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**Private Labor Regulation
and Administrative Justice**

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

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



Nature of labor complaints

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

The initiation of the dispute process in practice

The procedure for handling labor disputes usually starts with a claim before the employer. These claims often involve allegations of unjust dismissal, unpaid wages or overtime, or termination of contract for purported economic reasons. Employees usually consult their syndicates and/or their superiors (e.g., the human resources manager, Director General, or head of institution) in raising a complaint. If the dispute is not resolved, the employee is supposed to write a complaint letter to the workers' delegates at the firm for the purpose of exploring mediation. These employee representatives are empowered by the law to amicably settle individual labor disputes between employers and employees.¹ The workers' delegates call the disciplinary committee of the institution, which is supposed to handle the dispute. The employees elect the workers' delegate² as required by article 114 of the Labor law.

There is a widespread view among those who have had labor disputes that employees seem to undervalue these elections and do not have confidence in the ability of delegates to resolve disputes. There is also some distrust of the delegates' independence; many believe top managers are in a position to influence such elections. In addition, workers' delegates are not adequately protected by the law when they take decisions against their employer.³ Furthermore, many citizens who were interviewed said that workers' delegates often take the side of the employer to avoid further conflicts and protect their own position, resulting in decisions that often go against employees³ who are more vulnerable. In certain other cases, employees have reported that inspectors may become overly familiar with, and sometimes biased toward, certain employers as a result of having previously inspected the latter's workplaces and having met with

¹ Art. 102 of the law N° 66/2018 of 30/08/2018 regulating labor in Rwanda (hereinafter Labor law)

² For elections, see Ministerial Order n°09 of 13/07/2010 determining the modalities of electing worker's representatives and fulfilment of their duties.

³ Article 1 of the ILO Convention on Workers' Representatives requires workers' representatives to be afforded protection from wrongful dismissal or other adverse actions based on the role they play in workplace dispute resolution. In Rwanda, one of the current protection measures is stated in Article 30 of the Labor Law, which provides for an increase in damages in cases of unjust dismissal of workers' delegates' due to fulfillment of their workplace duties.

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

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

According to Article 102 of the new Labor Law of 30/8/2018 (repealing labor law of 27/5/2009), when employees' representatives (workers' delegates) fail to settle a dispute amicably, the concerned party may refer the matter to the labor inspector of the area where the enterprise is located for mediation.⁴ In practice, when the dispute is not solved by workers' delegates, an employee usually does go to the inspector or approaches a district official who in turn typically refers him or her to the inspector. In fact, district officials by law have no official role in labor dispute resolution but may, out of courtesy, try to resolve disputes or offer some informal guidance. This can present problems, since dispute resolution is by law entrusted to labor inspectors – who are employees of the Ministry of Public Service and Labor (MIFOTRA) – and district officials may sometimes fail to provide sound or accurate advice. If and when the employee ends up in the labor inspector's office, he or she is able to explain the basis for the dispute with the employer, verbally or in writing.

Upon receipt of a complaint, the task of the labor inspector is thus to conciliate with the parties to the dispute. However, his/her role is not limited to conciliation; it is also to prevent disputes from occurring in the first place through periodic inspection of workplaces or investigation of an employer following multiple complaints lodged about particular issues – from compensation to safety.⁵ This preventive function can help guide employers on how to comply with the law, and raise general employer and employee awareness about legal requirements.

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

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

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

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

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

⁴ Article 103 of the Labor Law stipulates that labor inspectors are empowered to settle collective labor disputes as well through mediation

⁵ See Article 113 of the Labor Law (2018), which stipulates that "The Labor Inspectorate is responsible for monitoring compliance with this Law, its implementing orders, collective agreements as well as awareness and providing advice on matters relating to Laws governing labor and social security." Settlement of Labor Disputes through Mediation (Arts. 102 & 103).



Role of inspectors

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

Mediation in practice

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

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



Mediation outcomes

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

cases, employers may be represented or accompanied by a lawyer, whose presence can interfere with the effectiveness of the mediation process (some lawyers zealously advocate and adopt an adversarial stance that may be appropriate in a court of law, but unsuited for a genuine mediation dialogue)⁶.

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

⁶ A few interviewees also indicated that employers and/or their lawyers sometimes appeared to exert undue influence on inspectors or district officials based on their stature in the community or personal relationships.

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

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

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

Inspections in practice

With regard to carrying out an inspection, labor inspectors must obtain information that affords them an objective, factual view of a company's treatment of its workers. The labor inspector works cooperatively with workers' delegates to collect such information and may do so through an announced or unannounced visit. The latter may occur if there is an indication that serious health and safety issues exist.⁷ However, until recently, a company could prohibit a labor inspector from conducting an inspection with impunity; there was no sanction available to enforce these procedures. Now, however, under Article 120 of the recently amended Labor Law (2018), administrative sanctions are available, notwithstanding the fact that modalities for implementing these sanctions are yet to be determined by an Order of the Minister in charge of labor.⁸

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



Inspections

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

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

⁷ Article 6 of Ministerial order n°07 of 13/07/2010 determining modalities of the functioning of the labor inspection states that "[t]he Labor Inspector shall not be obliged to inform the employer or the representative of his/her intended visit. He/she may request to be accompanied during his/her visit by one staff delegate of his/her choice within the institution."

⁸ Article 120 states that "an employer who refuses to allow a labor inspector to enter an enterprise, refuses to provide information to him/her, fails to report to him/her via a summons or implement recommendations from a labor inspector, commits administrative misconduct. He/she is liable for an administrative fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two million Rwandan francs (FRW 2,000,000)."

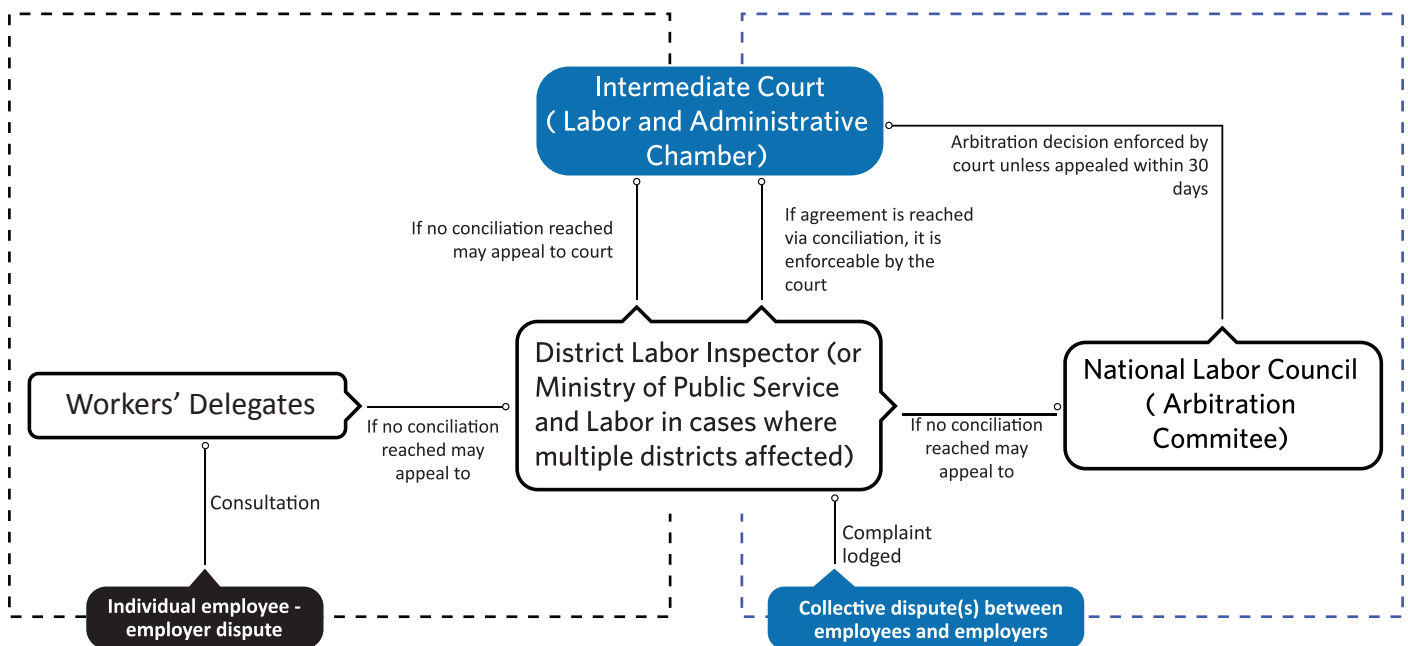


Inspections follow up

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

Administrative Decision Pathways in Private Labor Disputes

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

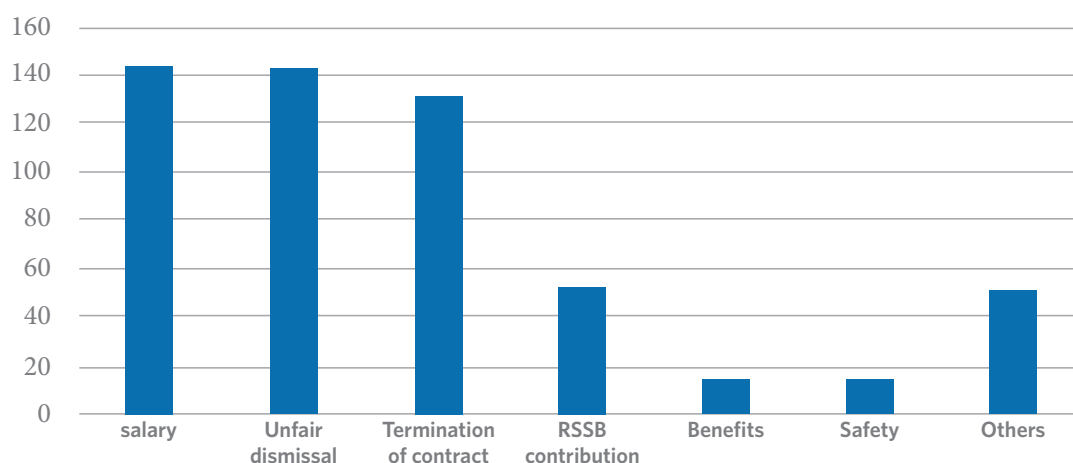


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Private Labor Dispute Resolution: Quantitative Data on Administrative Justice in Practice

The nationally representative sample of labor complainants participating in a survey about dispute resolution generated a wealth of interesting data about the processing of individual labor complaints. Based on our sample of 370 respondents who pursued individual private labor complaints over the past three years for which data were available (2015-2017), Figure 1 indicates that the main reasons for complaining were related to salary issues, unfair dismissal, and termination of contract for alleged economic or technological reasons. More than 90% of the complaints are related to at least one of these reasons (note that a complaint may be a combination of these). Complaints related to Rwanda Social Security Board (RSSB) contributions came next, but were much smaller in volume (mentioned by about 14% of surveyed complainants). Safety complaints were much lower (4% of respondents). Notably, females lodged relatively more complaints about salary and fewer about unfair dismissal and termination of contract for economic or technological reasons. Also, respondents in the higher Ubudehe categories lodge relatively fewer complaints about salary.⁹

Figure 1: Reasons for Lodging a Complaint (# of cases)¹⁰



Complainants in the sample were mostly male (75%). They were concentrated in Ubudehe categories 2 (25%) and 3 (67%), and were generally between the ages of 26 and 35 years (40%).¹¹ A large number were university graduates (49%),¹² working in positions designated as permanent (97%) with full-time (92%) and open-ended (61%) contracts in private for-profit enterprises (82%). More than half have fewer than five years of experience (54%),¹³ and had a household monthly income above 30,000 Rwf (87%).¹⁴

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

From the full sample of 370 respondents, fewer than two-thirds of the surveyed complainants (63%) felt informed about their labor rights, while more than one-third (37%) felt uninformed.¹⁵ Looking at the characteristics of the two groups, it was noticeable that (i) men (36%) felt less informed than women (41%); (ii) individuals between the ages of 46 and 55 years were more informed than others,¹⁶ which can be related to their working experience;

⁹ 45% of complaints in Category 1 are related to salary, 41% in category 2, 38% in category 3, 0 in category 4.

¹⁰ IPAR's calculation.

¹¹ Age category 36-45 accounts for 35%.

¹² Max. secondary diploma holders account for 17% and Max. Primary diploma holders account for 16%.

¹³ 26% have between 5-9 years of experience

¹⁴ 32% have income between 30,000 and 100,000 Rwf, 30% have income between 100,000 and 200,000 Rwf and 25% have income above 200,000Rwf.

¹⁵ The distribution is: Not well informed at all 24%; Not very well informed 13%; Somewhat informed 27%; Very well informed 63%.

¹⁶ 45% for 16-25 years; 60% for 26-35 years; 67% for 36-45 years; 64% for 45-55 years and 56% for 56 years and older.

(iii) complainants from a higher Ubudehe category felt much better informed¹⁷; (iv) More educational attainment was correlated with complainants who self-identified as better informed.¹⁸ In this regard, those with a University-level education seem to have had high degree of awareness of their labor rights (79% of them felt informed); and (v) there was no significant difference in workers self-identifying as full-time workers versus part-time workers.

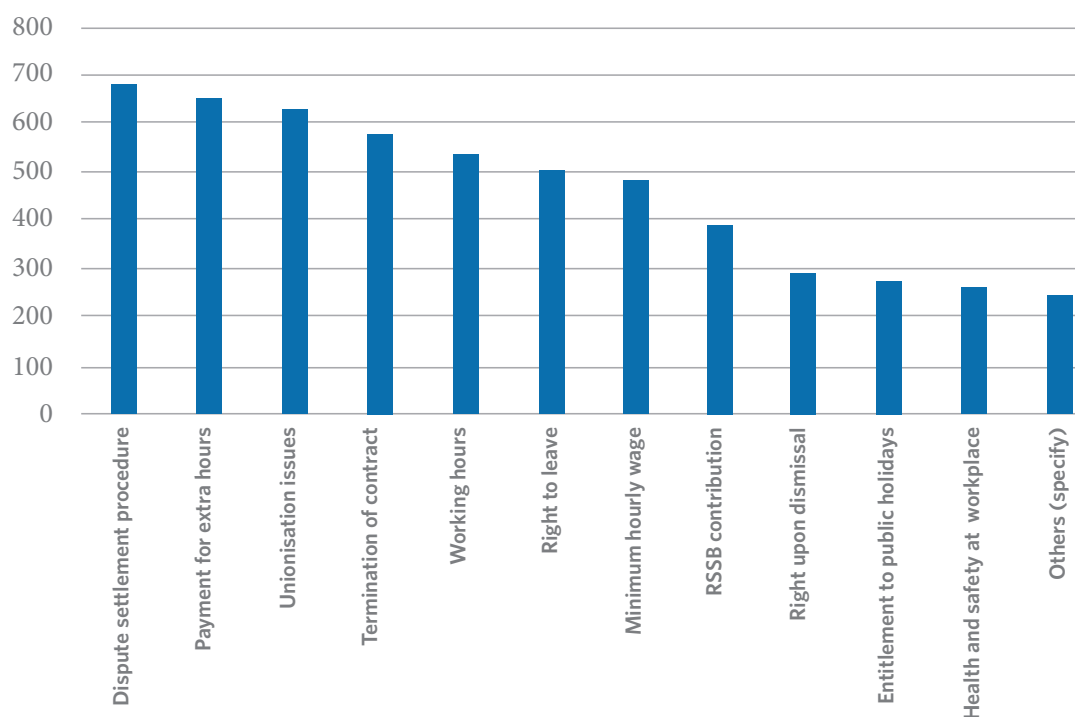
It is worth noting that employees who were better informed had a higher probability of getting a written decision, getting an explanation of the reasons for a decision, getting information on how the administrative process works in the first instance, getting more attentive treatment from a relevant public official, getting more courteous treatment, getting more helpful information, and being given an opportunity to make their views known and offer any evidence supporting their case verbally or in writing. These findings clearly highlight the importance of being informed.¹⁹

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

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

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

Figure 2: Domain of information needed (in % of respondents)²⁰



¹⁷ 18% of complainants in Category 1 feel informed, 50% in category 2, 50% in category 3, 100% in category 4.

¹⁸ 17% of complainants with no education feel informed, 35% for primary educated, 49% for Junior secondary educated, 62% for Secondary educated, 79% for University educated.

¹⁹ These results are drawn from a multinomial regression results. The modeling strategy and the results table is provided in Annex A. For employees who are "somewhat informed" or "very well informed" the probability of getting a written decision compared to not getting a written decision is 3.7, or 5.4 times more likely, respectively, than for employees who are "Not well informed at all" holding other variables constant. Similarly, the probability of getting an explanation of the reasons for a decision is 5.0, or 7.8 times more likely; the probability of getting information on how the administrative process works in the first instance is 2.5, or 4.4 times more likely, and the probability of being given an opportunity to make their views known and offer any evidence supporting their case

In terms of where respondents reported going first to lodge a labor complaint, a very large number indicated they went to the labor inspector (81%). Many fewer reported appealing to a higher authority within their company (5%) or going to their firm's workers' delegates (5%). This is very noteworthy, as the law provides that citizens should first try to resolve a labor dispute within an enterprise by taking a complaint to their workers' representatives; accordingly, the high reported figure of going initially to the labor inspector seems to indicate a very low level of confidence in the workers' delegates, notwithstanding the legally prescribed procedure.²¹

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

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

Similar disparate views emerged from the survey data regarding information provided about the appeals process by different actors: workers' delegates and higher authorities within the company were not seen as providing much of this information (respectively 35% and 26% of them were reported to furnish such information), while labor inspectors did so frequently (in 60% of the cases). A similar relative trend (with significantly better service provided by labor inspectors) was reported by respondents with respect to (1) being given an opportunity to provide evidence and make known his or her views of the case, (2) being provided a written decision and an explanation with reasons thereof, and (3) being furnished information about how and where to appeal. All of these practices reflect sound administrative justice principles.²²

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

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

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

²⁰ Calculation by IPAR.

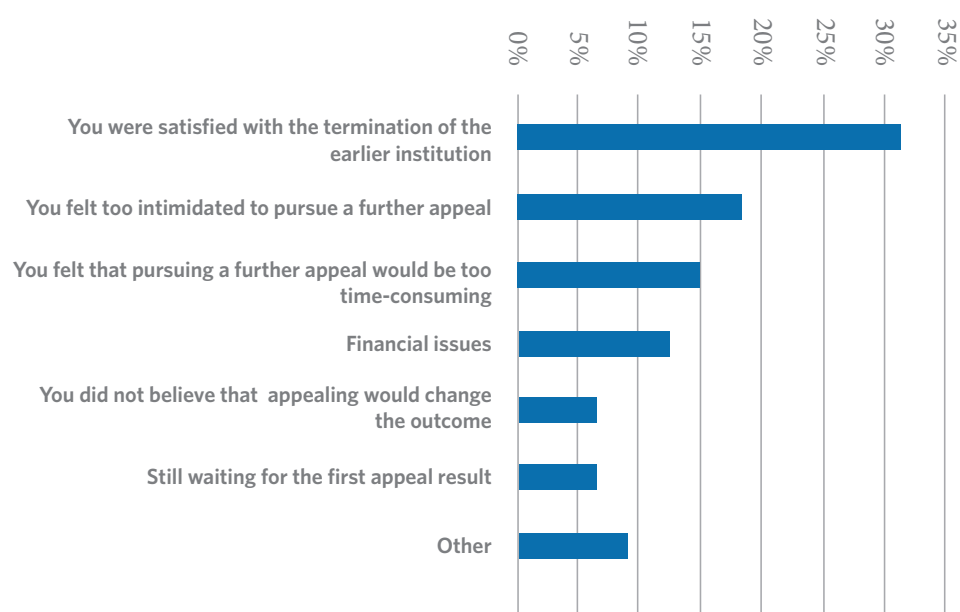
²¹ It is possible that some respondents did not consider workers' delegates as the 'initial' step in lodging a complaint as a procedural matter, but the wording of the survey asks the respondent where "did you go to complain/appeal first" about the dispute in question, and offers workers' delegates as an option. The most likely interpretation of the survey results is that citizens indeed went to the labor inspector directly, especially when viewed in the context of interviews separately conducted with citizens, many of whom expressed significant skepticism about the capacity of workers' delegates to effectively and objectively address employment disputes.

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

In terms of labor complainants pursuing additional appeals, 34% of survey respondents reported taking their complaints to a second forum. In this respect, when a complainant initially lodges a complaint with a higher authority within the employer, he or she typically pursues a second appeal to the labor inspector in 84% of the cases (and in 11% of the cases he or she does not pursue a second appeal). When the first recourse is to the workers' delegates, 69% of complainants lodge a second appeal to the labor inspector, while 29% do not pursue the complaint. When complainants first went to the labor inspector (which is the case for 4 out of 5 complainants), they proceed to courts in 25% of those cases, and 71% do not pursue any second appeal. The reasons why respondents did not pursue a complaint further²³ than the initial institution are provided in Figure 3. Among those who go no further, only 31% of them say they did so because they were satisfied with the initial determination of their case, while 18% of respondents said they felt too intimidated to pursue the complaint any further.

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

Figure 3: Reasons for not pursuing a complaint



²² Survey respondents reporting on their experience before the various first instance complaint handlers had markedly different views on those actors' adherence to certain practices that follow sound administrative justice principles as follows:

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

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

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

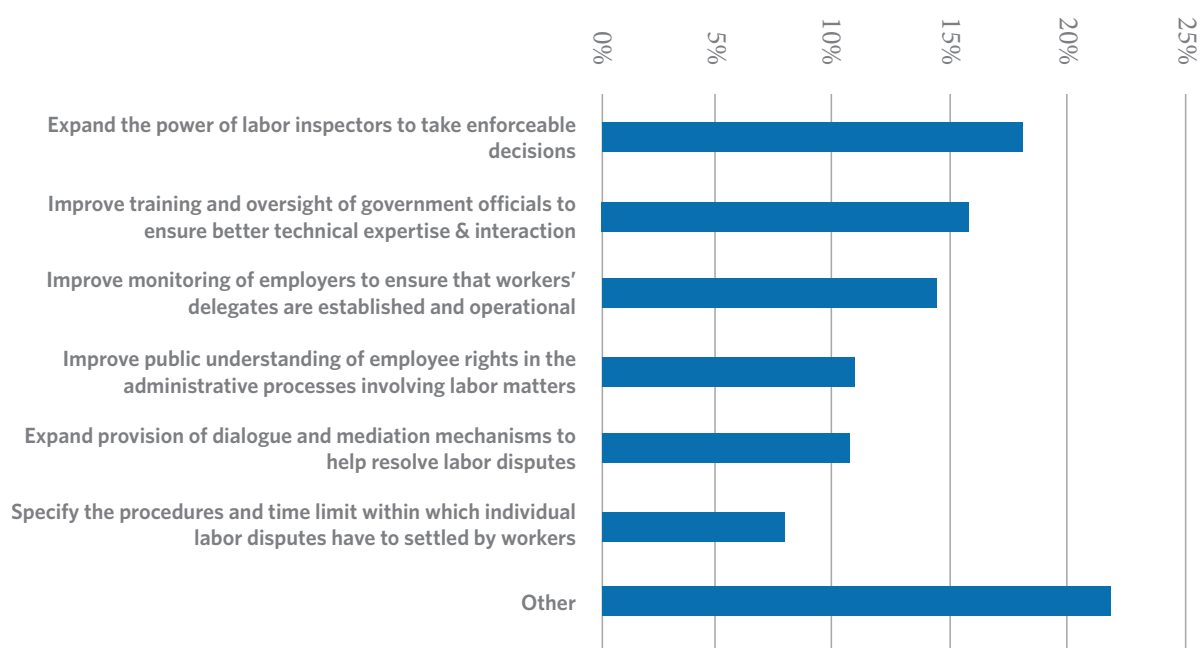
(iv) being provided with information on how and where to appeal: Labor inspector 68%, Workers' delegates 12%, higher authorities within firms 0%

²³ We note that 93% of the complainants who do not pursue a complaint first appealed to labor inspectors.

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

Finally, survey respondents were asked to provide their top priority recommendations to strengthen administrative justice in Rwanda. The top 3 priorities identified by the respondents were as follows: Expand the power of labor inspectors to take enforceable decisions (18%),²⁵ Improve training and oversight of government officials to ensure better technical expertise and interactions with citizens in the handling of labor disputes (14%), and Improve monitoring of employers to ensure that workers' delegates are established and operational (15%). Other recommendations are provided in Figure 4.

Figure 4: Recommendations to SRAJ



²⁴ It is important to note that article 120 of the new Labor Law of 2018 provides for sanctions against employers who obstruct the functioning of the labor inspectorate. Modalities for implementing these sanctions are yet to be determined by an Order of the Minister in charge of labor. The law does not however expand the powers in relation to enforcement of settlement agreement.

3

Lessons Learned and Recommendations

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

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

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

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

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

“
Workers delegates
are not protected
by the law, they
usually fear to
take decisions
related to disputes
between employees
employers, they just
keep quiet.
Group Discussion, 2019

(the figures were even worse for the higher authority within the employing institution--11% and 6%, respectively). And even where workers' delegates got engaged and took (or explained) a decision, only 41% of the complainants surveyed said they received a written decision or an explanation of the reasons therefor. Still fewer (29%) said they were given an opportunity to provide evidence on their behalf.²⁵

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

²⁵ It is worth noting that the 26% of complainants who reported having a lawyer help them present their case indicated that their first instance complaints handlers (81% of whom were inspectors) were relatively more helpful, more attentive, more courteous, more likely to provide information, more open to receiving additional evidence, providing a written decision, providing reasons for a decision, describing how and where to appeal, and providing a more speedy decision. However, since most citizens can't afford a lawyer and many disputes could be resolved more expeditiously at the workplace (where citizens currently don't bring most of their labor complaints), it behooves policymakers to think more critically about improving problem-solving and mediation skills among worker's delegates and company representatives.

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

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

Raising employers' awareness of dispute resolution and settlement procedures:

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

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

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

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

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

extend the power of the labor inspector to impose sanctions to cases where employers delay or otherwise fail to comply with a settlement agreement that he or she has certified (fully 18% percent of citizens responding to the survey specifically mentioned this as their top recommendation for strengthening administrative justice in the labor sphere)²⁶. This would greatly reduce obstruction by employers while reducing the need for employees to tie up significant resources seeking relief in the courts.

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

” KII, 2019

²⁶ Ideally, the order should also provide inspectors with the ability to sanction employers for repeated failure to comply with a summons for mediation.

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

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

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

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

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

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

Group Discussion, 2019

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

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

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

Meanwhile, employers and employees alike indicated

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

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

4

Annex A: Regression outcomes

Variables descriptions

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

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

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

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

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

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

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

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

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


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

Table 1. Descriptive statistics

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



The Institute of Policy Analysis and Research (IPAR-Rwanda)

 Kimihurura, KG 627 St, Building No.4

 P.O Box 6005 Kigali-Rwanda

 Tel: (+250) 789099704

 E-mail: info@ipar-rwanda.org |  Website: www.ipar-rwanda.org

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