



**S TRENGTHENING  
R WANDAN  
A DMINISTRATIVE  
J USTICE**

**FINDINGS AND RECOMMENDATIONS  
FROM DISTRICT FIELD RESEARCH ON  
ADMINISTRATIVE JUSTICE IN PRACTICE**



# Introduction

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At its core, administrative justice is about **ensuring that public bodies and those who exercise public functions make legally supportable, reasoned, timely, procedurally fair, and intelligible decisions**. Administrative justice is also about how such decisions are communicated to people (as citizens, consumers, businesses, and CSOs) and what mechanisms exist for providing redress when decisions are decided incorrectly or perceived as such. While administrative justice also concerns appeals of such decisions to higher government authorities (including the courts), the focus is on improvements to alleged deficiencies in front-line (i.e., first instance) decision-making by rank-and-file public officials. This involves a thorough examination of how users and public officials understand how systems of administrative justice operate (across different subject areas, institutions (central and local government), and geographic locations, and how both can learn from both government-held data and independent research evidence. Such understanding of citizen system usage and official decision-making patterns, as well as learning from mistakes – via information from appeals systems and independent research can improve both resource utilization and quality of decision-making.

Given that administrative cases in any modern bureaucratic society, including those in Rwanda, dwarf the number of cases in the criminal or civil judicial systems– and exert a major influence on the welfare of ordinary people and businesses (administrative justice is inherently a mass system of justice) – improvements in administrative justice can have a disproportionate impact on the quality of government service delivery and on perceptions of government effectiveness and commitment to fair treatment of citizens under the law. A key hallmark of administrative justice is the extent to which the state, despite being a party to administrative disputes, nevertheless has a special, affirmative responsibility to protect the basic rights of individuals – to offset the inherent power imbalance in resources and information between the state and its citizens.

Research has shown that the procedural dimension of justice systems matter greatly to citizens.<sup>1</sup> When citizens have a basic understanding of their rights and how the decision-making process works, when they are treated

with courtesy and respect, given an opportunity to describe their situation and present evidence on their behalf, and provided with a written decision with supporting reasons, they are likely to view an administrative process as fundamentally fair – and less likely to feel that they have to appeal to the courts, politicians, or other forums for redress. Ultimately, a sound system of administrative justice enhances public trust in state institutions, as well as investor confidence in regulatory governance.

There is a delicate balance and tension in administrative decision-making between issues of efficiency, regularity, and the mechanical application of rules (often public administration priorities) and those of quality, individualized fairness, and appropriate decision-maker discretion (emphasized by those with a more legal or justice orientation). There are also important questions about the training and supervision of those who make administrative decisions: whereas many see such decision-making as a simple, straightforward, and somewhat lowly enterprise, others see the need for improved professionalization as a mean of enhancing both citizen confidence and the job satisfaction and stature of public servants. In the latter view, capacity (as well as perhaps remuneration and other resources) can be enhanced in the following skill/responsibility areas: (1) knowledge of law, regulations, and policy; (2) clear and respectful communications with the public; (3) proper collection and management of information/evidence; (4) assessment and weighing of evidence and the generation of supportable findings; (5) the application of law and the giving of proper reasons; and (6) the capacity to learning from decisions and the generation of appropriate guidance (quality assurance) from higher authorities (senior public administration, ombudsman offices, and the courts).

In this project, UMass Boston and its partners gathered and analyzed information that identified the most serious issues with the quality, transparency, and legality of administrative decision-making in Rwanda (principally at the District government level, where most administrative decisions – as opposed to policy – are made under the country’s decentralized governance), in order to help relevant Rwandan government and nongovernmental organizations use that information to spur critically

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<sup>1</sup> See, e.g.: Tom R. Tyler, “Procedural Justice, Legitimacy, and the Effective Rule of Law,” *Crime and Justice* 30 (2003): 283-357; Tyler, T. R. (1988). What is Procedural Justice? Criteria used by Citizens to Assess the Fairness of Legal Procedures. *Law & Society Review*, 22, 103–135. doi:10.2307/3053563; Tyler, T. R. (2006b). *Why People Obey the Law*. Princeton, NJ: Princeton University Press.

needed administrative, legal, managerial/training, and civic awareness initiatives and reforms. Four areas of administrative decision-making are addressed intensively: public labor relations; private labor regulation; land expropriation, and public procurement. These areas have been selected based on the large numbers of cases that are decided by administrative officials, the relatively high visibility of and intrinsic public interest in such matters, and the extent to which two of the four areas implicate businesses, thereby potentially engaging the Rwandan private sector as a stakeholder for reforms.

### Project Background and Context

The ultimate goal of the project is to improve administrative decisions so that they are clear, intelligible, grounded in law, and afford individual citizens and businesses procedural rights to understand the contours of the administrative process, present evidence on their behalf, and access effective avenues of appeal. The SRAJ Team objectively assessed the nature and scope of potential problems with administrative decision-making and used such policy-relevant evidence to: (1) Propose improved training programs on administrative decision-making for legal professionals and public officials; (2) Raise public awareness of citizen rights in the administrative process; and (3) Explore possibilities for legal and policy changes that would measurably strengthen such rights.

It is important to note the thrust of this project rests on existing Rwandan government policy commitments to improve the quality of governance, particularly at the district level. It aligns squarely with the government's efforts to strengthen administrative accountability and service delivery in accordance with the National Strategy for Transformation (NST-1), as well as with the country's Justice, Reconciliation, Law and Order Sector (JRLOS) Strategic Plan.

The project has been committed to studying and helping improve an area of public management that has generally been overlooked, but in the process, strives to achieve not only tangible, but sustainable results. These important efforts toward sustainability included the following initiatives:

- Assembling a wealth of information about administrative decision-making and recordkeeping in Rwanda at the local level (where the vast majority of such decisions affecting ordinary citizens and businesses are made) that in aggregate form, can be shared with the public to heighten public awareness of individual rights using a gender lens.
- Assisting Rwandan training institutions such as the Institute for Legal Practice and Development (ILPD) with various training curricula that can be refined in the future based on learning under the project and innovative pedagogical approaches. By acting intelligently on the data collected by the project, the Rwandan government will be in a strong position to mount expanded training and capacity-building efforts of the kind piloted by this project. These efforts can include those focusing on particular sectors, administrative jurisdictions (ministry/agency/local governments), units (departments or offices responsible for particular kinds of decisions or appeals), and/or legal and procedural issues.
- Transmitting to policymakers and other interested stakeholder's various policy recommendations and legal reforms (including those directly affecting administrative procedure) that can guide future reform efforts. Labor

This report compiles all the information gleaned from the research activities, which includes both a legal and policy framework analysis and a field research effort aimed at collecting a wealth of information about administrative justice in practice at the district level. While many of the project activities are exploratory and preliminary in nature—identifying problems with solid, policy-relevant evidence and initial information dissemination and capacity-building efforts, and then respectfully relying on government and civil society stakeholders to determine how best to integrate such work and insights into future reform initiatives—the SRAJ program provides an impetus for change that is locally owned and respectful of objective evidence.

# Methodology

## Program Subject Matter Parameters: Areas of Decision-making

In order to better understand the systematic characteristics of administrative decision-making in Rwanda, this program has sought to determine the nature, scope, and magnitude of actual or potential decision-making problems by examining them in a limited number of regulatory contexts that are characterized by: (1) a high volume of cases that affect large numbers of individuals and/or businesses; and (2) high-visibility areas of regulation and decision-making that are readily understandable to citizens and that have the potential to resonate in significant ways with the media and public opinion. This sampling has the potential to focus the attention of government and citizens alike and ensure that interventions designed to improve the quality and legality of decision-making have significant value for money.

Based on the above approach and criteria concerning decision-making subject areas for intensive research, UMass Boston and its Rwandan partners conducted discussions and expert consultations in February 2016, and selected four areas for research and analysis, balancing potential impact with time and cost considerations and recognizing that a study of this nature has not been undertaken heretofore. The four areas are: (1) public employment relations; (2) private employment regulation; (3) land expropriation; and (4) public procurement. Each area offers significant advantages, and together they promise to provide important insights into administrative decision-making in Rwanda as a whole.

All four areas meet the twin criteria of featuring relatively high numbers of cases and having reasonably high visibility to ordinary citizens and entail substantial decision-making authority at the district government level. All have a very direct bearing on citizens' livelihoods and most citizens are relatively knowledgeable about what is involved in such cases (and many have personal experience or know people who have been directly impacted).

In the labor areas, both public and private employment were examined, including public recruitment and termination decisions that are anecdotally known to

generate abundant grievances and lawsuits, and private sector labor regulation decisions that also generate a large number of disputes. Private employment in particular, brings in the perspectives of both employees and employers, and can have a tangible effect on the enabling environment for private investment.

## Mixed methods

We used a mixed methods approach combining qualitative and quantitative analysis in the four areas vis- a-vis administrative justice.

In each area, the quantitative data was collected using a questionnaire (specific to each subject area).<sup>2</sup> Respondents were selected among individuals having registered complaints during the past three or four years (depending on the data readily available for the four subject areas<sup>3</sup> – see below discussion re: district and respondents selection). Complainant lists in each area were obtained from the districts (see below discussion of district selection) and respondents were randomly chosen from these lists.<sup>4</sup> We note that the sample of complainants in the area of private labor is nationally representative of labor complainants in Rwanda, comprising 370 respondents. The samples of the 3 other areas are not representative, but purposive in nature, reflecting limitations on available data as well as research costs. The sample size in land expropriation is 111 respondents, while those for public employment and procurement are 100 and 50, respectively. In each area, data was gathered on, but not limited to:

- ◇ Individual demographic characteristics (age, sex, education, ...)
- ◇ General knowledge of rights and dispute procedures in the subject area
- ◇ Access to information related to the subject matter
- ◇ The type of disputes
- ◇ The appeal process (Institution appealed to, response time, ...)
- ◇ Satisfaction with and various perceptions of, the dispute process

<sup>2</sup> The questionnaire is provided in annex.

<sup>3</sup> 3 years for private labor regulations and public employment and 4 years for land expropriation and public procurement.

<sup>4</sup> Statistics to determine the potential sample size were obtained from central authorities. Lists of complainants were obtained from the district.

- ◇ The transparency of the procedure and the decisions
- ◇ Key recommendations to strengthen administrative justice in the subject matter

The data analysis consisted of summary statistics and cross tabulations of the different variables constructed. A regression analysis was conducted on the labor component.

The qualitative data collection consisted of key informant interviews and group discussions in order to obtain a more granular and nuanced understanding of the procedures, practices, and perceived challenges (according to both citizens and officials) in each of the four areas.

Key informants interviews (KIIs) were conducted with district-level officials in each of the districts covered by the respective subject matter sampling methods,<sup>5</sup> including (depending on the specific subject matter) Mayors or Vice-Mayors for Economic Development, Executive Secretaries, Legal Advisers, Documentation and Archives Officers/other Central Secretariat personnel, Good Governance Unit Managers, Labor Inspectors, Corporate Service Division Managers, Procurement Officers, HR and Administrative Unit Directors, HR Management Officers, Land Management Team Leaders, and Valuation Officers. In addition, employers and bidders were also interviewed for the private labor and the public procurement components, respectively. The discussion was guided by a researcher<sup>6</sup> and questions about procedural experiences, practices, and challenges faced by individual complainants and officials were posed.

Group Discussions were conducted with groups of five to eight participants, male and female, in the respective districts, who were identified as having registered disputes/complaints at the district level in any of the four subject matter areas<sup>7</sup>. Special Group discussions for women were organized when the complaints were

about sexual harassment in workplaces, and in land expropriation, when the complaint addressed the lack of consultation of women in land expropriation processes. In addition, group discussions were held with tender committee members in the various districts (with regard to the procurement area) and with employers in the case of private labor regulation. The discussion was guided by a researcher and questions about common procedural and legal practices, challenges faced, and factors that helped and hindered their work were discussed by the participants.

Lastly, cross districts group discussions<sup>8</sup> were conducted bringing together men and women officials across various districts who occupies the same position in district government (e.g. Group discussions among legal advisers or procurement officers).

### District and respondent selection

The districts for the field research were selected in a three-stage process. First, six districts were selected to achieve a nationally representative survey sample in the private labor regulation component but to also maintain significant geographic diversity across the country's five provinces (see below the description of the specific selection procedure utilized). Second, five out of these six districts were selected to conduct the public procurement survey and the public employment survey. The selection of the five districts was also done such that all the provinces were represented and geographic diversity achieved. Third, the land expropriation survey was administered in four of the latter five districts. The four districts were selected during a workshop of researchers and in accordance with their direct relevance to land expropriation (all four districts had significant urban infrastructure projects over the past several years and had generated a reasonably significant number of expropriation-related complaints by citizens).

For the **private labor** topic, the list of labor complaints over the last three years and its distribution across

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In preparation for the field research, interviews were conducted (and the respective surveys administered) in the districts of Kicukiro and Kamonyi as part of a piloting effort. Based on the results of the pilots, several questions of the survey and the KII's were slightly modified, as well as aspects of the protocol for administering the surveys.

The interview guide is provided in Annexes.

The following group discussions with citizens were held in each of the sampled districts (see the below description of the sampling methods): private labor (men, women, and a mix in each of the six selected districts), land expropriation (men and women in each of the four selected districts), and public employment (men, women and a mix in each of the five selected districts). A group discussion also was held among tender committee members in each district with regard to the procurement topic. For labor, a discussion was also conducted with several employers in each district, and for procurement, a discussion was held in each of the five districts with company representatives.

Cross-district group discussions were conducted after the data collection phase, and involved, respectively, the following similarly situated personnel: Legal Advisers, Documentation and Archives Officers/other Central Secretariat personnel, Good Governance Unit Managers, Labor Inspectors, Corporate Service Division Managers, Procurement Officers, HR Management Officers, and Directors of One Stop Centers. In addition to those officials from the target districts, officials in some of these group discussions were invited from Kamonyi and Kicukiro, which had served as districts for the piloting of the survey and interview protocols. The discussions were designed to presenting various preliminary findings from the field research in the target districts and obtained informed reactions from the participants

districts in Rwanda was shared with the SRAJ researchers by MIFOTRA (based on labor complaints data generated by labor inspectors all over the country and catalogued by district). The population we considered was limited to the list of employees who lodged the labor complaints in question. These individuals were of course unevenly spread across the country.

While it is certainly true that a large number of districts in the country have certain similar characteristics demographically (esp. due to substantial rural sectors and a few large urban sectors), it is imperative that we obtained a representative sample relevant to our specific objectives. Such a nationally representative sample was possible with respect to the issue of labor regulation, thanks to the availability of aggregate complaints data by district.

Our sampling is presented in two steps. We first compute the number of observation for national representativeness. We then select districts where observation will be collected.

The **Approach** first relies on some general principles and background:

1. First, it is important to note that urbanicity correlates very well with labor complaints (.777).
  3. Because urbanicity and number of labor complaints track well with each other, these can be used as a way to determine which districts should be considered for dropping from the study (due to their relative insignificance). Indeed, a combination of both serves the purpose. Applying this concept, we use the rule that a district gets dropped from consideration if its urbanicity is 3.0% or less and if the number of labor complaints is less than 100. Six districts can accordingly be dropped from consideration (Nyamasheke, Gisagara, Burera, Nyaruguru, Rutsiro, and Rulindo). Implementing this rule means that
- only 391 of the 7504 total labor complaints (5.2%) are being eliminated from consideration for selection into the sample (resulting in 95% coverage). Also, under this proposed design, 2 of 3 (67%) of the districts in Kigali are selected, and 4 of the 21 (19%) of the other districts in the sample are selected. That means overall, we are studying 6 of 24 (25%) of districts under consideration.
5. We have two strata: One for Kigali and one for the remaining 21 districts from the other four Provinces. Kigali needs to be a separate stratum due to its unique characteristics—both the huge volume of complaints and the complex and sophisticated nature of many of the individual cases.
  7. The selection method within the two strata is probabilistic in design, but also attempts to get the widest possible geographic spread across the country. This is accomplished by first using a type of random walk from district to district within each province sequentially (we develop an ordering of districts contiguously across first Southern province, then Western province, then Northern province and finally Eastern province).
  9. Next, using probability proportionate to size sampling (where the number of complaints within a district is the measure of size), a systematic random sample of four districts is chosen along the ordered geographic path developed in step 3 (we randomly pick a district along the ordered path that probabilistically hits a certain complaints range and then proceed to do the same until four districts are selected).<sup>9</sup> This guarantees a geographic spread, while using probabilistic random sampling and in no way relies on any type of purposive selection of any district.
  11. For the Kigali stratum, two districts are randomly selected, again using probability proportionate to size sampling. This is crucial as a matter of eliminating

<sup>9</sup> Outside Kigali, the districts are arranged along a path beginning with the Kamonyi district within the Southern Province (this was simply chosen as a convenient starting point). The path proceeds through all districts within that province until it passes into the Rusizi district in the Western Province. After going through all districts in that province, it passes into the Musanze district in the Northern Province, through that province and into the Nyagatare district in the Eastern province, ending after touching all districts in that last province. Because a probability proportionate to size selection of 4 districts is desired for geographic diversity, and because the number of complaints is used as a measure of size (due to their importance to the study and their high correlation with urbanicity), we focus on the 4129 complaints from the 21 districts that remain in this stratum after the 6 districts with insignificant numbers of complaints are dropped. Dividing the 4129 complaints by 4 (i.e., number of desired districts to sample) creates an interval of 1032.25. Then, a random number is generated between 1 and 1032 to serve as the seed to begin the selection process. Using the ordering of districts along geographic lines just described, and also using the number of complaints within each district, the first district selected into the sample will be the one that ends up containing the complaint corresponding to the randomly generated seed. For example, assume that the random seed was 714. The first district in the created path, Kamonyi, has 62 complaints, so it does not contain the 714th complaint. The next district along the path is Muhanga, which has 72 complaints. Therefore, Muhanga has the 63rd through 134th complaint and also does not contain complaint number 714. The third district in the path is Ruhango which has 602 complaints, which falls within the range containing the 135th through the 736th complaint; accordingly, this interval does contain the 714th complaint so Ruhango is selected into the sample. This process continues in this manner along the previously ordered path, next looking for the district that contains the  $714 + 1032 = 1746$ th complaint. Then it looks for the district with the  $1746 + 1032 = 2778$ th complaint and then finally the  $2778 + 1032 = 3810$ th complaint. As advertised, the method utilized to select the four districts selected in this systematic sample, using a randomly generated start, is probabilistic (using proportionate to size criteria) and also creates a geographic spread along the contiguous path of districts originally created.

bias, but it is also crucial because each of the 3 Kigali districts are so unique in terms of complaints volume and certain demographic characteristics;

13. Here are the results of the district selection:

- a. For the Kigali stratum Nyarugenge and Gasabo districts were selected into the study.
- c. For the selection of four provinces from the rest of the country stratum, we drew the following districts: Ruhango from the Southern Province, Rubavu from the Western Province, Gicumbi from the Northern Province and Bugesera from the Eastern Province.

It is worth noting that the selection ended up with a district from each of the four provinces. Note that there is still a reasonable dispersion across level of urbanicity in the rest of the country stratum (2.8% - 8.1% range). There is also a reasonable dispersion across the numbers of complaints in this second stratum (146 - 602).

The **respondents** were selected from the 6 districts selected above. Within each district, respondents were randomly selected from the list of labor complaints individuals. The actual sample includes 370 respondents out of a population of 7504 complainants. Using a transformation of Yamane's sampling approach<sup>10</sup>, the

level of precision of the survey is 5.24%. At this level of precision, the sampling hence ensures national representativeness with respect to the individual labor complaints in Rwanda. District and sub-administrative representativeness cannot be claimed.

As mentioned above, five out of the six districts were selected to administer the survey in public procurement and in public employment. The districts were selected such that all four provinces plus the city of Kigali were represented. The surveys were hence conducted in Ruhango, Rubavu, Gicumbi, Bugesera and Gasabo. In land expropriation the survey was administered in four out of the latter five district. Ruhango was identified to be the less relevant district to the subject matter. The survey in Land expropriation was hence conducted in Rubavu, Gicumbi, Bugesera and Gasabo.

For the qualitative part, as previously mentioned, Group Discussions<sup>11</sup> were conducted in the districts where the survey was administered. In each area, key informant's interviews were conducted in the six districts, plus the two pilot districts: Kicukiro and Kamonyi. Data collected from the survey questionnaire, key informant's interviews and Group Discussions constitute the basis on which the findings are build, and which are presented, component by component in the next sections.

$$n = \frac{N}{1 + N(e)^2}$$

<sup>10</sup> Yamane (1967:888), where n is sample size, N is population and e the level of precision.

<sup>11</sup>The following group discussions were held: private labor (Men, women, mix), land expropriation (men and women), public employment (Men, women and mix), Public procurement (tender committee). In addition, views from employers were collected both on public procurement and private labor components.



# **Private Labor Regulation and Administrative Justice**



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# An Overview of The Practice of Administrative Justice in Private Labor Regulation

This section provides a general description of the practice of administrative justice related to private labor complaints. It was informed by the Phase I Legal and Policy Framework Analysis conducted by the SRAJ project, as well as the Phase II field research (which included individual interviews and group discussions in 6 districts, involving more than 50 citizens, 20 representatives of private employers, and 40 officials from central and decentralized government entities. These actors have participated in the administrative process (with regard to labor regulation) as complainants (citizens), respondents (private firm representatives) and problem-solvers and (sometimes) mediators (public officials). Their views, against the backdrop of the operative legal framework, provide a multi-dimensional view of the current administrative process governing private labor disputes. This section is followed by a discussion of quantitative data obtained from a survey of citizens with personal experience in labor disputes, and then a summary of key findings and recommendations from the field research.



## Nature of labor complaints

A private labor complaint arises when an employee of a private employer within a district makes a complaint about his or her employer to the appropriate authority at the district level. This authority is the labor inspector—a representative of the Ministry of Public Service and Labor (MIFOTRA). Complaints made by contracted employees of the district are also treated as private labor complaints.

## The initiation of the dispute process in practice

The procedure for handling labor disputes usually starts with a claim before the employer. These claims often involve allegations of unjust dismissal, unpaid wages or overtime, or termination of contract for purported economic reasons. Employees usually consult their syndicates and/or their superiors (e.g., the human resources manager, Director General, or head of institution) in raising a complaint. If the dispute is not resolved, the employee is supposed to write a complaint letter to the workers' delegates at the firm for the purpose of exploring mediation. These employee representatives are empowered by the law to amicably settle individual labor disputes between employers and employees.<sup>12</sup> The workers' delegates call the disciplinary committee of the institution, which is supposed to handle the dispute. The employees elect the workers' delegate<sup>13</sup> as required by article 114 of the Labor law.

There is a widespread view among those who have had labor disputes that employees seem to undervalue these elections and do not have confidence in the ability of delegates to resolve disputes. There is also some distrust of the delegates' independence; many believe top managers are in a position to influence such elections. In addition, workers' delegates are not adequately protected by the law when they take decisions against their employer.<sup>14</sup> Furthermore, many citizens who were interviewed said that workers' delegates often take the side of the employer to avoid further conflicts and protect their own position, resulting in decisions that often go against employees<sup>3</sup> who are more vulnerable. In certain other cases, employees have reported that inspectors may become overly familiar with, and sometimes biased toward, certain employers as a result of having previously inspected the latter's workplaces and having met with

<sup>12</sup> Art. 102 of the law N° 66/2018 of 30/08/2018 regulating labor in Rwanda (hereinafter Labor law)

<sup>13</sup> For elections, see Ministerial Order n°09 of 13/07/2010 determining the modalities of electing worker's representatives and fulfillment of their duties.

<sup>14</sup> Article 1 of the ILO Convention on Workers' Representatives requires workers' representatives to be afforded protection from wrongful dismissal or other adverse actions based on the role they play in workplace dispute resolution. In Rwanda, one of the current protection measures is stated in Article 30 of the Labor Law, which provides for an increase in damages in cases of unjust dismissal of workers' delegates' due to fulfillment of their workplace duties.

the workers' delegates, making workers' delegates less trusted as problem-solvers.

As a consequence of the foregoing, many employees are aware of these situations and some go to District officials (e.g., Good Governance Officers or Executive Committee members) or inspectors directly. Some even go to the court immediately, which is contrary to procedure. When the courts receive their complaints, they order the employees to return to the workers' delegates due to this violation of procedure.

According to Article 102 of the new Labor Law of 30/8/2018 (repealing labor law of 27/5/2009), when employees' representatives (workers' delegates) fail to settle a dispute amicably, the concerned party may refer the matter to the labor inspector of the area where the enterprise is located for mediation.<sup>15</sup> In practice, when the dispute is not solved by workers' delegates, an employee usually does go to the inspector or approaches a district official who in turn typically refers him or her to the inspector. In fact, district officials by law have no official role in labor dispute resolution but may, out of courtesy, try to resolve disputes or offer some informal guidance. This can present problems, since dispute resolution is by law entrusted to labor inspectors – who are employees of the Ministry of Public Service and Labor (MIFOTRA) – and district officials may sometimes fail to provide sound or accurate advice. If and when the employee ends up in the labor inspector's office, he or she is able to explain the basis for the dispute with the employer, verbally or in writing.

Upon receipt of a complaint, the task of the labor inspector is thus to conciliate with the parties to the dispute. However, his/her role is not limited to conciliation; it is also to prevent disputes from occurring in the first place through periodic inspection of workplaces or investigation of an employer following multiple complaints lodged about particular issues – from compensation to safety.<sup>16</sup> This preventive function can help guide employers on how to comply with the law, and raise general employer and employee awareness about legal requirements.

During the initial conciliation, the labor inspector is supposed to explain what the law stipulates depending on to the nature of the dispute. The inspector also asks whether the employee has brought the complaint to the attention of the employer via the workers' delegates. If the matter was not initially being referred

to the workers' delegates for possible resolution, some labor inspectors order the complainants to go back to the workers' delegates, but others handle the dispute without returning the matter to the workplace.

Once the complaint is received, the labor inspector sends a letter informing the employer of the dispute and calls the latter to appear for conciliation (via a written summons). The employer has to sign a "pour reception" of the letter acknowledging receipt. The summons indicates the name of the complainant, the subject matter (showing the provision of the law violated), the date of proposed conciliation, and a request to bring evidentiary documents supporting the employer's decision vis-à-vis the employee. Often this documentation does not exist, since proper labor contracts may not have been signed, nor reasons given verbally or in writing for a decision to terminate or refuse to pay wages/overtime. The summons requires a response from the employer within one week, and if it is not respected, a second summons is given.

In case of a further non-response, labor inspectors may also advise the complainant to use a non-professional bailiff (e.g., local authorities, such as cell secretary) to bring the employer to the conciliation. If the employer does not show up after the third summons, a decision is written indicating that the mediation was not respected by the employer. However, despite these refusals by some employers to appear for mediation – which is fairly common based on information relayed in multiple field interviews and group discussions – there is still no legal power vested in the inspector to sanction an employer for such refusal, and an employee is therefore forced to seek recourse in the courts.

Some labor inspectors apparently give the employee a written right to go to court if the other party refuses to show up with no justifiable reason following the second summons. In either case, a written decision by the inspector of employer non-compliance allows the employee to appeal to the court. In many cases, interviews revealed that employees do not know how to pursue their cases in court. They are unfamiliar with the procedure and lawyers may be both hard to find (especially in rural areas) and reluctant to accept a case unless the individual has a means to pay (legal aid providers may sometimes accept such cases on a free or reduced remuneration basis, but they may be hard to find in certain districts or may already have excessive caseloads).

<sup>15</sup> Article 103 of the Labor Law stipulates that labor inspectors are empowered to settle collective labor disputes as well through mediation

<sup>16</sup> See Article 113 of the Labor Law (2018), which stipulates that "The Labor Inspectorate is responsible for monitoring compliance with this Law, its implementing orders, collective agreements as well as awareness and providing advice on matters relating to Laws governing labor and social security." Settlement of Labor Disputes through Mediation (Arts. 102 & 103).



## Role of inspectors

The labor inspector has the responsibility to monitor compliance with the Labor Law, its implementing orders and collective agreements (Art. 113 of Labor Law) and settlement of labor disputes through mediation (Articles 102 & 103). He/she is also responsible for raising awareness and advising on matters relating to the Labor and Social Security Laws (Art.113). Labor inspectors are directly responsible for managing private labor complaints. They are appointed by, and report to the Ministry of Public Service and Labor (MIFOTRA). Even though they work at the District level and are provided with office space by District authorities, they are administratively separate and they are accountable to MIFOTRA, not to District officials. Each urban district has two inspectors, while each rural district has one.

## Mediation in practice

Mediation is supposed to occur when the employer and employee come to the labor inspector's office for conciliation. According to citizens and officials interviewed, there are usually delays in finding times to meet and resolve disputes, occasioned by the unavailability of the inspectors, one or the other party, or both. When the conciliation eventually commences, the labor inspector presents the applicable law and what can be expected from conciliation, which is of course a consensual process; a decision cannot be imposed by an inspector. However, according to many different interviewees, some inspectors do not have the knowledge and expertise to conciliate effectively; they may lack mediation skills to narrow the issues between the parties and build trust, lack a detailed knowledge of labor laws and regulations, and/or lack sufficient understanding of business processes and practices in particular industries (e.g. mining). They may also be unfamiliar with methods of calculating employee salaries, so as to maintain an independent view on this subject if and when settlement of back wages is under consideration.

During the conciliation process, each party is supposed to be given time to present evidence and their side of the story. The inspector seeks to find areas of compromise, but as field research interviews and group discussions indicated, if his or her mediation skills are not strong, if he or she does not create an atmosphere of equality between the parties, or if he or she is overworked and/or rushes the process, one or both parties may not be given time and space to express themselves adequately or may feel unduly pressured to reach agreement. Moreover, in some



## Mediation outcomes

A mediation session may result in one of four outcomes: (1) Total conciliation; (2) Partial conciliation; (3) No conciliation; (4) Employer refusal to participate in mediation. In the case of partial or no conciliation, the inspector may ask the parties to continue to negotiate. The inspector then continues mediation until total conciliation is reached, or the inspector determines that the parties are unlikely to reach agreement. If a deadlock results, or the employer refuses to mediate, the inspector issues documentation that allows the parties to proceed to court (in the case of an individual dispute) or to the National Labor Council (in the case of a collective dispute). The National Labor Council uses arbitration procedure to reach a resolution, and its award is able to be enforced by the courts.

cases, employers may be represented or accompanied by a lawyer, whose presence can interfere with the effectiveness of the mediation process (some lawyers zealously advocate and adopt an adversarial stance that may be appropriate in a court of law, but unsuited for a genuine mediation dialogue)<sup>17</sup>.

In the course of conciliating, labor inspectors may carry out an inspection, including discussions with employers and employees, to obtain additional relevant information. There may also be other background information about the employee or the employer (including prior inspections data and the latter's overall compliance with the labor laws) that can illuminate the contours of the dispute in question.

<sup>17</sup> A few interviewees also indicated that employers and/or their lawyers sometimes appeared to exert undue influence on inspectors or district officials based on their stature in the community or personal relationships.

With or without an inspection and additional evidence-gathering, the conciliation process may be concluded in the following ways: through total conciliation, partial conciliation or non-conciliation. Minutes of each mediation are taken and, in the case of partial or total conciliation, the employer and employee are asked to concur on deadlines for the execution of agreed-upon settlement terms. In some cases, a labor inspector may make regular follow-up field visits to check whether the agreement terms are executed (as might be expected, some companies respect and execute the conciliation agreements to the letter, while others do not). In some cases, companies fail to execute an agreement due to

insolvency or some other hardship. In these cases, if back wages or benefits are owed, inspectors may pursue further mediation efforts to determine, for example, how the company can pay in installments. However, despite new Labor Law amendments passed in 2018, inspectors still lack the power to enforce agreements on their own.

Most interviewees who had filed labor complaints can help those with modest financial resources to potentially obtain legal representation in private labor cases.

## Inspections in practice

With regard to carrying out an inspection, labor inspectors must obtain information that affords them an objective, factual view of a company's treatment of its workers. The labor inspector works cooperatively with workers' delegates to collect such information and may do so through an announced or unannounced visit. The latter may occur if there is an indication that serious health and safety issues exist.<sup>18</sup> However, until recently, a company could prohibit a labor inspector from conducting an inspection with impunity; there was no sanction available to enforce these procedures. Now, however, under Article 120 of the recently amended Labor Law (2018), administrative sanctions are available, notwithstanding the fact that modalities for implementing these sanctions are yet to be determined by an Order of the Minister in charge of labor.<sup>19</sup>

An inspection form has to be filled by the inspector during the inspection. This form is designed to provide a score at the end of the inspection. However, the form may not always be filled out completely because of lack of information or technical problems. The inspector provides a copy of the completed form to the employer and files a copy with the complaint. It does not appear that inspection forms are systematically reviewed and followed up on by the government, nor is this the case with mediated agreements (as a matter of recordkeeping and data analysis, depriving MIFOTRA



### Inspections

According to Article 113 of the Labor Law (2018), the Labor Inspectorate is responsible for monitoring compliance with the labor law. Furthermore, Article 3 of Ministerial Order n°09 of 13/07/2010 determining the modalities of electing workers' representatives and fulfilment of their duties, states that the functions of a Labor Inspector shall be to secure the enforcement of the legal provisions relating to labor. To fulfill this function, labor inspectors have been entrusted with inspection powers.

of insights into recurrent problems, possible systemic problems with particular employers and sectors, and certain workload or other issues involving the duties of inspectors). Nevertheless, by conducting interviews with both employees and employer personnel pursuant to inspections, labor inspectors end up making recommendations that are at least reasonably evidence-based, which is sometimes sufficient to produce results. And based on new amendments to the Labor Law passed in 2018, inspectors do now have the power to sanction employers who violate remediation recommendations generated as a result of an inspection.

<sup>18</sup> Article 6 of Ministerial order n°07 of 13/07/2010 determining modalities of the functioning of the labor inspection states that "[t]he Labor Inspector shall not be obliged to inform the employer or the representative of his/her intended visit. He/she may request to be accompanied during his/her visit by one staff delegate of his/her choice within the institution."

<sup>19</sup> Article 120 states that "an employer who refuses to allow a labor inspector to enter an enterprise, refuses to provide information to him/her, fails to report to him/her via a summons or implement recommendations from a labor inspector, commits administrative misconduct. He/she is liable for an administrative fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two million Rwandan francs (FRW 2,000,000)."

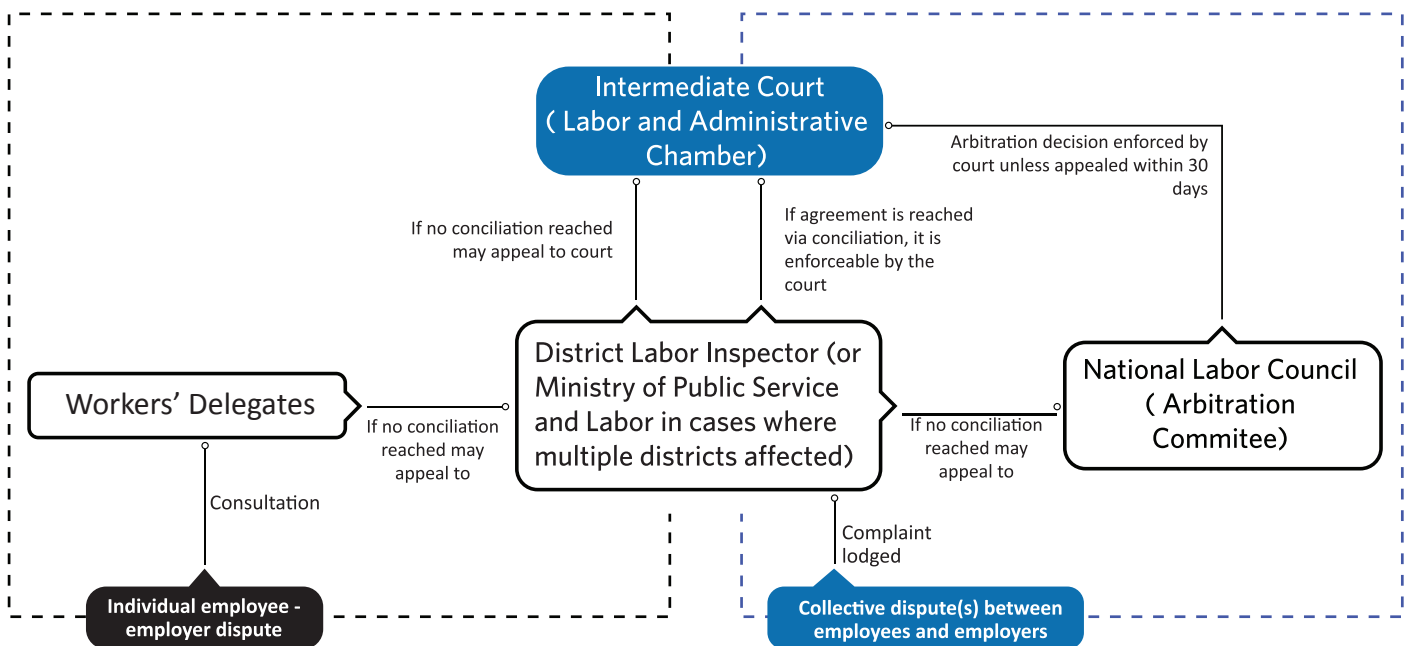


### Inspections follow up

The inspector provides a copy of the inspection form to the employer and sets deadlines by which each violation must be corrected. One or more follow-up inspections are scheduled to ensure compliance. If particular egregious violations are found, the inspector will report the situation to MIFOTRA, which will determine whether operations should be suspended or the company should be closed. However the law appears unclear on this. Article 11 of the new Labor Law (2018) provides for offenses and penalties relating to occupational health and safety. It also provides for administrative sanctions to be levied for non-compliance with inspection procedures or recommendations.

## Administrative Decision Pathways in Private Labor Disputes

The following graphic shows the overall pathways by which individual and collective private labor disputes can be pursued in the Rwandan administrative justice framework.

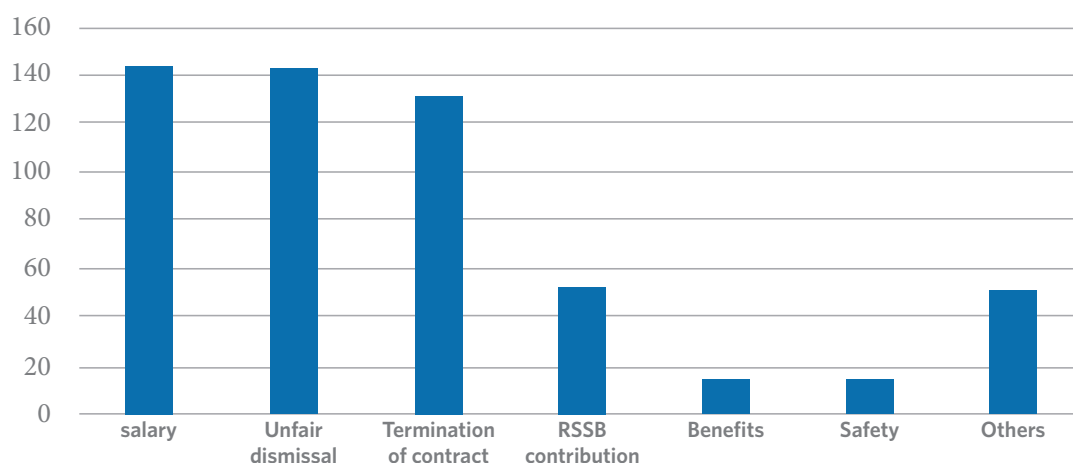


## 2

## Private Labor Dispute Resolution: Quantitative Data on Administrative Justice in Practice

The nationally representative sample of labor complainants participating in a survey about dispute resolution generated a wealth of interesting data about the processing of individual labor complaints. Based on our sample of 370 respondents who pursued individual private labor complaints over the past three years for which data were available (2015-2017), Figure 1 indicates that the main reasons for complaining were related to salary issues, unfair dismissal, and termination of contract for alleged economic or technological reasons. More than 90% of the complaints are related to at least one of these reasons (note that a complaint may be a combination of these). Complaints related to Rwanda Social Security Board (RSSB) contributions came next, but were much smaller in volume (mentioned by about 14% of surveyed complainants). Safety complaints were much lower (4% of respondents). Notably, females lodged relatively more complaints about salary and fewer about unfair dismissal and termination of contract for economic or technological reasons. Also, respondents in the higher Ubudehe categories lodge relatively fewer complaints about salary.<sup>20</sup>

**Figure 1: Reasons for Lodging a Complaint (# of cases)<sup>21</sup>**



Complainants in the sample were mostly male (75%). They were concentrated in Ubudehe categories 2 (25%) and 3 (67%), and were generally between the ages of 26 and 35 years (40%).<sup>22</sup> A large number were university graduates (49%),<sup>23</sup> working in positions designated as permanent (97%) with full-time (92%) and open-ended (61%) contracts in private for-profit enterprises (82%). More than half have fewer than five years of experience (54%),<sup>24</sup> and had a household monthly income above 30,000 Rwf (87%).<sup>25</sup>

The main reported source of information used by complainants concerning labor rights were lawyers (19%) and the employee rights manual of the institution (16%). By contrast, information that may be provided by an institution's HR and legal departments, respectively, was very seldom used (only 4% and 5%, respectively).

From the full sample of 370 respondents, fewer than two-thirds of the surveyed complainants (63%) felt informed about their labor rights, while more than one-third (37%) felt uninformed.<sup>26</sup> Looking at the characteristics of the two groups, it was noticeable that (i) men (36%) felt less informed than women (41%); (ii) individuals between the ages of 46 and 55 years were more informed than others,<sup>27</sup> which can be related to their working experience;

<sup>20</sup> 45% of complaints in Category 1 are related to salary, 41% in category 2, 38% in category 3, 0 in category 4.

<sup>21</sup> IPAR's calculation.

<sup>22</sup> Age category 36-45 accounts for 35%.

<sup>23</sup> Max. secondary diploma holders account for 17% and Max. Primary diploma holders account for 16%.

<sup>24</sup> 26% have between 5-9 years of experience

<sup>25</sup> 32% have income between 30,000 and 100,000 Rwf, 30% have income between 100,000 and 200,000 Rwf and 25% have income above 200,000Rwf.

<sup>26</sup> The distribution is: Not well informed at all 24%; Not very well informed 13%; Somewhat informed 27%; Very well informed 63%.

<sup>27</sup> 45% for 16-25 years; 60% for 26-35 years; 67% for 36-45 years; 64% for 45-55 years and 56% for 56 years and older.

(iii) complainants from a higher Ubudehe category felt much better informed<sup>28</sup>; (iv) More educational attainment was correlated with complainants who self-identified as better informed.<sup>29</sup> In this regard, those with a University-level education seem to have had high degree of awareness of their labor rights (79% of them felt informed); and (v) there was no significant difference in workers self-identifying as full-time workers versus part-time workers.

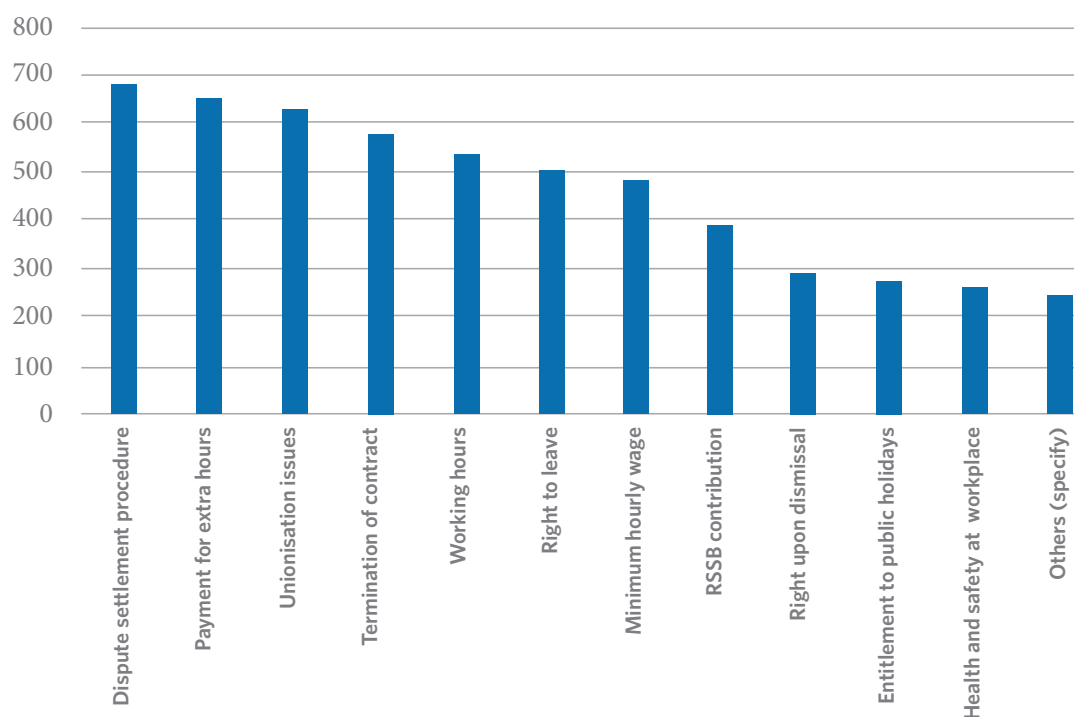
It is worth noting that employees who were better informed had a higher probability of getting a written decision, getting an explanation of the reasons for a decision, getting information on how the administrative process works in the first instance, getting more attentive treatment from a relevant public official, getting more courteous treatment, getting more helpful information, and being given an opportunity to make their views known and offer any evidence supporting their case verbally or in writing. These findings clearly highlight the importance of being informed.<sup>30</sup>

The additional information about labor rights and labor issues that complainants said they needed spanned many topics. However, the greatest need for information concerned dispute settlement procedures (68% of respondents), payment for extra hours (65%) and unionization issues (63%). These were followed by termination of contract (57%), working hours (53%) and minimum wages (48%) Other topics about which some information was desired by complainants are indicated in Figure 2.

In further analyzing respondents' characteristics, it is worth noting that information about dispute resolution procedures was the most frequently mentioned by those from each of the four Ubudehe categories. However, some priority information needs appeared to be specific to particular groups:

- i. Females reported needing relatively more information on issues related to termination of contract and extra hours, and less about public holidays.
- ii. Complainants with lower levels of educational attainment mentioned the need for more information on unionization issues as their top priority, while complainants with higher levels of educational attainment said that more information on dispute settlement procedures was their greatest need.

**Figure 2: Domain of information needed (in % of respondents)<sup>31</sup>**



<sup>28</sup> 18% of complainants in Category 1 feel informed, 50% in category 2, 50% in category 3, 100% in category 4.

<sup>29</sup> 17% of complainants with no education feel informed, 35% for primary educated, 49% for Junior secondary educated, 62% for Secondary educated, 79% for University educated.

<sup>30</sup> These results are drawn from a multinomial regression results. The modeling strategy and the results table is provided in Annex A. For employees who are "somewhat informed" or "very well informed" the probability of getting a written decision compared to not getting a written decision is 3.7, or 5.4 times more likely, respectively, than for employees who are "Not well informed at all" holding other variables constant. Similarly, the probability of getting an explanation of the reasons for a decision is 5.0, or 7.8 times more likely; the probability of getting information on how the administrative process works in the first instance is 2.5, or 4.4 times more likely, and the probability of being given an opportunity to make their views known and offer any evidence supporting their case

In terms of where respondents reported going first to lodge a labor complaint, a very large number indicated they went to the labor inspector (81%). Many fewer reported appealing to a higher authority within their company (5%) or going to their firm's workers' delegates (5%). This is very noteworthy, as the law provides that citizens should first try to resolve a labor dispute within an enterprise by taking a complaint to their workers' representatives; accordingly, the high reported figure of going initially to the labor inspector seems to indicate a very low level of confidence in the workers' delegates, notwithstanding the legally prescribed procedure.<sup>32</sup>

With regard to their interaction with labor inspectors, a large number of respondents said that they obtained useful information (84%), as opposed to respondents' experience with higher authorities in their workplace or with workers' delegates (from whom respectively only 16% and 35% instead of respondents reported getting useful information). Similarly, complainants indicated having a much better experience with labor inspectors when it came to courtesy shown to them, or attentiveness to their cases (84% found labor inspectors courteous and 81% found them attentive; by contrast, only 11% of respondents found company higher authorities courteous and 6% found them attentive, while the figures for workers' delegates were 24% and 31%, respectively).

It is also the case that if the employee was a male, the probability of getting more attentive treatment from a relevant public official (for most complainants, the labor inspector) was .41 times less likely than if the employee was a female, holding other variables constant. Similarly, the probability of getting more courteous treatment was .47 times less likely than if the employee was female, holding other variables constant. If the employee was in Ubudehe category 2 or 3, the probability of getting more attentive treatment from a relevant public official (for most complainants, the labor inspector) was 4.9 or 4.6 times more likely, respectively, than in the case of employees who were in Ubudehe category 1. Similarly, for employees in Ubudehe category 3, the probability of getting more courteous treatment was 3.6 times more likely than in the case of employees in Ubudehe category 1, holding other variables constant. (see all regression results in Annex A).

Similar disparate views emerged from the survey data regarding information provided about the appeals process by different actors: workers' delegates and higher authorities within the company were not seen as providing much of this information (respectively 35% and 26% of them were reported to furnish such information), while labor inspectors did so frequently (in 60% of the cases). A similar relative trend (with significantly better service provided by labor inspectors) was reported by respondents with respect to (1) being given an opportunity to provide evidence and make known his or her views of the case, (2) being provided a written decision and an explanation with reasons thereof, and (3) being furnished information about how and where to appeal. All of these practices reflect sound administrative justice principles.<sup>33</sup>

Looking at case handling from the perspective of efficiency, about half of the complainants (49%) said that they received some kind of response to the substance of their complaint within 1 month of submitting it in the first instance to an individual or institution (which as noted above, means the labor inspector in slightly more than 4 out of 5 cases). Another 22% received a response within 1 to 3 months.

As for the issue of lawyer representation, the 26% of complainants who indicated that they had help from an attorney in presenting their case to this first instance institution were more likely than those who were unrepresented to say that their interlocutors – which, again, were labor inspectors in 81% of the cases – were more helpful, more attentive, and more courteous, and more likely to provide information, afford opportunities to complainants to present evidence and make their views known, provide complainants with a written decision,

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verbally or in writing is 2.7, or 5.6 times more likely than for those employees who are "Not well informed at all". If the employee responds that he or she is "very well informed," the probability of getting more attentive treatment from a relevant public official is 2.3 times more likely than in the case of employees who are "not well informed at all.". Finally, if an employee answers that he/she is "very well informed," the probability of getting more helpful information is 3.0 times more likely than if the employee is "well informed," holding other variables constant. For employees who report being "very well informed", the probability of reporting more courteous treatment from a relevant public official is 2.427 times more likely than for employees who reported being "well informed" about the administrative process, holding other variables constant.

<sup>31</sup> Calculation by IPAR.

<sup>32</sup> It is possible that some respondents did not consider workers' delegates as the 'initial' step in lodging a complaint as a procedural matter, but the wording of the survey asks the respondent where "did you go to complain/appeal first" about the dispute in question, and offers workers' delegates as an option. The most likely interpretation of the survey results is that citizens indeed went to the labor inspector directly, especially when viewed in the context of interviews separately conducted with citizens, many of whom expressed significant skepticism about the capacity of workers' delegates to effectively and objectively address employment disputes.

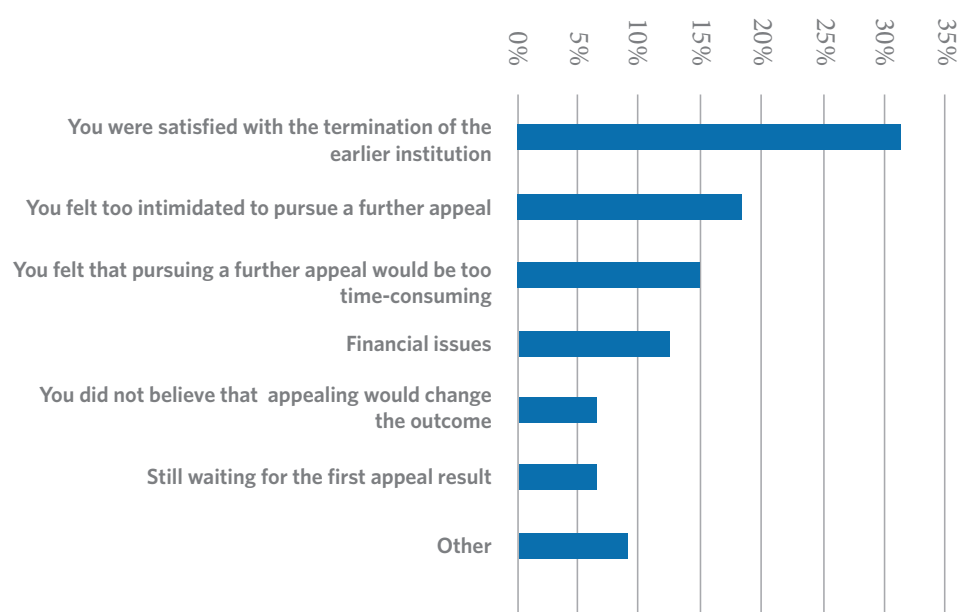


explain the reasons for the decision, provide information on how and where to appeal, and provide a swifter response to the substance of the complaint in question.

In terms of labor complainants pursuing additional appeals, 34% of survey respondents reported taking their complaints to a second forum. In this respect, when a complainant initially lodges a complaint with a higher authority within the employer, he or she typically pursues a second appeal to the labor inspector in 84% of the cases (and in 11% of the cases he or she does not pursue a second appeal). When the first recourse is to the workers' delegates, 69% of complainants lodge a second appeal to the labor inspector, while 29% do not pursue the complaint. When complainants first went to the labor inspector (which is the case for 4 out of 5 complainants), they proceed to courts in 25% of those cases, and 71% do not pursue any second appeal. The reasons why respondents did not pursue a complaint further<sup>34</sup> than the initial institution are provided in Figure 3. Among those who go no further, only 31% of them say they did so because they were satisfied with the initial determination of their case, while 18% of respondents said they felt too intimidated to pursue the complaint any further.

To the extent that most respondents pursuing recourse to a second institution took their appeal to the courts (60%) while a smaller cohort took their next appeal to the labor inspector (33%, which were those who first sought recourse solely within the company), different, but quite positive views were expressed as to the treatment received by citizens before these two institutions, respectively. At this stage of their respective journeys through the complaints process, citizens variously said that the courts and the labor inspector were very helpful or helpful in providing information relevant to their cases (respectively 95% and 85%), very courteous or courteous (respectively 94% and 90%) and very attentive or somewhat attentive in listening to their explanation of their cases (respectively 95% and 87%).

**Figure 3: Reasons for not pursuing a complaint**



<sup>33</sup> Survey respondents reporting on their experience before the various first instance complaint handlers had markedly different views on those actors' adherence to certain practices that follow sound administrative justice principles as follows:

(i) being afforded an opportunity to complainants to provide evidence and make their views known: Labor inspectors 83%, Workers' delegates 29%, higher authorities within firms 32%;

(ii) being provided with a written decision: Labor inspectors 74%, Workers' delegates 41%, higher authorities within firms 15%;

(iii) being provided with an explanation of the decision with reasons: Labor inspector 72%, Workers' delegates 41%, higher authorities within firms 16%;

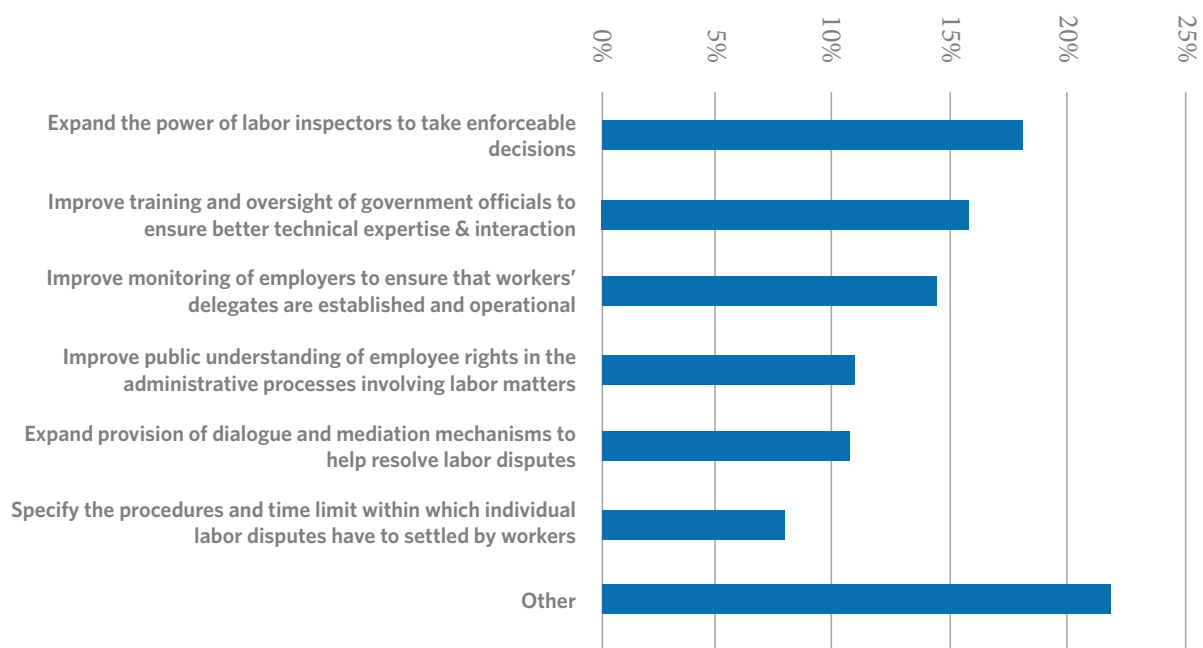
(iv) being provided with information on how and where to appeal: Labor inspector 68%, Workers' delegates 12%, higher authorities within firms 0%

<sup>34</sup> We note that 93% of the complainants who do not pursue a complaint first appealed to labor inspectors.

Among those who pursued a second appeal, only 17% of the complainants (that is 6% of the initial complainants) took their cases further, to a third appeal (which usually meant the courts, for those who initially lodged a complaint within the employer). For those who did not appeal further, the stated reasons for so doing included the following: 37% said they were still awaiting a decision from the second instance appeal forum, 25% were satisfied with the determination of the case by the second instance institution, and 14% said they felt too intimidated to pursue the case further.

Finally, survey respondents were asked to provide their top priority recommendations to strengthen administrative justice in Rwanda. The top 3 priorities identified by the respondents were as follows: Expand the power of labor inspectors to take enforceable decisions (18%),<sup>35</sup> Improve training and oversight of government officials to ensure better technical expertise and interactions with citizens in the handling of labor disputes (14%), and Improve monitoring of employers to ensure that workers' delegates are established and operational (15%). Other recommendations are provided in Figure 4.

**Figure 4: Recommendations to SRAJ**



<sup>35</sup> It is important to note that article 120 of the new Labor Law of 2018 provides for sanctions against employers who obstruct the functioning of the labor inspectorate. Modalities for implementing these sanctions are yet to be determined by an Order of the Minister in charge of labor. The law does not however expand the powers in relation to enforcement of settlement agreement.

## 3

## Lessons Learned and Recommendations

A number of important lessons learned and recommendations emerged from the survey data collected in the six districts, the qualitative information gathered from citizen and public official interviews and focus group discussions, and from the validation workshop conducted with administrative justice stakeholders following the field research

**Strengthening employee's awareness of their rights and dispute settlement procedures:** are generally not aware of their rights in workplace labor matters and of those surveyed, more than a third (37%) did not feel well informed about their rights. As many as 68% of those surveyed said they needed more information about dispute settlement procedures (and 65% needed more information about the rules on overtime pay in particular (where field research indicated that employers frequently fail to pay overtime, or delay such payments). Many did not know what to look for in contracts or understand how to calculate or check their RSSB contributions. Validation workshop participants recommended that all employees need valid contracts, that employees and employers need to be educated about this, and that employees should be given ample time to read their contracts before signing them.

Based on these findings, there should be activities supporting expanded employee legal awareness, so as to inform them of their rights and the availability of dispute resolution mechanisms (the role of mediation in particular). This could be done, according to validation workshop participants, through both the media and workplace education. It was also specifically recommended that MIFOTRA hold its employment forums every six months (rather than every year) and do so at the district level. This educational effort could result in fewer workplace conflicts and less recourse to the courts, saving time and money for citizens and district governments alike. Specific trainings could be organized

by appropriate CSO's operating in particular sectors of the economy or with particular expertise, including that of mediation and conciliation.

**Enhancing the functioning of workers' delegates:** Interviews and group discussions revealed that most workers' delegates do not have sufficient understanding of applicable labor law and many are intimidated by their employers (many workers fear reprisals or the taking of decisions against employees not merited by the facts). Some worker's delegates do not even function, as elections may not be held in some workplaces as required by law. Moreover, the survey of citizens indicated that only about 2 in 5 of them (35%) found that workers' delegates had useful information about employees' rights and dispute resolution. By contrast, 82% of them believe labor inspectors have useful information to share on these matters. Equally important, only 24% of citizens found workers' delegates courteous in handling complaints and only 31% of them felt that delegates listened attentively to citizens' explanation of their cases

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by the law, they  
usually fear to  
take decisions  
related to disputes  
between employees  
employers, they just  
keep quiet.  
Group Discussion, 2019

(the figures were even worse for the higher authority within the employing institution--11% and 6%, respectively). And even where workers' delegates got engaged and took (or explained) a decision, only 41% of the complainants surveyed said they received a written decision or an explanation of the reasons therefor. Still fewer (29%) said they were given an opportunity to provide evidence on their behalf.<sup>36</sup>

Consequently, it is vital to train workers' delegates on basic labor law issues and dispute settlement, and increase employee trust in, and reliance on, workers'

<sup>36</sup> It is worth noting that the 26% of complainants who reported having a lawyer help them present their case indicated that their first instance complaints handlers (81% of whom were inspectors) were relatively more helpful, more attentive, more courteous, more likely to provide information, more open to receiving additional evidence, providing a written decision, providing reasons for a decision, describing how and where to appeal, and providing a more speedy decision. However, since most citizens can't afford a lawyer and many disputes could be resolved more expeditiously at the workplace (where citizens currently don't bring most of their labor complaints), it behooves policymakers to think more critically about improving problem-solving and mediation skills among worker's delegates and company representatives.

delegates (if possible, trade unions and/or relevant CSOs should take the lead in assessing the needs of workers' delegates and developing a suitable capacity building program). Training is also needed for HR representatives and the leadership of firms. The law should also specifically improve protections for workers' delegates.

In addition, as an ancillary matter, labor inspectors should ensure, through inspections and sanctions if necessary, that employers do not seek to influence the election of workers' delegates. The firm is the first level of addressing private labor complaints and is key to reduce the burden of dispute resolution at the state level. In some private institutions, internal rules and regulations are working well for solving disputes between employee(s) and their employer. Those institutions usually have a mechanism for conflict resolution, which can take the form of a team or council composed by a legal adviser, a workers' representative and the management team. Within this framework, skilled representatives of employees - who may have received trainings at the district to improve their skills – have been reported to be drivers for solving most of the problems at the level of the company, together with the legal adviser who, when consulted, helps provide vital legal guidance.

#### **Raising employers' awareness of dispute resolution and settlement procedures:**

Interviews with employers indicated that many employers have limited knowledge about dispute resolution and settlement procedures, especially regarding the mediation role played by the labor inspectors. This lack of information can cause unnecessary adversarialism and non-compliance, creating inefficiencies for all three parties engaged in the process (employee, employer and inspector). Employers should be sensitized about the mandated and important mediation role played by inspectors as well as the benefits of mediation. Indeed, MIFOTRA, and the Private Sector Federation(PSF) should

develop specific information plans in this regard. And since employers are usually represented by lawyers in mediation, it is also crucial to encourage these lawyers to participate constructively in the mediation process in order to reach a genuine compromise or negotiated settlement. That, in turn, would in turn discourage the parties from viewing the mediation process as a mere formal legal requirement before proceeding to

court (where many citizens are hesitant or unable financially to go). In this respect, it was reported that when labor inspectors meet private employers and employees to make them aware of the law, the volume of disputes declines.

#### **Adopting the ministerial order determining the sanctions in case of non-compliance of labor inspectors' decisions:**

The current labor law (amended in August 2018) provides for sanctions against any employer who obstructs the functioning of the Labor Inspectorate or does not comply with on-site inspection findings and recommendations. However, the modalities for implementation of these sanctions are yet to be determined by an order of the minister in charge of labor. This order should

extend the power of the labor inspector to impose sanctions to cases where employers delay or otherwise fail to comply with a settlement agreement that he or she has certified (fully 18% percent of citizens responding to the survey specifically mentioned this as their top recommendation for strengthening administrative justice in the labor sphere)<sup>37</sup>. This would greatly reduce obstruction by employers while reducing the need for employees to tie up significant resources seeking relief in the courts.

“  
A challenge is when an institution prevents an inspection from being conducted. There is no fine to enforce these procedures {.....} and the report on inspection is therefore not followed. Without the enforcement regulation (via the Prime Minister's Order), the labor inspection is difficult

” KII, 2019

<sup>37</sup> Ideally, the order should also provide inspectors with the ability to sanction employers for repeated failure to comply with a summons for mediation.

**Ensuring that all employees sign valid contracts with their employers:** The labor law accepts the validity of unwritten employment contracts on condition that their duration does not exceed ninety (90) consecutive days. The labor law accepts the validity of unwritten employment contracts on condition that their duration does not exceed ninety (90) consecutive days. 26 Ideally, the order should also provide inspectors with the ability to sanction employers for repeated failure to comply with a summons for mediation.

Despite this requirement, some employers hire the services of employees for a period longer than ninety days without written contracts. If labor disputes arise in such cases, labor inspectors face difficulties in handling complaints from these employees without contracts being put in place. While evidence rules are liberal in labor matters, such employees still encounter major difficulties in presenting credible evidence to support their complaints. Accordingly, labor inspectors should carry out regular inspections within different companies to ensure that all employees have valid contracts and impose sanctions on non-compliant employers. Moreover, employees should sign contracts written in the language they understand best.

**Strengthening the resources of the Labor Inspectorate:** Interviews and group discussions with citizens, employers, and inspectors alike indicated that labor inspectors are severely under-staffed, and many are unable to hold office hours for more than two days per week, according to interviewees. Having only one labor inspector per district creates massive workload challenges for both mediation and inspection activities, both of which require field work (this is true even in the three Kigali districts that have two inspectors each but that frequently have even higher volume caseloads). It is important to increase the number of labor inspectors in proportion to their workload, based on a need assessment determining clear criteria on how to calculate the additional resources to be allocated. Moreover, labor inspectors need tablets and specially designed applications to more efficiently maintain and transmit labor data.

Very recently, labor inspectors have been equipped with a new electronic system in which they fill all data

regarding the labor in their respective district. The system is called ILAS (Integrated Labor Administrative System). It is an online case management system that has been shared by MIFOTRA. While the system is new, labor inspectors are starting to become familiar with it since and they have already received some trainings.

“  
Labor inspectors need to be trained on how to calculate salaries[...], on mediation and conciliation skills[...], on the Integrated Labor Administrative System,[...] and on drafting minutes of mediation.  
”

Group Discussion, 2019

This system is expected to increase the frequency and facilitate data collection. However, it was reported that ILAS should also have a space for the proper recording of all reports. In addition, peer learning between labor inspectors has been reported to improve knowledge. The peer learning occurs through social media platforms, on which labor inspectors share experience regarding their daily work. As there is a new law, with which inspectors are supposed to be familiar, labor inspectors have been active in creating different groups and platforms such as advisory council committee WhatsApp group and email groups, through which they share experience. This allows labor inspectors to anticipate

potential case and to learn how to deal with these cases.

**Need for inspector training:** Citizens expressed generally high satisfaction with the work of labor inspectors. For example, large numbers of survey respondents (84%) judged labor inspectors to be courteous and 83% said that inspectors afforded them an opportunity to present evidence on their behalf. Moreover, 74% also said that inspectors provided them with a written decision and 72% said that inspectors explained the reasons for the decision that was issued. Nevertheless, citizen interviews and group discussions surfaced significant dissatisfaction with the effectiveness of mediation, including the impression that inspectors were more solicitous of employers and did not adequately engage employers to find genuine areas of agreement and compromise. The fact that 34% of citizens surveyed did not receive a decision in writing is still challenging, and can lead to confusion and difficulties in enforcing inspector orders, thereby creating an evidence gap. This in turn creates problems for the inspector being able to adequately assess employer conformity with applicable legal standards.

Meanwhile, employers and employees alike indicated

in interviews that many inspectors needed stronger mediation training to bring parties to agreement and that they lacked specialized knowledge of particular industries, including mining (“improved training for inspectors” was the second most common recommendation from citizens regarding administrative justice improvements in the labor sphere—16% of respondents). This hampers uniform interpretation

of the Labor Law (particularly with regard to its new amendments), the carrying out of effective inspections, and more effective and technically relevant mediation sessions (including the drafting of more useful conciliation minutes and other germane legal documents bearing on the particular employer and sector involved).

## 4

## Annex A: Regression outcomes

### Variables descriptions

Male ----male=1, female=0

Education---- combine “None, never been to school “and “primary” into group “priedu”, and assign it as 1; then combine” Junior Secondary” and “ Advanced Secondary ” into group “secedu”, and assign it as 2; last, combine “Vocational” and “university” into group “highedu” and assign it as 3.

Lawyer presenting----if you received help from a lawyer in presenting your complaint to this institution.

Written decision----if you were provided with a written decision in the matter that was the subject of the complaint.

Second appeal----if you pursued a second appeal for your complaint.

Second appeal information---- if you were provided with information about how and where to further pursue a complaint/appeal in your case if you were dissatisfied with the decision in the first instance institution.

Process information----if information was provided verbally or in writing about how the complaint process operated.

View supporting----if you were given an opportunity to make your views known and to offer any evidence supporting your case verbally or in writing.

Decision explanation---- if the written decision was accompanied by an explanation with reasons for the decision.

To all the “yes/no” question, assign “yes” as 1, “no” as 0.

**Table 1. Descriptive statistics**

Variable	Mean	Std. Dev.	Min	Max
Male	.7533875	.4316244	0	1
Education	2.333333	.7625757	1	3
Ubudehe	2.683616	.5442592	1	4
Information	2.140921	1.046049	1	4
Lawyer presenting	.2228412	.4167334	0	1
Written Decision	.6852368	.4650697	0	1
Second Appeal	.6470588	.4785553	0	1
Second Appeal Information	.6155989	.4871323	0	1
Process Information	.729805	.4446802	0	1
View Supporting	.7743733	.4185778	0	1
Decision Explanation	.6685237	.4714009	0	1
Helpfulness (of the inspector)	1.712644	1.080698	1	4
Attentiveness (of the inspector)	1.737892	1.055443	1	4
Courtesy (of the inspector)	1.785915	1.057299	1	4

## Regressions results

Table 2 Multilevel logistic regression models (Odds Ratios/Std.Err.)

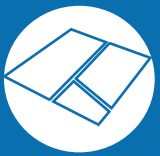
	Binary logistic regression models					Ordinal regression models			
	Written Decision	Decision Explanation	Process Information	View supporting	Second Appeal	Helpfulness	Attentiveness	courtesy	
Gender: Male	.664 (.205)	.523** (.162)	.601 (.194)	.585 (.201)	.783 (.231)	.345*** (.121)	.411*** (.141)	.465** (.146)	
Education: secedu	.959 (.353)	.873 (.323)	1.178 (.436)	1.062 (.431)	.988 (.374)	.607 (.223)	.878 (.319)	1.147 (.386)	
highedu	.979 (.368)	.697 (.263)	1.137 (.430)	.636 (.257)	.784 (.297)	.980 (.381)	1.212 (.462)	1.460 (.514)	
Ubudehe: Category 2	.105** (.115)	.441 (.337)	.852 (.640)	.258 (.286)	.456 (.367)	1.471 (.993)	4.920** (3.114)	1.936 (1.159)	
Category 3	.136* (.149)	.475 (.357)	.759 (.558)	.258 (.283)	.736 (.588)	2.620 (1.760)	4.544** (2.814)	3.608** (2.137)	
Category 4	.065 (.108)	.279 (.409)	.332 (.486)	.099 (.164)	1.267 (1.929)	.958 (1.425)	2.195 (.179)	1.557 (2.176)	
Information: Not very well informed	1.681 (.688)	2.154* (.878)	1.720 (.695)	1.687 (.716)	.769 (.345)	1.038 (.423)	.675 (.274)	.893 (.341)	
Somewhat informed	3.703*** (1.60)	4.968*** (2.157)	2.467** (1.050)	2.688** (1.21)	.653 (.300)	1.656 (.730)	1.521 (.663)	1.335 (.534)	



Very well informed	5.350*** (2.371)	7.816*** (3.492)	4.143*** (1.837)	5.56*** (2.668)	.510 (.241)	2.931** (1.357)	2.262* (1.004)	2.427** (1.013)
Lawyer Presenting: Yes	2.016** (.669)	1.727* (.548)	1.841* (.622)	1.050 (.348)	.206*** (.060)	1.043 (.336)	1.022 (.317)	.919 (.263)
Second Appeal Information: Yes					2.400*** (.663)			
View Supporting: Yes						4.236***	3.652***	3.817***
Decision Explanation: Yes						(1.767)	(1.413)	(1.45)
Process Information: Yes						3.193***	3.148***	2.829***
						(1.172)	(1.109)	(.991)
						2.466**	4.919***	3.055***
						(1.073)	(1.985)	(1.229)
Pseudo R2	0.092	0.090	0.055	0.056	0.093	0.245	0.269	0.231
Number of Observations	344	344	344	344	343	333	336	340

Regress on Stata 15.1 Significance codes: P-value < 0.01 = "\*\*\*\*", P < 0.05 = "\*\*\*", P < 0.1 = "\*\*"

Gender: female as a reference; Education: primary education as a reference; Ubudehe: Category 1 as a reference; Information: "Not well informed at all" as a reference



# **Land Expropriation and Administrative Justice**

# An Overview of the Practice of Administrative Justice in Land Expropriation

Land expropriation (the seizure of property for purposes in the public interest) has been a relatively contentious area of administrative decision-making over the past several years, but despite a number of important substantive reforms, including a new expropriation law in 2015, a number of procedural challenges remain, including many legally required processes that still need to be adopted via ministerial regulation, or are not implemented as intended. In some cases, simply better planning and advance communication with local authorities and the public would yield significant improvements.

This section of the report provides a general description of the practice of administrative justice related to land expropriation. It was informed by the SRAJ Project's Phase I Legal and Policy Framework Analysis, as well as the Phase II field research, which included in-depth interviews with citizens and government officials, group discussions conducted with citizens and public officials, respectively, in each of four districts (Gasabo, Bugesera, Rubavu, and Gicumbi), and cross-district group discussions with land officers from the above four districts and the two pilot districts (Kicukiro and Kamonyi) in which the survey instruments and interview guides were tested. Their views, against the backdrop of the operative legal framework, provide a multi-dimensional view of the current administrative process governing land expropriation. Following this section, we provide an overview of findings regarding the operation of the administrative process in practice, based on surveys administered to citizens with experience in that process. The report concludes with a summary of findings and policy recommendations.



## Expropriation in the public interest

An act based on the power of government to seize a person's property for a purpose in the public interest after payment of fair compensation. The purpose can encompass anything from infrastructure (esp. roads) to master plans facilitating a variety of public works supportive of long-range urban planning and priority economic development. Insofar as the law does not give an exhaustive list of activities deemed to be in the public interest (see Article 5 of Law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest - hereinafter referred to as "Expropriation law"), it is within the power of local committees of expropriation to determine/confirm the public interest nature of the proposed project. In reaching its decision, such committees are required to conduct a consultative meeting with the population living where the land is located to discuss the relevance of the expropriation project. However, the ministerial regulation establishing these committees has not yet been adopted, so that it is up to District Executive Committees to decide whether or how to conduct such consultations.

## The process of land expropriation in practice

The administrative process is relatively uniform across the analyzed districts. However, the process differs when the project involving the expropriation of land is initiated by central authorities at the national level rather than by local authorities at the district level, as described below.

For projects initiated at the district level, the land expropriation law is used by district officials as the

basic procedural guide, following the steps according to Table 1. The process starts with identification of the site to be expropriated. There should then be a round of consultation with land owners, which may be conducted by the District Executive Committee<sup>38</sup> -- usually in the form of some kind of public meeting -- before the district takes a decision to expropriate the land. The District Council has the role of examining

<sup>38</sup> Article 11 of the Law on Expropriation states that the committee in charge of monitoring projects of expropriation in the public interest (referred to as a committee in charge of supervision under article 8 of that law) has to assess the relevance of the project within thirty (30) days after receiving the request for expropriation and conduct a consultative meeting with the affected population on the matter. As these committees have yet to be established by the Order of the Prime Minister, responsibility for the consultation falls to the district Executive Committee.

different projects of the district that may involve expropriation and are the ones to give the go-ahead on a project or stop it if necessary.<sup>39</sup>

Subsequently, a separate meeting may be held to explain how citizens' land and appurtenant property will be listed, valued, and compensated.

After consultative meeting with the citizens, the Executive Committee submits in writing its decision to the District Council, which approves the expropriation in public interest as provided by article 15 of the Expropriation Law. This decision can be challenged in court within 30 days.

Once the decision on expropriation is made and the relevant land identified, (the specific decision to include a particular property on the expropriation list can be challenged in court within 15 days), the land is valued.<sup>40</sup> The owner of the land to be expropriated then has to provide the land title that shows ownership, his identity card, and his signature in order to accept the valuation. He must also provide his or her bank account number. The money is then supposed to be transferred.

Land owners who disagree with the valuation decision of the officials can make an appeal to the district government within 10 days, including via the use of a counter-valuation.<sup>41</sup> If the complaint is accepted, the valuer goes back to verify the proposed compensation. The land to be expropriated can then be re-evaluated, usually by the district valuer. However, the complainant can instead hire a private certified valuer to carry out counter-valuation.<sup>41</sup> If the district government rejects the complaint/counter-valuation, the citizen can still appeal this decision to the court, within 15 days. However, the above process is sometimes not honored in practice. At the same time, compensation was reported by many citizens interviewed in the field research to be delayed, often up to six months or more. Moreover, in practice, many citizens indicated that the short time frames for counter-valuation efforts to be undertaken are unrealistic and put citizens at a real disadvantage—especially since it can be costly to retain the services of an independent valuer and may take the citizen quite some time to find the money to pay for such services.



### Procedure for application, assessment and approval of expropriation projects.

The application, assessment and approval for expropriation projects is supposed to follow this procedure:

**Initial application:** This is received by the Executive Committee at the district level (unless multiple districts within the City of Kigali are involved, in which case the Executive Committee for the City is the recipient, or the relevant Ministry, if multiple districts elsewhere are involved).

**Consideration of the relevance of the project proposal for expropriation in the public interest:** The Committee in charge of monitoring projects of expropriation in the public interest has to assess the relevance of the project within thirty (30) days after receiving the request for expropriation and is supposed to conduct a consultative meeting with the population concerning the relevance of the project of expropriation in the public interest (this is otherwise done by the District Executive Committee since the aforementioned committees still do not exist by law).

**Decision on the relevance of a project of expropriation in public interest:** When the Committee finds that the project is worthy of preliminary approval, it submits its decision in writing to the District Council (or the Kigali City Council or relevant Ministry, as the case may be) within 15 days after the consultative meeting with the concerned population.

**Approval of expropriation in the public interest:** On the basis of the decision of the Committee in charge of supervising projects for expropriation in the public interest (the Executive Committee currently), the next step is approval by one of the aforementioned competent organs within 15 days. The decision of approval must be announced on at least one of the radio stations with a wide audience in Rwanda and in at least one newspaper with a wide readership in order for the relevant parties to be informed thereof. Further, the list of landowners to be expropriated should be posted in a publicly accessible place at the office of the City of Kigali, the District, the Sector and the cell where the land is located (as the case may be) within 15 days of the approval of the expropriation.

<sup>39</sup> It also takes the role of providing advice and finding solutions to large-scale complaints that may arise from land expropriation, together with other relevant officials in the district. These are generally situations where the Mayor and Vice-Mayors may not otherwise find solutions or provide useful guidance to individuals or small groups of complainants.

<sup>40</sup> Article 23(2) of expropriation law indicates that "the valuation of land and property incorporated thereon shall be conducted by valuers certified by the Institute of Real Property Valuers in Rwanda".

<sup>41</sup> Article 34 of the Law on Expropriation provides for the right to counter-valuation.



### Valuation and counter valuation of land and property: prescribed process

The valuation of land and property incorporated thereon must be conducted by valuers certified by the Institute of Real Property Valuers in Rwanda. It must be conducted in the presence of the owner of the land and property incorporated thereon, or his or her lawful representatives, as well as in the presence of representatives of local administrative entities. The valuation must be completed within a period of 30 days. Where necessary, this period can be extended up to a maximum of 15 additional days, upon request by the government applicant for the expropriation, after approval by the designated organ. Within 15 days after the submission of the valuation report, the expropriator shall decide on the report prepared by valuers and publish it for information of the concerned persons.

Any person contesting the assessed value, may, at his/her own expense, engage the services of a different valuer or valuation firm recognized by the Institute of Real Property Valuers in Rwanda to carry out a counter-assessment. The counter-assessment and accompanying report must be generated within ten (10) days from the application for counter valuation. The expropriating entity must then take a decision thereon within five working days after the counter-valuation is received. When the counter-valuation report is accepted by the expropriator, it replaces the initial valuation report. When it is not accepted by the expropriator, the person to be expropriated who is not satisfied with that decision can challenge the matter in the competent court (in the case of district governments, the appropriate Intermediate Court). The appeal, however, will not suspend the expropriation process while it is pending.

If an expropriation is initiated and carried out by central authorities, the process is somewhat different, and unless the properties in question are in one or two discrete districts, the central government may not end up involving district authorities in carrying out the procedure. As a result, consultations with district officials, or with the land owners whose properties are targeted, may not be held, which is arguably not in compliance with the law. However, in many cases, district officials do collaborate with central government

officials, and are in charge of handling complaints—even where a wide range of central government officials may be involved in finding solutions to large-scale projects with significant opposition.<sup>42</sup> In cases where master plans are involved, it was reported in the field research that some private investors with an interest in eventual development of the land in question may support district officials by providing legal advisors to develop creative solutions to potential landowner objections.

#### Key prescribed stages of the land expropriation process - district level

1. Application and identification of the site (site selection)
2. Consultation meeting with land owners
3. Decision of the District Council on the expropriation
4. Publication of the expropriation decision and the list of persons to be expropriated
5. Land valuation (under supervision of the district)
6. Approval and publication of valuation report regarding the properties to be expropriated
7. The fair compensation report is given to the land owners for signature
8. After the signature, the land owners submit documents allowing the compensation
9. After compensation, the land owners are given 90 days to move off the property and relocate

<sup>42</sup> For example, interviews in the field research revealed the fact that in Gasabo District a group of members of the Parliament helped to find a solution with a group of property owner complainants, while in another case, the Ministry of Local Government intervened to help district officials find a solution with a large number of complainants.

## The complaints process in practice

Although the law as set forth above prescribes certain activities to occur according to various time frames, in practice deviations may occur or decisions may be taken that are objected to by citizens. The field research conducted in four districts – both the surveys and interviews conducted with those who had pursued complaints in the past several years, as well as with public officials at the district level – surfaced considerable detail about how various expropriation complaints may arise, and how they are dealt with in practice.

To initiate any complaint related to land expropriation, most citizens are directed to go to the so-called One Stop Shop Center in the District, which is responsible for handling land and other commercial matters.<sup>43</sup> However, some citizens may instead choose to go to the Mayor's office or lower-level authorities such as village leaders (Umudugudu), or to cell (Akagari) and/or sector (Umurenge) leaders. Often this is done sequentially, starting with a lower authority and ending up with district authorities where the decisions are taken as a legal matter and where appropriate expertise resides. However, approaching lower-level local leaders first can be helpful from the standpoint of access and having such leaders provide guidance and advocacy, not to mention problem-solving that may obviate the need for the complaint altogether.

Citizen complaints brought to the One Stop Center can often be addressed rapidly in open meetings. People can present their complaints in open space before Center workers, who can sometimes provide solutions immediately. At a minimum, citizens can be given advice on expropriation procedures. Citizens who are not satisfied with key decisions regarding the decision to expropriate, inclusion of property on the expropriation list, and valuation/compensation amounts are directed to lawyers and/or private professional land valuers, where they can seek additional assistance. Notably, however, these workers are not professionally trained in mediation, which might otherwise afford some opportunities for resolution of problems without recourse to other individuals at the district level, or to institutions like the courts or the Ombudsman's office.

Complaints can, and often are, also entertained by Mayors, who may meet citizens during the office hours they regularly keep for citizen interactions. Although a Mayor is not specifically legally empowered to render decisions, he or she can provide possible solutions or guidance to complainants. For example, in cases involving land valuation disputes, a Mayor may suggest that a citizen asks for a counter valuation or where a valuation might seem low, request the district land valuer to make another attempt to value the property, possibly taking other factors about the property into consideration.

Most complaints do in fact arise when complainants are dissatisfied with their property valuation. In these cases, One Stop Center workers usually encourage citizens to seek a private professional valuer, in order to make a counter valuation. However, as the above example indicates, sometimes a second valuation may be conducted by the district on its own initiative, particularly if someone points out the extent to which potentially significant information was not considered the first time. In cases where a counter-valuation is made, the private valuer and the district valuer compare their respective valuations and deliberate in order to try to find common ground. If agreement is not possible, the citizen can appeal the district valuation to court.

Other types of complaints may concern the decision to expropriate land in the first place (which may be appealed directly to court) or the inclusion of specific properties in the proposed project (which can be appealed to the district government). These complaints may in turn be predicated on the government's failure to hold consultations with affected property owners and the community about whether the proposed seizure of land truly is in the public interest or could be done in a less intrusive or expansive manner at the contemplated site. Some interviews conducted in the districts seemed to suggest that if proper consultations were held, many expropriation-related complaints or citizen frustration could be avoided; in that case, the process might be better understood, citizen concerns could be received early in the process, and certain

<sup>43</sup> The ones directly responsible are those in the directorate of the One Stop Centers, which includes the Director, the lawyer of the Center (Land lawyer) and the Land Valuer. As discussed briefly below, certain other officials may get involved in certain aspects of the process, such as the Mayor, one or both Vice-Mayors (especially the Vice-Mayor responsible for economic and social affairs), the District Legal Advisor, and the Executive Secretary of the District. Those in charge of security may also be involved in the process.

problems could potentially be resolved without resort to complaints being registered. Still, in some cases, resolution of a complaint is not possible, particularly where valuations remain disputed or compensation is significantly delayed. In these instances, citizens often resolve to go to court, which is usually the Intermediate Court serving the district where the land is located.

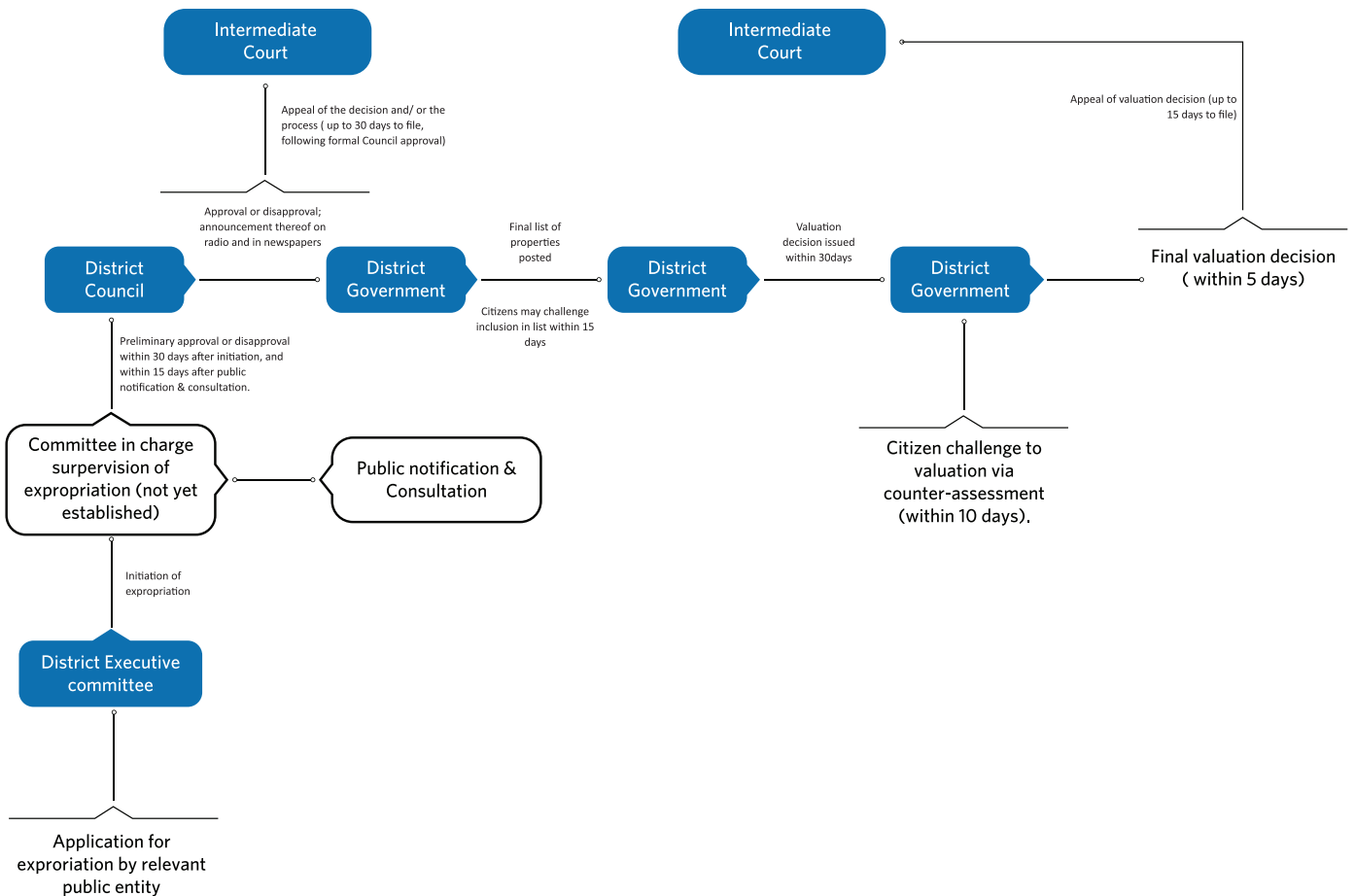
The overall administrative process governing land expropriation is depicted on the graphic below; the general decision flow is noted, along with key junctures in the process where citizens may bring complaints—in some cases to district authorities and in other cases to the courts).



### Court appeals

Individuals affected by expropriation can take certain complaints to Court, including those seeking annulment of a decision to approve an expropriation, a revision of the valuation of property, or delays in payment of compensation. However, like with any other administrative case, administrative remedies must be exhausted before filing a claim in court. In cases of inaction by the district or other government ('administrative silence'), a complainant is usually allowed to submit a claim to court when a particular deadline for action has lapsed.

## Administrative decision pathways: land expropriation



## Cooperation/interactions between different government officials in practice

There are two important levels of cooperation among government officials involved in expropriation cases: (i) Cooperation between central and district authorities (including interactions with private investors); and (ii) cooperation among different officials within a district. Some of the details of these interactions were discussed during individual interviews or group discussions with district officials and to a lesser extent, with citizens who had been subject to expropriation.

- i. In the first case, the central government is inextricably involved in expropriations of any kind insofar as it is responsible for making funds available for expropriation projects, including funds for compensation. However, in some cases, central agencies implement their own projects (those with national significance or involving unique features that affect multiple districts) without consultation with districts. In many such cases, they simply sidestep district officials and go directly to the sector level where expropriations may need to occur in order to meet with citizens and sector officials (in which case, many procedures of the Expropriation Law may not be properly followed). In our field research, we learned that sometimes district officials are only made aware of the central government's plans in this regard when citizens come to complaint to them. This raises obvious issues of communication and coordination that could otherwise be obviated if central authorities were sharing their plans in advance and inclusive in implementing these projects.

It was also learned through the field research that districts share considerable information about planned expropriation processes with central government officials and with private investors (esp. where fulfillment of master plans is involved). They do so on a rather frequent and continuous basis through various correspondence so as to inform central authorities of the status of a project and any associated challenges.

Private investors willing to invest in the district, for their part, also engage in correspondence with both district and central authorities about the projects they want to implement and how this can fulfill certain plans that are in the public interest (e.g., details about the site, type of project, aim of the project, project duration). The districts assess

such projects and their impact on the development of the district, checking their conformity with the district master plan. If a district agrees that such projects are in line with the development objectives in the master plans, they typically give a go-ahead. In cases where the project is in contradiction with the master plan, it is rejected.

In rural areas, it was learned that investors may often come and negotiate only verbally with district officials, providing details of their project verbally, and then requesting permission to implement their project. District officials have been known to give a go-ahead for some of these projects without any significant written documentation of the process or the reasoning behind the decision. This can be very problematic for local government accountability.

- ii. Cooperation among district officials is inherent in the expropriation process, as described to some extent in the previous sub-sections. For example, the Land Lawyer and District Legal Advisor typically interact to a significant degree on legal issues surrounding the expropriation process and complaints handling. The One Stop Center Director, the Land Valuation Officer, and the District official designated to coordinate the expropriation project interact often, including at times when consultations are held. The Mayor, meanwhile, is often on the front lines in handling expropriation complaints, even if he or she has no official or legally prescribed role to do so. The Mayor can seek to find individual or group solutions to problems by consulting the Legal Advisor or the Land Lawyer, or can facilitate the directing of complainants to the staff of the One Stop Center.

While officials from the One Stop Center offices are supported by other officials, it was learned that they can also sometimes be involved in activities not at all related to land or business regulation. For example, staff of One Stop Centers have frequently worked on priority projects having to do with the sensitization of citizens concerning sexual harassment against women and young girls or educating the district population about health insurance.



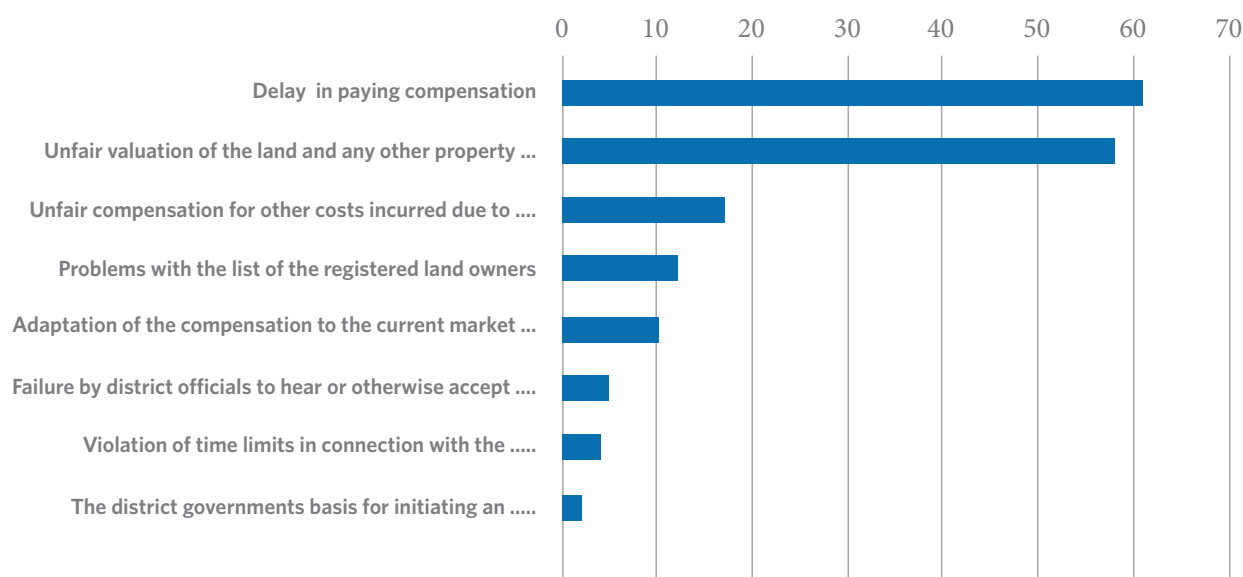
## 2

## Land Expropriation Dispute Resolution: Quantitative Data on Administrative Justice in Practice

The field research conducted by the SRAJ project encompassed not only interviews with several dozens of citizens and public officials in four districts, but a survey sample of 111 citizen respondents<sup>44</sup> in each of the four sampled districts (Gasabo, Bugesera, Rubavu, and Gicumbi), who were selected based on their having been subjected to an expropriation within the past four years. Group discussions were also conducted with citizens and public officials, respectively, and a cross-district group discussion was held with land officials from the above four districts as well as the two pilot districts (Kicukiro and Kamonyi). The predominant characteristics of the citizens in the sample were as follows: Married (79.3%), older than age 55 (37.8%), men (57.7%), possessing at least a primary education diploma (76.5%), involved in farming activities (71.2%), belonging to the second Ubudehe category (44.1%), and with an income averaging less than 30,000 Rwf per year (45%). Persons living with a disability constituted 12.6% of the respondents.

For the most part, the complainants surveyed were mostly those who were expropriated due to projects involving future power plants, roads, or an airport. Insofar as a high proportion of these individuals were farmers, as noted above, they were likely prompted to file a formal complaint because they risked losing not only a place to live, but land critical to their subsistence. Figure 1 shows that of the various reasons the respondents had for registering formal complaints about expropriation, the vast majority addressed problems with delays in the payment of compensation (61%) or with allegedly unfair valuation (60%). Very few respondents, by contrast, registered a complaint about the government's basis for initiating an expropriation, indicating that most concerns revolved around payment and the fairness of the compensation process, not about expropriation as such or whether the seizure of land was legitimately in the public interest.

**Figure 1: Reasons for complaining (# of cases)<sup>45</sup>**



<sup>44</sup> Note that the sample is not representative of the national population of complainants in land expropriation; as such the results cannot be generalized outside the respondents' population in the four subject districts.

<sup>45</sup> IPAR's calculation.

## The expropriation process

In terms of self-reported levels of understanding of the expropriation process, 68.4% of complainants indicated that they were not aware of their rights in expropriation process.<sup>46</sup> When we disaggregate these respondents by certain characteristics, we find that men are slightly more aware of their rights in expropriation process (10 percentage points higher than in the case of women). We also note that awareness of rights seems to decrease with age; it is highest for people in their mid-twenties (41.7%) and lowest for people over 55 years of age (26.2%).

The main sources of basic information relied upon by respondents regarding the expropriation process were – in order of importance – communications with District officials such as the District Land Officer (44%), radio or TV (28%), lawyers (7%) and local leaders (5%). While consultations conducted by government officials were generally deemed helpful (77% of respondents found it somewhat helpful or very helpful), 2 out of 3 individuals affected by an expropriation were not consulted by district government before the latter took a decision to expropriate (i.e., 65.8% were not consulted on expropriation plans) and 64% were not consulted on how the expropriation was to be implemented).

Similarly, even following the decision to expropriate, 64% of citizens were not notified about the decision (indeed, 93% of the citizens who were not consulted on expropriation plans did not receive notification after the decision was taken). Conversely, when citizens were consulted about the decision to expropriate, they almost always reported being notified following the decision. For the 36% of citizens who were notified in some manner, 75% were informed through some kind of public meeting or forum and 25% by other verbal communication. In 25% of the cases, the notification was received one month before the relevant property was listed for expropriation. Otherwise it was received at least 3 or 6 months before such listing took place (respectively 28% and 48%).

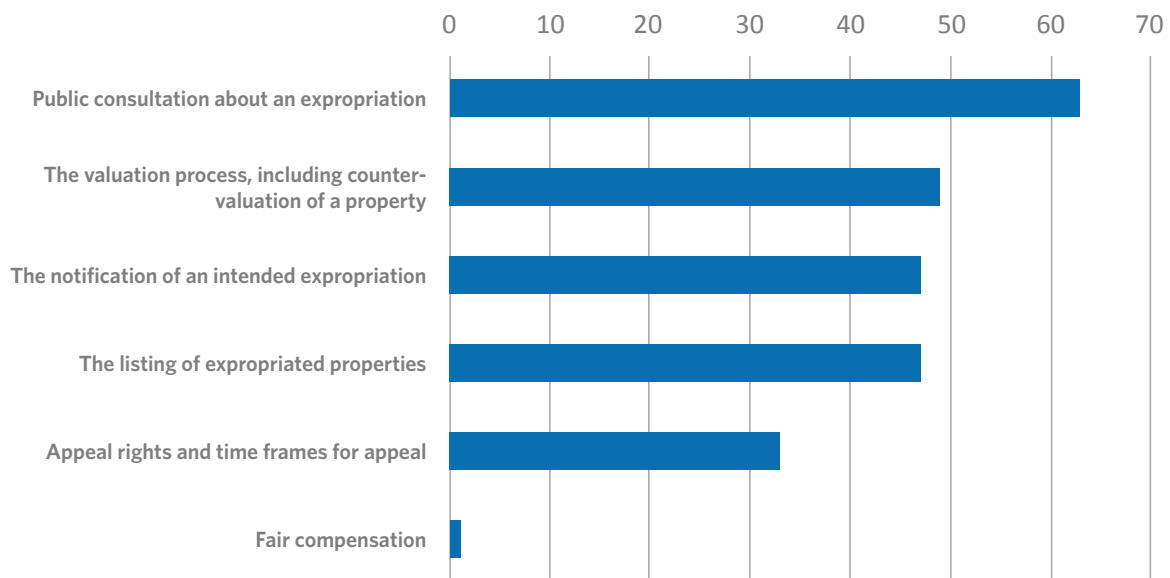
Only 10% of the complainants were given an opportunity to negotiate with a developer on the value of the land and/or any property incorporated thereon (in cases where consultations of this kind were not otherwise conducted by district officials), and only 55% of surveyed citizens were informed about the outcome of the property valuation process. If and when they were informed, respondents mentioned that they received the information in writing (52%), through a public meeting/forum (18%), or by other verbal means (22%).

Sixty-four percent (64%) of the respondents were dissatisfied with the outcome of the property valuation.<sup>47</sup> Ten percent (10%) pursued a counter-valuation through an independent property valuer, and of these individuals, 64% of the counter- assessment reports were considered, which resulted in some increase above the valuation.

When respondents were asked about what kinds of information they would have liked to receive more of (see Figure 2), the largest proportions cited information about public consultations (53%), the valuation process (including the right to counter-valuation of a property) (42%), the basis for the listing of expropriated properties (40%), being notified about the intended expropriation (40%), and information on appeal rights and timeframes for appeal (28%).

<sup>46</sup> 45.9% are “not well informed at all” while 22.5% are “not very well informed”.

<sup>47</sup> Very dissatisfied:21.6%; Somewhat dissatisfied:42.3%; Neutral:18.9%; Somewhat satisfied:14.1%; Very satisfied:2.7%.

**Figure 2: Domain of information needed (in % of respondents)<sup>48</sup>**

## The complaint process

As mentioned above, the main reasons cited by citizens in lodging complaints about expropriation were delays in the payment of compensation (61%) or problems with allegedly unfair valuation (60%). In bringing the initial complaint, a large proportion of citizens appealed to the One Stop Center in the District where the property is located (59%), which is to be expected given the expertise and responsibility of that unit for all matters related to land. Fewer respondents appealed to another authority within the district (19%) or to local leaders (11%).<sup>49</sup> In general, complainants reported that they chose the institution they filed their initial complaints with because they felt the institution would handle their dispute efficiently (63.2%). Despite this desire for efficient processing of their complaints, however, nearly half of the respondents had not received any response (49%) as of the time they were interviewed, and of those who did receive a response, 53% received it within 3 months.

As a procedural matter, respondents reported that they had generally unhelpful interactions with those to whom they brought their initial complaints. Slightly more than half of all respondents were not provided with any verbal or written information about how the complaint/appeal process operated (51%), and nearly two-thirds of respondents said they were not given an opportunity to make their views known and offer any evidence supporting their case (62.3%). Two-third of respondents (66%) said that they were not consulted by district government before a decision to expropriate was taken, and 64% of citizens said they were not consulted about the manner in which an expropriation would be implemented. Moreover, in the vast majority of cases, survey respondents indicated that district officials provided no explanation of the listing of properties to be expropriated (88%) or of the valuation process (90%).

At the conclusion of the process, a very large proportion of respondents (nearly four out of five complainants) were not provided with a written decision (79.2%), and an even larger number of respondents were not provided an explanation with reasons for the decision in question (87%). A still larger proportion of survey respondents

<sup>48</sup> IPAR's calculation.

<sup>49</sup> It is notably that respondents older than 55 and women are relatively less likely to file complaints (respectively 38% and 34% of their group). Similarly respondents who had either never gone to school or only had a primary education are less likely to file complaints (respectively 46% and 35% of their group).

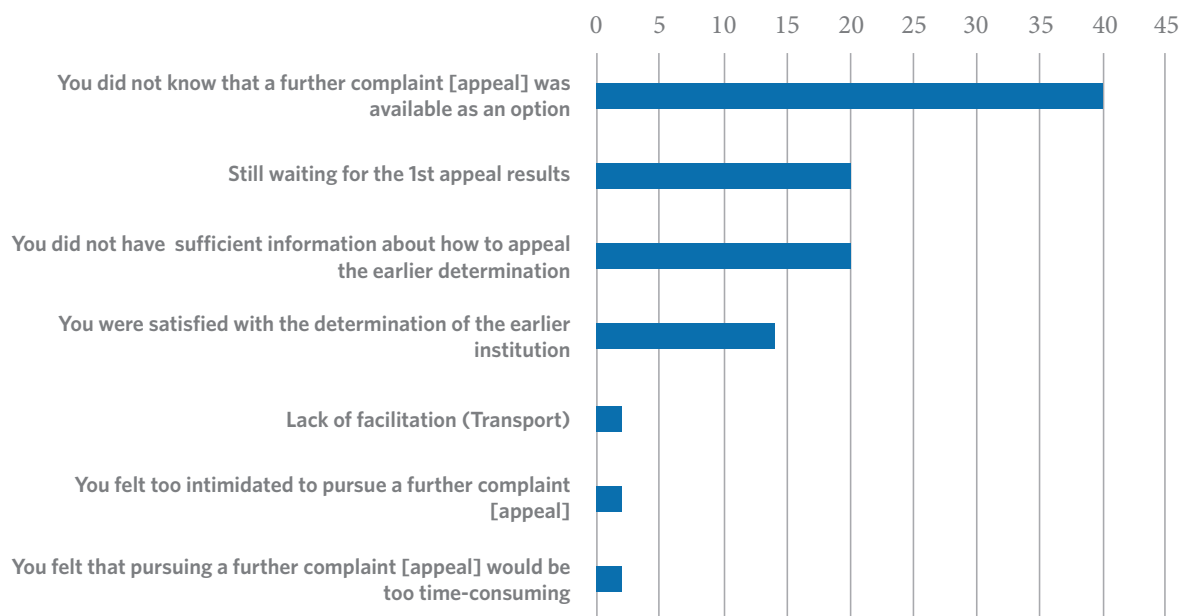
were not provided with information about how and where to further appeal their cases (89.6%). It is important to note that fully 88.3% of respondents reported that they were not represented by an attorney.<sup>50</sup>

Respondents were additionally asked a number of questions about the extent to which those to whom they brought their initial complaints (as noted above, nearly 60% of these officials were associated with the One Stop Centers) provided helpful information of various kinds. Well over half of respondents (61%) said that they did not receive helpful information from these institutions/officials, while 39% said the information was helpful in some way.<sup>51</sup> Interestingly, of the different individuals or institutions to which respondents said they brought their initial complaints, only Mayors were reported have provided very helpful information (60%). As for respondents’ perception of the courtesy and attentiveness to their cases shown them by these individuals or institutions, here too Mayors received higher marks (100% and 80%, respectively) than officials working in the One Stop Centers (62% and 60%, respectively). Local leaders at village and cell levels were slightly better perceived (63% for both courtesy and attentiveness).

Of those who formally registered an initial complaint, 28% of survey respondents decided to pursue a further appeal. Of those who did so, 43% went to a higher authority within the central government—presumably MININFRA if, as is likely, some form of infrastructure is involved. One-third of all respondents (33%) went to the One-Stop Center, among whom 57% had registered a formal complaint with this unit the first time.

Of the 72% of respondents who did not pursue a further (second instance) appeal, 14% said they were satisfied with the determination made by district authorities initially, while 38% said they did not pursue an appeal because they lacked sufficient information about how to do so. Fully 60% of the respondents who did not pursue an appeal did not even know that a further appeal was available to them (see the various reasons provided by respondents in Figure 3 below). In terms of turnaround time, 22% of respondents received a response about their initial complaint within two weeks, while 26% of respondents received a response between 1 to 3 months. Twenty-two percent (22%) did not receive any response.

**Figure 3: Reasons for not pursuing an appeal following a decision on an initial expropriation complaint**



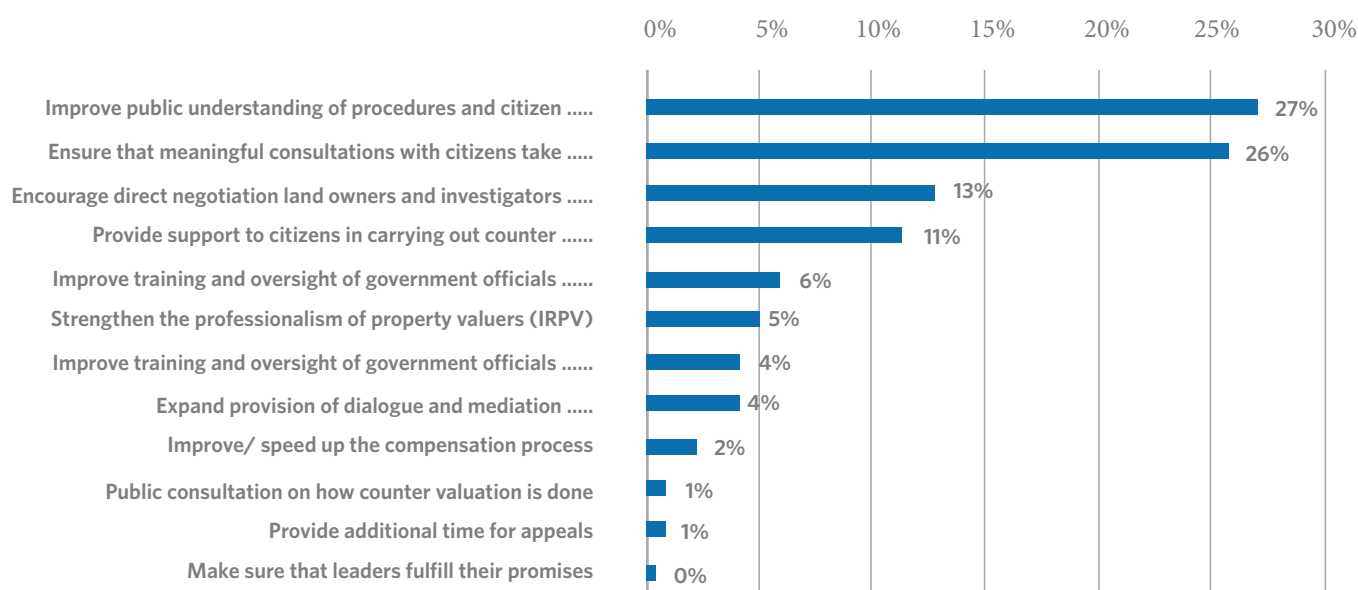
<sup>50</sup> The presence of the attorney (vs. no attorney) interestingly lowered the perceived helpfulness of information provided (22.2% vs. 38.2% helpful); while it was also associated with a lower level of perceived courtesy (44.4% vs 67.6% courteous) and a lower perception of the perceived attentiveness of officials listening to the citizens’ explanation of their case (44.4% vs 64.7% attentive).

<sup>51</sup> The presence of the attorney (vs. no attorney) lowers the helpfulness of information provided (22.2% vs. 38.2% helpful), it lowers the courtesy (44.4% vs 67.6% courteous) and the attentiveness (44.4% vs 64.7% attentive).

For those who pursued a further (second instance) appeal (as noted above, many went to MININFRA or, in the case of those who may have initially approached another part of district government, to the One Stop Centers), 52.4% of respondents felt that institutions they appealed to provided them with helpful information related to their case, were generally courteous (73.1%) and also generally attentive in listening to respondents' explanation of their cases (71.4%). For the most part, the reported level of helpfulness from land office personnel within the One Stop Centers in providing information about the expropriation process was reasonably high (86%), while that provided by a higher authority within the central government was quite low (33%).<sup>52</sup> Furthermore, even at this second stage appeal, respondents encountered numerous procedural shortcomings and obstacles. For example, 52% of respondents lodging such second instance appeals were not provided with a verbal or written information about how the complaint/appeal process operated. Only about half said they were given an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing (52%). At the conclusion of the process, fully 74% of respondents were not provided with a written decision, and 78% were not provided a decision accompanied by an explanation with reasons therefor. However, 87% of respondents who pursued a second instance appeal did receive information about how and where to further appeal their cases. During this second instance appeal, 87% of respondents did not have a lawyer to help their present their case.

While only 11% of the respondents who initially registered an expropriation-related complaint pursued a third-instance appeal, those who did went variously to a higher authority within the central government, to the One Stop Center in the district in question, or even to the office of the President.<sup>53</sup> Given the ready availability of judicial appeal channels for a number of different purposes (valuation challenges, challenges to the decision to expropriate, etc.), only one appeal was reported to have been filed in court.

**Figure 4: Recommendations to SRAJ**



At the end of the survey, respondents were asked to identify the single most important recommendation they would make in order to improve administrative justice in land expropriation disputes. A number of procedural recommendations topped the list, with improving public understanding of procedures and citizen rights in the expropriation process receiving the most votes (27%), and ensuring that meaningful consultations with citizens take place with regard to an announced expropriation coming in second (26%). The third- and fourth most cited recommendations concerned the encouragement of direct negotiation between landowners and investors (where the government chooses not to engage in, or facilitate such negotiations) (13%); and the provision of support to citizens in carrying out counter-valuations (11%).

<sup>52</sup> Land Bureau (frequency:31) and Central government (frequency:9): Very helpful (respectively 23.8% and 22.2%); Helpful (respectively 28.6% and 11.1%), Unhelpful (respectively).

<sup>53</sup> The number of cases reported to have been filed in these institutions were, however, only 1 or 2 each.

## 3

## Lessons learned and Recommendations

A number of important findings emerged from the survey data collected in the four districts, as well as from the qualitative information gathered from citizen and public official interviews and group discussions, not to mention the validation workshop conducted with administrative justice stakeholders following the field research. These findings in turn informed a number of recommendations below, some of which flow directly from the stated preferences and priorities of survey respondents, and which demand accelerated attention from Rwandan government authorities.

### **Improving planning, coordination and communication in expropriation projects involving central agencies:**

There is no clear policy on coordination between district governments and central government agencies on expropriation projects. This issue arose several times in interviews with relevant district officials. Some expropriation projects initiated by the central government are conducted without involving the district; the district only learns about the expropriation when the citizens raise complaints. This can lead to real challenges in ensuring that consultation takes place, addressing valuation and compensation modalities, and rendering decisions in a timely manner, as citizens may have already been expropriated when they first complain in the district. Since complaints are almost always received and handled by district officials, there should be advance planning, coordination and a clear channel of communication established between responsible central government authorities and district officials. In particular, affected districts should be informed by letter and email of any expropriation project approved by central authorities. This requirement should be enshrined in a Prime Minister's regulation, and/or through appropriate intra-ministerial directives from MININFRA and/or MINALOC.

**Adopting and implementing the Prime Minister's order determining the organization, operational responsibilities, and composition of the committees in charge of supervision of expropriation projects in the public interest:** AAs attested to by numerous public officials and citizens, the failure to establish the Committees in Charge of Supervision of Projects of Expropriation constitutes a critical gap in the institutional framework for expropriation at the district level, leading to additional planning and coordination problems. The yet-to-be established Committees are supposed to act as the main interface between the population being expropriated and the expropriating entity, handling crucial issues of public notification,

consultation, and informed decision-making as to the expropriation project under consideration. In the absence of these committees, the relevant District Executive Committees have had to assume these responsibilities, for which they sometimes lack sufficient technical knowledge, and which places them in a potential conflict of interest (since they are the ultimate initiators of the expropriation). Only the more specialized and formally neutral committees envisioned by the Prime Minister's order can devote the time and effort to adequately protect citizen rights in the expropriation process.

### **Improving consultation of citizens in the expropriation process:**

As already noted, expropriation projects often take place without prior notification of, or consultation with, the public, particularly when central government agencies are the initiators. Sixty-six percent of citizens responding to the survey said they were not consulted by district government before a decision to expropriate was taken, and 64% of citizens said they were not consulted about the manner in which an expropriation would be implemented — which is not surprising given that respondents reported that their greatest need for information is related to public consultation (53%).

According to several individuals interviewed, this leaves citizens without an adequate opportunity to offer their views on whether a project is indeed in the public interest (and how it can be conducted in as a non-disruptive manner as possible), and without adequate time to begin plans and communications about the valuation of their property. Indeed, the second most commonly recommended improvement to the land expropriation process cited by those taking the survey - 26% of all respondents - was "ensuring that meaningful consultations with citizens take place with regard to an announced expropriation."

**Improving record keeping and documentation:** Field research indicated that expropriation files are usually not properly kept. There is no electronic filing (except in a few urban districts) and files in hard copies are often misplaced or even stolen. There is also a need for staff to better maintain all land related archives. Improving record keeping by creating an electronic filing system and using it systematically would greatly benefit overall management of the expropriation process and citizens who seek various administrative files in the complaint process.

**Assisting citizens to challenge valuations:** While it is reported that the law clearly guides how can a complainant can ask for a counter valuation, and how to compare the outcome of the two valuations, survey results indicate that citizens not only face significant difficulties in challenging expropriations (due often to the failure of local authorities to properly notify citizens of an impending expropriation activity), but also in obtaining what they perceive as fair compensation for their property.<sup>54</sup> Indeed, the field research indicated that 45% of survey respondents received no notification of the valuation of their property by the government whatsoever, and that 64% of respondents were dissatisfied with the proposed valuation once they learned about it.

While challenging a valuation is possible, it faces obstacles. First, citizens may not be aware of their rights to a counter-valuation. Second, obtaining a counter-valuation by a private property valuer may be expensive for many citizens— something confirmed by the field research, where the expense of a counter-valuation was deemed prohibitive for many citizens, especially complainants belonging to the first and second Ubudehe categories. For example, only 9.9% of respondents were able to pursue a counter-valuation, and 68% of these individuals were unaware that they had a right to such counter-valuation (22% said that obtaining a counter-valuation was too expensive). Of

“  
There is no  
electronic filing and  
files in hard copies  
are often misplaced  
or even stolen.  
Group Discussion, 2019

”

those who were able to pursue a counter-valuation, 63.6% were able to have the independent private valuer’s report taken into consideration.

Under these circumstances, the government should ensure that citizens are notified about their right to an independent valuation. It should also consider some mechanism by which poorer citizens (e.g., those in Ubudehe categories 1 and 2) can obtain an independent valuation at an

affordable price. At the same time, the government should also increase the period

allocated for counter-valuations: the existing period of 10 days is far too short for the citizens (never mind poorer citizens) to seek legal advice and access money to carry out an effective counter-valuation. This reform should be prioritized in future near-term amendments to the Law on Expropriation.

**Ensuring timely and fair payment of compensation:** As noted above, the survey indicated that the main reasons for expropriation-related complaints were delays in paying compensation and unfair valuation. The districts and concerned central agencies should accordingly improve budget planning in order to ensure sufficient funds for timely payment of compensation. Specifically, no expropriation activity should commence until the budget is transferred to the district in question. Meanwhile, the right to a counter-valuation should be a central part of consultations and communication with the public in any district in the future.

**Strengthening public awareness:** Most citizens are not aware of basic expropriation procedures and associated rights; indeed, 68% of the citizens interviewed reported that they were not well informed about the process. In fact, the most commonly recommended improvement cited by survey respondents (27% of citizens) was “improving public understanding of procedures and citizen rights in the expropriation process.”<sup>55</sup> Logically there should be expanded public education efforts through various media such as radio and TV, as well as sensitization activities through public meetings/

<sup>54</sup> Note that in Gasabo district, the property to be expropriated is valued twice. This avoids errors and reduces the number of complaints. A cost benefit analysis of this practice would help assessing its efficiency.

<sup>55</sup> It’s important to note that the vast majority of citizens (83.3%) who responded to the survey did not have legal representation when bringing their complaints to the district one-stop shop offices.

forums such as Umuganda. This need for a variety of communications channels was confirmed by the field research, which showed that the main sources of information for citizens on rights and processes related to expropriation included district land officers (44%), and radio or TV (28%). Indeed, fully 75% of citizens said that if they had been consulted, it was done through a public meeting or forum, and 77% of respondents said they found it useful to consult with district officials.

**Strengthening the capacity and training of district officials (especially staff of one stop centers):** Based on the above challenges, and given their ground-level responsibilities related to expropriation (including complaints handling), district One-Stop Center officials should receive additional training complementary to the trainings currently offered by Land Center (Rwanda Land Management and Use Authority) and by the Rwanda Housing Authority and resources to carry out their work and communicate effectively with citizens. This includes paying proper attention to procedural requirements and individual rights in the expropriation process; however, in an overwhelming number of cases, survey respondents indicated that district officials provided no explanation of the listing of properties to be expropriated (88%) or of the valuation process (90%). Moreover, just over half of all complainants were not provided with either verbal or written information as to how the complaints process operated, and

nearly two-thirds of citizens surveyed indicated they did not have an opportunity to present their views or offer evidence in support of their case (62.3%). Notably, nearly 4 out of 5 (79.2%) of citizens were not provided with a written decision on their expropriation complaint (including valuation decisions), and a very high percentage (87%) of citizens indicated that the decision was not accompanied by an explanation with reasons. An even higher percentage of respondents -- 89.6% -- were likewise not given any information about how and where to appeal. Based on these findings, district officials must be given detailed training on how to communicate with citizens and provide basic procedural information (including through role play and simulation exercises), while being subjected to more stringent job performance criteria and workplace oversight.<sup>56</sup> Moreover, district land managers should also be given GIS software and an adequate transport budget to meet with citizens on expropriation matters and more effectively discharge their duties.

**Creating a forum for one stop center managers:** In a focus group discussion the need to create a forum for all district one stop center personnel emerged. This is a forum where they could meet at least once a year to discuss common challenges and ways of addressing them most effectively. This would also help generate practical recommendations that could be forwarded to policy-makers to help improve the quality of their work.

<sup>56</sup> One approach might be to insist that as part of their performance plan and evaluation, officials keep hard and soft copies of their written decisions on file, and that those decisions be scrutinized and documented by superiors regarding evidence of distribution to the citizen (via a signature) and inclusion of reasons for the decision and information about where to appeal if the citizen is not satisfied with the result.





# **Public Procurement and Administrative Justice**

## 1

# An Overview of Administrative Justice in Practice in Public Procurement

Public procurement at the district level has a profound impact on businesses of all sizes and types in Rwanda and helps shape overall opinions about the state of the investment climate in the country. The perceived fairness of procurement processes and competence of procurement officials has an important bearing on public trust in local government. To explore the functioning of administrative justice in public procurement at the local level, field research was conducted in five districts (one from each Province and the City of Kigali). The research involved surveys administered to 50 bidders who had participated in tenders in the five districts over the past four years, as well as in-depth interviews conducted with 20 district officials, and group discussions with tender

committee members in four of the five districts. A group discussion was also conducted with procurement officers from each of the five different districts. These sources of data collectively informed the findings and recommendations below.

This section discusses the general contours of local procurement practice, based on both the applicable legal framework (as described in the SRAJ Project's Phase I Report) and the views of both citizens and district officials. The second section summarizes the results of the bidders' survey, while the third section contains key lessons learned and recommendations from the field research.



## Public procurement and procurement disputes:

Public procurement encompasses the procedure through which a public entity acquires goods, construction, or services from outside vendors in return for a price. There are four types of public procurement in Rwanda: procurement for works; procurement for goods or supplies; procurement for consultancy services; and procurement for non-consultancy services.

Procurement disputes generally concern issues of compliance with the procurement rules, such as those related to the evaluation of bids (selection criteria), cancellation of the contract, and various penalties that may be assessed for failure to execute the contract as specified.

## Procurement plans and the procurement process

The procurement process starts with the preparation of the public entity's budget for the financial year and the subsequent elaboration of a procurement plan indicating upcoming tenders and associated information.<sup>1</sup> The procurement process starts with the preparation of the public entity's budget for the financial year and the subsequent elaboration of a procurement plan indicating upcoming tenders and

associated information.<sup>57</sup> The procurement plans are prepared by different departments within the district government and consolidated to form a plan for the entire local entity. Procurement plans that are not put together properly or timely shared with the public often lead to disputes about potential tenders, according to private sector bidders who were interviewed as part of the field research.

<sup>57</sup> Article 16 of the law N°62/2018 of 25/08/2018 governing public procurement (hereinafter Public Procurement Law) requires each procuring entity to prepare and submit to the responsible Ministry and Rwanda Public Procurement Authority the annual procurement plan indicating activities to be submitted to tender and related budget.

The procurement process must follow key timelines as part of the execution of the procurement plan. The main steps of any procurement process are: preparation of the tender, advertisement of the tender (call for bids), bid evaluation, award of the contract, and contract management.

Once a tender is published, anyone can consult it for information about requirements and procedures. At this stage, it is common for bidders to have many kinds of questions—about terms of reference (which can be unclear or contradictory), the nature and format of required documents for the submission, and the e-procurement system—that can lead to disputes/claims. Clarifications may be needed, and a clear format for seeking and receiving such clarifications is necessary. Eventually, according to the prescribed timetable, bidders submit their bids and receive an evaluation, which can sometimes be judged by the bidder to be unfair. At this point, bidders can meet with officials in person in an effort to clarify the issues (allowing the latter to explain their decisions and reasons therefor), while others may simply elect to complain in writing.

The contract is negotiated and signed between the successful bidder and the Chief Budget Manager (see below for a description of his/her role). Following award, the contract is often amended due to changed circumstances, especially matters concerning the timeline for deliverables. Occasionally, contracts are even canceled for certain reasons, which can also lead to disputes. When the service/good in question has been delivered or the work has been completed, the district is obligated to pay the bidder. Failing to do so in due time may result in a complaint, although some bidders do not like to complain, since they want to work again with the procuring entities and do not want to spoil their relationship with them.



## Public procurement stages

The principal stages of the procurement process include: Preparation, Advertisement, Bid Evaluation, Contract Award and Contract Management.

1. **Preparation of the tender documents:** This encompasses a number of different decisions and activities, starting with development of technical specifications and selection of the procurement method. For the most part, the procuring entity awards public procurement contracts through open competition, unless otherwise provided by law, which could encompass other methods such as restricted tendering; a request for quotations; single source procurement; or direct contracting.
2. **Bid evaluation:** This includes the opening of bids; evaluation of the bids, which consists of a detailed administrative, technical and financial review;; a further round of clarification and evaluation involving finalist bidders; and possible negotiation with the finalist(s).
3. **Award of the contract:** This stage entails contract negotiation and signing of the contract. It is important to note that the contract can be amended up to 20% of the initial tender price via an addendum to the contract.
4. **Contract management:** This stage involves monitoring of the execution of the contract. The procuring entity usually appoints a specific supervising official to monitor execution of the contract in collaboration with the procurement officer. Monitoring can include discussions about the timing and quality of the goods or services being delivered; clarifications or improvements necessary to bring the work into line with the contract requirements; and invoicing and payment for deliverables. It can also involve penalties or withholding of payment for delays or failures of performance.

## Practice and recent changes in the procurement process

Until recently, the procurement process in districts and central institutions was guided solely by procurement law and regulations, as well as Rwanda Public Procurement Authority (RPPA) guidelines. The submission of bids was made by hand or by post to the physical address of the procuring entity. However, today, bids are submitted electronically following new electronic procurement (e-procurement) guidelines.<sup>58</sup> All submitted information can be electronically verified and retrieved by the RPPA in its role of overseeing all public procurement processes in the country.

### A well-defined procurement process

RPPA as an institution has continuously sought to improve the procurement system based on fundamental principles of transparency, competition, and value for money. According to findings from key informant interviews and group discussions with district officials, the rules and regulations are now quite clear and the RPPA guidelines of RPPA well-articulated. In this regard, districts for the most part appear to follow transparent standards in preparing bid documents, evaluating tenders and awarding contracts. The tender document facilitates the process, as it indicates all information the supplier needs in order to prepare the solicited quotations and other materials. This information includes, among others things, documents required to be submitted by the supplier, necessary specifications, and a price schedule in an appropriate format. Moreover, the district legal advisor is supposed to actively assist, advise, and ensure that the legal requirements are followed.

### Using IT Solutions: The E-procurement system

With the advent of the e-procurement system, regulations and guidelines are accessible online via a transparent interface that moves the user through the process step by step, making it harder for bidders

to make mistakes or miss certain requirements. Interviewees indicated that the system has reduced the number of bids disqualified due to the lack of items required to be submitted. Moreover, E-procurement has also improved the RPPA's auditing capabilities. No longer limited to conducting retrospective audits, the agency now has the ability to monitor ongoing web-based procurement processes to obtain real-time information, making it easier to detect problems and react to potential irregularities promptly. In general, by limiting discretion by front-line procurement officers at the district level, the e-procurement system curtails opportunities for bid manipulation or the extension of favors to certain bidders.

### Key roles and responsibilities of district actors in the procurement process

While the entire district staff can be said to participate indirectly in the procurement process via their role in helping put together the district procurement plan, the implementation of the plan is led by specialized units and committees and overseen by the Chief Budget Manager (CBM), who is usually the Executive Secretary of the District. The CBM is mandated to establish a tender committee of seven members from different units, which has the job of evaluating tenders and recommending awards.<sup>59</sup> The tender committee is specifically charged with approving procurement plans, reviewing technical specifications, opening and evaluating bids, notifying bidders, and awarding contracts. It may also get involved to a limited extent in contract management. The tender committee reviews the technical specifications as well as tender requirements before they are published for purposes of quality assurance, fair competition, and transparency. The committee evaluates the bids and submits their evaluation results to the CBM/Executive Secretary.

<sup>58</sup> Article 4 of the Public Procurement Law requires the use of e-procurement for public procurement in all public procuring entities. However, RPPA may give authorization to conduct public procurement proceedings without using the e-procurement system upon request of the procuring entity, which must give proper grounds for not using the electronic system.

<sup>59</sup> Article 10 of Public Procurement Law provides that responsibilities of the Tender Committee include: evaluation of bids; recommendation for tender award; providing recommendations on all issues relating to public procurement; providing advice on tender documents before their publication; recommending tenders to be awarded through methods other than open competition; making recommendations on any change to be carried out on the procurement contract and the opening of bids in cases where they have not been submitted through the e-procurement system.

**BOX1: Examples of Collaboration: Testimonies from Procurement Officers**

One officer reported that the exchange of information between the authority and the procurement unit is well organized, especially regarding complaints related to tenders. Procurement unit works with the Chief Budget Manager (CBM) and Division Manager in charge of corporate services (DM) and technicians. She noted: “We work together, as we need advice from each other in order to resolve certain problems.” She explained that the DM is the one in charge of disseminating tenders after the tender requirements have been stated. The tender committee works with the DM and the whole procurement unit during the entire tender process. The legal advisor is not continuously involved in the process, but is kept in the loop so that in case a problem arises, he or she has a clear understanding of how the process was handled up to that point.

Another officer said he routinely seeks advice from the tender committee when he cannot resolve an issue. He thinks it is key that the legal advisor participates in the process, especially at the contracting stage where he advises on how the contract is proposed and how agreements should be formulated.

Yet another officer highlighted that the fact that procurement officers can readily ask other relevant staff for help, e.g.: asking the DM to resolve disputes or other problems before engaging in written correspondence (i.e.: before documenting how a case was handled).

The tender committee is composed of members selected from departments that will be using the procured goods/services in question based on the specific procurement. Members are appointed by the CBM of the district based on their technical knowledge in particular relevant fields. After nomination, the members are supposed to be provided training in the procurement process, even if they have been involved in prior procurements (since each procurement has its own specific requirements and idiosyncrasies). Nevertheless, it was reported during group discussions with both bidders and district officials that some members of a tender committee may have insufficient knowledge of the subject matter in question or may lack the requisite experience in contract management. This can lead to unnecessary confusion and mistakes, even when, as is necessary, members consult internal or external experts.

Meanwhile, one or two procurement officers are charged with following up on all of the district’s procurement obligations. The procurement officers essentially carry out day-to-day operations of the procurement process in collaboration with other members of the tender committee and the CBM. These operations include, among other things, preparation of tender documents; preparation and review of terms of reference (TOR) in collaboration with related departments; preparation and publication of related advertisements; receipt of submitted bids; organization and participation in the evaluation of bids, as well as notification to the

successful bidder. In addition, they receive and initially process any appeals from complaining bidders. The procurement officers also prepare the contract with the successful bidder, and get involved as necessary on an advisory basis in contract management in collaboration with the relevant district department.<sup>60</sup>

Another important actor in procurement matters at the local level is the district legal advisor. The legal advisor participates in district management meetings, for the purpose of advising on legal and procedural requirements on any matter of the district. Legal advisors also specifically cross check the type of tender or bid to be awarded, so as to ensure it fits within the announced procurement plan of the district and associated district budget parameters. They also play a major role in helping procurement officers draft the different documents required by the procurement process. Finally, legal advisors provide legal advice during the handling of appeals from bidders, including with regard to the rights of bidders and communications with them (e.g., concerning the basis for a decision and the marshaling of relevant evidence/justification therefore).<sup>61</sup>

It is important to note that in the case of infrastructure procurements involving roads that are large and complex, districts may also utilize the support services of the Association d’Exécution des Travaux d’Intérêt Public (ASSETIP), an association that brings together various actors in the field of infrastructure projects. ASSETIP assists districts in planning, design,

<sup>60</sup> Article 11(7<sup>9</sup>) of Public Procurement Law provides that procurement officer(s) have, among other responsibilities, to monitor contract execution in collaboration with concerned departments.

<sup>61</sup> One other function of the legal advisor is to guide the district leadership on how best to deal with internal legal matters involving procurements, e.g., possible measures to be taken against a member of a tender committee caught in, or suspected of, wrongful conduct. Note that every Tuesday in most districts, there is also a general staff meeting in which the Mayor seeks to address problems affecting the work of individual departments, including those involved in procurement matters.

procurement, delivery and maintenance of feeder roads. This kind of work may actually also require the cooperation of the Rwanda Transport Development Agency (RTDA), the Road Maintenance Fund (RMF), the Local Administrative Entities Development Agency (LODA), and the concerned districts to reach a consensus on the conceptual approach to the roads in question, not to mention material and unit costs for maintenance.

The process is intended to optimize the efficient use of resources by the Government. ASSETIP may also help streamline development of the terms of reference (ToR) and technical specifications for large, complex projects other than those concerning infrastructure. This has helped districts to recover many discrete costs while building their capacities.

## Dispute resolution in procurement cases

According to the Procurement Law and associated regulations, those bidders appealing a procurement decision are required to write a letter to the relevant tender committee within seven (7) days following the announcement of the bid evaluation results (Art. 51(2) of the Law on Procurement). They are entitled to receive a response no later than seven (7) days after submitting their complaint (Art. 51(3)).<sup>62</sup>

As noted above, some bidders mentioned that they try to settle a dispute orally through a meeting with procurement staff. In this case, the complaint process often stops after the discussion, with or without a satisfactory decision. Other appeals may be submitted in writing to the district procurement officer, even if they are initially addressed to the top leadership of the district through the central secretariat. Once the appeal is received, the district tender committee in question convenes a meeting to discuss the substance of the complaint and provide feedback.

If a bidder is not satisfied with the response at the district level, he/she can bring the appeal to the Independent Review Panel of the RPPA. The Independent Review Panel must make a decision within thirty (30) days following receipt of the appeal. If the panel is unable to reach a decision within thirty (30) days, it must inform both the procuring entity and the complainant of the need for extra time, which cannot exceed an additional thirty (30) days. In case of administrative silence by the IPR after the initial 30 days, a complainant is permitted to lodge an appeal to the competent court, which in this case means the Commercial Court.<sup>63</sup> This is also the applicable procedure when the complainant is otherwise dissatisfied with a decision rendered by the Independent Review Panel.



### Appeal mechanisms

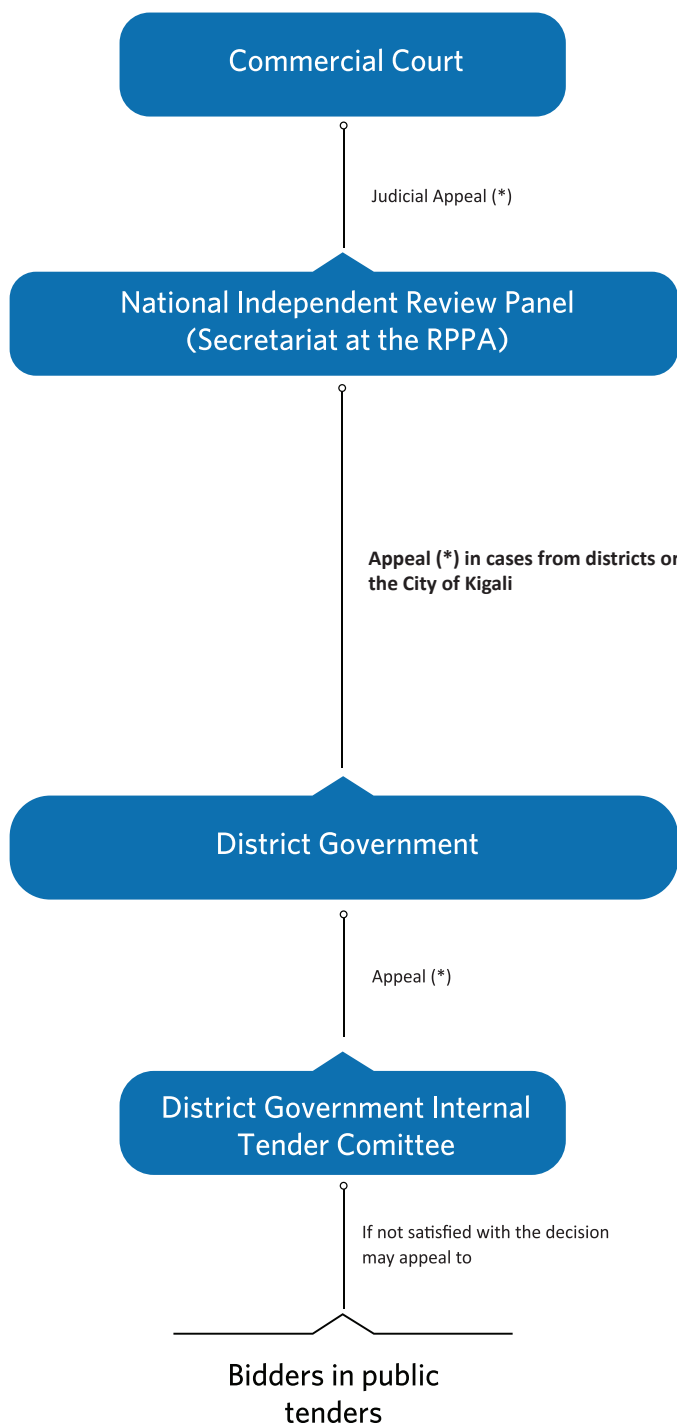
Below are the available remedies in procurement disputes:

1. **Request for review to the procuring entity:** A request for review is permitted if it is submitted within seven (7) days after the bidder becomes aware of the circumstances giving rise to the request. The procuring entity must respond within seven (7) days after receipt of the request for review.
2. **Review by Independent Review Panel:** A bidder who is not satisfied with a decision lodges a complaint with the Independent Review Panel. The Independent Review Panel must make a decision within thirty (30) days following receipt of the complaint. In case of any inability to do so, it must inform both the procuring entity and the complainant of the need for the extra time, which cannot go beyond an additional thirty (30) days. In case of failure to take a decision within thirty (30) days, or to inform both the procuring entity and the complainant of the need for the extra time, or in the case of an adverse decision by the IPR, the complainant is allowed to lodge his/her claim with the Commercial Court.
3. **Court Review (Commercial Court):** This is the last recourse for procurement disputes resolution. Lodging of the claim requires the exhaustion of administrative remedies, however.

<sup>62</sup> From our survey, we note that 59.6% of bidders mentioned that they received feedback on their initial complaint within two weeks. Note that the survey is not representative of bidders in Rwanda as a whole, and these data should not be generalized beyond the sample.

<sup>63</sup> Article 81(16°) of the Law N°30/2018 of 02/06/2018, Determining the Jurisdiction of Courts, provides that the Commercial Court is the competent court for hearing cases related to public tenders.

# Administrative Decision Pathways in Public Procurement



(\*) If not satisfied with the previous decision, bidders may appeal to

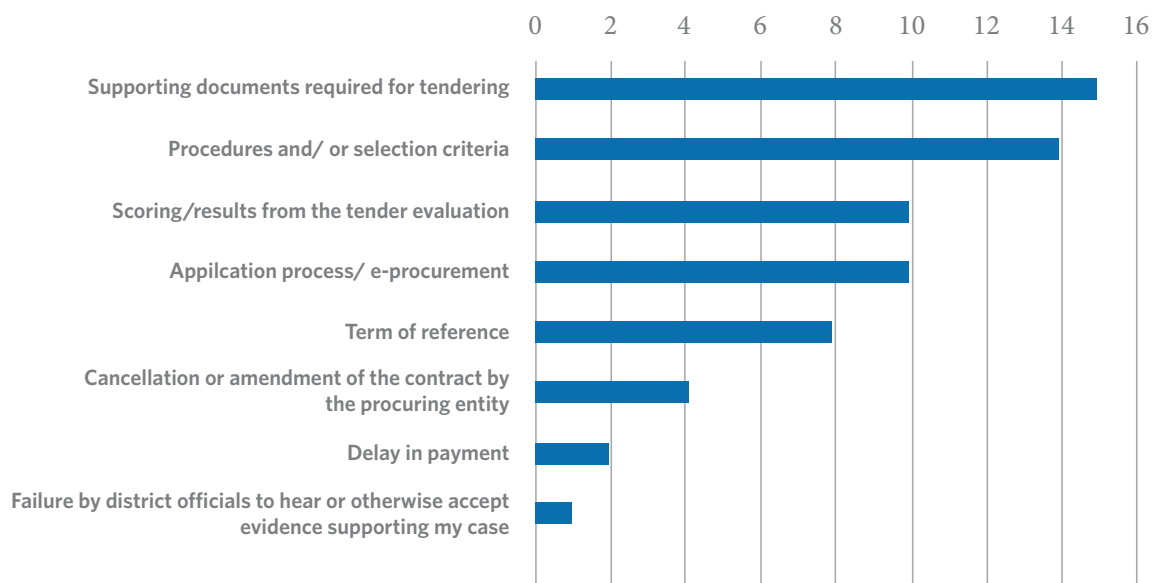
## 2

## Procurement and Administrative Justice: Some Quantitative Data from Bidders

This section includes quantitative data derived from a survey of 50 private entities (bidders) across five districts<sup>64</sup> that lodged complaints about some aspect of the procurement process during the period 2015-2018. In terms of demographic characteristics, the sample of respondents consisted disproportionately of men (94%) with a university education (90%). The firms represented were made up mostly of small and medium businesses (SMEs - 82%), and the largest proportion came from the construction sector (36%); the next largest type of firm represented were those supplying general services (14%). Nearly 70% of the respondents had participated in public tenders more than 20 times in the last four years. Regarding the value of the tenders they were involved in, 40% of respondents reported to have participated in tenders with a value higher than 500.000.000 Rwf.

Figure 1 indicates that the main reasons that impelled respondents to lodge procurement appeals were related, respectively, to the supporting documents required for tendering (15 cases, or 23%); procedures and/or selection criteria (14 cases, or 22%); and the application process and the e-procurement, as well as the scoring/results from the tender evaluation (10 cases each, or 16%).

**Figure 1: Reasons/basis for lodging complaining (# of cases)** <sup>65</sup>



Out of the total sample of 50 bidders, 82% of complainants said they were informed<sup>66</sup> (either well informed or somewhat informed) about their rights related to the public procurement process, while 18% said they did not feel well informed. Individually, men (85%) felt well informed relative to women (33%)<sup>67</sup>, and older respondents felt they were better informed than younger ones.<sup>68</sup> Meanwhile, 100% of large businesses reported being informed (well informed: 88.9% and somewhat informed 11.1%), while 78.1% of SMEs reported being informed (well informed: 41.5% and somewhat informed 36.6%). From a sectoral standpoint, the most well informed sectors are those comprising manufacturing; water supply, sewage, waste management and remediation activities; transportation and storage; food service and hospitality/accommodations; and information and communications—in all of

<sup>64</sup> The sample is obviously not representative of the national population of complainants in public procurement. The results cannot be generalized outside the respondents' sample..

<sup>65</sup> IPAR's calculation.

<sup>66</sup> Either well informed (50%) or somewhat informed (32%).

<sup>67</sup> Well informed (50%);Somewhat informed (32%); Not very well informed (12%); and Not well informed at all (6%).

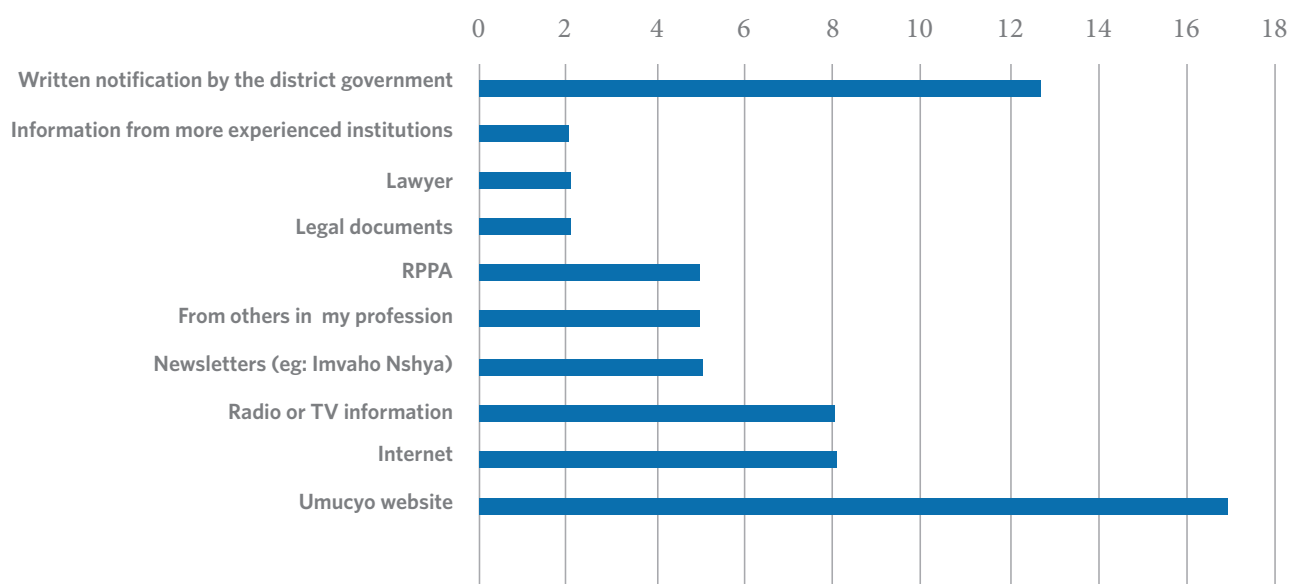
<sup>68</sup> This result must be taken with caution given that there were only 3 women in the sample.



these sectors, 100% of respondents reported that they were at least somewhat informed about their rights in the procurement process.

The main source of information accessed by procurement complainants (see Figure 2) is the Umucyo (e-procurement) website, from which 27%<sup>69</sup> of the respondents obtained information. In terms of the types of information that respondents felt were useful to receive from district officials, 52% indicated that information about terms of reference were helpful, while the same number (52%) felt that information about technical specifications and procedures and/or selection criteria were helpful.

**Figure 2: Main sources of information accessed by bidders (Frequency)<sup>70</sup>**



When respondents lodged complaints about some aspect of the procurement process (following any informal complaint or discussion that might be placed with the original tender committee), they mainly appealed to the district procurement officer (83%). When a complaint was presented to the district procurement officer, complainants generally reported receiving a response in less than 2 weeks (when complainants chose to complain initially to a higher authority within the district, they reported receiving a response in a less efficient time frame—1 to 3 months). In both of these cases, however, 80% of respondents indicated that they did not get helpful information from these institutions/officials. Only the Independent Review Panel was reported to have provided very helpful information, according to 4 out of 5 respondents. Similarly, procurement offices at the district level scored poorly with respect to courtesy or attentiveness shown to bidders (only 23% of respondents found procurement staff courteous and 26% found them attentive),<sup>71</sup> while the national-level Independent Review Panel was found to be both courteous (4 out of 5 respondents find them very courteous) and attentive (3 out of 5 bidders found them very attentive).

In terms of further feedback about their experiences interacting with various first instance institutions on appeal (as noted above, this mostly concerns district procurement offices (83% of all respondents), 81% of bidders indicated that they were provided with verbal or written information about how the complaint/appeal process operated, and 66% said they were given an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing. At the conclusion of the appeal process, 83% of complainants were

<sup>69</sup> The question allowed for multiple answers. Except for people who asserted to not be well informed on procurement rights, the rest had up to two sources of information. The figure represents 17 out of 62 answers provided (i.e. 47 with at least one source of information and 15 with a second source of information). In numbers, 94% had a source of information (on 50 interviews) of which 32% had two sources of information (15 out of 47).

<sup>70</sup> IPAR's calculation.

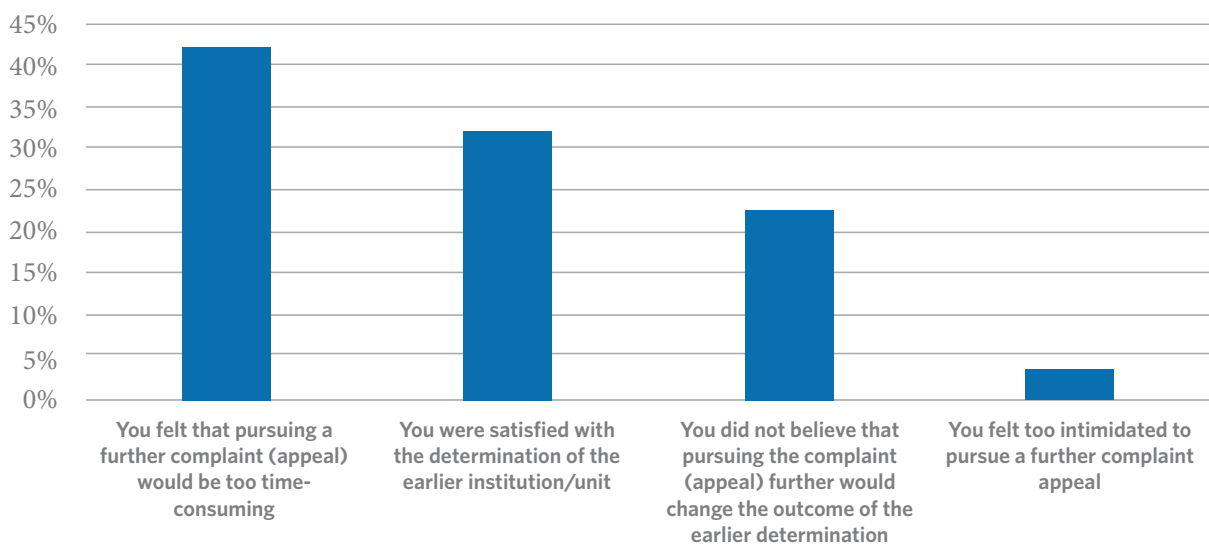
<sup>71</sup> Very courteous 15.4%, Courteous 7.7%; Discourteous 20.5%; Very discourteous 38.5%.

Very attentive 15.4%; Somewhat attentive 10.3%; Mostly inattentive 12.8%; Not at all attentive 43.6%

provided with a written decision, and 75% of respondents reported receiving a decision that was accompanied by an explanation with reasons for the decision. However, 77% of respondents were not provided with information about how and where to further appeal their cases. At the initial stage of appealing a decision (where most bidders are effectively seeking some kind of review or reconsideration by the district government), as many as 85% of respondents said they had not been represented by a lawyer.

After this first level of appeal, 31% of complainants indicated that they pursued a second instance appeal to an independent review panel, either at the national level (36%, which now is the only IPR that exists), or at the district level (21%, where an independent review panel existed up until the fall of 2018, when the Procurement Law was amended). The reasons why nearly 70% of respondents did not pursue a complaint to a further (second instance) appeal level are provided in Figure 3. Of these, 32% of them did not pursue the case because they were satisfied with the determination of the prior appeal institution.

**Figure 3: Reasons for not pursuing a further (second instance) complaint (by percentage)**



When interacting with institutions to which they appealed in the second instance, 86% of those complainants reported being provided with verbal or written information about how the complaint/appeal process operated, 71% indicated that they had been given an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing, and at the conclusion of the process, 57% said they were provided with a written decision (and of those who received such a written decision, all respondents said it was accompanied by an explanation with reasons). However, fully 86% of respondents were not provided with information about how and where to further appeal their cases. At this second instance stage of appeal, 71% of respondents indicated they were not represented by a lawyer.<sup>72</sup>

Most respondents (72%) felt that the most important improvement to be made regarding administrative justice in public procurement disputes are to improve the e-procurement system. 16% of respondents also recommended expanding provision mediation and other Alternative Dispute Resolution (ADR) mechanisms to help resolve certain procurement disputes, and 12% suggested improving training and oversight of government officials to ensure better understanding of legal requirements and procedure on procurement.

<sup>72</sup> Only 5 respondents reported pursuing a third instance appeal, so drawing any conclusions from a number that small is not meaningful. Still, after the second instance appeal, 58% of this small pool of respondents decided not to pursue a further appeal, mainly because it would be too time-consuming (86%) or because they were satisfied with the administrative decision (14%).

## Lessons Learned and Recommendations

### **Enhancing the professionalism and ethics of bidders:**

Interviews and group discussions indicated that some bidders lack professionalism and ethics in participating in the procurement process. This sometimes leads to illegal practices, such as the submission of forged documents, and disqualification—often complained about—when the fault lies with the bidders themselves. Poor practices and/or low capacity have also led some bidders to submit unduly low price quotations, which may gain them the tender, but ultimately lead to non-fulfillment of their contractual obligations (which in turn generates disputes with local governments that could obviously might have been avoided). As revealed through the field research, still other bidders may betray a lack of professionalism by participating in multiple tenders at times when they lack the internal resources to carry out projects should they be awarded (resources are shifted from one tender to another due to poor or unrealistic planning, and relevant staff cannot be hired, causing deadlines and deliverables to be missed). Public education efforts – especially those highlighting the consequences of bad practices (including the imposition of sanctions or loss of contracts for poor performance) – could better alert firms to the dangers of engaging in unprofessional behavior.

### **Harmonizing technical specifications/terms of reference for similar tenders across the districts:**

Field research also indicated that different districts may be pursuing exactly the same tenders but with different specifications/terms of reference. This creates unnecessary preparation and monitoring work for district governments and bidders alike. The RPPA could help the situation by providing more guidance and standard specifications/terms for similar tenders across all districts.

**Strengthening market price guidelines:** Interviews revealed that district officials very often lack accurate information about market prices. The RPPA could address this problem by periodically conducting a national market price survey and updating its applicable price indexes on its website in order to help district procurement officers better respect the principle of economy (i.e., value for money) as provided by the Procurement Law.

**Delays in payment:** Interviews and group discussions with public officials and bidders indicated that there is a tendency for district governments to delay payments to bidders even while expecting the latter to deliver procured services in a timely fashion according to agreed-upon deadlines. This puts bidders in a financially vulnerable situation, and yet the law does not require the procuring entity to pay interest for payment delays unless this is specifically stipulated in the contract. A clear instruction on this issue in the law or in RPPA regulations as a default stipulation should be adopted to ensure greater fairness and improve contractor performance.

### **Issuing guidelines to clarify the roles and responsibilities of procurement officers, tender committees, and user departments:**

While the relevant district user department(s) should be involved from the stage of needs identification all the way to execution of the contract, if for any reason such units do not prepare adequate technical specifications in timely fashion, it may adversely affect any subsequent stages— particularly those of evaluation and contract management. This can lead to a variety of complaints. RPPA should issue clear guidelines and provide for appropriate oversight and training on the respective roles and responsibilities of these three actors (procurement officers, tender committees, and user departments) in the procurement process (focusing on the key issues of planning, specifications, evaluation, and contract management).

### **Strengthening the capacity of procurement officers, tender committee members, and contract managers from user departments:**

Gaps in procurement knowledge among those responsible for various parts of the procurement process surfaced during the field research. If procurement decision-making at the district level is to be improved, specialized training for district officials in technical specifications, contract management, logistics/supply chain management, and tenders for specific types of public works, supplies, and consultancy projects must be expanded. These capacity needs were especially apparent when survey data on bidder complaints was examined: 80% of bidders said that they do not receive helpful information from

district procurement and other local officials regarding the complaints process (only independent review panels at the national and (formerly) district level were viewed as providing useful information—100% and 80%, respectively).

More important, only 66% of bidders surveyed said that they were given an opportunity to make their views known and to offer evidence in support of their case. And while 83% of bidders were provided with a written decision, only 75% were provided with reasons supporting the basis for the decision. Moreover, 77% were not provided with information about how and where to further appeal their cases. Finally, district officials involved in rendering initial procurement decisions scored low with respect to general courtesy shown to complainants (only 32% of bidders). All of this argues for significant and concerted capacity-building training to ensure that proper procedure is followed and bidders' rights are respected.

**Consultation of legal advisers:** Interviews and group discussions indicated that at various stages of the procurement process, district legal advisers are not adequately consulted by procurement officers, tender committee members, or contract managers. This consultation should be systematically enforced through better district management processes and guidance so as to reduce the number of incorrect or improper decisions taken and in turn, prevent unnecessary disputes from arising.

**Raising bidder's awareness of procurement procedures and associated rights:** Although 82% of bidders lodging complaints felt that they were either well informed or somewhat informed about rights related to the public procurement process, in depth interviews with bidders revealed a need for greater dissemination of information about both the operation of the procurement process and dispute settlement procedures—especially since some district officials apparently fail to give bidders helpful background information (which bidders do

believe is useful, especially with regard to terms of reference (52%) and technical specifications and procedures/selection criteria (52%)). In this regard, free-standing information outreach as well as training should be organized for bidders, helping improve their understanding of their rights and responsibilities. This could also improve the quality of appeals and reduce their incidence—since many bidders simply complain orally about their grievances without submitting a factual record of what they believe is in dispute. This—combined with greater availability of mediation as an option in procurement disputes—could in turn lead to better practices on both sides and fewer disputes ending up with the RPPA or in court.

**Training on the use of e-procurement system:** Interviews and group discussions also indicated that in many cases, officials as well as bidders do not fully understand the e-procurement process—either in terms of the submission process or the initiation of appeals (it was revealed that some bidders actually press the button to submit a complaint before they have fully read the decision or the instructions for appealing). Expanded and improved training on e-procurement for both district officials and bidders should result not only in improvements to the e-procurement system—which 72% of bidders indicated was their top recommendation—but more effective dispute resolution.

**Providing temporary expertise to district for specific tenders.** Tenders requiring specialized expertise not available at the district level should be supported with technical assistance by experts from the central level through RPPA—particularly tenders involving certain ICT functions and complex road construction projects, where technical expertise is often not available at the district level.



# **Public Employment and Administrative Justice**

1

# An Overview of the Practice of Administrative Justice in Public Employment

Public employment decisions, while not so numerous compared to decisions in other areas of district government activity, have a significant impact on the administrative justice in Rwanda due to their relatively high visibility. This is because the public sector is still large and several cases have ended up being litigated in courts. In recent years, several district governments have had to pay substantial financial compensation to public employees whose cases alleging unjust handling of disciplinary and/or termination procedure have been upheld by Rwandan courts. This is often due to inadequate documentary evidence and recordkeeping.

Field research conducted in five districts (one from each of the Provinces) by the SRAJ Project included interviews and group discussions with district officials and public servants who had been involved in employment-related disputes over the past four years. The findings from the research are shared in the three sections of this report. First, the general processes governing recruitment, discipline, evaluation, and termination are discussed, followed by quantitative data derived from a survey conducted with 100 public servants who had been involved such disputes. A final section contains lessons learned and policy recommendations stemming from the research findings.



## Nature of public employment complaints

A public employment complaint may arise when an individual fails to be hired into a public job or receives unfair performance evaluation, or is disciplined in, or dismissed from, a public job. Only complaints regarding staff positions fall under the complaint processes for public labor; recruitment and complaints by contractual employees fall under private labor processes and are not handled in the electronic recruitment system as is the case with disputes involving staff.

## The recruitment process and applicant appeals

With regard to recruitment practices and disputes that may arise therein, the office of the Director of Human Resources and Administration in the district is responsible for overseeing recruitment processes and procedures. However, the decision making authority is vested into the powers of the Mayor or the district executive committee. Appeals of such decisions may be taken to the Public Service Commission. All job openings are advertised on the electronic (e-) recruitment system by the Ministry of Public Service and Labor (MIFOTRA), and the job positions and associated descriptions are also posted at the district offices. Salaries are determined by MIFOTRA and are essentially uniform across all districts.

**Shortlisting.** Before shortlisting the candidates who are eligible for a given position, each dossier is reviewed by a three committee in the district composed of three members: the Director of Human Resources, the Human Resources Officer, and one other district

staff member appointed by the District Executive Committee. The list of the candidates who are selected for interviews is posted on the e-recruitment system, and the applicants receive an automated message indicating their application status (shortlisted or not shortlisted). The list of shortlisted candidates is also posted on the district's notice board, indicating time and dates for written and oral exams.

When an applicant feels that his or her application needs to be revisited for any reason, an appeal can be made in writing either through the e-recruitment system or to the concerned district directly. The review of the documents is then done again. If the District has made an error about the candidate's academic credentials and professional experience, it should rectify the error and reconsider the applicant's file. A short message is sent to the applicant informing him or her about the decision taken.



## Recruitment procedures and appeals therefrom

**Posting:** An open position is posted on the e-recruitment system for five working days.

**Application:** Any job applicant must fill out and submit an electronic job application form with all supporting documents through the e-recruitment process.

**Shortlisting:** Every application is reviewed considering two criteria: 1) the candidate holds the appropriate government-issued identification; and 2) the candidate meets the educational requirements for the position. Shortlisted candidates are called for a written exam.

**Initial (District) Appeal:** An applicant who is not shortlisted may log an appeal in the e-recruitment system within 3 days. The institution must render a decision within 3 working days from the date of receipt of the appeal (art.18 of Presidential order n°144/01 of 13/04/2017 determining modalities for recruitment, appointment and nomination of public servants). If a mistake was made, the district must correct it and shortlist the applicant. If no mistake was made, an SMS goes out informing the applicant.

**Public Service Commission Appeal:** An applicant who is dissatisfied with a decision on appeal at the district level may then file an appeal with the Public Service Commission (PSC). The PSC must review the appeal and respond and inform the HRA Director of its decision in the system within a period of five (5) working days from the reception of the appeal (art.18(5)). If the applicant is dissatisfied with the PSC's decision, he or she may request a mediation session with the HRA Director and a staff member at the PSC.

**Written Exam:** Exams are scored and then entered in the e-recruitment system. An SMS is sent to each applicant with his or her score out of a total of 50 marks. If the score is above 25, the candidate is called for an oral exam.

**Initial (District) Appeal:** An applicant who wishes to appeal his or her score must first appeal to the district, using the e-recruitment system. The HR Director must request for the exam, attempt to explain the score and the questions that the applicant failed.

**Appeal:** If the applicant is unhappy with the explanation, he/she may appeal to the PSC. The PSC may arrange a mediation session with the applicant, a PSC representative, the Director for Administration and Human Resources, and the consultant who marked the exam to explain how specific questions were marked.

**Oral Exam:** The oral exam is scored on a maximum of 50 possible marks administered by RALGA. The scores are inputted into the e-recruitment system and combined with the scores from the written exam. The applicant with the highest score is offered the position, as long as the applicant earns a minimum combined score of 70.

The appeal process is the same as that related to a written exam.

**Examination administration and marking.** The only recruitment agency for local governments is the Rwanda Association of Local Government Authorities (RALGA), which prepares and supervises required examinations for shortlisted applicants. After sitting for the examinations and having them marked, applicants can find the results published after one week. Written exams are marked on the basis of a total possible score of 50. The pass mark is 25 out of 50. Applicants who score below 25 are not eligible for oral exams

(interviews). Those who are eligible for and take the oral exam are also scored on the basis of a total possible score of 50. The marks for the written and oral exams are then added together (the maximum score then becomes 100), and the candidate with the highest score is offered the position, on the condition that he/she has a total score of at least 70 (out of 100). If no one scores 70% or more, MIFOTRA re-advertises the position(s). At this stage, an applicant can lodge a claim that he/she has been under-marked via a written

to the district. The district Directorate (Department) of Administration and Human Resources, together with the recruitment agency (RALGA), then assesses the candidate's claim in an attempt to understand what might have happened. If the candidate's claim reveals any errors, they must be corrected and a response given to the candidate within five working days.

An applicant who remains dissatisfied with the decision taken at the district level is then required to file an appeal within two days to the Public Service

Commission.<sup>73</sup> There is a commission of inquiry at the PSC that carries out investigations, writes a report on the case, and recommends a decision. The PSC then informs the district of its decision. If the complainant is not satisfied with the PSC's decision, he/she can appeal the case to court.

## Complaints arising from administrative (disciplinary) sanctions

Disciplinary proceedings in public employment are initiated by the employer. This may arise from alleged misconduct of an employee at work, which can encompass failing to report to work on time, leaving work early without notice, absenteeism without informing the line manager, and/or other cases of alleged negligence of work duties and responsibilities.<sup>74</sup> If the line manager or the human resources manager observes a problem of this nature, he or she informs the employee of the problem and seeks an explanation. The employee is given a chance to explain him/herself verbally, and a verbal warning can be given by the human resource office, if deemed appropriate. If the behavior in question persists, a notice of misconduct can be given in writing to the employee and he or she will be expected to respond in writing, explaining the reasons for his or her failure to respect the rules and regulations of his/her institution and applicable employment law.

If the written response given by the employee is not satisfactory, the human resources office can refer the matter to the district internal committee<sup>75</sup> to take disciplinary action. The internal district committee is composed of the Director of Human Resources, the Human Resources Officer (who is the secretary of the

office), the district Legal Advisor, the district Executive Committee Executive Secretary, and two professional and support staff representatives elected by their peers. After investigating the case, the internal district committee submits a report to the human resources office with a recommended decision on the employee to be made by the district. A notification of disciplinary action may be recommended; in some cases, dismissal can be taken as an option if the employee has engaged in gross misconduct.<sup>76</sup> The Public Service Commission is normally consulted in the case of any disciplinary sanctions in the second category.

Upon receiving the sanction, the employee can seek reconsideration of the disciplinary committee's decision by the office of the Mayor. If dissatisfied by the outcome in that office, the employee can pursue additional appeals to the Public Service Commission. The Commission can recommend a reduction in the penalty given to the employee, or recommend reconsideration of a dismissal. This constitutes the last step in the administrative settlement of disciplinary disputes. However, if the employee is still not satisfied with a PSC decision, the he or she can take his or her case to court.

<sup>73</sup> See article 18(5) of the Presidential Order n°144/01 of 13/04/2017 determining modalities for recruitment, appointment and nomination of public servants.

<sup>74</sup> Articles 8 and 9 of the Presidential order determining modalities for imposing disciplinary sanctions on public servants identify categories of disciplinary violations and corresponding sanctions. Infractions in the first category are sanctioned by a warning and reprimand, while an infraction in the second category is sanctioned by a delay in promotion, suspension for a period of up to three months without pay, or possible dismissal.

<sup>75</sup> The Committee has the power to investigate an employee's alleged misconduct and recommend an appropriate sanction (art. 19 of the Presidential Order no 65/01 of 04/03/2014 on modalities for imposing disciplinary sanctions on public servants).

<sup>76</sup> Article 14 of the Presidential Order no 65/01 of 04/03/2014 on modalities for imposing disciplinary sanctions on public servants refers to these as "serious disciplinary faults."



## Performance Evaluation & Promotion

By law, every public servant is promoted horizontally to the next level/grade every three years, provided his or her performance has been evaluated at 60% or higher over a period of three consecutive years. Moreover, within a level/grade, public servants can receive an annual performance bonus of 5 % if they score 80% or more, and 3% if they score between 70% and 80%.

An employee's performance is evaluated with reference to the performance contract (Imihigo), that is are signed annually between the employee and the employer. In his/her performance contract, the employee indicates his/her expected achievements (for the first two quarters), and sets targets and measurable indicators in line with his/her job description. At the end of the performance contract period, the employee fills out his/her evaluation form. The line manager in turn evaluates the employee on the basis of achievable or expected results. Upon completion of the evaluation, the line manager meets with the employee (individually) so that he or she is provided with reasons for the different scores. The employee is invited to sign the performance evaluation – in which case the employee validates the evaluation.<sup>77</sup> However, the employee can refuse to sign the performance evaluation if he or she is dissatisfied with the score. In the latter case, the practice shows that employees usually bring the matter to the Mayor or to the Executive Committee and seek mediation of the dispute before any submission of the claim to the District Council, as required by law<sup>78</sup>. If there is no resolution and the employee remains dissatisfied with the Council's decision, he or she can lodge an appeal with the Public Service Commission.<sup>79</sup>

### Dismissal

If disciplinary procedures result in a recommendation to terminate the employee's contract, the District



#### A Performance Evaluation Appeal

If an employee does not agree with a supervisor's performance evaluation, he or she may appeal to the Mayor. If the Mayor cannot facilitate agreement between the employee and supervisor, he or she must refer the appeal to the Executive Committee which, in turn, must convene an ad-hoc committee made up of staff directors who must investigate and recommend a decision. If the employee is still dissatisfied, he/she can appeal to the PSC.

Executive Committee is empowered by law to consult MIFOTRA which may approve termination, but also has the authority to reduce the punishment to a level lower than termination.<sup>80</sup> However, in case MIFOTRA approves the termination, the Mayor may dismiss the employee. When an employee engages in criminal activity, the Mayor may choose to dismiss him or her immediately without following the normal disciplinary procedures. Sometimes, however, due to haste or carelessness, employees are dismissed without proper documentation or consultation with district legal advisors, as was revealed in interviews and group discussions with various public officials.

If the employee wishes to appeal a dismissal, he or she has to first appeal to the Mayor within five working days from the date he or she was notified of the dismissal. The Mayor is then required to respond to the appeal within 15 working days from the date the appeal was received.<sup>81</sup> If the Mayor does not

<sup>77</sup> Scores are sent to MIFOTRA once per year and these fully filled evaluation forms are the basis on which bonuses are paid. Employees who score-- between 60 and 70% in consecutive years receive additional feedback and training to raise their score in the next evaluation. However, employees who score below 60% for three consecutive years are subject to dismissal from public service.

<sup>78</sup> Article 33 of the Prime Minister's order no 121/03 of 08/09/2010 requires a public servant working in local government to appeal to the Council of the District in the first instance within 15 days from receiving notification of appraisal results

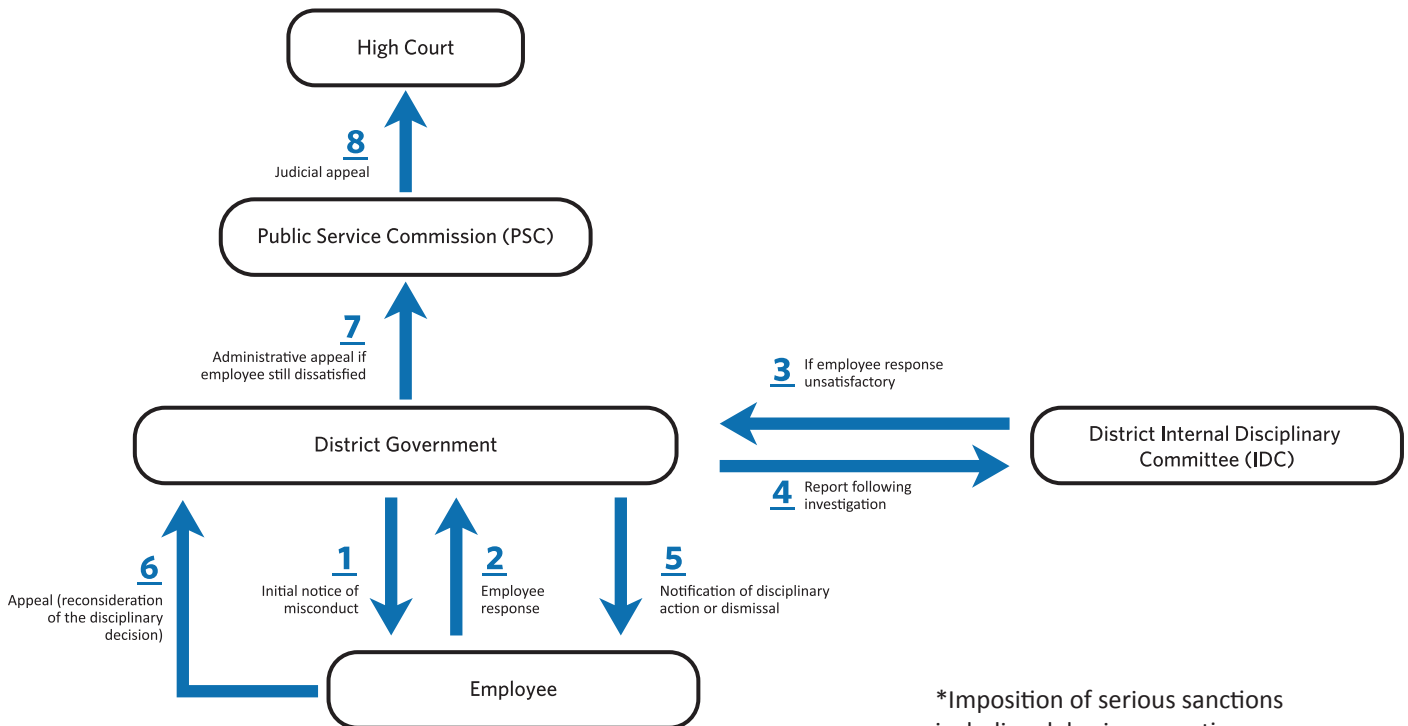
<sup>79</sup> Article 33 of the Prime Minister's order no°121/03 of 08/09/2010. An appeal of a public servant working within local government shall be addressed to the Council of the District in the first instance, and to the Public Service Commission in the second instance.

<sup>80</sup> As reflected by discussions among experts at a validation workshop hosted by the SRAJ Project last year, there is considerable support for having the PSC (not MIFOTRA) serve as the proper consultative body on dismissals, because the procedures related to dismissal fall under the PSC's responsibilities.

<sup>81</sup> Article 32 of Presidential Order n°65/01 of 04/03/2014.

reverse the decision, the employee may next appeal to the PSC.<sup>82</sup> If the employee is dissatisfied with the PSC's decision, he or she may appeal to the Court.<sup>82</sup>

## Administrative Decision Pathways in Public Employment Disciplinary/Dismissal Cases



\*Imposition of serious sanctions including delay in promotion, suspension, or dismissal currently requires consultation with the IDC and MIFOTRA (if due to misconduct) or the IDC and PSC (if due to performance)

<sup>82</sup> The PSC must decide on the appeal within 60 calendar days and, while the decision of the PSC is not subject to any other administrative appeal, recourse to the court is permitted (Article 33 of Presidential Order n°65/01 of 04/03/2014).

<sup>83</sup> It is important to note that public employment cases are handled by the intermediate Court Chamber for Labor and Administrative cases. However, the case is not admissible before the chamber if the plaintiff fails to exhaust all administrative remedies.

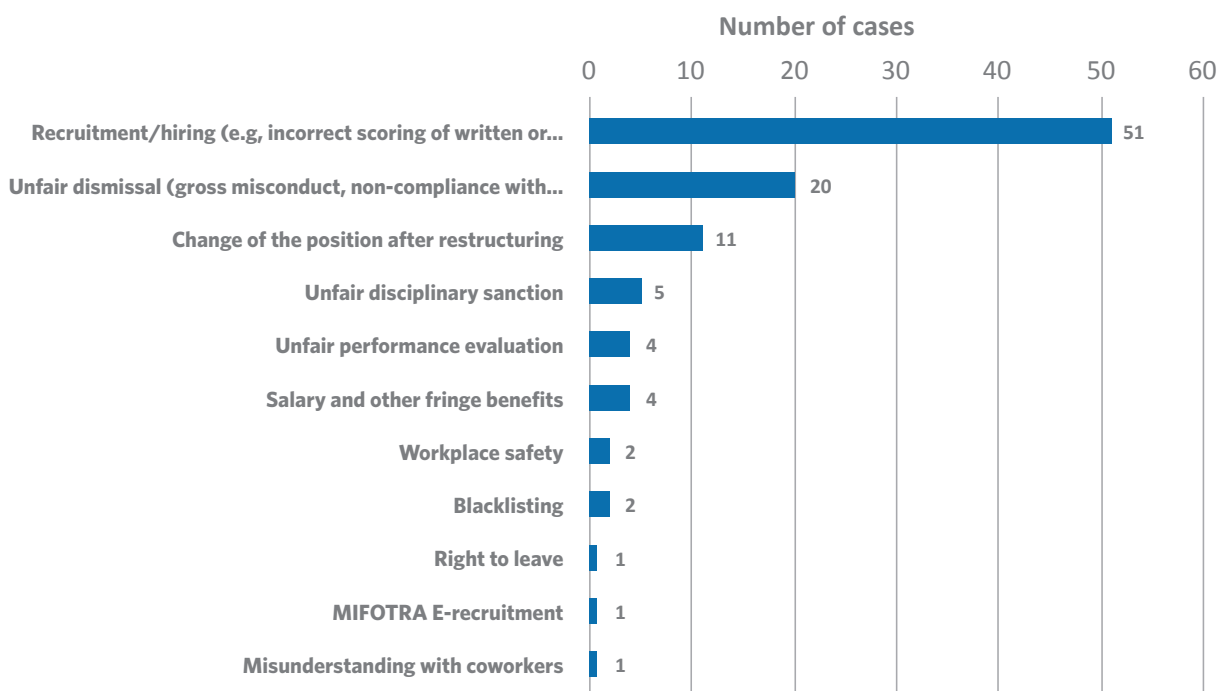
## 2

## Administrative justice in numbers

Based on the results of our survey of 100 respondents, Figure 1 shows that disputes in public employment principally concern the recruitment process (51% of the complainants). Unfair dismissal and changes of position based on restructuring come next (respectively 20% and 11%). Other types of cases generate fewer complaints.

As for the individual characteristics of the surveyed respondents, most of them are married, male, and between the ages of 26 and 35,<sup>84</sup> while 84% are in Ubudehe category 3 and 94% have a university level of education. 92% of respondents have fewer than 15 years of experience, with the largest number (58%) having fewer than five years of experience. In terms of monthly income, more than a half of them (52%) earn more than 200.000 Rwf.

**Figure 1: Reasons for bringing a complaint (frequency)** <sup>85</sup>



Overall, 87% of respondents indicated that they were well informed about their rights in the workplace. When disaggregated by characteristics, men tend to be more aware of their rights than women (90% vs. 78%). Individuals with a university level education (89%) and senior public servants (92%) also feel well informed.<sup>86</sup>

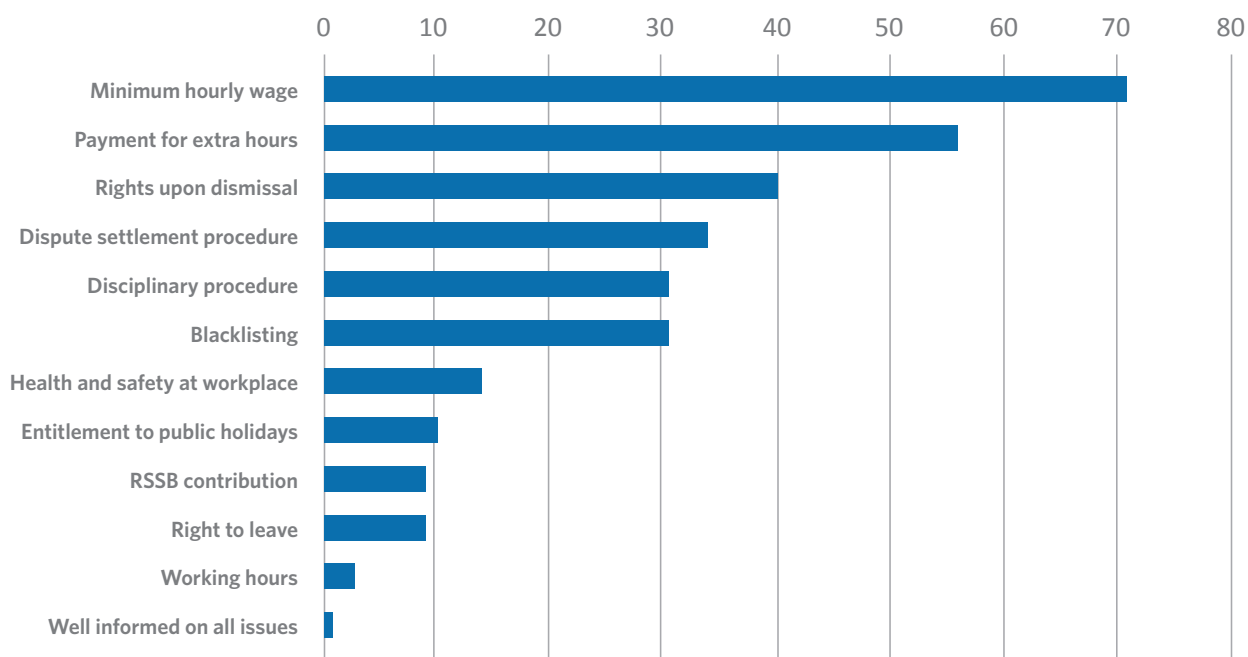
The respondents reported that they needed more information on various subjects, the top four of which were as follows, in descending order: minimum hourly wage, payment for extra hours, rights upon dismissal, and dispute settlement procedures (See Figure 2). When they need to access information on their rights in the workplace, the respondents said that they chiefly relied on the workplace manual on procedures (50%), the human resources department (33%), and the Internet (18%) (Note that they may use a combination of these sources).

<sup>84</sup> Male complainants represent 77% of the total sample, those married 70% and those between the ages of 26 and 35 constitute 61% of the sample.

<sup>85</sup> IPAR's calculation

<sup>86</sup> 25 percent of the sample belongs to the latter category. Note that 37% for respondents of university level reported to be "Very well informed" and 52.1% "Somewhat informed". Similarly, 40% of senior public servant reported to be "Very well informed" and 52% "Somewhat informed".

**Figure 2: Types of additional information needed (% of respondents)** <sup>87</sup>



When it comes to pursuing a complaint or appeal, complainants first go mainly to the district HR officer or to a higher authority in the district government such as the Mayor or the Executive Committee (44% and 23% of respondents, respectively). A lower percentage (16%) go to the Public Service Commission (PSC).<sup>88</sup> A large number of respondents (73%) reported that they appealed to these institutions because they understood this to be required by law. In terms of receiving a response on their case in this initial instance, just more than a half of respondents (53.3%) said they received a decision within two weeks.<sup>89</sup> At the first instance (mostly involving the Administration and Human Resources Department or some higher authority within the district, as noted above), a relatively large number of respondents reported that they were provided with information that was relevant to their cases (59%); and that the officials involved were courteous (72%) and attentive in listening to their explanation of the case (59%).<sup>90</sup>

In terms of specific procedural interactions, the respondents said that at the first instance (i.e., for many, but not all respondents, this is the stage of appealing within the district government), they were provided with a verbal or written information about how the complaint/appeal process operated (71%) and had an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing (59%). At the conclusion of the process, the respondents said they were usually provided with a written decision (72%) and the decision was often accompanied by an explanation with reasons for the decision (64%). Only 51% indicated that they were provided with information on how and where to further appeal their cases.<sup>91</sup> It is noteworthy that at this initial stage of appeal, most respondents (90%) were not represented by a lawyer.

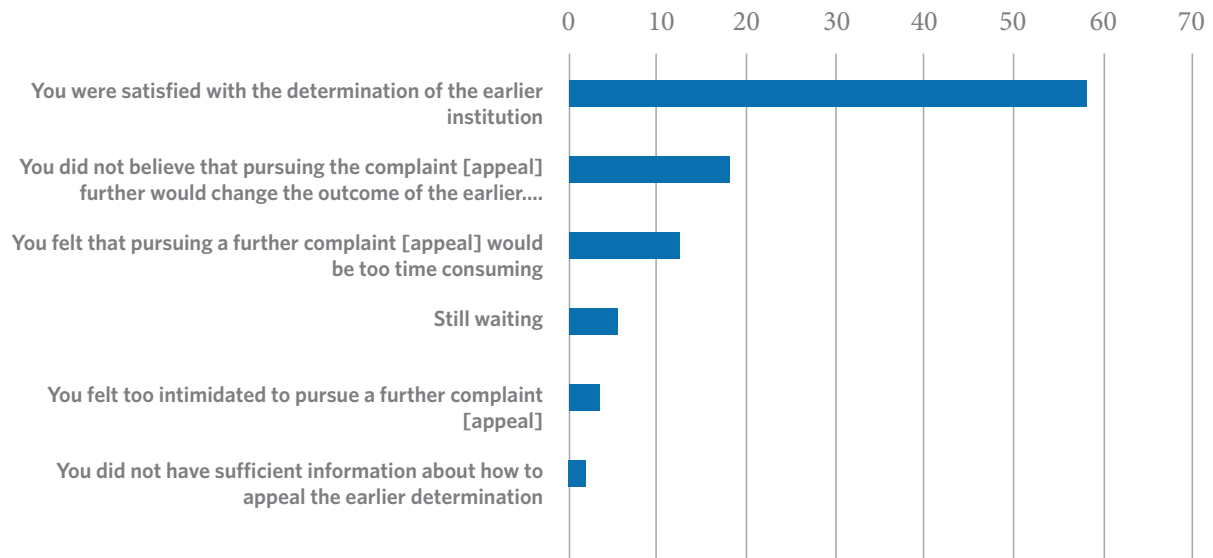
<sup>87</sup> IPAR's calculation.

<sup>88</sup> Other public servants appealed to the District Council (3%), Court (3%) or District Disciplinary Committee (1%). Ten percent of the complainants did not lodge a complaint/appeal. These figures reveal that some public servants are not aware of appropriate administrative pathways prescribed by the law.

<sup>89</sup> Between 2 weeks and 1 month: 13.3%; Between 1 and 3 months: 13.3%, More than 12 months 2.2%; Never received a response: 17.8%

<sup>90</sup> Information was "very helpful": 35.6%; "helpful":23.3%; Institutions were "Very courteous":22.2%; "Courteous":50%; "Very attentive":34.4%; "Attentive":31.3%; "Mostly inattentive":13.3%; "Not at all attentive":14.4%.

<sup>91</sup> While similar these numbers may vary among institutions. For more precise data refer to Table 7 of the annexes.

**Figure 3: Reasons for not pursuing a complaint**<sup>92</sup>

After an initial appeal, 39% of respondents decided to pursue the complaint further and 58% of those who did not do so said it was because they were satisfied with the decision they received. The majority of those pursuing a second appeal went to the PSC (54%) or to a higher authority within the district government (14%).<sup>93</sup>

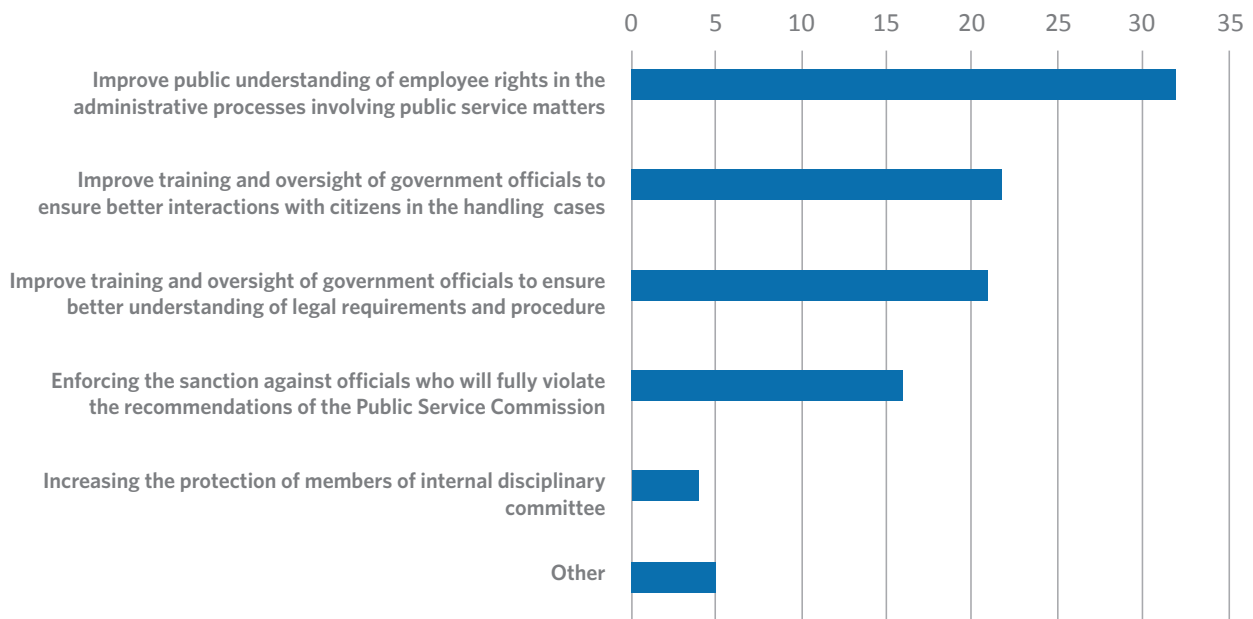
During interactions with these second instance institutions, the respondents said that they received helpful information that is relevant to their cases (69%), were received with courtesy (80%) and that officials listened attentively to their explanations of the case (74%).<sup>94</sup> Moreover, 77% of the respondents at this stage said they were provided with verbal or written information about how the complaint/appeal process operated and 68% had an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing. At the conclusion of the process, 74% of respondents further noted that they were provided with a written decision, and for 69% the decision was accompanied by an explanation of reasons for the decision. Just below half of respondents (49%) were provided with information about how and where to further appeal their cases. At this stage, a very large number of respondents (83%) said they had not been represented by a lawyer.

Finally, when asked to provide priority recommendations to strengthen the administrative justice in Rwanda, survey respondents indicated that their top recommendations were: (1) Improving public understanding of employee rights in administrative processes involving public service matters (32%); (2) Improving training and oversight of government officials to ensure better interactions with public servants in the handling of cases (22%); and (3) Improving training and oversight of government officials to ensure better understanding of legal requirements and procedures (21%). Other reasons are provided in Figure 4.

<sup>92</sup> IPAR's calculation

<sup>93</sup> We note that other public servants appealed to Court (11%), District council (11%), Province (3%), RALGA (3%) and MIFOTRA (3%). This indicates that some public servants are not aware of the appeal process provided by the law.

<sup>94</sup> Information was "Very helpful":45.7%; "Helpful":22.9%; Institution was "Very courteous":37.1%; "Courteous":42.9%; "Very attentive":42.9%; "Somewhat attentive":31.4%.

**Figure 3: Reasons for not pursuing an appeal following a decision on an initial expropriation complaint**

## 3

## Lessons Learned and Recommendations

A number of important lessons were learned from the survey data collected in the five districts, the qualitative information gathered from citizen and interviews with public official and group discussions, and from the validation workshop conducted with administrative justice stakeholders following the field research.

**Improving the recruitment process:** The e-Recruitment system makes the work of officials easier. Applicants have to follow clear steps, and they cannot submit an application before these steps are completed. Indeed, the system also directly informs applicants about missing documents. In this respect, applications that are treated and processed by officials are automatically checked for completeness, which is reported to have reduced the number of complainants alleging that applications were missing certain information. This has also reduced the workload of employers who are otherwise required by law to respond to a complaint within five working days. However, some potential candidates live in rural areas where there is no electricity and/or internet connection. When they want to use the e-recruitment system, they may fail to meet application deadlines and requirements because of poor or lack of internet connectivity. In addition, they may not be familiar with the system and, therefore, insufficient knowledge of the new e-recruitment system may render it ineffective for a significant part of the population. In order to solve this problem, there should be a provision for the applicants to submit the needed documents in a hard copy form, upon a showing of good reasons (e.g., poor internet connectivity in the sector where the individual lives, etc.).

The field research also indicated that while the application process is generally clear, RALGA often takes considerable time to recommend people for the positions. As a consequence, jobs frequently remain vacant for a long period of time and, therefore, existing public servants are overwhelmed by work, as they end up performing the equivalent of two jobs. This also impacts their capacity to deal with complaints and otherwise respond to other public demands. Consequently, this aspect of the recruitment process should be improved.

**Improving the promotion process:** While there are clear rules for promotion and salary increments, the associated budget is often lacking. Consequently, some districts do not pay the required horizontal promotion benefits and mission fees due to budget constraints. This can affect job performance and lead to personnel complaints. A clear instruction on compliance with the existing rules on promotion and salary increments

would ensure the improvement of the promotion process. More effective planning will also enable districts to comply with the relevant legal requirements.

**Raising the awareness of public servants about their rights and procedures for dispute resolution:** While district employees are relatively familiar with their rights in the workplace (87% of respondents are well informed or somewhat well informed), there is a need for more information about minimum hourly wages, payment for extra hours, rights upon dismissal, and the availability of dispute settlement procedures. As many as 41% of those who were involved in a personnel matter were not given an opportunity to make their views known and offer evidence supporting their case verbally or in writing. And while 72% of respondents were provided with a written decision, 36% of those decisions were not accompanied by an explanation with reasons for the decision. Moreover, 49% of respondents said they were not provided information about how and where to further appeal their cases, and many as a result did not lodge complaints initially with the proper office as provided by law. These deficiencies can generate unnecessary confusion and undermine important dispute resolution opportunities.

**Consulting legal advisers:** The findings from the field research (interviews with various public officials) indicate that consultation of legal advisers on personnel decisions still occurs less frequently than intended in many cases, often due to orders by senior government officials or undue haste. Quite often, consultation only occurs after a dispute or appeal against a decision arises. Again, opportunities for proper decision-making and generation of evidentiary support are lost. In addition, even though consultation occurs more frequently after a dispute arises, opportunities for effective dispute resolution are also frequently forgone, as parties become more intransigent. Requiring district officials to involve legal advisers in any administrative decision-making process involving personnel issues (or any other subjects, for that matter) would help ensure that they take legally justified decisions that benefit both the district and public servants.

**Training government officials to ensure better understanding of legal requirements and procedure:**

Interviews and group discussions indicated that there is considerable trust by public officials in the legally provided employment procedures, and that the latitude for dialogue and clarification of disputes before any formal complaints are lodged allows for grievances to be settled amicably.

However, some officials apparently do not understand certain decision-making procedures, especially in certain disciplinary cases where there are defined steps for documenting and presenting evidence and an opportunity to hear from the employee. Strengthening the capacity of HR officers and other decision-makers with regard to alternative dispute resolution skills and the legal requirements governing contractual and non-contractual public servants could reduce the number of relevant disputes, including those that end up being

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**The officers in charge of Human Resources and Administration seem confident in their understanding of the law on public employment. This has had a positive impact on employee relations and on conflict management and resolution.**  
 Group Discussion, 2019

taken to courts and result in adverse judgments.

**Enhancing the capacity and protection of disciplinary committee members:** Some members of disciplinary committees have limited knowledge about the laws and procedures governing public servants, including investigation and documentation methods that can support the recommendations that are made to supervisors. Moreover, the law should be strengthened to increase the protection of internal disciplinary committee members against reprisals from supervisors and/or fellow employees when certain decisions are taken within the scope of their legitimate job responsibilities (in several cases, IDC members have been held personally liable for monetary damages stemming from incorrect disciplinary committee decisions/recommendations).



# General Conclusions

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The data collected and analyzed from the district field research in the four distinct subject areas reveal procedural good practices and challenges unique to certain of those regulatory fields as well as those that share similarities across those disparate regulatory domains. By the same token, the data demonstrate that while there are aspects of district level administrative decision-making that are functioning well in the eyes of citizens and public officials alike, there are also many areas requiring significant attention and improvement, particularly as regards practical citizen needs. These require dedicated government attention; if the promise of administrative justice is to be realized in a country that has a commitment to rule-based governance, the legal and capacity gaps that impede that promise must be properly understood and then addressed. That is the overarching goal of the Strengthening Administrative Justice (SRAJ) Project, and the Phase II findings represent the understanding that is necessary to undertake the evidence-based reforms envisioned in Phase III.

The mix of opportunities and challenges can be seen in the labor field—an area that obviously affects a huge proportion of the population and has a profound effect on the business enabling environment. For example, labor inspectors are generally well-regarded by citizens in terms of their helpfulness and courtesy according to the data collected. This is something to be acknowledged and built on, since it hints at the possibility that with greater time, resources, and skills, inspectors could fulfill well the proper problem-solving and mediation roles assigned to them. In fact, as recognized by citizens and public officials alike (including the labor inspectors themselves), the inspectors are not only burdened with huge caseloads that hamper their effectiveness, but lack the legal powers and more advanced mediation skills that could make their dispute resolution role more influential (the top recommendation from citizens about improvements in the labor dispute sphere was expanding the power of inspectors to take enforceable decisions). The biggest challenge, perhaps, concerns the proper establishment and training of workers' delegates; interviews with citizens and public officials painted a picture of barely functional workers' delegates in many firms—a situation that fails to address employment problems at their source and that indirectly provides employers with certain unhelpful power advantages vis-à-vis their employees. This situation

requires thoughtful legal and managerial attention from MIFOTRA and the Private Sector Federation.

Similarly, in the procurement field, there are many positive indicators, as well as some places where remedial efforts are clearly warranted. As an illustration, bidders from the business community have strongly favorable views of the procedural transparency of the procurement process; some 81% of survey respondents said that they received information from the government on how the procurement process worked, and 83% reported receiving a written decision on a procurement result. On the other hand, only 66% of those complaining about a procurement dispute said they were given an opportunity to present evidence on their own behalf—a somewhat anomalous fact in a system that has relatively well-informed and knowledgeable participants on both sides. And while fully 75% of respondents said that their written decision was accompanied by an explanation with reasons, one might well wonder why the other 25% of bidders did not receive such an explanation, which is a fairly fundamental expectation when one participates in a public tendering process. Even more surprising is that only 23% of respondents said that they were given information about how and where to appeal an adverse procurement outcome—and only 32% of respondents said that district officials treated them with courtesy in the procurement process. Clearly there are important pieces of information that need to be discussed in depth by key government stakeholders.

It is in the land expropriation area, however—where citizens are perhaps most vulnerable—where the challenges are perhaps the most stark. Only 34% of citizens said they had been notified or consulted in advance about an expropriation in which they had been involved, and only 36% said they were consulted in any way about how the expropriation process would unfold. With regard to other aspects of procedural transparency, only half of respondents received information about how the expropriation process worked, only 38% said they were given an opportunity to present evidence on their own behalf (a very significant finding, since this encompasses the important issue of being able to obtain a counter-valuation of one's property), only 21% received a written decision on the expropriation of their property, and a mere 13% received an explanation with reasons

for the decision. Most glaringly, just 10% of respondents said they were provided with information about how and where to appeal an expropriation decision—perhaps not so surprising in context, where government are often under pressure to move an expropriation process along and may not want to encourage such appeals. All in all, as was clear from the individual interviews with citizens, there is an enormous information gap that needs to be filled in order to make sure that affected individuals are treated with dignity and have a meaningful opportunity to challenge the valuation of their property by the district through recourse to an independent property valuer.

Finally, in the public employment area, one discerns an arena where there is a relatively good understanding of one's rights on the part of public employees (87% of those who had been involved in public employment-related disputes said they were well-informed), but less clarity and fidelity to the law on the part of supervisory personnel in district government. In general, as revealed in individual and group interviews with public officials, there is insufficient knowledge of what is required procedurally in for disciplinary, promotion, and termination decisions, and especially what kind of documentation is to be kept and utilized. In the end, it is generally a disappointment that as many as 28% of public employees said they did not receive any written decision in the first instance on their cases, that 36% of such employees indicated they did not receive an explanation with reasons for the employment decision, that 41% were not provided an opportunity to provide evidence on their own behalf, and 49% failed to receive information on how and where to appeal their adverse decision in the first instance.

Looking across the four different subject areas more broadly, then, one perceives significant shortcomings in key procedural functions that go to the heart of administrative justice. In essence, in several different contexts, a relatively large proportion of citizens are not being provided with adequate information about how the complaints process works and more significant numbers of citizens are not being given an opportunity to present evidence on their side of the dispute, and are ultimately not being provided with a written decision and an explanation of reasons for that decision. And a very large proportion of citizens are not being provided information about where to go to further appeal a first instance determination of their complaint at the district level. All of these deficiencies can materially affect the fairness and efficiency of complaints handling, ultimately leading

to more complaints and frustration that undermine public trust and unnecessarily consume state and private resources.

If this report's findings and targeted recommendations can be acted upon in a strategic way over the next several years —particularly those recommendations having to do with public awareness raising and district official training-- this public trust can be strengthened and district government can better realize the aspirations set for it under the country's decentralization policies. The result can be a more prosperous economy and a more responsive public sector.

But the commitment must be serious and substantial. It must address not only shortcomings in the training and supervision of district officials, but coordination guidance designed to ensure that district leadership knows where its authority lies, and where it needs to defer to other officials and institutions. For example, within district government, legal advisers have a very important role to play in helping to ensure that decisions rendered by district officials are legally sound. Yet insofar as they are often sidelined by local officials too eager to make quick decisions or dismiss legal concerns as inconsequential—something revealed in several different interviews and group discussions—it is very important that district leadership be strongly encouraged to consult with, and listen to, the advice of legal advisers in taking consequential decisions in these four areas, particularly in the case of land expropriation and public employment cases, where political priorities may sometimes overwhelm sound legal counsel. Similarly, in the case of labor regulation, district officials need to coordinate with, but acknowledge the independence and expertise of labor inspectors who report to MIFOTRA, and whose mission and roles are defined by international labor standards.

In the end, administrative justice is indeed a matter of meeting the needs and aspirations of ordinary citizens in achieving 'everyday justice' in the many different interactions they have with the state—from business licensing and permitting, to public benefits provision, to the four areas addressed in this field research. When these aspiration are addressed in a meaningful way, the Rwandan state can truly fulfill a major part of its good governance goals under the National Strategy for Transformation<sup>95</sup> and complement the sustained progress it has made on social and economic policy over the past two decades.

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<sup>95</sup> In particular the following objective under the Transformational Governance Pillar: "Strengthen capable and responsible public institutions committed to citizens' advancement and efficient service delivery."

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