**MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION PANEL REVIEW OF THE
DEMOCRATIC REPUBLIC OF CONGO PRIVATE SECTOR
DEVELOPMENT AND COMPETITIVENESS PROJECT (Credit No. 3815-DRC)**

Management has reviewed the Requests for Inspection of the Democratic Republic of Congo Private Sector Development and Competitiveness Project (Credit No. 3815-DRC), received by the Inspection Panel on February 25, and March 13, 2009 and registered on March 12, and March 19, 2009 (RQ09/02 and RQ09/03, respectively). Management has prepared the following response.

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## ABBREVIATIONS AND ACRONYMS

| | |
|---|---|
| BCDC | *Banque Commerciale du Congo* |
| BCECO | *Bureau Central de Coordination*<br>Central Coordination Office |
| BP | Bank Procedures |
| CF | Congolese franc |
| CIR | Information and Reinsertion Centers |
| COPIREP | *Comité de Pilotage de la Réforme des Entreprises Publiques* (Steering Committee for Public Enterprise Reform) |
| CRETES | *Centre de Recherche et d'Etudes en Economie et Sondage* (Center for Research and Studies on Economy and Surveys) |
| DOP | *Dispense Temporaire de l'Obligation de Prester* (Temporary Work Interruption) |
| DRC | Democratic Republic of Congo |
| ECOFIN | Ministerial Committee in charge of Economic and Financial questions |
| ERC | Economic Recovery Credit |
| ESW | Economic Sector Work |
| GCBA | Gécamines Collective Bargaining Agreement |
| GDP | Gross Domestic Product |
| GNI | Gross National Income |
| IDA | International Development Association |
| IFC | International Finance Corporation |
| IMC | International Mining Consultants, Ltd. |
| IMF | International Monetary Fund |
| IPN | Inspection Panel |
| ISDS | Integrated Safeguards Data Sheet |
| LVM | *Location Vente Maison* (Housing Lease Purchase) |
| NGO | Nongovernmental Organization |
| OD | Operational Directive |
| OP | Operational Policy |
| PAD | Project Appraisal Document |
| PSDC | Private Sector Development and Competitiveness Project |
| PSIA | Poverty and Social Impact Analysis |
| PV | *Partants Volontaires* (Voluntarily Leaving Employees) |
| PWC | PriceWaterhouseCoopers |
| SIL | Specific Investment Loan |
| SOFRECO | French Consulting Company |
| TA | Termination Agreement |
| TF | Trust Fund |
| TSS | Transitional Support Strategy |

| | |
|---|---|
| URK | *Unité de Coordination pour la Réinsertion au Katanga* (Coordinating Unit for Reinsertion in Katanga) |
| VDP | Voluntary Departures Program |

**Currency Equivalent (as of March 31, 2009)**
US$1 = CF 820

## EXECUTIVE SUMMARY

### *Summary of Requests*

1. The Inspection Panel received and registered two Requests for Inspection concerning the Democratic Republic of Congo (DRC): Private Sector Development and Competitiveness Project (PSDC), financed by the International Development Association (IDA Credit No. 3815-DRC). The first was submitted by two residents of Likasi, Katanga, in the Democratic Republic of Congo (DRC) as former employees of the State enterprise "Générale des Carrières et des Mines," (Gécamines). The second was submitted by the President of "le Collectif des Ex-agents Gécamines ODV" ("the VDP [Voluntary Departures Program] Collective of former Gécamines employees"), who is also a resident of Likasi. The Panel registered these requests on March 12 and March 19, 2009, respectively. On March 27, 2009, Management received notice of additional signatories to the first Request from the "*Association Congolaise pour la Défense des Droits Economiques et Sociaux*" (the Congolese Association for the Defense of Economic and Social Rights).

2. The Requesters' claims center around the Voluntary Departures Program (VDP), which resulted in the retrenchment of over 10,000 Gécamines workers in 2003-2004 in exchange for severance payments. They claim that the Bank did not follow its own processes and policies in providing financing for the retrenchment plan; that the VDP was in contravention of local laws, including the Congolese Labor Code, that the VDP would not have taken place without the Bank imposing the requirement to dismiss a part of the workforce. They further claim that the reintegration efforts, such as social assistance and training, were limited, and indicate that a housing scheme launched by Gécamines in 1984 could have been financed under the VDP. Further, both sets of Requesters State that their communications to the Bank in late January and February 2009 have gone unanswered.

### *Summary of Key Issues*

3. The Gécamines VDP, which is the object of the Request for Inspection, took place between March 2003 and February 2004. At the time, the mining sector was in shambles. By 2002, Gécamines, a State-owned mining company, which dominated the mining sector in the DRC, was producing 4 percent of its peak capacity and had substantial operating losses. It was not able to maintain its installations or to respond to the financial obligations of its creditors, including workers. It had accumulated an average of 21 months of salary arrears, US$1.3 billion of debt and had a negative net worth of US$600 million. Two World Bank operations supported the restructuring of Gécamines. The US$410 million Economic Recovery Credit (ERC) approved in June 2002 had a floating tranche of US$25 million to support the Government's structural reform in the mining sector, including financing for the cost of voluntary separation of part of the Gécamines workforce. The ERC, which closed in June 2003, was not sufficient to cover the cost of the VDP. The US$120 million Private Sector Development and Competitiveness Project (PSDC) approved in July 2003 (with a closing date in 2009 to be extended to

December 2012) included, at the request of the Government, additional financial assistance for the VDP – US$15 million as planned in the Project Appraisal Document (PAD, while US$17.4 million were effectively disbursed thanks to a favorable exchange rate between US$ and SDR. The VDP was complemented by reinsertion activities for Gécamines' employees that took part in the VDP.

4. The financing of this retrenchment plan was the first of its kind since the Bank re-engagement in DRC in 2001. It raises issues typically associated with such programs, including balancing the potential negative impacts on redundant staff with the longer term objective of saving a distressed company in the hope that it becomes profitable again and contributes to the wealth and economic development of the country. These issues are at the heart of economic reform today in DRC, a country where major resources and utilities are managed by the State, through public enterprises. Several other Bank-financed operations are supporting retrenchment or retirement schemes, in public enterprises and public administrations. Most importantly, through this and all its other projects at that time, the Bank attempted to address the critical economic and social needs of the population in the very fragile peace that followed the end of the civil war in 2001. Specifically, IDA operations, including Development Policy Operations and investment operations such as the PSDC, aimed at: (a) producing tangible and visible benefits for the populations; and (b) trying to restore trust and confidence between government and citizens.

5. The paragraphs below summarize the key issues with regards to the VDP:

- *Bank processing and the OP Memo on Financing Severance Pay.* At the time of preparation of the PSDC, the OP Memo on Financing Severance Pay in Public Sector Reform Operations of April 5, 2002 governed policy requirements for retrenchment programs, as referred to in OP 12.00 (Disbursements). The provisions of the VDP were reviewed by Bank Management, and an Official Memorandum dated April 24, 2003 noted that it met the applicable requirements. These requirements include: (i) sustainability of proposed reforms; (ii) countering the moral hazard of retrenchment pay financing; (iii) avoiding adverse selection, (mitigating the risk of overpayment); (iv) avoiding adverse publicity; and (v) monitoring and financial reporting. Policy requirements in connection with the financing of retrenchment plans were revised in 2004, after PSDC had become effective. The policy revisions to OP 12.00 did not affect the implementation of the project.

- *OP/BP 6.00 (Bank Financing); OD 4.15 (Poverty Reduction); and OP/BP 13.05 (Supervision).* The Bank team has made every effort to meet the requirements of Bank policies during Project preparation and implementation. With regard to OP/BP 6.00 (Bank Financing), the restructuring of Gécamines was critical to restart economic development in Katanga and in DRC as a whole. In addition, the fiduciary arrangements in place ensured that each beneficiary received what s/he was due under the Project. With regard to OD 4.15, the key objective of the Project was to reduce poverty through economic recovery in the Katanga region in particular. The Bank team focused on ensuring that the interests of the people of DRC were at the center of the Project.

With regard to OP/BP 13.05, twelve supervision missions were undertaken between July 2003 (effectiveness of PSDC) and the Mid-Term Review (June 2007). In addition, the Task Team Leader has been based in Kinshasa since October 2007.

- *The VDP and local laws.* Appropriate consideration was given to local laws: the VDP is based on a mutual agreement to terminate a labor contract, which is allowed, and not in contradiction with the 1967 and 2002 Labor Codes. The Government led a comprehensive review of applicable laws, regulations and contracts (see Box 7 in the main text). The retrenchment proposals were weighted in light of the applicable rules and procedures deriving from these laws, regulations and contracts. The final proposed packages were assessed by the Government and Gécamines to be legally valid. The VDP represented a compromise agreed by the Government and the trade unions. (see Box 6 for details). Throughout the legal review process, regular consultations with trade unions and civil society took place. Discussions with stakeholders and review of the proposed program by the Bank team provided grounds for the Bank to consider these packages as appropriate, taking into consideration the legal framework and all other circumstances surrounding the implementation of the VDP. Such an agreement was considered essential for proceeding.

- *No linkage between the housing scheme (LVM) and the VDP.* There is no direct link between the LVM scheme that started in 1984 and the VDP, which began in 2003. The Government decided not to include the LVM in the retrenchment package.

- *Issue of conditionality.* The Government made the decision to restructure Gécamines, based on the advice of consultants financed by the Bank, and to address the need to retrench employees, given the significant social risk posed by unpaid Gécamines workers. The Bank then proceeded with the program.

- *The economic reinsertion package provided opportunities for retrenched workers.* Reinsertion activities were launched between June 2003 and April 2006 (see Box 11 in the main text). The results recorded by the independent consultant CRETES indicate economic reinsertion rates after 1.5 years of about 90 percent. However, in the medium term, some activities were not as successful as anticipated and showed that challenges for reinserting an aging workforce into the DRC economy were significant. The reinsertion package was designed with the involvement of Gécamines, NGOs, and civil society; it drew on similar retrenchment operations conducted in Eastern Europe, Latin America and Sub-Saharan Africa. Reinsertion activities included matching grants, and technical assistance for agricultural programs (*Terres Arables),* provision of free access to schools and health services until 2006, and technical training and assistance for the set-up of micro-enterprises.

- *Lack of response from the Bank to communications from Requesters.* The Bank office in Kinshasa received several e-mails in late January, February and March 2009. Management acknowledges that it did not respond to all the emails. A letter sent by one requester on January 27, 2009 was answered by the Bank office in Kinshasa on March 12, 2009. Another letter could not be answered as it did not include any contact details.

## I. INTRODUCTION

1. On March 12, 2009, the Inspection Panel registered a Request for Inspection, IPN Request RQ09/02, concerning the Democratic Republic of Congo Private Sector Development and Competitiveness Project (Credit No. 3815-DRC) financed by the International Development Association (IDA). On March 19, 2009, the Inspection Panel registered a second Request for Inspection related to the above-referenced Project. The second Request has been assigned IPN Request Number RQ09/03. Because the second Request raises similar issues and refers to the same project as the Request of March 12, and for reasons of economy and efficiency, the Panel advised Management that it would consider processing both requests jointly. Unless specifically noted, these are collectively hereafter referred to as the "Requests."

2. ***Structure of the Text.*** The document contains the following sections: Section II outlines the Requests; Section III provides project background; Section IV discusses special issues and Section V presents Management's response. Annex 1 presents the Requesters' claims, together with Management's detailed responses, in table format. Additional annexes provide selected background documents and a bibliography.

## II. THE REQUESTS

3. The first Request for Inspection was submitted by Mr. Chola Kabamba and Mr. Assani Kyombi, both residents of Likasi, Katanga, in the Democratic Republic of Congo, acting as former employees of the State enterprise "Générale des Carrières et des Mines," (Gécamines). The second Request was submitted by Mr. Bidimu Kamunga, resident of Likasi, Katanga, in the Democratic Republic of Congo, acting as President of "*le Collectif des Ex-agents Gécamines ODV*" ("*the VDP* [Voluntary Departures Program] *Collective of former Gécamines employees*"). The second Request included 14 signatures of other members of the collective. Unless specifically noted, both sets of signatories are collectively hereafter referred to as the "Requesters."

4. Attached to the first Request are:

(a) Letter No, 001/ACK/AK/01/2009 of January 27, 2009 with the subject: "PSDC Project—Update and request for complete reparation of damages sustained from deeds of the World Bank;"

(b) Letter No. 002/ACK/AK/01/2009 of January 31, 2009 with the subject: "PSDC Project—Evaluation of the damages sustained owing to World Bank activities in the DRC and proposal for transfer of claims;"

(c) Letter No. PR/MIN/ET/159/W/2007 of April 10, 2007 with the subject: "The matter of 10,655 Gécamines workers terminated in 2003" and addressed to the Prime Minister and Head of the Congolese Government by the Minister of State in the Office of the President of the DRC;

(d) CRETES report on the evaluation of the activities for the reintegration of personnel voluntarily leaving Gécamines; and

(e) Final report on the work of the first special session of the General Assembly on the Permanent Framework for Social Dialogue held in Kinshasa and containing the recommendations made to Gécamines and the Congolese government with respect to the matter of 10,655 terminated workers.

5. Attached to the second Request are documents relating to the dismissal of the Gécamines employees.

6. On March 27, 2009, Management received notice from the Panel of additional signatories to Request 09/02, the Association Congolaise pour la Defense des Droits Economiques et Sociaux (ADDES – the Congolese Association for the Defense of Economic and Social Rights). On March 28, the Panel received a Request for Inspection from ADDES substantiating the claims in the first Request for Inspection and reiterating their desire to be included in the processing of the Requests. On April 9, the Panel received annexes to the ADDES communication of March 28, which they forwarded to Management as they contain additional and relevant information to the Management Response being prepared. No further materials were received by Management in support of the Request.

7. The Requests contain claims that the Panel has indicated may constitute violations by the Bank of various provisions of its policies and procedures, including the following:

| | |
|---|---|
| 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. |

## III. PROJECT BACKGROUND

### A. DRC Economic Context

8. The Gécamines Voluntary Departure Program (VDP), which is the object of the Request for Inspection, took place between March 2003 and February 2004.

9. ***In 2001-2002, DRC was a shattered country.*** It was gradually emerging from a decade of political instability and conflict. The regime of Mobuto Sese Seko (1965-1997)

was marked by corrupt mismanagement leading to a series of economic crises and the near collapse of all social infrastructure. The collapse of the State was punctuated by riots and plundering by an unpaid military (1991, 1993), which destroyed much of the productive capital. By the early 1990s, most bilateral and multilateral institutions, including the World Bank and the IMF, had suspended economic assistance.

10. At the end of the Mobutu regime, there were signs of economic revival, but shortly thereafter the conflict started again. Civil war broke out anew in 1998 and drew in the Government, rebel groups and six other nations and several militias of opposing governments in the Great Lakes region. In August 1999, the Government, the three rebel factions and their five principal military backers signed an accord in Lusaka, Zambia, which called for a ceasefire and troop standstill, disarmament of the militias and an initiation of an inter-Congolese dialogue leading to reunification and political solution to the conflict. However, the Lusaka accord was widely violated by all parties.

11. Following the assassination of Laurent Kabila in January 2001, all parties observed a spontaneous cease-fire. Frontlines were stabilized: the standstill placed approximately 30 to 40 percent of the land area with a population of 18 million under rebel control, and 32 million people in Government-controlled areas. The new president, Joseph Kabila, stated his support for the Lusaka process and the inter-Congolese dialogue, and affirmed his commitment to improving living conditions in the country and to liberalizing the economy; he also requested the resumption of international assistance.

12. Considering that a unique window of opportunity for peace had opened, the World Bank and the international community decided to re-engage in the DRC. The first DRC Transitional Support Strategy (TSS) was approved by the Board on July 31, 2001. This strategy aimed to contribute to the transition to peace and stability in both DRC and the sub-region by helping the Government to: (a) meet basic and urgent needs; (b) rebuild effective public institutions and policies; (c) revitalize economic activity; and (d) rebuild implementation capacity.

13. In 2001, the country was facing a deep economic crisis. The estimated total stock of DRC external debt at the end of 2001 stood at US$12.9 billion. The loss of life between 1997 and 2001 associated with the collapse of physical and social infrastructure caused by the conflict was estimated to be as high as 1.5 million persons. The FAO estimated that about a third of the population was starving or malnourished, while UNICEF estimated that the majority of the population lived on 20 cents a day. Government resources had shrunk to 5 to 7 percent of GDP. These resources were largely allocated to the military to finance the war effort, to the detriment of social sectors, while the service pay scale had fallen to about US$0.40-4.00 a month (see Table 1).

**Table 1: Key Indicators for DRC**

| | 1980 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|---|---|---|---|
| Population, total (million) | 28.1 | 50.7 | 52.0 | 53.5 | 55.2 | 56.9 | 58.7 | 60.6 | 62.4 |
| GNI per capita, Atlas method (current US$) | 610 | 80.0 | 80.0 | 90.0 | 100.0 | 110.0 | 120.0 | 130.0 | 140.0 |
| Life expectancy at birth, total (years) | 47.8 | 44.0 | .. | 44.9 | .. | .. | 45.8 | 46.1 | .. |
| GDP (current billion US$) | 14.4 | 4.3 | 4.7 | 5.5 | 5.7 | 6.6 | 7.1 | 8.5 | 9.0 |
| GDP growth (annual %) | 2.2 | -6.9 | -2.1 | 3.5 | 5.8 | 6.6 | 6.5 | 5.1 | 6.5 |

14. ***A Mining Sector in Shambles***. The mining sector in DRC is dominated by the State-owned Gécamines (see Map 1). Gécamines used to be the country's most important provider of foreign exchange with more than US$1 billion in annual revenues (see Box 1). As such, Gécamines was a major contributor to the national budget, with more than US$100 million per year. Production from Gécamines declined from a peak of 476,000 tons of copper and 14,000 tons of cobalt in 1986, with 33,000 workers (representing a productivity of 14.4 tons per workers) to a production of 19,000 tons of copper and 1,800 tons of cobalt, with 23,730 workers in 2002 (representing a productivity of 0.8 ton per worker). In 2002, Gécamines was producing at 4 percent of its peak capacity; with substantial operating losses (US$2 billion since 1990 and US$132 million in 2001 alone), it was not able to maintain its installations or to respond to any of its financial obligations towards its creditors, including workers. If not protected by its status of State Owned Enterprise, it would have been put under a bankruptcy regime. Among its financial obligations, it had accumulated an average of 21 months of salary arrears, US$1.3 billion of debt and had a negative net worth of US$600 million.

**Box 1: Description of Gécamines' Situation in the 2002 Letter of Development Policy (Economic Recovery Credit)**

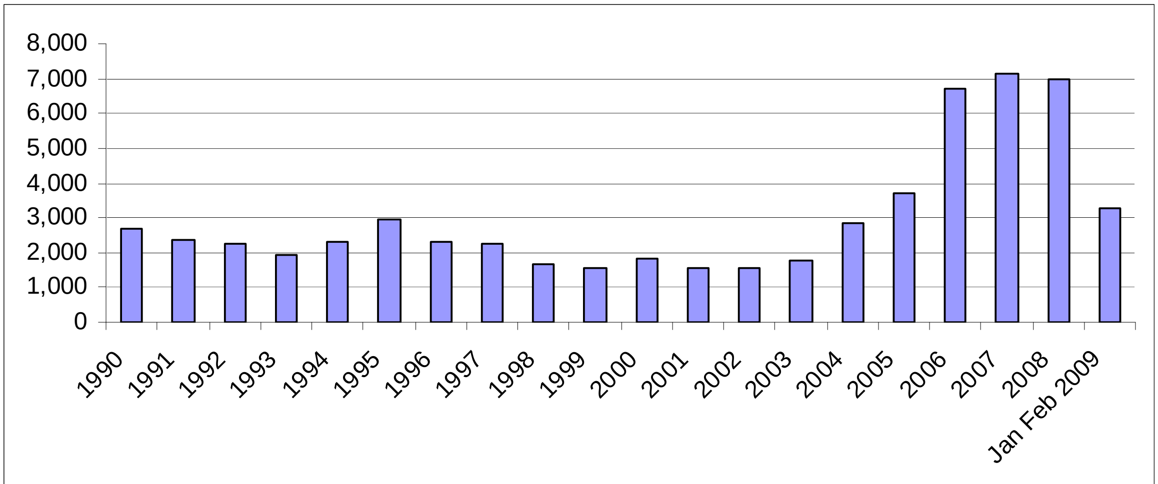
"Gécamines was for a long time the most important producer and exporter in DRC. However, the financial situation of the company is now of great concern, and may be summarized by the following key figures: (i) very high indebtedness amounting to about US$1.3 billion, of which about US$100 million is on account of taxes; (ii) cumulative operating losses of more than US$2 billion since 1990 and US$132 million in 2001 alone, leading to negative net worth of more than US$600 million in 2001; (iii) outdated equipment and inappropriate technologies; (iv) costs of production that are 2-4 time greater than international averages; (v) excessively large and aging workforce (23,400 employees); (vi) salary arrears of more than 12 months for Congolese personnel and 28 months for expatriates; (vii) fiscal burden of over US$100 million; and (viii) frequent legal disputes and seizure of the company's products while en route to customers. Current operations of Gécamines entail significant loss of value and have a depressing effect on the economy of the province of Katanga. Forecasts for the current year suggest that it remains highly unlikely that the company will be able to meet its salary obligations."

Source: Letter of Development Policy 2002 – 2003 (dated May 11, 2002), Economic Recovery Credit Memorandum to the President

15. ***Current Status of Mining Sector in Katanga.*** The rise in mineral prices and joint venture agreements with private actors (involving upfront payments, or "*pas de porte*" in

French) led to a sudden boom in activity in Katanga. The rise in prices (see Figure 1 below), a smaller workforce and improved financial management have allowed Gécamines to regularly pay its 10,000 employees since 2006, thus ensuring social peace in Katanga. This situation and the fact that copper prices rose between 2006 and 2008 created the perception that Gécamines had become solvent again. However, with other unresolved structural and operational issues, Gécamines is still incurring heavy operational losses, has unsustainable financial charges and barely manages to cover its payroll needs. The most recent global crisis has affected Gécamines' growth prospects and has delayed a number of new investments. Copper prices are falling again and were at US$3,750 per ton (average for March 2009). Creditors are now claiming US$1.9 billion of debt from Gécamines (see Figure 1 and Box 2 below). As of end October 2008,[1] salary arrears amounted to US$83.5 million and Gécamines is again facing difficulties in regularly paying its employees.

**Figure 1: Copper Prices 1990 – Early 2009 (US$ per ton)**




**Box 2: Gécamines' Financial Situation: Key Data**
**(in US$, as of December 31, 2007)**

- Total debt: 1.91 billion
  (including 136.9 million of social debt, which includes salary arrears as well as contribution arrears to INSS, the social security institution)
- Net worth: minus 1.38 billion
- Net loss: minus 177.3 million

Source: Gécamines' financial statements (2007)

[1] Since 2006, Gécamines has been able to pay salaries on time (it has been the focus of the new management); however, Gécamines has not yet been able to settle the salary arrears accrued during the previous years.

## B. World Bank Operations supporting Gécamines' Restructuring

16. Considering the huge potential of the mining sector in DRC (historically, mining accounted for 25 percent of the country's GDP, 25 percent of total budgetary revenues and about three-quarters of total export revenues), mining sector restructuring – and more specifically, Gécamines' restructuring – was at the center of the Government economic recovery program in 2001-2002. It was considered that, with a conducive investment climate, DRC could, over the next ten years, return to its historical levels of mineral export commodities of more than US$1 billion per year, and collect significant tax contributions.

17. Two World Bank operations aimed at supporting Gécamines restructuring: the Economic Recovery Credit (a budget support operation) and the Private Sector Development and Competitiveness Project.

18. ***Economic Recovery Credit***. The World Bank re-engaged in the DRC, through regular Bank financing,[2] with the US$450 million Economic Recovery Credit (P057293, Cr. 3660-DRC) approved on June 13, 2002. The ERC closed on June 30, 2003.

19. ***Objectives***. The main objectives of this budget support operation were to help advance the TSS goals of supporting economic stabilization and structural reforms to lay the basis for economic recovery as presented in the Government's Interim Poverty Reduction Strategy Paper. More specifically, the ERC built on the wide ranging reforms already undertaken and was to support the Government's efforts to pursue policy and structural reforms needed to: (a) improve governance and reduce corruption in order to foster private sector development and increase the supply of public services; (b) improve public sector financial management, especially regarding expenditures; (c) continue its reform and restructuring of the public enterprise sector; (d) begin the reform of the financial sector, especially the restructuring of commercial banks; (e) support policy actions in the forestry sector in anticipation of implementation of new regulations; and (f) provide support to urgent special actions within the mining sector that foster restructuring. These reforms were to help pave the way for a transformation from an inefficient and concentrated State-controlled economy to a market-based one, better able to deliver services and to reduce the extraordinary levels of poverty in the DRC.

20. ***Tranches***. The ERC was designed with three tranches. The first tranche of US$410 million was released upon effectiveness of the Credit. US$330 million were used to reimburse directly the creditors who had extended a bridge loan to clear the DRC's arrears to IBRD and IDA. The remaining US$80 million were used to finance imports.[3] The Credit had, in addition, two subsequent floating tranches: a forestry sector floating tranche of US$15 million released following the submission of the Forestry Code to the National Assembly; and a mining sector floating tranche of US$25 million, released following the completion of agreed actions (as described in the following paragraphs).

[2] Through a special grant facility for post-conflict countries, the World Bank had earlier approved (on July 31, 2001) a US$50 million Emergency Early Rehabilitation Project.
[3] Except those on a negative list of items, for which imports could not be financed.

21. ***Mining Sector Floating Tranche***. The ERC aimed, in particular, at supporting the Government's pursuit of policy and structural reform in the mining sector. The objective of the ERC in the mining sector was to create the foundation for improved governance in the management of mineral resources in DRC; and to increase the contribution of the sector to the country's reconstruction and economic growth on a socially and environmentally sustainable basis. The key building blocks were: (a) reforming the legal and regulatory framework; and (b) enterprise level reform, with a focus on Gécamines.

22. In 2001-2002, Gécamines' unpaid workers were posing a significant social risk to the Government in the key southeastern province of Katanga, parts of which had been at the center of the recent conflict. Rumors of social unrest were high at the time. Further, given the dominant position of Gécamines in the DRC mining industry and its once significant fiscal contribution, its bankruptcy and the uncertainty surrounding the resolution of its problems were deterring new investments in the mining industry and imposing a severe constraint on the Government's ability to increase revenue collection.

23. Because of the significant social risk posed by unpaid Gécamines workers, the Government requested the inclusion in the ERC of a mining sector floating tranche to finance the cost of voluntary separation of part of the Gécamines workforce, as an urgent first step towards restructuring the company and stabilizing the situation in the mining sector. Box 3 below summarizes prior actions supporting the release of the mining sector floating tranche. The floating tranche was released on June 25, 2003.

**Box 3: Prior Actions for the Release of the US$25 million Mining Sector Floating Tranche**

As stated in the Development Credit Agreement of the Emergency Recovery Credit (Cr. 3660-DRC), the conditions for the release of the mining tranche were the following:

The Borrower has:

- Established by decree, in form and substance satisfactory to the Association: (a) a commission for the validation of mining titles and (b) an autonomous mining registry, pursuant to paragraph 33 of the Letter of Development Policy.
- Established by decree, in form and substance satisfactory to the Association, a permanent committee in charge of: (a) overseeing the carrying out of the plan referred to in paragraph 3 of this Part B, and (b) the restructuring of Gécamines, pursuant to paragraph 33 of the Letter of Development Policy.
- Furnished evidence to the Association, in form and substance satisfactory to the Association, of a voluntary separation plan of Gécamines' workers in form and substance satisfactory to the Association, pursuant to paragraph 33 of the Letter of Development Policy.

Relevant paragraphs[4] of the Letter of Development Policy regarding the "voluntary separation plan of Gécamines" state the following:

"In order to promote the recovery of the mining sector, the government is proposing the following actions:

- Creation of a Permanent Committee within the Presidency for the restructuring of Gécamines;

[4] The DCA refers to paragraph 33 of the Letter of Development Policy; however, it would appear that the relevant paragraphs are 36 and 37.

- Prepare and undertake a detailed restructuring study of Gécamines;
- Prepare a restructuring strategy and implementation plan on the basis of the study;
- Prepare and implement a voluntary departure program in order to reduce overstaffing.

The current situation of Gécamines requires urgent remedial actions that could be undertaken in advance of the above-mentioned study. The company today is unable to meet its wage and salary obligations and a significant number of employees would be prepared to leave the company without a significant adverse impact on the company's activities. The government hereby requests World Bank support for the voluntary departure program through the proposed Economic Recovery Credit as a first step."

The Memorandum from the President dated June 18, 2003 regarding the Release of the Mining Sector Tranche confirmed that the conditions of the release of the mining tranche were met, mentioning, in particular, receipt of an original letter from the Minister of Plan confirming the content of the Voluntary Departure Program at Gécamines approved by the Government on March 11, 2003, which was sent to the Association on April 12, 2003.

Source: Economic Recovery Credit Memorandum to the President, Economic Recovery Credit Development Financing Agreement, Memo from the President, dated June 18, 2003 regarding the Release of the Mining Sector Tranche, Economic Recovery Credit.

24. ***Private Sector Development and Competitiveness Project***. The US$120 million Private Sector Development and Competitiveness Project was approved on July 29, 2003 and became effective on December 2nd, 2003. The project closing date was extended – following additional financing of US$60 million approved on April 22, 2008 – from 2009 to December 31, 2012.

25. ***Objectives***. The project's development objective is to increase the competitiveness of the economy, and thereby contribute to economic growth. The project will achieve these objectives by: (a) improving the investment climate; (b) supporting the reform of public enterprises in the mining, telecommunications, financial, transport, and energy sectors; and (c) stimulating economic diversification and development in the Katanga region through community-driven development approaches and by facilitating the reintegration of retrenched workers in the local economy through support for training, business development services and finance.

26. ***Project Components***. The project includes the following components:

- Component 1: Improve the investment climate (US$36.10 million). This component aims at strengthening the judiciary system and improving the legal and fiscal framework.
- Component 2: Implementing public enterprise reform (US$71.69 million). This component aims at strengthening regulatory authorities in the telecommunications, transport and energy sectors, as well as at facilitating divestiture from the public enterprises. As the US$25 million floating tranche from the ERC was not sufficient to cover the cost of the Gécamines VDP, the Government requested additional assistance from the proposed Private Sector Development and Competitiveness Project to finance the total cost of the program of US$40 million (Letter from the Minister of Plan confirming the content of the VDP at Gécamines ap-

proved by the Government on March 11, 2003, sent to the Association on April 12, 2003).

- Component 3: Initiatives for economic development in the Katanga region (US$7.41 million). This component supports measures aimed at increasing competitiveness of the economy of Katanga.

27. The VDP at Gécamines was undertaken in the context of Component 2, which involves a number of subcomponents: (a) creating a regulatory framework (US$7.61 million); (b) facilitating divestiture from public enterprises (US$13.05 million); and (c) supporting the social cost of reform (US$41.76 million). This component was to be complemented by activities financed under Component 3, aiming at supporting economic development in the Katanga region. The project also financed a voluntary departure program for OCPT (the post and telecommunications public enterprise) for 4,009 employees (for a total amount of US$11.4 million), as well as the retrenchment package for 3,474 employees of three liquidated State-owned banks, for a total of US$11.1 million. The same international consultant who assisted in preparation of the retrenchment programs at OCPT and the three liquidated banks also assisted in preparation of the Gécamines VDP.[5] The project is implemented by COPIREP, the Steering Committee for Public Enterprise Reform. COPIREP is the Government body in charge of preparing and undertaking, following Government's approval, the restructuring of public enterprises in DRC. Project supervision has been intensive, with three missions a year until the Mid-Term Review; additional missions have also been undertaken by the policy and operations unit of the Bank's oil, gas, mining, and chemicals department. The task team has regularly followed developments on the reinsertion activities. It should be noted that there have been delays on some of the reinsertion activities and on addressing the need to finance activities in health and education that had not been planned.

28. ***Project Status***. The project implementation status has always been rated satisfactory. The project is 68 percent disbursed and 80 percent committed. In April 2008, additional financing of US$60 million was granted to the project, with a view to scale up investment climate reform activities and to jump start the reform of SNCC, the public railway, while the proposed World Bank-financed transport operation is being prepared. The project closing date has been extended to December 31, 2012, to coincide with the closing date of the additional financing. The Mid-Term Review took place in June 2007 and noted the generally satisfactory implementation of the project in a difficult environment.

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[5] It should be noted that the issue of retrenched workers losing housing in the process was raised in the Integrated Safeguards Data Sheet (ISDS) of the Project Appraisal Document (PAD). The ISDS dated 05/19/2003 underlines that a Steering Committee "will be set up at Presidency Level" to establish a severance policy for redundant workers, including provision of a social safety net for those that leave the company and for the transfer of social services that the company had provided. Although this committee, the "*Comité Permanent pour la Restructuration de la Gécamines*", was set up, it never became effective, because ECOFIN, the ministerial sub-committee in charge of financial matters, subsequently decided that it would discuss and approve all decisions regarding the VDP.

## C. The Broader Public Enterprise Reform Agenda

29. Public enterprises dominate the mining sector and control the transport (airports, railways, and ports), water and power sectors. They account for around 80 percent of formal employment in the country. As public monopolies, they have not been subject to adequate oversight for many decades, resulting in large losses to the country in terms of misdirected investment; high user charges; revenue leakages; lack of provision of essential services in water (22 percent access rate) and electricity (6 percent access rate); unreliable transport services, etc. These enterprises are a burden to the State, but are potentially an important source of growth as they are active in the areas most likely to attract investments and generate revenues in the foreseeable future (e.g., power, extractive industries and transport), as well as critical to restore the competitiveness of the economy.

30. The ESW entitled "Reforming Public Enterprises through Improved Governance" (completed in 2004) highlighted the profound mismanagement of all public enterprises in the DRC, resulting in the virtual bankruptcy of most of them.

31. ***Renewed Momentum for Public Enterprise Reform***. There was a renewed momentum for public enterprise reform following the 2006 presidential elections, which represented the first democratic elections since independence, and the establishment of the Government in March 2007. In particular, the laws defining a new governance structure and allowing for State disengagement from public enterprises were promulgated in July 2008. These laws specifically stipulate that public enterprises with a commercial mandate will be transformed into commercial companies. They abrogate Law 78/002 on public enterprises, which established a weak governance framework that was considered a key factor in the poor performance and mismanagement of public enterprises. In parallel, the Government launched management contracts for the three key public transport enterprises (ONATRA [national transport company], SNCC [railway company], and RVA [aviation administration]) and initiated the State's disengagement from public enterprises such as the Karavia Hotel and CINAT (cement plant). Management contracts are also being prepared for key public enterprises, such as REGIDESO (the water utility) and SNEL (the power utility). Gécamines' restructuring has been slower since the departure of SOFRECO (the French firm that had taken over management in 2006) in November 2007. Another consultant (Europhoenix) is providing technical assistance to COPIREP to develop an updated restructuring strategy for Gécamines, planned to be implemented in the forthcoming IDA financed mining operation, scheduled for fiscal year 2010.

32. As noted by the Requesters, the Government had envisaged in 2007 setting up a tripartite commission (composed of the Inspectorate General of Labor, Gécamines, and representatives of the former Gécamines employees) to examine the concerns raised by the *partants volontaires*. To the best of Management's knowledge, this commission has not been established. However, in its efforts to support the Government in addressing the overall issue of public enterprise reform and to identify ways to move forward on this agenda – while taking account of the Government's serious budgetary constraints – the Bank will assist the Government in preparing a workshop before the end of 2009. The

aim of this workshop will be to identify and establish principles for reform and a strategy for addressing its costs (see Management Action Plan after paragraph 82).

33. A number of recommendations have been developed by a consultant (Core Advice) with in-depth experience on retrenchments. COPIREP is in the process of drafting a strategy note to be discussed by the Cabinet. The Government also understands that faced with these immense potential social costs, trade-offs have to be made, and therefore a comprehensive approach taking into account all implications (social, financial and policy) needs to be developed into an adequate strategy to be discussed with all stakeholders.

34. Reinsertion for former public enterprise workers is a critical issue. International experience (in Latin America, former Soviet Union, Sub-Saharan Africa and Europe) has demonstrated that reinserting this – often elderly – workforce into the economy is extremely challenging for a variety of reasons, including the limited availability of formal employment in most developing countries and the limited entrepreneurial skills of former public enterprises employees. Expectations should therefore not be overestimated. While the VDP in DRC had demonstrable success, it was implemented in the challenging context of a small private sector base and devastated infrastructure.

## IV. SPECIAL ISSUES RELATED TO THE REQUEST

35. ***Gécamines employment conditions***. The VDP needs to be understood within the context of Gécamines. The Poverty and Social Impact Analysis (PSIA), which began in 2003 before the Project's approval by the Board in July of that year, provides a good description of Gécamines' history and unique features (see sections 3.14 and 3.15). During its profitable years, Gécamines took care of its employees "from cradle to retirement"; there were free schools for workers' children, free health care for the sick, food distribution for all, free recreational infrastructure, housing, free water and electricity, and lifetime employment security, and for some, perks such as trips abroad or preferential loans for cars or houses, secluded clinics and special schools. Expectations were that the extremely rich copper deposits of the Katanga would always provide for them and their children. Both their social and work life revolved around the company, and its collapse left a majority of older workers (on average 56 years old with one quarter over 60 and one tenth over 65), at the time of the VDP, with skills in working within a hierarchical environment, but without the entrepreneurial, budgeting, or networking skills required in other sectors.

36. This model had been developed to reduce the turnover of a workforce not used to working in an industrial mining enterprise. To retain its workforce, Gécamines had a generous approach to employment conditions and employees came to refer to the company as "Gécamines, my mother, Gécamines, my father" (in Swahili: "*Gécamines djo baba, djo mama*").

37. The following sections address the issues and describe the Voluntary Departure Program, the Housing Scheme, and the Reinsertion Program.

## A. Gécamines' Voluntary Departure Program

38. The key principles of the VDP are summarized in Box 4 below. It was estimated that 11,200 employees would be eligible for the VDP. In the end, 10,655 benefitted from it.

**Box 4: Key Principles of the VDP**

**Eligible for the VDP:**

a) All active employees, who, as of 31 December 2002, had been working for the enterprise for more than 25 years; and

b) All employees in "Temporary Work Interruption" (*Dispense Temporaire de l'Obligation de Prester, DOP);*[6]

**Conditions:**

- To belong to the groups of employees meeting a) and b) described above;
- To voluntarily choose to leave the enterprise and to freely and formally[7] express this decision;
- To sign a "transactional act" which represents an agreement to terminate a contract (*convention de rupture de contrat*).

Source: Gécamines, Note Circulaire 0235/ADG/2003, dated March 20, 2003

39. ***Process supporting the Voluntary Departure Program***. The Letter of Development Policy (2002 – 2003) prepared by the Government for the ERC highlights the Government restructuring strategy for Gécamines (see Box 3). This strategy included the following actions: (a) creation of a Restructuring Committee for Gécamines within the Presidency; (b) implementation of a detailed restructuring analysis for Gécamines; (c) implementation of a restructuring plan, based on the analysis; and (d) preparation and implementation of a VDP to reduce the surplus workforce of Gécamines.

40. Based on this roadmap, an international consulting firm (International Mining Consultants Ltd, IMC) was hired on September 18, 2002, under the Emergency Early Recovery Project, financed by an IDA Grant, (Grant No. H0050 signed August 10, 2001) to prepare a global strategy for the restructuring of Gécamines. A report outlining an overall strategy for restructuring the company was submitted in April 2003, and found satisfactory by World Bank staff. A key recommendation of the IMC study was to replace the top management of Gécamines, which had shown poor performance and was considered by the Government unqualified to undertake the required restructuring of the enterprise.

41. The restructuring proposed by the Government aimed at restoring the financial viability of the company and covered: (a) a retrenchment program to pay salary arrears and substantially reduce the payroll; (b) resumption of productive activities; (c) the hiring

[6] Further details about the DOP program are provided in paragraph 44.

[7] Candidates for the Voluntary Departure Program had to express in writing their willingness to take part in the program (see annex 3.2).

of a management firm. In April 2002, the President announced that a Permanent Committee in charge of Gécamines restructuring would be created within the Presidency. The Presidential Decree was published on April 15, 2003, but the Permanent Committee never became effective, because ECOFIN, the ministerial sub-committee in charge of financial matters, subsequently decided that it would discuss and approve all decisions regarding the VDP.

42. The VDP for over 10,000 Gécamines employees was undertaken from March 2003 to February 2004. Following implementation of the VDP, the authorities decided to competitively recruit a management firm (SOFRECO) to initiate enterprise restructuring at Gécamines. SOFRECO started managing Gécamines in 2006, and had difficulties stabilizing production activities, while the financial situation artificially improved thanks to favorable copper prices. Gécamines was encumbered with a number of long-standing difficulties (engrained mismanagement, obsolete equipment, surplus and aging workforce without the right skill mix, etc.), which certainly challenged the implementation of the restructuring. SOFRECO's mandate was not renewed.

43. ***The Voluntary Departure Program.*** The Requesters state, based upon attachments to the Request, that the cost of terminating employment on a voluntary basis was US$240 million. At the time the VDP was being implemented, Gécamines' management had calculated the cost of terminating employment on an involuntary basis of around 11,000 employees at US$120 million (or about 10 percent of the Government's budget in 2002), under the terms of the existing "Collective Bargaining Agreement" (Convention Collective) and of the applicable provisions of the Labor Code. As this represented an impossible financial burden for a bankrupt company (and for a highly indebted State, with very limited financial resources), the Government decided, based on its concerns about the economic and social risks in Katanga, to put in place a program of mutually agreed separation and to request the support of the World Bank, through the ERC, for US$25 million.

44. The proposal by the Government to Gécamines employees in June 2002, consisting of a first VDP payment scale for a total amount of US$25 million, under which around 10,000 workers would leave Gécamines, was rejected by the trade unions in the same month. The Government then decided to hire an international consultant with experience in retrenchment plans to help reach an agreement with the trade unions. At the request of the Government, the World Bank also agreed to provide additional financing for the VDP through the PSDC under preparation at that time. The Consultant undertook a detailed analysis of the laws and regulations governing retrenchments in DRC, and for Gécamines more specifically, as well as consultations with the trade unions and the Government. The VDP finally agreed by the trade unions and the Government in March 2003 amounted to US$43.5 million (US$25 million financed by the ERC and US$18.5 million financed under the PSDC). The paragraphs below set out in more detail the design, legal issues, and implementation of the VDP.

45. ***The DOP Program.*** Gécamines' management had already tried to deal with the overstaffing of the enterprise in 1999. In July of that year, Gécamines issued a "Temporary Work Interruption" (*Dispense Temporaire de l'Obligation de Prester*, DOP) for

5,000 employees. Under this mechanism, employees were put in "technical unemployment" (*congé technique*), were inactive, and were paid 55 percent of their salary.

46. In 2002 and 2003, the possibility of a larger voluntary separation program for Gécamines' workers elicited strong enthusiastic support from the workers and their unions,[8] which led to the decision to include the DOPs in the Voluntary Departure Program.

47. ***Design of the VDP***. Following its decision to put in place a program of mutually agreed separation, the Government proposed on June 22, 2002, a VDP with the payment scale described in Table 2 below.

**Table 2: Initial Payment Scale of the VDP proposed on June 22, 2002 (with an exchange rate of US$1 = CF 450)**

| Proposed Payment (CF) per Month | Proposed Payment (US$) per Month | Employee Category |
|---|---|---|
| 450,000 | 1,000 | Workers (category 5 to 8) |
| 700,000 | 1,570 | Workers (category 4) |
| 1,000,000 | 2,200 | Mid managers |
| 2,000,000 | 4,400 | Managers and Directors |

Source: Signed minutes of the meeting between Gécamines' management and Gécamines' trade unions (June 22-24, 2002).

48. This proposed payment scale was rejected by the trade unions on June 24, 2002. Following this rejection, the Government decided to hire an international expert on retrenchment plans, Jacques Catry,[9] to help move the VDP forward. This expert ("VDP consultant") was recruited by BCECO, a specialized procurement office that reports to the Ministry of Finance, created in 2001 to manage donor financing. The VDP consultant was financed under the Trust Fund TF020224: Social Stabilization and Economic Recovery Program. The terms of reference required the VDP consultant to: (a) elaborate the payment scale for the Voluntary Departure Program (VDP); (b) propose a mechanism for the implementation of the VDP; (c) propose a reinsertion program and budget the proposed program; and (d) undertake a financial and economic analysis of the program.

49. The VDP consultant started working on the design of the VDP in September 2002. He undertook a thorough analysis of the Gécamines labor force, which, as of August 31, 2002, numbered 23,730 employees. The average age of a Gécamines employee was 48 years, 50 years for Managers and Directors; 22.3 percent of the employees were over 55. On average, the employees had been working for Gécamines for 23 years, with 45 percent employed for over 25 years. This consultant also compared the Gécamines salary scale with private sector salaries in Lubumbashi (the capital of Katanga). Table 3 below shows the Gécamines salary scale in US$ at the time of the VDP.

[8] The task team leader of the project was given a trophy by the trade union in (or around) 2004 to thank him for the support provided during the VDP. The trophy was donated to the Kinshasa country office.
[9] It should be noted that Mr. Jacques Catry is now deceased. Mr. Catry was selected on the basis of his previous experience in managing large retrenchments operations in Togo and Cote d'Ivoire.

## Table 3: Gécamines' Salary Scale at the Time of the VDP

| | Directors | | | | | | Managers and Workers | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | S5 | S4 | S3 | S2 | S1 | W/o position | Managers | Mid-Managers | Rank 4 | Rank 5 | Rank 6 | Rank 7 | Rank 8 |
| Number of employees | 2 | 6 | 15 | 70 | 126 | 168 | 1,710 | 961 | 2,419 | 1,996 | 5,932 | 8,891 | 1,357 |
| Gross monthly salary (US$) | n.a. | 2,383 | 1,844 | 1,406 | 1,033 | 986 | 489 | 387 | 181 | 139 | 134 | 130 | 128 |

Source: Catry's Lotus 123 files

50. The VDP consultant then undertook an analysis of the legal framework (the 1967 and 2002 Labor Code, as well as relevant decrees) and the 1996 Collective Bargaining Agreement, which governs the termination of employment contracts between Gécamines and its employees, as well as the provisions pertaining to social security. The Consultant also analyzed the applicable regulations for retrenchment in private enterprises. In addition, he reviewed the experiences of countries such as Algeria, Benin, Comoros, Guinea, Ivory Coast, Madagascar, Niger and Togo. The findings of this analysis are summarized in Box 5 below.

### Box 5: Conclusions of the Analysis of the Legal and Regulatory Framework Governing the Interruption of a Work Contract between Gécamines and Its Employees

**Key findings:**

- Gécamines' collective bargaining agreement is broadly in line with Congolese practices in the public and private sectors, but, in addition, includes specific provisions on capital pension.[10]
- The DRC legal and regulatory framework governing the termination of employment contracts between an employer and an employee is comprehensive and includes generous termination benefits, estimated to be more generous than in other African countries (Algeria, Benin, Comoros, Guinea, Ivory Coast, Madagascar, Niger, and Togo).

Source: J. Catry's Intermediate Report, October 8, 2002.

51. Following the analysis of the labor force and of the legal and regulatory framework, the VDP consultant worked with the Gécamines Human Resources Department, on different scenarios for the VDP, which led to the approach described below. During the design of the VDP, the VDP consultant had several meetings with Gécamines' trade unions.[11] The VDP payment scale was presented to Gécamines' trade unions on March 8, 2003. The proposed payment scale was significantly higher than the payment scale proposed by the Government to Gécamines employees in June 2002.

52. The payment scale proposed by the VDP consultant took into account the termination indemnity (notice, paid leave and leave gratification), as well as all the salary ar-

[10] Under this mechanism (specified in Gécamines' Collective Bargaining Agreement) every employee who had worked over 10 years for the enterprise was to receive a lump sum payment according to an established scale.

[11] Different documents confirm that several meetings took place during the preparation of the Voluntary Departure Program (Catry Intermediate Report; minutes of the Steering Committee meeting - Gécamines management, trade unions, Ministry of Mines, Presidency, and Ministry of Labor - which took place on October 8-9, 2002; presentation to the trade unions that took place on March 8, 2003; minutes of meeting between Gécamines, the trade unions, URK, the VDP consultant and the World Bank on April 4, 2003).

rears until August 31, 2002 (at their historical value). The proposed payment respected all provisions of the collective bargaining agreement, except the pension fund (*capital pension*) and life insurance (for managers).[12] Details are provided in Box 6 below. It represented around 33 months of salary for workers and 40 months for managers. The VDP consultant also noted that this would represent the highest payment scale ever financed by the World Bank in retrenchment operations since 1995.

53. As highlighted in Box 6 below, the VDP consultant started his work in September 2002, when the 1967 Labor Code was still applicable. On October 25, 2002 a new Labor Code was approved. Reports from the VDP consultant show that he analyzed the impact of the new Labor Code on the payment scale he had proposed, with the constant that pension funds and life insurance would be excluded from the calculation of arrears. As it appeared that an application of the 2002 Labor Code would result in lower amounts, the VDP consultant proposed to apply the 1967 Labor Code when determining the payment scale.

**Box 6: VDP Payment Scale[13]**

- Initial calculations were undertaken in the framework of the 1967 Labor Code.

  These calculations included all salary arrears as of August 31, 2002, as well as all benefits provided by the Collective Bargaining Agreement, except the pension fund and the life insurance (for managers).

- If the pension fund and the life insurance are excluded, the new 2002 Labor Code would have provided a lesser entitlement.

  The 2002 Labor Code excludes transport and housing benefits from the salary calculation, which represent between 27 and 40 percent of the gross salary for Gécamines' workers.

- The exchange rate used for the calculation was a rate which was more favorable than that used by Gécamines in payroll, but less favorable than the exchange rate prevailing at the time of payment (payment took place several months after calculation, while Congolese franc depreciated against the dollar).

  At the time of the VDP Gécamines salary scales were in US dollars (as decided by Gécamines management) but salaries were paid in Congolese francs, using a virtual exchange rate of CF 200=US$1. With a market rate of CF 360=US$1 at the time of calculation, this allowed Gécamines to lower its payroll in dollar terms. Catry's calculation proposed to: (i) pay the retrenchment package in US dollars, which allowed beneficiaries to be less subject to currency depreciation; and (ii) use an exchange rate of CF 360=US$1.

- The Government's choice of payment scale is based on the 1967 Labor Code calculation increased by 15 percent, and using an exchange rate of US$1=CF 360, more favorable for a payment in US dollars.

  The consultant presented the proposed payment scale to ECOFIN (the inter-ministerial committee in charge of economic and financial questions) on February 25, 2003. In this initial proposed scale, the minimum payment amount for active employees was US$2,061 and the maximum amount was US$60,862 for non-DOP employees.

  Catry's presentation to the trade unions that took place on March 8, 2003 indicates that the Government requested a 15 percent increase in the originally proposed payment scale. As a result the revised payment scale (for active employees) varied between a minimum of US$2,370 and US$69,991 for non-DOP employees.

[12] Source: Jacques Catry Final Report on Gécamines Restructuring (February 24, 2003).
[13] Sources: Catry's Power Point Presentations to ECOFIN (February 25, 2003) and to the trade unions (March 8, 2003).

| |
|---|
| The revised payment scale is more favorable than if the 2002 Labor Code had been applied. |

54. The VDP was approved by ECOFIN on March 11, 2003. The VDP was officially announced by the Minister of Mines on March 13, 2003. The trade unions' roles throughout the process were constructive and productive.

55. The payment scale under the VDP varied from US$2,370 to US$69,991 for active employees and from US$556 to US$23,458 for inactive employees called DOPs. Annex 2 shows the payment scales for active employees and for DOP employees.[14] An analysis of the difference between the VDP payment scale (for active employees) and the payment scale that would apply with an exact application of the Collective Bargaining Agreement (Annex 2) shows that for directors, the VDP payments were lower by 15 to 40 percent, while for managers and workers the gap was between 3 and 9 percent. However, one group – mid-level managers – got about 6 percent more under the VDP than under the collective bargaining clause. The VDP proposed to pay all obligations, including salary arrears, but excluding the capital pension and life insurance (for managers). An audit undertaken by PriceWaterhouseCoopers (PWC, dated July 11, 2003) confirmed the eligibility of partants volontaires for compensation, and the accuracy of the indemnities paid, according to the chosen methodology

56. ***Legal Basis of the VDP***. The VDP was carried out on a voluntary basis, and based on mutual agreement to terminate a labor contract. Box 7 describes the legal aspects of the VDP approach. Terminating a contract by mutual consent is allowed by Article 33 of the Congolese Civil Code, Third Book. Article 128 of the 1967 Labor Code and Article 149 of the 2002 Labor Code mention the case of "mutual termination agreement." Article 29 of the Collective Bargaining Agreement also mentions the case of mutually agreed termination. A mutual termination agreement is not contradictory with the 1967 or 2002 Labor Codes and the Gécamines Collective Bargaining Agreement (GCBA). The VDP represented a compromise agreed by the Government and the trade unions (See Box 6 for details).

57. The legal framework of DRC, including the Civil Code, Code de Procedure Civil and Code du Travail, has a comprehensive grievance mechanism allowing affected persons to challenge the proposed VDP or its outcome. According to the Bank's knowledge, based on information received from Gécamines, the participants in the VDP (*partants volontaires*), have not yet undertaken any action to challenge the VDP in court. The Labor Code provides that, in the event of a labor dispute in DRC, the first step is to discuss the labor dispute at the Employment Inspectorate. If the dispute is not resolved there, the next step is to go to court.

[14] 448 DOP employees participated in the VDP.

## Box 7. Legal Basis of the VDP

The Government contracted an international retrenchment consultant to assist Gécamines in the design of the VDP. The consultant was required under the Terms of Reference, reviewed and approved by the Bank to "analyze, among others, the contractual obligations of Gécamines vis-à-vis its employees, applicable laws (including the Labor Code), the current conditions of the labor market in the Katanga Province and on these bases, compare the advantages and drawbacks of a VDP against the traditional lay-offs ('*départ forcé*')." The consultant was also required to analyze the target situation of Gécamines and to precisely define the amount of resources needed to cover the indemnification. Finally, the consultant had to prepare a proposal in connection with salaries due.

The consultant prepared several drafts which were discussed with and among stakeholders and reviewed by the Bank. The final report included all relevant considerations connected to the then prevailing labor conditions and market in DRC, attitude and opinions of labor unions, Gécamines and government authorities. The Consultant Report (the Report) also included an analysis of applicable laws, regulations and contractual provisions applicable to the rights and obligations of potential VDP participants and Gécamines (Catry's Report, Chapter 2 "Le cadre réglementaire et conventionnel qui régit les conditions de départ des agents de la Gécamines") and a comparison between applicable legal, regulatory and contractual provisions in various sectors and in the mining sector at Gécamines.

During the preparation of the Report, the consultant reviewed the relevant provisions of the following:

- Law 67/310 of August 9, 1967 on Labor Code,
- Ministerial Order (*Arrêté*) 70/015 of August 11, 1970 on working day schedule (temps de travail) and notice conditions (*Conditions de préavis*),
- Department Order 117/74 dated September 19, 1974 on dismissal, redundancy and mass lay-offs (*licenciement des travailleurs*),
- National Inter-professional Collective Labor Convention as revised on March 19, 1985,
- Gécamines Collective Bargaining Agreement (GCBA) dated May, 17, 1996,
- Decree-Law (*Décret-loi*) dated June 29, 1961 on the organization and regime of the health insurance organization (*Sécurité Sociale congolaise*),
- Arrêté 8.61 dated October 21, 1961 on General Rules on Health Insurance (*Réglement Général de l'Assurance*).

At the time of the preparation and discussion of the VDP, the 2002 Labor Code was yet to be approved and put into effect and conventions between Gécamines and its employees were governed by the then in force 1967 Labor Code. The new Labor Code was adopted and issued by the President of the Republic as law on October 16, 2002, while the processing of the VDP was yet to be adopted and completed.

Under the above-described applicable legal and regulatory system, the benefits for employees under the GCBA are as generous as those generally provided for in other collective bargaining agreements but are more generous than those defined in the Labor Code for workers not covered by a collective bargaining agreement. In addition to these benefits, Gécamines used to provide its employees, who had worked for at least ten years for the Company, with a pension plan.

A Note-Circular N. 325/ADG/2003, dated March 20, 2003 from the Managing Director of Gécamines was issued and disclosed to all employees, describing the VDP, eligibility criteria and program processing in compliance with a Communication of the Minister of Mines and Energy dated March 14, 2003. Then a lengthy consultation process took place during which employees had opportunities to learn about all the terms of the VDP, provide comments and feedback and decide on participation in it.

The voluntary character of the VDP was highlighted in the "Termination Agreement" ("*Convention* *de Rupture du Contrat de Travail de Commun Accord*") that was entered into by Gécamines with each of its employees. For the purpose of confirming the voluntary aspect of the participation of employees in the VDP and the consensual character of the Termination Agreement (TA), a Record of Conciliation Agreement was signed by Gécamines and each volunteer in the presence of an accredited Provincial Inspector of Labor (*Constat d'Accord de Conciliation*). This presence would indicate that the TA is consistent with the provisions of the 2002 Labor Code.

58. ***Roll out of the VDP***. The Gécamines Memo 0235/ADG/2003, dated March 20, 2003 explained in detail the roll out of the program. It described in particular the communication mechanism that was to be deployed, the registering period, the information to be provided to employees interested in the VDP, and the administrative procedures. It also explained that an independent reinsertion mechanism would be undertaken by the Coordinating Unit for Reinsertion of Gécamines Voluntarily Departing Employees in Katanga (*unité de coordination pour la réinsertion des partants volontaires de la Gécamines au Katanga*, URK).

59. A second Gécamines' document (DRH/DIR/35796/2003, dated March 24, 2003) explained in detail the role of the different departments of the enterprise in the VDP. A third Gécamines' document (DRH/DIR/35810/2003, dated March 27, 2003) summarized the required documents for the registering of VDP candidates (see Box 8 below). This memo also included the VDP payment scales (for active and DOP employees), as well as the comparative table between the proposed payment scale and the payment scale with an exact application of the Collective Bargaining Agreement.

**Box 8: Official Documents for Each *Partant Volontaire***

The following official documents are available for each *partant volontaire*:

- Hand written notification to the Managing Director of Gécamines of the decision of the employee to take part in the VDP, signed by the employee and by his/her manager;
- Convention of employment contract termination by mutual agreement (*Convention de Rupture du Contrat de Travail de Commun Accord*), signed by the employee, the Human Resources Director and the Central Administration of Human Resources Director;
- Validation of the "Convention of work contract interruption by mutual agreement" by the Provincial Work Inspection (*Procés-Verbal de constat d'accord de conciliation, Division Provinciale de l'Inspection du Travail*).

60. Gécamines finalized the list of candidates for the VDP on May 21, 2003. An audit firm checked the accuracy of the list compiled by Gécamines. In particular, the auditing firm checked the accuracy of the following information for each candidate: (a) number of years worked in Gécamines (*ancienneté*); (b) job category or rank in Gécamines; and (c) exit payment amount (this amount had to be strictly in line with the established payment scales).

61. ***Communication.*** Gécamines' memos (Note Circulaire 0325/ADG/2003, DRH/DIR/35796/2003 and DRH/DIR/35810/2003) explained that communications with the employees related to the VDP would be jointly undertaken by Gécamines' senior management and the trade unions. Information campaigns were undertaken in a systemat-

ic manner, in all locations of the enterprise, to ensure that all Gécamines employees were informed. The registering period was set from March 24 to April 4, 2003. The Directors of Gécamines' production centers outside of Lubumbashi (i.e., Likasi, Kolwezi, Kinshasa and Brussels) were to inform their respective employees who were interested in the VDP of the "exit payment" lump sum they would receive. In addition, they were to inform the candidate for the VDP that the autonomous URK would be responsible for the organization of the payments and of the advisory services, which would be available freely to the *partants volontaires*.

62. Additional communication efforts were undertaken by URK and the three Information and Reinsertion Centers (CIR) established in Kolwezi, Likasi and Lubumbashi (and reporting to URK). A theatre troop (Mufwankolo) undertook a series of theatrical plays[15] in Swahili (mostly spoken in Katanga) to explain the VDP to Gécamines employees from June 2 to 20, 2003. In addition, national NGOs (COPEMECO, FOLECO and RIFIDEC) organized information meetings from June 2 to 21, 2003 to: (a) encourage *partants volontaires* to use a part of the payment they received for reinsertion; and (b) present potential income generating activities for *partants volontaires*. The CRETES report assessed that 5,813 *partants volontaires* participated in the information campaigns.

63. ***Results.*** The minimum actual amount paid under the VDP was US$825, with a maximum paid amount of US$60,773.[16] The average payment amount was US$4,083 (the equivalent of one year of a mid-manager's pay at the time of the VDP). The roll out of the VDP went smoothly. The payments started on August 11, 2003 and ended on March 11, 2004. Box 9 below summarizes the different steps of the payment process. A lot of care was taken to ensure that the payments would reach the correct beneficiaries, which represented a major challenge in a weak fiduciary environment such as DRC. The payments were undertaken by a contracted commercial bank, the Banque Commerciale du Congo (BCDC), with close supervision from URK. The 2003 audit of the PSDC, undertaken by Deloitte, confirmed that the processes in place to undertake the payments were sound and that the persons and amounts paid correspond to the list certified by PWC in July 2003.

**Box 9: VDP Pay Out Process**

The VDP pay out processes involved the following steps:

- (i) Identification of candidate to the VDP, and issuance of an ID card
- (ii) Collective meeting of the different sides (40 persons per group)
- (iii) Individual meeting with a social worker compulsory prior to (iv)
- (iv) Signature of the Convention of employment contract termination
- (v) Official document allowing the *partant volontaire* to obtain payment from the bank (BCDC).

[15] A video of the play is available.

[16] The payment scale for active and inactive employees ranged from US$556 to US$69,991. Actual payments were different from expected payments shown on the payment scales, because there were no eligible applicants at the lower and higher ends of the payment scale.

## B. The House Lease Purchase Scheme (LVM, Location Vente Maison)

64. The LVM scheme was adopted by Gécamines on August 4, 1983 (and officially started in 1984) and was terminated on May 8, 2008. There is no direct link between the VDP and the LVM scheme. Box 10 below summarizes the LVM scheme. The consultant had advised the Government not to include it in the VDP, but made some propositions to Gécamines to adapt the LVM scheme in the context of the VDP[17] (such as, inter alia, providing further discounts on the LVM to *partants volontaires*). However, Gécamines asked the *partants volontaires* who were occupying Gécamines houses they did not own, to vacate them by May 2004.[18] The PSIA estimated that only 26 percent of *partants volontaires* did not own a house at the time of the VDP. A number of former Gécamines employees (including some *partants volontaires*) refused to vacate the houses they were occupying, even though the houses had been sold to other Gécamines employees. The employees who purchased the houses have usually gone to court to recover them.

**Box 10: LVM (1984 Program)**

To participate in the LVM scheme, the employee needed to meet the following conditions:

- to be Congolese, to have worked at least 10 years for Gécamines and have a performance rating of at least B+;
- to be living in a Gécamines house, or to purchase one not occupied by another Gécamines employ*ee;*
- to pay the mortgage – over 15 years for managers and 25 years for workers;
- to pay property registration taxes;
- in case of lay-off, resignation, retirement or death, to return the house to Gécamines;
- to be responsible for taking care of the property and small works, with important works remaining the responsibility of Gécamines until the purchase is complete.

The LVM scheme began in November 1984. After an interruption between 1992 and 1994, it was finally terminated on May 8, 2008.

Source: Gécamines, Note on the LVM scheme

## C. Implementation of Component 3 of the Project: "Initiatives for Economic Development in the Katanga Region"

65. Box 11 below summarizes Component 3 of the Project Appraisal Document: "initiatives for economic development in the Katanga region" (US$7.41 million) and highlights what has been achieved so far. The component aimed at creating new economic opportunities for the workers retrenched from Gécamines and other public enterprises present in Katanga and at fostering regional economic development. As of the end of March 2009, US$5.3 million had been disbursed under this component.

[17] See Catry's Power Point Presentations dated October 8, 2002 and February 25, 2003.
[18] Because of the mobility of Gécamines employees within Katanga, a number of employees had bought a house in a given location and were living in another house in another location.

### Box 11: Project Component 3 "Initiatives for Economic Development in the Katanga Region"

| **Proposed Activity (PAD)** | **Achievement** |
|---|---|
| *Subcomponent 1: Small grants program to finance local economic development activities (US$2.40 million)* | |
| Small grants program to finance local economic development activities (such as worker training, seminar attendance, purchase of necessary equipment and improvement of production and marketing techniques).<br><br>Linkages will be made between this program and microfinance institutions active in Katanga. | US$3.76 million disbursed.[19]<br><br>This small grant program focused on *partants volontaires*. Please refer to section above for further details.<br><br>The linkages with microfinance institutions did not take place as expected, due to the weakness of the microfinance sector in Katanga. |
| *Subcomponent 2: Improvement of competitiveness in the region (US$0.94 million)* | |
| Support to activities to improve the competitiveness of the region by supporting technical assistance to help identify investment opportunities and upgrade skills and capacity of small and medium size enterprises around an emerging private mining industry.<br>Linkages will be created with local community development and business partners, namely mining companies, NGOs, microfinance institutions, business associations.<br>Linkages will also be created with the economy of Zambia's copper belt. | No activity financed by the subcomponent.<br><br>The IFC undertook an assessment of the copper belt mining supply chain in the Katanga province. |
| *Subcomponent 3: Transfer of social services to municipalities (US$1.04 million)* | |
| Support for transfer of social services to municipalities by transferring housing and social infrastructure assets that are on the balance sheet of Gécamines to local private or non profit institutions or to the Central Government. | US$1.31 million disbursed.<br><br>In the context of Gécamines' restructuring, two in-depth analyses of the reorganization options for education and health activities were undertaken. It was recognized that for Gécamines to recover and to become again a profitable mining enterprise, it could not continue to operate such a broad network of schools, health centers and hospitals. The important role of these schools and health services in the Katanga region was also recognized.<br>The gradual and careful transfer of Gécamines' schools and health services will be undertaken in the context of the next phase of Gécamines restructuring. COPIREP is currently working on a road map to be presented to the Government.<br>The transition support to Gécamines schools and health services was funded under this subcomponent. |
| *Subcomponent 4: Set up of regional development frameworks (US$2.51 million)* | |
| Financing of local economic development activities and capacity building of local communities.<br>Assessment of infrastructure required to make | US$70,000 disbursed<br><br>COPIREP organized two workshops in Katanga |

[19] The higher amounts disbursed are due to changes in the exchange rate during project implementation.

| **Proposed Activity (PAD)** | **Achievement** |
|---|---|
| private investment viable.<br>Analysis of the respective role and capacity of central and local governments to deliver essential services and to implement and maintain public infrastructure<br>Formulation of regional and local development frameworks. This would include the preparation of local (urban and rural) development plans and investment programs using participatory approaches.<br>Help to design appropriate tools and methodologies for urban and rural communities to better manage local infrastructure maintenance and basic services delivery to their population. | on regional development frameworks.<br>A number of these activities are undertaken in the context of other World Bank operations.<br>In the context of the preparation of the forthcoming mining operation, an analysis of the infrastructure need of the mining sector is on-going (with participation from the IFC).<br>The recently approved decentralization operation intends to provide support to the Government of Katanga on regional and local development. |
| *Subcomponent 5: monitoring and evaluation (US$0.51 million)* | |
| Establishment of a monitoring and evaluation system for the program. | US$160,000 disbursed.<br>Two studies from the University of Lubumbashi (base line survey and technical assistance to Gécamines' restructuring) were undertaken within this subcomponent.<br>The impact study under the CRETES evaluation report was also undertaken within this subcomponent. |

### D. Reinsertion Program for "Voluntarily Departing Employees" (*partants volontaires*)

66. ***Context.*** Reinsertion of *partants volontaires* was an important concern during the preparation of the VDP. The VDP consultant (Jacques Catry) was asked to design the social component of the VDP. Based on the experience of retrenchment plans in other African countries, the consultant estimated that about 25 percent of the *partants volontaires* would not seek, for various reasons (in particular because of their age, see Table 4), to participate in reinsertion activities; the consultant also emphasized that, due to the very difficult context of Katanga in 2002, the reinsertion program would not be able to achieve ambitious results.[20]

**Table 4: Age Groups of *Partants Volontaires***

| Age | 20 to 25 | 26 to 30 | 31 to 35 | 36 to 40 | 41 to 45 | 46 to 50 | 51 to 55 | 56 to 60 | 61 to 65 | Over 66 | **Total** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Years in enterprise | | | | | | | | | | | |
| 26 to 30 years | 0 | 0 | 0 | 0 | 393 | 2,198 | 1,211 | 495 | 222 | 57 | **4,576** |
| 31 to 35 years | 0 | 0 | 0 | 0 | 0 | 486 | 1,450 | 450 | 202 | 53 | **2,641** |
| More than 36 years | 0 | 0 | 0 | 0 | 0 | 0 | 475 | 1,298 | 1,110 | 565 | **3,448** |
| **Total** | 0 | 0 | 0 | 0 | 393 | 2684 | 3136 | 2243 | 1534 | 675 | **10,665** |

[20] Catry's Power Point presentation dated October 8, 2002.

67. A PSIA was undertaken at the beginning of the VDP in 2003 and completed in 2007. The PSIA objective was to provide an analysis of the projected impacts and risks of the VDP and of the dependence on Gécamines' ancillary social services that were being affected by the bankruptcy. The University of Lubumbashi carried out the research with technical assistance from IDA. The rapid initial assessment as part of the PSIA led to several adjustments in the VDP, and to the design of interim programs to support Gécamines schools and health centers, which had not been foreseen at project preparation (these activities were not reflected in the PAD). Based on this, two years of free access to schools and health centers were granted to ex-Gécamines employees.

68. The PSIA also included a series of recommendations for IDA involvement in the Katanga province and in the mining sector. While a number of these recommendations were beyond the scope of the project, they will be implemented in later IDA operations, such as the forthcoming mining sector operation in fiscal year 2010, which, for example, will tackle artisanal mining issues, or the recently approved decentralization operation which will provide targeted support to three provincial Governments (including Katanga).

69. ***Poverty Analysis of Partants Volontaires.*** The PSIA included a poverty analysis of *partants volontaires* before they left Gécamines (based on a survey undertaken by the University of Lubumbashi in June 2003). Because of the financial difficulties of Gécamines, by 2003, most employees had not been paid for over 30 months. To survive, families went into subsistence farming, sold off their possessions (refrigerators, tables, beds, etc), women took up small income generating activities, and many started to skip meals (sometimes eating only once every other day, or even less). The PSIA reported that many employees spoke of increased divorce rates and family break-up (see PSIA, sections 3.9 and 3.10).

70. The PSIA revealed, through analysis of consumption patterns, that at the start of the VDP, Gécamines employees were worse off than the general population in Katanga. The interruption in food distribution by Gécamines, as well as the non-payment of salaries for more than two years, contributed to this dramatic decline in consumption.

71. ***Reinsertion Activities***. A number of reinsertion activities were undertaken for the *partants volontaires*. During the individual interviews carried out during the roll out of the VDP, the *partants volontaires* were asked to choose an income generating activity: 40.3 percent chose agriculture, 40.0 percent chose livestock farming, 11.2 percent chose trading, 5.5 chose craft, 2.6 chose fishing and 1.4 percent chose health or education related activities. It should be highlighted that this was a demand-driven process. *Partants volontaires* had to apply for training, technical assistance or matching grants. URK, the structure in charge of coordinating reinsertion activities, underlines that not all *partants volontaires* were interested in reinsertion activities; many did not apply for funding or specific training. There was no issue of over demand and lack of funding.

72. Activities proposed to the *partants volontaires* fell into four categories: (a) information campaigns to identify activities for reinsertion; (b) training on entrepreneurship, micro enterprise management, agriculture, specific technical skills applicable to micro enterprises; (c) technical assistance provided by NGOs, cooperatives or directly by URK; and (d) matching grant programs.

73. ***Evaluation of Reinsertion Activities of Partants Volontaires***. An evaluation of the reinsertion activities of *partants volontaires* was undertaken between November 2005 and January 2006 by CRETES. Less than two years after the start of the VDP, 9,924 *partants volontaires* had initiated an income-generating activity, which represented a high reinsertion rate (measured by employment in the formal or informal sector) of 93 percent. This high reinsertion rate would not typically be sustained in the medium to long term. (A new survey will be undertaken to update this information, as indicated in Section V.) The study also highlighted a number of weaknesses in the proposed reinsertion program. In particular, the study recommended shifting the focus on collective activities to individual activities, as it appeared that the constitution of associations was rather opportunistic (i.e., to take advantage of financing). The study also highlighted the dissatisfaction of the *partants volontaires* with the reinsertion support they received (such as technical advice). Finally, it identified a number of bureaucratic hurdles that slowed down the disbursement of funds, with regards to the matching grant mechanism. (See Annex 3.9.)

74. In the medium term, anecdotal evidence shows that reinsertion results may be more modest. Around 1,500 benefited from technical assistance to launch micro enterprises for about 100 micro-enterprises effectively launched. More than 5,000 received training on the creation of association and on new activities for reinsertion. But *Partants volontaires* who selected an agriculture activity, mostly grouped under the Terres Arables project, managed to cultivate only 230 hectares out of the 1200 hectares initially allocated to them. Very few *partant volontaires* (150) took training in management and entrepreneurship skills. See Box 12 on Summary of Reinsertion Activities. These mixed results in the medium term showed that challenges for reinserting an aging workforce into the DRC economy were significant (Catry had noted in his report that considering the age of many *partants volontaires*, it would be difficult for a number of them to launch a new economic activity – see age groups in Table 4).[21]

**Box 12: Summary of Reinsertion Activities undertaken for *Partants Volontaires***

| Period | Activity | Institution(s) | Number of beneficiaries | Results | Planned budget (US$) | Actual budget (US$) |
|---|---|---|---|---|---|---|
| June 2 to 20, 2003 | Sensitization of PV by a theatre company to (i) describe the reinsertion activities that will be undertaken and (ii) encourage PV save part of the payment they received for reinsertion activities | Mufwankolo theatre company | Around 10,000 PV in all Gécamines' sites | 9 plays undertaken in local language (Swahili) in Katanga. PV are familiar with the proposed reinsertion program | 7,650 | 7,650 |
| June 2 to 21, 2003 | Sensitization of PV on payment | Local NGOs: COPEMECO, | Around 7,400 PV | In all sites of Gécamines, PV are | 17,000 | 17,000 |

[21] Catry had assessed that out of 10,000 *partants volontaires*, 1,000 would have been finally able to create a new micro-enterprise. He had also estimated that around 30 percent of *partants volontaires* would choose subsistence agriculture.

| Period | Activity | Institution(s) | Number of beneficiaries | Results | Planned budget (US$) | Actual budget (US$) |
|---|---|---|---|---|---|---|
| | mechanism and reinsertion activities | FOLECO and RIFIDEC | | sensitized | | |
| January 26 to July 26, 2004 | Further analysis on the 2003 survey on living conditions of PV undertaken by University of Lubumbashi | University of Lubumbashi (UNILU) | Not applicable | Dissemination of the findings of the study through workshops in Lubumbashi and Katanga with key stakeholders | 49,962 | 49,962 |
| February 23 to June 30, 2004 | Advice for reinsertion | URK CIR (Information Centers for Reinsertion) in Likasi, Kolwezi and Lubumbashi | 3,000 PV | Advice to PV on reinsertion and technical assistance (basic management and agriculture) | 105,000 | 105,000 |
| March 15 to May 15, 2004 | Training of PV in management and entrepreneurship | Congolese Enterprises Federation (FEC), Katanga branch | 150 PV | 150 PV (individuals or representing associations) participated to training on entrepreneurship and micro-enterprise management within 10 days in Likasi, Kipushi, Lubumbashi, Kambove and Kolwezi. Focus on PV that had decided to start a micro-enterprise | 34,000 | 34,000 |
| March 15 to May 15, 2004 | Further dissemination on reinsertion and on the creation of associations | Local NGO: COPEMECO | 5.813 PV | Dissemination of identified sectors / activities for reinsertion and training session for the creation of associations | 21,696 | 21,696 |
| June 2004 to June 2007 | Technical assistance for economic reinsertion initiatives | International NGO: PACT | Around1,500 PV | (i) Technical assistance to around 1,500 PV, (ii) incubation centers in Likasi, Kolwezi and Lubumbashi and development of 96 “projects kits” | 1,949,588 | 1,949,588 |
| June 2004 to June 2007 | Matching grants | Managed by URK | 1,720 PV for individual and collective projects | Matching grants to finance selected projects of PV and associations of PV, with technical assistance | 478,118 | 390,216 |
| August 2, 2004 - November 2, 2004 (estimated) | Technical assistance to the Federation of Kambov Cooperatives (FDC) on management | URK | 1702 PV belonged to FDC | Capacity strengthening for FDC in basic management. However, a number of activities undertaken by FDC failed. | 161,252 | 60,000 |
| September 2005 – ongoing | Technical assistance to PV engaged in agricultural activities (Terres Arables initiative) | Local NGO: FOLECO | 68 associations of PV (around 600 PV) | Technical advice on agriculture: 1,200 hectares of land in 3 sites, Lubumbashi, Likasi and Kolwezi, made available to PV | 162,146 | 106,500 |
| August 2, 2004 - November 2, 2004 (estimated) | Financial and technical assistance for PV in the Terres Arables Initiatives | URK and individual consultants | 79 associations (1562 persons including 1141 PV) | Out of the 1200 hectares made available to PV, 100 hectares cultivated in Lubumbashi, 30 hectares in Likasi and 100 hectares in Kolwezi | 777,674 | 563,446 |
| May 2004 to April 2006 | Allowances to Gécamines' teachers to ensure that PV children had access to education | URK | 1,183 teachers | PV children had access to education. No strike from 2004 to 2006 in Gécamines schools (as it was the case before the VDP) | 412,000 | 411,840 |
| August 2004 to April 2006 | Allowances to Gécamines health staff to ensure that PV and their family have access to health care | URK | 1,040 health staff | PV and their family had access to health care. No strike from 2004 to 2006 in Gécamines' hospitals and health centers (as it was the case before the VDP) | 700,000 | 698,820 |
| October 2005 to February 2006 | Evaluation of reinsertion activities | CRETES | Not applicable | Evaluation of reinsertion activities undertaken by PV | 80,592 | 80,592 |
| | | | | **Total budget** | **4,956,678** | **4,496,310** |

75. ***Support to Schools and Health Centers.*** Following the recommendations of the PSIA, it was also decided to provide financial support to teachers and nurses so that they could continue to care for *partants volontaires* and their families. A total amount of US$1.1 million was provided over a 2-year period (until end 2006). Studies financed by the PSDC looked at alternative solutions to continue to provide support and externalize social services.

## E. The Challenges of Reinsertion

76. Analysis of the VDP and of the reinsertion activities highlights a number of challenges in their implementation. These include limited local capacity for reinsertion, slow

disbursement of matching grants, and problems managing such economic activities as a local cooperative or agricultural enterprises. Some of these issues are linked to the implementation process; others are more substantive and are linked to the particular conditions in DRC, Katanga and Gécamines at the time of the operation launch in 2003. It should also be underlined that these findings are based on recent anecdotal comments by some *partants volontaires* and would need to be validated by a more detailed survey (see Action Plan in Section V). The Gécamines model of employment adds to the complexity of reinsertion. It has been difficult for a number of the Gécamines' *partants volontaires* to make the transition from Gécamines to other types of employment, including entrepreneurial activities. Despite numerous efforts to assist the *partants volontaires*, COPIREP, via URK, has not fully succeeded due to capacity issues and the numerous challenges of reinsertion.

77. The issue of VDP beneficiaries spending the entire payment in consumption was carefully discussed by the World Bank team during the VDP preparation. A suggestion for scheduling the payment in tranches was made but the workers did not trust Gécamines or the banking system enough to accept it. Discussions were also held with banks to facilitate the opening of savings accounts for beneficiaries. Two problems prevented that from happening. The fees requested by the banks were very high and there were no longer any bank branches open in two of the three Gécamines industrial centers (Likasi and Kolwezi). The possibility of extending microfinance to the beneficiaries was also carefully assessed, but at that time none of the microfinance institutions working in DRC had the capacity to shoulder such a big program.

## F. Designing Future Retrenchment Programs

78. The Gécamines' VDP provides some useful guidance that is being factored into the design of Bank-financed retrenchment programs in the Region, including:

- The reinsertion activities need to be ready to be launched at time of the start of the retrenchment process.
- Use rapid surveys to track poverty patterns and social impact immediately after the retrenchment, and for up to five years after. These rapid surveys should also help identify alternative reinsertion mechanisms during the life of the project.
- Consider providing payments in tranches, create partnerships with financial institutions, provide training on money management, etc.
- Allow flexibility in the design or reinsertion activities to adapt to rapidly changing economic environment.

## G. Bank Policies

79. During Project preparation and the implementation, the Bank team made every effort to meet the requirements of Bank policies. At the time of preparation of the PSDC, the OP Memo on Financing Severance Pay in Public Sector Reform Operations of April 5, 2002 governed policy requirements for retrenchment programs, as referred to in OP 12.00 (Disbursements). The provisions of the VDP were reviewed by Bank Management,

and an Official Memorandum dated April 24, 2003 noted that it met the applicable requirements. These requirements include: (a) sustainability of proposed reforms; (b) countering the moral hazard of retrenchment pay financing; (c) avoiding adverse selection (mitigating the risk of overpayment); (d) avoiding adverse publicity; and (e) monitoring and financial reporting. Policy requirements in connection with the financing of retrenchment plans were revised in 2004, after the PSDC had become effective. The policy revisions to OP 12.00 did not affect the implementation of the Project.

80. With regard to OP/BP 6.00 (Bank Financing), the restructuring of Gécamines was critical to restart economic development in Katanga and in DRC as a whole. In addition, the fiduciary arrangements in place ensured that each beneficiary received what s/he was due under the Project. With regards to OD 4.15 (Poverty Reduction), the key objective of the Project was to reduce poverty through economic recovery in the Katanga region in particular. The Bank team focused on ensuring that the interests of the people of DRC were at the center of the Project. With regards to OP/BP 13.05 (Supervision), twelve supervisions missions were undertaken between July 2003 (effectiveness of PSDC) and the Mid-Term Review (June 2007). In addition, the Task Team Leader has been based in Kinshasa since October 2007.

## V. MANAGEMENT'S RESPONSE

81. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

82. **Action Plan.** Management sent a mission in March 2009 to the project area, which included the Task Team Leader, the Bank's Senior Technical Advisor on Safeguards, and the Resident Mission's mining specialist. This mission included meetings with both Requesters, held in Likasi, Katanga. The following action plan is proposed under the project.

| **Action** | **Timeline** |
|---|---|
| ***With regards to the Gécamines' VDP*** | |
| • Undertake a new survey of Gécamines *partants volontaires* to have a better understanding of their current situation including progress in reinsertion efforts. This survey will help analyze if special actions are needed for *partants volontaires.* The results of the survey will also provide a basis for further dialogue with the Government on any specific actions that might be needed for the *partants volontaires*. | Survey results expected by end September 2009 |
| ***For other past and forthcoming retrenchment plans*** | |
| • Provide best practices technical assistance to COPIREP on retrenchment plans. | Starting in April 2009. Draft TOR available. Consultants to be hired on sole source basis |
| • Assist the Government in preparing a workshop on the social dimensions of public enterprise reform. COPIREP is in the process of drafting a note on this to be discussed at a Cabinet meeting. The workshop would aim at presenting and | By end 2009 |

| | |
|---|---|
| agreeing upon common principles among public enterprises to address the social aspects of reform. This workshop would also aim at agreeing on a Government strategy to cope with the social cost of reform, given the Government's budgetary situation and the critical need for public enterprise reform for DRC's economic recovery. | |
| • Encourage the Government to apply lessons learnt when undertaking forthcoming retrenchment plans in other public enterprises, including the SNCC and REGIDESO in particular, to undertake rapid poverty assessment surveys at the time of the retrenchment to benchmark progress and closely monitor reinsertion activities. | April 2009 – April 2011 |

83. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue concretely its mission statement in the context of the Project. In Management's view, the Bank has followed the guidelines, policies and procedures applicable to the matters raised by the Requests. As a result, Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.

## ANNEX 1A
## 1ST REQUEST
## CLAIMS AND RESPONSES

| No. | Claim/Issue | Response |
|---|---|---|
| | **OP/BP 6.00 Bank Financing** | |
| 1. | The World Bank financed the design, evaluation, and implementation of:<br>• 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; and<br>• The program to support economic initiatives in Katanga.<br>It is our understanding that the World Bank adopted certain special rules and procedures for granting the loan of US$43,483,422 intended "to facilitate the departure of employees freely seeking to end their careers in the enterprise," (See in this regard the summary minute of the special union consultation meeting held in Lubumbashi from June 22 to 24, 2002 by representatives of the employer, Gécamines, and workers in the presence of the Advisor to the Ministry of Mining.) However, said departures were supposed to be voluntary and meet certain conditions determined by the World Bank, such as the payment of a lump-sum amount in full settlement of any final reckoning (op.cit.). | **Context:** The Government's strategy to go forward with a Voluntary Departure Program (VDP) was decided at a time when Gécamines was producing about 2.5 percent of its peak annual capacity of the 1970s, and was accumulating significant wage arrears (21 months). Employees of retirement age could not retire because Gécamines could not pay their "final payment" ("*décompte final*"); social services provided to Gécamines workers were either no longer available, or were provided on a fee-basis to be paid by the employee. Economic conditions in Katanga at the time of the VDP were dire.<br>**Bank Financing:** The VDP was initiated by the Government and initially financed by a budget support operation (Economic Recovery Credit P057293, effective on 7/03/2002 and closed on 06/30/2003). The US$25 million tranche corresponding to the VDP was released to the DRC budget on 06/20/2003.<br>The Private Sector Development and Competitiveness (PSDC) project (P071144, effective on 12/02/2003; *i.e.*, after the disbursement of the Gécamines tranche under the ERC) provided US$17.4 million to complete the VDP. It also provided training and economic reinsertion opportunities for departing employees (Component 3 of the project). See Box 11 in the main text.<br>**Role of the Bank vs. Government:** The Government designed and implemented the VDP, in consultation with Gécamines, the trade unions, international and local NGOs, and the workers. According to Bank records, preparatory work started in 2001 (see Economic Recovery Credit). The Government based its decision to undertake the VDP on advice provided by an international expert on retrenchment plans ("VDP consultant"), Jacques Catry (now deceased), whose contract was financed by a Trust Fund administered by the Bank in August 2002. The Bank made financing available for implementation of the VDP. In its due diligence process for the preparation of the PSDC operation, the Bank checked and confirmed the eligibility of the financing of retrenchments.<br>**Processing of the PSDC:** The procedures followed to provide financing under the PSDC were that of SILs. OP 12.00 requirements on disbursement were also addressed and met. The changes in policy in OP 12.00 did not affect implementation of the project.<br>**Dismissal of Employees:** Gécamines employees were not "dismissed." The documents supporting the Government decision show that the process as designed allowed eligible Gécamines employees to choose to opt for this program. The separation contract signed by Gécamines workers and the template signed by all trade unions of Gécamines stipulate that the workers make a |

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| | | willing choice to sign the contract.<br>**Compensation Amount under the VDP**: Effective payments to active employees under the VDP ranged from US$2,030 to US$60,773.[22] Payment to inactive employees (i.e. DOPs) ranged from US$825 to US$23,458. The terms of reference of the VDP consultancy called for consideration to be given to the provisions of the labor code and other relevant applicable legal provisions and the consultant took these into consideration in preparing the financial compensation options presented to the Government. The VDP represented a compromise agreed by the Government and the trade unions. (see Box 6 in the main text and Catry's Power Point Presentation in Annex 3.5). According to available information, these payments were close to but lower than what would have been made available under a typical involuntary redundancy program (the difference ranging from 6 to 9 percent for low to medium ranked employees, and from 15 to 40 percent for director levels). |
| | **OpMemo, Financing Severance Pay in Public Sector Reform Operations** | |
| 2. | Gécamines cut its staff throughout the entire DRC in contravention of the provisions of Articles 62, 78, 100, 104, 144, and 152 of the Congolese Labor Code.<br>To do so, it presented each of us with a standard transaction instrument entitled "Agreement to terminate the labor contract by mutual agreement" and a minute of this finding of conciliation agreement in lieu of a "minute of full reconciliation," which were prepared in advance and which each of us had simply to sign in exchange for remittance of a payment instrument (irrevocable letter of credit) drawn up by the Katanga Reintegration Coordination Unit (URK), a part of COPIREP, in order to collect the severance payment at the Likasi agency of the Banque Commerciale du Congo (BCDC). The assistance programs for former Gécamines employees were limited. Indeed, COPIREP-URK, in its small project support program and its "IGJJENGA UHIJRU" 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. | **Compliance with Local Laws:** To the best of Management's understanding at the time:<br>▪ The Convention de Départ states that eligible employees, by mutual consent, freely accepted the proposed terms of the termination. The Government through legal opinion of COPIREP's Counsel explained in a communication to the Bank dated April 2009 that, as general principle of law, termination of contracts are allowed by Article 33 of the Civil Code, Third Book which states that " agreements legally formed have the force of law over those who are the makers of them. In addition COPIREP's Counsel mentioned the specific situation where workers can revoke specific benefit (travel benefit) agreed upon in their labor contract (Article 149 of the 2002 Labor Code). Reference to this Article 149 is an indication that termination of labor contract by mutual agreement is not prohibited under DRC labor law.<br>Each Convention de Départ was signed by a Labor Inspector (Inspecteur du Travail) which would indicate consistency with the relevant provisions of the Labor Code (See Annex 3.4, Signed Certified Report of Conciliation Agreement).<br>The sample Convention was signed by all trade unions on June 11, 2003, hence showing their agreement with |

[22] The actual payments were different from expected payments shown on the payment scales (US$2,370 to US$69,961 for active employees), because there were no eligible applicants at the lower and higher ends of the payment scale.

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| | | the proposed "mutual separation agreement."<br>**Were Gécamines employees free to reject the proposal?**<br>▪ See "compliance with local laws" immediately above.<br>Gécamines estimated that about 11,200 workers were eligible for the VDP; 10,655 elected to participate. This underscores the voluntary nature of this program (see Annex 3.7, Note to the Managing Director, dated September 21, 2004). There was unmet demand by people who did not meet the eligibility criteria and could not be accommodated.<br>**Bank Policies:** At the time of preparation of the PSDC, the OP memo on Financing Severance Pay in Public Sector Reform Operations of April 5, 2002 governed policy requirements for retrenchment programs, as referred to in OP 12.00 (Disbursements). The provisions of the VDP were reviewed by Bank Management, and an Official Memorandum dated 04/29/2003 noted that it met the requirements of OP 12.00. These requirements include: (i) sustainability of proposed reforms; (ii) countering the moral hazard of retrenchment pay financing; (iii) avoiding adverse selection; (iv) mitigating the risk of overpayment; (v) avoiding adverse publicity; and (vi) monitoring and financial reporting. Requirements of OP12.00 on Disbursement were modified in 2004, i.e., after effectiveness of the PSDC. This did not affect the implementation of the project.<br>**Reinsertion Activities:** The "IGJJENGA UHIJRU" program was financed under the Small Grants subcomponent of the PSDC, and managed by COPIREP URK. All employees were invited to participate in an orientation session about reinsertion activities. Those participating in training and matching grant programs did so after expressing an interest to join. The IGJJENGA UHIJRU program was managed by an international NGO, PACT (see Box 12 on reinsertion activities). |
| 3. | At present, Mr. ASSANI KYOMBI has been placed on retirement by Gécamines while Mr. CHOLA KABAMBA is unemployed and not receiving adequate support.<br>What is worse, the latter has been cited for abandonment of his company housing by Mr. NONOJI KAWAYA, Director of Agropastoral Activities of Gécamines, who has fraudulently acquired the Gécamines dwelling situated at Avenue de l'Hopital, No. 1, Commune of Likasi, Likasi. It bears recalling that Mr. NDONDJI KAWAYA fraudulently claimed the status of occupant of that dwelling, which was the determining factor in his being selected to be a potential beneficiary of the Gécamines Housing. Lease-Purchase Operation (LVM). In addition, Mr. NDONDJI KAWAYA arranged to have his written declarations supported, and his false assertions corroborated, by several persons responsible for reviewing applications to purchase Gécamines housing (acts covered and punishable | **The House Lease Purchase Scheme:**<br>▪ The social safety net provided by Gécamines at the time of retrenchment comprised education and social benefits, but not housing since Gécamines had transferred most of its housing to employees under a separate Government scheme launched in 1984 (this scheme ended in 2008). The PSDC does not deal with the specific issue of transfer of housing from Gécamines to its employees, but addressed health and education benefits. All 10,655 retrenched workers had access to medical and education services until end 2006.<br>▪ Nevertheless, the issue of retrenched workers losing housing in the process was raised in the Integrated Safeguards Data Sheet (ISDS) of the PAD. The ISDS dated 05/19/2003 underlines that a Steering Committee "will be set up at Presidency Level" to establish a severance policy for redundant workers, including provision of a social safety net for those that leave the company and for the trans- |

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| | by Articles 4, 98, 124, and 126 of the CPL I and II—on this subject see also General LIKULIA BOLONGO, Droit Penal Special Zairois [Zairian Special Criminal Law), 1 GDJ Paris, 19/6, pp. 281-301). On February 20, 2009 Mr. CHOLA KABAMBA lodged a complaint, with acknowledgment of receipt, with the General Prosecutor's Office of Lubumbashi against Mr NDONDJI KAWAYA for attempted swindling by forgery and false statements following the latter's appeal of the civil case that had been stayed at the Lubumbashi Court of Appeals under No. RCA 12589, CHOLA KABAMBA (appellant) against Mr. NDONDJI KAWAVA (defendant)—see Letter No. 003/ACK/02/2009 of February 7, 2009, attached. | fer of social services that the company had provided. Although this committee, the "*Comité Permanent pour la Restructuration de la Gécamines*", was set up, it never became effective because ECOFIN, the ministerial sub-committee in charge of financial matters, subsequently decided that it would discuss and approve all decisions regarding the VDP. |
| 4. | Our rights and interests guaranteed by the DRC Constitution, the Congolese Charter on the Rights of Man and the People, Law No. 015/2002 of October 16, 2002 establishing the Labor Code, the Collective Bargaining Agreement of May 17, 1985 concluded between Gécamines and the Workers' Union Organizations, individual labor contracts, and Presidential Decree No, 035/2003 of March 18, 2003, are as follows:<br>• The right to work (Article 2, Paragraph 1 of the Congolese Labor Code);<br>• Protection against unemployment (Articles 62 and 78 of the Congolese Labor Code);<br>• The right to official housing (Article 138 and Article 152, Paragraph 2, of the Congolese Labor Code);<br>• The right to claims arising from various causes (Articles 81, 93, 100, 104, and 162 of the Congolese Labor Code); and<br>• Protection of the civil interests of workers (Article 258 of the Congolese Labor Code, Book III)<br>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 PVGs in observance of the fundamental rights of Congolese workers, as had been done by ZAMBIA.<br>However, under pressure from the World Bank, which made the financing of activities to revitalize the activities of State enterprises conditional on a drastic cutback in their staffing, Gécamines was obligated to dismiss an initial tranche of 10,655 employees in contravention of the Congolese Labor Code, which requires a special procedure in this type of operation (see Articles 62 and 78 of Law No. 016/2002 of October 16, 2002, establishing the Labor Code, as supplemented by Ministerial Order No. 12/CAB MINITPS/1 16/2005 of October 26, 2005, determining the modalities for dismissing workers). In addition, the incomplete communiqué | The World Bank team understands the concerns raised by the Requesters. The following explains the Bank's process and procedures for implementing the PSDC:<br>**Process Followed:** The World Bank followed its own internal procedures consistently to process the PSDC operation and checked the eligibility of the financing of the VDP against the requirements of OP 12.00:<br>▪ An Appraisal decision meeting was conducted on 04/22/2003;<br>▪ A Quality Enhancement Review was conducted on 05/05/2003;<br>▪ An internal official memorandum to Bank Management (dated 04/29/2003) cleared the financing of the VDP;<br>▪ The IDA Board of Directors discussed and approved the financing for the PSDC on 07/29/2003.<br>Subsequent to the information campaigns, the eligible employees freely decided to sign a new contract with Gécamines. Since this decision was free and by mutual consent between the employer, Gécamines, and the employee, the Government's VDP does not breach the legal conventions mentioned in the Request.<br>**Conditionalities:** The World Bank did not make its financing conditional upon the laying off of Gécamines employees. The Government requested financing from the Bank to help it implement its strategy to reform Gécamines and to reduce the Gécamines workforce to allow for a viable restructuring of the company. This strategy included: the VDP to allow employees that were on average 56 years old to leave Gécamines; the hiring of a management firm; and the re-launching of productive activities.<br>**Consultation with Trade Unions and Civil Society:** The VDP consultant presented the proposed VDP to trade unions on March 8, 2003 (see Power Point Presentation in Annex 3.5). All Gécamines trade unions approved the proposed Convention of Mutual Agreement Separation on June 11, 2003 (see Annex 3.1). NGOs and civil society also provided feedback to Gécamines and monitored the implementation. The Bank was often invited to these meetings as an observer. |

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| | of the Minister of Mining, the supervisory authority of Gécamines, rounded out by the findings of the work of the expert Jacques CATRY approved by the World Bank, struck a sledgehammer blow to the legal standards and conventions that the government had undertaken to observe on the basis of Presidential Decree No. 035/2003 of March 18, 2003, ordering the settlement of wage arrears and the payment of final reckonings to the Gécamines employees having opted to voluntarily leave the enterprise, this in order to avoid social unrest (in this connection, see the technical note on the matter of massive dismissals at Gécamines known as the "Voluntary Departures Operation" in connection with the restructuring of this State enterprise, sent in 2005 to the Executive Secretary of the Governmental and Cultural Committee by the Minister of Labor and Social Welfare). | The poverty conditions in Katanga in 2003 and the financial situation of Gécamines make it difficult to compare with the Zambia case. |
| 5. | We are of the opinion that our 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. This caused the following damages: the damage incurred by being deprived of wage arrears and the final reckoning to which each of us is entitled, and which we should have collected if our individual labor contracts had not been terminated in an irregular manner. Damages also stem from being deprived of all other social advantages (repatriation allowance, provision of various essential commodities, waiting fees for former employees transferred, company housing, etc.) until the date of organization of our final return trip to the hiring site (Lubumbashi). Thus, with the abusive breaking of our labor contracts and the deprivation of amounts incontestably owed by our former employer, we have lost all acquired benefits of any kind.<br><br>We maintain that the World Bank is responsible for the violation, by our former employer Gécamines, of its contractual obligations following the breaking of our contracts in question. | **Measures Complementing the VDP Package:** The PSDC financed free access to medical services and to schooling for a period of two years for all *partants volontaires*. This measure, initially not envisaged in the PSDC, increased the sustainability of the reform proposed by the Government and allowed more benefits to be extended to Gécamines employees after they had signed their Convention de Départ.<br><br>**Violation of Workers' Contractual Obligations:** At the request of the Government, the Bank intervened to financially support the implementation of the VDP, a plan for voluntary departures that was designed based on extensive consultations and in consideration of applicable legal documents. The information gathered and made available at the conception and implementation stage did not suggest any legal violation and appeared economically justified and to the benefit of employees who volunteered. |
| 6. | To be sure, the World Bank is fully cognizant, as an employer itself, of its obligations in respect of observing the laws of man and workers. It must ensure that the 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.<br><br>Indeed, jurisprudence tells us that third parties have an obligation not to do anything that might facilitate a debtor's failure to enforce a contract (see Michel Waelbroeck, "Les responsabilités du tiers complice | The Bank did not initiate the program, but agreed to finance a program that had been decided upon and designed by the Government and was later validated by the Congolese authorities. In so doing, the Bank carried out its due diligence by financing the hiring of an international consultant specializing in retrenchment and voluntary departure programs. Discussion with stakeholders and review of the proposed VDP by the Bank team provided grounds for the Bank to consider the package as consistent and appropriate, taking into consideration the legal framework and all other circumstances surrounding the implementation of the VDP. |

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| | dans la violation d'une obligation contractuelle en droit belge et en droit comparé" [The liability of a third party involved in the violation of contractual obligations under Belgian law and comparative law), Rev. Crit. De Jurisp. responsabilité du tiers complice dans l'exécution d'une obligation contractuelle" [The liability of third parties complicit in the failure to carry out a contractual obligation), LIZ, No. 1,2, and 3, 1979, p. 9). | |
| | **OD 4.15, Poverty Reduction** | |
| 7. | We must now extricate ourselves from our affairs completely by ourselves. This sudden and mandatory adaptation to a life of poverty, in sharp contrast to the life we have led for over 25 years as wage-earning workers, cannot but have caused great harm to victims of the Voluntary Departures Operation such as ourselves. | **Poverty Impact of the VDP Operation:**<br>▪ The PSDC's PAD states that "Gécamines is today in financial and technical bankruptcy. […] Its 24,000 employees have not been paid for more than 21 months and it has about US$1.4bn of debt." The VDP allowed a 40 percent reduction of Gécamines' workforce, so that restructuring efforts could be pursued and the remaining workforce maintained. The restructuring efforts paved the way for the revival of the mining sector in Katanga, which allowed Gécamines to enter into partnership agreements with foreign firms and re-start productive activities. These productive activities generated jobs and revenues for Katanga.<br>▪ While the Bank understands the difficult situation faced by ex-Gécamines employees, the compensation provided at the time was a good option in the face of the dramatic situation in which unpaid workers found themselves. The PSIA (paragraphs 70 and 71) provides more details on the poverty situation at the time of the VDP.<br>**Reinsertion Activities:** Some activities under the program for economic reinsertion started late. However, the CRETES report estimates that by February 2006, about 93 percent of eligible employees were engaged in a new economic activity. The reinsertion program is described in Box 12 in the main text. |
| | **OP/BP 13.05, Supervision** | |
| 8. | We have approached the staff of the World Bank in writing, namely its Africa Region Vice President in Washington and the Director of the its Office in Kinshasa, but to no avail (see our letters No. OO1/ACK/AK10112009 of January 27, 2009 and No. 002/ACKIAKJO1/2009 of January 27, 2009), In these approaches to the World Bank we first endeavored, by our letter of January 27, 2009, to obtain clear and precise answers on the measures contemplated by that international financial institution in the short term to address our respective problems. Then, in our letter of January 31, 2009 we pointed out the fact that the World Bank had deprived us of an honorable end to our careers, of our wage arrears, of our final reckoning, and of all the other social advantages prescribed by the relevant provisions of the Congolese Labor Code and of the Collective Bargaining Agreement of May 17, | **Intensity of Supervision:** From July 2003 (effectiveness date) to June 2007 (Mid-Term Review date), there have been 12 supervision missions to monitor implementation support of the PSDC. In addition, the task team leader moved to the field in October 2007. In that same period, the task team met with the trade unions on several occasions and also responded to several letters from Gécamines employees requesting more information about the VDP. More missions conducted by the Bank's Oil, Gas and Mining Policy Unit took place at the same time, notably in Katanga, and complemented the supervision effort.<br>The Bank was not aware of attempts by Mr. Chola Kabamba to transfer some of his receivables from Gécamines to a third party. In the Bank's opinion this issue is not related or applicable to the VDP.<br>The World Bank office in Kinshasa received several e- |

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| | 1996 (of which Mr. CHOLA KABAMBA is one of the signatories), of our individual labor contracts, and of Presidential Decree No. 035/2003 of March 18, 2009, which have not been observed, To avoid any public impugning of the World Bank's beneficent reputation in its fight against poverty, we even proposed that our claims be resolved in accordance with the provisions of Articles 352, 353, and 54 of the Congolese Civil Code, Book III. Under same, the transfer of a wage claim is the legal act whereby a Congolese worker transfers his or her rights over his employer to a third party, making the latter the claimholder in his or her place.<br>Beige, 1962, p. 335, cited by KALONGO MBIKAYI, and TSHIMANGA, "La | mails from Mr. Chola Kabamba in late January, February and March 2009. Management acknowledges that it did not respond to all the e-mails.<br>A letter sent by the Requester to the Vice President on January 27, 2009 was answered by the Bank on March 12, 2009. |
| 9. | [T]he World Bank Representative's Office in DRC and the Africa Region Vice Presidency of the World Bank have not even, out of simple courtesy, acknowledged receipt of our two aforementioned letters. Even the retransmission to these two World Bank offices of Letter No. PR/MN ET/058/vk/2007 of April 10, 2007 concerning the matter of 10,655 Gécamines workers terminated in 2003 and sent to the Prime Minister and Head of the Congolese Government by the Minister of State in the office of the DRC President resulted in no reaction of which we are aware. However, an information copy of that letter was sent to the World Bank Representative in Kinshasa. That letter states in particular the following: "Informed by the copy to me of the letter under reference that you sent to the Association of former Gécamines employees, I examined all aspects of the problem you raised and found as follows:<br>• The matter went through all stages required by law in respect of labor disagreements;<br>• The amount of US$240,000,000 (two hundred forty million dollars) was unilaterally halted by the beneficiaries;<br>• The overall amount of US$43,483,442 was made available voluntarily by the World Bank without taking account of all of Gécamines' liabilities vis-à-vis its separated employees;<br>• This disagreement has remained unresolved, whereas Gécamines claims to have closed the matter, and the former employees state they have received only down payments. | The April 10, 2007 letter to which the Request refers is addressed to the Prime Minister and copied to the Bank's office in Kinshasa. The Bank, therefore, did not respond to the letter. It should be noted that the Bank has not received a request from the Government to provide additional financing to the PSDC to complement the VDP.<br>Should the Government decide to provide additional compensation to the workers that have benefited from the VDP, and request that the Bank provides financing for this purpose, the Bank will review this request within the context of: (i) its procedures, including OP12.00; and (ii) its dialogue with the Government on the priority investments to be financed by the Bank. |
| 10. | In consequence, we maintain that the aforementioned criminal participation, which is contrary to the rules and procedures of the World Bank, has seriously damaged our rights and interests, and we ask that the Inspection Panel recommend that the Board of Executive Directors of the World Bank open an investigation in order to resolve our problem. | The World Bank understands the need for workers to be treated fairly. It also understands the extreme difficulties that workers faced before the VDP operation and the immense challenges faced at the time of the VDP, as shown during all the consultations that took place with the employees and trade unions in 2002-2003 and during supervision of the project. Nevertheless, the Bank accepted to finance this operation based on its analysis that this program would support the Government's efforts to assist workers who had not been paid for many |

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| | | months (from 2001 to 2003).<br>It is the Bank team's understanding that Bank rules and procedures were not violated:<br>• Decisions on the size and design of the voluntary departure package were made by the Government;<br>• Normal due diligence for preparation of projects was carried out in the context of the PSDC;<br>• Requirements of OP 12.00 were assessed to be met at the time of appraisal of the project; and<br>• The intensity of supervision on the PSDC was higher than the Bank's norm of 2 missions per year. During each supervision mission, consultations with former Gécamines employees, trade unions and Government were regularly carried out on this issue to assess progress on economic reinsertion and register issues. |

## ANNEX 1B
## 2ND REQUEST
## CLAIMS AND RESPONSES

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| | **OP/BP 6.00, Bank Financing** | |
| 1. | **World Bank Involvement.** The gradual collapse of operations of the Gécamines Congolese public corporation had in fact resulted in a situation of default on roughly 36 months of wages and other legal and contractual employee benefits.<br>In view of these difficulties, and to boost the company's productivity, on the one hand, and revive its operations, on the other, it became necessary to appeal for financing from international financial institutions, including the World Bank, which agreed to provide financing, but only under a number of strict requirements including, among others, a drastic work force reduction.<br>Thus, in agreement with the World Bank and under the auspices of the Congolese Government, Gécamines moved to dismiss en masse, as so-called "Voluntary Departures," 10,655 employees and workers of all categories.<br>The Voluntary Departures Operation would not have taken place if the World Bank had not made itself a "stipulating party" to finance the restructuring of Gécamines by imposing its superiority and the requirement to dismiss and pay a portion of the work force deemed excessive in its view. The responsibility of the World Bank as stipulating party is well established. | The World Bank did not make its financing conditional upon the laying off of Gécamines employees under the PSDC (Credit 3815-DRC). The Government requested financing from the Bank to help it implement a strategy to reform Gécamines. This strategy included (i) the Voluntary Departure Program (VDP) to allow employees that were on average 56 years old to leave Gécamines; (ii) the hiring of a management firm; and (iii) and the relaunching of productive activities. |
| | **OpMemo, Financing Severance Pay in Public Sector Reform Operations** | |
| 2. | **Status of Former Employees.** After 36 months of nonpayment of wages and more than 56 months of nonpayment of maintenance allowance (corn flour), the "Voluntary Departures" Operation was presented to employees as a heaven-sent opportunity that absolutely needed to be accepted while awaiting a better day. It was only to escape certain death, or at least immediate impoverishment, that employees instinctively signed on to this operation.<br>As proof, more than 90 percent of employees fulfilling the one and only condition of seniority of at least 25 years of professional activity agreed to leave.<br>We trust that you will understand that they did not sign on to this operation at their own volition, but rather under material, moral, and psychological duress. | Statements from Gécamines and audit reports from PriceWaterhouseCoopers (PWC report dated July 11, 2003 and Gécamines' letter on PWC audit dated July 24, 2003) confirm that about 600 people decided to opt out of the VDP operation. Employees who selected a departure package did so on a voluntary basis. See Items 1 and 2 in Annex 1A. |
| 3. | **Lump Sum Payment To Former Employees.** The Congolese Labor Code addresses and regulates all situations that can possibly arise between employers and workers, including en masse dismissal for economic reasons (Article 78 of the Congolese Labor Code). | Amount of payment: See Item 1 in Annex 1A.<br>Compliance of the VDP with the Congolese laws: see Item 2 in Annex 1A. |

<table>
<tr><td></td><td>n the case now under review, all Imperative and Law and Order provisions pertaining to en masse dismissal were not followed: Gécamines and the World Bank granted former employees a miniscule amount, equivalent to one-fifth of what they were due, even though the campaign that was carried out to sign up these former employees had offered much more attractive payoffs.<br><br>Gécamines and the World Bank did not even comply with the recommendations laid out as law in Presidential Decree 035/2003 of March 18, 2003.</td><td></td></tr>
<tr><td></td><td colspan="2">OD 4.15, Poverty Reduction</td></tr>
<tr><td>4.</td><td>Harmful Effects of the “Voluntary Departures” Operation. The sum of all payments that Gécamines, as “promising party,” and the World Bank, as “stipulating party,” granted to former employees and workers who were objectified, impoverished, and bruised after 36 months of wage arrears and non-distribution of foodstuffs sufficed only to pay debts contracted to ensure their survival.</td><td>See Item 7 in Annex 1A.</td></tr>
<tr><td>5.</td><td>The consequences of this ultimate swindle are many and varied. Among others, they include:<br>- impoverishment<br>- dismantling and destruction of households<br>- prostitution of girls who are still minors<br>- juvenile delinquency among boys<br>- lack of school enrollment for children<br>- famine and malnutrition (one meal per day, or even one meal every other day)<br>- a spike in the morbidity rate (due to a lack of medical care) and the mortality rate among former employees (an average of 2.5 deaths per week at the present time).<br><br>What hope can there be for these people who have given their all by working for more than 25 years, only to find themselves treated as wholly undesirable? What hope indeed, when they today find themselves sentenced to a collective suicide, imposed and programmed from without?<br><br>Their hope can only reside in payment of their claims due, henceforth recognized as liquid and payable.</td><td>See Item 7 in Annex 1A. See paragraphs 70 and 71 about the PSIA in the main text.<br><br>The PSIA shows that workers’ living conditions had worsened during the years that they had not been paid. The VDP program provided critical support for workers who had not been paid in many months (from 2001 to 2003).<br><br>Nevertheless, the Bank understands the challenges faced by ex-employees who had to find new economic activities after a lifetime spent at Gécamines.</td></tr>
<tr><td></td><td colspan="2">OP/BP 13.05, Project Supervision</td></tr>
<tr><td>6.</td><td>Request after Contact with Management. The Bank failed to take into account, in its financial support, the aspect of social management of the restructuring that it imposed on Gécamines for it to resume its activities; and that:<br><br>Subsequent to the failure to observe the legal, contractual, and labor contract-based provisions of the Congolese Labor Code and the Presidential Decree calling for the afore-mentioned operation, our rights were violated, causing us intangible and tangible damages with multiple and serious consequences.<br><br>We have approached the Bank staff with a re-</td><td>A letter was received by the World Bank Kinshasa office on February 27, 2009. However, the letter did not contain any contact details. The World Bank was therefore not able to provide an answer to this letter.</td></tr>
</table>

| | | |
|---|---|---|
| | quest, No. 017/ODV/C/2009 of 2/27/2009 addressed to Mrs. OBIA KATRYN EZERWESILI, Africa Region Vice President. However, we have received no reply from her or from her staff. | |
| 7. | **Steps Taken toward a Return to Legality**<br>**Based on the legitimacy that we derive from**:<br>• the Universal Declaration of Human Rights, in its provisions pertaining to the sacred nature and dignity of the human being (Articles 1, 3, 4, and 23);<br>• the Constitution of the Republic, in its provisions obligating the Government to respect and protect human beings from all forms of torture or inhuman, cruel, or degrading treatment (Article 16);<br>• the Constitution of the Republic, in its provisions related to the sacred nature of labor (Article 36); and<br>• the Congolese Labor Code, in its provisions related to en masse dismissal and calculation of the final cost, acceptance of a detailed written final breakdown, and acquittance (Articles 78, 103 and 104 Paragraph 1, and Article 77); and issuance of a certificate of end of service and wage claim privileges in the event of dismissal of workers for economic reasons (Articles 79 and 110);<br>We have undertaken steps to reestablish our trampled-upon rights following payment of the lump sum amount to the last former employee in April 2004.<br>Steps have been taken in all institutions of the Republic, at all levels of responsibility, both during the transition period and during the period of setting up a nation governed by the rule of law in the Democratic Republic of Congo.<br>Significant advances have been noted and recorded: all institutions of the Republic have been unanimous in recognizing that our rights have been trampled upon and that there is a need to correct the harmful effects of the ill-conceived “Voluntary Departures” Operation by paying the final breakdown in full, in accordance with the spirit of Article 103 of the Congolese Labor Code, and as stipulated in Recommendation VII of the Permanent Framework for Social Dialogue. | The World Bank affirms the workers’ claim to be treated fairly according to the law and simply as human beings.<br>To this effect, the Bank followed its own standard review processes, followed legal reviews conducted by the Government and Gécamines to ensure the program was in compliance with DRC laws, assisted the Government in designing the retrenchment program and provided financing for it.<br>The Government-led departure program, in the Bank’s opinion, helped alleviate the harm suffered by employees over many months. |
| 8. | We consider ourselves to be the victims of injustice and of acts contrary to the rules and procedures applicable to dismissal on economic grounds, and are approaching the Inspection Panel to seek the registration of our request to open an inquiry aimed at resolving this social conflict, which has lasted too long.<br>Our principal claims are for:<br>• Payment of 36 months’ of arrears in compensation<br>• Pension principal | See response to Item 7 above. |

| | | |
|---|---|---|
| | • Payment of legally paid leave<br>• All social benefits associated with the contract. | |

# ANNEX 2
# VOLUNTARY DEPARTURE PROGRAM PAYMENT SCALES

## 1. Payment scale for active employees

***Payment scale for active employees***

**Payment scale for Directors (US$)**

| Years in the enterprise | Directors | | | | |
|---|---|---|---|---|---|
| | W/o position | S1 | S2 | S3 | S4 |
| 25 | 23,169 | 24,273 | 33,038 | 43,330 | 55,995 |
| 26 | 23,536 | 24,658 | 33,562 | 44,017 | 56,883 |
| 27 | 23,904 | 25,043 | 34,086 | 44,704 | 57,771 |
| 28 | 24,271 | 25,428 | 34,610 | 45,391 | 58,659 |
| 29 | 24,639 | 25,813 | 35,134 | 46,079 | 59,547 |
| 30 | 25,146 | 26,344 | 35,857 | 47,027 | 60,773 |
| 31 | 25,513 | 26,729 | 36,381 | 47,714 | 61,661 |
| 32 | 25,881 | 27,114 | 36,905 | 48,401 | 62,549 |
| 33 | 26,248 | 27,499 | 37,429 | 49,089 | 63,437 |
| 34 | 26,616 | 27,884 | 37,953 | 49,776 | 64,325 |
| 35 | 27,123 | 28,415 | 38,676 | 50,724 | 65,551 |
| 36 | 27,490 | 28,800 | 39,200 | 51,411 | 66,439 |
| 37 | 27,858 | 29,185 | 39,724 | 52,099 | 67,327 |
| 38 | 28,225 | 29,570 | 40,248 | 52,786 | 68,215 |
| 39 | 28,592 | 29,955 | 40,772 | 53,473 | 69,103 |
| > = 40 | 28,960 | 30,340 | 41,296 | 54,160 | 69,991 |
| Numbers | 24 | 54 | 24 | 6 | 3 |

**Payment scale for workers and managers (US$)**

| Years in the enterprise | Managers | | Workers | | | | |
|---|---|---|---|---|---|---|---|
| | Managers | Mid-managers | Rank 4 | Rank 5 | Rank 6 | Rank 7 | Rank 8 |
| 25 | 11,606 | 8,436 | 3,456 | 2,648 | 2,535 | 2,453 | 2,370 |
| 26 | 11,795 | 8,585 | 3,531 | 2,705 | 2,590 | 2,506 | 2,422 |
| 27 | 11,985 | 8,734 | 3,588 | 2,748 | 2,631 | 2,546 | 2,461 |
| 28 | 12,175 | 8,883 | 3,644 | 2,791 | 2,672 | 2,586 | 2,500 |
| 29 | 12,364 | 9,032 | 3,700 | 2,834 | 2,714 | 2,626 | 2,539 |
| 30 | 12,622 | 9,231 | 3,780 | 2,895 | 2,772 | 2,682 | 2,594 |
| 31 | 12,812 | 9,380 | 3,836 | 2,938 | 2,813 | 2,722 | 2,633 |
| 32 | 13,001 | 9,529 | 3,892 | 2,981 | 2,854 | 2,762 | 2,672 |
| 33 | 13,191 | 9,678 | 3,948 | 3,024 | 2,895 | 2,802 | 2,711 |
| 34 | 13,381 | 9,827 | 4,004 | 3,067 | 2,937 | 2,842 | 2,750 |
| 35 | 13,639 | 10,026 | 4,084 | 3,128 | 2,995 | 2,898 | 2,806 |
| 36 | 13,828 | 10,175 | 4,140 | 3,171 | 3,036 | 2,938 | 2,845 |
| 37 | 14,018 | 10,324 | 4,196 | 3,214 | 3,077 | 2,978 | 2,884 |
| 38 | 14,207 | 10,473 | 4,252 | 3,257 | 3,118 | 3,018 | 2,923 |
| 39 | 14,397 | 10,622 | 4,309 | 3,300 | 3,160 | 3,058 | 2,962 |
| >=40 | 14,587 | 10,771 | 4,365 | 3,343 | 3,201 | 3,098 | 3,001 |
| Numbers | 742 | 205 | 746 | 1,132 | 2,760 | 3,908 | 191 |
| | | | | | | **Total** | 9,795 |

## 2. Comparison of the proposed payment scale with an exact application of the Collective Bargaining Agreement for active employees

The table shows the percentage of difference between the two scales.

| Years in the enterprise | Directors | | | | |
|---|---|---|---|---|---|
| | W/o position | S1 | S2 | S3 | S4 |
| 25 | 15% | 15% | 15% | 15% | 15% |
| 26 | 15% | 15% | 15% | 15% | 15% |
| 27 | 15% | 15% | 15% | 15% | 15% |
| 28 | 15% | 15% | 15% | 15% | 15% |
| 29 | 15% | 15% | 15% | 15% | 15% |
| 30 | 40% | 40% | 40% | 38% | 35% |
| 31 | 40% | 39% | 40% | 37% | 35% |
| 32 | 40% | 39% | 40% | 37% | 35% |
| 33 | 40% | 39% | 39% | 37% | 35% |
| 34 | 39% | 39% | 39% | 37% | 35% |
| 35 | 39% | 38% | 39% | 36% | 34% |
| 36 | 39% | 38% | 38% | 36% | 34% |
| 37 | 39% | 38% | 38% | 36% | 34% |
| 38 | 38% | 38% | 38% | 36% | 34% |
| 39 | 38% | 37% | 38% | 36% | 34% |
| > = 40 | 38% | 37% | 38% | 35% | 33% |

| Years in the enterprise | Managers | | Workers | | | | |
|---|---|---|---|---|---|---|---|
| | Managers | Mid-managers | Rank 4 | Rank 5 | Rank 6 | Rank 7 | Rank 8 |
| 25 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 26 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 27 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 28 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 29 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 30 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 31 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 32 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 33 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 34 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 35 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 36 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 37 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 38 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 39 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| >=40 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |

Source: Gécamines' memo DRH/DIR/35810/2003, dated March 27, 2003

## 3. Payment scale for non active (DOP) employees

***Payment scale for unactive (DOP) employees***

| Years in enterprise | Directors | Years in enterprise | Managers and mid managers | | Workers | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | Managers | Mid-man. | Level 4 | Level 5 | Level 6 | Level 7 | Level 8 |
| 1 | 8,970 | 1 | 4,121 | 2,357 | 810 | 620 | 594 | 575 | 556 |
| 2 | 9,453 | 2 | 4,378 | 2,573 | 900 | 689 | 660 | 639 | 618 |
| 3 | 9,927 | 3 | 4,631 | 2,786 | 989 | 757 | 725 | 702 | 679 |
| 4 | 10,392 | 4 | 4,879 | 2,994 | 1,076 | 824 | 789 | 764 | 739 |
| 5 | 11,054 | 5 | 5,225 | 3,277 | 1,201 | 920 | 881 | 852 | 825 |
| 6 | 11,497 | 6 | 5,462 | 3,478 | 1,301 | 996 | 954 | 923 | 893 |
| 7 | 11,930 | 7 | 5,695 | 3,675 | 1,383 | 1,060 | 1,014 | 982 | 950 |
| 8 | 12,354 | 8 | 5,923 | 3,868 | 1,464 | 1,122 | 1,074 | 1,039 | 1,006 |
| 9 | 12,768 | 9 | 6,146 | 4,057 | 1,544 | 1,183 | 1,132 | 1,096 | 1,061 |
| 10 | 13,371 | 10 | 6,462 | 4,317 | 1,660 | 1,272 | 1,218 | 1,178 | 1,140 |
| 11 | 13,764 | 11 | 6,675 | 4,498 | 1,752 | 1,342 | 1,285 | 1,243 | 1,203 |
| 12 | 14,148 | 12 | 6,882 | 4,676 | 1,827 | 1,399 | 1,340 | 1,296 | 1,254 |
| 13 | 14,521 | 13 | 7,085 | 4,849 | 1,901 | 1,456 | 1,394 | 1,349 | 1,305 |
| 14 | 14,886 | 14 | 7,284 | 5,019 | 1,973 | 1,511 | 1,447 | 1,400 | 1,354 |
| 15 | 15,429 | 15 | 7,571 | 5,257 | 2,080 | 1,593 | 1,525 | 1,476 | 1,428 |
| 16 | 15,772 | 16 | 7,758 | 5,418 | 2,163 | 1,657 | 1,587 | 1,535 | 1,485 |
| 17 | 16,106 | 17 | 7,941 | 5,576 | 2,231 | 1,709 | 1,636 | 1,583 | 1,531 |
| 18 | 16,429 | 18 | 8,119 | 5,730 | 2,297 | 1,760 | 1,685 | 1,630 | 1,576 |
| 19 | 16,743 | 19 | 8,292 | 5,880 | 2,362 | 1,809 | 1,732 | 1,676 | 1,620 |
| 20 | 17,228 | 20 | 8,550 | 6,095 | 2,460 | 1,884 | 1,804 | 1,745 | 1,687 |
| 21 | 17,521 | 21 | 8,713 | 6,237 | 2,535 | 1,942 | 1,859 | 1,799 | 1,739 |
| 22 | 17,804 | 22 | 8,871 | 6,376 | 2,595 | 1,988 | 1,903 | 1,841 | 1,780 |
| 23 | 18,078 | 23 | 9,024 | 6,510 | 2,654 | 2,033 | 1,946 | 1,883 | 1,820 |
| 24 | 18,342 | 24 | 9,172 | 6,641 | 2,711 | 2,077 | 1,988 | 1,923 | 1,859 |
| 25 | 18,767 | 25 | 9,401 | 6,833 | 2,800 | 2,145 | 2,053 | 1,987 | 1,919 |
| 26 | 19,064 | 26 | 9,554 | 6,954 | 2,860 | 2,191 | 2,098 | 2,030 | 1,962 |
| 27 | 19,362 | 27 | 9,708 | 7,074 | 2,906 | 2,226 | 2,131 | 2,062 | 1,993 |
| 28 | 19,660 | 28 | 9,861 | 7,195 | 2,951 | 2,261 | 2,165 | 2,094 | 2,025 |
| 29 | 19,957 | 29 | 10,015 | 7,316 | 2,997 | 2,296 | 2,198 | 2,127 | 2,056 |
| 30 | 20,368 | 30 | 10,224 | 7,477 | 3,061 | 2,345 | 2,245 | 2,172 | 2,101 |
| 31 | 20,666 | 31 | 10,378 | 7,598 | 3,107 | 2,380 | 2,279 | 2,205 | 2,133 |
| 32 | 20,963 | 32 | 10,531 | 7,718 | 3,152 | 2,415 | 2,312 | 2,237 | 2,165 |
| 33 | 21,261 | 33 | 10,685 | 7,839 | 3,198 | 2,450 | 2,345 | 2,269 | 2,196 |
| 34 | 21,559 | 34 | 10,838 | 7,960 | 3,243 | 2,484 | 2,379 | 2,302 | 2,228 |
| 35 | 21,969 | 35 | 11,047 | 8,121 | 3,308 | 2,534 | 2,426 | 2,348 | 2,273 |
| 36 | 22,267 | 36 | 11,201 | 8,242 | 3,353 | 2,569 | 2,459 | 2,380 | 2,304 |
| 37 | 22,565 | 37 | 11,354 | 8,362 | 3,399 | 2,603 | 2,493 | 2,412 | 2,336 |
| 38 | 22,862 | 38 | 11,508 | 8,483 | 3,445 | 2,638 | 2,526 | 2,444 | 2,367 |
| 39 | 23,160 | 39 | 11,662 | 8,604 | 3,490 | 2,673 | 2,559 | 2,477 | 2,399 |
| 40 et + | 23,458 | 40 et + | 11,815 | 8,724 | 3,536 | 2,708 | 2,593 | 2,509 | 2,431 |

Source: Gécamines' memo DRH/DIR/35810/2003, dated March 27, 2003 and Catry's Lotus 123 files
Note: it appeared that the Gécamines' memo did not include the column for workers Level 8 starting for year 27 (see shaded section). The shaded section comes from Catry's Lotus 123 file.

## ANNEX 3.1
## SIGNED MINUTES OF CONCILIATION MEETING BETWEEN GÉCAMINES' TRADE UNIONS, GÉCAMINES AND URK
## ANALYSIS OF DRAFT "CONVENTION OF MUTUAL AGREEMENT SEPARATION", JUNE 11, 2003

**GENERAL QUARRIES AND MINES COMPANY**
**(GECAMINES)**
**A legally recognized public enterprise**
**B.P. 450, Lubumbashi, Democratic Republic of Congo**

Report of the consultative meeting held in Lubumbashi on June 11, 2003 between the Representative Trade Unions, the Permanent Union Executive (BSP), Gecamines, and URK in the DG meeting room, from 11:00 am to 1:30 pm

In attendance:

For the Representative Trade Unions:

| | | |
|---|---|---|
| Messieurs: | TASINDA | GST |
| | KINANGWA | UNTC |
| | KABOL | FTS |
| | KASONGO | FGTK |
| | KAZADI | FOSYMINE |
| | MATESO | SOLIDARITE |
| | MWILAMBWE | NDS |
| | NDAY | OTUC |
| | NGOY KALUMBA | CDT |
| | MWAMBAY | CSC |
| | KISALU | SYTRAGEC |
| | KYUNGU | SCTC |

For the General Trade Union Delegation:

| | | |
|---|---|---|
| Messieurs: | MUTEBA | Acting President of BSP |
| | LUTUMBA | Acting GP/S |

For the Employer:

| | | |
|---|---|---|
| Messieurs: | MAYAYA | DRH |

| | |
|---|---|
| SUKADI | SG |
| MASENGO | PRI |
| MUHAU | GRH |
| TSHIZANGA | JUR |
| KAPENDA | DRI |
| EKUTSHU | ADC |
| MIKA | JUR |

For the URK Coordinating Unit:

| | | |
|---|---|---|
| Messieurs: | MUSHAMA | Coordinator |
| | NKULU | Operations Manager |
| | KABULA, Esq. | Legal Consultant |

Agenda:
**To review the draft convention for terminating the work contract by mutual consent**

At the initiative of Gecamines, the parties reviewed the draft convention for terminating the work contract by mutual consent, prepared by the Employer with the assistance of Mr. Kabula, Legal Consultant.

After an exchange of views, the parties adopted the text of the convention for terminating the work contract, a copy of which is appended hereto.

Signed in Lubumbashi on June 11, 2003

For the Employer

[multiple signatures]

Legal Consultant

[signature]

For the URK Coordinating Unit

[two signatures]

For the Trade Unions and the Permanent Union Executive

[multiple signatures]

## Convention for terminating the work contract by mutual consent

between:

**General Quarries and Mines Company**, abbreviated as **Gecamines**, and known by the acronym GCM, a public enterprise under Congolese law, registered in the new Trade Register of Lubumbashi under registration number 453 and headquartered at B.P. 450, Lubumbashi, Democratic Republic of Congo, represented for the purposes of this agreement by Messieurs …………, hereafter referred to as **Gecamines**, on the one hand,

and:

Mrs., Ms., Mr. ……..……. employee number …………… residing at ………….. (avenue, street), ………… (municipality), hereafter referred to as the **Employee**, on the other hand.

## Preamble

Whereas Gecamines and the employee agree by mutual consent to terminate their contractual work relationship;

Whereas this terminating of the work contract will be accompanied by compensation paid to the employee;

## The following terms are decided on and agreed to:

**Article 1**: The work contract signed on ………… shall be broken by mutual consent on the date when this convention is signed by Gecamines and the employee.

**Article 2**: Gecamines agrees to pay to the consenting employee, all at once, the sum of US $................ which represents the balance of all accounts due. Said sum will be paid to the employee as soon as this convention is signed.

**Article 3**: This convention, reached in good faith, reflects the will of both parties and shall be considered irrevocable.

**Article 4**: Both parties agree to have this convention notarized, once it has been signed, and all related expenses shall be borne by Gecamines.

Signed at ……………, on …………… 2003, in three originals.

**For Gecamines** **The Employee**

DSA/GROUP OR ADC/DIR SIEGE/DIR OR DRH/DIR

## ANNEX 3.2
## SIGNED HANDWRITTEN LETTER FROM A PARTANT VOLUNTAIRE TO THE MANAGING DIRECTOR OF GÉCAMINES STATING HIS DECISION TO TAKE PART IN THE VOLUNTARY DEPARTURE PROGRAM, APRIL 2, 2003

[handwritten statement]

[name deleted]
Employee number [deleted]
[DAT/TRF/O– illegible]
Kolwezi

Kolwezi, April 2, 2003

Re:
Voluntary departure from Gecamines

To:
Mr. General Managing Director of Gecamines
Gecamines, Lubumbashi

I have the honor to hereby notify the company of my decision to terminate my service under the "Voluntary Departures" Operation.

Please receive, Mr. General Managing Director, my sincere regards.

Employee
[signature]

Stamp of the employee's superior
[stamp and signature]

## ANNEX 3.3
## SIGNED CONVENTION OF MUTUAL AGREEMENT SEPARATION BETWEEN A PARTANT VOLUNTAIRE AND GÉCAMINES, SEPTEMBER 11, 2003

### Convention for terminating the work contract by mutual consent

between:

**General Quarries and Mines Company**, abbreviated as **Gecamines**, and known by the acronym GCM, a public enterprise under Congolese law, registered in the new Trade Register of Lubumbashi under registration number 453 and headquartered at B.P. 450, Lubumbashi, Democratic Republic of Congo, represented for the purposes of this agreement by [Director of the Central Administration of Human Resources and Director of Human Resources], hereafter referred to as **Gecamines**, on the one hand,

and:

[name deleted], employee number [deleted], residing at [deleted], hereafter referred to as the **Employee**, on the other hand.

### Preamble

Whereas Gecamines and the employee agree by mutual consent to terminate their contractual work relationship;

Whereas both parties have deemed it appropriate, for this purpose, to record this agreement in a written contract;

Whereas this terminating of the work contract will be accompanied by compensation paid to the employee in an amount determined by mutual consent between the parties;

Whereas this compensation will be promptly paid;

### The following terms are decided on and agreed to:

**Article 1**: The work contract signed on August 1, 1966 shall be broken by mutual consent on the date when this convention is signed by Gecamines and the employee.

**Article 2**: Gecamines agrees to pay to the consenting employee, all at once, the sum of US $10,175, which represents the balance of all accounts due. Said sum will be paid to the employee as soon as this convention is signed.

**Article 3**: This convention, reached in good faith, reflects the will of both parties and shall be considered irrevocable.

**Article 4**: Both parties agree to have this convention recorded in a conciliation agreement report drawn up by the competent Labor Inspector, and all related expenses shall be borne by Gecamines.

Signed in Kolwezi on September 11, 2003

| **For Gecamines** | | **The Employee** |
|---|---|---|
| [signature] | [signature] | [signature] |
| Director of the Central Administration of Human Resources | Director of Human Resources | |

## Annex 3.4
## Signed Certified Report of Conciliation Agreement for a Partant Voluntaire, by the Provincial Labor Inspector, December 23, 2003

**Democratic Republic of Congo**

Ministry of Labor and Social Welfare
Province of Katanga
Provincial Division of the Labor Inspectorate

**<u>Conciliation Agreement Report</u>**
**No. 22/MTPS/DPI/6245/CD/CL.R.12.03**

Whereas, by means of the attached convention to break a work contract, Gecamines and the employee [name deleted], employee number [deleted], have agreed to terminate their contractual work relationship;

Whereas this terminating of the work contract is accompanied by compensation paid to the employee in an amount determined by mutual consent;

Whereas for both parties the signed convention to break the work contract reflects their will and shall be considered irrevocable;

I the undersigned, [name deleted], Principal Labor Inspector and Officer of the Criminal Investigation Department with limited material competence, identification number [deleted], have drawn up this report in four copies, duly signed by myself, in order to certify this agreement between the parties, in accordance with the provisions of Articles 187 and 192 of Law 015/2002 of October 16, 2002 establishing the Labor Code.

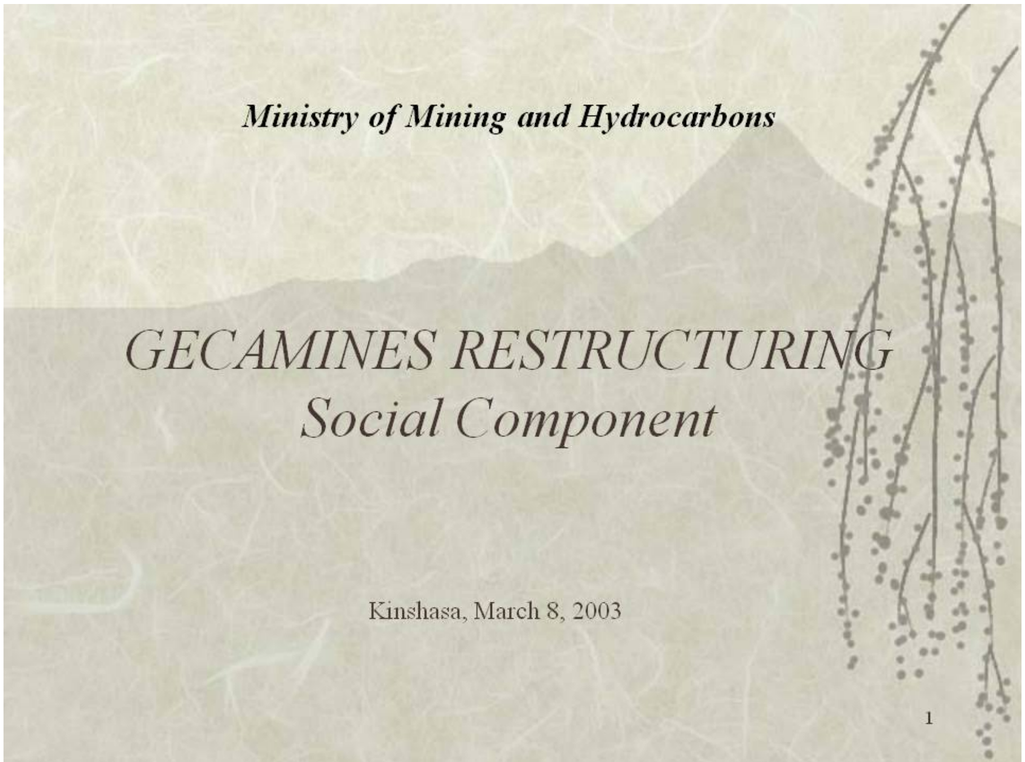
I hereby swear that this report is truthful.

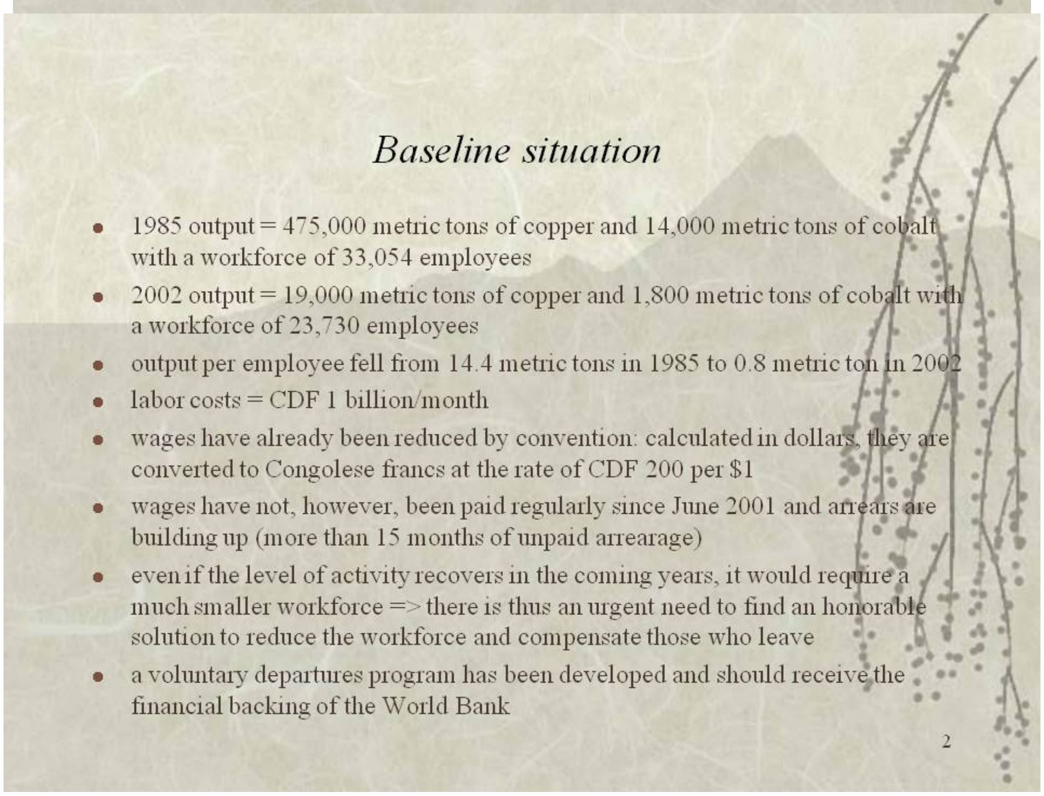
Signed in Lubumbashi on December 27, [2003? – illegible]

Class 2 Provincial Labor Inspector

[multiple stamps and signatures]

## ANNEX 3.5
## JACQUES CATRY, POWER POINT PRESENTATION
## PRESENTATION TO TRADE UNIONS MARCH 8, 2003



## *The compensation program developed in early October 2002 should have actually been lowered*

- Initially, the benefit of voluntary departure was limited to the 10,665 African employees of Gecamines who had accumulated 25 years of seniority as of December 31, 2002; it called for compensation based on a scale that took into account the hierarchical category of employees and their seniority; the total amount of compensation came to US $38.4 million; this included all wage arrears as of August 31, 2002 as well as all benefits granted by the collective agreement, except for pension capital and life insurance (for higher level staff); the allowances, calculated in CDF, were then converted to dollars at the rate of CDF 360 per $1.
- The new labor code promulgated on October 16, 2002 clearly excluded travel and housing allowances from the compensation (Article 7, Paragraph h); depending on the category, these allowances represent from 27 to 40 percent of gross wages.
- In addition, since August 31, 2002, the CDF has fallen in relation to the dollar by 16 percent; this depreciation should also have affected the scale proportionately.
- Overall, taking these new elements into account should thus have resulted in a lowering of the scale by 43 to 56 percent, depending on the category involved.

3

## *At the Government's request, this scale was nevertheless raised*

- To enhance the proposed individual compensation and fully take into account the rights acquired by workers, it was decided to raise the compensation scale by 15 percent despite the negative impact of the new legislative requirements and the changes in the exchange rate; this constitutes a substantial increase.
- The guiding principles of this stabilization operation could however be respected:
  - All the recipients of compensation must be voluntary.
  - No discrimination between categories: no single category should have priority over others => the criterion for eligibility to leave the company should be the same for a director as for a watchman.
  - The procedure should permit the departure of a workforce of roughly 10,000 employees.
  - The impact of the savings on labor costs for Gecamines should remain a key objective.

4

## *Some 9,800 employees should ultimately be able to benefit from the voluntary departures procedure*

- To respect these guiding principles, the arrangements initially worked out were modified as follows:
  - 15 percent increase in the compensation scale;
  - Raising of the seniority required for eligibility to benefit from the voluntary departures procedure;
  - Expansion of the financial package earmarked for compensation payments; however, the total must not exceed $40 million.
- All African employees of Gecamines who have accumulated 25 years of seniority as of December 31, 2002 will be able to apply for the procedure; the ceiling of $40 million then ultimately confirms eligibility for only the most senior applicants (sole criterion).
- According to the statistical data currently available to the Gecamines Human Resources Directorate, roughly 9,800 employees would be likely to benefit from this procedure (seniority of more than 26 years).

5

## *Voluntary participation is an imperative condition*

- Receiving this compensation is not automatic => one must volunteer and, by signing a legalized settlement, agree not to contest at some later date the departure conditions or the amount of compensation received.
- Employees who do not want to participate in this procedure are of course free to wait for Gecamines to meet with better days and then potentially lay claim to even more generous benefits.

6

*Line staff and higher level employee compensation scale (US $)*

| *seniority* ancienneté | *supervisors/ higher level staff* MOCA | | *line staff (class 4, etc.)* agents d'exécution | | | | |
|---|---|---|---|---|---|---|---|
| | cadre | maîtrise | classe 4 | 5 - HQ | 6 - Q | 7 - SQ | 8 - M |
| 25 | 11 606 | 8 436 | 3 456 | 2 648 | 2 535 | 2 453 | 2 370 |
| 26 | 11 795 | 8 585 | 3 531 | 2 705 | 2 590 | 2 506 | 2 422 |
| 27 | 11 985 | 8 734 | 3 588 | 2 748 | 2 631 | 2 546 | 2 461 |
| 28 | 12 175 | 8 883 | 3 644 | 2 791 | 2 672 | 2 586 | 2 500 |
| 29 | 12 364 | 9 032 | 3 700 | 2 834 | 2 714 | 2 626 | 2 539 |
| 30 | 12 622 | 9 231 | 3 780 | 2 895 | 2 772 | 2 682 | 2 594 |
| 31 | 12 812 | 9 380 | 3 836 | 2 938 | 2 813 | 2 722 | 2 633 |
| 32 | 13 001 | 9 529 | 3 892 | 2 981 | 2 854 | 2 762 | 2 672 |
| 33 | 13 191 | 9 678 | 3 948 | 3 024 | 2 895 | 2 802 | 2 711 |
| 34 | 13 381 | 9 827 | 4 004 | 3 067 | 2 937 | 2 842 | 2 750 |
| 35 | 13 639 | 10 026 | 4 084 | 3 128 | 2 995 | 2 898 | 2 806 |
| 36 | 13 828 | 10 175 | 4 140 | 3 171 | 3 036 | 2 938 | 2 845 |
| 37 | 14 018 | 10 324 | 4 196 | 3 214 | 3 077 | 2 978 | 2 884 |
| 38 | 14 207 | 10 473 | 4 252 | 3 257 | 3 118 | 3 018 | 2 923 |
| 39 | 14 397 | 10 622 | 4 309 | 3 300 | 3 160 | 3 058 | 2 962 |
| 40 et + | 14 587 | 10 771 | 4 365 | 3 343 | 3 201 | 3 098 | 3 001 |
| nbre d'agents *no of employees* | 742 | 205 | 746 | 1 132 | 2 760 | 3 908 | 191 |

7

*Director compensation scale (US $)*

| *seniority* ancienneté | *directors (no mandate, S1, etc.* directeurs | | | | |
|---|---|---|---|---|---|
| | sans charge | S1 | S2 | S3 | S4 |
| 25 | 23 169 | 24 273 | 33 038 | 43 330 | 55 995 |
| 26 | 23 536 | 24 658 | 33 562 | 44 017 | 56 883 |
| 27 | 23 904 | 25 043 | 34 086 | 44 704 | 57 771 |
| 28 | 24 271 | 25 428 | 34 610 | 45 391 | 58 659 |
| 29 | 24 639 | 25 813 | 35 134 | 46 079 | 59 547 |
| 30 | 25 146 | 26 344 | 35 857 | 47 027 | 60 773 |
| 31 | 25 513 | 26 729 | 36 381 | 47 714 | 61 661 |
| 32 | 25 881 | 27 114 | 36 905 | 48 401 | 62 549 |
| 33 | 26 248 | 27 499 | 37 429 | 49 089 | 63 437 |
| 34 | 26 616 | 27 884 | 37 953 | 49 776 | 64 325 |
| 35 | 27 123 | 28 415 | 38 676 | 50 724 | 65 551 |
| 36 | 27 490 | 28 800 | 39 200 | 51 411 | 66 439 |
| 37 | 27 858 | 29 185 | 39 724 | 52 099 | 67 327 |
| 38 | 28 225 | 29 570 | 40 248 | 52 786 | 68 215 |
| 39 | 28 592 | 29 955 | 40 772 | 53 473 | 69 103 |
| 40 et + | 28 960 | 30 340 | 41 296 | 54 160 | 69 991 |
| effectif *no of directors* | 24 | 54 | 24 | 6 | 3 |

8

## *Employees leaving the company will be supported in their reintegration efforts*

- Employees voluntarily leaving the company will benefit from a major program of reintegration assistance tailored to each individual situation.
- Each one will be received individually by a consultant to assess what he <u>knows how</u> to do, what he <u>wants</u> to do, and what he <u>can</u> do.
- Based on the choice that he makes, the former employee will have training, supervision, or assistance proposed to him which will then be provided either to him or to the [family member] that he designates for the purpose of:

  - finding a job;
  - creating self-employment;
  - creating an industrial, artisanal, or commercial micro-activity;
  - or engaging in an agropastoral activity.

9

## *Will these measures enable Gecamines to achieve financial equilibrium?*

By all indications, no.

The departure of 9,800 of the 23,653 African employees on the company's rolls will reduce by 35 percent the total wage bill, without cutting into productive capacity.

This is clearly very significant, but still manifestly insufficient to put the company's operations "in the black" at its current level of output.

It can only be hoped that these measures will make it possible to pay remaining employees more frequently than is possible at present.

10

## *Who will coordinate all these actions?*

A coordinating unit will be responsible for implementing this program. Based in Lubumbashi, the unit will have field offices in Likassi and Kolwezi.

This unit will be operational for two years. It will require the recruitment of 16 persons, all of Congolese nationality.

The essential role of the Coordinating Unit will be to lead, steer, organize, and oversee missions of assistance for the reintegration of those who have voluntarily left the company, so as to expedite reintegration on the basis of individual needs. These actions will be carried out by institutions, consultants, and NGOs, for the most part Congolese.

11

## *What are the expected results of this program of support?*

The objective is to enable two thirds of the former employees who seek the Unit's assistance to find, in less than one year, an income-generating activity that, at the very least, provides for their subsistence.

Program performance will be measured by an independent organization, the Observatory of Urban Change (Faculty of Sociology at the University of Lubumbashi).

12

## ANNEX 3.6
## MINISTER OF MINES AND HYDROCARBONS
## ANNOUNCEMENT OF VOLUNTARY DEPARTURE PROGRAM FOR GÉCAMINES' EMPLOYEES
## MARCH 13, 2003

**Democratic Republic of Congo**
**Ministry of Mining and Hydrocarbons**

Kinshasa, March 13, 2003

**Communiqué from the Minister**

**Gecamines Employee Voluntary Departures**

1. The "Voluntary Departures" matter is part of the social component of the Gecamines restructuring, which constitutes a vast program, decided on by the Government with the financial assistance of the World Bank, and intended to result in a profound reconfiguration of the company and the activities currently under its control.

2. It is therefore of critical importance that the voluntary departures program – the first component of this program to be implemented – be carried out as quickly as possible and under optimal conditions from both a psychological and operational perspective.

3. Two dates illustrate the scope of the disaster:

   1986: 476,000 metric tons of copper
   14,000 metric tons of cobalt
   33,000 workers
   → Productivity: 14.4 metric tons/employee

   2002: 19,000 metric tons of copper
   1,800 metric tons of cobalt
   23,730 workers
   → Productivity: 0.8 metric ton per employee

   21 months of wage arrears

4. The voluntary departures program is expected to initially involve 9,800 African workers, out of a total workforce of 23,730 persons. Priority is given to employees with 25 or more years of seniority.

5. Voluntary participation is an imperative condition, once the eligibility criterion has been met.

   - The employee must volunteer and, by signing a legalized settlement, agree not to contest at some later date the departure conditions or the amount of compensation received.

   - Employees who do not want to participate in this procedure are totally free to wait for Gecamines to meet with better days and then potentially lay claim to even more favorable benefits.

6. Employees voluntarily leaving the company will benefit from a major program of reintegration assistance tailored to each individual situation.

7. Quite certainly, the voluntary departures program will not enable Gecamines to regain its productive capacity nor, of course, to achieve financial equilibrium. This program is a social measure aimed at providing opportunities to organize themselves to those who decide to leave.

In conclusion, this measure is first and foremost one of the required phases of the entire process of downsizing Gecamines, redefining its purpose, and restructuring its organizational framework and its activities.

[signature]
Jean Louis Nkulu Kitshunku

# ANNEX 3.7
# GÉCAMINES, NOTE FOR THE MANAGING DIRECTOR
# REPORT ON THE VOLUNTARY DEPARTURE PROGRAM
# SEPTEMBER 21, 2004

**GENERAL QUARRIES AND MINES COMPANY**
**Human Resources Directorate**

Reference number: DRH/DIR/31.246/2004

Lubumbashi, September 21, 2004

## MEMO TO THE GENERAL MANAGING DIRECTOR

**Re: Report on the Voluntary Departures Operation**

Please find below the report on the Voluntary Departures Operation backed with statistics as requested by the Governmental Delegation currently on assignment at Gecamines.

## I. STUDY, ARRANGEMENTS, AND EXECUTION

The Voluntary Departures Operation (ODV) for Gecamines employees is laid out in the communiqué from the Minister of Mining and Hydrocarbons dated March 13, 2003. According to this communiqué, the ODV matter is part of the social component of the Gecamines restructuring, which constitutes a vast program, decided on by the Government with the financial assistance of the World Bank, and intended to result in a profound reconfiguration of the company and the activities currently under its control.

The communiqué emphasizes the program's free and voluntary nature, which is an imperative requirement, and affirms that the goal of this program is not to enable Gecamines to regain its productive capacity, nor to achieve financial equilibrium; rather, the program is a social measure aimed at providing opportunities to organize themselves to those who decide to leave.

As a matter of interest, this program required the services of an international expert, selected by the Government with World Bank assistance and financing, Mr. Jacques Catry. The study organized by Mr. Catry forms the basis of the program and all the arrangements of the Voluntary Departures Operation. This study includes two components: *Compensation* and *Reintegration*. Execution of the entire program involves three phases.

**Phase 1: Consultant's study**

The study was carried out with the collaboration of Gecamines and the company's social partners. It focuses on a review of the population to be targeted and selects, as the criterion for eligibility, all employees with 25 or more years of uninterrupted service in the company as of the end of December 2002 and who freely express the desire to leave.

Added to this population are the employees who find themselves in a situation of Temporary Exemption from the Obligation to Perform, regardless of seniority. Special emphasis is to be placed on the absolute eligibility requirement of allowing each potential beneficiary the freedom to choose whether to leave the company or not. Based on these criteria, the consultant established a detailed wage scale and proposed ways of reintegrating those who voluntarily leave. He also called for a unit dependent on BCECO, now COPIREP, and autonomous from Gecamines to take charge of the compensation payments and the reintegration programs. The study was submitted to the Steering Committee, which approved it and submitted it to the Government for approval in advance of implementation.

**Phase 2: Implementation of the departures component**

Implementation of the employee departures component involved three stages:

Stage 1: Official launch and awareness-raising campaign

This stage consisted of the Government's communiqué of March 13, 2003, in which the Minister of Mining and Hydrocarbons, the Supervisory Minister, provided the kick-off for the Voluntary Departures Operation. At the same time that he laid out the arrangements, the Minister stressed the voluntary nature of this operation. The Minister deliberately traveled to Lubumbashi, where he informed the Provincial Authority of the start-up of the program and conferred with the company's management, directors, and social partners. The official launch was followed by a vast campaign to raise the awareness of all employees, in all offices and at all sites, so as to explain the characteristics, requirements, and free and voluntary nature of this operation. This awareness-raising was led by all the company officials, all 13 of the representative trade unions at Gecamines, and the company's entire general trade union delegation.

Stage 2: Applicant registration and statement preparation

This second stage was executed entirely by the Gecamines Human Resources Directorate, assisted by all 13 representative trade unions at Gecamines. From the end of March through mid-April 2003, employees, duly informed and so wishing, registered their intentions by providing written notification to the company of their desire to leave same under this program. Following a review of the individual letters of request to leave the company, in accordance with the criteria established, 10,655 employees who provided written notification were selected, out of a total of 11,200 employees who were eligible based on the seniority criterion or the status of Temporary Exemption from the Obligation to Perform. The final statements were then given, with reports, to the BCECO/COPIREP unit created for this purpose and named URK-GCM (Katanga Reintegration Unit [for voluntary departures] from Gecamines).

Stage 3

This stage was carried out by URK-GCM and included:

a) Statement certification

To fulfill its mandate, URK-GCM required the services of the international auditing firm Price Waterhouse Coopers to audit and certify the statements. This was done.

b) Compensation payments

Compensation payments began in August 2003 and were officially closed on February 6, 2004 by the Vice Governor of Katanga Province in the presence of the Deputy Director General of BCECO and all the Gecamines directors. The total amount disbursed came to US $43,533,998 for a workforce of 10,655 employees.

It should be noted that each payment was preceded by the response from Gecamines to the request from the employee to leave the company under the agreed-upon conditions, and by the signing of a convention to break the work contract by mutual consent, validated by a conciliation report drawn up by the Principal Provincial Inspector of Labor and signed by the parties. This convention was the subject of a joint agreement with the 13 trade unions prior to its implementation.

It should also be noted that more than ten employees withdrew their participation either during the procedure or at the time of payment, having made a final decision to continue their careers with the company.

The Voluntary Departures Operation was carried out appropriately, without any conflicts: each beneficiary received the full compensation to which he was entitled, and in the case of deceased beneficiaries, their heirs received the compensation owed to the deceased.

The reintegration process was designed to follow this phase as quickly as possible in order to assist the individual and collective initiatives already undertaken by those voluntarily leaving the company, and also to forestall the precariousness likely to threaten persons accustomed to a paid job. In addition, there were grounds for hope stemming from the permanence of the ongoing difficulties created in particular by the wage arrears which, it was thought, may have engendered survival mechanisms forcing employees to cover their own needs somehow, even against their will, and thus prepared the employees in a sense for self-determination.

**Phase 3: Reintegration component**

The above-referenced communiqué from the Minister affirmed that employees voluntarily leaving the company would benefit from a major program of assistance for reintegration, a program tailored to each individual situation.

While the compensation payments were carried out relatively quickly, the same cannot be said of the reintegration activity, the importance of which remains crucial because this program is primarily intended to support the efforts of each individual to find a new occupation and make the best use of the payment received. In this regard, Gecamines deemed it worthwhile to express its concerns in this area to the Supervisory Authority.

This component ultimately began with an informational campaign on the program of support for the economic reintegration initiatives of employees voluntarily leaving Gecamines. Responsibility for implementation of the reintegration activity falls solely to COPIREP (formerly BCECO), which seeks out the expertise that it wants to have, from whomever it chooses. According to URK, intense and significant reintegration actions actually got underway in mid-May and are being carried out by a specialized NGO over a two-year period.

Thus, Gecamines as such is not specifically involved. However, it helps URK whenever URK asks for its assistance. Indeed, even after leaving the company, many of these men and women have the instinctive feeling of still being Gecamines employees. While Gecamines continues to provide medical care for those who have left and schooling for their children, this has been possible only through assistance and the promise of assistance from the World Bank. Reintegration should provide a way to break this instinctive feeling and assist men and women along the path to their autonomy, a necessary element of organizing their post-Gecamines lives. For example, URK is now getting organized to return employees who have voluntarily left the company to the locations where they were hired if they so desire.

## II. CONSEQUENCES OF THE VOLUNTARY DEPARTURES OPERATION

At the time when the Voluntary Departures Operation got under way, Gecamines had several months of unpaid wage arrears. The company was experiencing untimely work stoppages on an ongoing basis, even including demonstrations in the street. As of April 2003, Gecamines still had not paid wages for the months of October and November 2001.

The Operation was therefore greeted enthusiastically. While the Government expected some 9,000 persons to sign on, more than 10,000 were accepted.

We can affirm that the majority of the 10,655 employees who left the company have been able to organize themselves.

Currently, we are receiving many requests for a new Voluntary Departures Operation and even claims from persons who say they have been omitted from the list of employees voluntarily wishing to leave. Those drawing pensions are requesting that they be able to benefit in turn from such an operation.

Nevertheless, conflicting accounts are also being raised. A minority of the employees voluntarily leaving the company formed a collective, after receiving their compensation, to protest the Voluntary Departures Operation. They have apparently collected fees ranging between US $5 and $10 per registrant, for the purpose of advancing their claims. Within this framework, to keep the fires of protest burning, a few members of the cooperative meet on a regular basis.

This explains the small number of sporadic demonstrations, attended by a handful of persons, witnessed from time to time in Lubumbashi and Kinshasa.

Accusations against Gecamines have been presented to the Labor Inspectorate. In its response, Gecamines has demonstrated the inadmissibility of these accusations, which are, moreover, groundless.

The compensation amount is a flat rate to settle all accounts. It was calculated by the Consultant. The total amount disbursed is US $43,533,998. It should be noted that the initial amount given by the Government was US $25,000,000.

This matter involves a transaction between Gecamines and each employee who agreed to leave and who, until the point of leaving, retained the freedom to decide not to leave.

While it is accurate to say that the Consultant did not follow the logic of the Gecamines line items, his amounts are not very different from what Gecamines would need to pay as final payouts. In addition, the precarious situation of Gecamines finances forces the company to pay at its own rate (i.e. CDF 200 per US $1 instead of the official rate of CDF 380 per US $1) and by installments spread over three years. To date, Gecamines is not capable of honoring the final payouts as calculated on the basis of its own principles. Also, in this regard, Gecamines has final payout arrears that in some cases date back to 1996 and 1993 if not earlier. It is thus deceptive to say that Gecamines will someday be able to pay these outstanding amounts.

Upon analysis, the discrepancy between the ODV compensation and the amounts that Gecamines would have paid ranges between 3 and 9 percent for most of the employees who voluntarily left the company, i.e. line staff and higher level staff, but is higher for directors (between 15 and 40 percent). Supervisory staff, on the other hand, have seen a 6 percent bonus. When the fact that Gecamines would have withheld tax deductions and social contributions is taken into account, the compensation is much better for the majority of the employees who voluntarily left, consisting of line, supervisory, and higher level staff.

The organizers of the protest lead employees who voluntarily left to believe that the World Bank could revise the compensation amounts. This argument, greeted eagerly here and there, has caused some imprudent individuals to squander their payments.

There are however grounds for deploring the delays in implementing the reintegration program. If acted upon in time, this would have allowed a greater number to better organize themselves. The persons involved have been assisted throughout their entire professional careers and have been accustomed to receiving income at regular intervals, and are thus poorly or inadequately prepared to take charge of their own affairs on a sustainable basis over long periods of time.

In the future, any new Voluntary Departures Operation should be simultaneously accompanied by reintegration measures and support mechanisms.

[signature]
Urbain Mayaya I.-M.
Director of Human Resources

## ANNEX 3.8
## GÉCAMINES, MEMO ON DOCUMENTS FOR VOLUNTARY DEPARTURES, MARCH 27, 2003

**GECAMINES**
**Human Resources Directorate**

Lubumbashi, March 27, 2003

Reference number: DRH/DIR/35810/2003

MEMO TO:
- GDH
- DEX/SUD/DIR
- DEX/CENTRE/DIR
- DEX/OUEST/DIR
- RDG/KIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Re: **Voluntary Departures documents**

Reference: N/L DRH/DIR/35.796/2003 of March 24, 2003

As a supplement to our above-referenced letter, please find attached hereto the various documents that constitute the annexes to same. These are the listings of employees who meet the eligibility criteria for voluntary departures, the compensation scales, and a set of ad hoc forms.

1. **The scales include**:

- the proposed compensation scale
- the conventional compensation scale
- the scale of divergence between the first two scales

All the persons to whom these scales are addressed are designated by name on the copies reserved for them.

We should emphasize the *confidential nature* of these documents, which should not be published or distributed to third parties on any grounds whatsoever. The scales are being sent to you so as to provide useful information solely intended for the employees whose names appear in the listings referred to in Point 4 below. Furthermore, they are not to be consulted, even by your collaborators.

2. **The forms include**:

- **Employee application**: In the event that you are not able to produce multiple copies of this document, employees applying for voluntary departure are encouraged to draw up their applications by hand.
- **Responses from Gecamines**: The content of these responses is identical for MOE and MOCA employees and varies depending on whether they are active employees or in a situation of Temporary Work Interruption (DOP). These responses will be signed by the DSA/Group and the employee's Head Office Director, in the case of MOE, and by ADC and DRH in the case of MOCA.

3. **<u>The convention to break the work contract by mutual consent</u>** is intended to be signed by the employee who has already made the decision to leave the company under the Voluntary Departures Operation, and by the DSA/Group and the MOE employee's Head Office Director, on the one hand, or by ADC and DRH in the case of a MOCA employee.

4. **<u>The listings contain</u>** the names of all potential beneficiaries, broken down by seniority in decreasing order.

   We have signed these listings so as to certify their authenticity. Nevertheless, we ask you to verify them and, if necessary, to inform us of any omissions or errors that you may find, so that we can make any needed adjustments.

It is strongly recommended that the applications for voluntary departure be entered into the computer as they are received in order to satisfy statistical requirements and permit subsequent cross-checking.

The members of the Central Monitoring Committee and the Group Subcommittees are at your disposal for any assistance that you deem necessary.

You will have to devote the necessary time to give each of your eligible employees the information that he or she needs in order to make a well-advised decision and to ensure that the relevant provisions are properly implemented by the units that fall under your jurisdiction.

[signature]
Urbain Mayaya I.-M.
Director of Human Resources

ci.: ADG – ADGA – ADT – ADFI – BSP
cc.: ALL HEAD OFFICES AND DEPARTMENTS
ADC – GRH – PRI – ADC/AP – DSA/S – DSA/O – DSA/C – DSA/KIN

## Compensation scale for active employees

### Compensation scale for directors (US $)

| Seniority | Directors | | | | |
|---|---|---|---|---|---|
| | No mandate | S1 | S2 | S3 | S4 |
| 25 | 23 169 | 24 273 | 33 038 | 43 330 | 55 995 |
| 26 | 23 536 | 24 658 | 33 562 | 44 017 | 56 883 |
| 27 | 23 904 | 25 043 | 34 086 | 44 704 | 57 771 |
| 28 | 24 271 | 25 428 | 34 610 | 45 391 | 58 659 |
| 29 | 24 639 | 25 813 | 35 134 | 46 079 | 59 547 |
| 30 | 25 146 | 26 344 | 35 857 | 47 027 | 60 773 |
| 31 | 25 513 | 26 729 | 36 381 | 47 714 | 61 661 |
| 32 | 25 881 | 27 114 | 36 905 | 48 401 | 62 549 |
| 33 | 26 248 | 27 499 | 37 429 | 49 089 | 63 437 |
| 34 | 26 616 | 27 884 | 37 953 | 49 776 | 64 325 |
| 35 | 27 123 | 28 415 | 38 676 | 50 724 | 65 551 |
| 36 | 27 490 | 28 800 | 39 200 | 51 411 | 66 439 |
| 37 | 27 858 | 29 185 | 39 724 | 52 099 | 67 327 |
| 38 | 28 225 | 29 570 | 40 248 | 52 786 | 68 215 |
| 39 | 28 592 | 29 955 | 40 772 | 53 473 | 69 103 |
| 40 et + | 28 960 | 30 340 | 41 296 | 54 160 | 69 991 |

### Compensation scale for line staff and higher level employees (US $)

| Seniority | MOCA | | Line staff | | | | |
|---|---|---|---|---|---|---|---|
| | Higher level staff | Supervi-sors | Class 4 | 5 - HQ | 6 - Q | 7 - SQ | 8 - M |
| 25 | 11 606 | 8 436 | 3 456 | 2 648 | 2 535 | 2 453 | 2 370 |
| 26 | 11 795 | 8 585 | 3 531 | 2 705 | 2 590 | 2 506 | 2 422 |
| 27 | 11 985 | 8 734 | 3 588 | 2 748 | 2 631 | 2 546 | 2 461 |
| 28 | 12 175 | 8 883 | 3 644 | 2 791 | 2 672 | 2 586 | 2 500 |
| 29 | 12 364 | 9 032 | 3 700 | 2 834 | 2 714 | 2 626 | 2 533 |
| 30 | 12 622 | 9 231 | 3 780 | 2 895 | 2 772 | 2 682 | 2 594 |
| 31 | 12 812 | 9 380 | 3 836 | 2 938 | 2 813 | 2 722 | 2 633 |
| 32 | 13 001 | 9 529 | 3 892 | 2 981 | 2 854 | 2 762 | 2 672 |
| 33 | 13 191 | 9 678 | 3 948 | 3 024 | 2 895 | 2 802 | 2 711 |
| 34 | 13 381 | 9 827 | 4 004 | 3 067 | 2 937 | 2 842 | 2 750 |
| 35 | 13 639 | 10 026 | 4 084 | 3 128 | 2 995 | 2 898 | 2 806 |
| 36 | 13 828 | 10 175 | 4 140 | 3 171 | 3 036 | 2 938 | 2 845 |
| 37 | 14 018 | 10 324 | 4 196 | 3 214 | 3 077 | 2 978 | 2 884 |
| 38 | 14 207 | 10 473 | 4 252 | 3 257 | 3 118 | 3 018 | 2 923 |
| 39 | 14 397 | 10 622 | 4 309 | 3 300 | 3 160 | 3 058 | 2 962 |
| 40 et + | 14 587 | 10 771 | 4 365 | 3 343 | 3 201 | 3 098 | 3 001 |

## Compensation scale for employees with a Temporary Work Interruption (DOP)

(wage arrears valued at 55 percent of those of a full-time employee)

| Seniority | Directors | Seniority | MOCA | | Line staff | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | Higher level staff | Super-visors | Class 4 | 5 - HQ | 6 - Q | 7 - SQ | 8 - M |
| 1 | 8 970 | 1 | 4 121 | 2 357 | 810 | 620 | 594 | 575 | 556 |
| 2 | 9 453 | 2 | 4 378 | 2 573 | 900 | 689 | 660 | 639 | 618 |
| 3 | 9 927 | 3 | 4 631 | 2 786 | 989 | 757 | 725 | 702 | 679 |
| 4 | 10 392 | 4 | 4 879 | 2 994 | 1 076 | 824 | 789 | 764 | 739 |
| 5 | 11 054 | 5 | 5 225 | 3 277 | 1 201 | 920 | 881 | 852 | 825 |
| 6 | 11 497 | 6 | 5 462 | 3 478 | 1 301 | 996 | 954 | 923 | 893 |
| 7 | 11 930 | 7 | 5 695 | 3 675 | 1 383 | 1 060 | 1 014 | 982 | 950 |
| 8 | 12 354 | 8 | 5 923 | 3 868 | 1 464 | 1 122 | 1 074 | 1 039 | 1 006 |
| 9 | 12 768 | 9 | 6 146 | 4 057 | 1 544 | 1 183 | 1 132 | 1 096 | 1 061 |
| 10 | 13 371 | 10 | 6 462 | 4 317 | 1 660 | 1 272 | 1 218 | 1 178 | 1 140 |
| 11 | 13 764 | 11 | 6 675 | 4 498 | 1 752 | 1 342 | 1 285 | 1 243 | 1 203 |
| 12 | 14 148 | 12 | 6 882 | 4 676 | 1 827 | 1 399 | 1 340 | 1 296 | 1 254 |
| 13 | 14 521 | 13 | 7 085 | 4 849 | 1 901 | 1 456 | 1 394 | 1 349 | 1 305 |
| 14 | 14 886 | 14 | 7 284 | 5 019 | 1 973 | 1 511 | 1 447 | 1 400 | 1 354 |
| 15 | 15 429 | 15 | 7 571 | 5 257 | 2 080 | 1 593 | 1 525 | 1 476 | 1 428 |
| 16 | 15 772 | 16 | 7 758 | 5 418 | 2 163 | 1 657 | 1 587 | 1 535 | 1 485 |
| 17 | 16 106 | 17 | 7 941 | 5 576 | 2 231 | 1 709 | 1 636 | 1 583 | 1 531 |
| 18 | 16 429 | 18 | 8 119 | 5 730 | 2 297 | 1 760 | 1 685 | 1 630 | 1 576 |
| 19 | 16 743 | 19 | 8 292 | 5 880 | 2 362 | 1 809 | 1 732 | 1 676 | 1 620 |
| 20 | 17 228 | 20 | 8 550 | 6 095 | 2 460 | 1 884 | 1 804 | 1 745 | 1 687 |
| 21 | 17 521 | 21 | 8 713 | 6 237 | 2 535 | 1 942 | 1 859 | 1 799 | 1 739 |
| 22 | 17 804 | 22 | 8 871 | 6 376 | 2 595 | 1 988 | 1 903 | 1 841 | 1 780 |
| 23 | 18 078 | 23 | 9 024 | 6 510 | 2 654 | 2 033 | 1 946 | 1 883 | 1 820 |
| 24 | 18 342 | 24 | 9 172 | 6 641 | 2 711 | 2 077 | 1 988 | 1 923 | 1 859 |
| 25 | 18 767 | 25 | 9 401 | 6 833 | 2 800 | 2 145 | 2 053 | 1 987 | 1 919 |
| 26 | 19 064 | 26 | 9 554 | 6 954 | 2 860 | 2 191 | 2 098 | 2 030 | 1 962 |
| 27 | 19 362 | 27 | 9 708 | 7 074 | 2 906 | 2 226 | 2 131 | | 2 062 |
| 28 | 19 660 | 28 | 9 861 | 7 195 | 2 951 | 2 261 | 2 165 | | 2 094 |
| 29 | 19 957 | 29 | 10 015 | 7 316 | 2 997 | 2 296 | 2 198 | | 2 127 |
| 30 | 20 368 | 30 | 10 224 | 7 477 | 3 061 | 2 345 | 2 245 | | 2 172 |
| 31 | 20 666 | 31 | 10 378 | 7 598 | 3 107 | 2 380 | 2 279 | | 2 205 |
| 32 | 20 963 | 32 | 10 531 | 7 718 | 3 152 | 2 415 | 2 312 | | 2 237 |
| 33 | 21 261 | 33 | 10 685 | 7 839 | 3 198 | 2 450 | 2 345 | | 2 269 |
| 34 | 21 559 | 34 | 10 838 | 7 960 | 3 243 | 2 484 | 2 379 | | 2 302 |
| 35 | 21 969 | 35 | 11 047 | 8 121 | 3 308 | 2 534 | 2 426 | | 2 348 |
| 36 | 22 267 | 36 | 11 201 | 8 242 | 3 353 | 2 569 | 2 459 | | 2 380 |
| 37 | 22 565 | 37 | 11 354 | 8 362 | 3 399 | 2 603 | 2 493 | | 2 412 |
| 38 | 22 862 | 38 | 11 508 | 8 483 | 3 445 | 2 638 | 2 526 | | 2 444 |
| 39 | 23 160 | 39 | 11 662 | 8 604 | 3 490 | 2 673 | 2 559 | | 2 477 |
| 40 et + | 23 458 | 40 et + | 11 815 | 8 724 | 3 536 | 2 708 | 2 593 | | 2 509 |

**<u>Divergence between the proposed compensation scale and the conventional compensation scale</u>**

(losses expressed as a percentage of the conventional compensation)

**Compensation scale for directors (US $)**

| Seniority | Directors | | | | |
|---|---|---|---|---|---|
| | No mandate | S1 | S2 | S3 | S4 |
| 25 | 15% | 15% | 15% | 15% | 15% |
| 26 | 15% | 15% | 15% | 15% | 15% |
| 27 | 15% | 15% | 15% | 15% | 15% |
| 23 | 15% | 15% | 15% | 15% | 15% |
| 29 | 15% | 15% | 15% | 15% | 15% |
| 30 | 40% | 40% | 40% | 38% | 35% |
| 31 | 40% | 39% | 40% | 37% | 35% |
| 32 | 40% | 39% | 40% | 37% | 35% |
| 33 | 40% | 39% | 39% | 37% | 35% |
| 34 | 39% | 39% | 39% | 37% | 35% |
| 35 | 39% | 38% | 39% | 36% | 34% |
| 36 | 39% | 38% | 38% | 36% | 34% |
| 37 | 39% | 38% | 38% | 36% | 34% |
| 38 | 38% | 38% | 38% | 36% | 34% |
| 39 | 38% | 37% | 38% | 36% | 34% |
| 40 et + | 38% | 37% | 38% | 35% | 33% |

**Compensation scale for line staff and higher level employees (US $)**

| Seniority | MOCA | | Line staff | | | | |
|---|---|---|---|---|---|---|---|
| | Higher level staff | Super-visors | Class 4 | 5 - HQ | 6 – Q | 7 - SQ | 8 - M |
| 25 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 26 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 27 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 28 | 4% | -6% | 9% | 7% | 5% | 5% | 3% |
| 29 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 30 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 31 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 32 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 33 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 34 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 35 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 36 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 37 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 38 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 39 | 4% | -6% | 9% | 7% | 6% | 5% | 3% |
| 40 et + | 4% | -6% | 9% | 7% | 6% | 5% | 3% |

## Conventional compensation scale

### Compensation scale for directors (US $)

| Seniority | Directors | | | | |
|---|---|---|---|---|---|
| | No mandate | S1 | S2 | S3 | S4 |
| 25 | 27322 | 28624 | 38960 | 51096 | 66032 |
| 26 | 27755 | 29078 | 39577 | 51907 | 67079 |
| 27 | 28188 | 29532 | 40195 | 52717 | 68126 |
| 28 | 28622 | 29986 | 40813 | 53527 | 69174 |
| 29 | 29055 | 30440 | 41431 | 54338 | 70221 |
| 30 | 42153 | 43566 | 59784 | 75456 | 94166 |
| 31 | 42586 | 44020 | 60402 | 76267 | 95213 |
| 32 | 43020 | 44474 | 61020 | 77077 | 96261 |
| 33 | 43453 | 44928 | 61638 | 77888 | 97308 |
| 34 | 43886 | 45382 | 62256 | 78698 | 98355 |
| 35 | 44484 | 46009 | 63108 | 79816 | 99801 |
| 36 | 44918 | 46463 | 63726 | 80627 | 100848 |
| 37 | 45351 | 46917 | 64344 | 81437 | 101895 |
| 38 | 45784 | 47371 | 64962 | 82248 | 102942 |
| 39 | 46218 | 47825 | 65580 | 83058 | 103990 |
| 40 et + | 46651 | 48279 | 66198 | 83868 | 105037 |

### Compensation scale for line staff and higher level employees (US $)

| Seniority | MOCA | | Line staff | | | | |
|---|---|---|---|---|---|---|---|
| | Higher level staff | Supervi-sors | Class 4 | 5 - HQ | 6 - Q | 7 - SQ | 8 - M |
| 25 | 12115 | 7989 | 3786 | 2841 | 2708 | 2593 | 2433 |
| 26 | 12313 | 8130 | 3868 | 2903 | 2767 | 2649 | 2486 |
| 27 | 12510 | 8271 | 3929 | 2949 | 2811 | 2691 | 2526 |
| 28 | 12708 | 8412 | 3991 | 2995 | 2855 | 2733 | 2567 |
| 29 | 12906 | 8553 | 4053 | 3041 | 2899 | 2775 | 2607 |
| 30 | 13176 | 8742 | 4140 | 3106 | 2961 | 2835 | 2663 |
| 31 | 13373 | 8883 | 4201 | 3152 | 3005 | 2877 | 2704 |
| 32 | 13571 | 9024 | 4263 | 3199 | 3049 | 2919 | 2744 |
| 33 | 13769 | 9165 | 4324 | 3245 | 3093 | 2962 | 2784 |
| 34 | 13967 | 9306 | 4386 | 3291 | 3137 | 3004 | 2824 |
| 35 | 14236 | 9495 | 4473 | 3356 | 3200 | 3064 | 2881 |
| 36 | 14434 | 9636 | 4535 | 3402 | 3244 | 3106 | 2921 |
| 37 | 14632 | 9777 | 4596 | 3449 | 3288 | 3148 | 2961 |
| 38 | 14830 | 9917 | 4658 | 3495 | 3332 | 3190 | 3001 |
| 39 | 15028 | 10058 | 4719 | 3541 | 3376 | 3232 | 3041 |
| 40 et + | 15226 | 10199 | 4781 | 3587 | 3420 | 3274 | 3081 |

# ANNEX 3.9
# DEMOCRATIC REPUBLIC OF CONGO (DRC)
# PUBLIC ENTERPRISE REFORM STEERING COMMITTEE (COPIREP)
# EVALUATION OF THE REINTEGRATION ACTIVITIES FOR THOSE VOLUNTARILY LEAVING "GÉCAMINES" (LA GÉNÉRALE DES CARRIÈRES ET DES MINES)

**FINAL REPORT BY**
**THE CENTER FOR ECONOMIC RESEARCH AND STUDIES AND POLLING (CRETES)**
**FEBRUARY 2006**

## EXECUTIVE SUMMARY

## 1. GENERAL INTRODUCTION

Because of internal operational and management constraints, and confronted by an unfavorable international economic climate, the *Générale des Carrières et des Mines* (Gécamines) began a period of strong turbulence in 1986, resulting in a vertiginous decline in its production. Combined with its sizable and unsustainable indebtedness, this situation jeopardized the finances of the enterprise and drew it into a suspension of payments, including of employee wages.

Alongside other internal adjustment measures taken to stop the bleeding, the enterprise found itself obliged to reduce its manpower through a program of incentives for voluntary departure, which concerned 10,655 employees (out of total staff of 23,730) who met the final eligibility criteria.

In order to protect against possible deterioration in the severance allowances, these voluntarily leaving Gécamines (PVGs) were made aware of the reintegration modalities and the need for devoting a portion of the funds to be received to their reconversion. This enabled some of them, individually or in groups, to set up projects in several sectors. As a follow-up to this operation, the "program to support economic initiatives in Katanga" has been set up with the objective of assisting and supporting the PVGs, particularly those who have created income-generating activities (IGAs), to succeed with or consolidate their reintegration.

This evaluation has been decided upon and conducted more than two years after the launch of the voluntary departures operation (ODV).

## 2. OBJECTIVES OF THE EVALUATION

The study is aimed at evaluating the organizational and functional performance of the individual and collective projects created by PVGs in the wake of the ODV and the "program to support economic initiatives in Katanga." To that end, two main types of evaluation criteria are used:

(i) **technical and economic criteria,** referred to as standard: (a) effectiveness; (b) efficiency; (c) relevance; and (d) financial viability; and

(ii) **social development criteria,** those focused on the stakeholders and the environment: (a) consistency; (b) satisfaction; (iii) ownership and the capacity for autonomy and initiative; and (d) impact.

## 3. METHODOLOGY

The evaluation was conducted in accordance with the *"case studies" method*, a form of qualitative evaluation even though both qualitative and quantitative indicators are used. Multiple information sources are used to gather data, and make it possible better to understand the various components of the study. In this approach, the aim is to learn the meaning of a particular point rather than to verify an a priori response.

This methodology is articulated in four principal phases. First, use is made of documentation, files, and work performed prior to the evaluation, comprising a series of simultaneous actions, alternating technical discussions, identification of the projects set up by PVGs, and gathering documents and files. This phase enabled the team of experts to collect and consult nearly a score of various documents on the subject, such as URK reports and the structures tasked with assisting and monitoring the PVGs, documents and videos produced by COPIREP, and relevant decrees. Moreover, it made it possible to achieve a greater understanding of the terms of reference, learn about the information available, and finalize the relevant qualitative and quantitative indicators. Finally, it facilitated the proper execution of data gathering in the field as well as the achievement of the objectives sought.

Data gathering in the field (second phase) was conducted from December 5 to 13, 2005, using four distinct approaches: **(i)** direct interviews or interviews at the URK and at the structures tasked with technical assistance, follow-up, and supervision of the PVG economic reintegration initiatives; **(ii)** inquiries via the use of questionnaires at 612 individual and collective projects representative of the program stages (stage 1 or 2) and of its various financing campaigns (campaigns 1, 2, or 3); **(iii)** on-site visits to 32 individual and collective projects; and **(iv)** group discussions bringing together the PVGs from the three mining fields (Lubumbashi, Likasi, and Kolwezi) who had expressed differing views during the on-site visits and the inquiries with the structures tasked with technical assistance, monitoring, and supervising the PVGs who created individual or collective projects.

The data gathering phase is followed by the processing phase. The opinions expressed during the direct interviews, the on-site visits, and the group discussions are processed manually, whereas the questionnaire-based survey data are computer-processed using EPI INFORMATION software.

Lastly, analysis of the results and the drafting of the report (fourth phase) were carried out in accordance with the official donor report model and the plan suggested by the experts.

## 4. CONCLUSIONS AND RECOMMENDATIONS

### Conclusions:

1. The voluntary departures operation and the program to support economic initiatives in Katanga are effective from the standpoint of the results achieved, which may be broken down into:

- Project creation, reflecting the development of the entrepreneurial spirit and assumption of personal responsibility on the part of PVGs. 69.3% of the projects created are individual projects and 30. 7% are collective. 61% were created under the ODV. Judging from the number of persons involved in project creation, it would appear that PVGs were more heavily invested more in collective than in individual projects. 9,924 PVGs began an IGA, as against 10.641 PVG at the starting point, yielding an "economic reintegration rate" of almost 93% in Katanga, considerably quite higher than the rate observed in the mining sector in Zambia, for example (estimated at 80%). The projects created by the PVGs draw together one or more activities, of which those most in demand are agriculture, livestock farming, and the healthcare centers that are superb reintegration centers.
- The vending of products and services: PVGs have marketed the production from several agro-pastoral undertakings, with products generally available and of acceptable quality according to the assessment of neighboring people, the primary consumers of these products.
- Job creation: each project evaluated created an average of 9 jobs initially; this level has dropped to 7 at present. The collective projects employ an average of about 30 persons (13 full time), while the individual projects employ an average of 8 persons (3 full time).
- Income returned to the promoters: individual promoters have average annual income from their projects of US$982, as compared to US$28 for those in groups.

2. This effectiveness remains fragile because of production and productivity levels; moreover, trade between the sites and the surrounding environment is low, as is each promoter's income level:

- Each project in the agriculture and livestock sector produced 7.7 and 14.5 metric tons of various products in 2004 as compared to 14.6 and 15.4 tons, respectively, in 2003, a decline of 47% for agriculture and 5.8% for livestock breeding. In terms of the average number of members and implicitly of PVGs involved in collective projects, average per capita production comes to 247.4 kilograms of agricultural produce and 116 kilograms of livestock products in 2004, which is relatively weak. About half of the agro-pastoral production of PVGs is self-consumed and the other half sold.

· The production that is sold goes to nearby customers for the most part. In 2004, 84% of the projects in the Lubumbashi mining field marketed their surplus production within the same area, figures which are 89% and 94.5% for the Likasi and Kolwezi mining fields, suggesting a low level of trade between the sites and the surrounding environment.

· Individual promoters draw a daily [*sic*] average income of US$982 as compared to US$28 for those in a group, or daily incomes of US$2.69 USD and US$0.08 USD, respectively. These income levels are low when examined from the standpoint of PVG household sizes, and fall below the poverty line of US$1 per person per day.

3. Individual projects are more efficient and effective than collective projects, as are the projects created before the ODV payments as compared to those created at the end of that operation.

4. The return on assets used is higher for the individual projects (US$448) than for the collective projects (US$432), as is the case for projects created before the ODV (US$449) as compared to those created within the framework of that operation (US$349).

5. The agro-pastoral projects have a significant impact on increased land under cultivation and increased numbers of small livestock: the growth is higher for agriculture (+36,1%) than for fish farming (+23%), and the change in the overall livestock herd was only of 3.2% between the two periods (before and after the ODV).

6. There are few new goods or services put on the market by PVGs, but instead an increase in supply and bringing the aforesaid products and services closer to consumers, in particular relieving a distance problem. The lack of innovation is explained for the most part by the difficult transition from the status of employee to that of entrepreneur, which is reflected inter alia by risk aversion, seeking to do only what others are already doing or what one was already accustomed to doing (imitation).

7. The projects created are financially autonomous, especially the collective projects, and their profitability rate is positive, though with strong disparities by category and geographically.

8. The projects created in Lubumbashi have the best effectiveness, efficiency, and financial viability ratios, as compared with the projects at the other sites. Likasi brings up the rear in this regard, because of the involvement of a large number of PVGs in a massive collective project that currently is suffering from serious deficiencies on the statutory, managerial and organizational levels.

9. From the social development standpoint:

· The logic of the program's activities is consistent with the government's sectoral policy on the private sector.

· The policy of financing microprojects adopted under the "program to support economic initiatives in Katanga," owing to the ceilings adopted on financial participation, is inappropriate, as this evaluation shows that the individual projects are more efficient, more relevant, and financially more viable than collective projects. Moreover, this priority granted to collective projects leads to the creation of opportunistic groups (lacking internal dynamism), created solely to meet the requirements: they lack a cooperative and community spirit.

- The PVGs' assumption of ownership of the knowledge learned and their tendency to assume responsibility are weak, in particular owing to the difficult transition from the status of employees to that of entrepreneurs, their age (the average age of all the employees who left was 56 at the time of the ODV), and their educational level (manual laborers accounted for 89.5% of those leaving). They still experience problems in the provisioning, production, and marketing phases of the cycle of activities in all production sectors, particularly those in which most are involved, such as the agro-pastoral sector. The same holds true for the management of their projects. Consequently, they remain dependant on outside technical assistance, in particular from the URK.
- The direct beneficiaries of the program to support economic initiatives in Katanga (PVGs) are for the most part dissatisfied with the support received, and on the whole are more dissatisfied than satisfied with the structures tasked with technical assistance, monitoring, and supervising their economic initiatives.
- Furthermore, despite of the number of projects created that are functional and despite the number of departing employees that these projects concentrate, the PVGs are dissatisfied with the establishment of the ODV and with the project identification and formulation process for the beneficiaries of the program to support economic initiatives in Katanga.
- This program has had a positive and significant impact on the incomes of PVGs (in particular those who undertook individual projects less so those who are in groups), and a perceptible impact on their standard of living and on their social and human development. The impact on the social development of the surrounding populations is equally appreciable as much, considering the size and of the duration of the program.

**Recommendations:**

Given these findings and conclusions, the experts recommend the following actions and measures:

1. To classify the projects in two groups: (i) microprojects; and (ii) small and medium-sized enterprises, and to emphasize the sectoral approach by conducting a preliminary diagnosis of the competitiveness of the Katangan economy. This study will make it possible to use a multi-criterion approach to determine the most promising branches and sectors.

2. To reconsider the maximum financial participation of the program in terms of project amounts and typologies (individual microprojects or SMEs rather than individual or collective projects). In keeping with the conclusions of this evaluation, the accent should be placed on the most effective, efficient, relevant, and economically viable activities.

3. To reduce delays and shorten the processing circuit for financing and funds disbursement requests.

4. To monitor the use of the funds granted to beneficiaries to ensure that the financing is not diverted from the use for which it was requested.

5. To perform the necessary work for exploitation of arable lands contiguous to Sambwa, Tanga Mazembe, and Katebi that were distributed to agricultural associations from the Lubumbashi, Likasi, and Kolwezi mining fields, so as to permit those to begin sowing there in keeping with the agricultural calendar of Katanga.

6. To reconsider the promoter training and support policy by encouraging promoters (in the case of those who are elderly and lack a level of education compatible with ownership of the knowledge to be imparted) to designate a third person of their choice, preferably a family member regularly involved in the implementation of their project or better still an employee, so that he or she may benefit from program support in their place. The training should be tailored to benefit each project (individual or collective) and be targeted by activity.

7. To assist and monitor promoters in putting the knowledge acquired to use. This monitoring and assistance must be individualized (by project) and be provided by personnel recruited by the URK or the structures tasked with technical assistance.

8. To support promoters in the provisioning, production, and marketing phases of their project operation. Such support can take many forms: financial; training-based; infrastructural; informational.

9. To support promoters in the activities of managing their projects: Accounting management, Budgetary management, Marketing management, Financial management, etc. This support should be preceded by a public awareness campaign targeted on the requirements for enterprise management.

10. To recruit an independent party (research firm or NGO) to perform regular monitoring and evaluation of the activities of the program and its partners (the structures tasked with technical assistance and the supervision of PVG reintegration activities).

11. And finally, to envisage conducting a final evaluation.

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