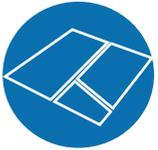




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**PUBLIC EMPLOYMENT
AND ADMINISRATIVE
JUSTICE**

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 appeal

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.¹ 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.² 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 committee³ 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.⁴ 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.

¹ 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.

² 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.

³ 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).

⁴ 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.⁵ 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 law⁷. 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.⁸

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.⁹ 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.¹⁰ If the Mayor does not

⁵ 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.

⁷ 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

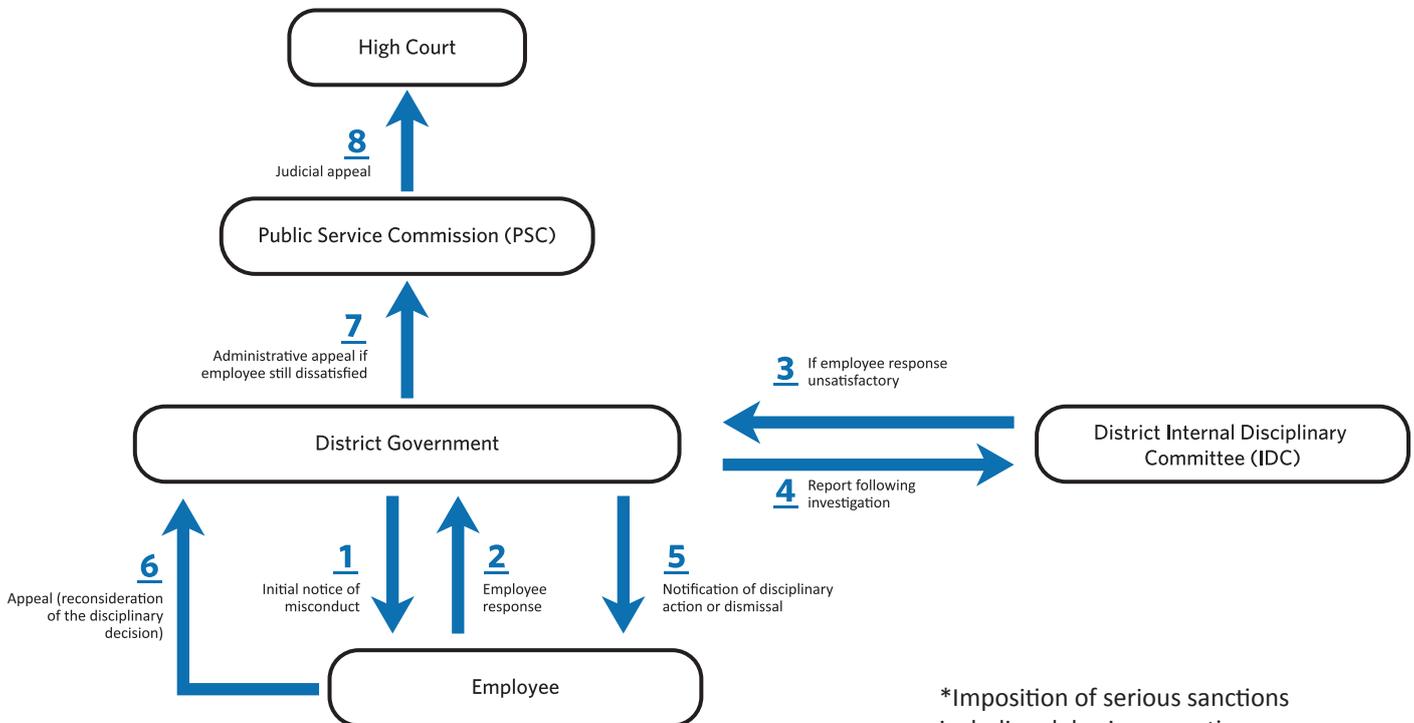
⁸ Article 33 of the Prime Minister's order no^e121/03 of 08/09/2010. An appeal of a public servant working within local government shall be addressed to the Council of the District in the first instance, and to the Public Service Commission in the second instance.

⁹ 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.

¹⁰ Article 32 of Presidential Order n°65/01 of 04/03/2014.

reverse the decision, the employee may next appeal to the PSC.¹¹ If the employee is dissatisfied with the PSC's decision, he or she may appeal to the Court.¹²

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)

¹¹ 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).

¹² 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.

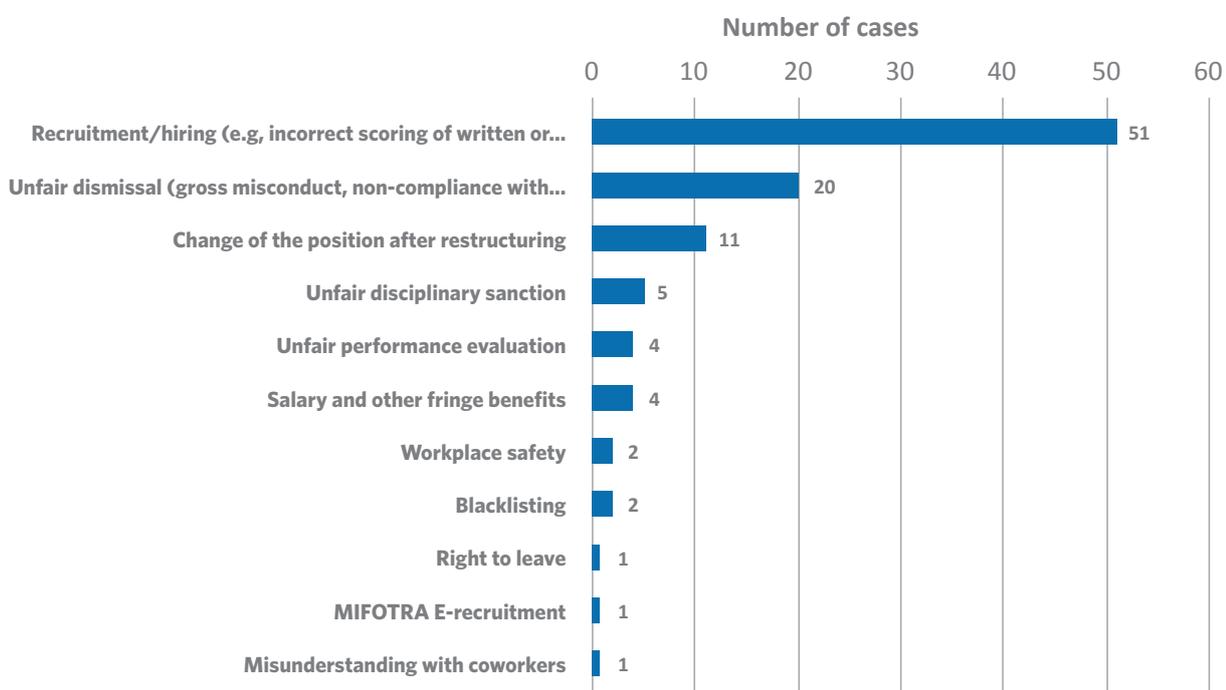
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Administrative justice in numbers

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 35,¹³ 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) ¹⁴



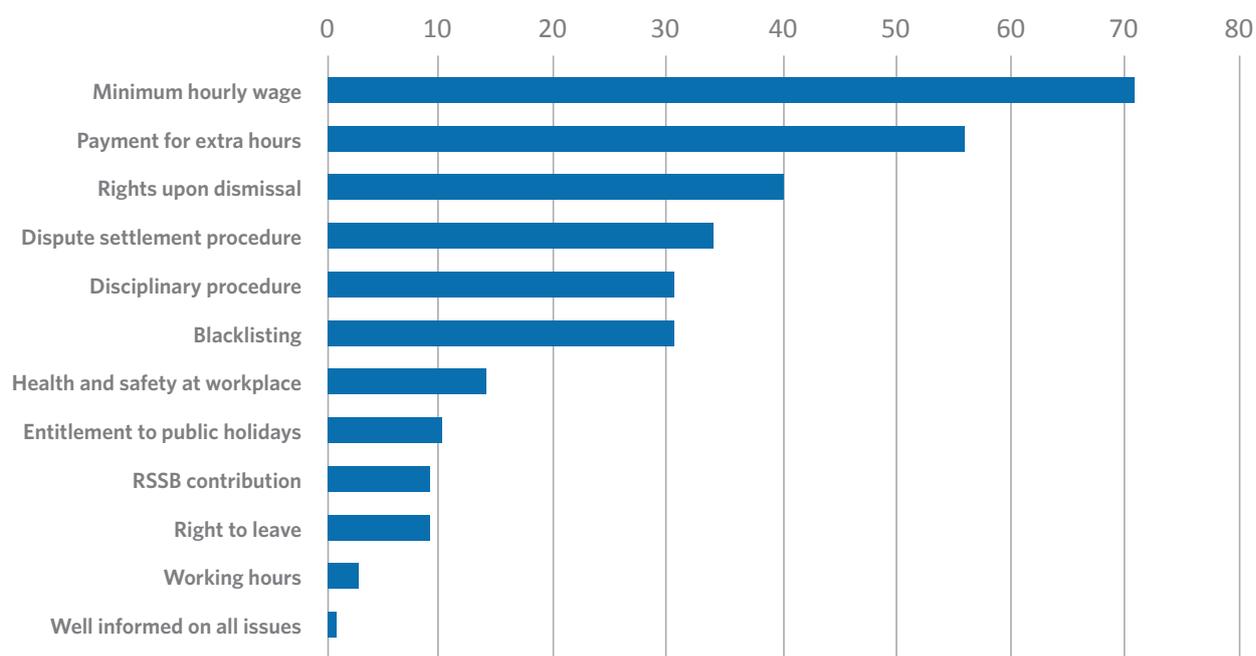
Overall, 87% of respondents indicated that they were well informed about their rights in the workplace. When disaggregated by characteristics, men tend to be more aware of their rights than women (90% vs. 78%). Individuals with a university level education (89%) and senior public servants (92%) also feel well informed.¹⁵

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).

¹³ 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.

¹⁴ IPAR's calculation

¹⁵ 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)¹⁶

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).¹⁷ 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.¹⁸ 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%).¹⁹

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.²⁰ It is noteworthy that at this initial stage of appeal, most respondents (90%) were not represented by a lawyer.

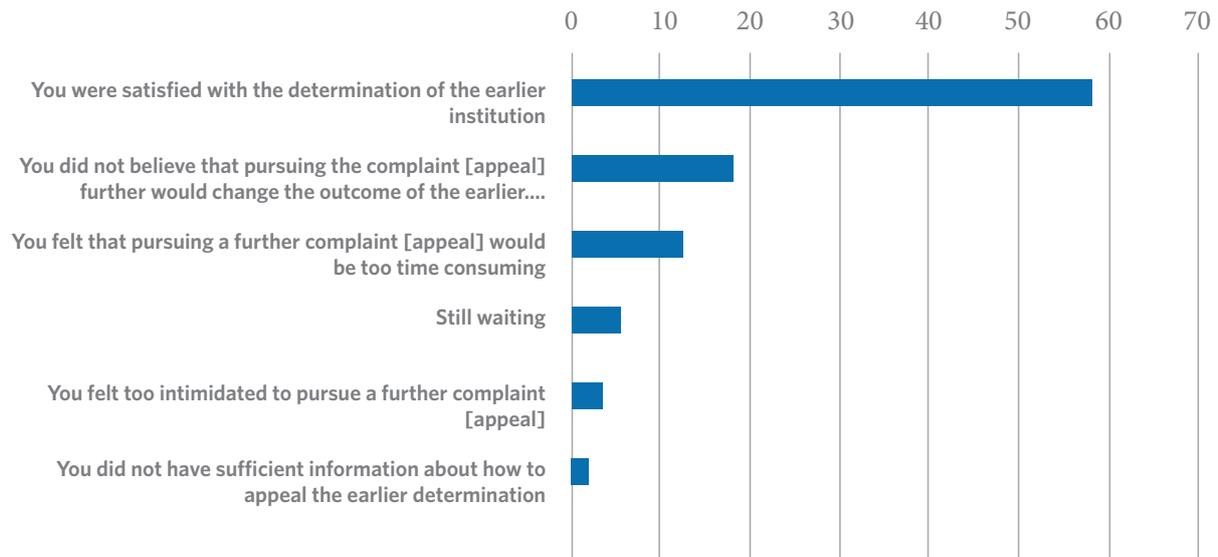
¹⁶ IPAR's calculation.

¹⁷ 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.

¹⁸ 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%

¹⁹ 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%.

²⁰ 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 ²¹

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%).²²

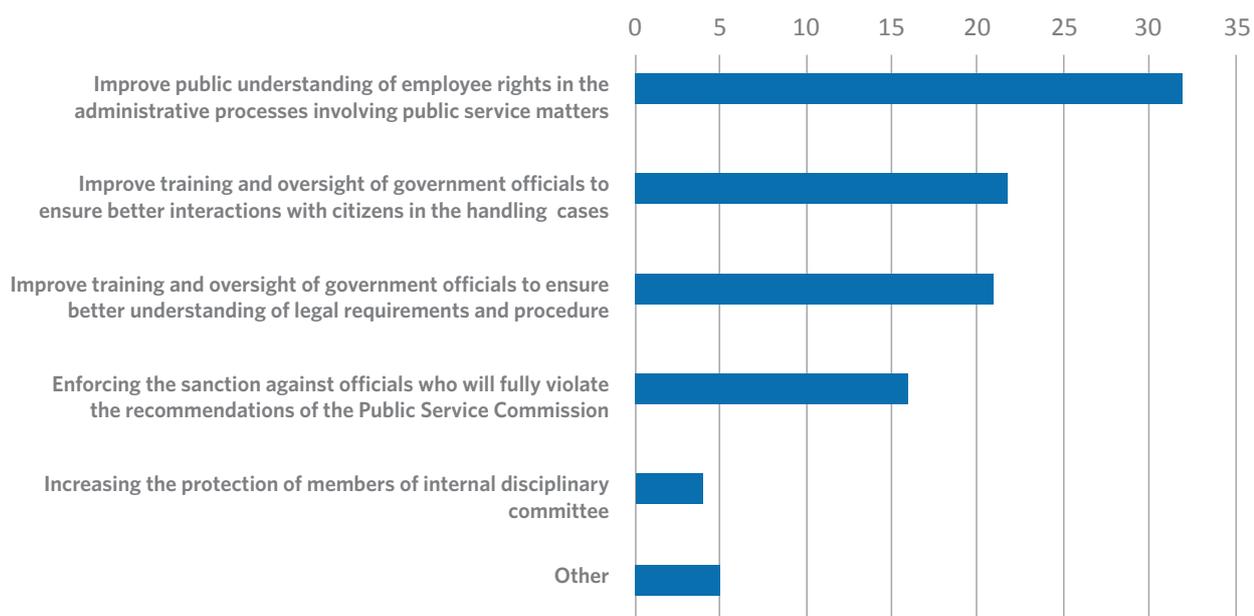
During interactions with these second instance institutions, the respondents said that they received helpful information that is relevant to their cases (69%), were received with courtesy (80%) and that officials listened attentively to their explanations of the case (74%).²³ Moreover, 77% of the respondents 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.

²¹ IPAR's calculation

²² 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.

²³ 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

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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).



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