

THE INSPECTION PANEL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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IPN REQUEST RQ09/02

March 12, 2009

NOTICE OF REGISTRATION

Re: Request for Inspection
Democratic Republic of Congo: Private Sector Development and Competitiveness Project
(Credit No. 3815-DRC)

On February 25, 2009, the Inspection Panel received a Request for Inspection (the “Request”) related to the above-referenced Project. Mr. Chola Kabamba and Mr. Assani Kyombi, both residents of Likasi, Katanga, in the Democratic Republic of Congo, submitted the Request acting as former employees of the state enterprise “Générale des Carrières et des Mines,” abbreviated as “Gécamines,” *“and as victims of the Voluntary Departures Operation initiated by the Congolese Government with the financial support of the World Bank.”* The Panel also has been approached on different occasions by additional groups of people raising similar concerns.

The Project

The Project’s objective is to *“support the Borrower’s policy of the promotion of private-sector led growth through: (a) improving the investment climate; (b) supporting parastatal reform in the telecommunications, energy, finance, transport, and mining sectors; and (c) improving mining competitiveness in the Katanga region of the Borrower.”*

According to the Project Appraisal Document (PAD), Component 3 of the Project will consist of *“financial assistance to retrenched mining workers at Gécamines (...). Efforts to restructure the company have focused on cost-cutting measures and measures aimed at increasing efficiency. As a result, Government has approved a voluntary departures program, with a cost of \$40 million (...).”* The PAD states that more than 10,000 workers have decided to benefit from the program and their severance packages will be distributed during project implementation. In addition to distributing the payments, the project will finance social assistance and training to prepare workers for self-sustaining economic activities. The PAD adds that *“the lessons learned in the Katanga province will be used for subsequent severance package distribution to workers in other sectors.”*

The PAD also adds that fiduciary arrangements are made to ensure that: (i) Gécamines staff, beneficiaries of the severance packages, are properly identified; (ii) payments are made in full to eligible beneficiaries; and (iii) following IDA disbursements to a special account, funds flow in a timely manner and appropriate amounts are made. The PAD further adds that supervision of the disbursements will be conducted by BCECO, which will review the list of beneficiaries prepared by Gécamines and audit the payments, and that all necessary protocols, acceptable to IDA, will be drawn up and signed by the parties concerned in a legal agreement.

The Request

The Requesters claim that the “*World Bank financed the design, evaluation, and implementation of the operation known as ‘Voluntary Departures,’ which resulted in the dismissal of 10,655 Gécamines workers from August 11, 2003 to February 6, 2004 in exchange for severance payments ranging from US\$1,900 to US\$30,000.*”

They state that the reintegration effort, in the form of social assistance and training, for employees who voluntarily left their work at Gécamines, should mean that the employees receive their severance allowance and be engaged in individual or collective activities enabling them to earn the necessary income for their own survival and that of their dependents. They also state that the reintegration of those voluntarily leaving Gécamines is intended to make them competitive and capable of producing or creating, at a lower cost, goods or services that are low in cost and of better quality. They further state that evaluation of the activities relating to the reintegration of those voluntarily leaving Gécamines was entrusted to the consulting firm CRETES (“*Centre de Recherche et d’Etudes sur l’Environnement et Sondage*”). The objective of CRETES’ study in Katanga was to evaluate the number of jobs created; the value added by these activities in their immediate environment; the amount of income generated; the problems encountered; and the effects on the social and cultural level.

The Requesters state that the Bank adopted “*special rules and procedures for adopting the loan of US\$43,483,422 intended ‘to facilitate the departure of employees freely seeking to end their careers in the enterprise.’*” According to the Requesters the conditions determined by the Bank, including the payment of a lump-sum amount, are in contravention of the provisions of Articles 67, 78, 100, 144, and 152 of the Congolese Labor Code. They add that each employee was presented with a standard transaction instrument entitled “*Agreement to terminate the labor contract by mutual agreement*” which each had to sign in exchange for a letter of credit drawn up by the Katanga Reintegration Coordination Unit in order to collect the severance payment at the a bank in Likasi.

They state that “*under pressure from the World Bank,*” Gécamines dismissed an initial tranche of 10,655 employees in contravention of the Congolese Labor Code. In addition, they claim that the supervisory authority of Gécamines, with approval from the World Bank, ignored the legal standards and the conventions that the government had agreed to for the settlement of wage arrears and the payment of final reckonings to the Gécamines employees. They add that their “*rights and interests were directly and negatively affected by the criminal participation of the World Bank in violating the contractual obligations between our former employer Gécamines and each of us.*” They further add that this has deprived them of wage arrears and the final reckoning to which each of them is entitled, and which they should have collected if their

contracts had not been terminated in this manner. They also add that they are “*deprived of all other social advantages (...) and have lost all acquired benefits of any kind.*” They state that this sudden adaptation to “*a life of poverty*” has caused great harm to the victims of the Voluntary Departures Operation such as themselves.

The Requesters also claim that the assistance programs for former Gécamines employees were limited. They state that the Katanga Reintegration Coordination Unit, in the small project support program and the “KUJENGA UHURU” program, supported only activities involving self-promotion and “*automatically covered only a portion of the former Gécamines employees, selected as being those most motivated and with the greatest potential, so as to permit them to achieve the objectives of their economic reintegration.*” According to the Request, one of the Requesters has been placed on retirement by Gécamines and the other is unemployed and not receiving adequate support. Also, the Request makes references to a civil lawsuit between one of the Requesters and another employee of Gécamines.

The Requesters state their different “*rights and interests,*” according to DRC laws and to an agreement signed between Gécamines and labor unions. They also state that “*the World Bank failed to observe its rules and procedures in the context of the programs agreed with the Congolese government on the restructuring of Gécamines with a view to finding an honorable solution to reducing the labor costs of our former employer Gécamines and properly indemnifying the [Gécamines employees].*”

They maintain that the World Bank is responsible for the Gécamines’ violation of its contractual obligations. They state that the Bank “*must ensure that state enterprises to which it extends loans, even with the guarantee of the Congolese government, apply and observe such rights.*” It must act in a manner consistent with the undertakings and obligations of the DRC in respect of the rights of man and workers. It knows full well that it is contrary to the law to support and participate in the arbitrary dismissal of workers. They also make reference to jurisprudence concerning the liability of a third party involved in the violation of contractual obligations under Belgian law and comparative law and the liability of third parties complicit in the failure to carry out a contractual obligation.

The Requesters state that they have written World Bank staff in Washington and in Kinshasa, but to no avail. They state that they first tried, on January 27, 2009, to obtain clear and precise answers on the measures contemplated in the short term to address their respective problems. Then, in on January 31, 2009, they pointed out to the harm they suffer. According to the Requesters, and to support the Bank’s fight against poverty, they proposed a solution. They state that they have not received a response or, “*out of simple courtesy,*” an acknowledgement of their two aforementioned letters.

The Requesters, in the Request for Inspection, asked the Inspection Panel to recommend to the Board of Executive Directors an investigation “*in order to resolve [their] problem.*” They indicate that this Request is presented in a brief form, that they could provide the Panel with more detailed information, and that they attach a number of e-mails to facilitate the “*finding of failures or omissions on the part of the World Bank.*” They also authorize the Panel to make the Request public.

Registration

The above claims may constitute non-compliance by the Bank with provisions of the following operational Policies and Procedures:

OD 4.15	Poverty Reduction
OP/BP 6.00	Bank Financing
OpMemo	Financing Severance Pay in Public Sector Reform Operations
OP/BP 13.05	Project Supervision

All communications with the Requesters in connection with this Request will be sent until further notice to Mr. Chola Kabamba and Mr. Assani Kyombi.

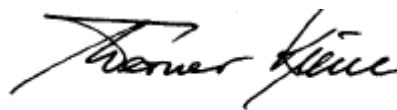
In accordance with paragraph 17 of the Panel's Operating Procedures (the "Operating Procedures"), I am notifying you that I have, on March 12, 2009, which is also the date of the dispatch of this notice, registered this Request in the Inspection Panel Register.

In accordance with paragraph 18 of the Bank Resolution that established the Panel (the "Resolution"), paragraphs 2 and 8 of the "*Conclusions of the Board's Second Review of the Inspection Panel*" (the "1999 Clarifications"), and paragraph 18 (d) of the Operating Procedures, Bank Management must provide the Panel, no later than April 10, 2009, with written evidence that it has complied, or intends to comply, with the Bank's relevant policies and procedures in relation to the above-referenced Project. The subject matter that Management must deal with in a response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarifications.

After receiving the Management response, the Panel will, as outlined in the 1999 Clarifications and as provided by paragraph 19 of the Resolution, "*determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.*"

The Request has been assigned IPN Request Number RQ09/02.

Yours sincerely,



Werner Kiene
Chairperson

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CC:
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