exchange rate weaker (over and above interest rate differentials), therefore the SARB will need to continue its tightening path.







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Outlook – Domestic

MENU Moneyweb DATA ALL EPISODES LISTEN SIGN IN SIGN UP

Industry INSIDER GOLD

SA's cement industry faces multiple threats

Government's 'massive infrastructure expenditure' plan coming to life would help, as would more strategic tariff protection.

By Roy Cokayne 12 Jan 2023 00:03

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Economy 3 INSIDER GOLD

Auto industry contribution to the economy threatened by power crisis

Component manufacturers hardest hit, with obvious impact on vehicle production and exports.

By Roy Cokayne 18 Jan 2023 00:02

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Loadshedding is hitting South Africa's agricultural sector and food inflation is 'sticky'

ECONOMY

Eskom crisis causes sharp fall in mining production

The price of electricity for the mining industry has increased eightfold since 2008 while consumer prices have doubled

BL PREMIUM

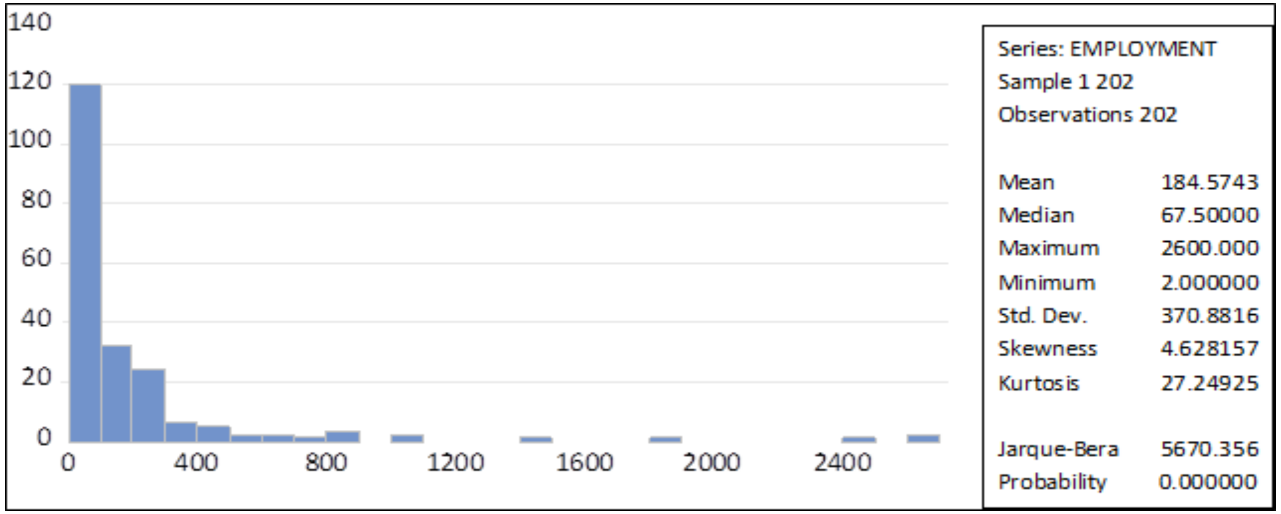
17 JANUARY 2023 - 13:02 *by* THULETHO ZWANE

UPDATED 17 JANUARY 2023 - 21:10

M&E Load Shedding Impact Assessment

- In January 2023, the SEIFSA office was tasked by its board to undertake this load shedding impact assessment with the view that the outcomes will assist the office in the advocacy work in the electricity supply industry.
- The reference period covered in the survey is February 2022 to February 2023
- The employee head count is the pivot variable on which the weighted statistics are consolidated
- Average company size of the companies that responded to the survey is 184, with a good mix between small, medium and large companies

Category	Sample
Number of respondents (companies)	206
Total Employee Count (from responding companies)	37 284
Average number of employees (proxy for company size)	184
% of sample to total SEIFSA member employee headcount	26.5%
% of sample to total M&E Sector employee headcount	9.9%



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Load shedding Impact Asses – Employment

EMPLOYMENT	OUTCOME
Number of companies indicating that they have reduced head account as a result of the energy crisis	24,2%
Weighted average employment reduction	-25,32%
Employment reduction (number)	9432
Number of companies that have implemented short time	33,20%
Vulnarable (companies that have already reduced head count AND are working short time)	16,90%
Number of companies that have not reduced head count, but working short time (leading indicator for job losses)	17,30%

- The employment losses, mostly attributable to companies responding to the energy crisis over the reference period, indicate some very concerning trends.
- A quarter of companies indicated that they have had to reduce head count in response to the electricity crisis, by as much as a quarter of their employment, equating to 9 432 people.

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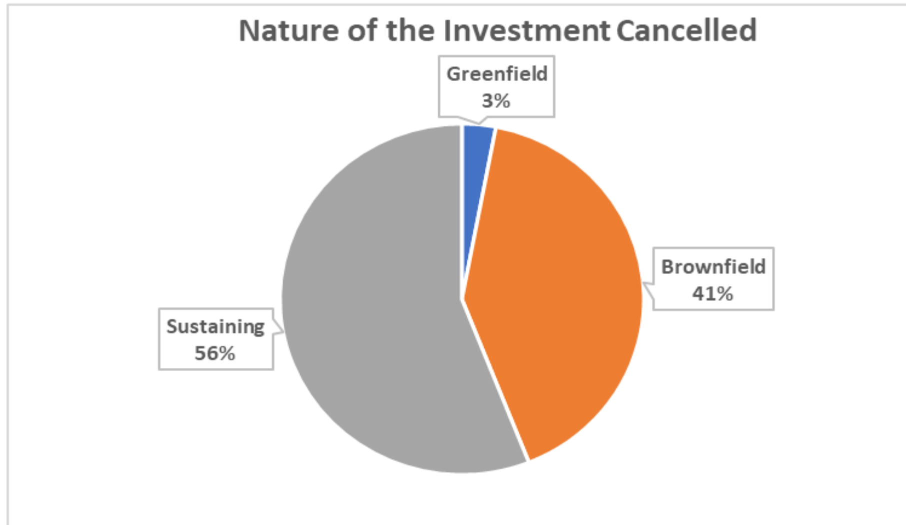
Load shedding Impact Asses – Investment

INVESTMENT	
Companies that have cancelled investment/expansion plans (motivated by the energy crisis)	42,70%
Value of Investment Cancelled	R2,64 billion
Potential jobs not created due to cancelled investments	1620

- It is therefore concerning that 42.6% of companies have indicated that they have cancelled investment and/or expansion plans owing to the uncertainty presented by the electricity crisis.
- The value of these investments amounts to R2.64 billion with the potential of creating 1 620 new jobs. The split of the nature of investment is included below.



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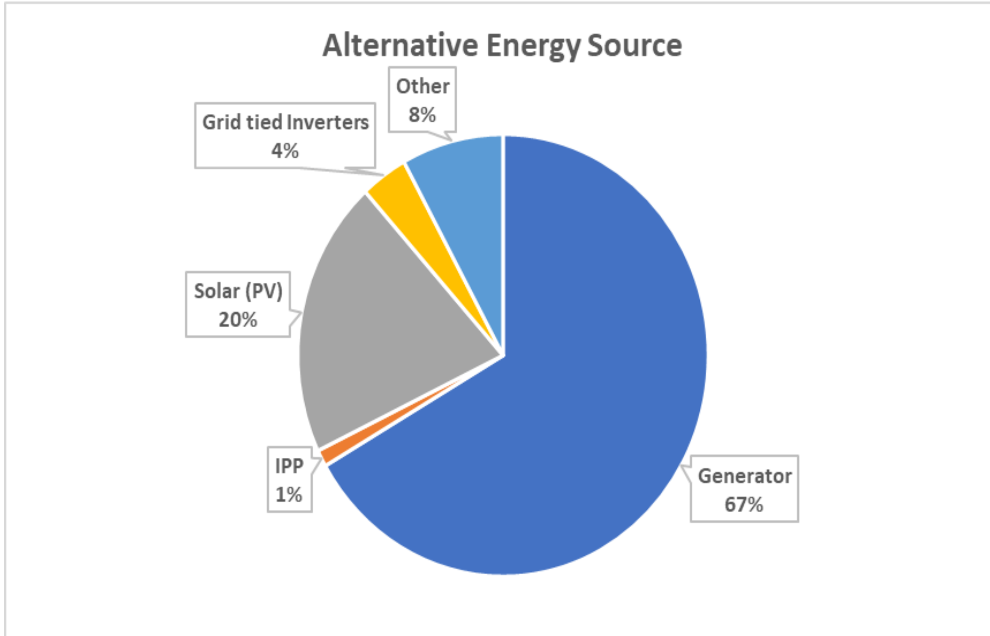
Load shedding Impact Asses – Alternative Energy

ALTERNATIVE ENERGY SOURCE INVESTMENT	
Companies that have invested in alternative energy solutions (in the last 12 months)	79,20%
Capital Cost of alternative energy	R 985,9 million
Extent to which alternative power source meeting consumption	53,60%
Installed capacity (Generator)	116,6 MW
Installed capacity (Solar)	36,2 MW

- The amount invested into alternative energy sources of R985 million is considerable when put into perspective that it accounts for 37% of the value of investments cancelled.
- This again highlights the point that companies are sacrificing scarce long-term capital to fulfil an immediate survival, presenting long-term adverse implications regarding the sustainability of the sector.



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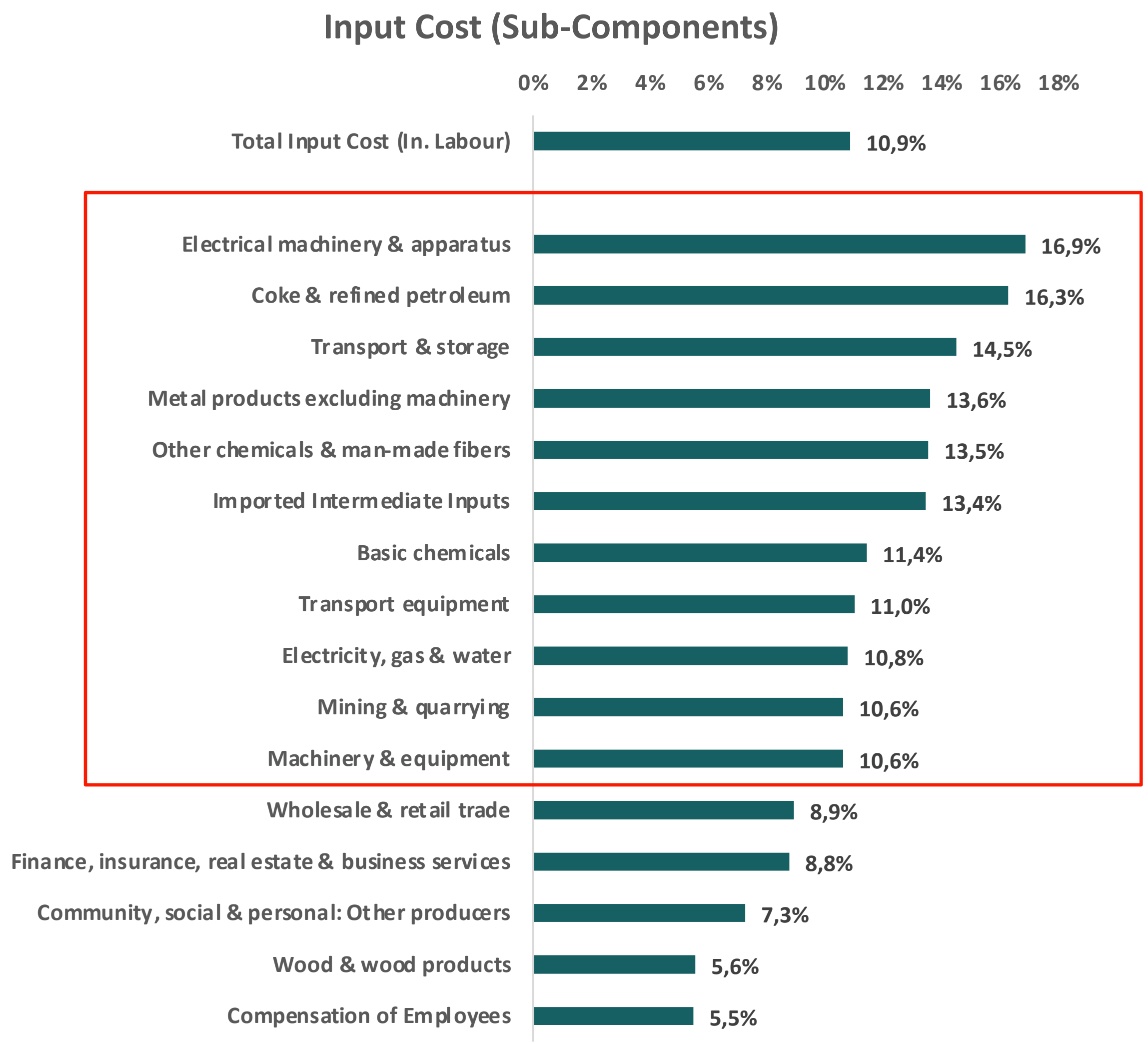
Load shedding Impact Asses – Input Costs

- In April 2023, input cost inflation for the sector was recorded at 10,9% (Y o Y%)
- 64 % of the input cost items increased at double digit rates

Cost Basket	2022	Total Mining
Intermediate Cost Basket		
Mining & quarrying	106 466	30,84%
Wood & wood products	1 527	0,44%
Coke & refined petroleum	4 290	1,24%
Basic chemicals	198	0,06%
Other chemicals	777	0,23%
Rubber products	187	0,05%
Metal products excluding machinery	80 566	23,34%
Machinery & equipment	11 397	3,30%
Electrical machinery & apparatus	962	0,28%
Transport equipment	1 012	0,29%
Electricity, gas & water	7 057	2,04%
Wholesale & retail trade	26 046	7,55%
Transport & storage	11 397	3,30%
Finance, insurance, real estate & business services	16 760	4,86%
Government and Community	1 122	0,33%
Other Intermediate Inputs	242	0,07%
Imported Intermediate Inputs	75 182	21,78%
Total Intermediate Costs (Ex Labour)	**345188**	**100%**
Intermediate Costs	345 188	82%
Compensation of Employees	77 991	18%
Total Input Costs	**423 179,0**	**100%**



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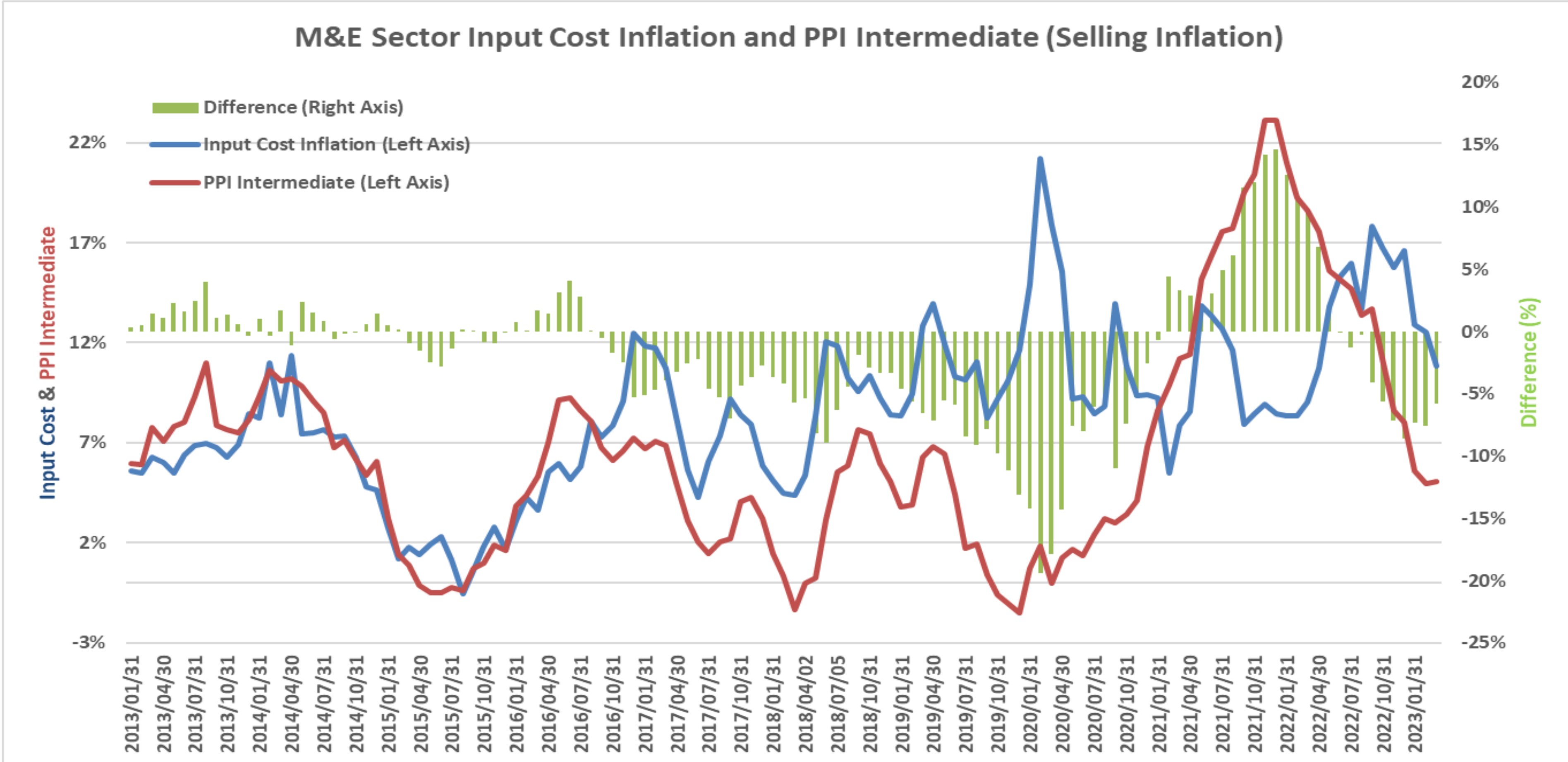
Load shedding Impact Asses – Input Cost and Selling Price Inflation

- Y o Y% Input cost inflation = 10,7%
- PPI Intermediate = 5,2%
- In 2023, input costs are running at 7 percentage points ahead of selling prices (average)
- 2,6 percentage points long run adaptive average



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Load shedding Impact Asses – Input Cost Inflation

- On a weighted average basis, companies have indicated increases to monthly operating costs to the extent of 24.9% from the extensive use of generators.
- This does not bode well for a sector whose input costs are running at 11% (y o y - April 2023).
- Factoring in the results of the survey to the input cost model results in input costs increasing by 1.7 percentage points to 12,7% for the sector.
- The less supportive demand environment means that these companies cannot easily pass on these costs, thereby resulting in considerable margin squeeze and ultimately long-term sustainability.

Outlook - Production

	DOMESTIC ECONOMY					EXPORT	
	61,8%					38,20%	
M&E % =	SA GDP +	Primary Sector	Agriculture	6,8%	+	Africa	39,6%
			Mining	21,0%		Asia	24,7%
		Secondary	Basic Iron and Steel	23,3%		Europe	21,8%
			Machinery and Equipment	19,8%		Americas	12,2%
			Chemicals	4,2%		Oceania	1,3%
			Construction	16,7%		Antarctica	0,0%
			Automotive	4,9%		Not Allocated	0,4%
		Tertiary	Government (direct)	3,2%			

M&E Sector (Forecast)	2023 (Initial)	2023 (Revised)
Plastics	4,0%	2,8%
Basic Iron and Steel	0,3%	-15,0%
Non Ferrous	-1,5%	-5,0%
Structural Metal	-4,0%	4,9%
Fabricated Metal	-3,0%	-7,3%
General Machanery	2,0%	-14,4%
Special Purpose Machiney	2,0%	-0,1%
Household appliances	-5,0%	-0,8%
Electrical Machinery	-10,0%	-11,4%
Parts and Accessories (MV)	-3,1%	2,9%
Transport Equipment	-8,3%	2,0%
Total	-2,3%	-5,3%

- The respondents to the survey indicated production declines as much as 34.2% (weighted) as a result of the impact of load shedding
- However, factoring in the results from this survey, the forecast for the 2023 year deteriorates to – 5.3% for the 2023 (a deterioration from the -2.2% originally calculated at the beginning of the year)

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Conclusion

- Global economic growth has been downgraded considerably presenting a less supportive economic environment
- Inflation is expected to remain stubbornly high suggesting higher interest rates for longer
- The composition of the export basket, particularly its gearing to the Africa continent presents some opportunities (ACFTA), however, fiscal vulnerabilities are presenting strongly (especially on the back of higher finance costs) which will affect demand from this market
- Domestically, the energy crisis presents the most significant binding constraint for the metals and engineering sector, and also the industries to which it supplies. This is expected to remain the case in the medium term framework
- Companies are investing into alternative energy sources:
  - Trade off between sacrificing scare capital to meet an immediate survival need
  - Generators provide the most practical electricity alternative given the baseload demand, however, this is resulting in sharp increase in operating costs, which is particularly problematic in an environment of constrained economic activity.

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Setting the Scene

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Steel and Engineering Industries Federation of Southern Africa

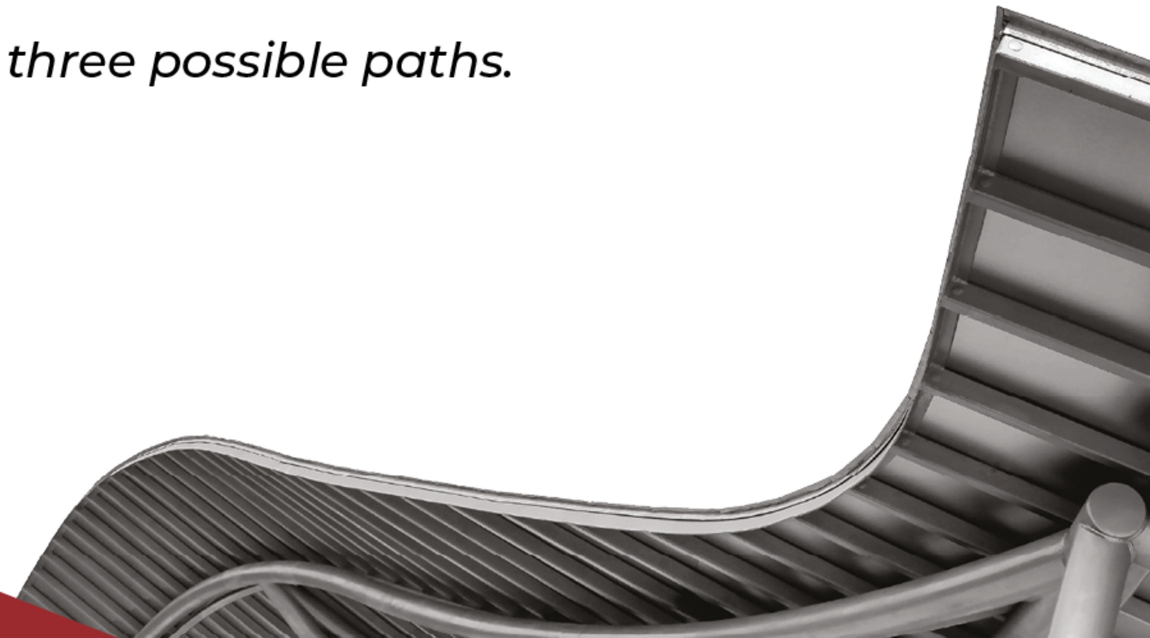
80 Years OF SERVICE 1943 - 2023

Mervyn Naidoo: Group Chief Executive Officer
ACTOM (Pty) Ltd

Lessons from Dinokeng

How can we address our critical challenges before they become time bombs that destroy our achievements?

– *This question can be answered in three possible paths.*



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Metal Industries Collective Bargaining Summit

LESSONS FROM DINOKENG

Presented by Mervyn Naidoo

24 May 2023

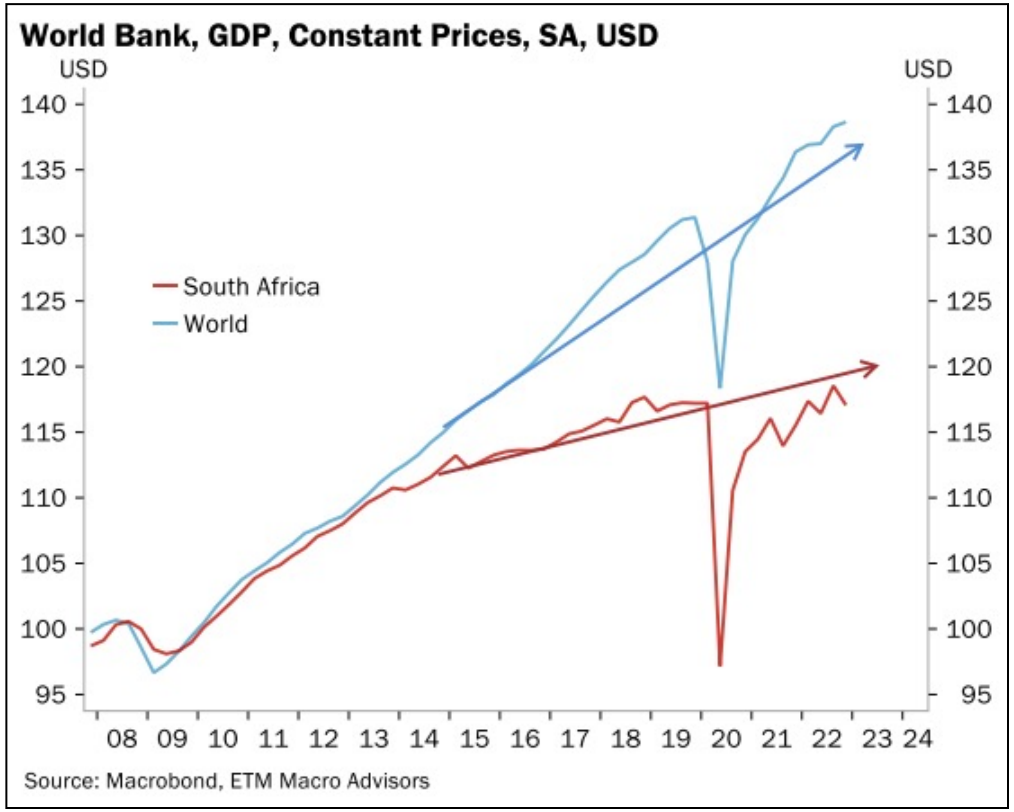
CONTENT

1. Introduction
2. Key global macro issues
3. South Africa – macro issues
4. Dinokeng scenarios
5. Strategic way forward

Key Global Macro Issues

1. COVID-19
2. Ukraine war
3. Extreme market volatility, unpredictability
4. Supply chain turmoil
5. Disruptors
    - Renewables
    - Digital revolution
    - Decarbonisation
6. Global inflation, recession risks
7. Water and food security
8. Inequality

SA MACRO MATTERS



IMF Forecasts (%)

	2023	2024
India	5,9 (6,1)	6,3
China	5,2 (5,2)	4,5
ASEAN	4,5 (5,3)	4,6
Emerging Economies	3,9 (4,0)	4,2
Egypt	3,7	5,0
Sub-saharan Africa	3,6 (3,8)	4,2
Nigeria	3,2 (3,2)	3,0
World	**2,8 (2,9)**	**3,0**
Turkey	2,7	3,6
Mexico	1,8 (1,7)	1,6
US	1,6 (1,4)	1,1
Japan	1,3 (1,8)	1,0
Advanced Economies	1,3 (1,2)	1,4
Columbia	1,0	1,9
Brazil	0,9 (1,2)	1,5
Eurozone	0,8 (0,7)	1,4
Russia	0,7 (0,3)	1,3
Argentina	0,2	2,0
South Africa	**0,1 (1,2)**	**1,8**
United Kingdom	-0,3 (-0,6)	1,0
Chile	-1,0	1,9

Source: IMF, Apr23 (Jan23)

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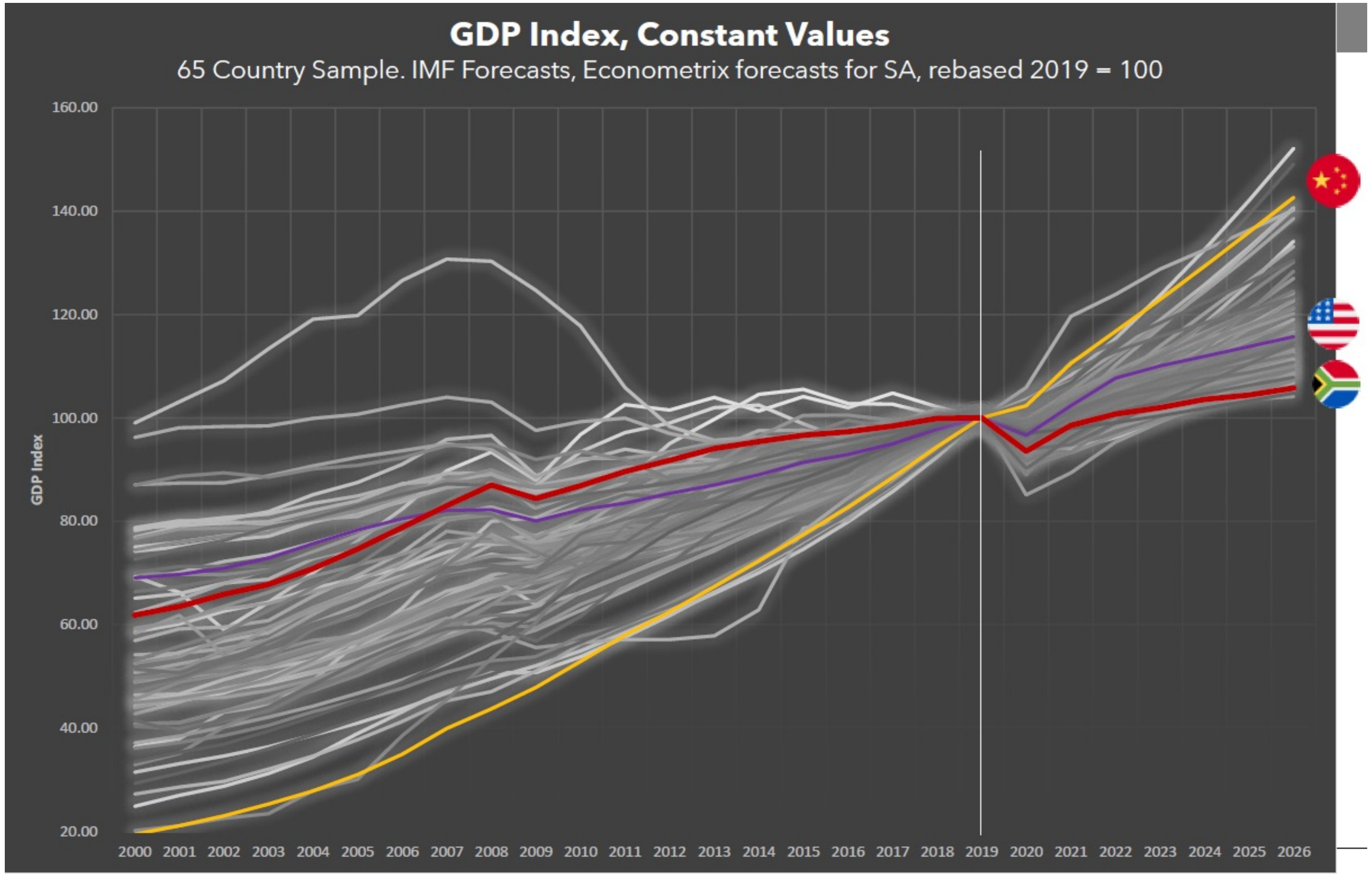
GDP TRACKING – 65 COUNTRIES



DE-INDUSTRIALISATION OF THE SA ECONOMY

SOCIAL CRISIS

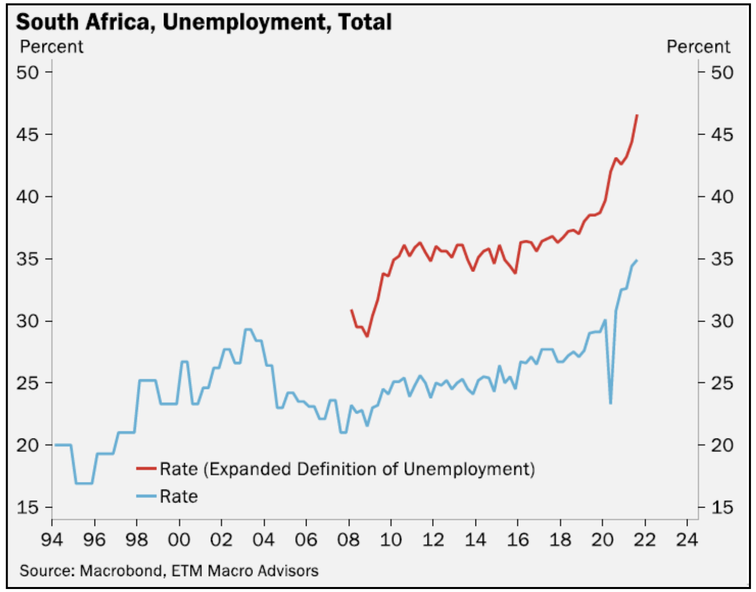
WORLD ECONOMIC FORUM

Uncertainty Clouds the Surface

Across many countries, the pandemic has made entrenched labor trends worse. It has also altered job market conditions.

South Africa is projected to see the highest jobless rate globally. As the most industrialized nation on the continent, unemployment is estimated to hit 35.6% in 2023. Together, slow economic growth and stringent labor laws have prevented firms from hiring workers. Over the last two decades, unemployment has hovered around 20%.

Country / Region	2023 Unemployment Rate(Projected)
South Africa	35.6%
Sudan	30.6%
West Bank and Gaza	25.0%
Georgia	19.5%
Bosnia and Herzegovina	17.2%



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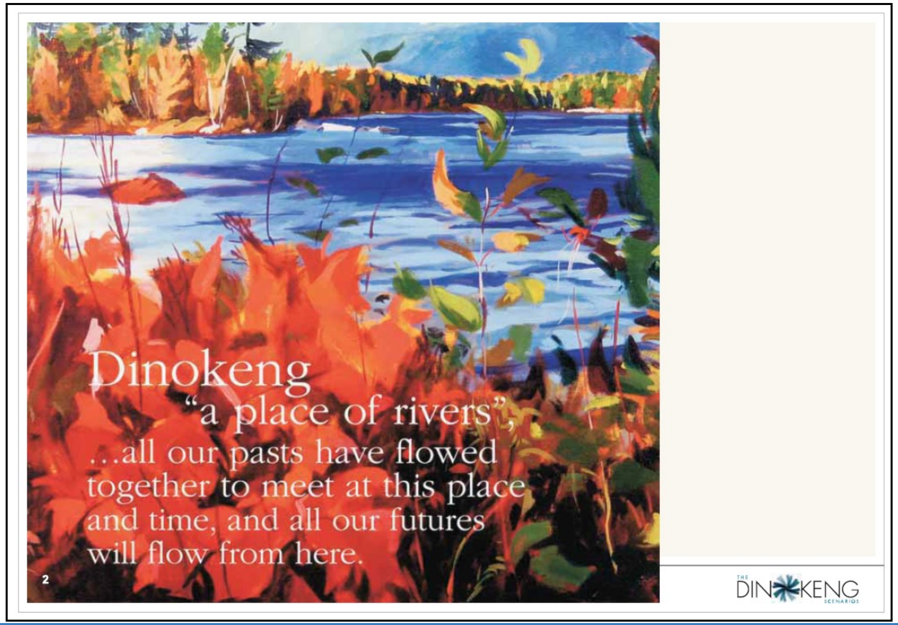
DINOKENG SCENARIOS – DONE IN 2009



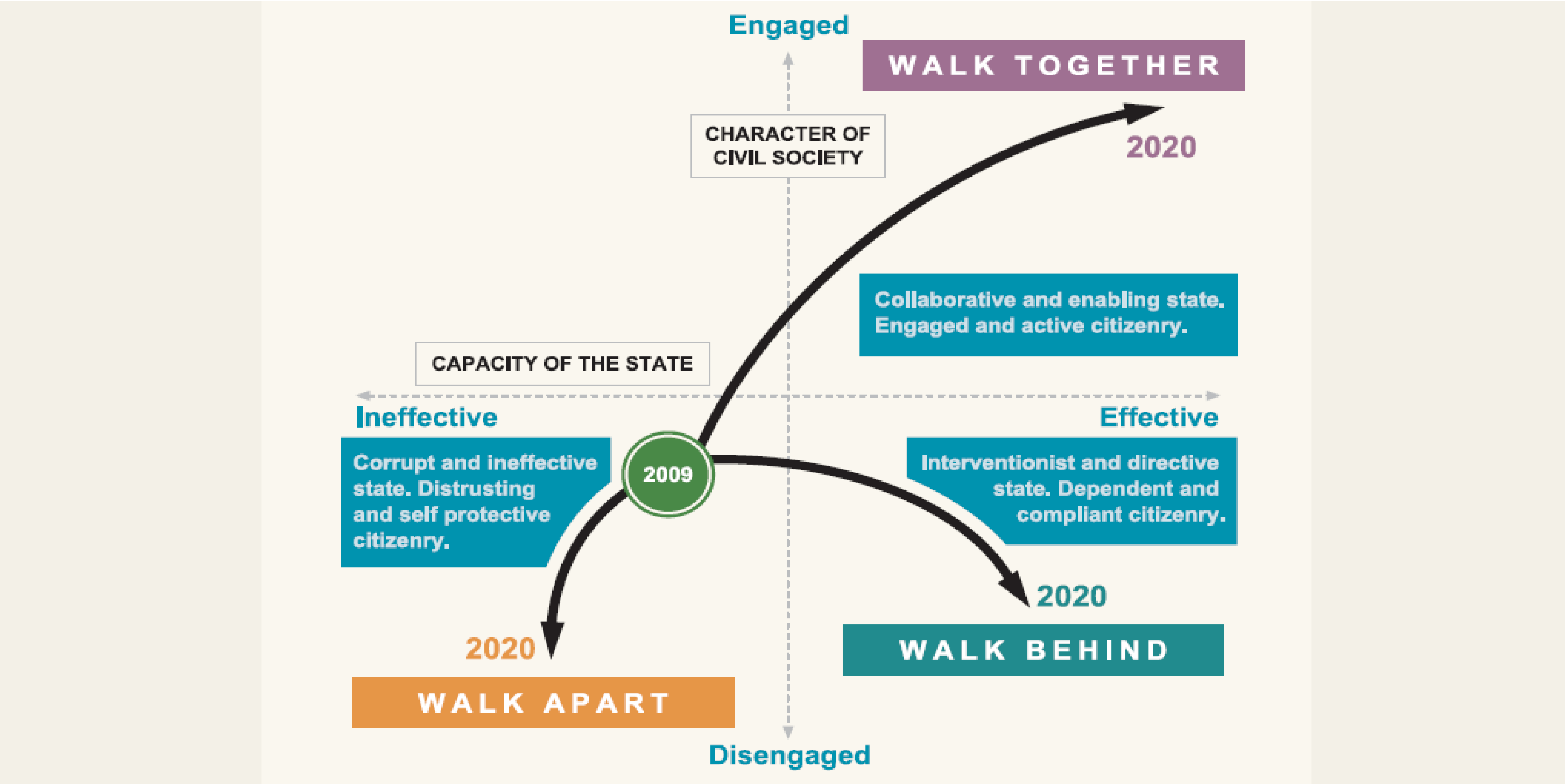
WHERE TO FROM HERE?

2009

How can we address our
critical challenges
before they become time bombs
that destroy our achievements?

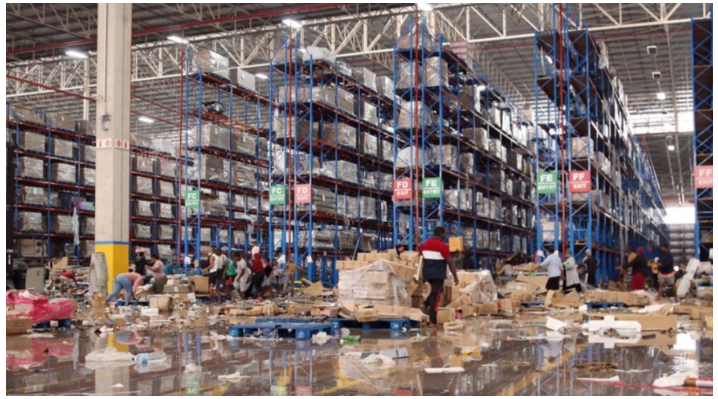
This question can be answered
in three possible paths.

THE COMPARATIVE PATHS OF THE THREE SCENARIOS



THE DINOKENG SCENARIOS

2021



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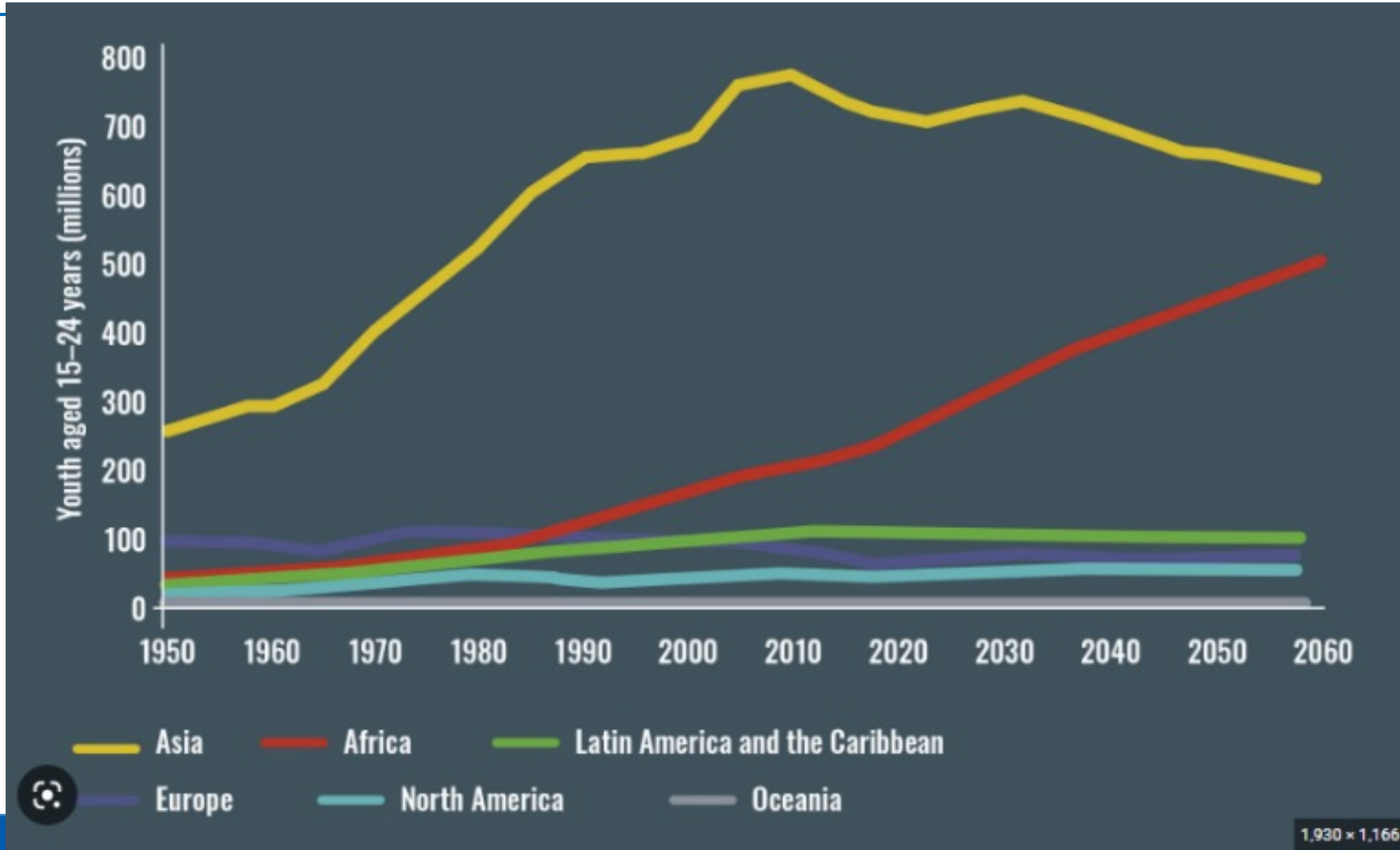
STRATEGIC WAY FORWARD

STRATEGIC WAY FORWARD



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CLOSING COMMENTS

What can each one of us do – in our homes, communities and workplaces – to help build a future that lives up to the promise of 1994?

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Tea, coffee and comfort break

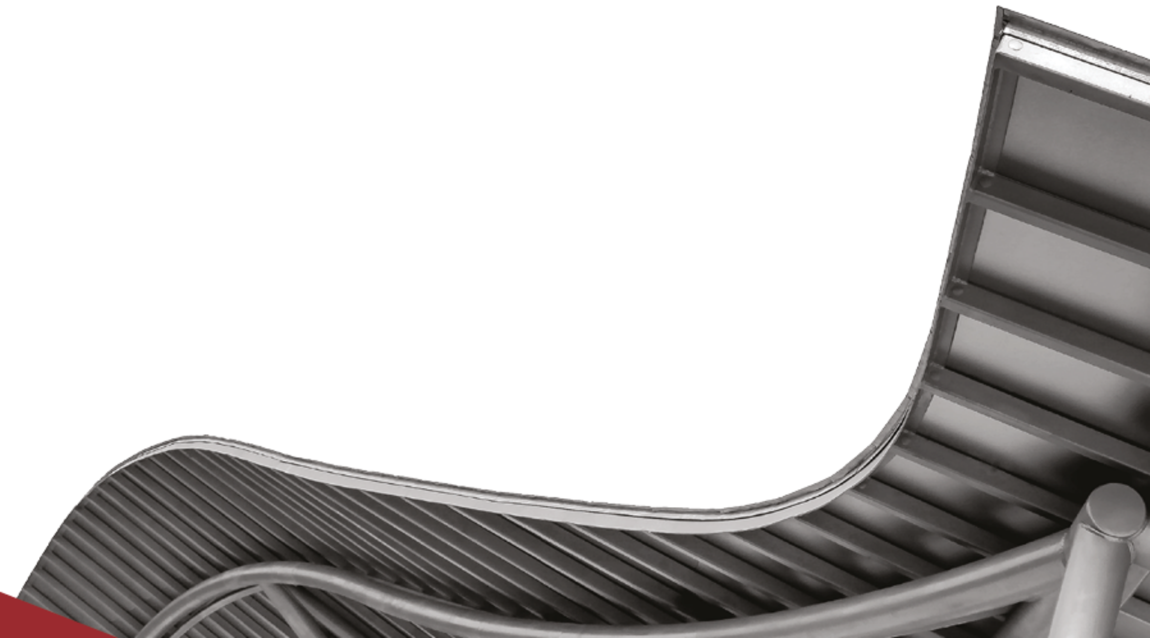
SEIFSA
Steel and Engineering Industries Federation of Southern Africa

80 Years OF SERVICE 1943 - 2023

Gideon Du Plessis: General Secretary Solidarity

Opportunity for unions to re-emerge as a united force?

- *Or, continue to pose a serious threat to whatever business and government tries to achieve.*



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SOLIDARITEIT
SOLIDARITY

Opportunity for unions to re-emerge as a united force. Or, continue to pose a serious threat to whatever business and government tries to achieve

Gideon du Plessis 24 May 2023

01 Case Study: Mining Sector

Adversarial to Cooperation

- Tri-partite structure and Future Forums
- Union rivalry & Employer rivalry
- Collapse of centralized collective bargaining
- Economic realities
- Health and Safety & Long-term agreements = game changer
- Union CB alliances & Social Compact for mining

02 Recipe: Inter-union solidarity

Essential Ingredients

- **Healthy union competition**
- **No room for individual agendas**
- **Have the interest of M&I workers at heart**
- **Attendance, participation and preparation**
- **Leadership continuity & internal alignment**
- **Common objectives & Ethical leadership**

03

Collective Bargaining (CB) - Model for Cooperation

ILO CB Philosophy

- CB should focus mainly on wage increases
- CB is the solution for a problem - not the problem
- Wage settlements improve labour relations
- Instrument to address inequality
- Agreement should benefit both sides
- CB should be free from populism

International
Labour
Organization

CB and sound labour relations

- **Embrace Code of Good Practice: CB**
- **Simplify the CB process**
- **Collective agreement compliance**
- **Long-term agreements**
- **Utilize time in-between negotiations**
- **Interest-based-bargaining model**

04 Cooperation between Social Partners

Building Blocks

- Advance tripartism and better utilisation of current forums
- Socio-economic realities – confront obstacles to economic growth
- Worker empowerment – financially and decision-making
- Collective focus areas: Industry 4.0, JT, Energy-crisis
- Social Compact for M&I sector
- Control what we can control

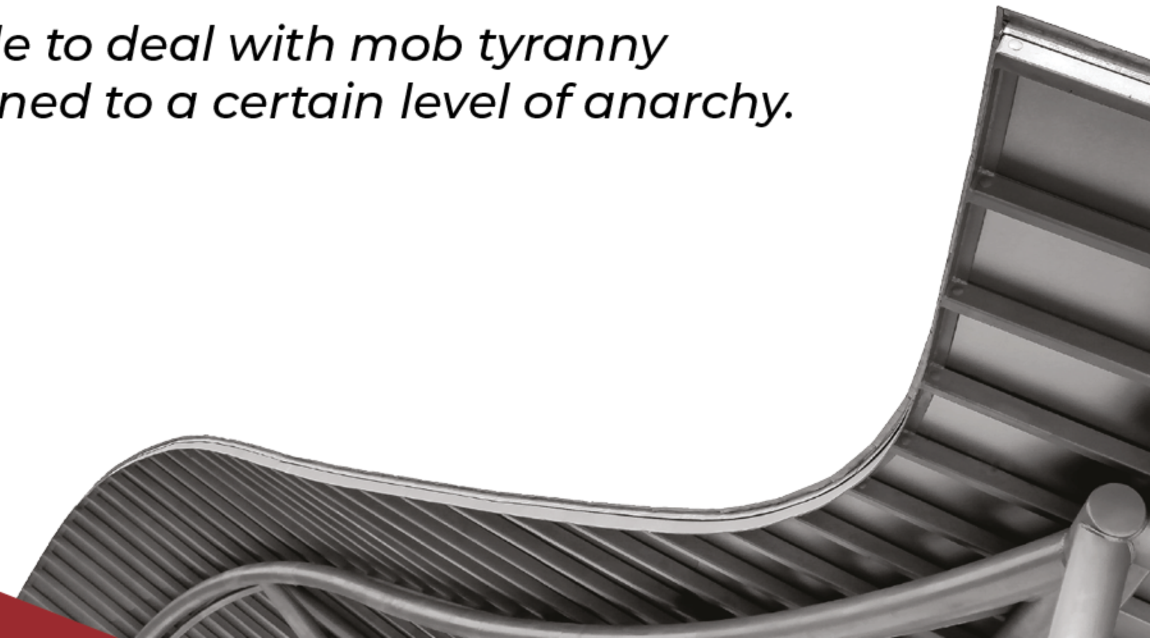
SOLIDARITEIT

SOLIDARITY

Neil Coetzer: Partner
Cowen-Harper-Madikizela Attorneys

A romantic idea of strikes means violence is far too easily tolerated:

- *The Labour Relations Act does little to deal with mob tyranny and the Labour Court seems resigned to a certain level of anarchy.*



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A romantic idea of strikes means violence is far too easily tolerated

Neil Coetzer
Head: Employment, Cowan-Harper-Madikizela Inc.

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Introduction

"[4] … Montecasino is a casino and entertainment complex situated in the Fourways area and which is owned by the applicant. The individual respondents were engaged in a protected strike called in support of a wage dispute between the applicant and the first respondent (the union). The applicant and the union had concluded a picketing agreement, which spelled out in some detail the manner in which the second to further respondents (the individual respondents) would exercise their right to picket in support of the strike. Regrettably, the picketing that occurred was anything but peaceful…"

Introduction

"… the applicant averred that the individual respondents were acting in breach of the picketing agreement by engaging in a variety of criminal acts, including assault, theft, malicious damage to property, and blocking access to and egress from the applicant's premises. The conduct … includes the emptying of rubbish bins onto the road outside Montecasino, burning tyres on the road, blocking the road with 20 litre water bottles, throwing packets of broken glass onto the road, throwing bricks at members of the SAPS, damaging vehicles, dragging passengers from vehicles and assaulting them, rolling concrete dustbins into Montecasino Boulevard, damaging patron's vehicles, and assaulting persons in the vicinity of Montecasino…"

Introduction

"…The applicant's attempts to resolve the issue of strike related violence by agreement with the first respondent failed - an undertaking given by the first respondent at the applicant's request proved to be worthless. Ultimately, intervention by the SAPS was necessary, but even this did not deter the individual respondents…"

Tsogo Sun Casinos (Pty) Ltd t/a Montecasino v Future of SA Workers Union & Others (2012) 33 *ILJ* 998 (LC)

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The question

- There is nothing romantic about violent strikes.

- They are unlawful, traumatic for everyone involved, deeply concerning for our labour relations and a threat to the rule of law and our democracy.

- Unfortunately, it is not uncommon. Have we become numb to workplace violence and intimidation? Why have we allowed this situation to persist as long as it has?

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Some context

- Violence during strikes is not new in South Africa.
- We have a complicated history of violence, also in industrial relations, from Rand Rebellion to Marikana.
- Constitutional rights to strike, fair labour practices and peaceful protest form the backbone of the LRA – mostly lip service paid to these ideals.

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Some more context

- LRA brought many protections for Unions and their officials, office bearers, members and shop stewards.

- Unions have been emboldened by the LRA's protections.

- The Labour Court has done a reasonably good job of trying to keep errant Unions compliant with the LRA. It is however constrained by the LRA.

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The LRA

- In 2011 Halton Cheadle, Peter le Roux and Clive Thompson wrote (Business Day, 15 Nov 2011):

'Violence in private sector labour relations has also reached new post-1994 heights. Here, too, there is a need to introduce procedural obligations that go beyond pro-forma picketing rules. And a case can be made for the right to industrial action to be open to suspension by the Labour Court if that action is accompanied by egregious conduct.'

- LRA has been amended several times since 1996. Little emphasis placed on addressing strike violence.

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The LRA

- By 2012 the LC had flirted with the idea of becoming an activist Court to address the problem.

> *"This court will always intervene to protect both the right to strike, and the right to peaceful picketing. This is an integral part of the court's mandate, conferred by the Constitution and the LRA. But the exercise of the right to strike is sullied and ultimately eclipsed when those who purport to exercise it engage in acts of gratuitous violence in order to achieve their ends. When the tyranny of the mob displaces the peaceful exercise of economic pressure as the means to the end of the resolution of the labour dispute, one must question whether a strike continues to serve its purpose and thus whether it continues to enjoy protected status."*

The LRA

- This debate was met with excitement in the labour law community.

- However, implicit in the suggestion by the LC was that for a strike to lose its protected status the violence would have to be of such a nature as to render the strike dysfunctional i.e. egregious or gratuitous.

- The flip side of this coin - LC appears to have accepted that some level of violence should not only be expected, but accepted. This is problematic.

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The LRA

- Prof Alan Rycroft commented as follows:-

"Practical difficulties would clearly arise: how much violence or misconduct would have to have occurred before the court would intervene? Extreme cases would be easily dealt with, but cases in which there has been some violence leading to attempts by the union to intervene, would be more difficult. The court in addressing these dilemmas, I suggest, would have to ask this question: <u>Has misconduct taken place to an extent that the strike no longer promotes functional collective bargaining, and is therefore no longer deserving of its protected status</u>? In answering this question, the court would have to weigh the levels of violence and efforts by the union concerned to curb it."

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The LRA

- On 19 December 2018 the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing was published.

- The Code is soft-law, intended to provide practical guidance to those who wish to engage in collective bargaining or who seek to resolve disputes related to matters of mutual interest by way of industrial action, as a last resort.

- Code is the product of engagement at NEDLAC, and following the conclusion of an Accord on Collective Bargaining and Industrial Action by collectives of business, labour and government.

The LRA

- The Code :

"(1) Violence during strikes and lockouts requires serious measures to prevent violence and induce a behaviour change in the way employees, employers and the police and private security, engage with each other during a strike or a lockout.

(2) …

(3) Prolonged and violent strikes have a serious detrimental effect on the strikers, the families of the strikers, the small businesses that provide services in the community to those strikers, the employer, the economy and community. Serious measures are needed to induce a behaviour change in the way that trade unions and employers and employers' organisations engage with each other in the pre-negotiation, negotiation and industrial action phases of collective bargaining."

The LRA

- On 1 January 2019 the LRA was amended (again).

- Section 69 of the LRA was amended to require that picketing rules exist before any picket takes place.

- Also permits the LC to suspend a picket for non-compliance with the picketing rules, or to vary those rules.

- Sections 150A, B, C & D introduced to cater for advisory arbitration in the public interest.

The LRA

- Just before these amendments came into effect, Labour Court dealt with *Dis-Chem Pharmacies Ltd v Malema & Others* (2019) 40 *ILJ* 855 (LC).

"It has become an almost commonplace occurrence that where there is a protected strike, violence and unlawful behaviour inevitably follow. It is almost as if striking employees believe this is how things should be done. One only has to spend a week in the urgent court in this court to appreciate the gravity of the problem. A significant portion of the urgent roll is devoted to interdicting violence and unlawful behaviour during strikes. The situation perpetuates because it seems that there is very little consequence to transgressors, despite picketing rules and interdicts by this court being issued…"

The LRA

- The LC indicated that the LRA requires pickets to be 'for the purposes of peacefully protesting'. This has important public policy considerations.

- LC referred to *Verulam Sawmills (Pty) Ltd v AMCU & others* where it had previously said the following about picketing rules:

> *"Not only are picketing rules there to attempt to ensure the safety and security of persons and the employer's workplace, but if they are not obeyed and violence ensues resulting in non-strikers also withholding their labour, the strikers gain an <u>illegitimate advantage in the power play of industrial action, placing illegitimate pressure on employers to settle</u>."*

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The LRA

- This is the nub of the problem. The LRA provides little to discourage Unions from engaging in violence.

- Violence impacts directly on the wage bargain ultimately struck. More violence = better settlement. A form of economic duress.

- The ineptitude of the SAPS has exacerbated the problem.

- Employers would rather concede to irrational demands than risk lives and property. Only employers with deep pockets and elaborate contingency plans can absorb a violent strike.

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Where to from here?

- The resort to violence is indefensible in modern labour relations, in a democratic society founded on the rule of law.

- The Constitution guarantees only a right to picket peacefully. Self-help is the antithesis of the rule of law, and the right to fair labour practices cuts both ways.

- Nevertheless, the problem is unlikely to go away or even be ameliorated without some form of legislative intervention.

- We should not be naïve – there is no political will to deal with this issue. Consider the labour broking issue as a contrast.

Proposals on reform

- Violence of any form should not be permitted during a strike or any conduct in furtherance of a strike.
- Any violence should immediately lead to the suspension of a strike, upon application to LC by an employer.
- Even though there is an historical significance to the right to strike, there is nothing magical about it.
- No reason why right to strike should trump rights to life, property, freedom and security of the person.

Proposals on reform

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- A form of strict liability for Unions which is triggered when strikes turn violent. Once triggered, Unions would become liable for fines.

- Too often Unions wash their hands of the violence, claim ignorance or blame ‘rogue elements’ for the chaos.

- The liability would fall away where a Union is able to show a justifiable reason for not imposing the fine i.e. assisting the employer in identifying or investigating the violence.

Proposals on reform

- Well-known rule in labour dispute resolution that where a relationship exists between an employer and a Union, costs orders should not be made.

- Rule has led to abuse, emboldening Unions to act unlawfully safe in the knowledge that any approach to the LC will be paid for by the employer.

- Time to revisit this rule.

- Unions who don’t abide by the rules should be saddled with costs orders, regardless of the existence of relationship.

Proposals on reform

- Proposals are not 'union bashing' or an attack on the right to strike.

- Holding people or institutions accountable for their unlawful actions is something that should be encouraged and promoted in our society.

- Important to recognise that the violence occurs in the context of what is an employment relationship, in which employees owe a duty of good faith and is based on trust.

- Unions should not be allowed to escape censure by the courts and regulation from the legislature simply because the right to strike is constitutionally protected.

Proposals on reform

- In 2011 the SCA, dealing with a protest march that had descended into anarchy in *SA Transport & Allied Workers Union v Garvis & others* (2011) 32 *ILJ* 2426 (SCA), remarked that:

> *"In the past, the majority of the population was subjected to the tyranny of the state. We cannot now be subjected to the tyranny of the mob."*

- The fact that the mob has assembled at the workplace does not confer additional protections or special status on it.

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Parting words

- The LRA, in its current form, does little to deal effectively with the tyranny of the mob.

- Time to leave behind the ideology and romantic ideas that underpinned the strike provisions of the act and deal decisively with violent strikes and those who engage in them.

Panel Discussion

Michael Avery: Programme Facilitator

Lucio Trentini

Neil Coetzer

Gideon Du Plessis

Mervyn Naidoo

"WILL LABOUR AND BUSINESS WORK CO-OPERATIVELY TOGETHER IN SOUTH AFRICA'S BEST INTEREST?"

PANELISTS

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Lunch break

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80 Years OF SERVICE
1943 - 2023

Afzul Soobedaar: Director:
Perispec Consulting, Former National Senior Commissioner: Collective Bargaining (CCMA)

Is the current form of central wage bargaining still relevant in today's new ownership structure?

- *Or, is it time to ditch central wage bargaining?*

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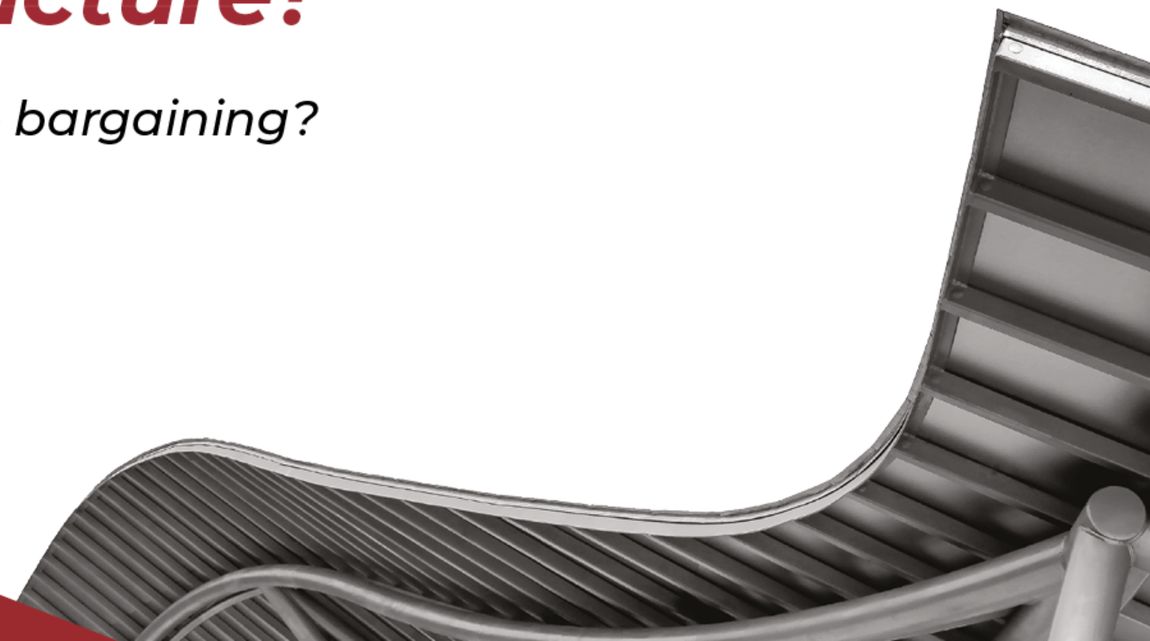

Steven Friedman: Research Professor
Humanities Faculty, University of Johannesburg

SA's labour relations system has dismally failed to address the needs of the poor

- *SA economic reconstruction and recovery plan is a mess – Is it time to throw the baby out with the bathwater?*

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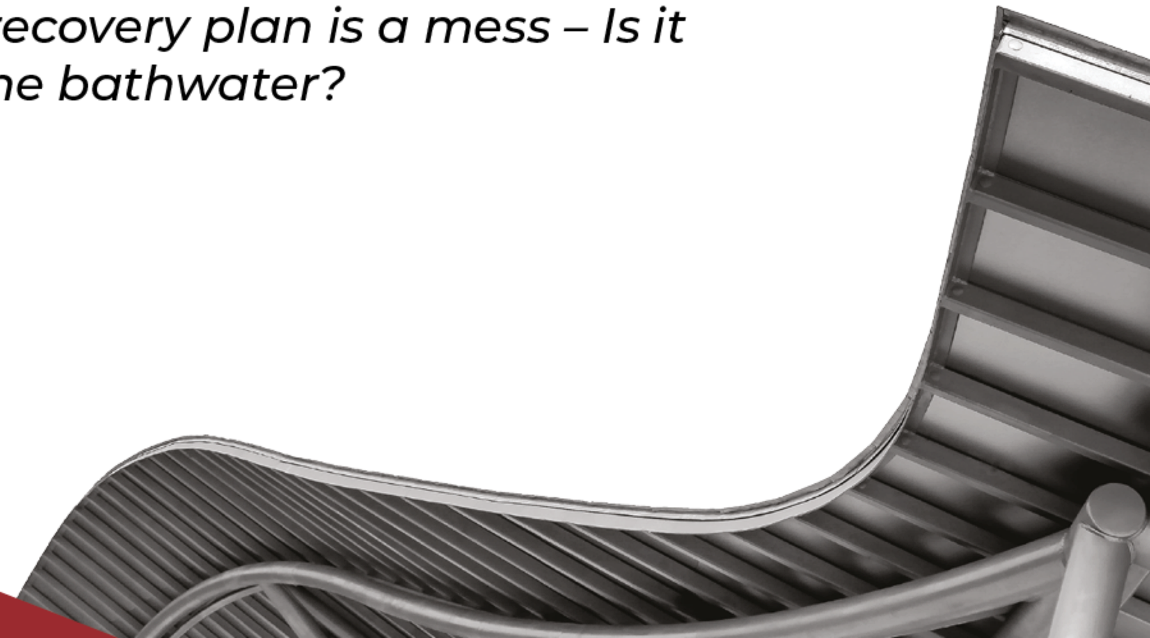


Panel Discussion

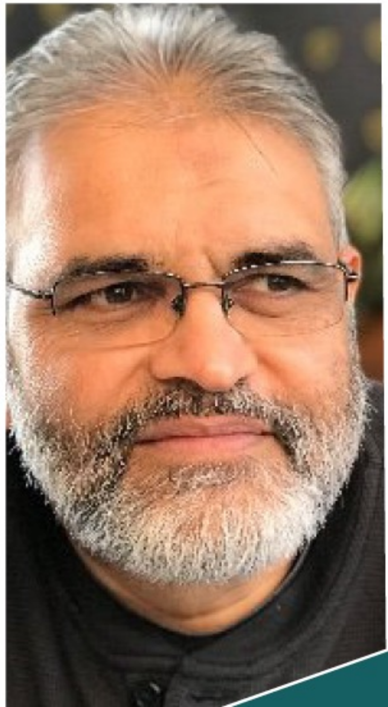
Michael Avery: Programme Facilitator

Elias Monage

Prof. Halton Cheadle

Steven Friedman

Afzul Soobedaar



"DO WE NEED AN ECONOMIC CODESA A REIMAGINING OF THE SYSTEM OF INDUSTRIAL RELATIONS, A NEW LABOUR RELATIONS DEAL?"

PANELISTS

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Tafadzwa Chibanguza: Chief Operating Officer, SEIFSA

Wrap-up for the day, reflections, key takeaways and closure

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Thank you for joining us today,

See you all tomorrow.

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