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USAID/RWANDA STRENGTHENING RWANDAN ADMINISTRATIVE JUSTICE (SRAJ) PROJECT

LEGAL AND POLICY FRAMEWORK/CONTEXTUAL ANALYSIS REPORT

APRIL 2018

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I. EXECUTIVE SUMMARY

Administrative justice involves the control of discretionary powers of executive officials in rendering administrative decisions that affect the rights of citizens, and allowing individuals who believe they have been adversely affected by those decisions to seek effective forms of government review. Administrative justice is accordingly deeply concerned with matters of procedure—not only the transparency, accountability and fairness that should attend the rendering of decisions by government officials, but also the review mechanisms – both internal to the bureaucracy and external (by way of the courts or Ombudsman's Office) – by which those decisions can be appealed. While this procedural focus of administrative justice is manifested through discrete sectoral laws and rules, it has common features and can be viewed as a comprehensive system at multiple levels of bureaucratic and judicial decision making. Nevertheless, administrative justice is principally concerned with improving the quality of front-line (first instance) administrative decision-making, so that decisions are rendered correctly the first time, thereby reducing the need for citizens to pursue appeals. This saves time and money for citizens and the government alike.

The Strengthening Rwandan Administrative Justice (SRAJ) Project, supported by the U.S. Agency for International Development (USAID) and implemented by the Legal Aid Forum, the Institute for Policy Analysis and Research-Rwanda, and the University of Massachusetts Boston, is intended to help assess the general state of administrative justice in Rwanda. It does so principally by focusing on the quality and consistency of administrative decision-making at the district level in four areas – land expropriation, labor regulation, public procurement, and public employment. The district level is the focus because that is where the vast majority of cases are decided and where a relatively small number of officials in a single institution (district government) have common decision making responsibilities for diverse areas of administration and regulation. Since an in-depth study of all relevant subject matter areas was not feasible, the four particular subject areas were selected to provide significant insight into administrative justice in Rwanda, insofar as they implicate a significant volume of administrative decisions and/or appeals, and involve significant issues about which the public has a high degree of awareness. Several cross-cutting legal framework issues affecting the general system of administrative justice in Rwanda were examined, including the role of the courts, Ombudsman's Office, and so called *Maisons d'Access a la Justice* (MAJ), the district access to justice offices.

This Legal and Policy Framework and Contextual Analysis Report represents the first phase of the Project—an effort to describe the current legal, policy, and institutional foundation for administrative justice in the country, while also drawing attention to possible gaps, ambiguities, and contradictions in the normative framework that could warrant targeted reform initiatives over time. The Report is also designed to highlight challenges with policy matters, and with implementation of existing laws and policies; it incorporates a number of findings and recommendations derived from interviews and roundtable discussions with various stakeholders that can inform the views of policymakers going forward. Finally, the Report is designed to provide context for the work of the second phase of the Project—an in-depth gathering of information about administrative decision-making *in practice* at the district level in the four focus areas. That, in turn, will provide an empirical foundation for targeted improvements in the third phase of the Project: relevant capacity-building and public education efforts, as well as support for possible legal reforms via workshops and discussion forums.

The research methodology adopted for the Report combined a literature review and in-depth legal analysis with (a) round-table discussions with representatives of stakeholder institutions (including those from government, civil society organizations, legal practice, and academia), (b) targeted key informant interviews with representatives of relevant ministries and independent agencies, (c) illustrative case scenarios drawn from actual administrative decisions on appeal, and (d) certain quantitative data obtained from the Courts, Ministry of Public Service and Labor, Public Service Commission, District offices, and the Office of the Ombudsman. While the research revealed some noteworthy gaps in the legal framework in each of the four substantive areas, which will be described below, it also revealed certain practical implementation barriers to achieving justice, including institutional or managerial deficiencies and a lack of legal awareness of rights and responsibilities on the part of both citizens and government officials.

(a) Land Expropriation

In the domain of expropriation the following key findings and conclusions emerged:

- The failure of the government to establish Committees in Charge of Supervision of the Process of Expropriation via a Prime Minister's Order has created a critical institutional gap. The Committees were supposed to act as the main interface between the population being expropriated and the expropriating entity, handling issues of notification, consultation, and approval or disapproval of the decision to initiate an expropriation. Given the rushed deadlines that current exist in many aspects of the expropriation process, the absence of the Supervising Committees effectively negates the rights of citizens to be clearly informed and consulted about an expropriation decision, and to challenge that decision or associated compensation in the first instance. As the line institution, the Ministry of Land and Forestry (MINILAF) should work together with the Office of the Prime Minister to draft, promulgate and publish this Order.

- Even once the Supervising Committees are established, a clear national policy coordination mechanism should be put in place by the government to ensure that the expropriation law is properly implemented, particularly as to matters of communication with landowners and the general public, publication of technical reports required by law, timely payment of fair compensation to affected individuals, and speedy and effective handling of people's complaints related to the project (obviating the need for complex and costly appeals). The Ministry of Land and Forestry (MINILAF) could take the lead on this by establishing a department in charge of expropriation.

- Legal reform is necessary to restrict the current non-exhaustive definition of the "public interest" rationale for expropriation. If a "catch all" category is deemed necessary for exceptional circumstances, the law must be amended to provide specific guidance regarding both the grounds upon which a decision to expropriate for other reasons can be initiated, and how such a decision can be challenged.

- Citizens are not provided with individual notice of expropriation and compensation determinations, and the legal requirement of general notice by radio and newspaper is often

not complied with, limiting citizens' ability to protect their rights. Enforcement of the existing requirement should be strengthened and a legal amendment requiring good faith efforts to provide individual notice should be seriously considered.

- Contrary to the law, updated land values are not published annually by the Institute of Real Property Valuers (IRPV), resulting in inaccurate (and frequently under-valued) land valuations being used by the government as a basis for awarding compensation. The government, through MINILAF, should work with the IRPV on resource and capacity needs to ensure this list is indeed updated and published annually.

- The process of challenging valuations is onerous and costly, with citizens having to fund their own counter-valuations and lodge challenges to official valuations in a matter of a few days. Faced with this financial and time burden, most citizens have are severely disadvantaged in challenge valuations that frequently favor the expropriating institutions (which are often major clients of the independent valuers). The government should reexamine the counter-valuation process and consider ways to at least partially subsidize the cost of counter-valuations for poor citizens based on their income.

- In some cases, the compensation process has proven difficult to implement in practice. While the law requires compensation to be paid within 120 days of the expropriation, individuals reported long delays in receiving compensation, difficulty receiving compensation for partial expropriations, and also the near impossibility of determining which institution to follow up with about delayed payment (since many different institutions are involved in the compensation process). Appropriate legal/regulatory reforms as well as proper coordination is necessary to address the procedural and bureaucratic issues that cause long delays in the payment of compensation.

- It was also noted that most citizens are not aware of their rights, including the right to engage in direct negotiation with a developer in the case of projects related to implementation of the master plan). Government authorities, as well as CSOs and the media, should greatly expand public education efforts.

(b) Private Labour Regulation

In the domain of private labour regulation, a number of key findings and conclusions arose:

- The Ministerial Order on workers' delegates does not provide adequate protections to workers' delegates from reprisals by management or other employees. At the same time, time limits and guidance for determinations by such delegates are not as yet provided in the Order or in other normative acts. Given that workers' delegates serve as the first recourse for employees in most kinds of employment disputes, these legal omissions should be remedied. At a minimum, the aspirations and guidelines of the ILO Convention 135 on the protection of workers' delegates should be fully incorporated into Rwandan labor laws and regulations.

- The Labour Law should also be amended to clearly specify the procedure and general timeline within which individual labour disputes should be settled by workers' delegates and labour inspectors, save in cases where delays may be extended by written justification based on particular circumstances (e.g., complexity of a case, etc.).

- Despite the role they play in protecting the rights of workers, and the legal responsibilities accorded to them, Labour Inspectors lack adequate enforcement powers. The Labour Law and the Ministerial Order on Labour Inspectors should be amended to empower such inspectors to impose sanctions on employers who fail to comply with their decisions.

- Labour Inspectors are under-resourced and lack adequate capacity and specialization, thereby limiting their effectiveness as enforcers of the law. ILO Convention 81 (providing for different types of labour inspectors) is not fully implemented, as there is only one labor inspector in most districts, which affects the quality of their work. The option of increasing the number of labor inspectors on a phased basis in proportion to their workload merits serious attention. Improved compensation and training for Labour Inspectors also needs to be considered to address well-known capacity issues.

- The Labour law should be amended to provide protections for trade union representatives within a company. The absence of these protections deters workers from becoming members of trade unions, despite their legal right to so choose.

- Damages available to workers in cases of wrongful dismissals are very low, which fails to act as a deterrent to employers in future cases. The labor law should be amended to increase damages where relevant. At the same time, many employers abuse fixed term contracts, often giving contract staff one-year (or shorter) renewable contracts so as to avoid separation pay when such staff are no longer needed. The law should be amended to provide a reasonable level of compensation for such employees.

- The Ministerial Order on the Minimum Guaranteed Wage should be adopted as soon as possible, because its absence causes difficulties in calculating wages and benefits due workers in a wide variety of contexts.

- Full implementation of the Ministerial Order on the Election of Workers' Delegates is overdue, because at present, many employers fail to hold such elections. The government should support expanded legal information outreach to workers to inform them of their rights and available dispute resolution mechanisms. This could result in fewer workplace conflicts and less recourse to the courts, saving time and money. .

(c) Public Employment

In the domain of public employment, the SRAJ Project research yielded information about a number of important challenges and suggested several key recommendations:

- The signing and evaluation of performance contracts through the Integrated Payroll and Personnel Information System (IPPS) are not done in compliance with the Prime Minister's

Order Regulating Performance Appraisals of Public Servants. While the IPPS only requires one level of review for employee performance, it should be amended to meet the required two levels of review, ensuring better transparency and accuracy in the review process.

- At the district level and below, there is sometimes confusion in the management of contract staff, public servants, and political staff. This confusion can deprive some staff of rights and benefits to which they are entitled. Improving awareness of differences in classifications at the lower administrative levels is necessary to ensure fidelity to the law.

- The Ministry of Public Service (MIFOTRA) is currently consulted in disciplinary cases involving misconduct, while the PSC is consulted in cases where dismissal is anticipated. The Presidential order on modalities of imposing disciplinary sanctions should be revised and responsibility for consultations on serious disciplinary action lodged solely with the PSC. MIFOTRA representatives believe that agency's role should be limited to formulating policies, promulgating legal standards, and monitoring legal implementation.

- Under the Presidential Order governing the application of sanctions to public employees, a public servant dismissed from the public service is to be registered on a MIFOTRA blacklist and prohibited from recruitment into another public position. In practice, the blacklist is applied immediately upon dismissal. The Order, however, does not clearly provide the procedure for an employee whose dismissal is later overturned to be removed from the blacklist. The Presidential Order should be amended to clarify such procedure.

- The law does not provide sufficient protection to members of disciplinary committees of institutions from employer reprisals, including financial liability for court judgments assessing damages for wrongful dismissal of an employee. MIFOTRA and the PSC need to develop clearer guidance under the applicable Presidential Order on this subject, while also strengthening the capacities of members so that they can better conduct proper investigations, document findings, and ground their decisions in applicable law.

- No official legal provision or guidance exists concerning the calculation of damages for wrongful termination of a public employee, leaving the matter entirely to judicial discretion. MIFOTRA should adopt guidance or instructions on this issue.

- The role of the PSC must be strengthened, given its substantial consultative/review mandate in public employment matters—and the extent to which its recommendations are often ignored by public institutions. Either additional compliance support should be obtained from the Prime Minister's Office, or amendments to the law should be considered to provide the PSC with expanded enforcement powers.

- The general statutes governing public service are as yet not properly aligned with the realities of the new e-recruitment system. While e-recruitment has resulted in increased accessibility and efficiency, time periods are too short for job postings to remain open, for shortlisting of candidates to occur, and for individuals to apply for positions. Applicants who do not have consistent access to a computer or the Internet may be

prejudiced. Accordingly, the law should be amended to provide more realistic timelines, and the e-recruitment system updated to mesh with such legal changes.

(d) Public Procurement

In the domain of public procurement, some challenges in the tendering process and review procedures may prejudice the rights of bidders. The following are some of the major findings and recommendations stemming from the Project research:

- Some common fraudulent practices in procurement, such as bid rigging, bid suppression, bid rotation, cover bidding, and market allocation, are not clearly defined in the procurement law. This can have a negative impact on the effective application of the law, as there is no clear guidance as to what constitutes improper collusion.

- Independent Review Panels, which are the key mechanisms for administrative review in procurement, typically have just one staff person. Given strict appeals and review deadlines, and the power that staff members have to deny a review request on their own (as a form of pre-screening), this lack of staffing capacity is a significant challenge to the effective functioning of these review panels.

- At the district level, staff receiving appeals from bidders and undertaking an initial check of the application (to ensure that all requirements are fulfilled) are regular district employees. This has reportedly deterred some bidders from protesting procurement decisions (in order to preserve their relationship with district officials). Further, concerns were raised about the overall performance and independence of the district IRP from district authorities. The government should consider ways to strengthen and render the district review panels more independent--through recruitment, management, training, resource expansion, and improved structural safeguards.

- Where bidders do obtain review of their claims before an IRP, it is within the discretion of the IRP whether to grant an in-person hearing or accept arguments in writing only. To guarantee full and fair access to the rights enshrined in the procurement law, an in-person hearing should be provided as a matter of right, not left to discretion of the Review Panel.

- In addition to the non-refundable fees paid by prospective bidders to participate in a tender, the existing requirement to pay fees in order to appeal a procurement decision can deter the filing of otherwise meritorious claims, which appear to be numerous (statistics reveal that approximately half of all appeals at the national IRP are found to be meritorious). The law should be amended so that at the very least, a bidder successful on appeal—or perhaps even having his claim accepted at the pre-screening stage—should have his fee refunded.

- In order to balance the rights of bidders with the rights of public entities, terms should be added to the standard procurement contract so as to provide penalties against procurement entities that violate the rights of winning bidders in the carrying out of procurement contracts or in the delay of payment.

(e) Cross-cutting Issues

Rwanda has several cross-cutting institutions that are designed to provide accountability in the functioning of the administrative system as a whole. Each has issues that present challenges to effective institutional operation and that could merit possible reform initiatives.

- The *Rwandan Courts* are competent to handle appeals from administrative decisions through the country's system of Intermediate Courts. The Civil, Commercial, Labour and Administrative Procedure Code provides the procedures, timelines and requirements for the filing of judicial appeals. Certain features of the Code might be improved, however: The rules governing standing should be amended to allow the concept of public interest litigation, and arbitration and conciliation should extend to administrative cases (currently it is only available in commercial cases). The Code does not place burdens of proof and persuasion on the state in administrative cases, despite its superior advantages relative to the citizen; this should be changed, as this principle of effective equality of arms is fundamental to most systems of administrative justice around the world.

- *The Office of the Ombudsman* seeks to address and resolve complaints about bureaucratic decision-making, lack of responsiveness and courtesy to the public, and systemic malfeasance, including issues of corruption. However, the Ombudsman has limited staffing compared to the number of complaints received from the citizens. Moreover, investigators and prosecutors working for the Ombudsman reportedly still have limited technical capacity given the complexity and sensitivity of their work.

- *Access to Justice Bureaus* (*Maisons d'Access à la Justice*, or MAJ) are offices at the District level under the supervision of the Ministry of Justice, and provide free legal support to underprivileged citizens. In principle, the MAJ do not formally handle administrative cases in order to avoid potential conflicts of interest as public servants, but they can provide general advice and help steer individuals in need to the right institutional units or appeals mechanisms in administrative cases. Given limited resources and the fact that workloads and needs vary greatly by district, expansion of the MAJ services in districts could be done on a phased basis, taking into account the volume of cases/disputes in a given district, district population, and availability (or not) of other legal aid providers in a district).

- The *Committee in Charge of Out-of-Court Settlement* can amicably settle disputes involving public entities—both those that have already reached the courts and those that may be the subject of future litigation. The Committee's biggest challenge appears to be a general lack of awareness of its existence, which suggests the need to better publicize the function of the Committee and its track record (including settlement statistics).

- *Legal advisors* are often not properly consulted in administrative decision-making in public institutions, particularly at the district level. This can have negative legal and monetary repercussions. Heads of institutions need to be properly educated about the role and importance of legal advisors in all institutional decision-making processes. At the same time, the capacities of legal advisors need to be strengthened, given the wide range of issues on which they have to opine.

II. GENERAL INTRODUCTION

Administrative justice seeks to protect citizens from arbitrary government decision making affecting the rights of individuals, businesses, and non-profit organizations. Wherever government officials are involved in making decisions—which generally involve the exercise of some degree of bureaucratic discretion—an effective system of administrative justice should provide sufficient procedural transparency, opportunity to present evidence, and remedies for the affected individuals to challenge government action. Remedial safeguards should permit citizens to resolve administrative disputes first within the institution that made the decision or an administrative review mechanism—as a matter of efficiency and expertise—and then within the judicial system should such efforts prove ineffective. The focus of administrative justice is principally on improving the quality of front-line administrative decision-making, so that decisions are rendered correctly the first time, thereby reducing the need for citizens to pursue appeals to the courts (if they are even able or willing to do so) or to lodge complaints with executive authorities or an ombudsman. This saves time and money for citizens and the government alike.

Given the influence of administrative decisions on the lives of ordinary people and businesses, improving the quality of administrative justice can have a profound impact on the perception and reality of citizens' experience of the legal system. That, in turn, can significantly influence the government's commitment to the rule of law and effective public administration. For a country like Rwanda that aspires to improve state capacity and create a more predictable regulatory environment, consistent with Vision 2020 and EDPRS II, administrative justice can help ensure that officials who exercise public functions render decisions that are legally supportable, reasoned and based on facts, and intelligible to the public. This, in turn, can enhance public trust and investor confidence.

The Strengthening Rwandan Administrative Justice (SRAJ) Project is intended to help assess the general state of administrative justice in Rwanda, principally by focusing on the quality and consistency of administrative decision-making at the district level[1] in four areas – land expropriation, labor regulation, public procurement, and public employment. These areas were selected insofar as they implicate a significant volume of administrative decisions and/or appeals[2], and involve issues about which the public has a high degree of interest. This Legal and Policy Framework and Contextual Analysis Report represents the first phase of the Project—an effort to

[1] The focus is on district-level decision-making, as this is where the vast majority of administrative decisions are rendered under Rwanda's decentralized governance system.

[2] While the precise number of administrative decisions involving the four regulatory areas cannot be ascertained at this time based on the unavailability of relevant statistics, it is worth noting that the volume of court appeals and Ombudsman complaints is significant. In the last three years (July 2014 – June 2017), Rwandan courts received 3,258 cases in administrative, labor and procurement matters (*See* annual activity reports of the Judiciary, accessed at http://judiciary.gov.rw/media_house/reports/judicial_reports.html). Meanwhile, the Public Service Commission (PSC) received 1,368 complaints or appeals in the public employment area (both cases related to recruitment and placement of staff and to management of staff) in the past three fiscal years (July 2014 to June 2017)(*see* annual activity reports of the Public Service Commission, accessed at http://psc.gov.rw/index.php?id=175). The National Independent Review Panel (NIRP) also received 161 complaints or appeals in the public employment area in the last three fiscal years (July 2014 – June 2017)(*see* Annual activity reports of the NIRP accessed at http://www.rppa.gov.rw/index.php?id=561). The Office of the Ombudsman received, in the last three fiscal years (July 2014 – June 2017) 369 cases of expropriation involving 8,408 individuals/households (*see* Report from the Office of the Ombudsman obtained by the Legal Aid Forum, Nov. 20, 2017).

describe the current legal and policy foundation for administrative justice in the country while also drawing attention to possible gaps, ambiguities, and contradictions in the normative framework that could warrant targeted reform initiatives over time. The Report is also designed to highlight problems with policy, and with implementation of existing legal and policy commands. Finally, the Report is designed to provide context for the work of the second phase of the Project—an in-depth gathering of information about administrative decision-making in practice at the District level in the four focus areas. By empirically identifying where and how the relevant legal and regulatory provisions are shaping decision-making outcomes in practice—or in some cases are not being understood or complied with—such data can help inform possible future organizational, training, and public education efforts.

As will be discussed below in the Report, administrative justice in Rwanda primarily rests on procedural and substantive standards established by sectoral laws, decrees, and regulations in each relevant administrative decision-making arena. In this report, the focus is on the aforementioned four areas; land expropriation, labor regulation, public procurement, and public employment. There may also be informal sectoral and District-level complaints mechanisms that offer alternatives to, or possible redress from, administrative decisions. At the same time, there are also cross-cutting laws, decrees, and other formal norms that bear on administrative justice, including the Law on Civil, Commercial, Labor, and Administrative Procedure (governing the handling of appeals from administrative decisions by the courts), and the Law on the Ombudsman and associated regulations. This Report is designed to analyze these legal frameworks in depth, seeking to explain the most common types of administrative decisions rendered in Rwanda in the four subject areas as well as the procedures used to render them, and identify any significant gaps, contradictions, and ambiguities that prevent these procedures from operating as effectively as intended. The Report also touches on a number of other challenges in implementation that interfere with proper implementation of the law, such as issues of institutional capacity, resources, coordination, and transparency, as well as public education and awareness. While this Report will provide tailored recommendations for possible legal and policy initiatives for each of the four areas, its most important contribution may be raising public and expert consciousness about the importance of certain *common* issues affecting administrative justice, particularly the opportunity of citizens to obtain adequate information about their rights in the administrative process, to provide evidence on their own behalf, to obtain a legally supportable decision, and to pursue one or more effective avenues of appeal.

This Report will be organized as follows. First, the Report's methodology to gather and analyze relevant information is briefly described. Second, the Report addresses the legal and procedural framework governing each of the four focus areas of administrative decision-making, including the relevant institutional arrangements within the government that handle first-instance decisions, internal appeals (reconsideration), judicial review, and informal complaints. The strengths and weaknesses of the current framework in each area follow, along with recommendations for possible improvements. Finally, the Report briefly covers the key cross-cutting institutions that play critical roles in helping support administrative justice in Rwanda as a whole.

III. METHODOLOGY

Both qualitative and quantitative methods were used to collect data for this report. The research methodology combined a literature review and in-depth legal analysis, round-table discussions, targeted key informant interviews, illustrative case scenarios drawn from actual administrative decisions on appeal, and certain quantitative data collection from the courts, District offices, and the Office of the Ombudsman.

III.1. Qualitative data collection

The report relied on qualitative methods in two ways. First, the researchers conducted an intensive literature review that included both legal texts and illustrative case law, as well as relevant secondary sources (articles and commentaries). Round-table discussions and key informant interviews on the research topics were also conducted.

III.1.1. Literature review

A literature review was conducted to establish the contours of existing laws, regulations, instructions, and policies that constitute the legal framework for the four areas of study: land expropriation, public procurement, labor regulation, and public employment. Secondary sources consulted included different study reports, journal articles, dissertations, and news articles. This review also provided insights into topics of discussion for round-table discussions and key informant interviews.

III.1.2. Round-Table Discussions

Two round-table discussions with representatives from key stakeholder institutions were held to further explore various dimensions and implications of the data collected during the literature review. Institutions invited to round-table discussions were identified based on their area of work and expertise in relation to the research areas. The experts were convened in small groups according to their respective areas of specialization, and the data collected during these meetings was used to enrich the literature review, guide quantitative data collection, and revise recommendations. The first round-table discussion gathered legal experts working in the fields of public service regulation, labour law, procurement law, and land issues who were put into specific groups per research area in order to discuss the findings identified in the literature review and develop recommendations. Participants included legal experts working in government, civil society organizations, legal practice, and academia, each of whom provided educated perspectives on the current state of administrative justice in Rwanda and how best to maximize the impact of the analysis.

The second round-table discussion, which was designed as a workshop and forum in which to present the Project's preliminary findings and conclusions, gathered mostly administrative officials but also several independent experts to review draft findings and recommendations of the completed Legal and Policy Framework Analysis. Participants included representatives from

government and non-governmental institutions who were convened to discuss the key findings and overall conclusions reached in the report. Key discussion points were shared with participants before the meeting. The round-table discussions served the dual function of allowing participants to provide insights into the practical implementation of administrative decision-making at the institutional level, as well as validating the most important findings of the Legal and Framework Analysis Report.

III.1.3. Key Informant Interviews (KIIs)

In order to gain a deeper and practical understanding of the issues identified during the desk review and round-table discussions, the research team also conducted key informant interviews with officials from relevant institutions concerned with the research areas. In total, the research team conducted interviews with representatives of 14 institutions: the Ministry of Public Service and Labor (MIFOTRA), the Public Service Commission (PSC), the Public Procurement Authority (RPPA), the Office of the Ombudsman, the Commercial Court, the Intermediate Court of Nyarugenge, the Rwanda Land Management and Use Authority (RLMUA), the Institute of Real Property Valuers of Rwanda (IRPV), the Rwanda Transport Development Authority (RTDA), the Rwanda Housing Authority (RHA), the Water and Sanitation Authority (WASAC), Bugesera District, and the Rwanda Workers' Trade Union Confederation (CESTRAR).

III.1.4. Case studies

Qualitative data collection also included analysis of several illustrative cases from each of the four areas of study. This examination of relevant case law helped describe common scenarios in how the law is shaped by the existing legal and regulatory framework and how such law is interpreted by relevant government agencies and the courts.

III.2. Quantitative Data Collection

To measure the volume and the nature of existing cases related to administrative justice in Rwanda, data was collected on court cases in the research areas. While case analysis on the number of administrative decisions overturned or upheld was not readily kept or made available by the courts, further research could be done to confirm these statistics. Data was also collected from the office of the Chief Inspector of the Ministry of Public Service and Labor on the volume of cases received by Labor Inspectors in the 30 Districts of the country with regard to private labor employment issues. The Office of the Ombudsman also shared data on the complaints received, mainly on expropriation. The research team also received data from some expropriating institutions on the complaints received related to their expropriation projects and data on the number of individuals still awaiting compensation in these implemented expropriation projects. The statistical information received helped in the analysis and in indicating the volume of cases existing in the four areas of the research.

IV. ANALYSIS OF THE LEGAL AND POLICY FRAMEWORK GOVERNING LAND EXPROPRIATION

IV.1. Introduction

One of the areas in which administrative justice is highly relevant is land expropriation, in which the government seizes property for use in the public interest and is required to pay some form of compensation. In the past ten years, Rwanda has distinguished itself as one of the fastest growing economies on the African continent and globally.[3] Land has been and continues to be one of the most needed resources to attract, facilitate, and enable economic growth, particularly in the context of urbanization and infrastructure development. However, given the size of the country[4], the population size[5], and the fact that the majority of Rwandans base their living on land as the fundamental resource,[6] it is difficult to find unoccupied land in the country. In this regard, expropriations have become an important prerequisite for developing infrastructure and state-driven industry in Rwanda.

Article 34 of the Rwandan Constitution[7] guarantees the right to private property, whether individually or collectively owned. However, Paragraph 3 of the same article states that "the right to property shall not be encroached upon except in the public interest and in accordance with the provisions of the law." As an implementing instrument of the Constitutional provisions, Law N°32/2015 of 11/06/2015 relating to Expropriation in the Public Interest (hereinafter referred to as "Law on Expropriation" or "expropriation law")[8] provides the institutional and legal framework for the implementation of expropriation in Rwanda. The law on expropriation also provides for the rights of people subject to expropriation. It puts in place the institutional mechanisms for the approval, implementation, and supervision of expropriation projects, as well as the redress mechanisms for those whose rights might be violated in the process. Several other laws and legal instruments bear indirectly on the legality and implementation of land expropriation in Rwanda. These include statutes on land,[9] local governance,[10] and roads,[11] as well as a number of

[3] The World Bank, "Rwanda Economic Update: Sustaining Growth by Building on Emerging Export Opportunities", (10 Ed., August 2017) p.2, last accessible on February 27, 2018 at http://documents.worldbank.org/curated/en/573241503374274792/pdf/119036-WP-PUBLIC-21-8-2017-16-10-48-RwandaEconomicUpdate.pdf

[4] The total surface area of Rwanda is 26,338 km².

[5] According to NISR projections for 2017, the size of the resident population in Rwanda is 11,809,295.

[6] Almost 80% of Rwandans are dependent on agriculture for their livelihoods (RDB).

[7] Constitution of the Republic of Rwanda, 2003, as amended in 2015.

[8] This (new) law replaced the Law n° 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest.

[9] Article 34 of law n° 43/2013 of 16/06/2013 governing land in Rwanda states that "[t]he State recognizes the right to freely own land and shall protect the land owner from being dispossessed of the land whether totally or partially, except in case of expropriation due to public interest."

[10] Article 109 of law nº87/2013 of 11/09/2013 determining the organization and functioning of decentralized administrative entities states that "[t]he decentralized administrative entity with legal personality may carry out expropriation for public interest. In this case, the entity shall use its funds to pay compensation before expropriation in accordance with Law."

[11] Article 33 of law n°55/2011 of 14/12/2011 governing roads in Rwanda provides that "[i]f the construction, modification, or widening of a national, District or City of Kigali road and that of other urban areas, require the

international standards.[12] There are also key national policies that address expropriation.[13] The Law on Expropriation and related instruments will be discussed in detail below.

IV.2. Legal, Procedural, and Institutional Framework Governing Administrative Decision-making

IV.2.1. Submission, review and approval of the application for expropriation

The expropriation law allows public institutions and private investors[14] to apply for or initiate an act/project requiring expropriation. However, Article 3 states that "only the Government shall order expropriation in the public interest".[15] According to the provisions of Article 7 of the expropriation law, the application for expropriation is submitted to:

- The Executive Committee at the District level, when development and expropriation activities or projects concern one District;
- The Executive Committee at the level of the City of Kigali, when development and expropriation activities concern more than one District within the boundaries of the City of Kigali;
- The relevant Ministry in cases where development and expropriation activities concern more than one District, or are at the national level.

The relevant committee determines the legality, necessity and appropriateness of the proposal for expropriation, and has the legal authority to make decisions about expropriation according to the law, and to address any disputes that may arise in the process of initiating and defining the project of expropriation in the public interest. These committees are also allowed to initiate expropriations, most commonly on behalf of the relevant District.[16]

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expropriation of a built-up or bare land, it shall be carried out in accordance with the Law relating to the expropriation in the public interest."

[12] Article 17 of the Universal Declaration of Human Rights provides generally that "*everyone has the right to own property alone as well as in association with others"* and that *"no one shall be arbitrarily deprived of his property*". Further, the African Charter of Human and Peoples' Rights in Article 14 states that "[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

[13] For example, the National Human Settlement Policy states that "[e]viction and expropriation operations should be in line with the fundamental rights of tenants, especially the right to a rehousing of almost similar conditions with the previous dwelling in terms of size and to financial conditions compatible with revenues of the households concerned (Updated Version of the National Human Settlement Policy in Rwanda, 2009, p.15)." Further, the National Land Policy provides that "in the case of expropriation of individuals, the system of compensation will be applied" (National Land Policy, 2004, p.41). And the National Urban Housing Policy for Rwanda also recognizes the need to respect legal procedures and international standards in case expropriation is needed by requiring that "…legal and regulatory measures be put in place to ensure that expropriations if required are carried out in line with internationally acceptable norms (National Urban Housing Policy for Rwanda, 2008, p.12)."

[14] Though for private investors the law is not very explicit, the provisions of article 6 of the expropriation law allows for an expropriation aimed at the implementation of land use and development master plans which mainly relates to projects of private investors.

[15] See also Land Law, Article 3 ("…the State is the sole authority to accord rights of occupation and use of land. It also has the right to order expropriation in the public interest.").

[16] Article 7 of the expropriation law.

Similar committees in charge of supervision of projects of expropriation at the various levels are also created to review applications for expropriation[17]. However, since August 2015, an Order of the Prime Minister, which is supposed to determine the organization, functioning, responsibilities and composition of this committee at different levels[18] is yet to be published.[19] Generally, the responsibility of this committee is to review and decide on whether to approve the applications or proposals for expropriation proposed by the competent authorities, including by determining whether the project is in the public interest.[20] In reaching its decision, the committee is required by law to conduct a consultative meeting with the population living where the land is located to discuss the relevance of the expropriation project.[21] This procedural requirement sets forth a participatory approach for expropriation in the public interest, and creates an administrative mechanism through which individual citizens may provide feedback about a specific expropriation project, to ensure the project is truly in the public interest in accordance with the requirements of the law.

Article 11 of the expropriation law requires that this committee make its decision on the application for expropriation within 30 days of receiving it and after holding consultations with the concerned population on the relevancy of the project.[22] Where the committee finds that the project is worthy of preliminary approval, it submits its decision in writing to the District Council or Kigali City Council or the Ministry in charge of land within 15 days after the consultative meeting with the concerned population; if it determines not to approve the application, it must notify the applicant.[23]

In addition to validating the merit and legality of the project, the law also creates another administrative step to approve the expropriation of persons in regards to compensation and other relocation or dispossession issues that may arise:[24]

- The District Council, which acts on District-level projects;
- The Kigali City Council, which acts on projects affecting more than one District within the boundaries of the City of Kigali;
- Upon an order of the Minister in charge of land whenever more than one District is involved;
- Upon an order of the Prime Minister for projects at the national level and in case the project relates to security and national sovereignty.[25]

[17] Article 11 of the expropriation law. In some articles of the law they are called Committee in charge of *Monitoring* projects for expropriation.
[18] Article 8 of the expropriation law.
[19] The expropriation law which requires the adoption of this Prime Minister's Order has been in place since 31st August 2015.
[20] Article 10 of the expropriation law.
[21] Article 11 of the expropriation law.
[22] Article 11 of the expropriation law. This procedural requirement sets forth a participatory approach for expropriation in the public interest, and creates an administrative mechanism through which individual citizens may provide feedback about a specific expropriation project, to ensure the project is truly in the public interest in accordance with the requirements of the law. Public participation is not only important in expropriation projects, but a key driver and ingredient of good governance in general as also elaborated in Rwanda's Vision 2020.
[23] Article 14 of the expropriation law.
[24] Article 9 of the law on expropriation.
[25] Article 15 of the expropriation law.

The decision of the approving authority must be made within 15 days of receiving the decision of the relevant Committee in charge of supervision of projects of expropriation, and must be announced on at least one of the radio stations with a wide audience in Rwanda and in at least one of Rwanda-based newspapers with a wide readership in order for the relevant parties to be informed thereof.[26] If necessary, any other means of communication can as well be used.

Further, the list of holders of rights registered on land titles and property incorporated on land shall be posted in a publicly accessible place at the office of the City of Kigali, the District, the Sector and the Cell of the place in which the land is located within 15 days of the approval of the expropriation.[27]

Within 15 days from the publication of the initial list of persons to be expropriated, any person affected by expropriation has the right to apply to the organ that made the list for review of the properties included.[28] The organ having made the list must decide on the application for review within 7 working days of receiving the application.[29] Within an additional 7 working days of the decision on any application for review of the list, the District or City of Kigali Mayor or the relevant Minister shall then approve the final list of the persons to be expropriated.[30] It is this list that then serves as a basis for drawing up an inventory of the property to be expropriated.

After the publication of the decision on expropriation in the public interest and the list of holders of rights registered on land titles and property incorporated on land, the land owner shall not develop any other long-term activities on the land. Otherwise, such activities shall not be compensable during expropriation.[31]

IV.2.2. Land and Property Valuation

As stipulated by Article 23 of the expropriation law, the valuation of land, property incorporated thereon, and activities carried out on the land shall be conducted by valuers certified by the Institute of Real Property Valuers in Rwanda.[32] Compensation for disruption caused by expropriation may also be made available to expropriated persons.[33] According to the provisions of Article 22 of the expropriation law, a list of land values and prices for property incorporated on land should be issued annually by the Institute of Real Property Valuers (IRPV) and published in the official gazette to form the basis of valuations. A representative of the IRPV[34] and the heads of One Land Stop Centers at the districts,[35] the market prices for land are determined by making an average of

[26] Article 15 of the expropriation law.
[27] Article 16 of the expropriation law.
[28] Article 20 of the expropriation law.
[29] Article 20 of the expropriation law.
[30] Article 21 of the expropriation law.
[31] Article 17 of the expropriation law. According to the provisions article 2 of the same law, a long term activity is defined as "any activity performed on land and likely to remain there for more than one hundred and twenty (120) days".
[32] Article 27 of the expropriation law. The Institute of Real Property Valuers (IRPV) is a professional body established by the Law N°17/2010 of 12/05/2010 establishing and organising the Real Property Valuation Profession in Rwanda.
[33] Article 27 of the expropriation law.
[34] Interview with Mr. Chris Nshimiyimana, the Executive Secretary of the Institute of Real Property Valuers (IRPV) on 20th November 2017.
[35] FGD with One-Stop Center heads, held on 9th November 2017 in Kigali.

comparable, recent sales in the area. Before the land is valued on this basis, the law requires the District, City of Kigali, or relevant Ministry to inform the persons to be expropriated of the expected start date of measurement of land and inventory of property incorporated thereon. Such communication shall be made through an announcement posted on the office of the Cell where the project is to be implemented. The communication shall also be made through a radio station and newspaper with a wide audience, or other means of communication if necessary.[36]

The valuation of land and property incorporated thereon must be conducted in the presence of the land owner and the owner of property incorporated on the land, or their lawful representatives, as well as in the presence of representatives of local administrative entities.[37] The valuation activity must be completed within a period of 30 days. Where necessary, the period for valuation can only be extended to a maximum of 15 additional days, upon request by the applicant for the expropriation, after approval by the designated organ.[38] When the land owner or the owner of property incorporated on land is satisfied with the valuation, he or she shall sign or fingerprint the approved fair compensation reports.[39] The law also requires that the valuation report[40] be published in writing and a copy be posted at the office of the Cell where the land is located, and the notice that the report is available should also be made through radio and newspaper channels.[41]

IV.2.3. Compensation

Fair compensation is a fundamental pre-condition of expropriation, and must be equivalent to the value of land and the activities performed thereon, calculated at market prices[42]. Previously, some institutions carried out expropriations without proper budgetary planning, resulting in long delays in compensation, so the current law obliges relevant institutions to budget for the project—allocating funds for the valuation of assets of the persons to be expropriated, as well as for the compensation of the individual's losses of land and/or property before actually carrying out the expropriation.[43] Fair compensation under the Rwandan law also includes compensation for disturbances due to expropriation,[44] fixed at a rate of 5% of the total compensation to be paid to the expropriated person.[45] Fair compensation can be paid in monetary form, or in any other form mutually agreed upon by the expropriator and the person to be expropriated.[46]

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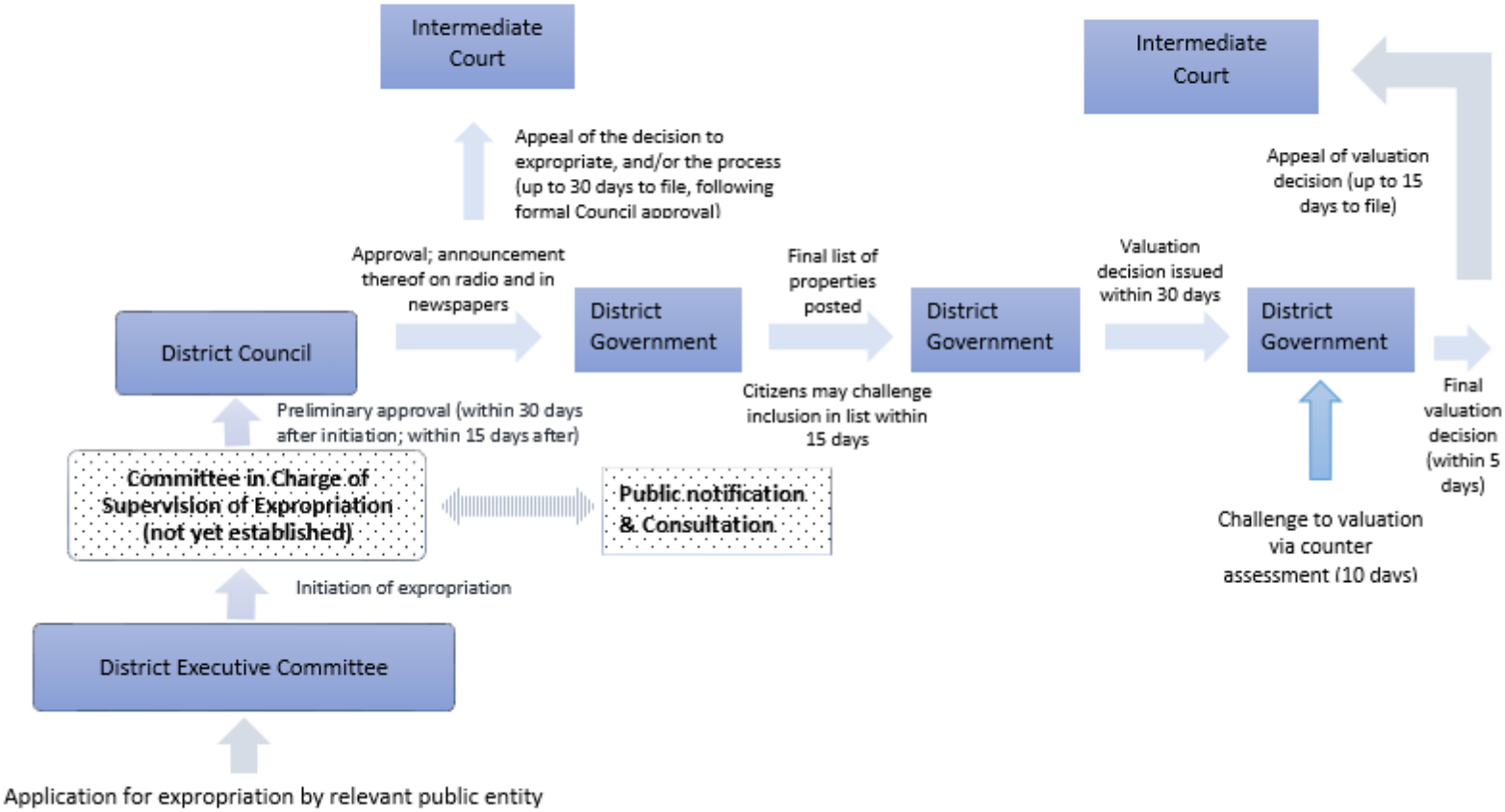
[36] Article 24 of the expropriation law. Also, see article 28 of the expropriation law.
[37] Article 25 of the expropriation law.
[38] Article 29 of the expropriation law. The law does not mention when these 30 days start to be counted. It could be from the date of the publication of the (final) list of holders of rights registered on land titles and property incorporated on land or just from the date the exercise of valuation starts.
[39] Article 32 of the expropriation law.
[40] By law, the valuation report should include the list of persons to be expropriated, the size of land and the value of property incorporated thereon belonging to each person to be expropriated, and the fair compensation to be paid to any person whose property is expropriated in the public interest (article 30 of the expropriation law).
[41] Article 31 of the expropriation law.
[42] Article 27 of the expropriation law.
[43] Article 4 of the expropriation law.
[44] Article 27 of the expropriation law.
[45] Article 28 of the expropriation law.
[46] Article 35 of the expropriation law. For example there have been cases where expropriated persons have been compensated with houses, in consideration of the value of their expropriated properties. Case of people expropriated from "lower" Kiyovu to Batsinda; see Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.79. Kigali, Rwanda: USAID | LAND Project.

ADMINISTRATIVE DECISION PATHWAYS: LAND EXPROPRIATION PROCESS



IV.3. Legal, Procedural, and Institutional Framework Governing Appeals and Complaints Mechanisms

IV.3.1. Opportunities for review/remediation by administrative mechanisms or administrative appeals

The Law on Expropriation, as well as other laws, defines a number of specific intervention points where individuals can request review of official action in expropriation through administrative mechanisms. Some of the appeals have to be made or submitted to the organ that made the decision, while others must go to a higher authority. The requirement of exhaustion of administrative remedies is enshrined in Article 336 of the civil procedure code, which states that "before filing a claim, the aggrieved party who is against the administrative decision shall be required to first lodge an informal appeal with the immediate superior authority vis-à-vis the one who took the concerned decision". If the relevant higher administrative authority does not respond within the required timeline[47], the request is considered rejected, which then gives the right to the affected person to lodge a complaint to the competent court.[48]

1. Request for review of the decision on the application for expropriation

Article 18 of the law on expropriation provides that *"*any person affected by the decision on expropriation in the public interest shall have the right to request review of the decision before the organ directly higher than the one having taken the decision. The appeal shall be made within thirty (30) days from the day of the publication of the decision." The decision mentioned here is that of the relevant competent organ approving the expropriation. The article also requires the decision on appeal to be made in 30 days. However, where expropriated persons may not know their rights, and where they might receive notification almost by chance in some circumstances through publication in a newspaper or on the radio. The law also provides an appeal mechanism for the institution applying for the expropriation, but providing the expropriating entity only 15 days to appeal an adverse decision on the application.[49] However, in some circumstances, no appellate level for the decision made on the application for expropriation exists, so some appeals may have to go directly to court.[50]

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[47] Some laws provide specific timelines within which the response from the relevant authority must be provided on a certain request. For example the expropriation law provides timelines within which a response must be provided under different processes. However, in case the concerned law does not provide a specific timeline within which a response must be provided, then the (general) timeline of *one month* provided under article 336 of Law N°21/2012 of 14/06/2012 relating to Civil, Commercial, Labour and Administrative Procedure applies. As indicated above, article 336 requires any one aggrieved by the administrative action/decision to first lodge an informal appeal with the immediate superior authority but also goes ahead in paragraph three to state that "The authority shall be required to respond in a period of one (1) month which runs from the date he / she received the informal appeal. If he / she does not respond, the request shall be considered as if it is rejected". The civil procedure code also specifies that a claim requesting for the annulment of an administrative decision must be accompanied by a copy of the decision being challenged if it is written and a document justifying recourse to the immediate superior administrative authority (Article 335 of the civil procedure code).

[48] Article 336 of the civil procedure code.

[49] According the law the appeal is done in writing (art. 19 of the expropriation law). The law is not explicit on whether the applicant would be allowed or invited to physically attend such an appeal hearing.

[50] Decisions of the Administrative Council (Njyanama) of the District and/or City of Kigali are directly challenged in court (there is no higher authority to appeal to). It is the district council that approves expropriation applications for

2. *Request for review of the list of rights holders*

After the decision approving the application for expropriation is published,[51] a list of the individuals whose properties are or will be affected by the expropriation is also published. In this regard, the expropriation law also provides that "within fifteen (15) days from the publication of the initial list of persons to be expropriated, any person affected by expropriation in the public interest shall have the right to apply to the organ having made the list for its review and indicate the grounds for his/her application," and gives the institution in charge of the list only 7 working days to decide on the application for review.[52] While the specific standards of review are not indicated in the law, presumably, a person could at this stage indicate that he or she has been improperly placed on the list due to a mistake about the location or ownership of his or her property, or a similar issue.

3. *Challenging the valuation process or the value given to one's property*

In addition to the right to appeal the decision to expropriate one's property, the law on expropriation also provides a procedure to challenge the valuation of one's property before the expropriating entity through the engagement of an independent valuation firm or expert.[53] The law indicates that the expense of obtaining such a counter-assessment must be borne by the citizen, and that a counter-assessment report must be submitted within 10 days of the filing of a challenge.[54] In turn, the expropriating entity must render a decision on the counter-assessment within 5 days of receipt, and if the citizen remains dissatisfied with the final valuation decision, he or she may appeal to the courts within 15 days.[55] As discussed below, these short time frames and onerous expenses on the individuals being expropriated raise important questions of the fairness and practicality of the process.

IV.3.2. Court Appeals Involving Expropriation Cases

Individuals affected by expropriation can seek the court action by requesting for annulment of the actual decision approving the expropriation, revision of the valuation process, or any other action or decision related to different stages in the expropriation process. However, like any other administrative matter, administrative remedies must be exhausted before filing a claim in court.

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projects within the district. The administrative council of the City of Kigali approves applications for projects affecting more than one District within the boundaries of the City of Kigali.

[51] Article 16, expropriation law.

[52] Article 20, expropriation law.

[53] Article 33 of the expropriation law states that "within seven (7) days after the approval of the valuation report by the expropriator, any person to be expropriated who is not satisfied with the assessed value of his/her land and property incorporated thereon shall indicate in writing grounds for his/her dissatisfaction with the valuation report." Though this article does not specify the organ or authority to which the aggrieved person might appeal in these cases, later text in Article 33 suggests that this appeal should be submitted to the expropriating entity.

[54] Article 33, expropriation law.

[55] Article 34 of the expropriation law. Any agreement or disagreement as to the final assessment decision must be memorialized in detailed minutes.

Articles 334-336 of the Civil Procedure Code stipulate the procedure and requirements to file an action to annul an administrative decision in court. However, Article 342 of the Civil Procedure Code also gives the individual affected by the administrative decision the right to seek compensation, stating that a party "may file a separate claim for damages before an administrative court without requesting for the annulment of the illegal administrative decision by only proving the illegality of such a decision." The individual's request for compensation is not contingent upon requesting annulment of the administrative action, so this could provide support for an expropriated person to seek damages incurred through the expropriation process or to seek damages for compensation that is too low even where the individual does not seek to block the entire process of expropriation. The affected person can also file a case contesting the valuation process of his or her property as well as any other matter in the expropriation process. Judges at the Nyarugenge Intermediate Court reported in an interview that majority of the expropriation cases they receive relate to valuation.[56]

According to Article 83 of Organic Law N°51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts, as amended to date (hereinafter referred to as the Law on the Competence of Courts), any action against an administrative decision, act or omission rendered by local administrative authorities up to the District level – including of course, expropriation decisions – should be filed at the first instance with the administrative chambers of the appropriate Intermediate Court. Article 93 of that law also specifies that complaints arising from expropriation decisions taken by the City of Kigali or Provincial authorities are reviewed by the High Court (the High Court also hears any second-instance appeals from the Intermediate Court, including those related to expropriation).[57] Final recourse from decisions of the High Court is to the Supreme Court.

The right to seek a court action starts to run from the day a person receives a response on his or her appeal to the competent administrative authority, or at the lapse of the required timeline within which the response should have been provided. Some laws, including the expropriation law, specify timelines within which a response must be provided, and in many cases the timeline is not more than 30 days for expropriation-related decisions. If timeline is not specifically provided by the relevant law, then the provisions of Article 336 of the Civil Procedure Code apply. Paragraph four of this article provides that if the applicant is not satisfied with the decision, he or she has 6 months to file a claim, which runs from the date when he or she received the response, and if there is no response, such a period shall start to run 1 month after the submission of the appeal to the relevant administrative authority.

IV.4. Strengths and Challenges Regarding Implementation of the Expropriation Law

IV.4.1. Strengths of the Current Legal Framework for Land Expropriation

Administrative justice, at its core, is a set of procedural rights to ensure that discretionary decisions made by government officials are fair and accountable. The existing legal framework for expropriation has a number of strengths to be highlighted insofar as administrative justice is concerned.

[56] Interview with Judges at Nyarugenge Intermediate Court on 23rd November 2017
[57] See Article 93(7°) and 83 of the organic law on the organization, Functioning and Jurisdictions of courts.

(a) Reasonably well defined legal framework. The legal framework creates a reasonably well defined procedure that an expropriation project must follow, including defined legal rights and responsibilities for both expropriated persons and expropriating entities. This allows for some degree of accountability at each stage of the process, where individuals can ensure their rights are being respected, and can complain to the appropriate body if they are not. Separate levels of government have discrete responsibilities and there is some degree of oversight of the process by elected political authorities (the major gap, of course, is the continued absence of the Committees in Charge of Supervision of Expropriation). The law on expropriation also clearly stipulates the timelines within which each activity must be done in the overall process of expropriation. These timelines provide deadlines for the citizen and government alike, even though, as noted, many are too short to encourage meaningful action and deliberation.

(b) Nondiscrimination. The law is nondiscriminatory in its provisions, as required by Rwandan law and international standards. While some concerns have been raised as to the accessibility of certain procedural rights where affected individuals are indigent, the provisions of the law generally treat all landowners the same in their rights to complain, to seek compensation, and to challenge government action, which is a bedrock of good administrative procedure.

(c) Availability of redress mechanisms. The legal framework provides for basic remedies and redress mechanisms where an individual is not satisfied with the decision to expropriate, with the grounds for expropriation, and/or the valuation of the property. Providing for multiple opportunities to challenge various decisions made at different junctures in the expropriation process ensures an important degree of transparency and integrity in the expropriation process.

IV.4.2. Challenges to Administrative Justice in the Legal and Policy Framework governing expropriation

While the expropriation law has several strengths and creates a number of administrative mechanisms to protect individuals being expropriated, there are several obstacles to meaningful administrative justice in the present legal and policy framework. Some of these are inherent in applicable normative provisions, and others stem from associated policy and implementation problems. In several instances, these obstacles derive from the inherent power imbalance between the government and individual citizens, whereby the latter do not typically have the time, resources or knowledge of their rights to challenge government action under the current framework. For example, individuals are required to use personal funds to counter-value their lands, and to meet short timelines in finalizing counter-valuations. Without some further assistance based in the law to make it practically easier to mount a meaningful challenge, many individuals will not be able to access appeal options under the law.[58]

(a) Absence of Committees in Charge of Supervising Projects of Expropriation. Article 8 of the expropriation law establishes the committees in charge of supervising projects of expropriation ("supervising committees") at different levels, but goes further to state that "An Order of the Prime

[58] According to the survey conducted by the Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" (Final Report, p.60), out of the 1,381 surveyed households, 80% reported not being satisfied with the valuation given to their land, however, only 6% appealed or requested a counter-valuation.

Minister shall determine the organization, functioning, responsibilities and composition of the committees". This Prime Minister's Order is yet to be adopted. The supervising committees are mandated with "conducting the consultative meeting with the population living where the land is located concerning the relevance of the project of expropriation in the public interest."[59] Because the supervising committees are not yet formed, the District Executive Committees take on the task of citizen consultations.[60] However, the expropriation law had separated the roles of the District Executive Committee as the *organ* initiating *the expropriation*[61] from those of the *s*upervising *c*ommittees as a review and assessing organ, including *through* consulting the concerned population[62], and from the District Council as an approving organ.[63] Without the *s*upervising *c*ommittee, citizens' first line of administrative review and assistance in the expropriation process is missing.

(b) Insufficient specification of activities qualifying as in the public interest. Even though the expropriation law contains a list of activities that can be considered as in the public interest, the list is not exhaustive, and states that "[a]n Order of the Minister in charge of lands, on the Minister's own initiative or upon request by relevant public institution, determines any other activity of public interest".[64] Without any guidance as to general standards that could help define additional public interest grounds, the Minister could make arbitrary decisions or use unchecked discretion to approve an activity or project as in the public interest. Where no clear standards are present in the law, individuals may also have an insufficient basis on which to challenge a public interest determination as well.

(c) Lack of personalized communication/notice to expropriated individuals. The way the law is currently structured, expropriated individuals are not provided with any written notification, although such documentation could be necessary in seeking review of various stages of the expropriation process with the competent authorities. In addition to a public posting of lists of households to be expropriated, which is supposed to be done once the households to be expropriated are determined, formal and individual notice is also necessary to enable affected people to assert their rights and feel satisfied with the process.[65] Although round-table participants noted the practical difficulty of personalized notice, alternatives provided by the law – including radio and newspaper announcements – do not appear to be honored either.[66] Lack of personalized communication to concerned individuals affects the respect of the strict deadlines. For instance, the 120 days within which compensation must be paid is counted starting from the day of the approval of fair compensation by the District or City of Kigali Council.[67] When it is unclear at what time the valuation is approved, individuals have no way of knowing when the timeline for

[59] Article 11, expropriation law.
[60] Information from the round table held on 9th November 2017 at MARASA/UMUBANO hotel.
[61] Article 7 of the expropriation law.
[62] Article 8 and 11 of the expropriation law.
[63] Article 9 of the expropriation law.
[64] Article 5, expropriation law.
[65] Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.50. Kigali, Rwanda: USAID | LAND Project
[66] Round table held on 9th November 2017 at MARASA/UMUBANO hotel.
[67] Article 36 of the expropriation law.

their compensation begins and ends, and they cannot properly protect their rights to timely compensation and/or timely exercise of rights of appeal.[68]

(d) Practical availability and effect of counter-valuations are limited. In cases where the affected individual is not satisfied with the value given to his or her property, the law provides an avenue for the affected person to engage the services of a private valuer or a valuation firm to carry out a counter-valuation of the property.[69] Whereas it is a measure to limit baseless claims, the fact that the full cost of this activity must be borne by the affected individual deters a majority of those who are not satisfied with the valuation from getting the counter-valuation.[70] This situation often results in the aggrieved landowner accepting the low compensation determined by the expropriating entity without any practical recourse.[71] Further, round-table participants affirmed that many people are financially unable to hire the services of independent valuers to carry out counter-valuations. Key informants echoed these concerns, noting that only the "well-off people" (*abishoboye*) can undertake counter-valuations, or bring a case to court if they are not satisfied with the valuation decision.[72] Given that court decisions have resulted in up to double the initial valuation given to expropriated lands, the inability to contest the valuation due to the expropriated individual's financial status is a major impediment to fair and just compensation and disproportionately impacts the poor.[73] This weakness in the law could be addressed by having some financial assistance for those who are indigent according to an objective standard, or having the cost of the counter-valuation reimbursed by the expropriating entity upon a determination that either such counter-valuation is likely to prevail or resulted in a major increase in the initial value of the property in question.

Furthermore, the root causes of the problem of low valuations could also be addressed by the law, especially since only a small percentage of individuals are able to comply with the requirements of formally contesting the valuation.[74] The law requires the IRPV to publish a list of land values

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[68] The non-publication of the "decision approving expropriation" as well as the "the list of persons to be expropriated" could have adverse effects on the right of citizens to appeal, as the time for appeal starts to run from the day of the publication of the decision to expropriate and the list of people to be expropriated. (Articles 18 and 21 of the Law on Expropriation).

[69] See article 33 of the expropriation law.

[70] More than 80% of expropriated households reported not to have been satisfied with the valuation of their property, but only 6% among the dissatisfied households actually appealed or requested for counter-valuation of their properties. One of the reasons mentioned for not carrying out the counter-valuation was the cost. See Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, pp.60-63. Kigali, Rwanda: USAID | LAND Project.

[71] Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.60. Kigali, Rwanda: USAID | LAND Project.

[72] Interview with the Mr. Emmanuel NSANZUMUHIRE, the Mayor of Bugesera district.

[73] Case of Ms. Henriette Umulisa vs RSSB.

[74] Interview with Judges at Nyarugenge Intermediate Court on 23rd November 2017; interview with the Bugesera and Kicukiro districts officials on 22nd and 24th November 2017 respectively; interview with WASAC officials on 22nd November 2017. The other major categories of complaints relate to delays in the payment of compensation, or even the non-payment of compensation for land taken for projects like the construction of District roads, installation of electric poles, or installation of water pipelines. These reports corroborate other research done on expropriation, which noted that over 80% of households were unsatisfied with the valuation given to their lands (see, e.g., Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.60. Kigali, Rwanda: USAID | LAND Project), and that many households experienced extreme delays in their receipt of compensation (*see id*, p. 67).

annually as the basis of valuations[75], but since the publication of this law in August 2015, new land values have not been published.[76] The unavailability of these updated prices can lead to speculation and inconsistency in land valuation, and has also led to concerns over the professionalism of valuers, reflected in inexplicable differences between their valuation reports where counter-valuations are done.[77] Accordingly, while the availability of a regularly updated list of land values and prices for property incorporated on land[78] is a crucial starting point and is required by law, valuation best practices could also be studied closely and encouraged.[79]

(e) Short time limits for appeals. The expropriation law in most instances provides specific time limits for decision-making. However, the shortness of some of these time limits could significantly hinder individuals in accessing justice. For example, the law requires a person being expropriated to give notice to the expropriating entity of the intent to challenge a valuation within 7 days of the valuation.[80] The law also requires the aggrieved individual to fund the counter-valuation of their lands, to be completed within 10 days of the notice of counter-valuation.[81] The law further gives the expropriating entity only 5 working days to make a final decision on whether to accept the counter-valuation.[82] And ultimately, if the individual does not agree with the final decision of the expropriating entity on the valuation question, he or she has only 15 days to file a claim in court.[83] While these short time periods might be intended to protect individuals affected by expropriation, they are unrealistic—both from the perspective of the individual who must seek legal advice[84] and gather financial resources to complete a counter-valuation of the land (as well as likely have to appeal to the same institution that provided the valuation), and from the perspective of the expropriating entity, which has only a few days to decide on this important issue, and may be balancing several similar claims in larger projects.

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[75] Article 22, expropriation law.

[76] According the interview conducted with Mr. Chris Nshimiyimana, the Executive Secretary of the Institute of Real Property Valuers on 20th November 2017, the list of land prices is currently under final approval for publication. They delayed in publishing these prices but the activity is quite expensive and they didn't have the required budget.

[77] For example, in one expropriation project in Kagarama Sector (Kicukiro District), the first valuer providing the valuation to the expropriating entity valued one square metre of land at 12,000frw. The landowner was unhappy with the price given to his land, and hired another independent valuer to do a counter-valuation. The second valuer set the land value at 80,000frw per square metre. Due to the failure of the parties to agree between the two valuations, the expropriating entity together with the landowner sought the assistance of the Council of the Institute of Real Property Valuers (IRPV), who appointed a third, neutral valuer to carry out another valuation. The third valuer put the price at 8,000frw per square meter (Interview with Ms. INGABIRE Emelyne, Land Management Team Leader in Kicukiro district, on 24th November 2017).

[78] Article 22 of the expropriation law requires that this list be updated every year.

[79] For example, participants in the round table discussions and interviews noted that valuations are aided where property is photographed. However, it was also mentioned that many valuers fail to do this, which is a real problem where landowners make improvements after the valuation and then claim that the valuation was incorrect.

[80] Article 33, expropriation law.

[81] Article 33, expropriation law.

[82] Article 34, expropriation law.

[83] Article 34, expropriation law.

[84] Given the biggest majority of the expropriation projects take place in rural areas (87.8%, see LAF report on expropriation 2015), where majority of the poor and uneducated live in Rwanda (NISR, The Fourth Integrated Household Living Conditions Survey, 2014), you really understand how this is a challenge to these people; finding the money, knowing where to find an independent valuer, contract him/her and then carry out the counter-assessment and submit the report - all of these only in 10 days.

(f) Reporting requirements are not robust. There are some key transparency issues that affect the soundness of the expropriation process. Among the requirements that must accompany the application for expropriation are a "document indicating that the project has no detrimental effect on the environment" as well as a "study indicating consequences on living conditions of persons to be expropriated."[85] However, the law does not require these studies to be published for public scrutiny (addressing potential mistakes or misinformation), nor is it clear about how these studies are verified and validated.[86] International best practice supports robust transparency and accountability in the expropriation process, which is furthered through public participation and open public debates.[87] With regard to the "plan or maps indicating the demarcations of the land where activities shall be carried out,"[88] officials at Rwanda Land Management and Use Authority (RLMUA) further suggested that these plans and maps be shared with their office before the expropriation is carried out, in order for them to advise and indicate where potential problems could arise.

IV.4.2. Problems with Implementation of the Law

(a) Delays and Bureaucracy in the payment of compensation. The expropriation law requires that compensation be paid within 120 days of the approval of the valuation report.[89] However, delays in the required payment of compensation have always been a problem in expropriation.[90] This delay has serious effects on the concerned persons both economically and socially, as well as harming their trust in government authorities.[91] These delays are caused by the bureaucratic nature of the payment process, and in some instances, the compensation process has to go through more than three institutions, which can also confuse affected individuals regarding where to follow up

[85] Article 10 of the expropriation law.

[86] During the round-table discussions, some participants also raised the issue of capacities at the District level to review and verify these reports, which is where the reports are to be submitted. Where District authorities do not have the resources or capacity to actually validate the reports, then producing them becomes just a formality, and no actual, independent assessment of the contents will occur. The City of Kigali does have "socio-economical analysts" who look into these reports, but these staff are not available at the District levels, where most of the expropriation projects take place. Information from the round table discussions held on 9th November 2017 at MARASA hotel.

[87] Ward Anseeuw, Liz Alden Wily, Lorenzo Cotula, and Michael Taylor (2012), *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project*, INTERNATIONAL LAND COALITION, 65.

[88] One of the requirements in the application for expropriation is "the master plan of land where the project will be carried out" which includes the plan or maps indicating the demarcations of the land where activities shall be carried out, among others (see article 10 of the expropriation law).

[89] Article 36 of the expropriation law.

[90] See Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.67-73. Kigali, Rwanda: USAID | LAND Project). According to a 2017 survey conducted by Rwanda Civil Society Platform "The Analysis of Land Expropriation and Transfer Process in Rwanda", 31% of the expropriated people did not receive their compensation within the required legal timeline. See also https://igihe.com/amakuru/u-rwanda/article/abadepite-batabarije-abaturage-bamaze-igihe-bishyuza-ingurane-y-aho-bimuwe-na. The Government of Rwanda has also acknowledged this issue with delays. While appearing before the Parliamentary Standing Committee on National Budget and Patrimony on 2nd February 2018, the Minister of Local Government indicated that slightly more than 4 billion Rwandan francs is needed to pay arrears of compensations to more than 16,000 people/households expropriated by different projects implemented by the Water and Sanitation Corporation (WASAC), Rwanda Energy Group (REG), Rwanda Civil Aviation Authority (RCAA) and Rwanda Transport Development Agency (RTDA). See also http://mobile.igihe.com/ubukungu/article/leta-irasabwa-miliyari-4-frw-yo-kwishyura-abaturage-ingurane-y-ahagenewe.

[91] See Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.67-73. Kigali, Rwanda: USAID | LAND Project).

about their payments[92] and which institution may be accountable for harm caused by delays.[93] To remedy this problem, the government should consider adopting a policy or amendment to the Law on Expropriation that provides for clear designation of a coordinating or 'lead' entity for expropriation. The Ministry in charge of Lands and Forestry (MINILAF) should ordinarily coordinate expropriations at the national level, but there is currently no unit or person in charge of expropriation coordination at the Ministry.

In a related issue, expropriations for expansion of roads under Law N°55/2011 of 14/12/2011 governing roads in Rwanda are often done without proper expropriation procedures or compensation paid.[94] Although Articles 17 and 33 of the law governing roads guarantees compensation to people whose land is taken due to road widening, round-table participants, including District officials, seemed unaware of this right to compensation for road projects, especially district roads, which has led to landowners not receiving any compensation for road expansion takings, and often they may also have to continue to pay taxes on the portion of their land taken by the road but cannot be used. The burden appears to be on the landowner to request adjustment or correction of the land title to reflect the new dimensions of their land following the road expansion.

Key informants and round-table participants noted that problems with payment procedures, such as, rigidity in the mode and methods of payment required coupled with other factors like bureaucracy, poor planning/coordination, and the provision of wrong or incomplete information by the affected persons (such as wrong ID numbers or bank account numbers), cause delays in the payment of compensation.[95]. Many round-table participants called for payment procedures to be more flexible and adapted to individuals' particular circumstances in order to ensure they receive compensation in time. The expropriation law requires that monetary compensation be deposited into a bank account of the person to be expropriated.[96] However, this can be problematic in practice depending on the amount of compensation to be provided to the person to be expropriated. During interviews, officials from the Districts and other expropriating entities provided examples where individuals were paid compensation that was almost equivalent to the amount required by the bank just to open an account. This was especially common in partial expropriations related to water

[92] For example, if an expropriation for a road project is initiated by Rwanda Transport Development Authority (RTDA), after preparing the lists of those that need to be compensated, RTDA sends these lists to the Ministry in charge of Infrastructure (MININFRA), then MININFRA forwards the lists to the Ministry in charge of Finance and Economic Planning (MINECOFIN), which then sends the lists for payment to the National Bank of Rwanda (BNR), which pays the compensation to expropriated people through their respective banks. If compensation is then delayed, the affected person will often go the District, which will refer to the lists sent to RTDA (or another expropriating entity), but RTDA will refer to the lists sent to MININFRA and so on. Information from the round table discussions held on 9th November 2017 at MARASA hotel.

[93] This problem was even reiterated by the Minister of Local Government during his appearance before the Parliamentary Standing Committee on Political, Gender and Legal Affairs on 9th November 2017. Article 37 of the expropriation law sets a 5% compensation (of the total value of his/her property expropriated) for any expropriator who fails to pay the expropriated people within the 120 days prescribed by the law.

[94] See Articles 15, 16 and 22 of the Law N°55/2011 of 14/12/2011 governing Roads in Rwanda.

[95] According to the recently commissioned study by the Rwanda Civil Society Platform entitled "The Analysis of Land Expropriation and Transfer Process in Rwanda", 31% of the expropriated individuals/households face delays in payment of their compensation. For example, according to statistics shared by WASAC, as of 17th November 2017, they still had 1030 people waiting to be paid their compensation

[96] Article 38 of the expropriation law.

pipelines or electricity projects, where individuals might be paid just 10,000 – 15,000 frw or less. In such cases, individuals could end up losing money through the expropriation.[97]

Other types of cases support key informant recommendations for flexibility in payment procedures.[98] For example, in cases where expropriated property belongs to more than one person, expropriating entities have been requiring that co-owners first separate the land so that each owner has their own land title. However, this procedure is cumbersome and costs additional money which landowners may not have. The expropriating entity could instead simply certify the proportional ownership of each owner, and then pay the owners based on their proportional ownership interest, saving money, time, and preserving fairness and justice. District officials, especially from outside Kigali, noted that some individuals still do not have land titles. An official from RLMUA echoed these concerns, estimating that around 20% of the total national land is yet to be titled.[99] Rather than delaying compensation while waiting for the land titling process, in such circumstances, the official at RLMUA suggested that the landowners could request the Executive Secretary of the Cell and the Sector to draft and sign a document certifying that the land belongs to the person in question (*Icyemezo cy'umutungo*), which would then be sent to RLMUA for verification, especially in regards to the size and demarcations of the plot. After this certification from RLMUA, the landowners could be paid based on this temporary title document.

(b) Inaccurate valuations of land in favor of the interests of expropriating entities. Some key informants reported that certain institutions use their own staff as valuers, rather than the independent valuers, even though the expropriation law requires that valuation be conducted by valuers certified by the IRPV.[100] These institutions allege the independent valuers lack professionalism and inflate prices unreasonably,[101] and want their own staff accredited as certified valuers to enable them to continue doing valuation for the institution's expropriation projects.[102] While the professionalism and independence of the IRPV valuers can continually be improved and monitored, valuations done by the staff of expropriating entities would not be independent and could result in unreasonably low valuations of land that conveniently fit the budget of the expropriating entity rather than the market price of the land.[103] This can result in an arbitrary

[97] WASAC reported an innovation in small payments where, under the guidance of the Ministry in charge of Local Government, expropriated people whose compensation was less than 20,000frw were paid by *cheque* to alleviate these additional administrative steps and costs for such small payments. Interview with the WASAC team led by Mr. Kajiwabo M. Joseph Poers, the Head of Community Mobilization Unity. Interview held on 22nd November 2017.

[98] E.g., the owner of the land may not be the owner of crops on the land. This happens under the practice of *kwatisha* (where a landowner might free of charge or under certain fees gives his or her land to another person for cultivation). In such circumstances, flexibility should be applied during payment so that the person who owns the crops but not the land does not lose out on the compensation provided during the expropriation process.

[99] Interview with Mr. Jean Baptiste Mukarange, Director of land Administration at RLMUA, held on 23rd November 2017.

[100] Article 23, expropriation law. RTDA, for example, was one of the institutions reportedly using their own staff as valuers, as well as their own standards and prices not subject to review or the rules of the IRPV. RTDA has their own data collection forms and whose information they base on in determining the value of the land and/or property. In addition, the prices RTDA is currently using are those set in 2015.

[101] Interview with RTDA official on 20th November 2017.

[102] Interviews with RTDA official on 20th November 2017.

[103] Some expropriation projects have also been implemented before the valuation of the property is conducted. This problem is particularly common in water and electricity supply projects, where the landowner's crops are destroyed during the installation of electric poles and transmitters without prior assessment of the value of these crops. Interview with Mr. RUMAZIMINSI N. Seraphin, the Director of Preventing and Fighting Injustice Unit, on 20th

decision about how much compensation should be paid based on speculation as to the value of the crops destroyed. Participants in the round-table discussions and interviews also reported that the valuation report is in practice approved by members of the District Executive Committee, despite the fact that the law vests this power into the District Council (*Njyanama*).[104] This practice also highlights discrepancies between what is provided for by the law and what is done in practice. Stricter enforcement of the provision requiring independent valuers and review of the valuation reports by the District Council must be carried out, as well as sensitization of public institutions of the importance of supporting the institution of the independent valuers and officially reporting problems related to the professionalism of the valuers or the valuation process rather than engaging in "self-help" procedures that harm the rights of individuals.

(c) Implementation of master plans is difficult to challenge. .Among the activities considered to be in the public interest, "activities to implement land use and development master plans" are specifically included.[105] Development activities of private investors normally fall under this justification for expropriation. While the expropriation law requires expropriating entities using the master plan justification to "first negotiate with owners of assets that are affected by the project,"[106] round-table participants and key informants reported that individuals to be expropriated for implementation of master plans are often not approached. In practice, an investor who wants to carry out an activity that fits within the framework of a master plan often goes through the line government institution (either the Ministry or another public entity) rather than directly approaching the landowners,[107] and relies on the line institution to work with the District officials where the project is supposed to take place. The District (or City of Kigali) authorities then expropriate people based on the letter from the relevant Ministry or public entity as if the project is for that line institution rather than a private investor.[108] Officials from public institutions allege that direct negotiation with individual landowners would not be possible and could lead to speculation in land values, and do not recognize the legal requirement that expropriation activities to implement master plans be presented first to concerned individuals for negotiation, which can act as a useful check on the public interest determination for master plan projects—which might otherwise be abused merely for the financial gain of the investor.[109]

November 2017. Also, according to the recently commissioned study by the Rwanda Civil Society Platform entitled "The Analysis of Land Expropriation and Transfer Process in Rwanda", over 60% of households expropriated for water & electricity projects report that they were not notified about the expropriation project affecting their lands

[104] Article 36 of the expropriation law.

[105] Article 5, expropriation law.

[106] Article 6, expropriation law. Only where negotiations between the landowners and investors fail should public authorities intervene. *Id.*

[107] See James Karuhanga, 'Talks between CoK officials, slum residents hit deadlock' (New Times, January 25, 2018) http://www.newtimes.co.rw/section/read/228299/where people, among other issues, were complaining to the Kigali City authorities for not giving them the chance to negotiate with the investor for the yet-to-be implemented contravention project of modern houses in Nyarutarama area. Last accessed on March 2, 2018 at http://www.newtimes.co.rw/section/read/228299/

[108] Round table discussions held on 9th November 2017, interviews with Bugesera and Kicukiro district authorities on 22nd and 24th November 2017 and the interview the official from Rwanda Housing Authority on 24th November 2017.

[109] To avoid expropriation for master plan implementation related expropriation projects, e.g. having modern houses in a certain area, one potentially useful practice referenced by District authorities is to encourage landowners to organize and improve their land (e.g. by paving roads with the assistance of the relevant District authorities) and then privately sell their plots of land to private buyers or investors. Under this scheme, the landowners give land that the road would go through without receiving any compensation, and during the negotiation for the sale of their plots to the investor, they are able to negotiate a price that fairly compensates them for the total value of the land, including

(d) Confusion about administrative accountability for expropriation decisions. A key challenge for people seeking redress in some expropriation cases is the difficulty of knowing which institution is legally responsible for carrying out the expropriation, and hence not knowing the proper institution to complain against during the process. This problem is mainly caused by the fact that even in expropriation projects not initiated by the District, it is always the District leaders (together with the Sector and Cell leaders, working under the District) who convene the necessary meetings about the project and take the lead in explaining the project to the population.[110] The District accordingly becomes the face of the expropriation project regardless of the other institutions and entities involved. This results in affected individuals taking complaints about expropriation to the District authorities (or to the Sector and Cell authorities), even if at a particular stage, another institution or agency is actually the legally responsible interface.[111] The law does not address this situation. Given the responsibilities of the local authorities at the District level of ensuring the welfare of the community members and coordinating activities at the local level, it is understandable that complaints should go through them, but the procedure should be clear as to how the District authorities would be required to coordinate with the expropriating entity in handling affected people's complaints, and in which circumstances affected persons should directly deal with the expropriating entity.[112]

(e) Lack of legal awareness

Another big challenge in implementing the Law on Expropriation is people's lack of information about the law and their rights in the expropriation process. For example, people may not know that they have a right to ask for the review of the decision to expropriate, and those who attempt to request review of this decision at the court level are often not informed that they have the right to seek a stay of such a decision pending the court decision on the merits. For their part, many local leaders are themselves not conversant with the law on expropriation (e.g., the procedure to solve claimants' issues and timelines to deal with these issues). This lack of knowledge about

any land lost to the road construction. This approach has been used in Kicukiro district at the "Nunga site," in Gahanga Sector, and at the "Bisambu site" in Gatenga Sector, among others. This allows citizens to deal directly with the investor and negotiate market prices for the land, and also saves the District authorities from acting as the expropriating entity on behalf of a private investor, using public resources to address disputes related to private investment. It also reportedly increases citizens' satisfaction with the process and with the public authorities. By following the administrative requirements of the law in cases of expropriation for the purpose of implementing the master plan, the protections for landowners provided for in the law are evident.

[110]See http://www.newtimes.co.rw/section/read/228299/. See also http://www.newtimes.co.rw/section/read/228579/. Round table discussions also confirmed that community meetings are mainly meant for providing information or giving instructions on how the project will be implemented rather than providing a forum for meaningful feedback and information about one's rights to challenge official actions and decisions.

[111] Even in cases where the affected individuals know or come to know the actual expropriating entity, some face the challenge of knowing exactly where the offices of the expropriating entity are located, and may also have difficulty finding transport to reach to the offices of these expropriating entities (most of which are in Kigali). Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.63. Kigali, Rwanda: USAID | LAND Project).

[112] Legal Aid Forum, "The Implementation of Rwanda's Expropriation Law and Outcomes on the Population" Final Report, p.40-43. Kigali, Rwanda: USAID | LAND Project). In some cases the District authorities have forwarded complaints to the proper institutions, although they have no clear obligation to do so. However, if the District does not forward the complaint to the proper authority, or notify the individual to do so, the individual's already short time limit to submit a complaint can lapse.

expropriation procedures may cause delay, and may also cause individuals to rely on local officials to their detriment, and miss other opportunities provided in the law to seek redress in the expropriation process.

(f) Failure to Properly Title Expropriated Land. District and RLMUA officials noted that government entities rarely registered or clearly demarcated expropriated land after an expropriation is completed, which can result in financial losses to the government in cases of double expropriation or double payment by the expropriating entity, or in cases of loss of land that has already been expropriated. This problem has most often arisen in projects that involve partial expropriation of land for projects like roads, water pipelines, and electricity installations.[113] Even where the land title has been secured by the expropriating entity, the expropriating entity that is required to register that new acquired land does not always do so. For example, in case RAD 0082/2015/HC/KIG, Ntaganzwa was expropriated by Gasabo District, and later Rwemalika acquired that land from the District and held it for a long time after the expropriation of Ntaganzwa. However, the High Court ruled that there was no written evidence of the expropriation since Ntaganzwa still held the original title of the land in his name. Therefore, Gasabo District was ordered to pay the Ntaganzwa family compensation for the land, although according to Gasabo District, it had already paid the Ntaganzwa family for the expropriation, and Rwemalika had been the new owner of the land for some time.[114]

(g) Dedicated dispute resolution mechanisms not in place. The expropriation law does not explicitly provide for any dedicated mechanism through which disputes related to expropriation can be resolved, apart from the steps to be taken by individuals dissatisfied with the property valuation. In the absence of the formation of the Supervising Committees, this gap is even more acute. However, RTDA reported that it establishes a committee of 5 or more persons at the beginning of a proposed expropriation project to facilitate the resolution of any possible disputes that might arise during the process.[115] The committee is comprised of, at a minimum, 2 people representing the landowners (1 man and 1 woman), the Executive Secretary of the concerned Cell, the Executive Secretary of the concerned Sector, and the person in charge of land matters at the Sector level, in addition to others who might be appointed on a case-by-case basis. According to

[113] In partial expropriations, the original land titles are not taken by the expropriating institutions, but remain with the landholders. In this regard, if the expropriating institution does not proactively undertake the process of seeking the land title for the portion of the land that is expropriated, the expropriated person can either sell the expropriated land, mortgage the expropriated land, or agree to an expropriation of the same land by another agency. For example, WASAC officials reported in an interview that in Bugesera District, they had compensated some people for part of their land, but later this same land was expropriated again by the Ministry in charge of trade and industry for another project (Interview with WASAC officials on 22nd November 2017). Kicukiro District officials also suspect that cases exist of people who were paid twice or even three times during the expropriation for the Kanombe Airport because of lack of immediate demarcations after expropriation. Another issue that can come up in relation to partial expropriation where a land title of the expropriated person is not requested or withheld is the possibility of additional legal disputes over the land, e.g., when land has been mortgaged to a bank. According the law, the mortgagor is under an obligation *"*to notify the mortgagee of any change affecting the nature of the mortgage." (Article 13 of the Law N° 10/2009 of 14/05/2009 on Mortgages, as amended to date). However, this is not always done, especially in partial expropriations, which later creates problems in case the land owner defaults on his or her obligation to service the debt and the mortgagee wants to sell the mortgage.

[114] Case RADA 0082/15/HC/KIG, between Rwemarika, vs Ntaganzwa Family and Gasabo District, the case ruled on 22/4/2016.

[115] Interviews with RTDA official on 20th November 2017.

RTDA, these committees have been successful in resolving citizens' concerns at an early stage[116], saving unnecessary costs and other lost resources in the process.[117] According to RTDA, the following data describes the complaints received and resolved in the past 3 years under this process:

Year	No. of complaints received	No. of complaints resolved	No. of pending complaints
2015	69	69	0
2016	127	127	0
2017 (to date)	224	176	48

While dispute resolution is at the heart of administrative justice, and a procedure like this could benefit all expropriations (notwithstanding other appeals procedures that could be retained and clarified under the Law on Expropriation), this type of mechanism is not formalized in any way. Formalizing and universalizing this kind of grassroots dispute resolution mechanism could help to ensure that conflicts are resolved at an early stage and with no (or minimal) cost for concerned individuals, while offering a degree of transparency.

IV.5. Recommendations

Based on the foregoing challenges and problems, as well as gaps in the legal and regulatory framework related to expropriation, the following recommendations should be considered to ensure the government fulfills the intent of the expropriation law.

(a) Adopt and publish the Prime Minister's Order establishing committees in charge of supervision of expropriation projects. This Prime Minister's Order is provided for in the expropriation law and the role of these committees is essential with regard to community consultations and reviewing the relevance and legality of the expropriation projects. These committees ensure accountability of the Executive Committee (at the District or City of Kigali level). Without the establishment of the Supervising Committees, Executive Committees will continue to both initiate the expropriation projects and review their relevance and legality, which can create significant conflicts of interest.

(b) Ensure that an effective coordination mechanism is in place. A clear coordination mechanism should be put in place to ensure that the expropriation law is respected by the public institutions involved in expropriation, including the provision of communications to relevant landowners and citizens, decisions and procedural steps required by the law, the timely payment of fair compensation to the affected people, and the speedy and effective handling of the people's

[116] For example issues to do with 1) land boundaries in case of a dispute (this happens especially where land is not yet titled); 2) dissatisfaction with valuation (the affected person might claim for example that during valuation the number of trees mentioned in the valuation report are less than what he/she has. The committee together with local leaders verify this and liaise with the expropriating entity for rectification); 3) doing advocacy in case of delays for payment, etc.

[117] It should, however, be stressed that this mechanism of creating (informal) citizens expropriation support committees does not deprive the affected person of their right to use other appeal mechanisms that are provided for by the law in case citizen's issue(s) is not resolved.

complaints related to the project. The Ministry in charge of Lands and Forestry (MINILAF) should take the lead on this by establishing a department in charge of expropriation which should coordinate expropriation projects accordingly.

(c) Reinforce the requirement that investors negotiate directly with individuals in expropriations involved in executing master plans. The expropriation law provides for landowners to negotiate directly with investors in projects implementing master plans. In circumstances where landowners are unable to develop their land as required by the master plan, the district authorities should assist in organizing these people to help them increase the value of their land vis-à-vis private investors. To avoid or reduce continuous eviction of people, new approaches should be developed, such as making the original landowners shareholders in land development projects, or allowing them to farm their expropriated land under cooperative arrangements with the new owner or investor.

(d) Support poor and vulnerable citizens to carry out counter-valuations. Article 33 of the expropriation law, which requires any person contesting a valuation to carry out a counter-valuation at his or her own expense should be revised to provide some government assistance for those who are indigent according to an objective standard, or to have the cost of the counter-valuation reimbursed by the court or government upon a determination that such counter-valuation should prevail for the property in question.

(e) Enhance community participation in expropriation projects to ensure transparency at all stages. Along with the intended establishment of the Supervising Committees, which are supposed to conduct consultations with concerned community members, the population should also have access to meaningful involvement in expropriation decisions and processes. In turn legally required studies of the impact of the proposed projects on the welfare of the people and the environment should also be made public. The expropriation law could be amended to include this requirement for publication of these studies and other relevant information to ensure proper participation and accountability in expropriation projects. Alternatively, ministerial instructions can also be issued to require this kind of transparency. Individuals being expropriated should further receive a standard package of information explaining how they can seek redress for any complaints they have related to the expropriation, and in particular where they should file their complaints depending on the stage in the process at which the harm occurs. The expropriating entity together with the local authorities should understand these responsibilities and MINILAF should monitor the process.

(f) Strengthen the capacities of public and private sector officials on the expropriation law. Insofar as local leaders remain on the front lines, liaising with the public and making key decisions in expropriation projects, their capacity to know and use the expropriation law must be continually improved. In this regard, MINILAF should work closely with MINALOC and other relevant partners to develop a module on the expropriation law and related laws and regulations and organize trainings for public and private sector officials, with a focus on district and sub-district leaders, as they are the ones who have the most important roles to play in implementing expropriation projects. These trainings can be organized directly by the relevant ministries with the assistance of experts or they can be organized through the already existing training institutions like the Institute of Legal Practice and Development (ILPD), the Local Government Institute (LGI) or the Rwanda Management Institute (RMI).

(g) Incorporate greater flexibility into compensation payment methods. For small payments, the WASAC method of payment by *cheque* should be considered. Alternatively, the relevant compensation amount could be sent to the relevant Sector bank account and the Sector Executive Secretary could provide cash to expropriated persons (having them sign or fingerprint upon receipt). Flexible and innovative payment procedures should also be adopted where land is jointly owned, where landowners do not yet have the official titles to their land, or where people have been cultivating land under the practice of *kwatisha*.

(h) Revise timelines for appeal and create committees for dispute resolution to incentivize citizens and expropriating entities to openly address and resolve complaints. Insofar as the timelines provided for by the law for both expropriated persons and the expropriating entity are for the most part unrealistic (hindering opportunities for dispute resolution), an amendment to the Law on Expropriation should be entertained, whereby citizens are given additional time to submit a complaint to the expropriating institution (especially in cases where they were in good faith confused or misled about where to file). Formalizing such committees in charge of dispute resolution could fulfill many of the key aims of administrative justice.

(i) Establish and publish clear criteria for what constitutes the "public interest." Article 5 of the Expropriation Law gives MINILAF the power to determine if an activity is in the public interest. International standards recommend that, where possible, an *exhaustive* list of acts of public interest should be established as a matter of transparency and accountability. Accordingly, the current 'catch-all' provision of article 5 should be revised—either to incorporate an exhaustive list of activities deemed to be in the public interest, or to establish a clear and objective basis on which an activity can considered as such.

(j) The IRPV should be supported to strengthen the capacity and professionalism of valuers. The IRPV needs to be supported in strengthening the capacity and professionalism of valuers, including through the development of effective monitoring and enforcement systems on matters of performance and ethics. MINILAF,[118] should take the lead on such capacity building with the IRPV, which should be required to publish the annual list of land and property prices (which can serve as minimum prices for valuers in establishing market prices). Given the importance of this annual exercise of establishing market-based land and property prices (and the expensive nature of this activity, as reported by IRPV officials), the government should also consider providing some financial support to the Institute to enable it to honor its obligations. The IRPV should also adopt clear and internationally accepted standards to guide valuers in developing the most accurate prices for each plot of land (such as proximity to roads, water, services, etc.).

(k) Expand the role of RLMUA in expropriation projects, especially through its One-Stop and Centers. RLMUA can add value and expertise to the expropriation process with regard to developing and accessing plans and maps of the land where proposed expropriation projects are to

[118] The Ministry of Lands and Forestry is the line ministry for IRPV. Article 11 of the law N°17/2010 of 12/05/2010 establishing and organising the real property valuation profession in Rwanda requires the Council of IRPV to "to submit a quarterly activity report to the Minister in charge of lands." Further, article 14 of the same law requires the council of IRPV to submit its meeting resolutions to the minister in charge of land for his/her comments before becoming final.

be carried out. A more expansive and formalized role for RLMUA in the expropriation process should be incorporated into the law.

V. ANALYSIS OF THE LEGAL AND POLICY FRAMEWORK RELATING TO PRIVATE LABOUR REGULATION IN RWANDA

V.1. Introduction

The increased imbalances in labour supply and demand can exacerbate the unequal bargaining power between employers and employees. Rwanda is undergoing an important transformation from an agrarian to a knowledge-based economy[119], and the Vision 2020 development plan projects reducing the proportion of the population employed primarily in agriculture. The plan is to increase the role of private sector in creating jobs that will lead to an increased off-farm employment for the large number of young people entering the labour market. Due to these conditions, the Government of Rwanda is generous to private investment but it has also taken an active role in regulating private employment; it places duties and obligations on employers and grants rights to workers by ensuring that minimum terms and conditions of service are provided to them, including administrative complaints mechanisms to resolve disputes between employees and employers outside of courts. As the focus on skilled labour increases in Rwanda, so too does the reliance on administrative decision-making in the area of labour, including regarding hiring practices, termination practices, and conditions of employment.

The Constitution of Rwanda of 2003, as revised in 2015, grants all citizens the right to work and to have free choice in employment.[120] In addition, Rwanda is party to ILO Convention 122[121], the ratification of which requires Rwanda to put in place a favorable legal and institutional environment for the development of employment for all.[122] The Constitution also supports the principle of equal pay by stating that persons with the same competence and ability have the right to equal pay for equal work without discrimination.[123] The right to form trade unions or employers' professional associations to promote legitimate professional interests is also recognized.[124] This

[119] National Institute of Statistics Rwanda, *RPHC4 Thematic Report: Population Size, Structure and Distribution*, Kigali, Rwanda, viewed on 4 November 2017, from http://www.statistics.gov.rw/publication/rphc4-thematic-report-population-size-structure-and-distribution.

[120] See Article 30 of the Constitution of Rwanda. See also For instance, the International Covenant on Economic Social and Cultural rights stipulates in its article 6 that "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." In the same vein, the African Charter of Human and People's rights states in its article 15 that: "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work." The Government of Rwanda, as a member state of the International Labour Organization (ILO), has ratified and is implementing 28 ILO conventions that are contributing to the regulation of labour in Rwanda, including those relating to ; C14 Weekly rest (Industry) convention, C17 Workmen's compensation (accidents) convention, C98 Right to organize and collective bargaining convention, and C100 equal remuneration convention. *See* http://www.lmis.gov.rw/scripts/jobmrkt/doc/List_of_ratified_conventions_by_Rwanda.pdf.

[121] Employment policy convention (C 122).

[122] Rwandan National Employment Policy, 2007, page 15.

[123] See Article 30 of the Constitution.

[124] See Article 31 of the Constitution.

includes the right to collective bargaining and the right to strike, so long as these rights are exercised within the limits of the law.[125] The implementation of the principles of the Constitution and international instruments is carried out through national laws and regulations related to employment. The main implementing law is Law N°13/2009 of 27/05/2009 regulating labour in Rwanda. This law is supplemented by orders that clarify specific provisions in the country's labor law framework, including Prime Minister's Order N°125/03 of 25/10/2010 determining the mission, organization and functioning of the National Labour Council, Ministerial Order N°09 of 13/07/2010 determining the election of workers representatives and fulfillment of their duties, and Ministerial Order N°07 of 13/07/2010 determining the work of the labour inspector.[126]

In order to closely analyze this legal framework related to private labour in Rwanda, the following analysis is divided into 3 major parts. First, the legal framework of rights in the private labour sphere will be set forth, including some of the challenges in interpreting and implementing these rights. The second part will address the legal, procedural, and institutional framework governing appeals and other remedial mechanisms related to private labour disputes, including certain challenges encountered in operationalizing those mechanisms. The third part lists key conclusions and recommendations as to how labour legislation affecting private labour relations can be implemented more effectively, particularly in the context of decision-making in labour cases.

V.2. Regulation of private labour

The current labour law contains various provisions regulating the relationship between employer and employee in the private sector. The enforcement of the labour law and regulations is ensured by different organs such as Workers' Delegates, Labour Inspectors established at each District and at the National Level, and also courts. Workers' delegates are elected from among the staff of the institution for renewable three-year terms. They represent the staff of the institution before the management for issues of common and individual interest.[127] Labour inspectors have the responsibility of securing the enforcement of the legal provisions relating to conditions of work and the protection of workers, such as working hours, wages, hygiene and safety at work place, social security, the control of child labour, and all violence committed in the workplace. They carry out inspection of the institution, and also mediate disputes between employers and employees on

[125] See Article 32 and 33 of the Constitution.

[126] See also Law N°05/2015 of 30/03/2015 governing the organization of pension schemes, Ministerial Order N°03 of 13/07/2010 determining circumstantial leaves, Ministerial Order N°04 of 13/07/2010 determining essential services that should not stop and the terms and conditions of exercising the right to strike in these services, Ministerial Order N°05 of 13/07/2010 determining major contents and modalities for a written contract, Ministerial Order N°06 of 13/07/2010 determining the list of worst forms of the child labour, their nature, categories of institutions that are not allowed to employ them and their prevention mechanisms, Ministerial Order N°08 of 13/07/2010 determining the implementation modalities for professional training and its related leaves, Ministerial Order N°11 of 13/07/2010 determining the modalities and requirements for the registration of trade unions or employers' professional organizations, Ministerial Order N°15/19 of 13/06/2003 concerning weekly duration hours within public service as modified and complemented to date, Ministerial Order N°10 of 13/07/2010 determining the modalities of declaration of the enterprise, workers and nature of employer register, Ministerial Order N°03/Mifotra/11 of 07/03/2011 determining the nature and the form of the apprenticeship and internship contracts, and Presidential Order N°06/01 of 16/02/2011 determining official holidays.

[127] Ministerial order no 09 of 13/07/2010 determining modalities of electing workers representatives and fulfillment of their duties.

labour matters. Courts ensure the implementation of labour law and regulation in solving disputes between employers and employees submitted to them. The sections below discusses different laws governing the relationship between employee and employers in private sector.

V.2.1. Terms of an employment contract

The labour law and regulations do not provide specific guidance for the recruitment of employees in the private sector. Most of the terms of the contract[128] are a matter of negotiation between the employer and the employee, and both parties must respect the contract terms in good faith and in conformity with the law.[129] The nature of the job, the salary and other benefits must be indicated in the contract, and the employment contract may be oral or written, unless it exceeds 6 months or the work will be performed outside of Rwanda, in which case it must be written.[130] Salaries are also the subject of negotiation between employee and employer. However, to provide a framework for such negotiation, some established standards are envisioned by the law.

V.2.2. Absence of a Uniform Minimum Guaranteed Wage in Rwanda

Workers are entitled to the payment of a salary according to the law regulating labour.[131] In order to establish guidelines to fix salaries in the private sector, the Labour Law (via a Ministerial Order) provides for the establishment of a Minimum Guaranteed Wage (MGW) for different categories of work.[132] However, this Order has not yet been adopted. During the round-table discussion, participants reported that the absence of this Order provides a room for the violation of workers' rights with respect to wages and other benefits. The Ministry in charge of public service and labour reported that the establishment of the MGW has taken longer than expected because it is meant to be inclusive and applicable to both the formal and informal sectors, and should be based on a comprehensive wage survey carried out in all sectors, which has taken a long time to accomplish, as well as consultations with different stakeholders.[133]

The MGW framework also serves as the basis for calculating indemnities allocated to workers for issues such as accidents or injuries at work, and pensions. The Supreme Court of Rwanda has addressed the absence of the MGW by establishing a wage amount to be used when calculating different damages for cases related to labour. This amount was fixed at 2,500 Frw/day in *Nyetera Jean Baptiste vs CORAR*.[134] In 2016, while deciding on the case of *SORAS Ltd vs Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacque*[135], the basic amount was raised to 3,000 Frw/day to adjust for a cost of living increase. Such cases decided by the Supreme Court serve as guidance

[128] "All written contracts contain legal basis, complete identity of the employee and employer and the place of work, nature and duration of a contract, nature of the job, probation period, notice period, salary, allowances and deductions, date and place of payment, rate of overtime remuneration, labour collective conventions and internal rules and regulations." Article 2 of Ministerial Order N°05 of 13/07/2010 determining the major contents of a written contract.
[129] Article 5 of Ministerial Order no 05 of 13/07/2010 determining the major contents and modalities for a written contract.
[130] Ministerial Order no 05 of 13/07/2010; Article 17 of the law regulating labour in Rwanda.
[131] Article 75 of the law regulating labour in Rwanda.
[132] Article 76 of the Labour law.
[133] KII with MIFOTRA on 23/11/2017.
[134] Nyetera Jean Baptiste vs CORAR, Case no RCAA 0202/7/CS of 09/04/2009.
[135] SORAS Ltd vs Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques, Case no RCAA 0049/14/CS of 25/11/2016

to other courts on similar cases. However, the establishment of the MGW through the Ministerial Order remains as a gap for setting the terms of employment and settling disputes out of court.

V.2.3. Termination terms

The Labour Law requires the following procedures for termination of an employment contract:

- Adequate notice: The employer must provide the employee with adequate notice of termination of the contract: at least 15 days' notice where the employee has worked for the employer for less than one year, and at least 1 month where the employee has worked for the employer for more than one year.[136]
- Reasons for termination: an employment contract may only be terminated or suspended for lawful reasons, including gross negligence in the case of a fixed-term contract[137], good faith or legitimate motives for an at-will contract[138], or technical or economic reasons, provided that the employer follows the legally required hierarchy of employees when carrying out the lay-offs.[139]
- Compensation for termination: The termination of an employment contract for a worker who has completed a period of at least 12 consecutive months of work requires the employer to pay the dismissed employee dismissal benefits in accordance with the law.[140]

In practice, some employers do not respect the required procedures for termination of employment contracts, as reported by participants in the round-table discussions. For instance, they indicated that some employers terminate the employment contracts of less experienced workers without proper reasons, simply to minimize the amount of dismissal compensation they have to pay.[141] Participants proposed increasing the dismissal allowance to discourage such calculations. Participants in the round-table discussions also indicated that private sector employers dismissed employees for what they said were economic reasons, internal reorganizations, or restructuring, and then recruit new staff within a few days. Increasing dismissal compensation could prevent these abusive termination practices. There is also an issue of which acts constitute gross misconduct as a ground for lawful dismissal. According to article 32(3) of the Labour Law, gross misconduct is left to the discretion of the competent jurisdiction. Courts examined this issue in a number of cases such as *Niyitegeka Eric v. Banque Populaire du Rwanda Ltd case* [142]and *Jabo Martin v. A Voice for Rwanda* case,[143] but the Courts do not have consistent practice. In order to harmonize the practice of the Courts, the law should provide for an indicative list of acts considered as gross misconduct as well as the criteria for judging unlisted acts (e.g., nature and gravity of the act and intention of the employee).

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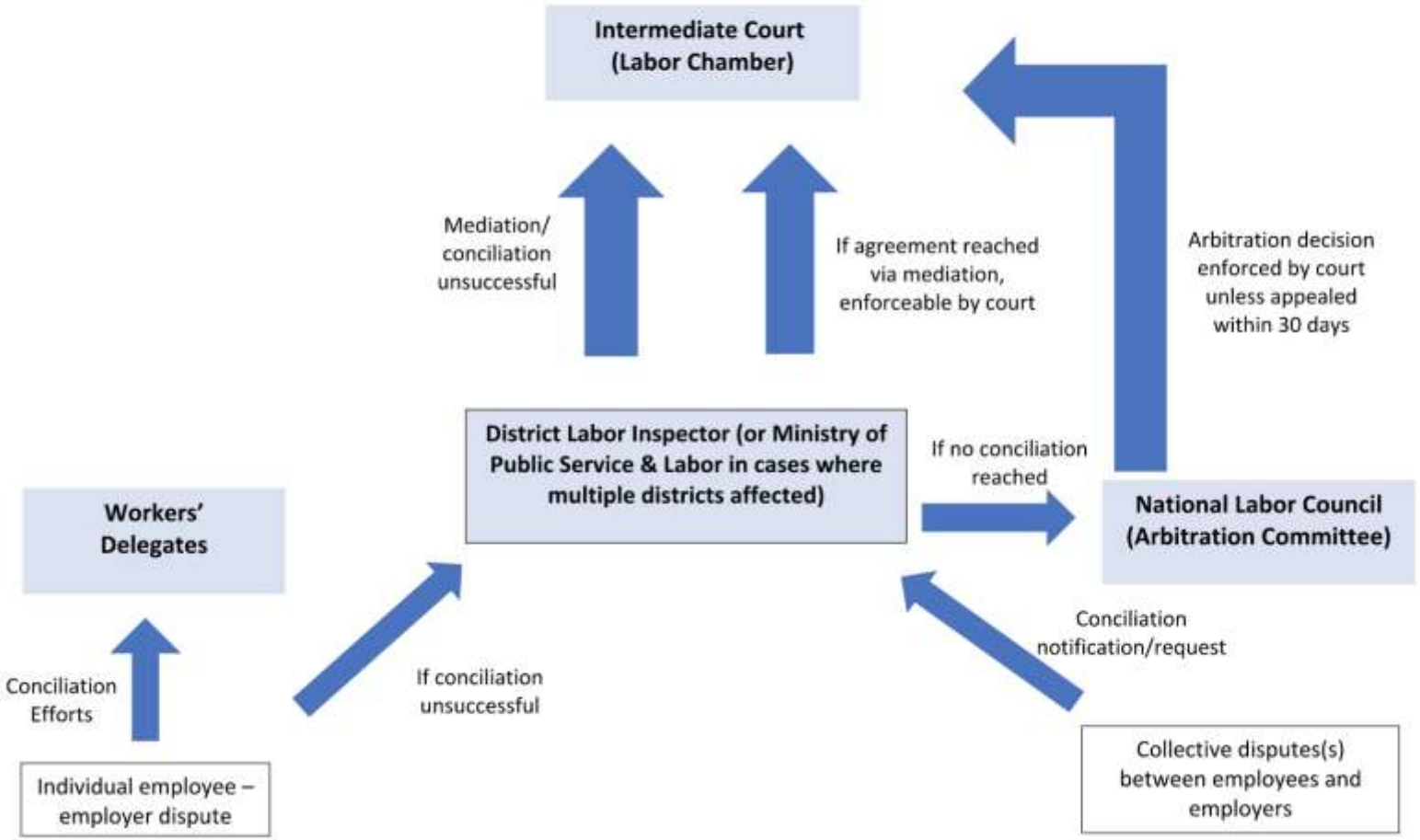
[136] Article 27 of the law regulating labour in Rwanda.
[137] Article 28 of the law regulating labour in Rwanda.
[138] Article 29 of the law regulating labour in Rwanda.
[139] Article 34 of the law regulating labour in Rwanda.
[140] Article 35 of the law regulating labour in Rwanda. The dismissal benefits are calculated by years of experience: one times the average monthly salary for a worker within less than 5 years of experience, two times the average monthly salary for a worker with between 5 and 10 years of experience, three times the average monthly salary for a worker with between 10 and 15 years of experience, four times the average monthly salary for a worker with between 15 and 20 years of experience, five times the average monthly salary for a worker with between 20 and 25 years of experience, and six times the average monthly salary for the worker with over than 25 years of experience.
[141] Article 35 of the law regulating labour in Rwanda; FGD held at MARASA hotel on 9th November 2017.
[142] *Niyitegeka Eric v. Banque Populaire du Rwanda Ltd*, Case No. RSOCA 0006/15/HC/NYA, 16 June 2015
[143] *Jabo Martin v. A Voice for Rwanda*, Case No RSOCA0025/15/HC/KIG, 09 September 2015.

Administrative Decision Pathways in Private Labor Disputes



V.3. Challenges in implementation of rights in the private labour sphere

V.3.1. Formation of unions

The right to form trade unions is recognized by the Constitution of Rwanda and the labour law. It is believed that trade unions play an important role as they assist their members with claims related to the terms of their employment.[144] The labour law provides a comprehensive framework to address the rights of workers and employers to freely associate and collectively bargain. Thus, Ministerial Order N°11 of 07/09/2010 determines the modalities and requirements for the registration of trade unions and employers' professional organizations. However, according to Article 5 of the Order, a 90-day time limit exists for approval of an application for registration of a trade union, which can delay the establishment of the organization. The same article gives the Minister in charge of labour the power to propose modifications to the statutes of a trade union under registration, which vests the Minister with broad discretion to impact the powers of trade unions. Trade unions also face challenges in practice where employers create barriers for employees and trade unions to interact.[145] At the same time, the labour law does not provide protection for trade union representatives within a company. The absence of these protections deter workers from becoming members of trade unions, despite legal and constitutional protections for the rights of workers to be in trade unions. While many employers must be further sensitized to the business value and legal obligation of supporting workers, some private institutions have started to allow workers to elect their own representatives[146].

V.3.2. Workers' rights within the informal sector

The informal sector is less regulated than the formal sector and is the subject of ongoing regulatory and policy debates in Rwanda. However, the government has determined that informal workers' rights should be protected to some extent, so the labour law guarantees informal sector workers a right to social security, to form and join trade unions, and to health and safety standards in the workplace.[147] Round-table participants highlighted the importance of clearly understanding which businesses are considered to be in the informal sector in order to clarify the rights of informal workers, because some businesses operate contrary to the definitions provided by the labour law in this regard. CESTRAR[148], a confederation of trade unions in Rwanda, indicated that it receives some complaints from informal workers with regard to the implementation of the labour law and that it has intervened in conciliation between employers and workers in the informal sector.[149]

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[144] Article 108 of the law regulating labour in Rwanda.
[145] Interview with CESTRAR on 23/11/2017.
[146] Interview with CESTRAR on 23/11/2017.
[147] Article 3 of the labour law.
[148] La Centrale des Syndicats des Travailleurs du Rwanda (CESTRAR) was created in 1985 with the objectives of improving the soci0-economic conditions of workers and creating solidarity among workers and involving them in trade unions activities. It has 16 National Trade Union Centre affiliations. (See Rwanda Labour Market Profile, 2016, page 1).
[149] Interview with CESTRAR on 23/11/2017.

V.3.3. Limitations of Labour Inspector's capacities and resources

Labour Inspectors are vested with a number of duties that apply to the day-to-day management of labour relations. Their duties include monitoring worker suspensions that involve salary seizure[150], monitoring occupational risks in the workplace[151], monitoring certain trade union communications[152], and monitoring collective conventions for labour unions.[153] The Labour Inspector's mandate is broad, and is required to report on any deviations from the law in the area of labour issues.[154] The Labour Inspector has broad rights of inspection to carry out its duties[155], however, due to human resource and capacity limitations, the Labour Inspector's ability to carry out all of its duties could be compromised. For instance, participants in the round table indicated that labour inspectors work mostly in their office and put more efforts in handling cases brought to them; thus they do not have time to perform other duties like inspection. As there is only one Labour Inspector by district, it is not easy for them to leave their offices for work in the field. Another issue highlighted by participants in the round table was that Labour Inspectors do not have the expertise and required materials to evaluate health and safety standards in the workplace.

V.4. Legal, Procedural, and Institutional Framework Governing Appeals and Remedial Channels in the Private Labour Sphere

There are a number of administrative entities in place to ensure that disputes relating to the application of these labour law provisions are handled. Laws and regulations have made the submission of a dispute to some bodies mandatory, and recourse to other bodies optional.

V.4.1. Remedial mechanisms/channels

Remedial channels include judicial and non-judicial channels. The non-judicial channels through which labour disputes can be resolved include workers' delegates, the Labour Inspector, The Ministry of Public Service and Labour (MIFOTRA)[156], and the National Labour Council. The applicable channel to be used depends on whether the dispute is individual or collective in nature.

V.4.1.1. Appeals and remedial channels for individual labour disputes

An individual labor dispute is a disagreement between a worker or several workers and the employer where the dispute is related to an alleged violation of a labor contract.[157] Two administrative organs may become involved in the settlement of individual labour disputes: workers' delegates and the Labour Inspector.

a) Workers' delegates

[150] Law regulating labour in Rwanda, Art. 86-87.
[151] Law regulating labour in Rwanda, Art. 94, Art. 100.
[152] Law regulating labour in Rwanda, Art. 112.
[153] Law regulating labour in Rwanda, Art. 130.
[154] Law regulating labour in Rwanda, Art. 157.
[155] Law regulating labour in Rwanda, Art. 158.
[156] Ministry of Public Service and Labour.
[157] Law regulating labour in Rwanda, Art. 2.

In an individual labour dispute between an employer and a worker, either party may request the intervention of workers' delegates[158], who are legally empowered to help settle the dispute amicably.[159] This is the first opportunity for a worker (or employer) to seek recourse through an administrative mechanism and prevent litigation in case of a labour dispute, and according to the law, this is a mandatory first step in resolving a private labour dispute.[160] If the parties fail to settle the dispute at this stage, the matter is referred to the Labour Inspector.

b) Labour Inspector

Where a dispute is not settled with the workers' delegates, the aggrieved party shall then refer the matter to the Labour Inspector for mediation and settlement.[161] One Labour Inspector is assigned to each District, as well as one at the National level, working in the Ministry of Public Service and Labour in the Labour Administration unit.[162] In the process of settling an individual labour dispute, a Labour Inspector may:

- Conduct a physical inspection of the workplace where the dispute has arisen;
- Question under oath any person likely to have relevant information for settlement of the dispute;
- Invite assistance from any person who may be able to contribute to the amicable settlement of the dispute.[163]

In practice, after receiving a labour dispute, the Labour Inspector invites the concerned parties for mediation. Parties can be assisted or represented, and each party is given an opportunity to be heard during the conciliation process. The Labour Inspector takes the minutes of the conciliation proceedings and each party signs or fingerprints and receives a copy of the minutes after the proceedings are concluded. Where conciliation efforts fail, the minutes of the proceedings may become part of any subsequent court claim. Agreements made during the conciliation process form an administrative decision and must be executed in good faith by both parties; and where one of the parties fails to execute the settlement, the case can be submitted to the court.

V.4.1.2. Appeals and remedial channels for collective labour disputes

A collective labour dispute is defined as a disagreement between one or several employers and some or all of their workers, where the disagreement arises in relation to labor conditions such as

[158] Workers' delegates are elected from workers of the institution. They are elected for a term of 3 years renewable. The number of workers' delegate depend on the number of staff. Workers' delegates have the responsibility to liaise with the employer to exchange views on business matters, adopt a report on previously raised issues and how they were treated and take due resolution about the pending ones. (Article 50 of the Ministerial order no 09 of 13/07/2010). Workers' delegates also settle amicably an individual labour dispute that arises within the institution (article 140 of the Labour law).

[159] Law regulating labour in Rwanda, Art. 140.

[160] Law regulating labour in Rwanda, Article 140, para.1.

[161] Law regulating labour in Rwanda, Art. 140, para.2. See also Article 3 Ministerial Order n°07 of 13/07/2010 determining the modalities of functioning of the labour inspector.

[162] See article 2 of the Ministerial order no 07 of 13/07/2010 but due to the volume of work within the districts of Kigali City, there are 2 labour inspectors for each district of Kigali City and 3labour inspectors at national level in Ministry of Public Service and Labour (Labour Administration unit).

[163] Article 141 of the law regulating labour in Rwanda.

contract terms or workplace conditions, which jeopardize the smooth running or the social peace of the institution.[164] A collective labour dispute may be handled through the Labour Inspector, the Minister in charge of Labour, or the National Labour Council.

a) Labour Inspector

The parties to a collective labour dispute must immediately notify the competent Labour Inspector of the dispute.[165] Within 7 days, the Labor Inspector is required to convene conciliation proceedings, and the parties can be represented or assisted at the hearing, and the Labour Inspectors rights of inspection and questioning interested parties and witnesses also apply in collective cases. The minutes of the conciliation proceedings are taken, including any agreements reached, and at the end of the proceedings, the minutes should be signed by the two parties and each party should also receive a copy. An original copy of the minutes detailing an agreed upon resolution and serving as an administrative act/decision must be submitted to the competent court within 15 days of any conciliation agreement. Conciliation done under these conditions becomes enforceable on the day the decision is submitted to the competent court.[166] While redress to courts is available in both individual and collective labour disputes after going through the proper administrative process with an Inspector, the decision made by the Labour Inspector in a collective dispute is filed with the court and becomes automatically enforceable, while in an individual dispute the party has the option to appeal to a court if the other party does not execute the settlement.

b) Minister in charge of Labour

Where a collective labour dispute arises in more than one District, it is brought before the Minister of Public Service and Labour rather than the District Labour Inspector. The Minister uses the same procedure as the Labour Inspector at the District level to resolve collective labour disputes.

c) National Labour Council

The National Labour Council (NLC) operates as an arbitration committee to resolve collective labour disputes referred to it by the Minister in charge of labour. In case of non-conciliation on a collective labour dispute, the Minutes prepared by Minister in charge of labour or by a Labour Inspector who heard the dispute are forwarded to the National Labour Council that will set up an Arbitration Committee to resolve the referred dispute.[167] The arbitration committee of the NLC is independent and makes decisions based on laws and relevant conventions.[168] In handling a collective labour dispute, the Arbitration Committee follows the procedure indicated by the Labour law for the settlement of collective labour disputes. Concerned parties are invited within 7 days for conciliation proceedings, and interested parties and witnesses are interviewed.[169] The Arbitration Committee takes minutes of the conciliation proceedings indicating any agreements reached by the parties.[170] The arbitration committee may also apply principles of equity to resolve

[164] Article 3 of the law regulating labour in Rwanda.
[165] Article 143 of the law regulating labour in Rwanda.
[166] Article 143 of the law regulating labour in Rwanda.
[167] Article 144 of the law regulating labour in Rwanda
[168] Article 147 of the law regulating labour in Rwanda.
[169] Article 146 of the law regulating labour in Rwanda
[170] See article 143(1).

disputes where the law does not provide clear guidance[171], allowing for fair and equitable resolution of specific cases where the law does not apply. A decision of the arbitration committee is enforceable once it is made available to the two parties by the Minister or Labour Inspector, and where no appeal is lodged before the labour chambers of the intermediate court by any of the parties within 30 days of the notification of the decision.[172]

V.4.3. Judicial recourse in labour matters

Labour disputes that are not resolved after going through the mandatory administrative procedures may be referred to court.[173] According to the laws related to the competence of courts, labour cases are submitted to a special chamber within the intermediate court.[174] The labour chamber has the competence to hear the following types of cases:

- Disputes between individuals or groups of persons arising from employment or apprenticeship contracts, between private employers and their employees; collective bargaining conditions or administrative decisions where no collective bargaining agreement is reached;
- Disputes arising from labour relations between private employers and employees;
- Disputes between social security organizations, or between employers and employees in implementing social security programs and protections;
- Suits for damages arising out of offences for breach of labour laws[175].

Courts are not the preferred mechanism for resolving labour disputes under the law, and exhaustion of all administrative remedies is required by the law before the court will be competent to hear the dispute.[176] In fact, the last paragraph of the Article 140 of the labour law permits but does not require a judge to dismiss a claim brought where administrative remedies have not been exhausted. Round-table participants noted that this provision creates confusion for those who want to submit a dispute to court. Even if the provisions of the Article 140 appear to give a choice to a judge about whether to admit a case where the claimant has not exhausted administrative channels, in practice judges require exhaustion of administrative channels before hearing a case.

For instance, in the case RSOC 00144/2017/TGI/NYGE between GT Bank and Sengiyumva Francois for unfair dismissal, the court declared Francois's case inadmissible as he submitted his claim to the labour inspector and then to the court without taking it before the workers' delegate, which did in fact exist at GT Bank. The court's decision rested on the fact that Article 140 of the labour law was not fully respected because the claimant had not brought the case to the workers' delegate first. Round-table participants noted that this decision sets a time-consuming precedent where Article 140 does not strictly require exhaustion of administrative remedies. In the same vein, Labour Inspectors indicated that parties come before them not expecting conciliation, but just to have a document to be presented in a court so that they can proceed to court where they believe

[171] Idem.
[172] Article 148 of the law regulating labour in Rwanda.
[173] Article 140 of the law regulating labour in Rwanda.
[174] Article 9 of Organic law n°51/2008 of 31/09/2008 determining the organization, functioning and jurisdiction of the Courts, as complemented and modified to date.
[175]Article 81of the organic law n°51/2008 of 09/09/2008 determining the organization, function and jurisdiction of courts as modified and complemented to date.
[176] Article 140 of the law regulating labour in Rwanda.

their claim will be more effective.[177] It is unclear whether the lack of trust in Labour Inspectors is due to their limited skills in resolving disputes or perception on their independence. The use of available administrative remedies is mutually beneficial to both parties in most cases, and the courts are an added backstop to protect individual rights if the concerned party is not satisfied with the decision taken during administrative proceedings. However, clarification about whether administrative remedies must be exhausted before taking a claim to court will be necessary to preserve judicial resources and provide clear direction to potential claimants in labour cases.

V.5. Challenges to dispute resolution in private labour matters

While dispute-handling procedure related to private labour are provided by the laws, a number of challenges that hinder their effectiveness exist.

V.5.1. Worker's delegate system ineffective

The labour law provides for workers' delegates in institutions to represent the first-level administrative process for labour disputes.[178] Ministerial Order N°09 of 13/07/2010 determines the modalities of electing workers' representatives, and designates their duties. In practice, the challenge of utilizing the workers' delegate system to resolve labour disputes administratively is that some institutions do not have workers' delegates. Moreover, workers' delegates can be conflated with other organs in the institution. For instance, in the case of Ruturwa Daniel and the former School of Finance and Banking (SFB), Daniel, formerly employed by SFB, submitted his dispute to the High Court requesting the payment of salaries and other indemnities which had not been paid to him, allegedly due to his unfair dismissal. SFB's lawyer asked the court to reject Ruturwa's claim because it had not been submitted to the workers' delegates before being submitted to the court, as required under the Labour Law. In the analysis, the court decided to accept Daniel's claim, because SFB had an internal disciplinary committee which was not the same as a worker's delegate. Because SFB had not established the correct complaints mechanism, Daniel did not have administrative recourse before the court to resolve the labour dispute. The confusion between the internal discipline committee and the workers' delegates also indicates the lack of knowledge of labour law, even among employers, which hinders the implementation.

Article 113 of the Labour Law states that "representatives of a trade union within a firm shall enjoy the same protection as granted to the workers' representatives." However, the law does not define what the protections granted to workers' delegates shall actually be. Article 1 of the ILO Convention on Workers' Representatives[179] requires workers' representatives to be afforded protections from wrongful dismissal or other adverse actions based on their function as a workers' delegates. Round-table participants indicated that the absence of these protections jeopardizes the effectiveness of the workers' delegates in private institutions in Rwanda. Furthermore, while workers' delegates are the first administrative organ to which an individual labour dispute can be submitted, the applicable time limits for the dispute settlement before the workers' delegate is not stated in the law. The omission of a timeline for the decision weakens the institution of the workers' delegates. Clear timelines for the filing and proceeding of cases should be set by the law, as well

[177] FGD held at MARASA hotel on 09th November 2017.
[178] Article 140 of the law regulating labour in Rwanda.
[179] C135 ILO Convention on workers' representatives.

as the standards/guidelines against which workers' delegates would use in promoting the conciliation of disputes.

V.5.2. Labour Inspectors' limitations

The responsibilities of labour inspectors include providing advice on compliance with the law, mediation between employers and workers, and inspection of companies, including other duties.[180] In practice, Labour Inspectors face a heavy workload due to the complexity of the cases they handle and the numerous duties they have. Although complete data from all labour inspectors was not available, the table below illustrates the estimated number of cases labour inspectors received for mediation in the past 3 years[181]:

Period	**2014-2015**	**2015-2016**	**2016-2017**
Cases received	2,937	2,554	3,335

This large number of cases causes delays in mediating disputes, and labour inspectors also do not have enough time to dedicate to their other duties, such as ongoing monitoring and inspection.

ILO Convention 81 on labour inspection provides for separate labour inspectors for industry and commerce. However, this distinction is not made in the Rwandan system. Labour Inspectors at the District level are in charge of inspecting all companies without distinction, and the Labour Law does not provide for any specialization among labor inspectors for specific institutions or sectors such as industry or commerce. This was also highlighted during the focus group discussions where participants, including labor inspectors themselves, stressed that some sectors or industries, depending on the nature of the work, need specialized inspectors to be able to meaningfully and effectively perform the inspection role of the labor inspector.[182] Participants in the round-table discussion recommended the full domestication of ILO Convention 81 related to labour inspection in order to address the need for specialization in labour inspections. This recommendation was reiterated during the interview with CESTRAR.

Furthermore, the Labour Law does not provide a time limit within which an individual labour dispute has to be resolved by the Labour Inspector. While some disputes may take longer than others to resolve, having some timelines in the law provides protection to all parties, as well as the Labour Inspectors. As the Labour Law sets time limits for the settlement of collective labour disputes, round-table participants proposed a review of the Labour Law and regulations in order to indicate the period within which an Inspector should settle a dispute. However, adding time limitations on the labour inspector's settlement of disputes should be accompanied by increased resources and capacity for the Labour Inspectors.

[180] Article 3 of the Ministerial Order determining the modalities of the functioning of the labour inspector.
[181] Where data from a Labour Inspector was missing for one year, the total number of cases was determined by calculating an average of the cases received by the Labour Inspector in other years. For the exact number of cases submitted to Labour Inspectors with the missing (averaged) data indicated, please see Annex A.
[182] FGD held at MARASA on 9th November 2017.

Another challenge Labour Inspectors face is that their power in dispute settlement is limited, because Labour Inspectors cannot propose administrative sanctions based on a violation of the law discovered during an investigation. Their settlement decisions also lack a clear mechanism for enforcement and will essentially rely on the voluntary compliance of the parties to be carried out. Labour Inspectors who participated in a round-table discussion also noted that the procedure for submitting a labour dispute to the Labour Inspector is often considered a mere legal formality before submitting the case to court, and the parties do not even expect or want to settle the claim with the Labour Inspector. This can be seen as a result of the limited power, effectiveness and slowness due to the work overload of Labour Inspectors, or perceived partiality. This affects the entire conciliation process because one or both of the parties may go into the mediation process without the desire to settle the claim outside of court. Labour Inspectors must have the power to impose enforceable sanctions in order to strengthen their legitimacy and make them more effective in monitoring the implementation of labour legislation.

V.5.4. Role of the Labour Chamber

A special chamber of each of the country's intermediate courts deals with labour matters and is organized to have a designated judge handle such cases. However, participants in the round-table discussion and CESTRAR in an interview noted that this judge may not have sufficient knowledge about all aspects of Labour Law, and trade unions, COTRAF Rwanda[183], and CESTRAR have noted an increase in violations of workers' rights, and an increase in labour disputes submitted to the courts.[184] Respondents indicated that due to the large number of cases handled by the special chamber in charge of labour, a special court to handle labour matters, staffed with specialized judges, should be created.[185] MIFOTRA officials do not agree with the recommendation to create a special labour court due to the fact that Rwanda does not have a large number of labour cases overall, and under the current system is able to resolve all submitted labour matters. A judge at Nyarugenge Intermediate Court agreed with MIFOTRA's view, affirming that the special chamber at the intermediate court level is able to handle all labour matters.[186] While the issue of capacity of judges is to some extent a matter of opinion, MIFOTRA and the Intermediate Court at Nyarugenge did propose reinforcing the capacity of this chamber through regular training to the judges in the intermediate and other courts that have responsibility for handling labour matters.

V.5.4. Lack of awareness of workers' rights and procedure to follow

Labour is regulated by series of specific laws and regulations, and some workers are not aware of the administrative organs that exist to assist them in resolving their labour disputes. For example, round-table participants indicated workers may not even know that they have the right to elect workers' delegates within their institutions[187]. Due to their lack of knowledge of their rights,

[183] Congress du Travail et de la Fraternite des Travailleurs du Rwanda.
[184] The Intermediate Chamber of the Court does receive numerous labour claims – at least double of the rest of the administrative complaints it receives annually. See Annex D for data on administrative and labour cases received.
[185] Ihohoterwa%20rikorerwa%20abakozi%20ritumye%20hasabwa%20Urukiko%20rw'umurimo%20-%20IGIHE.com.html and http://igihe.com/amakuru/u-rwanda/article/mifotra-ntivuga-rumwe-na-cestrar-ku-ishyirwaho-ry-urukiko-rwihariye-rw-umurimo

[186] KII with judges at Nyarugenge Intermediate Court on 28/11/2017.
[187] FGD held at MARASA hotel on 09th November 2017.

workers seek help from other institutions, such as trade unions, which do not have a statutory mandate to resolve workers' disputes. CESTRAR reported that it often receives complaints from workers seeking advice on procedures to be followed in resolving labour disputes. Based on the nature of the complaint received, CESTRAR sometimes engages in conciliation between the employee and the employer, or in other cases it might direct the employee to the competent authority to resolve the dispute. CESTRAR indicated that through provision of advice and orientation, they educate workers about their rights and the procedures to be followed while seeking redress for their issues. According to the available statistics, CESTRAR received 228 cases/complaints from January 2015 to October 2017 (54 cases in 2015, 87 cases in 2016, and 87 cases in 2017). CESTRAR believes that the high number of cases they receive suggests that employers often do not respect labour regulations; this may warrant further consideration of damages for such disregard.

V.6. Recommendations

Based on the challenges to implementing the legal framework in regards to private labour, the following recommendations should be considered:

1. ***Finalize the enactment of the Ministerial Order related to the Minimum Guaranteed Wage***

In order to fix standards to be followed by different institutions in different sectors to determine salaries of workers and different benefits to be allocated to workers, the Ministerial Order setting the Minimum Guaranteed Wage must be adopted, as required by the law. Courts have been filling in a minimum wage for the calculation of damages, but the intent of the law is to have the Minimum Guaranteed Wage for other purposes as well, to be set by the Minister, not by the Courts.

2. ***Ensure the full implementation of ILO Convention 135 in order to provide protection to workers' delegates.***

Although the Labour Law requires workers' delegates to be afforded protections, the nature of protection is not defined by the law. The ILO Convention requires workers' delegates to receive protection from wrongful dismissal or other adverse actions based on their function as workers' delegates. Such protections could also apply to trade unions representatives.

3. ***Ensure the full implementation of ILO Convention 81 in order to ensure specialization within the labour inspection.***

Labour Inspectors are meant to inspect employment sites in the course of resolving disputes and in ensuring general compliance with labour laws. However, Labour Inspectors in Rwanda are not specialized in some sectors of their inspection. The ILO Convention designates specialization for Labour Inspectors based on industry or sector for greater effectiveness and efficient use of resources.

4. ***Ensure the full implementation of the Ministerial Order related to the election of workers' delegates to ensure all private institutions elect workers' delegates.***

The role of workers' delegates in the disputes resolution process is essential, and courts have even dismissed cases where the parties did not utilize workers' delegates first. However, many institutions have not provided for the election of workers' delegates, which leads to delaying workers in accessing their rights, and can also lead to the waste of national resources where cases that could have been resolved by workers' delegates end up in courts.

5. ***Amend the labour law in order to clarify the requirement of the exhaustion of administrative remedies before bringing a labour claim before a court.***

While the Labour Law does provide a judge with grounds to dismiss a case if administrative remedies have not been exhausted in a labour case, the judge can still do it. This makes exhaustion of administrative remedies an optional requirement, which may affect consistency and uniformity of the procedure, thus harming the effectiveness and authority of the administrative structures created to address private labour disputes.

6. ***Amend the labour law to increase dismissal compensation.***

Compensation for dismissal of a worker employed for over one year is based on the years of experience the worker has. Dismissal compensation is also relatively low. This can incentivize wrongful termination, especially of workers with less experience.

7. ***Amend the labour law in order to specify procedure and time limit within which individual labour disputes have to be settled by workers' delegates and labour inspectors.***

In order to preserve the rights of workers who do submit their claims first to workers' delegates or labour inspectors, some timelines for settlement of the dispute at these levels should be adopted by law. While the timelines must allow for proper consideration of complex cases, a 7 day time limit with the option to extend could be a good starting point.

8. ***Amend the Labour Law and Ministerial Order on the functioning of Labour Inspectors in order to increase the powers of Labour Inspectors.***

Labour Inspectors represent a key stage in dispute resolution and labour regulation in general, but their authority is limited. Vesting Labour Inspectors with the power to propose sanctions where non-respect of labour laws and regulations have been noticed could serve to increase the Labour Inspectors' relevance and authority. Other capacity building initiatives such as resource increases, and skills could also be vested in the Labour Inspectors.

9. ***Provide increased capacity building efforts for judges handling labour matters on labour law and relevant labour issues.***

As judges continue to manage complex labour cases and as the legal framework is refined and updated, they should be provided with capacity-building to ensure they apply the laws equally, fairly and evenly in light of changing conditions of work and regulatory issues.

10. Raise worker awareness of labour law and regulation.

Workers themselves can be their own best advocates for their rights. Trainings and workshops organized by different partners, public institutions, and private institutions should be supported in order to provide workers with relevant information about their rights.

In conclusion, the current labour legislation provides guidance to be followed in establishing employment contracts in the private sphere. It indicates rights and obligations of both the employer and the employee. Procedures to be followed and organs that intervene when a labour dispute arises are established. However, some areas of regulation need to be improved in order to ensure the effectiveness of provided mechanisms for solving problems. In this regard, the labour law and some Ministerial Orders will have to be amended in order to correct issues raised, and the international conventions ratified by Rwanda should be fully incorporated into national laws and regulations in order to ensure that Government is executing its obligations from these conventions. All partners, public institutions, and private institutions, should work together in ensuring the implementation of laws and regulation related to labour and promoting the respect of workers' rights.

VI. ANALYSIS OF LEGAL AND POLICY FRAMEWORK GOVERNING PUBLIC EMPLOYMENT IN RWANDA

VI.1. Introduction

The Constitution guarantees all Rwandans a right to participate in their government, including through entering into the public service. Article 27 states that "all Rwandans have the right to equal access to public service in accordance with their competence and abilities."[188] This provision of the Constitution is implemented by different laws that regulate procedures to access public service. Public servants, specifically, are governed by Law n°86/2013 of 11/09/2013 establishing the general statutes for public service. This law applies to all public servants and states guidelines for the management of public servants. Other laws that apply to certain categories of public servants include Law n˚10/2013 governing the statutes of judges and judicial personnel, Law n˚44bis/2011 of 26/11/2011 governing the statutes of prosecutors and other staff of the National Public Prosecution Authority, Presidential Order n˚04/01 of 03/05/2012 establishing the special statutes governing prison guards, Presidential Order n˚24/01 of 24/11/2016 establishing the special statutes governing teachers in nursery, primary and secondary education, and Presidential Order n˚30/01 of 09/07/2012 on specific statutes for police officers. In addition to these laws and regulations relating to specific professions in the public service, some other laws and regulations also address the management of public servants and other work-related issues.[189]

To analyze the legal framework governing public employment in Rwanda, this analysis is divided into 3 major parts. Firstly, it describes the legal, procedural, and institutional framework governing administrative decision-making and highlights some of the challenges to full implementation of the law in regards to recruitment, management, and discipline of public servants. The second part describes the legal, procedural, and institutional framework governing appeals and complaints mechanisms that deal with the disputes that may arise, and addresses implementation issues faced at these levels as well. The third part contains recommendations for ensuring the full implementation of legislation related to public employment in Rwanda.

VI.2. Legal, Procedural, and Institutional Framework Governing Administrative Decision-making

Every public institution has an authority entrusted with the competence to make decisions regarding the management of public servants.[190] This authority has the obligation to respect laws and procedures when making a decision. If any decision made by the authority is not in accordance with applicable laws, the decision may be appealed before the competent authority or before the court according the law.

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[188] Article 27 of the constitution of Rwanda of 2003 revised in 2015.

[189] *See, e.g,* Presidential Order no°65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants; law no°18 of 28/04/2017 governing result based-performance management in branches of government; Prime Minister's order no°121/03 of 08/09/2010 establishing the procedure of performance appraisal and promotion of public servants; Presidential order no°144/01 of 13/04/2017 determining modalities for recruitment, appointment and nomination of public servants.

[190] Article 4 of Law n˚86/2013.

VI.2.1. Recruitment of public servants

VI.2.1.1. Procedures for public servants governed by the general statute

All Rwandans have equal rights to access public service according to their capacities. The modalities for the recruitment and nomination of public servants are regulated by a Presidential Order. A public servant is recruited if the organizational structure of the concerned institution was approved by the competent authority, the job position to be occupied is vacant, the vacant job position is budgeted for, and the vacant job position has a job description that was approved by the competent authority.[191] The recruitment is done through an open and competitive process. A recruiting institution establishes an internal recruitment committee composed of the Director of human resources, a human resources officer, and another employee nominated by the management of the institution.[192] This committee is in charge of overseeing the recruitment process, conducted as follows:

- Announcement of a vacant post: a recruiting institution has to advertise the vacant post. Currently this advertisement is done using the e-recruitment system. The announcement should indicate the job title, job level, and job number, direct supervisor, job description, closing date and information about the method of posting the position.[193] A minimum of at least 5 working days between the date of the announcement and the application deadline is required. However, if the vacant post requires foreign expertise or if a special recruitment procedure is needed, the concerned institution may use other electronic means different from the e-recruitment system. In the context of maximizing awareness of the vacant job position, the recruiting institution should request the authorization of the Public Service Commission to determine other appropriate method of recruitment.
- Application: Any job applicant for the advertised job position must fill and submit an electronic job application form using online e- recruitment process.[194] The applicant should include a copy of the ID card or its equivalent and a copy of his or her degree along with the application.
- Shortlisting: Within 5 working days of receiving applications, the recruiting institution should publish a list of candidates selected to sit for an exam, and provide the reasons for not selecting other candidates. The list must be published using the e-recruitment system, and candidates should be notified through e-mails and telephone short messaging system. The shortlisting stage is to be conducted by at least 3 persons designated by the competent authority of the recruiting institution.[195]
- Examination process: After shortlisting, the recruiting institution shall administer written and oral exams for shortlisted candidates. The institution has to inform candidates about the date and venue of the exam. The recruiting institution is designated to prepare the exam, but it may also seek the assistance of another institution of hire a consultant to prepare,

[191] Article 4 of Presidential Order no˚144/01 of 13/04/2017.
[192] Article 5 of the Presidential Order no˚144/01 of 13/04/2017.
[193] Article 6 of the Presidential Order no˚144/01 of 13/04/2017.
[194] Article 8 of the Presidential Order no˚144/01 of 13/04/2017.
[195] *See* Articles 9 and 10 of the Presidential Order no˚144/01 of 13/04/2017.

conduct and mark the exams.[196] The results of the written exams are to be published within 10 working days from the date on which exams are finalised. An oral exam should be conducted within 3 working days of the day following the date of publication of the results of the written exam.[197] The results of the oral exam are published in a period not exceeding 1 working day from the date on which the exam was finalised.

- Appointment of a public servant: A successful candidate has to score at least 70% in all the exams.[198] The appointment of a successful candidate shall be done within thirty (30) working days from the date of the publication of final results.[199] In decentralized administrative entities, the Executive Secretary submits to the Executive Committee[200] the recruitment report for approval and appointment of staff. However, the Executive Secretary and Internal Auditor of decentralized entities are appointed by the relevant Council.[201]

VI.2.1.2. Public servant governed by special statutes

For public servants governed by special statutes, these special statutes provide for the organs entrusted with the power of making decisions related to the management of the staff. The High Council of the Judiciary, the High Council of the National Public Prosecution Authority (NPPA) and the High Council of the Rwanda Corrections Service (RCS) play an important role in the management of the career of judges, prosecutors, and prison guards, respectively. The recruitment of these staff follow similar procedures for the advertisement of positions, assessment of candidates, and appointment of successful candidates as ordinary public servants.

VI.2.2. Management and appraisal of public servants

In 2015, the Government of Rwanda adopted the system of Result-Based Performance Management (RBM) for Rwanda Public Service. The objective of this policy is to promote greater efficiency and effectiveness in public service, enabling the Government to meet timely policy commitments and targets in its National Development strategy. Thus, all public institutions across all service sectors (Executive, Judiciary, and Legislature) have to implement result-based performance management within their operations.[202]

Every year, each institution has to prepare and sign its institutional performance contract, and individual performance contracts with its staff.[203] Both contracts have to be aligned with the

[196] Article 11 of Presidential Order no˚144/01 of 13/04/2017. Based on this article, Districts use the Rwanda Association of Local Government Authorities (RALGA) to recruit their staff.
[197] Article 15 of Presidential Order no˚144/01 of 13/04/2017.
[198] Article 19 of Presidential Order no˚144/01 of 13/04/2017.
[199] Article 21 of Presidential Order no˚144/01 of 13/04/2017.
[200] The Executive Committee is one of the three management organs of a district. The executive committee is in charge of supervising the implementation of daily activities carried out at the District level. It has the power to appoint, suspend and permanently dismiss staff, apart from the Executive Secretary and the auditor. The Council is also one of the management organs of a District. It is composed of elected members. It has the power to appoint and dismiss the executive Secretary and Internal auditor at District level. It also has the power to receive complaints of the staff related to their appraisal.
[201] Article 25 of Presidential Order no˚144/01 of 13/04/2017.
[202]MIFOTRA, Result-based Performance Management Policy (2015), page 3.
[203] Both public servants governed by the general statute for public service and those governed by special statutes sign performance contracts and are evaluated annually against these contracts.

relevant action plan and the annual budget of the institution. Conclusion and evaluation of individual performance contract is done in public in front of a panel of supervisors at the relevant level.[204] The signing of performance contract shall be done at the beginning of each fiscal year, no later than July 31 and it is done in writing.[205] For High Institutions, Ministries, public institutions, and Commissions, the signing and evaluation of performance contract is done by the Secretary General or Permanent Secretary, Executive Secretary, Director General or Director, or other similar position, and also by the support staff in the institution. At the Province and District level, performance contracts are signed by the Executive Secretary of the Province and District and also by the support staff. At the Sector level, performance contracts are signed by all staff.[206]

Performance contracts are evaluated every year, and each State organ monitors the implementation of individual performance contracts for its staff. A two-level panel[207] is entrusted with analysis and evaluation of performance contracts of staff in each institution. For positions that lack a panel quorum at both levels, their performance contracts shall be analysed, evaluated and signed by a panel or supervisor at one level.[208] The performance contract of every public servant shall be signed and evaluated by the direct hierarchical supervisor at first level. At second level the performance contract shall be signed and evaluated by a supervisor at the second hierarchical level.[209] After assessing the contract performance of each employee, the panel shares the results with the employee and invites the employee to provide possible explanations for any matters with which he or she disagrees or wants to explain further. The results of the analysis and evaluation are recorded and signed by the public servant and his or her supervisor.[210] The general report of the performance appraisal for public servants is to be signed by the head of the institution and sent to the Minister in charge of public service. In local government institutions, the report is forwarded to the concerned Governor of the Province, with a copy to both the Minister in charge of local government and the Minister in charge of public service.[211]

[204] Article 4 of Prime Minister's no˚121/03 of 08/09/2010.
[205] Article 13 of Law no˚18/2017 of 28/04/2017 governing Result-Based Performance Management in Branches of the Government.
[206] Article 7 of Prime Minister's Order no˚121/03 of 08/09/2010 establishing the procedure of performance appraisal and promotion of public servants.
[207] A panel is composed of supervisors of the public servant to be appraised (Article 6 of the Prime Minister's Order). The functions of the evaluating panel or supervisor at the first level are to analyze, harmonize, and determine the results to be achieved by public servants in light of the objectives of the administrative unit; ensure monitoring and respect for different stages for analysis, signature, and evaluation of staff performance contracts, and evaluate the performance contracts of personnel under their responsibility, and to recognize the efforts of the staff and help to correct any shortcomings (Article 9 of the Prime Minister's Order). The panel at the second level is in charge of assessing the performance contract sent by the first-level panel, to confirm or refute the assessment sent by the first-level panel both for numerical score and substantive comments, and to comment in sufficient detail about the reason for any reversal of the numerical score or assessment done at the first level (Article 10 of the Prime Minister's Order). The panel analyses and compares the results expected and results achieved as well as management skills observed, and compares the results achieved to those expected. For results not achieved, the panel identifies the causes and gives the relevant score. On the basis of the evaluation, the supervisor meets with the public servant to communicate the results of the evaluation, discussing the public servant's achievements and failures, and proposing measures for improvements for the following year (Article 22 of the Prime Minister's Order).
[208] Article 6 of Prime Minister's Order no˚121/03 of 08/09/2010.
[209] Article 7 of Prime Minister's Order no˚121/03 of 08/09/2010.
[210] Article 6 of Prime Minister's Order no˚121/03 of 08/09/2010.
[211] Article 28 of Prime Minister's Order no˚121/03 of 08/09/2010.

VI.2.3. Discipline of public servants

VI.2.3.1. Public servants governed by the general statute

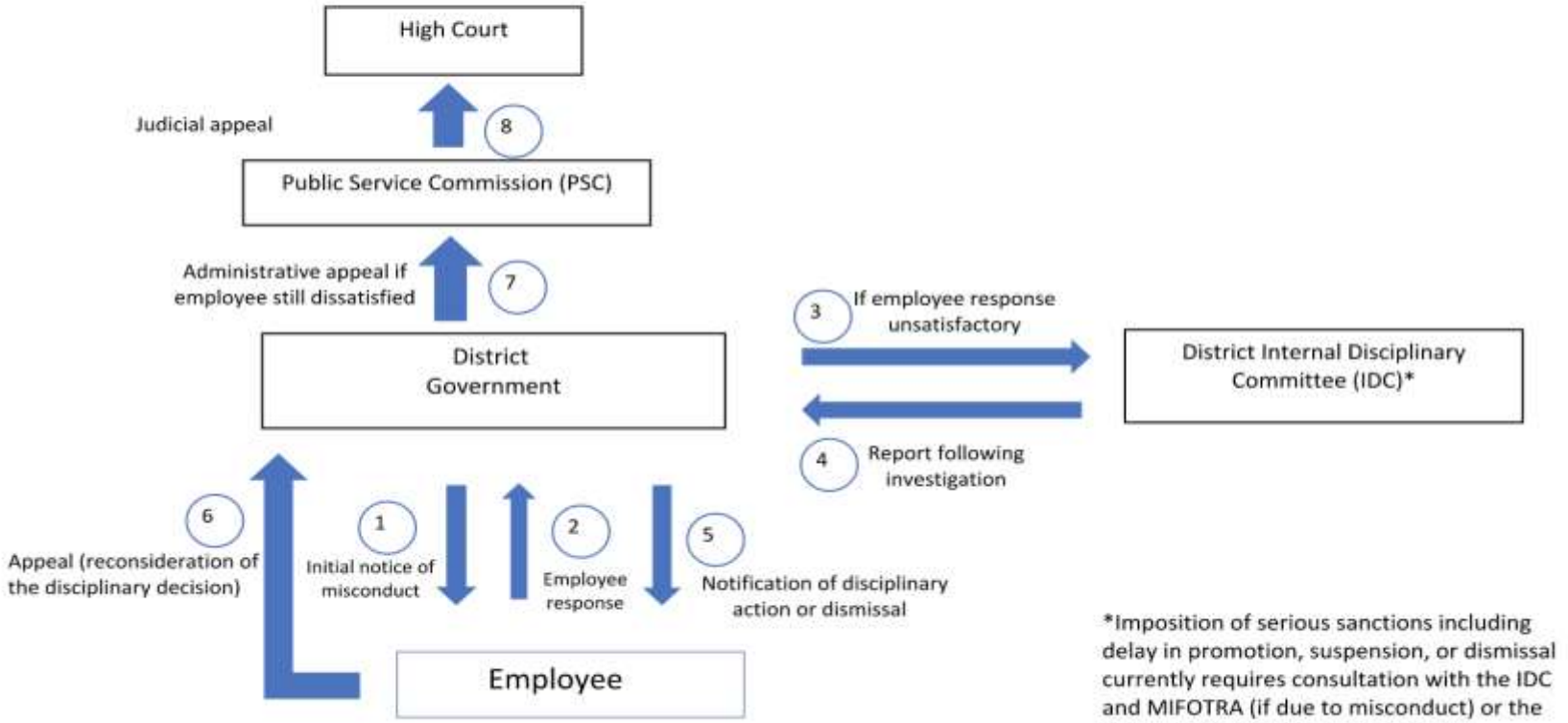
During the exercise of their duties, public servants are expected of a certain code of conduct and discipline. The disciplinary proceedings start from the notice of the misconduct committed by the public servant, which must be provided in written form to the public servant. The public servant then has not more than 5 working days from the date of notification to respond to the allegations. After receiving the public servant's response, the competent authority has 10 working days to inform the public servant if his or her explanations were satisfactory to resolve the disciplinary issue without penalty. If that period expires without a written response to the public servant, then the employee's explanations are considered as satisfactory.[212]

If the competent authority is not satisfied by the employee's explanations, the matter is sent to the internal disciplinary committee of the institution. Each public institution shall establish an internal disciplinary committee comprised of at least 5 members responsible for conducting investigations of employee misconduct, and suggesting any sanctions to be imposed.[213] After receiving the matter from the competent authority, the internal disciplinary committee conducts its investigations and provides a report on the matter within 15 working days from the date it received the request to start investigations. The competent authority must then notify the public servant in writing of any decision made to discipline him or her within 5 working days from the date it receives the report from the internal disciplinary committee or the Minister in charge of public service.[214]

Any sanctions to be imposed shall be notified through a letter issued by the competent authority, clarifying in detail the misconduct committed and the consequences of the misconduct. The letter shall be delivered to the public servant with confirmation of receipt.[215] Sanctions of the first category (warning and reprimand) shall be imposed by the head of the institution after consultation with the internal disciplinary committee. Sanctions of the second category (delay in promotion, suspension for a period of up to 3 months without pay, and dismissal) shall be imposed by the appointing authority after consultation with the internal disciplinary committee and the Minister in charge of public service.[216] Where dismissal is the recommended sanction, the competent authority shall make the decision to dismiss the public servant after consulting the Public Service Commission. In local government, staff appointed by the Executive Committee are dismissed by the Executive Committee and those appointed by the Council are dismissed by the Council,[217] after consulting the Public Service Commission.[218] Administrative and judicial appeals mechanisms are available to public servants who are not satisfied with disciplinary actions taken against them.

[212] Article 21 of Presidential Order no˚65/01 of 04/03/2014.
[213] Article 19 of Presidential Order no˚65/01 of 04/03/2014 determining the modalities of imposing disciplinary sanctions to public servants.
[214] Article 22 of Presidential Order no˚65/01 of 04/03/2014.
[215] Article 24 of Presidential Order no˚65/01 of 04/03/2014.
[216] Article 17 of Presidential Order no˚65/01 of 04/03/2014.
[217] Article 56 of Law no˚87/2013 of 11/09/2013 determining the organization and functioning of decentralized administrative entities.
[218] Article 30 of Prime Minister's Order no˚121/03 of 08/09/2010.

Administrative Decision Pathways in Public Employee 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)

VI.2.3.2. Public servants governed by special statutes

Special statutes governing some categories of public servants provide for the procedures to be followed to impose disciplinary sanctions. The organs in charge of management of the staff such as the High Council of the Judiciary, the High Council of the NPPA, and the High Council of the RCS have the power to impose disciplinary sanctions on the public servants under their authority. The relevant laws also provide for administrative and judicial appeals procedures where an employee is not satisfied with a disciplinary decision made against him or her.

VI.3. Challenges in implementation of administrative decision making in Public Labour

VI.3.1. Implementation challenges for recruitment procedures

The e-recruitment system is used for publication of job postings, the submission of applications to available postings, and for appeals related to the recruitment process. While this system can provide better access to public service postings for all citizens of Rwanda, reduce transportation coast for applicants as well as more efficient handling of complaints regarding the recruitment process, some challenges to the full and fair implementation of the e-recruitment system remain:

- Issue related to internet connectivity: The use of e-recruitment is challenging for some individuals because it requires internet connectivity. Round-table participants indicated that candidates living outside of Kigali, especially in rural areas, face challenges in accessing the system.[219] The EICV 4 report on access to internet indicates that in 2013-2014, around 9% of households had access to internet, while 33.5% of households in urban areas had internet access.[220] These statistics show the disparity of access to internet between urban and rural dwellers, in addition to the overall low prevalence of internet access in general.
- Issue of computer access: To be able to use the e-recruitment system, a candidate must also have access to a computer to fill out the application and upload supporting documents. According to the EICV 4, providing data on access to ICT in Rwandan households, household ownership of a computer was 2.5% in 2013-2014. Households not owning an ICT device may still use public ICT services, although only 2% of households use public ICT devices and internet in Rwanda. The highest usage rate is found in Kigali (7%) compared to other provinces.[221] Not only do many Rwandans lack access to computers, but they also lack computer literacy. Some candidates do not know how to upload supporting documents to the system, and others do not know how to submit their applications, or even search the system for open job postings. At the national level, only 7% of the population

[219] FGD held at MARASA hotel on 9th November 2017.
[220] National Institute of Statistics of Rwanda, Rwanda Integrated Household Living Conditions Survey (EICV) 2013-2014, Thematic Report-Utilities and amenities, *accessible at* http://www.statistics.gov.rw/publication/eicv-4-thematic-report-utilities-and-amenities.
[221] National Institute of Statistics of Rwanda, Rwanda Integrated Household Living Conditions Survey (EICV) 2013-2014, Thematic Report-Utilities and amenities; accessible on http://www.statistics.gov.rw/publication/eicv-4-thematic-report-utilities-and-amenities.

feels confident about using a computer. In urban areas, this number is up to 23%, compared to 4% in rural areas, as of the EICV 4 in 2013/14.[222]

- Limited time to submit application: The Presidential Order related to recruitment states that applications must be accepted for at least 5 working days from the date of the announcement of a job position. Due to requirements of gathering supporting documentation for the application, along with the challenges many applicants will face in accessing a reliable internet connection and a computer, this period is quite short and should be extended to ensure full and fair access to the recruitment process.
- Contradiction between the system and the provisions of the Presidential Order: According to the provisions of the Presidential Order related to the recruitment of public servants, days are counted as working days. For example, an appeal based on recruitment has to be lodged within 3 working days and the institution to which the appeal is made has 3 working days to provide a response.[223] The e-recruitment system counts by calendar days rather than working days, which impacts candidates who want to appeal, as well as the recruiting institutions which must respond and act according to the timelines set out by the Order. This issue was also highlighted by Kicukiro District officials, who indicated that some staff work during the nights and weekends in order to try to meet these timelines and avoid being disciplined for violating the required timelines.[224]
- Limited space to upload application documents: Article 8 of the Presidential Order related to the recruitment of public servants states that a job applicant must scan and send a photo of his or her original national identity card and a copy of the applicant's degree to the recruiting institution using the e-recruitment system. In practice, some institutions may ask for other supporting documents such as a work certificate, or candidates may want to send other documents that are useful to support their application. However, Kicukiro District officials highlighted the lack of space to upload large files such as photographs as supporting documents to the application, causing some candidates to being unable to complete their applications.[225]
- The slow speed of the system: The e-recruitment system is reported to be slow, causing candidates difficulties in accessing information about the available posts announced through the system, and completing applications on time, especially given the short time period for submitting applications. Recruiting institutions using the system also recognized that the system is slow and does not allow them to work quickly on their tasks through the system as well.[226] The PSC has recognized that the e-recruitment system has some faults, including being slow, and not being user friendly, and reports that it has informed the Ministry in charge of public service, which manages this system, in order to correct these flaws and increase access to public employment.[227]
- Capacity of internal recruitment committee: Article 5 of the Presidential Order states that each recruiting institution has to establish an internal recruitment committee composed of 3 members. Shortlisting of candidates has to be done within 5 working days from the

[222] National Institute of Statistics of Rwanda, Rwanda Integrated Household Living Conditions Survey (EICV) 2013-2014, Thematic Report-Utilities and amenities; accessible on http://www.statistics.gov.rw/publication/eicv-4-thematic-report-utilities-and-amenities.
[223] *See* Article 18 of Presidential Order n°144/01.
[224] Interview with Kicukiro District held on 24 November 2017.
[225] Interview with Kicukiro District held on 24 November 2017.
[226] Interview with Kicukiro District held on 24 November 2017.
[227] Interview with Public Service Commission on 1st December 2017.

closing date of submission of applications, which may be too short for the committee to complete its review of applications.[228] Officials from Kicukiro District reported that a 3-member recruitment committee is too small to handle shortlisting and appeals related to the application process within the time required by the Presidential Order. Officials from Bugesera District also reported that the recruiting committee struggles to meet the deadlines for shortlisting due to the volume of applications.

- Limited employment centres[229]: In order to facilitate candidates' access to information posted in the e-recruitment system and to send in their applications, employment centres have been established. However, at this point, only 2 centres exist: one in Musanze District and another in Kigali City.[230] In view of the statistics from the EICV 4 related to the access to ICT tools, especially for candidates living in rural areas, the number of employment centres must be increased, targeting rural areas.

VI.3.2. Challenges in implementation of management and appraisal of public servants

a) IPPS System

The Prime Minister's Order regulating performance appraisal of public servants requires performance contract evaluations to be done in front of a panel of supervisors at two levels. These two levels of panels of supervisors are established to ensure transparency in the review process. Currently, the signing and evaluation of performance contracts are done through the Integrated Payroll and Personnel Information System (IPPS), a system that was established and operationalized after 2010 (after the publication of the Prime Minister's Order regulating performance appraisal). Kicukiro District officials noted that the IPPS system, however, is contrary to the provisions of the Prime Minister's Order, because IPPS only provides for one level of review of the performance contract. The Public Service Commission (PSC) also reported that some supervisors were unable to access the IPPS system due to technical problems and errors in the system.

b) Failure to apply the labour law to designated public servants

Public servants are recruited through a competitive process in one of two categories: public servants recruited under ordinary processes for posted and budgeted positions to whom the general statutes governing public service applies, and public servants recruited for contract positions for short-term or specialized needs to whom the labour law applies. This means that, within an institution, different public servants will need to be managed in different ways with regard to performance appraisal and discipline. However, reports indicate that institutions fail to apply the correct legal regime in practice to public servants governed by the labour law, and use the general statutes for public service for both categories. This situation can even mislead the contracted public servants, who may believe they are governed by the general statutes for public service. For instance, in the case RADA 0015/13/CS Mulindahabi vs EWASA, Mulindahabi was hired by RECO RWASCO, which changed to EWASA, and claimed he was unfairly dismissed.

[228] Article 10 of the Presidential order no 144/01

[229] Employment centres receive and post available vacancies from public and private institutions. It provides employment tips to fresh graduate and secretariat for application purposes.

[230] FGD held at MARASA hotel on 09th November 2017

Mulindahabi submitted his case to court for his unfair dismissal as a public servant under the general statutes for public service. In its decision, the Supreme Court found that Mulindahabi was a public servant governed by the labour law and not the general statutes for public service, so he could not make a claim based on the general statutes for public service. Mulindahabi had not been aware of his own status from the beginning of his contract with EWASA. In some cases, the courts have held that contractual public servants are governed by the Labour Law,[231] while in other cases, the Statute Governing Public Servants applies to them. The latter determination is exemplified by the case of *Government of Rwanda (MINEDUC) v. Dr. Karemangingo Charles*[232] and the case of *Water and Sanitation Corporation Ltd v. Nzaramba Pierre and others*[233] (where the plaintiffs were dismissed due to the refusal to take oath because of their religious belief). Basing on the General Statutes for Rwanda Public Service, the Court held that the dismissed employees were under the obligation to take oath according to the instruction from the Minister of Labor and Public Service.

The PSC indicated that it advises public institutions employing contractual staff to clarify the terms under which the public servant is hired to avoid these situations. The PSC has also proposed the issuance of a standardized contract to be used by all agencies hiring contractual public servants. As there is already a Ministerial Order related to the recruitment of contractual staff in public service, the PSC also recommends revising the law to include key detailed information on the management of such staff, and also the key provisions for the standardized contract to be used.

c) Confusion between political and technical staff at decentralized levels

Public institutions are comprised of technical staff and political staff. The recruitment and nomination of technical staff are regulated by the general statutes of public service, while political staff are nominated by the competent authority—in most cases the Cabinet, the Parliament, or the people through popular election. In all institutions, political leaders work together with technical staff to achieve the mission of the institution. Within the decentralized entities, some technical staff such as Executive Secretaries of Districts, Sectors, or Cells are considered as political leaders by the managing authorities, especially on how their career is managed. This can result in their losing access to certain rights of public servants, and round-table participants indicated that those staff have even resigned from their posts as if they are political leaders due to their own ignorance of their status as public servants and technical staff. Participants also indicated the ignorance of the staff in charge of staff management, who fail to properly sensitize these public servants of their rights, roles, and responsibilities.

VI.3.3. Challenges in implementation of sanctions standards

a) MIFOTRA's role in approving sanctions

[231] See for instance *Uwizeyimana Jean Bosco v. Leta y'u Rwanda*, RADA007/13/CS, 15 January 2016. In the same perspective see also *Nsengimana Vincent v. National Agricultural Export Development Board* (NAEB), RAD0006/15/TGI/NYGE, 23 April 2015.

[232] *Government of Rwanda (MINEDUC) v. Dr. Karemangingo Charles*, Case no RADA 0003/14/CS, 17February 2016.

[233] *Water and Sanitation Corporation Ltd (WASAC) v. Nzaramba Pierre and others*, RADA No. 0004/14/CS, 10 March 2017

The 2 categories of administrative sanctions that can be imposed on public servants are sanctions in the first degree (warning or reprimand), and sanctions in the second degree (delay in promotion, suspension from duties, or dismissal).[234] The first-degree sanctions can be imposed by the head of the institution, and the second-degree sanctions can be imposed by the authority who appointed the public servant, but only after consultation with the Minister in charge of public service.[235] This provision of the Order directs the Ministry to intervene in the day-to-day management of the staff of public institutions, while its role should be making policies and laws related to public service. Participants in a round-table discussion indicated that the Ministry in charge of public service should not be the agency consulted on disciplinary issues, but rather the PSC is the proper consultative body. Because the procedures related to dismissal for poor performance fall under the PSC's responsibilities, the PSC should also review decisions about sanctions in the second degree. In fact, MIFOTRA reported that because it is the institution in charge of making policies and laws related to public service, it should not be involved in directly implementing those laws and policies, and believes its role is monitoring them. It also believes that a public institution seeking to sanction an employee should be required to consult the PSC rather than itself (MIFOTRA). Designating the PSC to approve decisions to issue sanctions in the second degree would be in line with the mission of the Commission in its oversight role over public institutions.

b) Responsibility of members of the internal disciplinary committees

The internal disciplinary committee within each institution has to be consulted before a disciplinary sanction can be imposed on a public servant.[236] The committee plays an important role in determining whether or not a public servant will be sanctioned, but because the membership of the committee is composed of employees of the institution, the committee members are being asked to approve disciplinary sanctions against their own colleagues. Kicukiro District officials noted that the members of disciplinary committees do not always feel comfortable approving sanctions for fellow public servants because they fear repercussions or reprisals. Furthermore, if a dispute over sanctions is submitted to a court and the court decision is different from the decision of the committee, members of the committee can even be punished according to the provisions of the Ministerial Instructions determining modalities for holding liable public servants who cause losses to the state, which state that "Any public servant who committed a fault causing a loss to the State shall be liable for damages".[237] The PSC opposes such liability for members of the disciplinary committees who make decisions based on the laws in accordance with the power granted to them by a Presidential Order.

The PSC also noted the lack of clear guidelines and procedures for investigating employee misconduct, making the disciplinary process problematic in some cases.[238] Where clear guidelines and procedures for the committee to carry out investigations for the alleged misconduct do not exist, it is difficult to establish fault. Because of the vagueness in procedures, some public servants who have committed misconduct might not be disciplined because their cases cannot be properly

[234] *See* Articles 8 and 9 of Presidential Order n˚65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants.
[235] Article 17 of Presidential Order n˚65/01 of 04/03/2014.
[236] Article 17 of Presidential Order n˚65/01 of 04/03/2014.
[237] Article 5 of Ministerial Instructions no˚002/M.J/AG/15 of 01/10/2015 determining modalities for holding liable public servants who cause losses to the state.
[238] KII with PSC on 01/12/2017.

investigated. The PSC recommended reinforcing the capacity and powers of the internal disciplinary committee in conducting investigations in order to affirm their confidence in their decisions and clarify the protections they enjoy, such as not being personally liable when they make a decision in accordance with the law.

c) Problems with blacklists

A public servant dismissed from the public service is to be registered on a blacklist and prohibited from recruitment into another position in the public service.[239] The Order also provides a procedure for public servants to request removal from the blacklist. This list is updated by MIFOTRA in conjunction with the PSC after public servants have been sanctioned. In practice, reports indicate that a former public servant is added to this list directly after dismissal, but before the end of any appeals.[240] Because the law provides opportunities to appeal before administrative authorities and before the court in some cases, a public servant should not be added to the blacklist before the decision is made at the final appeal. Even if public servants are added to the blacklist while their appeals are pending, a procedure should be adopted to ensure those who are successful on appeal are cleared from the blacklist.

VI.4. Legal, Procedural, and Institutional Framework Governing Appeals and Complaints Mechanisms

Where a public servant is aggrieved by one of the decisions made above in regards to his or her public employment, the public servant has a set of administrative and judicial remedies for appeal against that decision.

VI.4.1. Administrative appeals and remedial channels

VI.4.1.1. Appeals and remedial channels for prospective and public servants governed by general statute

a) Administrative appeal and remedial channels related to the recruitment of public servants

If an applicant for a public service position has a complaint regarding the recruitment process, he or she may lodge an appeal. In the first instance, the applicant should appeal to the recruiting institution within 3 working days starting from the date of the act or decision he or she is appealing. If the applicant is not satisfied with the decision made by the recruiting institution on appeal, he or she may appeal in the second instance to the Public Service Commission, within 2 working days from the date of the receipt of the response from the recruiting institution.[241]

This process is designed to provide swift access to an administrative appeals process for applicants to public service postings. At the District level, key informants noted that candidates for public

[239] Article 27 of Presidential Order no°65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants.
[240] FGD held on 9th November 2017.
[241] *See* Article 18 of Presidential Order n°144/01.

service positions seem to be aware of their right to appeal recruitment decisions.[242] According to Bugesera District officials, between 2015 and 2017, 26 candidates lodged appeals against the results of their written exams (although only 5 of these appeals were found justifiable). Three appeals related to the oral examinations were also submitted, but none of these were found justifiable.[243] The low rate of successful appeals may show how the recruitment of public servants has improved since the enactment of the Presidential Order on recruitment. However, the overall number of appeals is still low and this may suggest that applicants are not even aware of their right to appeal.

b) Administrative appeal and remedial channels related to performance appraisal of public servants

A public servant's performance is evaluated by his or her supervisor, who is advised internally by a two-level panel within the institution. However, the evaluation of the public servant's performance contract can result in the employee's promotion or dismissal, so the Prime Minister's Order on performance appraisal provides procedures for a public servant who believes that he or she was unfairly appraised to apply for review of the score granted to him or her, and any decision made concerning his or her promotion or dismissal. At the first instance, the public servant may lodge a complaint with the head of the institution employing him or her, within 15 days of notification of the appraisal results.[244] The head of the institution must seek advice from the panel that analysed and evaluated the staff at both levels before rendering a decision on the appeal. If the employee is not satisfied with the decision made by the head of the institution on the appeal, he or she may lodge a complaint with the Public Service Commission.[245] An appeal of a public servant working within local government shall be addressed to the Council of District at the first instance, and to the Public Service Commission at the second instance.

c) Administrative appeal and remedial channels related to dismissal of public servants

The general statutes of public service provide for administrative sanctions for a public servant when he or she is disciplined, and also provides for a public servant to appeal a disciplinary decision he or she believes is unfair.[246] The public servant must file a written appeal, first to the authority that imposed the sanction, within 5 working days from the date he or she was notified of the sanction. The agency is then required to answer the appeal within 15 working days from the date the appeal is received.[247] If the public servant is not satisfied with the decision on appeal, he or she may appeal for further review to the PSC within 5 working days from the date the first appeal was decided. The PSC must then decide on the appeal within 60 calendar days, and the decision of the PSC is not subject to any other administrative appeal,[248] although recourse to the court is permitted.

[242] Interview with Kicukiro District on 24/11/2017 and Interview with Bugesera District on 22/11/2017.
[243] See the report received from Bugesera District.
[244] Article 33 of Prime Minister's order no°121/03 of 08/09/2010.
[245] Article 33 of Prime Minister's order no°121/03 of 08/09/2010.
[246] Article 31 of Presidential Order n°65/01 of 04/03/2014.
[247] Article 32 of Presidential Order n°65/01 of 04/03/2014.
[248] Article 33 of Presidential Order n°65/01 of 04/03/2014.

VI.4.1.2. Appeals and remedial channels for public servants governed by special statutes

Public servants governed by special statutes are recruited and managed according to the principles provided by those statutes.

Judicial staff: The High Council of the Judiciary makes decisions relating to the appointment, promotion and removal of judges from their offices.[249] The decisions of the High Council of the Judiciary are not appealable before any other judicial organ. The High Council of the National Public Prosecution Authority has authority over the exercise of prosecution functions, the conduct of prosecutors, and the personnel of the Public Prosecution Authority, with the exception of the Prosecutor General and the Deputy Prosecutor General.[250] The decisions of the High Council of the NPPA may be appealed before a competent court.

Teachers: A teacher who is not satisfied with an employment decision made against him or her may lodge an appeal at the first level to the authority that took the decision, and at the second level with the District authorities. If the teacher is not satisfied with a decision made by the District, he or she can lodge a complaint with the Public Service Commission.[251] Decisions of the PSC in regards to employment of teachers may be appealed before a court.

Prisons guards: Prisons guards on duty may be disciplined. At the first instance disciplinary sanctions are decided by a disciplinary committee established at prison's level. Prisons' guards who are not satisfied with a decision of a disciplinary committee may lodge an appeal before the High disciplinary committee of RCS.[252] If a prison guard is not satisfied with administrative decision, he/she may submit the case to the court.

Police officers: Their special statutes provide for the procedures to be followed while imposing disciplinary sanctions by the competent authorities. A Police officer who feels wronged can institute an appeal. The Police High Council is entrusted with the power of taking a last decision on the matter concerning police officers.[253]

VI.4.2. Judicial recourse

The public service statutes allow an aggrieved public servant to file the case in a competent court, after he or she has exhausted available administrative remedies. The High Court is the competent court to receive disputes related to applications seeking the annulment of administrative decisions or requesting damages arising from non-observance of the general statutes governing public service and public institutions, including all applications seeking the annulment of official decisions made improperly, made by persons not competent to make the decisions, or made by persons acting beyond the scope of their authority.[254]

[249]Article 10 of Law n˚10 of 08/03/2013 governing the statutes of judges and judicial personnel.
[250] Article 40 of Law n˚44bis/2011 of 26/11/2011 governing the statute of Prosecutors and other staff of the National Public Prosecution Authority as modified and complemented to date.
[251] *See* Articles 45-47 of Presidential Order no˚24/01 of 24/11/2106 establishing special statutes governing teachers in nursery, primary and secondary school.
[252] See articles 16-19 of Ministerial instructions no 2/2014 of 04/12/2014 establishing prison guards code of conduct
[253] Article 38 of the Presidential order no 30/01 of 09/07/2012 on specific statute for Police personnel.
[254] Article 93 of Organic Law n° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts as modified and complemented to date.

VI.5. Challenges in implementation of appeal mechanisms

VI.5.1 Challenges related to legal framework

VI.5.1.1. Lack of enforcement mechanism to compel public officials to comply with the law

Although the statutes related to public servants are detailed and regulate all aspects of the recruitment, management, and discipline of public servants, round-table participants reported that many public officials continue to violate the law in the dismissal of public servants, performance appraisals done in violation of the procedures provided for by the law, and failure to respect the legal rights of public servants during restructuring of public institutions. Round-table participants also indicated that, in some cases, the officials do not take into account legal advice given to them by the legal advisors of the institutions. The PSC supported these claims, noting that, in some cases, public officials may lack knowledge of the relevant laws, while in others they wilfully violate the laws.[255] In order to address this issue and protect public servants, the Ministry in charge of justice should add to the existing instructions related to public servants' liability for losses to the state heavy sanctions to officials who make wrongful management decisions. Participants in a round-table discussion noted that these sanctions would help in reducing the number of decisions that are contrary to the law with regard to the management of public servants, and recommended for the full implementation of existing laws and regulations to ensure that authorities do not make illegal decisions.

VI.5.1.2. Difficulty of calculating damages in favour of public servants

The general statutes for public service do not provide the basis for calculating damages in case of unfair dismissal of public servants, and administrative bodies are unable to address this issue. Round-table participants indicated that public servants face difficulties requesting damages for unfair dismissal because the amount to be awarded is left to the discretion of the court. Accordingly, they recommended the revision of the law to indicate the basis for calculating such damages.[256] Judges at the Intermediate Court in Nyarugenge also emphasized the importance of receiving guidance on the applicable amount of damages in unfair dismissal cases.[257] Courts have different practices. In some cases, courts seem to draw inspiration from labour law by awarding six months of salary as compensation for unfair dismissal. This for instance *National University of Rwanda v. Dr Kiiza Charles* case,[258] *Sebera v. Rwanda Development Board* (RDB), RADA 0024/13/CS, November 14, 2014. In some other cases such as *Ukubaho Vivens v. The District of Muhanga*, the Courts award more or less that six months of compensation.[259]
Courts also have different approaches in awarding the compensation for failure to issue the work certificate to the dismissed public servant. Some courts ruled that the public servant is entitled to damages in case of non-issuance of work certificate[260] while other Courts rejected this request

[255] KII with PSC on 01/12/2017.
[256] FGD held on 9th November 2017.
[257] Interview with Nyarugenge Intermediate Court on 28/11/2017.
[258] *National University of Rwanda v. Dr. Kiiza Charles case,* RADA0055/11/CS, 08 March 2013
[259] *Ukubaho Vivens v. The District of Muhanga,* RAD 0006/14/TGI/MHG, 28 November 2014.
[260] *Rutagengwa Francois v. BNR*, RADA0020/10/CS, 07/11/2011.

basing on the fact that the law nº 22/2002 of 9/7/2002 that was establishing the General Statute of Public servants did not impose this obligation on the administrative authority.[261]

VI.5.1.3. Lack of two-step review for certain public servants

While one of the strengths of the public service legislation is the provision of at least 2 levels of appeal when a public servant is not satisfied with an administrative decision taken against him or her, the High Council of the Judiciary is the last organ to make decisions regarding judges and judicial personnel, and its decisions cannot be appealed either before another administrative organ or a court. This entrusts a single body with the power to decide upon the career of judges. In discussions, round-table participants indicated that the High Council of the Judiciary is comprised of judges, so its decisions are likely to be fair to other judges. However, it was also noted that every public servant must be given an opportunity to submit his or her case before an appeals body of some kind. Participants proposed creating two degrees or chambers within the Council, a first degree and a second degree, so that the judicial personnel also have a level of appeal to go to for any adverse decision made against them.

VI.5.1.4. Lack of legal awareness among public servants

Public servants can fail to use legal provisions which protect them because they are not aware of the protections the law provides to them. Round-table participants indicated that, in practice, public servants may fail to assert their rights because they are afraid of contradicting their employer.[262] The PSC emphasized this lack of knowledge, indicating that capacity building and legal awareness is needed for both the authorities that manage public servants, as well as the public servants themselves, as they are the key stakeholders in the process.[263]

VI.5.2. Challenges related to institutional framework

VI.5.2.1. Lack of enforcement power for Public Service Commission

The Presidential Order regulating recruitment of public servants recognizes the PSC as an organ before which candidates who are not satisfied may file an appeal. The Presidential Order determining the modalities for imposing disciplinary sanctions on public servants also allows public servants to appeal decisions made by their employers to the PSC. Also, a public servant who is not satisfied with the appraisal done by his or her employer may appeal against it at the second level to the PSC. All those provisions indicate that the PSC has a role to play in assisting public servants who are not satisfied with the administrative decisions to receive justice.

The PSC has independent oversight to ensure that public servants are fairly and impartially recruited, managed, and supported based on principles of equity, transparency, good governance, and integrity, in order to deliver high quality service in an effective and efficient manner. In order to achieve these goals, the PSC has to verify whether government institutions comply with laws,

[261] *Government of Rwanda (MINEDUC) v. Dr. Karemangingo Charles*, RADA 0003/14/CS, 17/2/2016.
[262] FGD held at MARASA hotel on 9th November 2017.
[263] Interview with PSC on 1st December 2017.

regulations, and decisions relating to the management of public servants.[264] In carrying out its mandate, the PSC makes decisions related to the activities of public institutions in order to advise them on how to respect the law related to public service. However, reports indicate that some institutions do not implement the recommendations of the PSC. Round-table participants noted that some institutions do not respect the recommendations of the PSC in particular to remove sanctions imposed by the public institution or to reinstate a public servant to his or her original position. In the case *Mukeshimana Lea vs Nyarugenge*[265] District, the PSC recommended the District vacate its decision to dismiss *Mukeshimana*, because the PSC found the dismissal unlawful, but the District refused, and the matter is now being heard by a court. In the case of *Nzeyimana Fred vs Bugesera District*, *Nzeyimana*, a District procurement officer, was dismissed by the District. When he brought a claim for wrongful dismissal before the PSC, the PSC found that the dismissal was illegal and requested the District to abandon its decision to dismiss him. However, the District refused. *Nzeyimana* then submitted his claim to court, and the High Court confirmed that the dismissal was illegal, and has ordered the District to pay compensation.

Bugesera District officials noted that some institutions may show reluctance in implementing certain recommendations of the PSC because they may feel the PSC is making recommendations based solely on the blind application of the law without considering the context that may have led to the dismissal, including other prior disciplinary sanctions. Sometimes, institutions may perceive that reinstatement of a public servant to his or her former position is not feasible, whether because the situation has become too tense or hostile, or because they have already replaced the dismissed public servant. MIFOTRA noted that public institutions should not be reluctant to implement the recommendations of the PSC, because the PSC is established by the Constitution and has a mandate to ensure that laws and regulations related to public service management are well implemented.[266] The PSC itself even indicated that some public institutions do not implement its recommendations, and has resorted to working closely with the Office of the Prime Minister to obligate institutions to comply with the decisions taken by the PSC, which has brought about improvements with regard to the implementation of their recommendations.[267]

VI.5.2.2. Lack of resources for the Public Service Commission

The PSC is responsible for ensuring that policies, principles and laws governing public service recruitment and administration are followed and put into effect by all government institutions. The PSC also plays a key role in handling disputes between public servants and their employers, and any decision made by the PSC is not subject to appeal before any other administrative body. In the past three fiscal years (July 2014 to June 2017), the PSC received 1,368 complaints or appeals (both those related to recruitment and placement of staff as well as those related to management of staff)[268]. Most of the complaints received related to the management of staff (79%). This implies that even as recruitment processes are improved, equivalent efforts and safeguards need to be directed to improving the management of public servants. With regard to the recruitment and placement of staff, most of the complaints (41%) relate to not being recruited to the position

[264] Article 4 of the law no 39/2012 of 24/12/2012 determining the responsibilities, organization, and functioning
[265] RAD00028/2018/TGI/Nyarugenge
[266] KII with MIFOTRA officials on 23/11/2017.
[267] KII with PSC on 01/12/2017.
[268] Annual activity reports of the Public Service Commission, available at http://psc.gov.rw/index.php?id=175.

competed for after passing the exams. This is followed by complaints related to dissatisfaction with the marks received from oral and written interviews (36%).[269] However, the PSC has a limited staff with which to handle complaints[270], and it often has to conduct extensive analysis, investigations, and site visits in order to collect the information it needs to render its decision. Thus, the Commission needs additional resources and capacity to ensure it can meet the needs of all parties in public service in a fair and equitable way.[271]

VI.6. Recommendations

In order to ensure that public service is well organized and the rights of public servants are respected, the following recommendations are made:

1. ***The Presidential Order determining the modalities of imposing sanctions on public servants should be modified to remove the requirement to consult MIFOTRA.***

In order to harmonize procedures followed for the management of public servants, MIFOTRA should not be consulted in second-degree sanctions. Instead, this responsibility should be given to the PSC as the organ having an oversight role for the management of public servants. Because public institutions consult the PSC on decisions related to performance appraisal of public servants, the procedures for imposing disciplinary sanctions should also go through the PSC; MIFOTRA should remain the organ in charge of policy making, it does not need to be involved with implementing organs.

2. ***The Presidential Order determining the modalities of imposing sanctions should be amended to clarify the protections for members of the internal disciplinary committee.***

Where members of the internal disciplinary committees will have to make decisions adverse to their fellow employees, or against the wishes or decisions of management staff from time to time, they need statutory protection against reprisals in their employment status.

3. ***The general statutes of public service should be revised to indicate the basis for calculating damages for unfair dismissal.***

Judges and other stakeholders have noted that because of the lack of a statutory basis for calculating damages for unfair dismissal, public servants have difficulty requesting such damages and being assured of a fair amount as it is in the discretion of a judge to decide.

4. ***The Presidential Order related to recruitment should be revised to extend the timeline for job postings and shortlisting.***

[269] *See* PSC reports, available at http://psc.gov.rw/index.php?id=175. Full statistics on PSC's role in reviewing decisions related to public employment can be found in Annex B.
[270] PSC has in total 40 staff, and only 18 staff handle technical matters within the Commission's mission.
[271] KII with PSC on 01/12/2017.

To ensure that public institutions have enough time to handle recruitment, the timeline for job postings and shortlisting should be extended. The timeline for receiving applications should also be increased in order to allow applicants to prepare their applications.

5. ***Technical deficiencies in the e-recruitment system should be addressed.***

The file size capacity in the e-recruitment system should be increased, and the manner of calculating days should be harmonized with the Order, from calendar days to working days.

6. ***MIFOTRA and the PSC should prepare and publish guidelines on how to use the e-recruitment system and should increase the number of employment centres across the country.***

Accessing the e-recruitment system is at the heart of accessing public service jobs. In order to ensure equal access to public service positions, the government must ensure that it provides access to information about how to use the system so that all potential applicants have the same information and opportunities to use the system and apply for public service jobs. Increasing the number of employment centres can help with disseminating this information and facilitating the use of the system even where individuals may not have access to the technology needed to use the system.

7. ***MIFOTRA should update the IPPS system in order to harmonize it with the provisions of the Prime Minister's Order related to the appraisal of public servants.***

While the Prime Minister's Order related to the appraisal of public servants provides for two levels of review in performance appraisal, the IPPS system only provides for one. IPPS should be harmonized with the regulatory framework, ensuring public servants their rights in performance appraisal.

8. ***The resources of the PSC should be increased to provide it with the full capacity to meet its statutory obligations.***

The PSC has a broad mandate, but lacks the resources to carry out its mandate with full authority. Increasing the staffing and financial capacity of the Commission will ensure that it can fully meet its statutory obligations. A robust PSC is a key element of a fully functioning and fair public service in Rwanda.

9. ***Competent authorities should support sanctions against officials who wilfully violate the recommendations of the PSC.***

One of the barriers faced by the PSC in fully exercising its authority is that public officials and institutions face no sanctions if they disregard the decisions or recommendations of the Commission. Statutory support for the sanctions and enforcement power of the PSC should be adopted to ensure the PSC fully functions within the role envisioned for it by law.

10. ***The PSC should organize trainings to build the capacity of the members of the internal disciplinary committees, especially in conducting investigations into the misconduct of public servants.***

The PSC could play a role in reinforcing and building the capacity of the internal disciplinary committees, which address public servant disciplinary matters at the first instance. This could include reinforcing their decision-making authority, training on how to engage in dispute resolution regarding employee discipline, and ensuring they are aware of protections they enjoy against reprisals in the carrying out of their duties.

11. ***The PSC should sensitize all public servants to the existing laws and regulations on public service to ensure that they are aware of their rights.***

The PSC can also carry out activities to raise the awareness of public servants about their legal rights in employment matters. This could include ensuring that contract workers in government and civil servants have solid awareness about the legal protections they enjoy, and understand how to make complaints and defend their rights if needed.

12. ***The PSC should organize capacity-building activities for officials managing public servants to ensure that they are aware of procedures to be followed in respect of the rights of public servants.***

Not only do public servants need additional information and training about their rights, but the management officials within public institutions also need better information about the laws that apply to public service employment, and how to lawfully carry out management, appraisal, and discipline of public servants. Improving legal awareness is the first step in reducing the burden of claims about public service coming through the Commission and the courts.

13. ***MIFOTRA should issue a standard contract to be used by public institutions which hire contractual staff governed by the labour law.***

The PSC recommends employing standardized contract terms to govern contracts for staff governed by the labour law. Because public servants are under standard contracts governed by law, contractual staff should be also, with the terms adjusted according to their status. This could ease confusion about the differences in the rights between public servants and contractual staff of public institutions if all contractual staff were under the same contractual terms.

14. ***The law governing the High Council of the Judiciary should be amended in order to establish two panels or levels within the High Council of the Judiciary to deal with employment disputes.***

While other public servants enjoy 2 levels of review for disciplinary decisions and disputes, judicial staff should also enjoy the same type of review. While a second body need not be created, 2 panels could be formed within the High Council of the Judiciary to give judicial staff access to the second level of review, like all other public servants.

In conclusion, the current legislation regulating public employment in Rwanda provides for procedures guiding decision-making and also mechanisms to handle disputes which may arise. In general, the laws are detailed and clear, but some revisions are likely to improve their implementation. Nonetheless, there are some decisions taken that are contrary to the law, sometimes due to ignorance of the law or wilfully acting in excess of legally granted authority. Measures should be taken to ensure that all decision made with regard to the management of public servants respect the required procedures, and that sanctions are given to officials who make wrongful decisions in managing public servants or following the guidance of the PSC.

VII. THE LEGAL AND POLICY FRAMEWORK GOVERNING THE PUBLIC PROCUREMENT PROCESS

VII.1. Introduction

As part of public financial management reform, the Government of Rwanda has been engaged in a number of initiatives aimed at streamlining its public procurement system in order to align it with fundamental principles of transparency, competition, economy, efficiency, fairness and accountability. Since 2007, the government of Rwanda has adopted a number of legal and regulatory reforms to improve the procurement process, which have had significant results in combating, deterring, and preventing corruption, collusion and other forms of bid rigging in public procurement. Though challenges remain in the implementation of those principles, as the key pillars of public procurement in Rwanda, they guide the entire process.

This chapter will assess and evaluate the legal, procedural, and institutional framework of the public procurement process in Rwanda. The first part lays out the legal, procedural, and institutional framework for administrative decision-making in the procurement process, including an analysis of how the basic principles of procurement are addressed by the relevant laws and procedures, and the challenges to implementation. The second part of this chapter shall focus on analysis of finding in terms of challenges of decision making in procurement process. Furthermore, in this chapter, we shall address the legal, procedural, and institutional framework for appeals and complaints in the public procurement process, including the challenges in implementation. The final part will provide a summary of the recommendations to address the challenges identified.

VII.2. Legal, Procedural, and Institutional Framework for Administrative Decision-Making in Public Procurement

VII.2.1. Relevant legal provisions in public procurement

In March 2007, the Law on public procurement was enacted, followed by the Law establishing the Rwanda Public Procurement Authority in December 2007. In January 2008, procurement regulations and standard bidding documents were issued.[272] In 2011, a new law on the Rwanda Public Procurement Authority was adopted[273], the procurement law was amended in 2013[274], a Ministerial Order strengthening the standard bidding and contract documents was adopted in

[272] Ministry of Finance and Economic planning (MINICOFIN), Rwanda Public Procurement Authority (RPPA), Public Procurement User Guide, November 2010, p.1.

[273] Law n°25/2011 of 30/6/2011 establishing the Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning Official Gazette nº 34 of 22/08/2011.

[274] *See* Law N°05/2013 of 13/02/2013 modifying and complementing Law n°12/2007 of 27/03/2007 on Public Procurement, Official Gazette n°16 of 22/04/2013. This law provides the general and key principles as well as procedural aspects of public procurement process.

2014[275], and an association of procurement professionals was created in 2016.[276] The 2013 amendment to the procurement law brought about a number of changes, including the elimination of criminal sanctions from the procurement law, which were moved to the Penal Code of 2012.[277]

Procurement officials who collude with bidders are liable to imprisonment of 1 to 3 years and a fine of 200,000 to 1,000,000 Rwandan francs.[278] Any person who discloses to a bidder any technical specifications of the tender before the tender is published is also liable to imprisonment of 6 months to 2 years and a fine of 500,000 to 2,000,000 Rwandan francs.[279] Awarding a tender without open competitive bidding is also subject to imprisonment of 6 months to 2 years, and a fine of 1,000,000 to 5,000,000 Rwandan francs.[280] These provisions deter and punish bid rigging, which could allow prospective bidders to gauge what the procuring entity would consider to be a reasonable price for the tender, thereby depriving the procuring entity the opportunity of purchasing the goods or services at market price.[281] While the application of imprisonment is critical to ensuring the integrity of the public procurement process, economic sanctions, as well as exclusion from the public procurement process, should also be considered to discourage collusion, corruptions and other related offences to reflect the economic character of the procurement process.

VII.2.2. Institutional framework for public procurement

VII.2.2.1. Rwanda Public Procurement Authority (RPPA)

The RPPA has the responsibility to approve the procurement plans submitted by each procurement entity in order to ensure that procurement entities comply with procurement law. However, there are no clear sanctions for procurement entities that fail to submit a procurement plan, and in practice this requirement is not respected. In addition to its review role in procurement planning, the RPPA also supervises public procurement matters in general, and advises the government and all public procurement entities on the policies and strategies in matters related to public

[275] Ministerial Order n°001/14/10/tc of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts.
[276] Law n°011/2016 of 02/05/2016 establishing the association of procurement professionals and determining its organization and functioning, *Official Gazette*, n˚21 of 23/5/2016.
[277] *See* Articles 628-632 of Organic Law n°01/2012/OL of 02/05/2012 instituting the Rwandan Penal Code, *O.G.* nºSpecial of 14 June 2012. (hereinafter Rwandan Penal Code).
[278] Article 631 of Organic Law n°01/2012/OL of 02/05/2012 instituting the Rwandan Penal Code, *O.G.* nº Special of 14 June 2012.
[279] Article 628(1°) of Organic Law n°01/2012/OL of 02/05/2012 instituting the Rwandan Penal Code, *O.G.* nºSpecial of 14 June 2012. The law provides some exceptional cases where disclosure of information is allowed. These include the disclosure of information to the accounting officer; the disclosure of information for the respect for the law; the disclosure of information for the purpose of a review, a procurement audit or for any other reasons provided for by the law and the disclosure of information pursuant to a court decision. Article 17(2º) of law n°12/2007 of 27/03/2007 on public procurement, as modified and complemented to date, *O.G.* n°8 of 15/04/2007.
[280] Article 632 of Organic Law n°01/2012/OL of 02/05/2012 instituting the Rwandan Penal Code, *O.G.* nºSpecial of 14 June 2012.
[281] H. F. FURTH *et al.*, *Suggestions for the Detection and Prevention of Construction Contract Bid Rigging*, http://www.fhwa.dot.gov/programadmin/contracts/dotjbid.cfm, accessed on June 25, 2014.

procurement.[282] However, the RPPA does not intervene directly in procurement processes, but rather takes a capacity-building and advisory role.

VII.2.2.2. Internal Tender Committees

The Internal Tender Committees in each procurement entity are responsible for the opening and evaluating bids, and recommending the awarding of contracts[283]. The Internal Tender Committee is composed of personnel from the procuring entity, including the Procurement officer, and members are appointed and dismissed by the Accounting Officer or Chief Budget Manager of the procuring entity.[284] Recruitment of external consultants onto the Internal Tender Committee is allowed to provide help to the Committee when necessary. Decisions of the Internal Tender Committee are subject to appeal to the procurement entity itself as a step of administrative review. However, the practical result of this appeal level is that the same Internal Tender Committee will end up reexamining its own decision. The bidder who is not satisfied with this decision may appeal to the Independent Review Panel.

VII.2.2.3. Accounting Officer/Chief budget manager

The Accounting Officer or Chief Budget Manager of each public institution or decentralized entity also plays a key role in the procurement process. In addition to appointing and dismissing members of the Tender Committee, this Officer also plays a review role over many aspects of the procurement process. The Officer approves all bid documents, approves procurement evaluation reports and contract awards, signs all contracts, appoints contract managers, and provides overall management of contracts.[285] Decisions of the Officer related to public procurement may be appealed, either to the procurement entity itself, or to the Independent Review Panel.

VII.2.2. Fundamental principles and processes guiding administrative decision-making in procurement

Administrative decision-making in public procurement is guided by the fundamental principles set forth in Article 4 of the procurement law indicated above. Those principles are considered as international standards of public procurement law as follows: transparency, competition, economy, efficiency, fairness, and accountability.[286] These principles also provide the procedural framework for organizing the process by which procurement decisions are organized and finally rendered.

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[282] Key responsibilities of the RPPA include: "To control activities of awarding public contracts and their execution; To develop professionalism of the staff involved in public procurement; To provide technical assistance as needed and develop teaching material, organize trainings and lay down the requirements which must be met by public procurement officers; To collect and disseminate on a regular basis information on public procurement; To put in place standard bidding documents, bid evaluation reports and other standard documents for use by public procuring entities; To sensitize the public on matters related to public procurement; To draw up and publish the list of bidders suspended or debarred from participating in public procurement; Procurement capacity building; Technical support to procuring entities." Law n˚63/2007 of 30/12/2007 (having reviewed Law n°25/2011 of 30/06/2011 establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning).

[283] Article 1 of Law n°12/2007 of 27/03/2007 on Public Procurement.

[284] Article 4 of Ministerial Order n˚001/08/10/Min.

[285] Article 4 of Ministerial Order n˚001/08/10/Min.

[286] Law n°05/2013 of 13/02/2013 modifying and complementing law n°12/2007 of 27/03/2007 on public procurement, Official Gazette n°16 of 22/04/2013.

VII.2.2.1. Transparency

Transparency in public procurement means that information on the public procurement process must be available to everyone: contractors, suppliers, service providers and the public at large, unless there are valid and legal reasons to keep certain information confidential. Examples of confidential information could include proprietary information of companies or individuals participating in the solicitation process, and certain information about military or defense procurements. A transparent system has clear rules and mechanisms to ensure compliance with those rules. The rules of competition are predictable and clearly laid out and records are open to inspection by public auditors and by others, such as unsuccessful bidders. Transparency fosters the confidence of taxpayers and all stakeholders in the public procurement system.[287] Transparency in decision-making in the public procurement process can be illustrated in the following steps:

- The first phase in the procurement process is the preparation and approval of the entity's Procurement Plan. As provided by the ministerial regulation, every procurement entity must complete a procurement plan at the beginning of each year and submit it for approval to the Rwanda Public Procurement Authority (RPPA).[288]
- In regards to a specific procurement, the next phase is the preparation of bidding documents by the procurement entity. The bidding documents must be sufficiently clear to allow interested bidders to participate in the competition or bidding process.[289]
- After bidding documents are prepared, they must be sufficiently publicized. The publicity of the documents must be done in such a way that any interested person can participate in the bidding process.[290]
- The next step is the opening of bids by a panel at a specified time and date, which brings the end to the bidding process.[291]
- After the opening of bids, the bids are evaluated for technical and financial aspects.[292] The end of the evaluation is followed by provisional notification to the selected bidder.[293]
- If no complaints are made about the bidding and evaluation process within 7 days from the provisional notification, a final award of the tender and signing of the contract by the winning bidder will signify the end of the procurement process.[294]

The requirements of publicity and transparency at all stages of the procurement process limit the risk of bid rigging. Although the procurement law does not employ the term "bid rigging", it refers

[287] Rwanda Public Procurement Authority (RPPA), Introductory Training Module in Public Procurement, March 2012.
[288] Article 2 of Ministerial Order n˚001/08/10/Min.
[289] Article 26 of law n°12/2007 of 27/03/2007 on public procurement.
[290] Article 28 of law n°12/2007 of 27/03/2007 on public procurement.
[291] Article 34 of law n°12/2007 of 27/03/2007 on public procurement.
[292] Article 39 of law n°12/2007 of 27/03/2007 on public procurement.
[293] Article 43 law n°12/2007 of 27/03/2007 on public procurement.
[294] Article 43 of law n°12/2007 of 27/03/2007 on public procurement.

in some of its provisions to collusion[295] or fraudulent practices[296], connivance[297], and lack of fairness[298], which encompasses various meanings and causes of bid rigging. Article 1(9º) of the procurement law defines collusive practices as an "arrangement between two or more parties designed to achieve an improper purpose, including influencing another party or the civil servant"[299]. Under Article 18, collusion with other bidders with the intention to interfere with the fair competition of bidding, or collusion with a public official in the preparation of bidding documents, is punishable by a ban from participation in public procurement for 4 years.[300] In a case of corruption, the provisions of the Penal Code apply.[301]

In evaluating bids, transparency is ensured through the requirement of opening bids in a public session before at least 3 members of the Tender Committee.[302] Bidders or their representatives are also allowed to attend the session. Transparency is also assured through the right of bidders to seek clarifications and additional information about the procurement documents. Article 20 of the procurement law authorizes bidders to request the procuring entity in writing for clarifications on the bidding document. The procuring entity must provide the response to such requests, without disclosing the source of the request, to all prospective bidders.[303] Article 60 of the procurement law strengthens this right by providing that any employee who refuses to provide a proper response to such a request shall be punished by suspension from work for a period of 3 months. Ensuring that all bidders have an opportunity to clarify and understand the bidding documents and have all the same information about the tender supports the aim of transparency in the procurement process.

VII.2.2.2. Fairness and prohibition of discrimination

This principle requires that public sector procurement must be conducted without favor or discrimination, and that all prospective bidders must be provided with the same treatment at each stage of the procurement process. The main aspects of fairness in the procurement process are as follows:

- Decision–making and actions in the procurement process should be unbiased; procuring entities should grant no preferential treatment to individuals or firms given that public procurement activities are undertaken with public funds.
- All bids should be considered on the basis of their compliance with the terms of the solicitation documents, and a bid should not be rejected for reasons other than those specifically stipulated in the solicitation document.
- A contract should only be signed with the bidder whose bid is compliant with and responds best to the requirements of the solicitation in terms of technical capability and price.

[295] *See* Article 1(9º) and Article 18(3)(2º) of law n°12/2007 of 27/03/2007 on public procurement.
[296] *See* Article 18(3)(3º) and 40(1)(3º) of law n°12/2007 of 27/03/2007 on public procurement.
[297] Article 18(3)(3º) of law n°12/2007 of 27/03/2007 on public procurement.
[298] Article 40(1)(3º) of law n°12/2007 of 27/03/2007 on public procurement.
[299] Article 1(9º) of law n°12/2007 of 27/03/2007 on public procurement.
[300] Article 18 of law n°12/2007 of 27/03/2007 on public procurement.
[301] Organic Law n°01/2012/OL of 02/05/2012 instituting the Penal Code.
[302] Article 31(1) and (2) of law n°12/2007 of 27/03/2007.
[303] Article 15(4) of Ministerial Order n°001/14/10/tc of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts.

- Bidders should have the right to challenge the bidding process whenever they feel that they were unfairly treated; such challenges must be based on the solicitation document and/or the procurement legal framework.[304]

For example, conflicts of interest are addressed by the law, which prohibits a firm from bidding where a civil servant of the procuring entity, his or her spouse, or his or her child is a shareholder, representative, or member of the Board of Directors in the bidding firm.[305] This protects bidders from potential bias and conflicts of interest in procuring entities and individuals who might influence the decision on their bid, even if they are not on the tender committee.

The law requires bids to be open to all persons who deal in commercial activities and are registered as businesses, holding professional licenses, or exercising any liberal profession.[306] Restricted tendering is only allowed when the goods or services are highly complex or specialized in nature, or are available only from a limited number of suppliers or contractors.[307] However, the application of restricted tendering is made at the discretion of the procurement entity, and prospective bidders cannot appeal the decision for restricted tendering where they believe the application of restricted tendering was not necessary. While most other decisions made in the procurement process give rise to a right to appeal where a bidder or even a prospective bidder believes the process was unfair or unlawful, it is unclear why the same right to appeal should not be applied in this case.

Limitations on single sourcing of procurements are also a key aspect of fairness and the prohibition of discrimination in the procurement process. Article 23 of the Ministerial Order on public procurement allows public institutions to procure without going through the tender process only for purchases not exceeding 300,000 Rwanda francs (between $300-400)[308]. This prevents the use of single source procurement for large tenders, while allowing public institutions to make small purchases without needing to go through the whole tender process. Article 177 of the procurement law also prohibits the splitting of procurement contracts with the aim of avoiding the application of competitive procurement, and provides for disciplinary sanctions and a fine for any public official who violates that requirement. Single sourcing is also allowed when a procuring entity has an urgent need for goods, works, or services, and using regular procurement proceedings would be impractical[309]. However, the law limits this type of single sourcing to circumstances where the urgency was not foreseeable by the procuring entity.

The law also allows bidders the opportunity to correct immaterial errors in their bid documents. Article 25 of the procurement law forbids procurement from being rigidly formalistic, including at the time of evaluating bids. The law requires a procuring entity to regard a tender as complying

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[304] Jorge Lynch, Public and Project Procurement for Novice and Aspiring Procurement Practitioners, https://procurementclassroom.com/public-procurement-principles/, visited on 26/1/2017.
[305] Article 11 of law n°12/2007 of 27/03/2007, as amended to date.
[306] Article 26 of law n°12/2007 of 27/03/2007, as amended to date.
[307] Article 33 of law n°12/2007 of 27/03/2007, as amended to date.
[308] Ministerial Order n° 001/14/10/tc of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts.
[309] Article 35(5°) of law n°12/2007 of 27/03/2007, as amended to date. Single source procurement is also allowed in consultancy procurement when the procuring entity seeks to enter into a contract with the service provider that is working or teaching in a higher learning institution or research institution in the country for the purpose of research, experimentation, or study.

with the tender requirements even if the bid contains minor errors that do not materially depart from the requirements in the bidding notice, or if the bid contains omissions that may be corrected without altering the substance of the bid. The right of bidders to correct minor errors ensures that all bidders will be on equal footing, and the evaluation of bids will not be impacted by immaterial mistakes. Bids also should not be disqualified for a minor deviation from the tender requirements. However, the determination of what is a minor deviation or a major deviation from the tender requirements is at the discretion of the tender committee. In fact, the National Independent Panel Review found in the case of KOPIBO vs Rubavu (2015) that Rubavu District had qualified the same lack of qualification differently.[310] Lack of clear guidance in the law makes the procurement process susceptible to unfairness and corruption.

VII.2.2.3. Competition

Under Rwandan law, the principle of open bidding is the general rule for public procurement. An open system provides an opportunity for all eligible bidders to compete for the opportunity to provide goods, works, or services to the government, and ensures that no undue restrictions are placed on competing for a particular contract. Open bidding supports the notion that competition leads to reasonable price for high quality services. Manipulating the procurement process to give preference to any particular firm or individual undermines this principle. Foreign bidders are also allowed to participate.[311] In fact, a violation of the principle of competition is one of the grounds upon which a bidder can appeal in the procurement process.

Given that public procurement is funded with taxpayer money, all qualified firms and individuals should be allowed to participate by submitting bids or proposals for tenders for which they are qualified. Additionally, public procurement requirements should be widely disseminated to increase the chances of a good market response leading to the award of competitively-priced contracts.[312] In order to meet the publicity requirement, procuring entities are required to advertise the invitation to tender in at least one newspaper of nationwide circulation and, if the procuring entity has a website, on its website.[313] These requirements ensure that all potentially qualified firms and bidders will have the opportunity to learn about the tender and put in a bid if desired.

In order to ensure a wide variety of potential bidders, procurement entities are also prohibited from imposing requirements of or references to a "particular brand, trademark, trade name, patent, design type, specific origin or producer" in the tender documents, unless it is impossible to describe the characteristics of the goods, works or consultant services to be provided in another way.[314] Where no other terms are available to adequately describe the needed goods or services aside from trade names or similar names, words such as "or equivalent" must be added. This requirement prevents procurement entities from unnecessarily narrowing the scope of the services or goods to be provided, or favoring a particular bidder through the tender documents.

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[310] Emma-Marie Umurerwa, Abashinzwe amasoko ya Leta bagaragaje ko bajya bashyirwaho igitutu kibi n'abayobozi, Igihe.com (December 28, 2017), http://igihe.com/amakuru/u-rwanda/article/abashinzwe-amasoko-ya-leta-bagaragaje-ko-bajya-bashyirwaho-igitutu-kibi-n.

[311] Ministry of Finance and Economic planning (MINICOFIN) Rwanda public procurement authority (RPPA), Public procurement user Guide, November, 2010, p.1.

[312] *Abide*

[313] Article 28(2) of law n°12/2007 of 27/03/2007, as amended to date.

[314] Article 25(2) of law n°12/2007 of 27/03/2007, as amended to date.

VII.2.2.4. Economy

The principle of economy in the procurement process focuses mainly on finding the lowest price for the services or goods offered to any public procurement entity. However, this principle also recognizes other criteria that can provide economic benefits to the contracting authority, such as: fitness for purpose or quality, delivery and availability, life–cycle costs, or ongoing maintenance and operating costs, on-costs such as transport and storage, and the administrative costs of the procurement activity[315]. Furthermore, in Rwanda, quality and cost-based selection (QCBS) is the default method of selection, which prioritizes quality of the offer, but makes cost a criteria for selection.[316] Where a tender is awarded to a bidder other than the one offering the lowest price, the procurement entity must clearly explain the reasons why the tender was not allocated to the bidder who offered the lowest price. A losing bidder who offered a lower price than the winning bidder can appeal either to the procurement entity itself, to the Independent Review Panel, or to a competent court, where these reasons will be examined to determine whether the principle of economy was respected in spite of choosing a higher-priced offer. Thus, basing on the principle of economy, procurement should be about giving the procuring entity the best value for money, with value being defined as more than just price, but quality assessment as well. More often lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money[317].

VII.2.2.5. Efficiency

Efficient public procurement describes a system that operates in a timely manner, with minimal bureaucracy, while being responsive to the needs of the end-user of the goods or services procured. The principle of efficiency in public procurement is measured by the best proportion between used procurement budget and effects achieved[318]. Efficient public procurement is simple and timely, practical, and meets the available budget of the procuring entity while achieving positive results not affected by unnecessary delays in the program implementation. Importantly, efficient public procurement is also procurement which is practical in terms of compatibility with the administrative resources and professional capabilities of the procuring entity and its personnel.[319] An e-procurement system has been launched and is being used by procuring entities in furtherance of the goals of efficiency in public procurement.

The principle of efficiency is also reflected in paying the winning bidder on time, according to contract performance. Any employee who refuses or delays payment to a winning bidder without justification faces suspension from work for 3 months[320]. However, a bidder may only claim

[315] Rwanda Public Procurement Authority (RPPA), Introductory Training Module in Public Procurement, March 2012.
[316] Article 63 of law n°12/2007 of 27/03/2007, as amended to date.
[317] Ministry of Finance and Economic planning (MINICOFIN) Rwanda Public Procurement authority (RPPA), Public procurement user Guide, November, 2010, p.10.
[318] *Id.*
[319] Ministry of Finance and Economic planning (MINICOFIN), Rwanda Public Procurement Authority (RPPA), Public Procurement User Guide, November 2010, p.1.
[320] Article 60 of law n°12/2007 of 27/03/2007, as amended to date.

penalties for late payment when such penalties are provided for in contract[321]. While a bidder may be unaware of this standard or unable to negotiate such a term into the contract due to unequal bargaining power, a procuring entity has an automatic right to penalties for a bidder's non-material faults. This imbalance in the legal framework should be addressed through an amendment to the law or standard contracts in procurement.

Each government institution or decentralized entity has a procurement unit or officer to manage procurement planning, preparation of bidding documents, publication and distribution of invitations to bid, receipt and safe keeping of bids, obtaining necessary award approvals, notification of tender awards and contract management, efficient contract execution, and providing requested information to the RPPA. Procurement entities are responsible for the whole procurement process from planning to completion of contract execution, but many have very small staff in the procurement unit compared with the size and number of procurements being managed or tendered at any given time. This could cause gaps and insufficiencies in the process of reviewing bids, awarding tenders, and managing contracts. Resource capacities of procurement units must also be reviewed in light of the annual procurement plans to ensure efficiency in the procurement process.

VII.2.2.6. Accountability

Accountability in the procurement process refers to enforcing established rules and procedures against all participants in the process. Procuring entities should be subject to challenge and, where appropriate, to sanction, for neglecting or bending the rules. The enforcement of rules and procedures in the procurement process supports the credibility of the procuring entity by serving as a deterrent to collusion and corrupt practices.[322] Accountability in the public procurement process also refers to the measures to be taken against any person who breaches the rules and procedures related to procurement. A key document in ensuring accountability in public procurement is the procurement plan, required to be created by each procurement entity when it prepares its annual budget.[323]

Furthermore, the law guarantees the right of successful bidders to have their work, supplies or services received by the procuring entity. Any employee who refuses to receive work, supplies or services without justification shall be suspended from work for 3 months.[324] This provision is an important tool in ensuring that work, supplies and services that are done in accordance with the procurement contract are not rejected without reason, minimizing opportunities for corruption among government officials. A bidder also has the right to seek an explanation about the reasons

[321] Article 101 of law n°12/2007 of 27/03/2007, as amended to date.
[322] Rwanda Public Procurement Authority (RPPA), Introductory Training Module in Public Procurement, March 2012.
[323] As indicated on article 2 of the ministerial order n° 001/14/10/tc, the procurement plan shall indicate the following: identification of needs; identification of priorities; indication if it is necessary to carry out a prior study for tenders of works; identification of the procurement method to be used for any planned tender; estimation of the value of the planned tender; specification of the source of funds for that tender; determination of the necessity to grant local preference to international tenders; specification of the need for request for approval prior to the award of contract; planning for the schedules in which different processes of tendering shall be carried out; planning for the execution schedules of the contract.
[324] Article 60 of law n°12/2007 of 27/03/2007, as amended to date.

why a bid was rejected.[325] The bidder has 3 working days to submit this request, and the procurement entity must provide the explanation within 3 working days of receiving the request. Non-compliance with this requirement gives the bidder a right to appeal to the Independent Review Panel, or a competent court.

VII.2.3. Legal, Procedural, and Institutional Framework Governing Appeals and Complaints Mechanisms

VII.2.3.1. Applications for review to procuring entities

All bidders and prospective bidders have a right to review of any decision taken during the procurement process.[326] The Procurement Law establishes the procuring entity itself as the first level of review for bidders and prospective bidders in the procurement process.[327] This request must be made in writing to the head of the procuring entity before the procurement contract is actually signed. The bidder or prospective bidder has 7 days to submit the request for review, and the head of the procuring entity has 7 days within which to resolve the issue raised.[328] Where the issue is not resolved to the satisfaction of the bidder, an appeal can be made to the relevant Independent Review Panel.

VII.2.3.2. Independent Review Panels

Independent Review Panels (IRPs) independently review complaints from bidders against decisions made in the procurement process.[329] IRPs exist at the District level and the national level. Appeals against decisions made by the City of Kigali and the District IRPs may be made to the Independent Review Panel at the national level. IRPs are composed of 7 members, appointed for 4-year terms. Members are drawn from the public sector, private sector and civil society, although public sector members are limited to 3 of the spots.[330] Members of the tender committees as well individuals not authorized to be members of tender committees[331], the staff and members of the RPPA Board of Directors, and members of the relevant District Council cannot be members of the IRPs, in order to avoid conflict of interest.[332] Further guaranteeing fair and just decision-making at IRPs, a quorum of at least two-thirds of all members of the panel must be present to make valid resolutions.[333]

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[325] Article 29 of law n°12/2007 of 27/03/2007, as amended to date.
[326] Article 68 of law n˚63/2007 of 30/12/2007, as amended to date.
[327] Article 69 of law n˚63/2007 of 30/12/2007, as amended to date.
[328] Article 69 of law n˚63/2007 of 30/12/2007, as amended to date.
[329] Article 21 of law n˚63/2007 of 30/12/2007, as amended to date.
[330] Article 49(1) of Ministerial Order n° 001/14/10/tc of 19/02/2014.
[331] Article 10 of Ministerial Order n° 001/14/10/tc of 19/02/2014 (those not authorized to be on IRPs include:
1° the head of a public body ;
2° Members of Executive committees of Districts and the City of Kigali;
3° the chief budget manager;
4° the Head of finance Unit;
5° the internal auditor;
6°the legal advisor;
7° the officer in charge of logistics.)
[332] Article 49(2) of Ministerial Order n° 001/14/10/tc of 19/02/2014.
[333] Article 58(1) of Ministerial Order n° 001/14/10/tc of 19/02/2014.

IRPs have significant responsibilities in review of administrative decision-making in the procurement process. However, IRPs at the District levels do not have permanent staff, while the IRP at the national level does have a permanent secretary working at the RPPA. At the national level, the Secretary receives complaints from bidders and informs the members of the IRP about these cases. At the District level, complaints are received by ordinary staff of the District, while at the same time, the District may also be the procurement entity concerned with the complaint.

Applications for review of decisions made in the tender process are subject to pre-screening[334] by the officer of the IRP to verify whether:

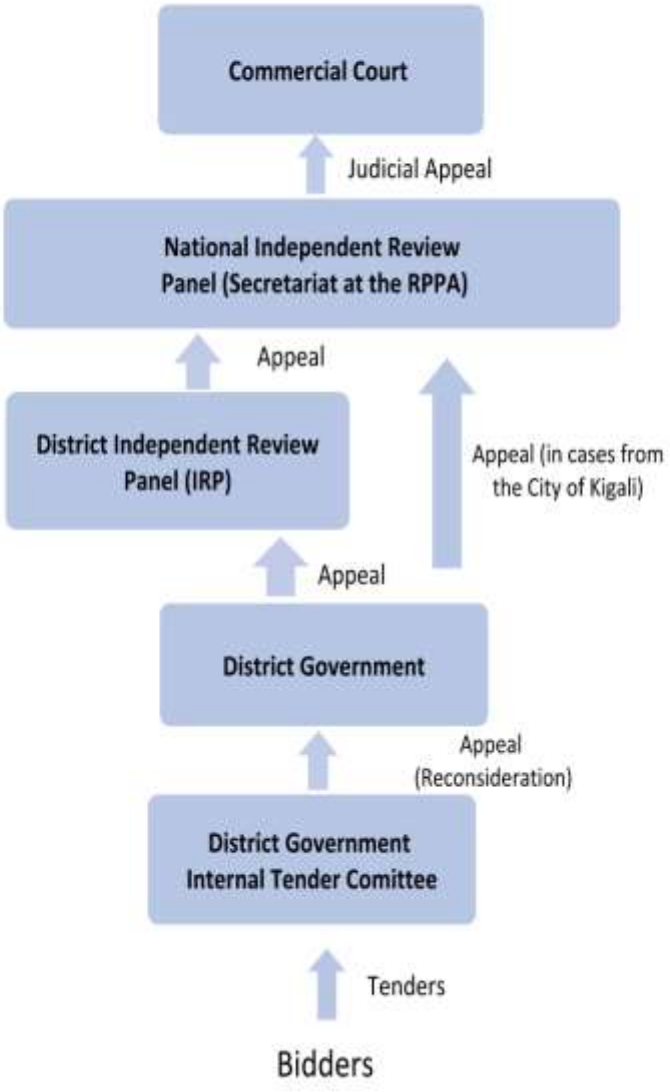
1º the complainant submitted all the required documents;
2º the fee was deposited on the appropriate account in case it is required;
3º the complainant appealed to other organs as provided for by the law;
4º the complainant appealed to an appropriate organ
5º the complainant appealed within the required time.[335]

The relevant officer of the IRP will decide whether an appeal meets these standards, and if not, the officer is required to make a report explaining the reasons for the denial of review, and submit it to the Chairperson of the IRP to make a final decision about whether to accept the request for review.[336] Where the request is accepted, the procuring entity has 3-5 working days to produce relevant documents for the IRP[337], and the IRP will then fix a date for the hearing and determine whether it will hear both parties in writing or in person.[338]

A bidder who appeals to the IRP is required to pay a nonrefundable fee of 50,000 Rwandan francs for tenders amounting to 20,000,000 Rwandan francs or less, and 100,000 Rwandan francs for all other values of tenders.[339] A bidder's right to appear before the IRP during hearings is not absolute and is decided upon in the discretion of the IRP.[340] When a complainant is not satisfied with the decision of the IRP at the District level, he or she may appeal to the IRP at the national level.[341]

[334] Article 68 of law n˚63/2007 of 30/12/2007, as amended to date.
[335] Article 54 of Ministerial Order n°001/14/10/tc of 19/02/2014.
[336] Article 54 of Ministerial Order n°001/14/10/tc of 19/02/2014.
[337] Article 55 of Ministerial Order n°001/14/10/tc of 19/02/2014.
[338] Articles 56-57 of Ministerial Order n°001/14/10/tc of 19/02/2014.
[339] Article 52(1) of Ministerial Order n° 001/14/10/tc of 19/02/2014.
[340] Article 57(5) of Ministerial Order n°001/14/10/tc of 19/02/2014.
[341] Article 52(3) of Ministerial Order n°001/14/10/tc of 19/02/2014.

Administrative Decision Pathways in Public Procurement



VII.2.3.3. Other statutory review mechanisms

a) Submission of annual procurement plans to RPPA

Every procurement entity is required to submit an annual procurement plan to the RPPA by July 31 of each year.[342] The objective of this review process is to give the RPPA the opportunity to contribute to the fight against bid rigging and ensure the respect of fundamental principles of procurement. If the RPPA finds that the procurement methods a procuring entity intends to use are likely to encourage collusion, it can refuse to approve the plan. However, it may be difficult in practice for some public institutions to comply with the requirements of planning and openness and transparency of procurement where the entity has a legitimate need to use single sourcing or direct contracting.[343] Furthermore, the law does not provide sanctions for an institution that fails to comply with the obligation to submit its annual procurement plan to the RPPA or accept the RPPA's determination on the plan.

b) Submission of quarterly reports on procurement

The Independent Review Panel at the national level is required to provide quarterly reports to the Minister in charge of public procurement, and the Independent Review Panel at the District level is required to give reports to the District Council.[344] This reporting requirement serves a tool to review procurement planning and procurement processes to promote transparency in public procurement. However, where procuring entities do not have procurement plans, it is a challenge for the IRPs to evaluate overall performance in the procurement process.

VII.2.3.3. Court appeals

Any party seeking to challenge a decision made by an IRP may seek review of the decision in court.[345] The Commercial Court is the competent court for hearing challenges to procurement actions and can annul an administrative decision related to procurement.[346] However, the jurisdiction of Commercial Court exists only where a decision is made by the final authority in the procurement review process, meaning the final review to the relevant IRP.[347] According to the interview held with the President of the Nyarugenge Commercial Court, most of the procurement cases they receive relate to termination of the procurement contract (unfairly and/or not respecting the procedure for termination)[348] There are many other recurrent issues such as the termination of

[342] Article 2(2˚) of Ministerial Order n˚001/14/10/tc of 19/02/2014.
[343] *See also* OECD, Designing Tenders to Reduce Bid Rigging: Helping governments to obtain best value for money, http://www.oecd.org/competition/cartels/42594504.pdf , accessed on May 27, 2014.
[344] Article 61 of Ministerial Order n˚001/14/10/tC of 19/02/2014.
[345] Article 71 of law n˚63/2007 of 30/12/2007, as amended to date.
[346] Article 12 of organic law n˚06/2012/OL of 13/09/2012 determining the organization, functioning and jurisdiction of commercial courts.
[347] See Article 12 of organic law n˚06/2012/OL of 13/09/2012 determining the organization, functioning and jurisdiction of commercial courts, in French language ("*annulation des décisions administratives prises* en dernier ressort *en matière fiscale et de marchés publics*", emphasis added) which refers to the decisions taken in the last resort in public procurement matters.
[348] Interview with the President of the Nyarugenge Commercial Court, held on 28th November 2017.

contractual obligations due to delay in delivery,[349] termination of contractual obligations due to non-compliance of supplies with the agreed specifications/standards,[350] termination of contractual obligations due to changing circumstances or force majeure,[351] termination of contractual obligations due to procuring entity's own reasons,[352] and the issue of the non-performance of obligations arising from additional works or activities executed by the successful bidder.[353]

The President of the Intermediate Court of Nyarugenge advised that more attention needed to be made by staff and officials in public institutions to the preparation of the contract as well as to any necessary termination; they should ensure that contracts are well done and that the procedure is well respected during any termination. In this regard, capacities of relevant civil servants and heads of public institutions need to be strengthened in this regard as it would avoid some of the mistakes committed that end up costing a lot from the government. The President of the Commercial Court also noted that most of the litigants they receive are usually not aware of the existence of the Committee in charge of out of court settlement[354] which helps to resolve cases involving government out of court, including procurement related cases.

VII.3. Challenges in the Public Procurement Process in Rwanda

VII.3.1. Challenges in the legal framework governing public procurement

VII.3.1.1. Lack of definition of bid rigging and related practices

Some common fraudulent practices in procurement, including bid rigging, bid suppression,[355] bid rotation,[356] cover bidding,[357] and market allocation[358], are not clearly defined in the procurement law. This can have a negative impact on the effective application of the law, as there is no clear guidance as to what constitutes collusion. Also, viewed from a rights-based perspective, the strength of a law does not only lie in terms of its effectiveness in punishing perpetrators of violations, but also in its suitability to inform the citizens as to what acts are prohibited, so that they avoid engaging in them. Where definitions of actions and practices that would violate the law are not clear, individuals who would like to comply with the law may not be able to conform their behavior to the law.

VII.3.1.2. Sanctions regimes unfair to winning bidders

[349] see ZENITH CC Sarl v. KIST, Case No. RADA0028/12/CS, 23 May 2014.
[350] DIDADA Supply Ltd v. Rwanda (MINALOC), Case No. RADA0018/12/CS, 18 July 2014.
[351] OCIR-thé v. SINFOTEC Sarl, Case No. RADA 0025/12/CS, 25 April 2014.
[352] SOGECO v. Nyarugenge District, Case No. RCom 0854/14/TC/Nyge, 28 October 2014.
[353] *See Guus van Balen v. Nyamagabe District, Case No. RADA0001/12/CS, 15 May 2015;*
[354] The Committee was established by the Cabinet meeting in its decision of 27/6/2001 and defined by Prime Minister's Instructions Nº005/03 of 16/12/2015 governing the organization and functioning of the Committee in Charge of Out of Court Settlement.
[355] Bid suppression occurs when conspirators agree not to submit a *bid* so another can win the contract.
[356] Bid rotation refers to the practice of competing bidding firms "taking turns" at winning the job.
[357] Cover bidding is the act of tendering an artificially high price for a contract, on the assumption that the tender will not be accepted and that the tender will be allocated to the second-highest bid.
[358] Market allocation or market division schemes are agreements in which competitors divide markets among themselves. In such schemes, competing firms allocate specific customers or types of customers, products, or territories among themselves.

For each day a bidder delays performance, the procuring entity may charge penalties of one one-thousandth (1/1000) of the value of the uncompleted activities.[359] These penalties are limited to 10% of the value of the tender overall, at which point the contract is automatically cancelled. However, in order for bidders to claim penalties against the procurement entity, especially in cases of delayed payments, the law requires such penalties to be provided for expressly by the contract, awarded after submission of an invoice complying with the contract terms.[360] Where penalties are provided by the contact, some bidders have been successful in claiming for damages in the courts. In the case Rcom,[361] 0403/13/TC/HYE from the Commercial Court of Huye, confirmed by the Commercial High Court in RCOMA 0142/14/HCC[362], the bidder Mariamantes Services Ltd[363] provided food and other services for staff training events at the Rwanda Management Institute. Due to delayed payment on several invoices, Mariamantes sued the Rwanda Management Institute for damages for delayed payments. The court ordered the Institute to pay penalties of 18% of the value of the delayed payment on each invoice, based on a clear clause in the contract concerning penalties that could be payable by the procurement entity. In the case of RCOM 0854/14/TC/NYGE[364], the Nyarugenge Commercial Court ordered Nyarugenge District to pay SOGECO HOPE Ltd penalties of 10,000,000 Rwandan francs due to delayed payments and illegal termination of a procurement contract to renovate the offices of Nyamirambo Sector. However, it is unclear whether the court would have awarded the damages for delayed payment alone had the District not also illegally cancelled the contract, and no cases were found to address this issue.

VII.3.1.3. Limited staffing capacity and broad discretion of the Independent Review Panels

The IRP at the national level has one permanent staff member, and the IRPs at the District levels have one supporting staff member who has other duties to the District. Appeals for review to the IRPs are subject to pre-screening by the staff of the IRP.[365] While members of the IRP must be informed about the decision to deny an application for review, this procedure of pre-screening appeals could cause prejudice against a bidder who files an application for review because it empowers a single person to prevent a complaint from being examined by the full bench of the IRP. The IRP is also required to decide upon any application for review within 30 days of receiving a complaint, although in some cases, an additional 30 days might be granted.[366] Given the strict deadlines, the heavy discretionary authority vested in the staff member, and the importance of preserving the fairness of the procurement process through the IRPs, this lack of staffing capacity at the IRPs, particularly at the District level, is a significant challenge to the fair and transparent functioning of IRPs, which is the key mechanism of administrative review for procurement

[359] Article 109 of law n°12/2007 of 27/03/2007, as amended to date.
[360] Article 101 of law n°12/2007 of 27/03/2007, as amended to date.
[361] RCOM implies a case that has been registered on a commercial Registrar (Role Commercial).
[362] Case law Rcom 0403/13/TC/HYE rendered by Huye Commercial Court on 31/1/2014 and confirmed by the Commercial High Court in the case RCOMA 0142/14/HCC rendered by Commercial High Court on 25/4/2014 between Mariamantes Services Ltd Vs Rwanda Management, case not published.
[363] Mariamantes Services Ltd is a commercial Company registered with RDB.
[364] Case law Rcom 0854/14/TC/NYGE rendered by Nyarugenge Commercial Court on 28/10/2014 between SOGECO HOPE Ltd vs Nyarugenge District, not published.
[365] Article 68 of law n°12/2007 of 27/03/2007, as amended to date.
[366] Article 58(3) of the Ministerial Order n°001/14/10/tc of 19/02/2014, Article 70 of law n°12/2007 of 27/03/2007, as amended to date.

process. Reform of the powers and functions of the relevant officer of the IRP must be undertaken to ensure accountability, as well as appointment of permanent officers at the District level, to improve the appeals review process and make it more fair and open.

VII.3.1.2. Unfairness in access to review mechanism

For procurements at the national level, bidders are required to appeal to the National IRP, which is the final administrative level of review for procurement at the national level. Parties who appeal decisions made in District level procurements can seek review first form the District IRP, and then from the national IRP. This means that bidders for procurement at the national level do not have a second level of recourse for review of decisions. The inequality of the bidders while exercising their right of review in procurement process is a violation of the principles of fairness and non-discrimination guaranteed by the procurement law, and supported by the constitution.[367] Establishing a second panel within the national IRP could resolve this imbalance.

Furthermore, where individuals do have review of their claims before an IRP, it is within the discretion of the IRP whether to grant an in-person hearing or accept arguments in writing only. This undermines the transparency of the IRP process, and denies the bidder the right to provide explanations or respond to claims or issues raised during the proceedings. In order to guarantee full and fair access to the rights enshrined in the procurement law, face-to-face confrontation between the bidder and the representative of the procurement entity should be provided as a matter of right, not left to discretion of the Review panel.

VII.3.1.3. Fees required for appeals could deter meritorious claims

The requirement to pay fees in order to appeal a procurement decision could prejudice certain claimants. While the requirement to pay these fees is done in order to prevent baseless complaints, it is done with no regard to the potential merit of the claims. No other administrative complaints process in Rwanda is subject to such payment of fees. Citizens should have the right to challenge illegal decisions made by the government, including decisions made in the procurement process by the tender committee or procurement entity, regardless of their income level or ability to pay a fee. Furthermore, these fees are not refundable, even where the claims are found to be meritorious. In other similar circumstances, such as litigation, the winning party is often entitled to a refund of the fees related to bringing or defending the case. In the same spirit, the procurement entity could be required to refund a winning bidder, or even a bidder whose claim is accepted at the pre-screening stage. This change in the application of the fees would ensure that these fees are used to discourage meritless claims rather than potentially become a source of revenue for government institutions. In fact, at the national level, the IRP received 161 complaints in the past 3 fiscal years (July 2014 – June 2017), and among all claims declared admissible, 49% of the claims were successful and the government was held liable for breaching procurement procedure, so the requirement to pay fees to challenge a procurement decision has a negative impact on many bidders whose claims are in fact found meritorious.[368]

[367] Articles 15 and 16, Constitution of the Republic of Rwanda of 2003, as amended in 2015.
[368] Annual activity reports of the NIRP accessed at http://www.rppa.gov.rw/index.php?id=561. Data was not available for reviews conducted at the District level. See Annex C for full available statistics.

At the District level, bidders may be even worse off. Although statistics on the number of filed and successful complaints were not available for District IRPs, participants in round-table discussions and interviews reported that bidders who participate in procurements at the District level often do not trust the District IRPs, and do not even bother to submit applications for review when they feel the procurement process has been unfair. By not submitting complaints to the District IRP in the first instance, bidders lose their right to appeal to the national IRP at the second level. Further reports by round table and interview participants noted that some bidders also avoid appealing in order to maintain their reputation and relationships with the District. Given the lack of permanent, independent staff at the District IRPs, the potential for abuse of the pre-screening and appeals process at the District levels is significant and is likely to cause underreporting of misconduct in the procurement process, even where data is available.

VII.3.2. Challenges in implementing decision-making in public procurement

VII.3.2.1. Implementation of e-procurement

Ministerial Order n°001/14/10/TC of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts was enacted in 2014 in order to bolster the legal framework of public procurement in Rwanda. However, as Rwanda has begun to implement e-procurement, some of the legal provisions related to procurement have become obsolete because many documents required in bidding process are no longer necessary. For example, the procurement law requires the procurement officer in each government institution to submit a monthly report on procurement through hard copy, but e-procurement may have made this obligation obsolete because reports may now be downloaded through the e-procurement system. Therefore, the legislation and regulations need to be harmonized with the e-procurement practice to ensure procurement entities know what their legal obligations are.

VII.3.2.2. Overuse of minor corrections option

The Auditor General's report from June 2016 noted "an increasing trend in public entities where the internal tender committees frequently make price adjustments on bids submitted to correct arithmetic errors." The report further notes that "whilst the practice is legally provided for under the procurement laws and regulations, its frequent use and changes in bid prices is an indicator of some emerging challenges in procurement, and could easily be abused." For example, Nyamagabe District made such changes in 14 tenders awarded during the year.[369] Where the practice of making corrections is almost universal, it will be difficult to determine when the process is being abused or where the line between minor corrections and major corrections lies.

VII.3.2.3. Deficiencies in contract management skills

Procurement officers reported challenges in carrying out contract management for procurement contracts. Where the concerned department prepares the terms of reference for the procurement, that department does not intervene in contract management, which is left to the procurement officer, who may or may not have clear information about the conditions giving rise to the tender and does not have the same substantive context for the work being done or the services being

[369] Office of the Auditor General's Report, 2016.

provided. Nonetheless, it is the procurement officer who would be held liable for any breach of procurement procedure. The Auditor General's report from 2016 noted a lack of general supporting documents to justify the tender procedures and has recommended "intensified efforts dedicated to project conceptualization, procurement and monitoring of government programs to ensure realization of intended objectives".[370] RPPA indicated that it has made efforts to increase capacity of procurement officers in the domain of procurement law, although challenges still remain because some contracts are complex and technical, further capacity building is needed.

VII.4. Recommendations

For proper administration of justice and decision-making in public procurement, the legal and institutional frameworks need to be strengthened as follows:

1. ***Capacity of procurement staff at public entities should be strengthened.***

The staff of RPPA as well as those from public institutions must benefit from capacity-building in terms of procurement procedures. The training should be focused not only on the preparation of bidding and the whole process of the procurement, but also on contract management in terms of respecting the principles of procurement. Strategies should be adopted to ensure that the user department collaborates with the procurement department for better management of procurement contracts.

2. ***The law should provide for sanctions for a procurement entity that does not submit its annual procurement plan on time.***

While the law creates an obligation for entities to submit an annual procurement plan, it does not create any sanction for those that fail to do so. This lack of sanctions harms the authority of the RPPA and risks the fundamental principles of fairness, transparency, and accountability in the procurement process.

3. ***Resources should be allocated to provide for permanent staffing of District IRPs to ensure their independence and efficient functioning.***

The fact that Independent Review Panels at the District levels do not have their own budgets and lack the staffing capacity can harm the rights of bidders because they are not able to give adequate time and attention to requests for review. Lack of incentives to review complaints could result in poor performance.

4. ***IRPs at the District level should be independent from procurement processes at the District level.***

Where Districts themselves are the procuring entity, the independence of the review process is compromised as the IRP is an organ of the District and staffed by a permanent staff member of the District.

[370] Office of the Auditor General's Report, 2016.

5. ***Bidders with recourse to the IRP at the national level should be provided a second level of review for appeals.***

Bidders with recourse to appeal to District IRPs benefit from a second level of review to the IRP at the National Level. However, Bidders at the National Level can only appeal to the IRP at the National level, and must then take the claim to Court.

6. ***The law should provide for refunding of fees payable to file an appeal once a complaint is accepted or is successful.***

The current framework of fees for appeals to the procurement process may be unfairly prejudicing bidders who suffered harm due to wrongful actions or decisions of procurement entities. In order to establish the fairness of the process, bidders who are successful in their claims, or even those who have their claims approved in the pre-screening process, should receive a refund of these fees.

7. ***Bidders should have the right to appear before the IRP at the hearings related to their claims.***

The possibility to be heard in person at the IRP is in the discretion of the IRP. While the IRP is obligated to treat both parties the same in its decision about whether to grant an oral hearing, an aggrieved bidder should be permitted the opportunity to appear in person at the hearing determining his or her claim in order to preserve the principles of fairness and transparency in the procurement process.

8. ***The procurement law should be revised to provide for automatic penalties payable to winning bidders for delayed payments.***

In order to balance the rights of bidders with the rights of public entities, terms should be added to the standard procurement contract that provides penalties against procurement entities that violate the rights of winning bidders in the carrying out procurement contracts. Where procurement contracts are normally prepared by the procurement entity, they might not willingly add penalty provisions against themselves, so these terms must be required as standard.

VIII. CROSS-CUTTING INSTITUTIONS THAT SUPPORT ADMINISTRATIVE JUSTICE IN RWANDA

In the field of administrative justice in Rwanda, several institutions that aim to provide greater access to justice also benefit individuals seeking to access their rights through administrative processes. In particular, the Office of the Ombudsman, the Committee in charge of Out-of-Court Settlements, and the *Maison d'Accès à la Justice* provide cross-cutting support for individuals seeking to access their rights in Rwanda. Furthermore, courts in Rwanda have review powers over administrative decision-making and may annul administrative actions and/or provide compensation for individuals harmed by administrative actions.

VIII.1. Office of the Ombudsman

The Office of the Ombudsman is an institution established by the Constitution of the Republic of Rwanda of 2003 (revised in 2015) under Article 139. As an implementing instrument of this constitutional provision, Law N°76/2013 of 11/9/2013 determines the Mission, Powers, Organization and Functioning of the Office of the Ombudsman (hereinafter referred to as "Law governing the Office of Ombudsman"). The Office is independent and does not take direction from any other institution.[371]

Among other responsibilities, the Office of the Ombudsman is charged to

i. Act as a link between the citizen and public and private institutions;
ii. Prevent and fight injustice, corruption and related offences in public and private entities;
iii. Receive and examine complaints from individuals and associations in connection with the acts of civil servants, State organs and private institutions, and mobilise such civil servants and institutions to resolve those complaints if it finds they are founded;
iv. Contribute to strengthening of good governance in all institutions by drawing the attention of such institutions where their functioning and relations are weak due to their contradiction with the law, with their respective responsibilities, with the State general policy or because they have a negative impact on the population;
v. Contribute to strengthening of good governance in all institutions by drawing the attention of such institutions where their functioning and relations are weak due to their contradiction with the law, with their respective responsibilities, with the State general policy or because they have negative impact on the population;
vi. Advise public and private institutions as to the improvement of the quality of services delivered to the population.[372]

Article 8 of the Law governing the Office of the Ombudsman also requires the Ombudsman to refer to the appropriate institution any person who brings a complaint that falls in the competence

[371] Article 3 of the Law governing the Office of Ombudsman.
[372] Article 7 of the Law governing the Office of Ombudsman specifically talks about the power to advise of the Office of Ombudsman where it states that "The Office shall provide advice to leaders and other civil servants or private operators with the aim of fighting behaviour and all practices likely to be a source of injustice, corruption and related offences."

of another institution. The same article, however, gives that right to the complainant to return his or her complaint to the Ombudsman in case the issue is not resolved in the other institution.

The Law governing the Office of the Ombudsman gives the power to the Ombudsman to help resolve complaints from individuals or private legal entities related to corruption and injustice. The Office of the Ombudsman is an important institution with regard to ensuring access to administrative justice through helping to resolve any injustice, fight corruption that can existing in decision making processes and in the management of public and private institutions, and give advice on the respect of the law and on avoiding behaviours and practices likely to be a source of injustice, corruption or related offences. The Ombudsman also has the power "to request for disciplinary sanctions to be imposed against any employee whether Government, public or private who acted unjustly towards a person, an organization or an independent association, after written explanations and to determine what should be done so that those who suffered from injustice may find redress."[373]

Without replacing other competent institutions, the Office of the Ombudsman may receive and handle any complaint involving corruption and injustice, including those related to the four research areas – Expropriation, Public employment (public service), Private employment (labor), and Public procurement. The Office of the Ombudsman receives complaints from people who come to the Office in Kigali and through community outreach campaigns, which the Office regularly conducts. In this regard, the research team was provided with information on complaints related to expropriation received by the Office of the Ombudsman. The table below shows the number of expropriation-related complaints received by the Office of the Ombudsman between 2014 and 2017[374]:

Financial year	**Number of complaints received[375]**
2014-2015	73
2015-2016	91
2016-2017	205

The figures above indicate that there has been an increase in the number of complaints related to expropriation received by the Ombudsman in the past few years. Among the complaints received in 2016-2017 was one case that included 8,040 people from 23 districts claiming payment for their destroyed crops and damaged property during the construction of electric lines by the Rwanda Energy Group (REG). The total value of the claimed compensation for all of these properties is 1,029,956,850frw. This case is now being processed by REG and relevant District authorities following the recommendations provided by the Office of the Ombudsman to these institutions.[376]

Challenges/issues:

[373] Article 10 of the Law governing the Office of Ombudsman.
[374] Report from the Office of the Ombudsman submitted to LAF on 20th November 2017.
[375] These cases include those received in writing (individual written complaint) as well as those received during the annual Anti-injustice campaigns (during which officials and staff from the Office of the Ombudsman do field visits).
[376] Report from the Office of the Ombudsman submitted to LAF on 20th November 2017.

- The Office of the Ombudsman has limited staffing capacity compared to the number of complaints received from the citizens.[377] As a result, there are delays in responding to people's complaints.
- The value and requirement of being accountable and transparent has not yet become entrenched in the work and behaviors of some leaders.[378]
- Investigators and prosecutors have limited technical capacity in light of the complexity of cases involving corruption and injustice.[379]

VIII.2. Committee in Charge of Out of Court Settlement

The Committee in charge of out of court settlement of cases concerning the Government was established by the Cabinet meeting in its decision of 27/6/2001 and is defined by Prime Minister's Instructions Nº005/03 of 16/12/2015 governing the organization and functioning of the Committee in Charge of Out of Court Settlement (hereinafter referred to as "Prime Minister's Instructions governing the Committee in Charge of Out of Court Settlement"). According to Article 5 of the Prime Minister's Instructions, the Committee is competent to amicably settle disputes involving public entities, both those that have already reached the courts and those that may be subject of litigation in the future. A case may be submitted to the Committee by the authorities or the advocate of the concerned public entity, or by the person who has a dispute with the public entity.[380] The Committee is chaired by the Permanent Secretary of the Ministry of Justice. Though not a mandatory mechanism, this Committee can also be another avenue for the settlement of any complaint against a public entity, including those related to expropriation, public employment, and public procurement. The Committee also has the power to award compensation due to loss caused by an administrative decision or act.[381] With regard to the force of the agreement reached through this mechanism, Article 31 of the Prime Minister's Instructions governing the Committee in Charge of Out of Court Settlement states that "The agreement signed between the parties shall have the same force as that of the final judgment of a competent court."

Challenges/issues:

- Limited awareness of the existence of the Committee in charge of out of court settlement of cases concerning the Government. Most people (litigants) are not aware of the existence of this committee which leads them to end up into courts without having explored this opportunity even where they would have needed to.[382]

[377] Interview with the official at the Office of Ombudsman on 20th November 2017.
[378] "The Mandate of the Office of the Ombudsman, Achievements, Best practices, Lesson learned and challenges faced.", report presented by the Office of Ombudsman in 2008. file:///C:/Users/user/Downloads/Rwanda%20Office%20of%20the%20Ombudsman%20(1).pdf
[379] Presentation made by the Chief Ombudsman on 18th February 2017 at the Consultative Meeting organized by members of the African Parliamentarians Network against Corruption (APNAC) in Kigali. http://ombudsman.gov.rw/en/?Corruption-cannot-be-curbed-with-no-cooperation-and-strong-anti-corruption#sthash.QxkUGFkH.dpbs
[380] Article 4 of the Prime Minister's Order governing the Committee in Charge of Out of Court Settlement.
[381] Articles 23 - 30 of the Prime Minister's Order governing the Committee in Charge of Out of Court Settlement.
[382] Interview with the President of the Commercial Court of Nyarugenge on 28th November 2017.

VIII.3. Maison d'Accès à la Justice

The *Maison d'Accès à la Justice*, commonly known as "MAJ"[383], are established in all 30 Districts in the country. The major responsibilities of MAJ are: 1) to advise people on law-related issues; 2) to disseminate laws and regulations; 3) to advise Abunzi in legal matters and procedures, and monitor and follow-up their activities; 4) to coordinate the execution of court judgments and execute judgments for poor and vulnerable people; 5) to provide legal assistance and legal representation in Courts for poor and vulnerable people; 6) to handle all issues related to GBV; and 7) to assist people in conflict resolution through mediation with other individuals or relevant institutions.[384] In principle MAJ does not handle administrative cases in order to avoid conflicts of interest as they are public servants[385], but they can provide general advice, do advocacy and orient an individual toward the right mechanisms or institutions in a case related to administrative matters.

Challenges/issues:

- Limited resources of these offices, both in terms of staff and logistics like transportation[386]. This had led to limited outreach of the MAJ and hence limited citizens' awareness of the existence of these Bureaus and the services they provide.[387]

VIII.4. Courts

Under the areas of Expropriation, Public employment, Private employment, and Procurement the courts are guided by Law N°21/2012 of 14/06/2012 relating to the Civil, Commercial, Labour and Administrative Procedure (hereinafter referred to as "Code of Civil Procedure"). The Code of Civil Procedure provides the procedures, timelines and requirements for filing a claim and responding to a claim, among other matters. This law is the backbone of access to justice in administrative matters both prior and during the courts processes because it establishes the court's review role in administrative decision-making. The Civil Procedure Code also provides for the exhaustion of administrative remedies, by requiring an aggrieved party to appeal to the immediate superior authority of an institution or official who makes an adverse administrative decision against him or her before lodging a complaint with the court[388]. The Civil Procedure Code also provides for filing

[383] These can be translated as "Access to Justice Bureaus/Offices". MAJ legal officers work under the Ministry of Justice (MINIJUST).
[384] See Ministry of Justice, MAJ Description, http://www.minijust.gov.rw/services/maj/maj-description/ ; see also Law N°83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning [hereinafter 2013 Bar Association Law], at Article 68.
[385] For example they cannot provide legal representation (in a court of law) to a vulnerable person in a case against a public entity.
[386] Each district MAJ office is staffed with only three legal officers that are meant to cover the whole district and are stationed at the district level.
[387] See Legal Aid Forum "ICT for Justice: Citizen Feedback on Justice and Legal Services in Rwanda through ICT Platforms" Final Report, p. 43, Kigali, Rwanda.
[388] Article 336 of the civil procedure code.

for the annulment of an administrative act or decision, and gives the aggrieved individual a right to request compensation for any damages suffered due to the decision.[389]

Challenges/issues:

- Article 2 of the Civil Procedure Code addresses admissibility of a claim, namely the status, capacity, and interest. However, the second paragraph introduces a new element of standing to be sued and the idea that associations, organizations and institutions without legal status do not have standing to sue (but can be sued). This might cause injustice and can be interpreted as a double standard. In this regard, the law should be revised to underline the principle that any party who can be called into court as a defendant should also have the ability to initiate cases as well".
- Article 14 of the Civil Procedure Code deals with the adjournment of cases, stating that a case shall not, *for any reason*, be adjourned more than two (2) times within the same court for reasons based on the actions of litigants. The term "for any reason" is very broad and should be amended to "for any unjustified reason".
- Article 13 sets a hypothetical period of six months for the adjudication of a case. Despite the understanding that this article intends to ensure timely justice for litigants, it could also be detrimental to the interests of parties to the case as the court might rush through the case to abide by the time limit instead of ensuring the quality of justice. In this regard, the law should state that the case be adjudicated within a reasonable time. Delays in the adjudication of any case depend on the nature and complexity of the case and the resources of the court hearing the case. All cases cannot be adjudicated in the same amount of time as all cases are different.
- The Code of Civil Procedure should also be revised to include provisions relating to arbitration and conciliation. The current law on arbitration[390] only addresses arbitration and conciliation in commercial matters. Mediation or conciliation and arbitration are part of the mandate of a judge, so legal provisions in this regard should also be included in the Civil Procedure Code as well.

Other issues which are not specific to administrative justice also remain: backlog and corruption. Though a lot of efforts have been made to reduce the backlog in the courts, the issue still remains, especially at the Supreme Court and the High Court.[391] Furthermore, the perceived partiality of judges, lack of independence, and corruption also affect court users' satisfaction with the decisions and the work of the courts.[392]

[389] Articles 334-336, 342 of the civil procedure code.
[390] Law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters.
[391] According to the study conducted by Transparency International Rwanda, still over 20% of respondents claim waiting one year and longer to come to the first hearing since the complaint was lodged. Transparency International, "Situational Analysis of Professionalism and Accountability of Courts for a Sound Rule of Law in Rwanda (Year II)", 2015. https://ombudsman.gov.rw/en/IMG/pdf/courtsmonitoringrwanda.pdf.
[392] Transparency International Rwanda "Situational Analysis of Professionalism and Accountability of Courts for a Sound Rule of Law in Rwanda (Year II)", 2015.

VIII.5. Recommendations

To improve the contribution of these cross-cutting institutions in ensuring access to timely and effective access to administrative justice by citizens, the following recommendations should be considered:

- Strengthening the capacities of the Office of the Ombudsman.
- Strengthening the capacities of MAJ to enable them to reach out to people at the grass roots levels.
- Raising public awareness about the existence of these institutions and mechanisms, their responsibilities and services, and how they can be reached.
- Revising the Civil Procedure Code to respond to some of the gaps or issues identified.
- Continuing to strengthen the capacities of judges, prosecutors and investigators to ensure delivery of quality justice.
- Strengthening monitoring and accountability measures for the staff and leadership of both public and private sector institutions to promote rule of law and access to justice.

ANNEX A

Number of complaints filed with District Labour Inspectors Annually from 2014-2017

No.	District	Number of complaints received		
		2014-2015	**2015-2016**	**2016-2017**
1	Gasabo	307	296	No report submitted
2	Kicukiro	347	177	151
3	Nyarugenge	501	359	846
4	Bugesera	159	94	110
5	Gatsibo	28	32	No report submitted
6	Kayonza	108	52	31
7	Kirehe	23	20	105
8	Ngoma	13	8	13
9	Nyagatare	191	No report submitted	No report submitted
10	Rwamagana	66	40	122
11	Karongi	29	50	67
12	Ngororero	36	24	26
13	Nyabihu	20	27	35
14	Nyamasheke	18	38	27
15	Rubavu	195	105	149
16	Rusizi	43	70	56
17	Rutsiro	No report submitted	No report submitted	59
18	Burera	29	36	24
19	Gicumbi	31	50	62
20	Gakenke	32	191	87
21	Musanze	15	No report submitted	276
22	Rulindo	44	16	11
23	Gisagara	04	No report submitted	10
24	Huye	183	21	54
25	Kamonyi	27	16	19
26	Muhanga	13	26	33
27	Nyamagabe	87	43	39
28	Nyanza	11	22	42
29	Nyaruguru	53	No report submitted	22
30	Ruhango	265	No report submitted	337

ANNEX B

Status of complaints/appeals received by the Public Service Commission annually from 2014-2016

Type of complaints	**2014-2015**				**2015-2016**				**Grand total**
	Justified or founded	Unjustified	Pending[393]	**Total**	Justified or founded	Unjustified	Pending	**Total**	
Complaints related to recruitment	31	62	0	**93**	35	56	0	**91**	**184**
Complaints related to management of staff	93	189	22	**304**	107	196	22	**325**	**629**
Total	124	251	22	**397**	142	252	22	**416**	

[393] These are cases that were pending (had not been analyzed yet) by the time of reporting.

ANNEX C

Status of complaints/appeals received by the National Independent Review Panel annually from 2014-2017

No.	Designation	Year			Total
		2014-2105	**2015-2016**	**2016-2017**	
1.	Admissible and founded appeals	18	26	15	**59**
2.	Admissible and unfounded appeals	31	23	8	**62**
3.	Inadmissible appeals	9	5	9	**23**
4.	Terminated appeals	0	3	3	**6**
5.	Ongoing appeals[394]	5	5	7	**17**
Total		**63**	**62**	**42**	

[394] The analysis of these cases was still going on by the time of the annual reporting (i.e., no decision had been taken on the case/s).

ANNEX D

Number of Administrative and Labour cases received by Intermediate Courts Annually from 2014-2017

RMEDIATE TS (IC)	2014-2015[395]		2015-2016		2016-2017	
	No. of Administrative cases registered	**No. of labor cases registered**	**No. of Administrative cases registered**	**No. of labor cases registered**	**No. of Administrative cases registered**	**No. of labor cases registered**
Nyarugenge	117	262	101	352	133	406
Gasabo	60	84	24	138	133	406
Nyagatare	13	5	105	10	15	3
Ngoma	21	20	11	6	5	17
Muhanga	11	17	6	18	12	17
Huye	14	4	10	11	9	16
Nyamagabe	10	2	7	11	11	2
Rusizi	10	4	10	7	3	13
Karongi	15	8	9	8	6	9
Rubavu	7	20	4	33	6	9
Gicumbi	5	5	6	18	4	13
Musanze	9	27	9	18	15	21
	292	**458**	**302**	**630**	**352**	**932**

[395] Public institutions, including courts, in Rwanda report according to the financial year which starts in July to June of the following year.

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