International Journal of Research in Social Sciences
Vol. 9 Issue 4, April 2019,
ISSN: 2249-2496 Impact Factor: 7.081
Journal Homepage: http://www.ijmra.us, Email: editorijmie@gmail.com
Double-Blind Peer Reviewed Refereed Open Access International Journal - Included in the International Serial Directories Indexed & Listed at: Ulrich's Periodicals Directory ©, U.S.A., Open J-Gate as well as in Cabell's Directories of Publishing Opportunities, U.S.A

LABOUR LAW REFORM FOR EFFECTIVE REGULATION OF THE TRIANGULAR EMPLOYMENT RELATIONSHIPS WITHIN THE PRIVATE SECURITY GUARD SERVICE INDUSTRY IN MALAWI

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Abstract

Malawi still registers inadequate protection amongst vulnerable employed guards within the private security guard service industry largely due to inadequately regulated triangular employment relationships. This paper, using document review analysis method, exposed the regulatory gap and proposed labour law reforms that can fill the gap by providing for adequate and effective regulation of triangular employment relationships in Malawi. The paper revealed the regulatory deficiency, in respect of outsourced employment contract arrangements, which is the unclear or inadequate regulation of the commercial contract entered between the private employment agency and the user firm. The paper proposed labour law reform that introduces user-firm as principal employer and security guard Company as immediate employer, both to have liabilities for the guards. Such law reforms have immediate effect of compelling the Private Security Guard Service Companies to comply with labour laws to avoid losing their business markets. Finally, the paper recommended (reaffirmed ILO recommendation) for Malawi government to ratify and domesticate provisions of the Private Employment Agencies Convention (No. 181) of 1997 into the country national laws as a compliment to the proposed labour law reform.

Key Words: Labour law; Triangular employment relationship; Outsourced services; Private security guard service industry; Employment/commercial contract.

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1. Introduction

Malawi has enough reasons to celebrate for increased job creation as a result of growth of the private security guard service (PSGS) industry. The country, however, has a long way to go to realize the required rights and social protection at work for the employed private security guards. This is because the numerous unfair labour practices (problems) faced by most employed industry security guards remain potential threats towards the realization of the desired country decent work by the year 2030 and beyond. Problems faced by employed security guards in the industry in Malawi and in most other African countries include: non-payment, delayed and/or under-payment of wages, unfair dismissals and non-placement of guard employees on mandatory pension schemes, among others (Makako, 2017; Murunga, 2014; Mariwo, 2008; Ritchie et al., 2007). These similar problems are a result of several causes that range from inadequate enforcement of countries' labour laws to inadequate regulation of the sectoral industry (Gumedze, 2008b). The inadequate regulation of triangular (or multiple) employment relationships is identified as the main cause complicating guards' problems to some extent in Malawi. Triangular employment relationships are commonly used within the PSGS industry as current employment work arrangements. Based on this problem extent, this paper proposed to reform the Malawi country labour laws, particularly the employment Act, to provide for the regulation of the triangular employment relationships.

A number of studies have been conducted on the working conditions in the PSGS industry that have revealed many problems experienced by employed security guards while at work (Ritchie et al., 2007; Mariwo, 2008; Murunga, 2014). For instance, Ritchie et al. (2007) conducted a fact finding study to check labour practices at Group 4 Securicor (G4S) Company Ltd in Malawi, Mozambique, and South Africa and found serious and ongoing violations of labour laws by the security guard company concerning wage payments, overtime and leave issues in addition to the company's harsh day to day behaviour over its employed guards. Mariwo (2008) researched on the working conditions and labour relations in the private security industry in Zimbabwe and found that decent work agenda principles were largely absent in the private security sector. Furthermore, Murunga (2014) found out that low wages and salaries; poor work environment and mistreatment by supervisors; lack of and poor work tools; long working time/hours as casual

guards with limited or no promotions; and long distance covered to workplaces were some of the security guards' faced problems at Secure Force Security Guard Company in Kenya.

There is little progress registered towards addressing the industry faced problems as a result of the unclear regulated involved triangular work arrangements, among other factors. Several efforts have been made to generate empirical evidence, through studies, on the suffering of employed security guards within the PSGS industry. However, the gap still exists because only few of such studies have partly covered issues of multiple employment parties. The issue of triangular employment relationships has been covered in some recent ILO study reports that have debated, discussed and suggested some general and global possible actions to address issues surrounding the non standard employment forms (NSEF), (ILO, 2015a; ILO, 2015b; ILO, 2015c). It must be noted, however, that ILO in these reports discussed and made some general recommendations for member states to act. For example, member states are recommended to ratify some relevant conventions that may regulate the industry such as the Private Employment Agency Convention, 1997 (No. 181) and to domesticate them into their national laws, in addition to developing their relevant regional and national regulatory policies for the NSEFs. ILO continues to urge and help member states to take lead in search for their own country specific and sustainable solutions to address the problems. It is based on such global direction that make the proposed labour reform in this paper more justifiable for the regulation of the inadequately regulated triangular employment relationships in Malawi.

The scarcity of information on researched and documented problems faced by security guards in the PSGS industry and on good practices in managing labour disputes occurring in the private security companies' (PSCs)[1] workplaces is unfortunate. This is because, that is the kind of empirical evidence that ILO and/or any of its member state's policy makers would appear to be requiring if they are to review and support or adopt some proposed labour reform provisions.

In this regard, it was the purpose of this paper to expose the regulatory gap and to propose labour law reforms that can fill the gap by providing for adequate and effective regulation of triangular

[1] Note that the term "Private Security Company" (PSC) shall be used in this paper as a short term to refer to the "Private Security Guard Services Company (PSGSC).

employment relationships in Malawi. The paper attempted to contribute towards knowledge body of literature in support for such proposal by reviewing employment contract provisions in the current Malawi Employment Act (EA), No. 6 of 2000. It also documented various researched and reported problems faced by employed security guards as well as outlined and analyzed some potential good practices experienced and used while handling the industry reported labour disputes. The proposed reform will enable the incorporation of provisional measures, in the national labour laws, with immediate effect of compelling the industry PSCs to comply with the country minimum labour standards while avoid losing their business markets.

The paper is structured as follows: methodology description for labour law reform process follows this introduction section. It outlines the methods used to enact and amend laws in Malawi and thus specifies the method adopted in this paper. The subsequent section is a review of related literature. It first presents growth and development of PSGS industry; triangular employment relationship used within the PSGS industry and regulatory instruments relevant for the regulation of triangular work arrangements, both at international and national level. It also presents labour law reforms which took place in Malawi from 1994-2005. The next section of the paper discusses the regulatory gap and thus, the proposed labour law reform for consideration by the Malawi government. Expected benefits and implications of the proposed labour law reform are also discussed. Lastly, the paper concludes.

2. Methodology for Labour (Law) Reform Process in Malawi

Malawi uses two distinct but similar routes to formulate her country laws. One route is by using the Law Commission which is a country constitutionally established body with mandate to, consult and solicit views from Malawians on an issue to be regulated, draft proposed legislation bill and submit it to cabinet for approval and transmission to parliament for debate and passing into law (Act of parliament). The other route is through the mandated Ministers by Acts of parliament, who can identify gaps in a particular existing legislation to be filled, usually by way of amendments, and consult their relevant stakeholders to agree on certain proposed law amendments. The first route is most appropriate for enactment of new laws or for repealing a legislative Act or for effecting massive law amendments, whereas, the second route is most appropriate for effecting minor amendments and/or formulating subsidiary legislation and

regulations. The two routes are, however, similar because they all depend on an identified and established problem or gap in the law(s) to be filled by way of law reform. By using either of the routes, ILO can be consulted to provide its technical support as well as financial support where necessary.

To work on any labour law reform using the second applicable route, the Minister of labour is required to consult representatives of employees' and employers' organizations who, together with the Ministry officials, discuss and agree on certain proposals to be incorporated into an exiting labour legislation Act. The origin and driver of any proposed labour law reform, is an identified regulatory gap within an existing labour Act. A regulatory gap can be identified and reported through two ways: it can be identified and reported by either of the two employment social partners (employees or employers) or it can be identified and reported by government labour inspectors/officers following challenges encountered in the process of enforcing the law through labour inspections and/or mediation and conciliation processes.

The labour law reform proposed in this paper is a result of the identified regulatory gap by labour inspectors. The regulatory gap is in respect of the inadequately regulated or under-regulated triangular employment relationships within the Malawian Employment Act of 2000. Therefore based on the question of how the Malawian labour laws (the Employment Act), can be effectively reformed to provide for measures with immediate effect of compelling the private security guard service companies to comply with labour laws while avoiding to lose their business markets, the paper adopted the second methodology route to analyse existing labour law provisions, publications and good practices to propose for labour law reforms that would be used to effectively regulate the triangular employment relationships in Malawi.

3. Related Literature

3.1. Private Security Guard Service Industry: Its Growth and Development in Malawi

The term "private security" as new concept in Africa, refers to security services provided to clients by non-state agencies (Kirunda in Gumedze, 2008b). The services have increased tremendously making a developed private security industry with many private security

companies rendering security guard services to most user companies operating in most developed and developing countries, including Malawi.

The proliferation of private security companies in many African countries was driven by a number of similar reasons. For instance, in Uganda, the liberalization of the economy in 1998 led to private property being acquired by individuals and private organizations (Kirunda in Gumedze, 2008b). This resulted in a high rate of crime, thus informing the need for the provision of security for private properties and individuals. In DRC[2], Meike de Goede in Gumedze (2008a) reported that the second reason for the boom in the private security industry is the rapid growth of internationals working for international non-governmental organisations (INGOs), and the multilateral organisations and companies that arrived in the country for the post-conflict transition and reconstruction programmes. On the other hand, in South Africa, like in Uganda, Zimbabwe, Kenya and Mozambigue, private security industry is reported to have grown in response to the need for private security in the absence of adequate protection by state organs following the escalation of crimes (Taljaard in Gumedze, 2008b).

Similarly, in Malawi, the private security industry, like in many other African countries, was underdeveloped between the years of 1964 to 1994. This was because government's security policy had mostly restricted issues of security services to be a responsibility of the state security agents rather than for the private security companies.

However, following the multiparty democracy in 1994, Malawi privatized some of its state functions including security functions. As a result, unemployment rate increased due to redundancies and/or retrenchments. Furthermore, the problem of unemployment was compounded as a result of numerous secondary school leavers who exited their secondary education, in the late 2000s, into the labour market looking for employment, most of whom were the products of the government free primary education introduced in 1994. Associated with the unemployment problem was the growth in crime rates as many jobless individuals flocked into

[2] DRC means Democratic Republic of Congo, one of the African countries that champions the outsourcing of security services to the private security service companies. And by the year 2008, there was a total of 35 to 45 registered private security companies legally operating in DRC and employing close to 25000 employees as reported by Meike de Goede in his paper titled: "Private and Public Security in Post-war Democratic Republic of Congo" edited by Gumedze (2008b: pp. 35-68).

urban areas looking for survival means thereby congesting urban areas, which thus became favourable areas to harbour criminals and commission of crimes.

In addition, several non-state organizations that included both local NGOs and international NGOs were registered and became operational following the liberalization of the country trade markets. In respective, all these socio-economical problems and developments needed the state security that, unfortunately, became inadequate. As a result, the private security sector emerged and has since developed significantly over the past two decades and now it has many private security companies (see table 1) providing a variety of security services and solutions for a broad range of user companies (enterprises) operating in complex environments, where the state security has become inadequate.

In terms of the industry development, one major factor that can be said to have necessitated the development of PSGS industry in Malawi is the adoption of the outsourcing policy for the delivery of institutional required support services that are not necessarily core mandate services of a particular institution. Over the past 11 years, Malawi government has increasingly outsourced to the private sector, activities that do not need to be undertaken by its ministries, departments and agencies (MDAs) including statutory corporations. By 2010 almost every public university in Malawi had finalized their plans to outsource some of their required support services such as catering, cleaning and security services as part of the government policy shift directive. Such policy direction has affected even other government statutory corporations such as the country water boards, power generating and supplying companies, just to mention but a few. With this policy, it is government's intention that by the year 2025, the outsourcing of support services should be applicable to all government MDAs. Furthermore, some of the private sector companies such as the financial institutions (banks inclusive), tobacco companies and others have followed and adopted the public outsourcing policy.

Obviously, the implication of this policy shift with respect to employment has been that of retrenchments and/or redundancy of employees in the institutions' support service departments and decline or suspension of employment of workers to render support staff services. Consequently, there has been tremendous growth of the service outsourcing industry in Malawi

from 2006 to date with many private security guard service companies being established and registered to deliver the outsourced services. This development has been supported by government as the right direction to create and offer employment to most of the country populace that would otherwise have been jobless due to retrenchments/redundancy effects and the decline in employment levels.

There are various ways how user companies benefit by outsourcing their needed security guard services (Iqbal, 2013; Allen, 2003). For example, in the context of Malawian labour laws, the user company benefits by way of cutting down security guards employment costs such as workers' compensation liabilities in cases of guards' injuries while at work; terminal benefits such as severance allowances, gratuities, notices etc; pension scheme contributions; provision of personal protective equipments, among other provided legal costs. This is because all the mentioned liabilities are employers' responsibilities to their employees according to provisions of the country's existing labour laws (Malema, 2017) which in this paper are the PSGSCs (as employers) and not the user companies (as outsourcing companies).

It must be pointed out, however, that the Private security industry is broad. It involves security operators such as the private military security companies rendering military security services and private security guard companies rendering other security guard services of various categories. However, for the purpose of this paper, the private security shall be limited to only those PSGSCs which, according to Gumedze (2008a), do not necessarily require a high level of education, especially for ordinary security guards. These PSGS companies provide employment to many Malawians of the lower society classes.

In Malawi, there are currently 34 registered and legally operating PSGSCs, according to the 2017 updated country business directory[3]. Table 1 shows these registered companies. They exclude many other non registered security guard service companies that are illegally operating in the country but also employing significant number of Malawians.

[3] See the following links for contacts and other details of the Malawi registered security guard service companies. http://www.malawiyp.com/browse-business-directory; http://www.malawiyp.com/category/Security_services/

Table 1 Registered private security guard companies providing security guard services in Malawi

S/N	Name of a Private Security Company	S/N	Name of a Private Security Company
1	Securicor (Malawi) Ltd	18	Kamu Sercurity Services
2	Team Security Co. Ltd	19	Kwacha Guard Alert
3	Safe-tech International (Malawi) Ltd	20	SYG Security Services
4	G4S Security Services (Malawi) Ltd	21	Universal Security
5	Action Guard Services	22	VK Security Services Ltd
6	Chilon Security Services Limited	23	PMJ Security Ltd
7	Eye Guard Security	24	CM Security Services
8	Lloyd Security Services	25	Mass Security Services
9	Security Force Guard Services	26	Faith Security Guard Services
10	Pasimalo Security Services	27	Nyaso Security Services
11	M & C Guard Services	28	St Martin Security Services
12	Buffalo Guards Services	29	Belam Security Guard Services
13	Convenient Security Services	30	Master Guard Services
14	L.S. Security Services	31	UK Security Guard services
15	Droid security systems	32	Rapid Response Security Co. Ltd
16	Viking Security Solutions	33	Safe Guard Security Company
17	KK Guard Services	34	Loma Security Guard Company

Private security guard companies in Malawi, like in many African countries, have become part of the security landscape of the future and hence are, and will be, significant source of employment creation. It is not a disputable fact that the employed labour force contribution by the PSCs in Malawi is significant and can currently stand at over 60,000 employees with G4S[4] Security Services (Malawi) Ltd alone, recruiting a total of 9,723 employees (Ritchie et al., 2007: 6).

The 2013 country national labour force survey conducted by the National Statistical Office reported that a total of 5.5 million people were employed, representing an employment rate of 80 percent with males having a higher employment rate than females at 86 percent and 74 percent respectively (NSO, 2014). The report, further, indicated that 19 % of the employed labour force represented workers from within the service and sales industry/occupation in which security guards are included. The report, however, did not estimate total employment size from the

[4] According to Ritchie et al. (2007), G4S is a British multinational company which is the world's largest security provider operating in more than 100 countries with approximately 470,000 employees with more than 82,000 employees on the African continent where it operates in 18 African nations including Malawi with a total of 9,723 employees by the year 2007.

private security guard services industry alone, the question that needs further research to establish the actual employment size from within the PSGS industry.

In terms of location, most of the established and registered PSCs are located in the country main cities of Lilongwe, Blantyre, Mzuzu and Zomba for obvious reasons of being convenient. In these cities, guards are deployed to work in wealthy and influential clients - banks, embassies and factory owners including homes of individual owners. However, these companies recruit workers who are deployed for work not only in such cities but also in other districts and townships across the country thereby creating so many "invisible workplaces" in which hundreds and hundreds of security guards are deployed working. This is one situation that has resulted into several complications and challenges with regard to protection of the outsourced employment agency employees (see box 1). For instance, there are security guards deployed working at most of the bank premises and at offices of the water boards, Electricity Supply Corporation of Malawi (ESCOM) as well as at some NGOs' offices located in various districts and townships across the country. Most employers (the security guard companies) of these employed security guards are far away from their reach usually located in the cities to the extent that, such employees do not have immediate supervisors to where they would present their immediate challenges being confronted while at work. Ironically, these are the employees whose country regulations seem to be insufficient and inadequate.

3.2. Triangular Employment Relationship within the Private Security Guard Service Industry

Triangular employment relationships have surfaced mainly as a result of the service outsourcing. Outsourced security guard services are provided by PSCs to user firms/companies within the PSGS industry. The provision of outsourced security guard services involves outsourcing employment arrangements and parties[5] in a triangular employment/work relationship. This relationship comprises of the user firm and the employment agency who conclude a commercial contract between them. And the employment agency and the worker who conclude the

[5] Different names are used to denote each of the three parties to the outsourced employment arrangement by different players/users in different parts of the world. For example, in China, Japan and the Republic of Korea, the agency work is known by the term "labour dispatch"; in South Africa, it is "labour brokerage"; and "labour hire" in Namibia (ILO, 2015a: 2).

employment contract between them, thereby defining the employment agency as a common party to the triangular employment/work relationship. This latter contract is the actual employment contract entered into between the employment agency and the worker that has an employment relationship to be regulated by country labour laws.

Thus three parties are involved in the outsourcing employment arrangement. These are the user firm; the employment agency and the worker (the employee). The user firm is a company that outsources or contracts its required services to the employment agency as an independent contractor. It uses services provided by the worker who is an employment agency's employee. In this case, the user firm pays contract fees to the employment agency. This contract entails that the employment agency wins a contract (contract for employment) with which s/he should provide employment opportunities for some job seekers to be employed as workers. The employment agency could also be a company or an individual person who employs the worker to be deployed for work at the premises of the user firm. Whereas, the worker is an employee of the employment agency who is not directly employed by the user firm - company - to which s/he provides his/her services. In this case, the agency pays wages and social benefits to the worker.

The two different contracts which alternatively bind the three parties are all regulated by government. For example, commercial contract which binds User firms and Private security guard service companies is regulated by government using company laws and other country business related laws and policies. Whereas, employment contract which binds Private security guard service companies and employed security guards is regulated by government using labour laws and policies. Figure 1 shows parties within the Private security guard services industry and how they are related.

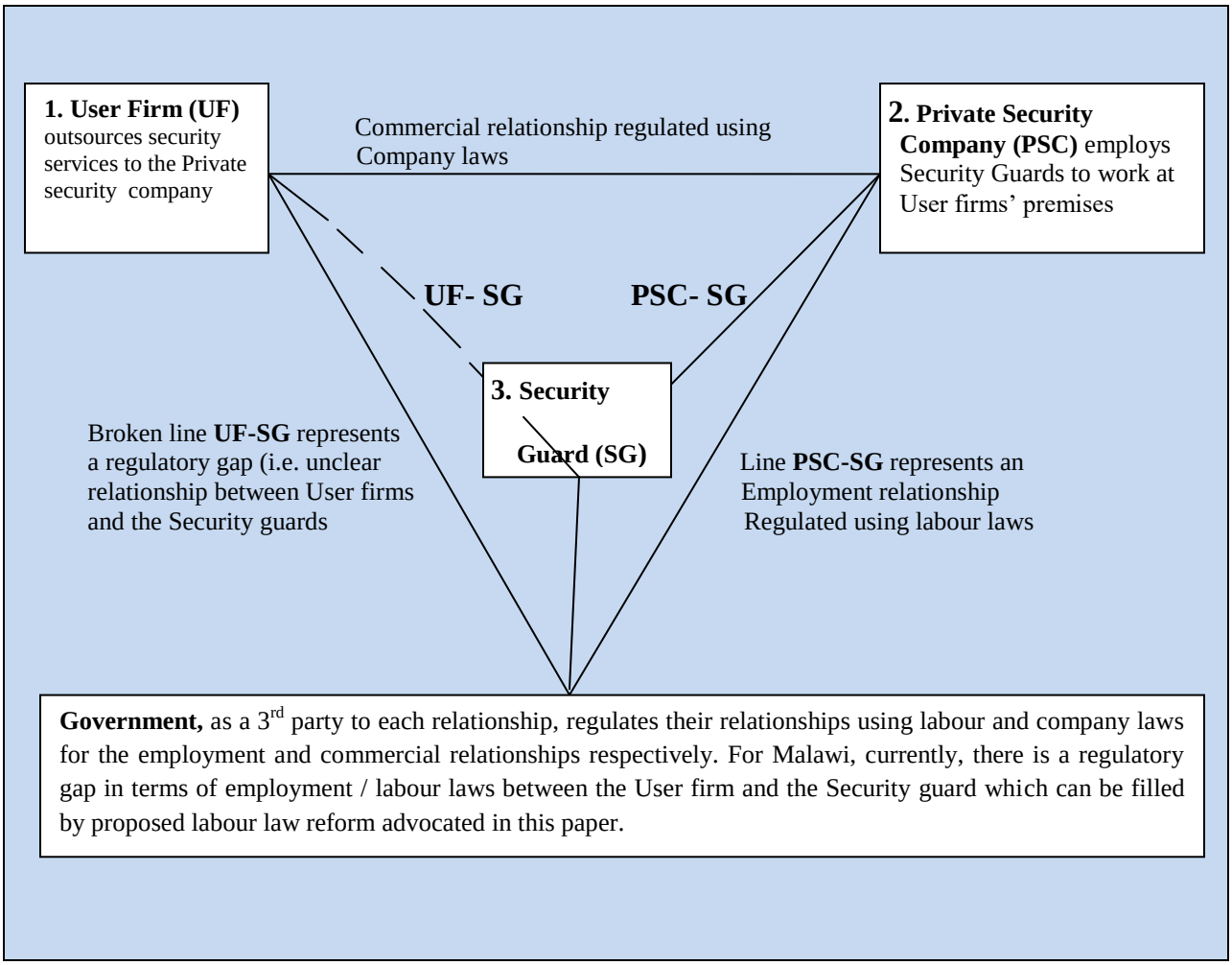

Figure 1 Relationships between three Parties within the Private Security guard Services Industry

Source: *Author's own composition using word home-insert-shapes graphics*

3.3. Regulatory Instruments Relevant for the Triangular Employment Work Arrangements

3.3.1. International Regulation

International regulation of employment refers to the application of ILO instruments such as the conventions, protocols and recommendations that are developed and adopted by ILO to regulate the world of work globally. The following are international instruments relevant for regulating multiple employment parties which include parties in triangular employment relationships.

First, is the Private Employment Agencies Convention (No. 181) of 1997. This convention under article 3 (2) provides that a ratifying "member [state] shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice". Furthermore, article 12 of the same convention provides that:

> a ratifying member state shall determine and allocate, in accordance with national law and practice, the respective responsibilities of [both the] private employment agencies … and of [the] user enterprises in relation to: collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; protection in the field of occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers claims, and maternity protection and benefits, and parental protection and benefits.

Second, is the Private Employment Agencies Recommendation (No. 188) of 1997. This recommendation supplements Convention No. 181 by providing, under recommendation clause 4, that members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices. For instance, clause 5 provides that workers, employed by private employment agencies, should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. Finally, recommendation clause 15 provides that, with due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services should not prevent the user enterprise [company] from hiring an employee of the agency assigned to it as well as not to impose penalties on an employee accepting employment in another enterprise, among others.

Third, is the Employment Relationship Recommendation (No. 198) of 2006 with notable provisions under paragraph one that state, among others, that:

> a member state should formulate and apply a national policy that should at least include measures to combat disguised employment relationships in the context of other relationships that may include the use of other forms of contractual arrangements that hide the true legal status [while] noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides

his or her true legal status as an employee and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they deserve.

From these international regulatory tools, it is clear that at the international level, multiple employment relationships are covered. However, the ILO Private Employment Agencies Convention while covering and defining multiple employment parties in the "triangular" employment relationships, it does not provide measures on how to regulate such multiple employment parties (ILO, 2015a, p. 24). This is one reason why the workers' organizations argue that the convention is insufficient (ILO, 2015a, p. 25) and therefore are of the view to revise the convention to extend its regulatory coverage to triangular employment relationships. Nevertheless, one positive part of this convention is the fact that part V provides for the user firm to take responsibility of ensuring that collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; among others, are accessible to workers employed by the employment agency. Finally, the regulatory guidelines contained in the employment relationship recommendation, once domesticated by a country, are crucial for addressing challenges confronting employees within the triangular employment relationships, the disguised employment relationships.

3.3.2. National Regulation

Each specific country is at "liberty" to ratify ILO instruments and domesticate them within its national laws. This can partly explain why the regulation of triangular employment relationships varies from one country to the other. For instance, as reported in ILO (2015a), some countries have effected their statutory reforms by introducing joint and several liability (shared responsibility) to exist between the user firm and employment agency (the labour supplier) for the employed contract workers (Vietnam, Phillipines, South Africa, Namibia, Chile and Uruguay); by imposing capital requirements on companies intending to operate as labour suppliers (Vietnam and Phillipines) and by introducing contracting measures for the user firm to ensure that employment agencies are in a position to comply with required obligations for their employees (Mexico, South Africa and Singapore). Whereas, others have effected their reforms to treat temporary employment agency workers as employees of both the agency and the user firm in cases where these workers are being used by unlicensed labour suppliers or are used in work activities not allowed for the agency workers (USA, Canada, Korea and Indonesia).

In Malawi, multiple employment relationships are, by implication, generally regulated by the country's pieces of labour legislation currently in force as well as by company laws and policies. Specifically, as indicated in figure 1, all concluded and/or signed commercial contracts are regulated by company laws whereas employment contracts are regulated by labour laws.

The company laws in force include: Businesses Licensing Act of 1961 (Cap. 46:01 - laws of Malawi) and Companies Act of 2013 (Cap. 46:03 - laws of Malawi). These are two pieces of legislation that regulate operations of any registered companies (be it public or private) operating in Malawi. The two pieces of legislation are supplemented by business policies and some other country business related laws. Among other things, companies are required to have registered business names, offices and registered postal addresses within Malawi. In addition, they are required to register their businesses that are authorized businesses by law and not otherwise. The private security guard service business, in relation to Malawian law, is an authorized business that can be registered, licensed, owned and operated by both the Nationals and Foreigners with employment permits.

Whereas for employment contracts, the regulation is by labour legislative Acts[6]. Specifically, terms and conditions of employment including all employment contracts are regulated by the Employment Act, No. 6 of 2000 which is a law to establish, reinforce and regulate minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice.

Fixed term employment contracts (as employment terms), used within the PSGS industry, are therefore regulated by Employment Act, No. 6 of 2000. Section 25 of the Employment Act provides that all types of contracts of employment are regulated by the Act and that they shall be in any one of the following three forms:

1. a contract for an unspecified period of time;
2. a contract for a specified period of time; and/or
3. a contract for a specific task.

[6] The Malawi five parliamentary labour legislative Acts are: Labour Relations Act (LRA) No. 16 of 1996; Occupation Safety, Health and Welfare Act (OSHWA) No. 21 of 1997; Employment Act (EA) No. 6 of 2000; Workers Compensation Act (WCA) No. 7 of 2000, and the Pension Act (PA) No. 11 of 2011.

With this provision, both permanent and temporary employment contracts are covered. It further means that all non-standard forms of employment, which are mainly of temporal in nature, that are used in Malawi are equally covered and regulated by the same Act. It is therefore clear that the fixed term employment contracts mostly preferred and used between parties in employment within the PSGS industry are covered by the Employment Act. However, despite equal coverage of the employment contract forms used in the industry, regulatory gap still exists to effectively regulate multiple employment parties.

3.4. Labour Law Reforms between 1994 - 2005

Most labour law reforms in Malawi took place between the years of 1995 to 2005. This was the time during when almost all the four main current pieces of labour legislative Acts were enacted by parliament. These are Labour relations Act of 1996; Occupational Safety, Health and Welfare Act of 1997; Employment Act and Workers Compensation Act of 2000. Basis to all these massive reforms was the coming in effect of the multiparty democracy in 1994 following a 30 year one party dictatorial rule since 1964. Thus the first two years, 1994 and 1995 were for consultations.

In the process of labour reforms, most of the previous labour laws were presumed to be oppressive laws despite the fact that some contained provisions were to be relevant in regulating employment relationships in the multiparty era. Consequently, most of such provisions were repealed for that same reason of being viewed as oppressive laws. Secondly, the consulted employment social partners such as the trade unions and employers organizations felt that the country would only develop with mostly the standard forms of employment rather than with non-standard forms of employment (NSFE) hence the failure to preserve some of the provisions that would be instrumental to regulate the most emerged NSFE relationships in Malawi. Little did they know that NSFE would persist and remain as required and acceptable form of employment relationship for the Malawi devolving labour market.

For instance, a case in point was the repealed Regulation of Minimum Wages and Conditions of Employment Act, Cap. 55:01 – that contained section 18 (1) which provided that:

> where the immediate employer of any employee is himself in the employment of some other person and that employee is employed on the premise and in connection with the business of that other person, that other person shall, for the purpose of this Act, be deemed to be the employer of that employee jointly with the immediate employer.

In this repealed provision, the term "other person" refers to the principal employer in a "commercial" contract for employment with the immediate employer.

This Act containing this provision was, unfortunately, repealed by the current principal Employment Act No. 6 of 2000, under section 68 (1). The repealed provision was giving the principal (superior) employer; the liability for the immediate employer's employees in cases where immediate employer fails to fulfill his/her required obligations to his/her employees. This was a good law. It was in tandem with contemporary debates on such law reform provisions as reported in Hardy (2017) who argued that "targeting the direct employer [alone] may not be effective in addressing some of the systemic drivers of employer non-compliance, which may be determined by more powerful firms positioned higher in the supply chain" … and thus observed that "third-party liability regimes have often been principally designed, or primarily used, to tactically target lead firms and combat some of the compliance problems raised by fragmented work structures such as outsourcing, subcontracting and franchising". In this regard, it can be argued that the said extensive reform process failed to foresee and thus to address the exposed regulatory gap.

4. Discussion and Justification for the Proposed Labour Law Reform

4.1. The Exposed Regulatory Gap

In Malawi, parties of the employment relationship who conclude employment contracts are obliged to undertake some liabilities to each other. For instance, on the one hand, the Malawi employment Act No. 6 of 2000 contains provisions that obligate the employer to pay wages as agreed in their terms of employment which must not be below the minimum wage rate; to subject the employee to fair disciplinary hearing procedures to avoid unfair disciplines and dismissals; to pay overtime wages to employees who work for overtime hours using the correct overtime wage rates provided by the law; and to pay terminal benefits to terminated employees as required by the law, among other obligations. On the other hand, the Act provisions obligate the employee to

perform several duties for his/her employer which could include: discharging duties as required and assigned by the employer; and reporting for work at the duty workplace as agreed. Such a law regulating the employment relationship is framed in a way that only parties to the employment contract are reliably responsible to each other and not any other individual who is not a party to the relationship. The law expects either party to comply with one's prescribed requirements.

The current regulatory deficiency within the Malawi labour laws in respect of outsourced employment contract arrangements, is not that the private employment agencies as employers and their agency employees are not covered by the country labour laws but it is that the commercial contract entered between the private employment agency and the user firm is not regulated by country labour laws (see figure 1 – broken line UF-SG). This regulatory deficiency has detrimental effects to the employment contract parties. It poses severe challenges with respect to enforcement of labour laws to ensure that the agency employees also enjoy their labour rights while being subjected to fair labour practices. The deficiency is being compounded by the fact that Malawi has not yet ratified the ILO Private Employment Agencies Convention (No. 181) of 1997 as is the case with neighbouring Zambia. Nor has it fully domesticated guidelines, of the Employment Relationship Recommendation (No. 198) of 2006, with conclusive protection cover for the disguised employment relationships.

ILO (2015b, p. 7) observed that compliance can be made more difficult when the respective rights and obligations of the parties concerned are not clear, or when inadequacies or gaps exist in the legislation, including with regard to the interpretation of legal provisions or their application. Confusion over responsibility may arise, for example, with respect to contractual arrangements involving multiple parties. In this regard, the labour law reform proposed in this paper is therefore justifiable to help address such exposed regulatory deficiency. This reform would in turn help to minimize or address some of the numerous problems faced in the industry as reported and discussed in this paper (see a discussion on expected labour law reform benefits below).

4.2. The Proposed Labour Law Reform

In respect of the above exposed regulatory gap, the paper therefore proposes that the current Malawi employment laws be reformed by providing that:

- the user firm should be introduced into the employment contract as a principal employer, whereas, the security company should be the immediate employer. Both the user firm and the security company should have legal employment liability for the employed security guards.
- the law, for instance, should provide for the user firm to pay the employed security guards, established non paid wages or arrears and thereafter recover them from the commercial contract fees payable to the security company; or
- for the user firm to have powers to terminate their commercial contract at a cost of the security company in case of non compliant security company with labour laws; or
- for the current law (Act) to be amended to give effect for inclusion of the immediate contract terminating clauses within the commercial contracts in cases of non compliance or negligence by PSC. Such proposed provisions and/or amendments will have compelling effects over the PSCs towards compliance.

With this proposed reform, both the contract for employment, that is, the commercial contract between the outsourcing firm and the outsourced security service company, and also the contract of employment, that is, the employment contract between the outsourced security service company and the employed security guards will have been inclusively regulated such that the outsourcing company shall have prescribed liabilities of principal employer whereas the outsourced security service company shall have liabilities of immediate/direct employer of the employed security guards of which both employers must be held accountable with respect to compliance with labour laws. In other words, the two contracts shall be both enforceable by the proposed labour law reform.

Such labour law reform will have several expected benefits (see discussion below) towards bringing about effective regulation of the triangular (or multiple) employment relationships, which have emerged and will continuously be increasing in the near future and beyond within the world of work, in Malawi as discussed above.

Note that similar regulatory provisions were once provided for in the Malawian labour laws before they were repealed following total labour reforms that took place in Malawi in the late 1990s. Such similar provisions (as indented in the literature review section) were contained in the Regulation of Minimum Wages and Conditions of Employment Act (Cap. 55:01) – section 18 (1).

An effort was made by the author of this paper to access the Malawian parliament hansards of 1999 – 2000, the time period when the old referred country employment law was debated and repealed, to understand reasons behind the provision repeal but to no avail. However, two former lawmakers of that time period who were interviewed reported that nothing else was problematic behind such repealed provisions apart from just being the country cause movements to repeal most of the previous labour law regimes which were totally perceived to be dictatorial and thus harsh labour laws (see paragraph on labour law reforms 1994-2005 above).

4.3. Expected Benefits and Implications of the Proposed labour Law Reform

4.3.1. Provision of dispute handling good practices with legal supporting framework

The proposed labour law reform is envisaged to be beneficial in many ways. First, it will provide as legal framework support to some current good practices, with respect to handling of some reported labour disputes, as has been practically shown in box 2 where the Malawi Northern Region Water Board (NRWB), for example, responsibly helped Government labour disputes mediators to handle and settle a dispute between the PSC and its employed security guards referred to as the "complainants" in the box text.

In terms of solicited support for the proposal from the labour and employment field practitioners, the labour law reform proposal would get substantive support by practitioners and policy makers at national level, some of whom have been equally faced with similar challenges in handling or advising field labour officers in how to process labour disputes from non compliant security guard companies. For example the deputy labour commissioner, on request for advice from one of the district labour officer, advised as follows:

> Action Aid must have a contract with LOMA which is not an employment contract. We have nothing to do with such contract because our enforcement powers are limited to matters relating to employment contracts. So, our concern should be the employment

> contract between the guards and LOMA. Action Aid is not a party to this contract. By the way, an employment contract is between an employer and an employee. It does not bind, or extend to, a third party. What Action Aid can do if it feels very concerned about the situation is to insist to amend the contract with LOMA by inserting a clause: "*that the contract will be terminated if Action Aid establishes that LOMA does not pay its guards, guarding the premises of Action Aid, their wages within a given number of days after Action Aid has paid LOMA, their contract fee*". [Further, you may wish to know that] ILOVO, for example, sets minimum standards including matters relating to wages, for all its operations that it has outsourced. I do not think that Action Aid has any powers under the contract to make direct payments to the guards, much as I sympathize with the guards.

The advisory message, by the Deputy labour commissioner, was in respect of LOMA, a private security guard company, with deployed employed security guards working at Action Aid company (the user firm) based in Rumphi district in Malawi. The following four points can be understood from the advisory message that reveals shortfalls in the law while at the same time supporting for the proposed labour law reform. First, whatever actionable advisory message given in the above quoted passage is not based on any law but rather based on appropriate good practice, thus a reasonable acknowledgement by national labour practitioners and policy makers for the existing regulatory gap for the effective regulation of the triangular employment relationships. Second, the advisory message totally agrees with the observed understanding that commercial contracts, in Malawi currently, cannot be regulated by labour laws nor can the employment contracts be regulated by company laws because they are two distinct contracts which are regulated using different pieces of legislation. Third, the inclusion of these words: "that the contract will be terminated if Action Aid establishes that LOMA does not pay its guards, guarding the premises of Action Aid, their wages within a given number of days after Action Aid has paid LOMA, their contract fee" in the advisory message, is a way of offering a practical proposal as short term solution to the problem which, in the long run, could be offering as a solution by way of amending the Employment Act to insert such words to extend regulation to commercial contracts. Finally, the mention of ILOVO[7] as a good example is further appreciation of the good practice which is currently working positively and the one that needs to be further supported by the law through the proposed labour reforms.

[7] Note that ILOVO is a big sugar production company in Malawi, with its main production plant located in Nkhotakota district within the central region of the country, which outsources a number of its non core business required services including security guard services to other private companies in addition to directly employing hundreds and hundreds of Malawians.

4.3.2. Acts as legal solution to the Regulatory challenge in respect of handling labour disputes involving triangular employment parties

In cases of a labour dispute between parties in an employment relationship, Malawian country labour laws provide for the government, as a third party using its mandate and trained labour officers and/or inspectors, to intervene by mediating and/or conciliating labour disputants, the work that has well laid procedure to be followed. Similarly, the law expects the two parties to respect the role of government as a third party to their employment relationship and thus to abide by its direction or to seek for court intervention in cases where one of the two parties may not be satisfied with labour officers' mediation work outcome. It must, however, be pointed out that it is this government's task that is constantly faced with a regulatory challenge, which to some extent could be solved by way of reforming the existing law provisions regulating triangular employment parties.

As has been argued by employment field practitioners, commercial contracts cannot be regulated by current labour laws nor can the employment contracts be regulated by company laws. This implies that either of the bound parties from each of the two distinct contracts cannot assume a cross-liability from each contract unless it is provided as such in the law, a situation which currently is not the case with current labour laws. It is this current law setup that makes PSGS companies to take advantage of 'ill-treating' their employed security guards knowing very much that the government labour officers or the user firm has no any legal role whatsoever to take the company to task on account that he/she ill-treats employees. In this case, the labour officer's mandate is limited only to the employment relationship (contract) entered between the security company and the guard. Whereas, the user firm's actions over the company is guided by provisions of their signed commercial contract based on provisions of company laws.

The second implication is that labour officers face several challenges to handle and process labour disputes involving security guard companies and their employees to conclusion. In most instances, such cases are rarely concluded in labour offices in Malawi but they are rather abandoned or referred to Industrial Relations Court (IRC) where sometimes they take longer time (years) to be handled and concluded. As a result most of the victimized employed guards give up without pursuing their cases with IRC unless it is a case involving various employed

guards acting collectively against their security company is when chances are high for their case to be handled by the court. In this case, the victimized employees would be sharing their case pursuant costs or they could be easily helped by interested trade union, which is not so easy with just an individual grieved guard. It is based on this regulatory gap that this paper proposed for the provision of the triangular employment regulation within the Malawi employment Act, the provision that would act as legal solution to the regulatory challenge in respect of handling labour disputes involving triangular employment parties.

4.3.3. Enhancement of existing enforcement approaches and options

In Malawi, as is the case elsewhere, the enforcement of compliance with labour standards is mainly conducted through labour inspections by designated labour inspectors. In addition, collective bargaining processes by employers and employees (trade unions) also serve as another implied option to bring about compliance with labour standards. Both enforcement approaches need sufficient regulatory law which however is seemingly inadequately available with respect to triangular employment relationships thereby posing as a threat to effective regulation of the parties involved in such employment relations. The extent to how governments including Malawi face enforcement challenges with regard to enforcing compliance with labour standards is evident in some recent enforcement experiences involving G4S Security Company versus the government of Mozambique (Ritchie et al., 2007).

Key implication from the company's behaviour as described in box 3, is that enforcement using existing laws by way of labour inspections and other means proves inadequate as governments alone face challenges through resistant behaviours by some PSCs. Such behaviours by the PSC employers that violate minimum labour standards have been reported to be happening in most developing countries (Murunga, 2014; Goos, 2013; Mariwo, 2008; Ritchie et al., 2007), the situation that complicates problems and regulatory challenges faced in the PSGS industry. To a certain extent, it has been the inadequacy of regulatory laws with respect to the discussed regulatory gap (proposed labour reform) that has perpetuated such behaviours by the industry employers to the effect that some public mandated institutional officials fail to hold PSCs accountable. The effective solution to such problems lies into reforming the law to provide for the user firm to have powers to terminate its commercial contract instantly with the PSC which

inflicts unfair labour practices over its workers and/or to allow user firms to settle guards' outstanding claims from their terminated PSCs. These labour law reforms will have compelling effect over the PSGCs as they will not want to lose their business markets through contract terminations by the act of law.

For instance, with the proposed labour reform, the US Embassy, in case of Mozambique experience, would be reasonably able to exercise its legal responsibility to prematurely terminate its commercial contract with G4S security Services Company and to withhold part of its contract fees for settlement of the company's unpaid overtime wages. All these would be done while cooperating with government enforcing agency within the provision of the law. Furthermore, as a long term remedial implication, the government enforcing agency would further extend the application of the proposed law to all other user firms in commercial contracts with G4S company in Mozambique so as to compel the company to comply with country's minimum labour standards and not necessarily forcing the company Manager outside the country unprocedurally as was the case by the "crossed" Mozambique labour Minister.

To conclude this section, it is clear that various other possible solutions such as enhancement of enforcement through increased labour inspections; application and use of organized trade unions in the sector to champion collective bargaining mechanisms as recommended by various reviewed studies on the regulation of the employment involving multiple parties (Mariwo, 2008; Hardy, 2017); would be far much supplemented with the enactment of the proposed labour law reform. Mariwo (2008) says as far as labour relations are concerned, worker unionization is a challenge, as many employees work in different establishments and half of them work at night. Again, from the challenges faced by security guards, one can see that labour inspections alone can still not address all problems faced, because labour inspectorates are already inadequately underfunded and understaffed, in most developing countries like Malawi, against the huge expansion of the industry workplaces. Thus empowering UFs with a monitoring role over PSCs, by way of labour reform, would help in enhancing compliance or preventing problems at workplace level in addition to empowering the workplace parties in dispute resolution as well as to reduce government's costs with respect to settlement of employment workplace disputes. Above all, the action would be totally supported by modern collective bargaining theories that

contend that governments should not be the first to handle employment workplace disputes but rather, it should be the workplace parties themselves to first attempt to address their own disputes. This argument has potential benefit such as to empower workplace parties in dispute resolution as well as to reduce government's costs with respect to settlement of employment workplace disputes.

4.3.4. Acts as driver for government to review and revise registration of PSCs

The need for the government company registering institutions, the registrar of companies, to ensure that company registration rules and regulations/procedures are in place and that adequate measures (e.g. capital requirements) are incorporated within the companies to be registered that should be tools to compel security companies (especially PSCs) to be compliant with the country labour laws with respect to conditions/minimum standards of employments, can be triggered following enactment of this proposed labour law reform. It must be noted that similar research of regulatory gap exposure acted as one basis for labour law reforms being enacted in some developing countries such as India and Singapore (Desai, 2014).

5. Conclusions and Recommendations

The purpose of this paper was to expose the regulatory gap and to propose labour law reforms that can fill the gap by providing for adequate and effective regulation of triangular employment relationships in Malawi. From the reviewed analysis of the Malawi labour law literature, the paper has exposed the current regulatory deficiency, in respect of outsourced employment contract arrangements, which is the unclear or inadequate regulation of the commercial contract entered between the private employment agency and the user firm.

The paper has discussed and shown that the use of existing enforcement approaches such as labour inspection that is usually insufficiently and ineffectively conducted as well as meditation and/or conciliation as labour disputes resolution approaches can be anchored and supplemented by user firms' monitoring actions over treatment of deployed guards by PSCs with the recognition, by reformed law, of user firms as guards' principal employers. Furthermore, it has also been shown that the proposed labour law reform can be potential to support the demonstrated good practices (box 2) which are currently being used but without legal support.

As a result of the exposed gap, the paper has proposed labour law reform with measures that have immediate effect of compelling the PSCs to comply with labour laws to avoid losing their business markets. The proposed reform measures include: the user firm to be introduced into the employment contract as a principal employer, whereas, the security company to be the immediate employer; the law to provide for the user firm to pay the employed security guards, established non paid wages or arrears and thereafter recover them from the commercial contract fees payable to the security company; or for the user firm to have powers to terminate their commercial contract at a cost of the security company in case of non compliant security company with labour laws; and/or for the current employment law (Act) to be amended to give effect for inclusion of the immediate contract terminating clauses within the commercial contracts in cases of non compliance or negligence by PSC. Such proposed provisions and/or amendments will have compelling effects over the PSCs towards compliance.

The paper has, however, discussed and noted that, internationally, employment relationships with multiple parties are adequately covered with coming into force of some relevant conventions such as the ILO convention (No. 181) of 1997. In this regard, the paper has recommended (reaffirmed ILO recommendation) for Malawi government to ratify and domesticate provisions of this convention into the country national laws so as to provide for the adequate regulation of the triangular employment relationships.

Such recommendations would be beneficial for the Malawi government that has made it as a policy statement and commitment to ensure the enforcement of national labour legislation and application of international labour standards in order to promote the realization of decent and productive employment. This commitment is reflected within the country National Employment and Labour Policy (NELP) of 2017 under its policy priority area 10 which is geared at improving labour administration and labour standards with an outcome to have improved and safe working conditions and better quality of work for all workers.

Finally, the overall discussion in this paper points out to the fact that as long as the triangular employment relationship is left inadequately, that is, ineffectively regulated, government's

mandated authorities in matters of labour and employments will likely going to face continued challenges with respect to enforcement of compliance with minimum standards of employments to the extent that employed security guards, in the private security guards services industry within which multiple employment (including triangular employment relationship) parties are most prevalent, will remain the most victims of inadequate social protection thereby defeating sustainable development goal objective of decent work for all.

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Appendix: **Boxes containing explained narrations of challenges experienced by employed Security Guards and some good practices to overcome some challenges**

Box 1
A narration of work life situation for Security guards in Rumphi district in Malawi

Seven security guard service companies operate in Rumphi district. These are: Safe Guard Security; Loma Security Guard Company; Belam Security Guard Services; KK Guard Services; Master Guard Services; UK Security Guard services; and G-4 Security Guard Services.

These companies employ workers (security guards) and deploy them to work at a number of workplace institutions in the district like is the case in other districts. The security companies' workers (guards) are deployed to work at bank premises; at post offices; Action Aid offices; at Water Board offices and at all MTL/TNM/Airtel transmitting stations (towers) in the district. This is just to mention some of the workplace offices.

None of these companies has an operational office in Rumphi. Most of them have offices located in Mzuzu, Lilongwe and Blantyre cities. The companies do not have clear conditions of employment with their employed security guards and/or their conditions of employment are not known to their employed guards. Their recruitment process is not transparent to their would-be employees i.e. the process is not in tandem with what is prescribed in labour laws. For instance, the companies through their representatives (mobile site supervisors), just come in the district meet to coax some individuals; ask them if they wish to be employed as guards. Once accepted, such approached individuals are immediately given uniforms and allocated places/deployed to start working. The employed guards are deducted a prescribed amount of money from their monthly wages for being given work uniforms. Upon termination of employment, the given uniforms are taken back by the companies as they are identities for specific companies.

The security companies pay their employees very low wages i.e. Mk21, 000.00 per month (equivalent to U$28.57 at the exchange rate of Mk735 for U$1.00 as at November 30, 2017). The payment of monthly wages is done very irregularly i.e. workers can work and stay for three months without receiving their monthly wages. And when their pay masters come, they usually bring only one month salary mainly for the current month with promises to bring other previous worked months' salaries at a later time. As such most of these employees fail to continue working and instead they stop reporting for work usually without informing their employers. Once their mobile supervisors inform their employers about some disgruntled absenting guards, an official is usually sent to come and confiscate the uniforms from them, tells them that the work is terminated without giving them their outstanding wage arrears saying that they are forfeited to meet the cost of the uniforms being given for use by the terminated guards. Ironically, the confiscated uniforms will have their total costs been deducted in full at the time of termination, sometimes. Such terminated employees lodge their complaints to labour offices. Rumphi labour office receives a number of such cases some of which are unconcluded or take too long to conclude as their employers do not even call at labour office once they are written letters to come for joint discussions (mediations).

Whereas, for some concluded cases, the office do advise such employers' representatives on correct procedures of conducting recruitments as well as handling their uniforms as protective wears for their employees, among others. The office also tries to reach/caution some job seekers on what to be doing before engaging into employment with such employers through notices and general awareness/sensitization. However this seems not to be effectively working on the part of the office. The office has been unable to conduct labour inspections in such workplaces because they are usually working without their employers. Worse still employed guards do not even have some immediate

workplace mobile supervisors to whom they could be presenting their work problems while at the place of work before they come to labour offices.

With such working environment, security guard service companies find their business to be more profitable as they (the companies) are usually paid not less than Mk45,000.00 (equivalent to U$61.22) by their serviced Firms for each employed guard (according to sourced information from one employed guard in the district) while in turn the company pays the guard a monthly wage of only Mk21,000.00 without necessarily taking full responsibilities as employers to each employed guard which obviously are the bases used by security companies when negotiating their service fees to be paid by user firms for each employed security guard.

Box 2

The Malawi Northern Region Water Board helps Government labour disputes mediators to handle and settle a dispute between the PSGSC and security guard complainants

Northern Region Water Board (NRWB), which is a Malawi government statutory corporation, contracted Loma Security Company to provide security services at the Board's head offices in Mzuzu. The security company recruited guards and deployed some of them to work at the board's Mzuzu offices. The employed guards suffered several unfair labour practices that included underpayment of wages, non-payment, and/or delayed payment, of wages and unfounded dismissal threats among others. Each time, the working guards complained to the user firm's authority about their suffering, they were told that NRWB had nothing to do to address their poor working conditions with their employer – Loma. The user firm's reaction is applicable according to the current country labour laws that do not extend regulation to the commercial contract entered between the user firm (the NRWB in this case) and the employment agency firm (Loma Security Company) which is not a contract of employment.

Nevertheless, the board advised the working guards to lodge their complaint to labour office for intervention which they (the guards) did. Mzuzu labour office, upon receiving the guards' complaint, opened a case and summoned Loma to appear to labour office for joint discussion. The security company, however, never turned up to labour office despite being issued with a call reminder letter. Further, labour office issued the final third call letter to the security company, this time, through the user firm (NRWB) advising the security company to call at labour office or to have the case referred to court (IRC) in the event that the security company fails again to appear at labour office. The security company turned up to labour office during when the water board sent their representative to appreciate the discussion of the lodged complaint. During the discussion, the employer accepted all the claims leveled against him. The case mediation process was concluded with the employer accepting to pay all the calculated wage arrears, and to immediately increase workers/guards' wages as well as to improve its workers' general work conditions.

Following such developments, the board reviewed the security company's outsourced contract and "unfortunately" (on part of Loma) the Board terminated the contract with Loma based on its unfair labour practice conducts revealed at labour office and instead, the contract was awarded to another security company firm which was requested to take on board (employ) all the guards that had been deployed at the board offices, by Loma, and allow them to continue working at the same Board's premise. In the commercial contract with a new security company, the board inserted a clause into their contract that obligates the security company to comply with fair labour practices as required by the country labour laws in dealing with its employed guards in order to sustain its commercial

contract with NRWB.

Source: Author's own compilation using secondary data extracted from 2016-2017 unpublished official reports maintained at Mzuzu Regional labour office, Malawi.

Box 3
Mozambique Government faced with enforcement challenges in dealing with G4S Security Services Company

As investigated and reported by (Ritchie et al. 2007), G4S security services company had been non-compliant with respect to overtime wage payments and refused to pay overtime wages, as had been assessed and determined by the Mozambique's arbitration panel's instituted commission, to its employed guards. The company employed security guards had lodged their complaint of non-paid overtime to the Mozambique's arbitration panel. Upon the matter being reported to the country Ministry of labour for intervention, the Mozambique's labour Minister, Helena Taipo, ordered G4S security services company to pay all the workers their determined long overdue non-paid overtime wages. Unfortunately, the company, despite having accepted to have owed the guards such determined overtime wages, continued with its behaviour of denial to settle the wages thereby totally undermining the Ministry's role to enforce compliance with labour standards.

Furthermore, in a similar case the same company denied to pay its retrenched workers, who had been deployed and worked at the United States Embassy offices in Maputo, severance allowances as provided for in the Mozambique's labour laws while challenging grieved workers to take their complaint to court, in which case, Taipo, in her capacity as labour Minister having felt being undermined on several occasions told G4S security services' top manager, Jon Mortimer, that he was no longer authorized to work in Mozambique, the action that led into Mortimer being forced to return to his home country, South Africa. The deportation happened although later on, the country's administrative authorities overturned the Labour Minister's order, on matters of procedures. With all these experienced challenges, the Mozambique's labour minister strongly wished "*there were an international court that could deal with G4S as the company believes it is above the law"* to the extent that it refuses to follow our own country laws.

Source: Adapted from Ritchie et al. (2007: pp. 13-15).