

An Assessment of Private Security Sector Adherence to Botswana Employment Laws

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Abstract: This paper seeks to evaluate and analyse the non-adherence of Private Security Companies (PSC's) to Botswana employment laws and further establish the underlying factors causing this deviance. The performance of the government as the main regulating authority of the private security sector will be discussed and analysed as well as the impact of other stakeholders such the Directorate of Intelligence Services (DIS), Ministry of Labour and the Security Association of Botswana. The previous security guard controller regulation as well as the recently adopted Private Security Services Act in 2018 contribution to the plight of security guards will be discussed. The paper will base its approach on a pluralism framework known as the systems theory which understands industrial relations as a sub system of a wider social system which is governed by rules and regulations (Rogowski, 2000). Specific clauses of the Employment Act which PSC's violate will be discussed in detail and these include wages payment and unauthorized wage deductions, failure to provide adequate uniform and equipment to workers, terminal benefits payment, unlawful termination of employment contracts, failure to provide workers with employment contracts. Past cases from the Industrial Court of Botswana will be cited to demonstrate practical cases of non-compliance to employment laws by PSC's.

Keywords: Botswana Public Sector, Private security, Non-adherences, Trade union

1. Introduction

According to Kirunda (1995), the term private security refers to security services provided to clients by non-state agencies and its growth has been facilitated by the desire to reduce the burden on state agencies of protecting their citizens (Kirunda, 1995). The American Society for Industrial Security (ASIS), which is the largest organization of private security professionals in the United States of America, defines private security as the non-governmental, private-sector practice of protecting people, property, and information, conducting investigations, and otherwise safeguarding an organization's assets (Griffiths & Montgomery, 2015). The Botswana Chapter 21:07 Private Security Service Act understands private security service as protecting, safeguarding a person or property, giving advice on the protection of a person or property, providing a reactive or response service, providing a service aimed at ensuring order and safety on the premises used for sporting. The purpose of this paper is to contribute to the debate on the adherence of PSC's with respect to Botswana employment laws. The paper seeks to establish why private security companies do not adhere to employment laws and discuss the specific employment regulations which they violate. This was motivated by the high number of

cases at the District Labour Offices and the Industrial Court pitting security guards against PSCs. In the recent past, the former Minister of Defence, Justice & Security (MDJS), Mr. Shaw Kgathi and the Chairman of the recently established Security Licensing Board Mr. Thebeyame Tsimako have also raised concerns regarding the non-compliance of security firms and unlawful treatment of employees. Given this background, the writer was motivated to find out the compliance of security companies with respect to the country's employment laws.

2. The Botswana Private Security Industry

Botswana's private security industry is a burgeoning business, which has grown to accommodate the glaring gaps in the security market. In recent years, the Botswana government has sought to confine the industry to Botswana citizens through the Reservation of Security Guard Services for Citizens Order of 24 July 1998 (otherwise known as the Statutory Instrument of 1998) (Hendricks & Musavengana, 2010). The industry is regarded as essential to complementing the work of the Police Force. The private provision of security functions is not a new phenomenon, it dates back to the ancient Greek and Roman empires where private actors

provided security functions to states and citizens, with quasi-official agencies providing policing services in Britain until the emergence of the modern police in 1929 (Holmqvist, 2005). The Post-Cold war period and the advent of market-based economies also gave rise to private security firms. PSC's have since become a permanent feature of the security architecture and in many instances outnumber their public counterparts by a considerable margin (Abrahamsen & Williams, 2011).

Modern democratic countries like the United States, Britain and Canada reached a watershed in the evolution of their crime control and law enforcement in the 1960s and this led to the states monopoly on policing broken through the creation of private and community based agencies to prevent crime (Ritchie *et al.*, 2007). In Africa, particularly South Africa and Uganda, inadequate resources to equip state organs for their principal role of protecting its citizens was a major decision driver in the growth of the sector. The first private security company to operate in Botswana was Way Guard Security (Pty) Ltd, which was a joint venture between the Botswana Development Corporation (BDC) and a citizen of Botswana (Molomo & Maundeni, 2014). It is however important to note that the privatization of security has brought challenges to states, providers and recipients, key of which are the working conditions of the security guards hence the interest in this study. The provision of security services remains a fundamental challenge to many countries regarding the adherence to regulatory framework within the industry. The demand for private security has gone up beyond what states can provide and as such private security companies (PSCs) have emerged as an alternative and complimentary actor to state security.

The majority of guards employed in Botswana PSCs as well as those in SADC countries work for long hours a day, are demotivated due to low pay and delays in payment and have no adequate time to take leave. The exploitation of these workers has been manifested by underpayment, lack of health and safety provision, lack of payment of terminal benefits, overworking (long hours) at work and the employer is unable to provide adequate basic needs to cater for the workers welfare e.g. toilet facilities, torches and other survival items. There are also on-going disputes at the department of Labour and countless cases at the Industrial Court around issues of non-adherence to the Employment Act

by these firms. There are allegations that security owners take advantage of the non-educated and sometimes unenlightened guards and exploit them. Further to this, the lack of an inclusive and robust Security Act or regulation in the past has contributed to the nonchalant attitude of PSCs and their non-compliance towards the industry regulations. There have been unfair labour practices especially when employers unprocedurally terminate security workers. Some of the raised complaints from angry security employees are that the security companies they serve do not pay them their monthly salaries on time and that they also do not provide them with proper protective uniforms and equipment. This is a serious concern because it at times affects the performance of the security officers as sometimes criminal activities may occur because security officers who were supposed to be on duty are not because they had a dispute with their employer. Not paying salaries on time as stipulated in the employer-employee contracts is regarded as violation of the law. Some companies do not have contracts with their employees at all as is supposed to be the case. Another disobedience to the law is that of not paying employees their severance benefits whenever they leave their jobs or at the end of their contracts. All this concerns serious responsive measures for them to be addressed.

3. A Theoretical Perspective

Pluralists differ from unitarists in that they assert that workplace conflict is inevitable. They further argue that management and employees constitute two interest groups with complex social constructions, who are seen as invariably subscribing to different values and objectives (Abbott, 2006). From this frame of reference, it is assumed that there will be different sources of authority within an organization, and that the potential for conflict between them will always exist over the organization of work tasks and problems and perspectives in management and allocation of rewards. This paper will therefore draw on a pluralist frame of reference known as the systems theory. According to Abbott (2006), the theory suggests that industrial relations are best regarded as a sub-system of the wider social system, it further states that work is governed by a wide range of formal and informal rules and regulations, which cover everything from recruitment, holidays, performance, wages, hours, and a myriad of other details of employment.

On the back of these assertions four elements are held to make up the system of industrial relations rule-making. The first is industrial actors, which consists of employers and their representative's employees and their representatives and external agencies with an interest in industrial relations. The second is the environmental context, which is made up of prevailing economic and technological conditions, as well as the distribution of power in wider society, each of which is thought to influence or constrain the actions of actors engaged in industrial relations. The third is a so-called web of rules that governs the employment relationship and is held to be the outcome of interactions between the actors. The last is a binding ideology, which is a set of common beliefs and understandings that serve to encourage compromises on the part of each actor for the sake of making the system operable. An important aspect of this framework conceives the industrial relations system as self-adjusting towards equilibrium. In so far as change in one element had repercussions for the other elements, they are held to set in motion a range of processes that invariably restores a sense of order on the system (Abbott, 2006).

4. Non-Compliance Challenges and Specific Employment Laws

Wages payment in the security industry is a major concern for the government and other stakeholders mainly because of many cases registered at the both the District Labour Offices as well as the Industrial Court. There continues to be media coverage on issues relating to Security companies and their employees. The minimum wage rate is one of the cornerstones of protective labor legislation, and it mainly serves to reduce income inequality by redistributing incomes toward the working poor. The Employment Act of Botswana therefore has specific clauses aimed at protecting employees' wages and clauses 75 to 80 deal with the payment of wages, time of payment, prohibition of unauthorized deductions from wages. Clause 79 specifically deals with the prohibition of unauthorized deductions from wages states that except where otherwise expressly permitted by the Act or any other written law, no employer shall make any deduction or make any agreement with any employee (whether or not the agreement is contained in the contract of employment) for any deduction from the wages to be paid by the employer or from any other payments which may be due to the employee or for any payment to the employer by the employee.

According to the then Maun Administrative Authority (MAA) Chairman of Finance and Works Committee, Mr. Luke Motlaleselelo security companies abuse workers and violate their rights to decent employment. He revealed in an interview with *The Patriot* on Sunday that the MAA would blacklist such companies from their service providers list. He further complained that despite paying security companies millions of Pula every year they continued to receive complaints of labour rights violations from employees of the same companies (Kgamanyane, 2020). According Motlaleselelo, some of the complaints from aggrieved employees were that the security companies did not pay them their monthly salaries on time and that they do not provide them with protective uniforms and equipment, a clear violation of the Employment Act and the Private Security Act. Some companies have been accused of providing non-existing contact addresses as a way of avoiding the Labour department inspections.

The non-adherence of PSCs is not a challenge unique to the Botswana context only, according to Majavu (2020), a certain security guard employed by a security company in South Africa had been working for the same employer for 11 years and payslips showed provident fund deductions of more than R15 000. His employer had however not made any contributions to the Private Security Sector Provident Fund. There were suspicions of security companies pocketing workers provident fund contributions.

4.1 Provision of Adequate Equipment & Uniform

To further illustrate practical examples of non-compliance of PSC's, the Chairperson of the Private Security Licensing Board expressed his concern that security guards were paid late and also not given adequate uniforms and work equipment (Ramojela, 2018). He further noted that some guards did not have guard rooms or shelter at their work stations. The failure by companies to equip their guards with necessary equipment is a violation of security regulations in Botswana. Ideally a guard should have a baton stick whistle, hand cuffs and safety boots, these all serve to protect the employee and help minimize the risk of injury whilst on duty (Botswana Employment Act, 2003).

4.2 Terminal Benefits Non-Payment

The private security firms as the employer have a responsibility to abide by the Employment Act by

lawfully terminating employment contracts with due consideration for notice where it is applicable and probation period. Though this is the case, scholarly information regarding this topic is lacking, hence the need to go into the field and collect more data. According to the Employment Act employees are entitled to severance benefits on termination of contract of employment. The Employment Act clause 77 states that the total wages and any other payments due to an employee who terminates his/her contract of employment without giving prior notice in circumstances in which he is required to give such notice, or before the expiry of any period of notice he may have given in accordance with that section, shall be paid by the employer before the expiry of the third day immediately after the day on which the employee terminated the contract of employment.

4.3 Unlawful Terminations/No Employment Contracts

The Employment Act provides among other things for contracts of employment for public employees. Some of the items covered under contract of employment include oral or written contracts of employment, termination of contract of employment, breaches of contract of employment, certificate of employment, redundancy, termination of employment, severance benefits on termination of employment, and others.

A case at the Industrial Court of Botswana where Evelyn Mosalakatane, a former security guard at a local security firm – Itsoseng Security Guard Services (Pty) Ltd, demonstrates the non-adherence of PSCs at different levels. Her grievance was that on assuming duty one day, she was advised by the outgoing guard to carry out certain duties (collecting dirt and cleaning the house) which she considered not to be part of her duties as a security guard. She refused to carry out the said duties and the Managing Director instructed summarily dismissed her for refusing to obey instructions at work. The matter was set down for a hearing at the Labour office but the company representatives did not bother to send a representative and the matter was subsequently escalated to the Industrial Court. The court then ruled that the dismissal of the applicant was substantively unfair, and that the respondent had summarily dismissed the applicant when she refused to carry out duties that did not form part of her job content (Mosalakatane v. Itsoseng Security Guard Services (PTY) LTD 2000 (2)

BLR 306 (IC), 2000). They further ruled that the applicant did not get any letter of dismissal and that the dismissal was procedurally unfair. The court ordered that the company pay the applicant a sum equivalent to four months' monetary wages.

5. Legal Framework of Private Security in Botswana

Molomo & Maundeni (2014) argue that 'the setting up of norms and standards and a regulatory framework that would not only enhance professionalism in the industry but would also inspire confidence in the police to work with them'. Botswana lacks regulation validating the relations between private security sectors and public. This regulatory authority is important in that it could help develop the private security industry, to impose some discipline, which can contribute significantly to decreasing crime and increasing community safety, in particular through partnerships and information-sharing with public police.

The PSCs' sector embraces an extensive range of events, and regulation should encompass to as many of these as is realistic to circumvent loopholes, guarantee accountability and maximize the contribution of private security to crime prevention and community safety. According to Maundeni & Molomo (2014), Botswana has even allowed the entry of foreign private security operators without the necessary legal framework to control their operations. It has also been noted that the growth of the private sector and the inadequacy of public security to safeguard it prompted the unplanned growth of the private security industry. While there is still instability within the private security industry the sector is growing fast, diversifying its services and complimenting the inefficiencies of the public security sector.

Any private security provider who violates the employment act should be held to account, and there should be proper channels in place for the receipt and investigation of complaints by any person against private security companies. Complaints should be investigated independently by relevant organizations and, where guilt is proven; the body should have powers to sanction on the security companies.

5.1 Chapter 21:07 Private Security Services Act

Security-related Acts and regulations in most jurisdictions are responsible for oversight, licensing, and

compliance of licensees. These Acts define private investigators and security guards; the functions they perform as well as qualifications required for licensing. In Botswana the industry was initially regulated through a Control of Security Guard Services Act (under section 20(1) 4th May, 1990) and partly by the Directorate of Intelligence Services. This regulation was however not comprehensive and as a result hindered the growth of the industry in Botswana. The primary regulatory authority now is the Chapter 21:07 Private Security Services Act.

The Act's clauses, which are directly linked to the adherence of employment and workers condition includes setting the minimum standards of training for security service providers and security guards and ensuring compliance with the minimum standards, encouraging and promoting efficiency in and responsibility within the private security service industry, setting a code of conduct for private security service providers, promoting the protection and enforcement of rights of security guards and other employees in the security service industry, ensuring compliance with existing legislation by security service providers through active monitoring and investigation of the affairs of security service providers. The Act further specifies how the private security industry must operate and determines forms of judicial punishment in the event of misconduct. Other regulatory stakeholders are the Department of Labour which determines the wages and employment standards for security companies, as well as the Ministry of Health and Wellness which pronounces the Safety and Security regulations at the work place.

5.2 The Security Association of Botswana

The Security Association of Botswana (SAB) is a voluntary association which consists of PSC's as members after paying an annual fee of P500 and has a total membership of about 120 security companies. It was formed with the intention to promote dialogue between PSC's and the MDJS. The SAB has on many occasions called for a regulatory authority that is established by an Act of Parliament and insist that such an entity should be autonomous and establish ethics, norms and standards regarding their operations. At present private security companies are loosely regulated by the Security Guard Controller whose substantive position is the Deputy Permanent Secretary in the MDJS. SAB is of the opinion that this arrangement is not working for

the industry as the Controller is not dedicated to overseeing private security. The SAB has in the past promised to investigate allegations that some of its members failed to pay their employees full salaries especially in the December period. They are however a ceremonial structure with very little power and influence and as such they have not been able to achieve much in terms of encouraging their limited members to comply with the Employment laws. The association has about 150 members despite that there are about 3500 registered security companies in Botswana.

The literature review clearly confirms that employment laws in Botswana are violated by PSC's. The security industry is dominated illiterate and semi-illiterate workers who are ignorant of the same employment laws meant to protect them and as such they continue to be vulnerable to scrupulous security companies. The Private Security Services Act is still yet to be implemented despite being adopted in 2018. Its implementation would help a great deal in addressing issues of inspections, wages payment, failure to provide adequate work equipment and training issues which the cornerstones of an organized industry. The security industry is a low profit margin job and most companies are not able to withstand competition in the market and a result end up short paying employees to survive. It is clear that government as the regulator is failing to protect security guards by continue to award contracts to the lowest bidders whose bids are not necessarily viable and able to financially match the contract obligations.

6. Results and Discussion

The literature reviewed has demonstrated that indeed security companies violate employment laws. The regulatory framework of the country as well as all other stakeholders besides PSC's, also contribute to the non-adherence of companies to the laws. Botswana does not have an autonomous regulatory framework like the Private Security Industry Regulatory Authority (PSIRA) to regulate the work of private security companies. Neither is there an overarching framework like a national security policy that coordinates all security policies. There is discomfort within the security sector that the absence of a National Security policy tends to be a conflation of roles by security actors. The problem has been most evident with the establishment of the DIS in 2008. There is clear evidence that the then

lack of a specific law or Act governing the operations of private security providers in Botswana has for the longest time hampered the growth of the security industry as a whole. Furthermore, there are no oversight structures to regulate private security companies and as a result there is no accountability.

The SAB is a toothless dog without any powers, it cannot take any actions against PSC's nor can it influence any major decisions in favour of the local security industry. This is demonstrated by the continued lowest bidder awards by the central and local government authorities who are the biggest procuring entities in the industry. This always leads to wages non-payment and the failure to pay terminal benefits at the end of such contracts because of the low margins in this labour intensive industry. The SAB has previously expressed their discomfort with the dispensation of severance benefit that replaced gratuity. The spirit of this dispensation was meant, among other things, to protect guards where unscrupulous employers would expel a worker who had worked for 4 years and deny them their benefits. Severance benefit affords guards benefits even when they have worked for one month.

The Labour movement in Botswana has been historically weak, mainly due to government's setting of wages (Motshegwa & Tshukudu, 2012). The level of unionization has generally been low due to the fact that the state fixed the minimum wages. In addition, guards are neither clearly defined in the labour laws of the country, nor unionized. Yet according to the International Labour Organization (ILO), unionization is a human right that all employees including guards should enjoy. The non-existence of security guards' unions or their failure to unionize despite their large numbers has been detrimental to efforts of improving their welfare in general.

Leaders of the private security industry share the view that there are also numerous briefcase security companies that are only active after they win tenders, and as a result, they deploy untrained workers in the market. The ministry needs the strength of numbers to lobby government for a regulatory framework and for reforms that would improve the image and advance the interests of the industry and its clientele. In short, the licensing authority has no capacity to manage the growth of the industry they spend more time mediating between disgruntled guards and some of their employers who fail to pay their guards. There is need for site visits to respective

security company offices to validate licensing, compliance with licensing or uniforms. Furthermore, there could be full audits that include a review of licensing, policies, processes or procedures. The new private security Act states that an inspector may at any time inspect the affairs of a person licensed to check whether the holder of the license is complying with the Act and the conditions of the license. The Act further states that an inspector may enter, inspect and examine any premises occupied by a private security service provider or used in connection with the rendering of a private security service use any computer system or equipment which appears to be utilized for the control or administration of a security service, or require reasonable assistance from any person on the premises to use that system to access any data contained in or available to that computer. Ronconi (2008) argues that theory predicts that firms respond both to the probability of being inspected and to the size of the expected penalty. Therefore, an ideal measure of enforcement should include the number of inspections conducted and the value of fines imposed. In this paper, I use the number of labour inspectors working in provincial enforcement agencies as a proxy for government enforcement of labour regulations (Ronconi, 2008). Government as the regulator now needs to walk the talk and implement this Act.

It is important to highlight that the non-adherence to employment laws by PSCs should not be solely blamed on the security providers, government as the regulator has a crucial role to play. The government has a responsibility to provide a cordial and conducive environment to enable all actors within the industrial relations realm to achieve their collective goals. Government labour laws work against the private security industry, for instance, labour laws stipulate eight working hours, and anything beyond is considered as over-time and is to be compensated as such. Private security companies however operate on a 24-hour day and seven-day week schedule. Government tenders however, do not cater for over-time in an industry in which the normal working hours is twelve and not eight. As a result, PSC's end up paying for overtime which is not budgeted for in the tender. According, to SAB what works for the industry is 12-hour day with two shifts, which violates the labour laws and violate the human rights of guards. The idea is that with a regulatory framework that appreciates the industry a dispensation that works for guards and employers could be developed.

The former Minister of Defence, Justice & Security in his address in 2015 cautioned local authorities and schools which have a tendency of awarding contracts to companies that bid at low rates, he argued that this brought biasness and unfairness as it accumulates to a vicious cycle in tender allocation (Ramadubu, 2015). The Licensing authority has also complained that many security companies underprice to win bids and fail to pay guards in accordance with the government minimum wage policy thus creating endless labour disputes that place guarded property at risk (Molomo & Maundeni, 2014). Mandatory training is necessary. While the local training institutions do not cater for private security companies, the industry has failed to fill the gap with a formal training facility for security guards. PSC's are always the first at the scene of crime and where they are not trained to protect the scene of crime, they may contaminate evidence hence the need for adequate training. According to leaders in the private security industry, the absence of educational requirements exposes it to those who failed to advance in their educational pursuits, and are therefore largely untrainable. They say, initially, guards were restricted to old men who had long retired from their manual work careers, and had a strong sense of duty. This only shows that historically, training was never part of the culture in the private security industry.

The SAB as a member of the Business Botswana (formerly Confederation of Commerce Industry and Manpower – BOCCIM), has an opportunity to deliberate on issues concerning the private security industry even at the High-Level Consultative Council (HLCC), which is chaired by the President of the Republic of Botswana. Given the current state of affairs in the industry it would be fair to conclude that they have failed to leverage on such a platform to advocate for progressive reforms for the industry.

7. Conclusion and Recommendations

This paper did establish that indeed PSC's violate employment laws in Botswana especially clauses relating to wages payment, unauthorized wage deductions, provision of uniform and equipment, terminal benefits payment and unlawful termination of employment contracts. It was further established that the lack of comprehensive regulatory legislation hindered the growth of the security industry. Furthermore, it was found out that the government

and other stakeholders aid the non-adherence by awarding security contracts to the lowest bidders without necessarily validating the contract viability. It is important for the industry regulator to consider including all relevant stakeholders in wage setting for a. The government needs to act swiftly and implement the recently adopted Private Security Services Act to help resuscitate the industry and help curb violation of employee rights by PSC's. Firms propensities to comply with regulations depend on the probability of being penalized, and, on the other hand, public enforcement agencies resources are likely to be affected by the extent of compliance. All these problems occur due to the lack of oversight institutions that would have been able to ensure that, the rights of employees are upheld. Based on conclusions the study recommends the following:

- Immediate implementation of the Private Security Services Act.
- Establish a tribunal or an oversight authority.
- Regular field and office inspections to enforce industry compliance by PSC's.
- An autonomous regulatory framework like PRISA in South Africa which will be able to regulate the industry without fear or favour.
- Minimum wage and bid price ceilings so be set and regulated by the association of PSC's and not government as is currently the case. Government cannot be a referee and a player in the industry.

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