

Extortion and Violence at Economic Sites

Guideline for Business

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1. Background

BLSA acknowledged the threat of Extortion to economic growth. BLSA thus supports the National Priority Committee for Extortion and Violence at Economic Sites. BLSA identified the need for a Guideline for Business with input from the referred Committee and Business.

2. Objective of Guideline

The objective of the Guideline is to put measures in place to

- prevent extortion or violence; and
- manage an instance of extortion or violence while occurring

through:

- a) appropriate compliance;
- b) site preparedness;
- c) early detection;
- d) gathering of the required information;
- e) immediate, effective reporting;
- f) protection of evidence;
- g) collaboration with all law enforcement activities.

3. Definition of Extortion

Extortion is the act of extracting something illegally, generally through force. Extortion requires two elements:

- A demand for benefit (money, work, contract, etc.), failing which
- A clear threat to inflict damage to property or reputation or bodily harm in any manner will be carried out.

The threat

- must be serious enough to place a reasonable person in fear,
- is not required to be carried out, and
- may be received by any means of communication (in person, by telephone, letter or email).

The benefit:

- is not required to be realised,
- may be for the benefit of someone else than the requester.

The following examples are not extortion:

- If damage or harm is inflicted without any demand for benefit;

- If a demand is made, but no threat is explicitly communicated even though a group of people may be present; and
- If both the demand and threat is present but it is not from the same person or group of persons.

4. Preparation

Extortionists often abuse legal references to have some credibility to negotiate. Business must ensure that these abused legal requirements are complied with, so that the possibility of a legitimate demand, is negated. Even the slightest receptiveness towards negotiation (e.g. allowing the uninvited visitor onto the premises) with the extortionist creates the expectation that the goal of a reward may be reached. The goal of an authentic extortionist is the reward and not to execute the threat. If the extortionist realises that no legitimate demand exists, the threat may be abandoned as ongoing activity is futile.

4.1 Preferential Procurement

The Preferential Procurement Policy Framework (Act No 5 of 2000) and Preferential Procurement Regulations, 2001 is often referred to as “the 30% rule”. This legal framework imposes a 30% subcontracting requirement to the benefit of SMMEs owned by previously disadvantaged persons, *but* is only applicable where:

- the client is an organ of State,
- the contract value is more than R30 million,
- the contract allocation is through an open tender;
- the procurement arrangement uplifts the community;
- the SMME complies with all tender rules and regulations; and
- such a procurement is feasible.

Thus, the “30% rule” is not applicable if the procuring body is a private business. It is advised that businesses that submits a tender to an Organ of State, verify that the legal framework is adhered to and keep such verification at hand. It may further be helpful to clearly state on the premises that either Preferential Procurement has been complied with or that it is not applicable as the client is a private business.

4.2 Local contracting

Communities expect to benefit from work carried out in their area. Thus, although a strict legal requirement is not enforceable, businesses are advised to attempt creating opportunities for locals. Extortionists often allege that they represent the local community. If the business engages with the community before and during execution of the work, these grounds for a demand is negated.

The Expanded Public Works Program (EPWP) is a useful framework to engage with the local community. This nationwide program of the Department of Labour with all stakeholders, aims to provide poverty and income relief to unemployed South Africans through temporary work.

The program;

- is normally run from the office of the Speaker of the municipality,
- is locally engaged through the ward councillor,
- is hosted on the Employment Services of South Africa (ESSA) portal of the Department of Labour,
- provides for the registration and profiling of individuals and companies,
- verifies competencies, references and home addresses,



- keep a record of employment and quality,
- rotates work through eligible candidates, and
- provide for skills development.

4.3 Useful business rules

Extortionists are sometimes not informed regarding the rules of business. It sometimes helps to explain that:

- personnel on site cannot make decisions regarding the allocation of work,
- it is illegal to sub-contract without following the correct procedure which includes a fair bidding and tender process, and
- it can lead to the tender of the main contractor be cancelled, then the work opportunity is lost for all.

5. On site

Ensure that the following is in place:

- a safe area for employees on site,
- an alternative exit for employees,
- recording equipment – CCTV preferred, alternatively a mobile camera with a dedicated operator, and
- primary and secondary communication options.

Be prepared to meticulously record the following:

- Date, time and address of the incident,
- Name and physical appearance of all apparent leaders,
- Organisation represented, if any,
- Any contact information provided,
- The demands made,
- The threats made, and
- The estimated severity of the damage that can be inflicted.

Record any interaction initiated from an external party. If any disruption is detected:

- lock gates where applicable,
- ensure that the video recording is started and that any conversation through the site boundary is clearly recorded,
- inform the security manager,
- log the incident on the E2 portal: <https://e2.bac.org.za>. Click on “Information sharing” and “Report Extortions”,
- inform the SAPS (this may be done through the security company, even more efficient if it is participating in E2),
- if work cannot continue, shut down and lock all equipment and buildings,
- DO NOT SPEAK TO THE MEDIA or publish on social media,
- refrain from showing any aggression,
- keep the conversation through the site boundary as little as possible,
- monitor the movement of the group, note and report if the actions become dangerous or any damage or harm is indeed inflicted,



- collaborate with Law Enforcement once they are on site,
- if feasible, evacuate personnel through an alternative exit, else wait until the unrest has stopped,
- do not move to or from the site in single vehicles, use a convoy,
- do not allow personnel to return to the site while the unrest continues, and
- keep up defence level until the situation is clearly resolved.

6. The criminal case

Report the incident at *any* police station (community service centre). It is alleged that SAPS members are hesitant to open criminal cases against persons of stature or that the complainant may be victimised. The provision to report at any station regardless of its area of jurisdiction, should address these fears.

Be very clear in the submitted statements regarding every aspect of the incident. The statement is used to decide the crimes to be listed in the charge sheet. Clear statements assist the investigation and later court case.

If the case is duly identified as an extortion case, the docket will be collected by the provincial task team for investigation. Once the case is registered, ensure that the report on the E2 portal is updated. Case numbers are critical to compare information. Collaborate with the investigating officer and ensure that witnesses remain available for the legal proceedings.

Incidents logged on the E2 portal is pursued at monthly meetings between business representatives and the SAPS. If SAPS members are not reacting as expected, refer to https://www.saps.gov.za/services/service_complaints_centre.php for contact details to log a service complaint.

7. Appeal

BLSA appeals to victims to report and follow up on cases as only Law Enforcement have the legal framework to address the crime. Extortion is prioritised in the JCPS Cluster. This Guideline is approved by the National Priority Committee.

8. Acknowledgement

BLSA has consulted with experts in business and the members of the established committees, to draft this guideline.