

Report No. 53760-ZR

The Inspection Panel 

Second Report and Recommendation

**Democratic Republic of Congo:
Private Sector Development and
Competitiveness Project
(IDA Credit No. 3815-DRC)**

April 5, 2010

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Second Report and Recommendation On Request for Inspection

Democratic Republic of Congo: Private Sector Development and Competitiveness Project (IDA Credit No. 3815-DRC)

1. On February 27, 2009, the Inspection Panel received a Request for Inspection related to the Democratic Republic of Congo (DRC): Private Sector Development and Competitiveness Project (the “Project”). This Request (the “First Gécamines Request”) was submitted by Mr. Chola Kabamba and Mr. Assani Kyombi, both residents of Likasi, Katanga, in the DRC, acting as former employees of the state enterprise “Générale des Carrières et des Mines,” abbreviated as “Gécamines,” *“and as victims of the Voluntary Departures Operation initiated by the Congolese Government with the financial support of the World Bank.”*
2. On March 13, 2009, the Inspection Panel received a second Request for Inspection (the “Second Gécamines Request”) related to the same above-referenced Project. Mr. Bidimu Kamunga, resident of Likasi, Katanga, in the Democratic Republic of Congo, submitted the Request acting as President of “*le Collectif des Ex-agents Gécamines ODV*” (“*the Collective of VDO [Voluntary Departures Operation hereinafter referred to as Voluntary Departure Program “VDP”] of former Gécamines employees*”). The Request included 14 signatures of other members of the collective.
3. The Panel registered the First Gécamines Request and the Second Gécamines Request, on March 12, 2009, and on March 19, 2009, respectively, and notified the Executive Directors and the President of the International Development Association (IDA) in accordance with the Resolution establishing the Inspection Panel (“the Resolution”).¹
4. On March 26, 2009, the Panel received a “*petition*” from the Congolese Association for the Defense of Economic and Social Rights (ADDES), requesting the Inspection Panel “*to recommend to the Executive Directors of the World Bank that they initiate the opening of an inquiry to resolve the problem posed by all our actual members, namely their complementary compensation and their economic reintegration in Katanga.*” In an attachment to this petition, ADDES requested the Panel to add the Association to the procedure initiated by the other two Requests. The Panel added ADDES to the processing of the two Requests for Inspection.

¹ IDA Resolution 93 – 6, Resolution Establishing the Inspection Panel (September 22, 1993).

5. On April 7, 2009, Management requested from the Board of Executive Directors an extension to the original deadline for its Response. Management stated in its request that “[i]n view of the fact that the two Requests concern the same project and address similar issues, in the interest of efficiency, Management is requesting to prepare a single, comprehensive Management Response that addresses both Requests.” The Board approved on a no-objection basis Management’s request on April 16, 2009. Management submitted its Response on April 27, 2009 (hereinafter referred to as the “First Response”).
6. In this Response, Management clarified its actions taken in the context of the VDP. Management also proposed undertaking a survey of former Gécamines workers participating in the program, generally referred to as *partants volontaires* (PVs), to have a better understanding of their current situation including progress in restoration of income and reintegration in the local economy following the VDP (referred to as reinsertion). Management stated that “*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.*”²
7. From May 3 through May 9, 2009, a team from the Panel composed of its Chairperson at the time, Werner Kiene, together with Panel Member Alf Jerve, and Panel Operations Officer Serge Selwan, visited DRC. During their visit, the Panel team met with Government officials and representatives of the project implementing unit COPIREP (Pilot Committee for State Enterprises Reform, “*Comité de Pilotage de la Réforme des Entreprises du Portefeuille de l’Etat*”) in Kinshasa. The Panel also visited Katanga Province and met with the signatories of the two Requests for Inspection and affiliated groups, officials of Gécamines, and trade union leaders in Likasi, and met with local and international technical experts and COPIREP representatives in Lubumbashi. The Panel also met with staff of the World Bank country office.
8. In its meetings with the separate groups of Requesters on May 7, 2009, in Likasi, the Panel shared Management’s proposal to undertake a survey of Gécamines PVs and to use this survey to provide a basis for further dialogue with the Government on any specific actions that might be needed for the PVs. The Panel also informed the Requesters of the possibility of deferring the Panel’s determination on whether an investigation is warranted, until the survey is finalized and follow-up actions are determined. Both groups of Requesters stated their preference for this option.
9. The Panel’s first report – Report and Recommendation – was issued to the Board on May 27, 2009.³ As stated in this Report, the Panel processed both Requests jointly

² Management’s First Response, para. 82.

³ Inspection Panel, Report and Recommendation, Democratic Republic of Congo: Private Sector Development and Competitiveness Project (IDA Credit No. 3815-DRC), May 27, 2009, para. 5.

as it has done in previous cases where it received more than one Request for Inspection related to the same Project with similar allegations of harm.

10. Additionally, in this Report, the Panel observed that the Requests, Management's Response, the Panel's visit to DRC, interviews with Government officials, Bank staff, Requesters and other affected persons, confirmed that there are sharply differing views on the issues raised by the Requests for Inspection. The Panel noted two main issues of disagreement: firstly, on the issue of whether terms and conditions of the VDP violated Congolese law at the time, and secondly, on the issue of the extent of impoverishment among ex-Gécamines workers and its causes.
11. In conclusion, the Panel determined that the Requesters and respective Requests met the eligibility criteria set forth in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications. The Panel also determined that the Requests and Management Response contained conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
12. The Panel further determined that since Management had stated its willingness to undertake a survey for the purpose of analyzing if special actions were needed for the '*partants volontaires*', and to enter a dialogue with Government on any specific actions, and since the Requesters stated their willingness to see whether this survey would lead to an effective resolution of their concerns, in fairness to all the parties concerned and as it had done in similar situations in the past with Board approval, it would not take a position at that time on whether the issues of non-compliance and harm raised in the Requests merited an investigation.
13. The Panel, therefore, recommended to the Board of Executive Directors that it approve the Panel's proposal to refrain from issuing a recommendation at that time on whether an investigation was warranted in this case, but rather await further developments on the matters raised in the Request for Inspection. The Panel expected to be able to make a determination six months later as to whether to recommend an investigation. On June 11, 2009, the Board approved the Panel's recommendation on a no-objection basis.
14. On December 15, 2009, the Inspection Panel received a further Request for Inspection related to the retrenchment operation financed by the same above-referenced Project (the "Banks Request", see Annex 1). Mr. Freddy Kituba Kimbwel and Mr. Timothée Lobe Bangudu, both residents of Kinshasa-Gombe, Kinshasa, in the Democratic Republic of Congo, submitted the Request acting on behalf of the "*Intersyndicale*". The *Intersyndicale* represents former employees of three state-owned banks: the "*Banque de Credit Agricole*" (BCA), the "*Banque Congolaise du Commerce Exterieur*" (BCCE) and the "*Nouvelle Banque de Kinshasa*" (NBK) (hereinafter collectively referred to as the "three banks"). The Panel registered this Request on January 7, 2010.

15. From January 19 through January 26, 2010, a team from the Panel composed of Panel Members Alf Jerve and Eimi Watanabe, and Panel Senior Operations Officer Serge Selwan, visited DRC. During their visit, the Panel team met with the Prime Minister of DRC, Mr. Adolphe Muzito, and the Minister of Labor, Mr. Ferdinand Kambere, and other Government officials and representatives of the project implementing unit COPIREP in Kinshasa. The Panel met with the new Requesters, ex-employees of the three banks (BCA, BCCE, and NBK) in Kinshasa, and also with ex-employees of Gécamines living in Kinshasa. Further, the Panel visited Katanga Province and met with the signatories of the different Requests for Inspection and affiliated groups and trade union leaders in Lubumbashi, Likasi and Kolwezi, and met with local technical experts and the COPIREP representative in Lubumbashi. The Panel also met with staff of the World Bank country office.
16. On March 9, 2010, Management submitted its Response to the Banks Request (hereinafter referred to as the “Second Response”, see Annex 2). This Management Response was originally due on February 8, 2009. However, since the World Bank offices closed for several days because of severe weather conditions, Management requested an extension from the Board to finalize this Response before sending it to the Panel. The Board approved this extension.
17. The purpose of this Second Report is to determine whether the Request relating to the three banks satisfy the eligibility criteria set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,⁴ and to make a recommendation to the Executive Directors as to whether the matters alleged in this Request and those related to the two earlier Gécamines Requests should be investigated.

A. The Project

18. The Requests raise issues related to the Democratic Republic of Congo: Private Sector Development and Competitiveness Project (“PSDC”), which has been financed through an IDA Credit and a separate IDA Grant.
19. The objective of the Project, according to the Project Appraisal Document (“PAD”), is to *“increase the competitiveness of the economy, and thereby contribute to economic growth”* by *“assisting with improving the investment climate; by supporting reform of public enterprises in the mining, telecoms, financial, transport, and energy sectors; by 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.”*⁵

⁴ Conclusions of the Board’s Second Review of the Inspection Panel (the “1999 Clarifications”), April 1999.

⁵ Project Appraisal Document (PAD), Private Sector Development and Competitiveness Project, July 2, 2003.

20. The Requests for Inspection relate to the Project's Component 2 as described in the PAD.⁶ It aims at implementing parastatal reform through *“activities to help retrenched workers enter new occupations, help government meet the social cost of the reforms by providing financial assistance to retrenched mine workers at Gecamines, finance severance packages for the workers of the Office Congolais des Postes et Télécommunications and the three liquidated banks [BCA, NBK and BCCE].”* The PAD adds that *“the lessons learned in the Katanga province will be used for subsequent severance package distribution to workers in other sectors.”*
21. Recognizing that those negatively impacted by the parastatal restructuring may resist the reforms, the PAD emphasizes the involvement of all stakeholders in the development of the severance packages and regional development programs so that the project can *“serve as a model for reforms in other sectors.”*
22. The PAD identifies retrenchment of employees as a key social outcome of the project and points out that the Government's retrenchment policy will provide severance packages to workers made redundant. It emphasizes that the amount of the severance package will *“be determined by the Government during project implementation and will reflect the nature of the company under restructuring, the region where the redundant employees are located and the past experience in this field in DRC, as well as the principles of fairness and fiscal responsibility. Social safety nets such as training or re-skilling, access to medical services are considered as part of the retrenchment package. In addition, the Government is looking into possibilities of providing redundant workers with new economic opportunities by capacitating them to start micro-enterprises.”*⁷
23. Project implementation has been carried out by the Pilot Committee for State Enterprises Reform (COPIREP), *“Comité de Pilotage de la Réforme des Entreprises du Portefeuille de l'Etat.”*

B. Financing

24. On August 16, 2004 the Bank entered into a credit agreement with the Democratic Republic of Congo (“the Borrower”) providing a credit (the “Credit”) for SDR 87,100,000,⁸ or about US\$ 129 million. On May 26, 2008, the Bank entered with the Borrower into a Financing Agreement providing for a grant (the “Grant”) of US\$ 56 million. The closing date for the Credit is March 31, 2010, while the closing date for the Grant is December 31, 2012. The Credit closing date has been extended to December 31, 2012, to coincide with the closing date of the Grant providing additional financing.⁹

⁶ PAD p. 10.

⁷ PAD, p. 21.

⁸ Agreement providing for the Amendment and Restatement of the Development Credit Agreement, Private Sector Competitiveness Project, August 16, 2004.

⁹ Management's First Response, para. 28.

C. The Requests

25. **The Gécamines Requesters** claim that the “*World Bank financed the design, evaluation, and implementation of the operation known as ‘Voluntary Departures,’ which resulted in the dismissal of 10,655 Gécamines workers from August 11, 2003 to February 6, 2004 in exchange for severance payments ranging from US\$1,900 to US\$30,000.*”¹⁰
26. They state that reintegration efforts (e.g. the Reinsertion Program¹¹) for employees who voluntarily left their work at Gécamines, should mean that the employees receiving their severance allowance and would be engaged in individual or collective activities enabling them to earn the necessary income for their own survival and that of their dependents.¹²
27. They claim that these reintegration efforts were inadequate. They state that only activities involving self-promotion were supported and the program covered only a portion of the ex-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.*”
28. According to the Requesters the conditions “*determined*” by the Bank for determining and effecting the severance pay, are in contravention of the provisions of Articles 67, 78, 100, 144, and 152 of the Congolese Labor Code. They add that each employee was presented with a standard transaction instrument entitled “*Agreement to terminate the labor contract by mutual agreement*”, which each had to sign in exchange for a letter of credit drawn up by the coordinating unit (Katanga Reintegration Coordination Unit) for the reinsertion of Gécamines PVs in order to collect the severance payment at a bank in Likasi.¹³
29. The Requesters state that there are significant differences between their “*rights and interests,*” according to DRC laws and the agreement signed between Gécamines and labor unions for the VDP. They also state that the Bank “*failed to observe its rules and procedures in the context of the programs agreed with the Congolese government on the restructuring of Gécamines with a view to finding an honorable solution to reducing the labor costs of our former employer Gécamines and properly indemnifying the [Gécamines employees].*”¹⁴ They maintain that the World Bank is responsible for the violation by Gécamines of its contractual obligations.

¹⁰ First Gécamines Request, para. 1.

¹¹ These efforts are referred to by Bank Management as the Reinsertion Program (Management Response, pp. 23-27).

¹² First Gécamines Request, para. 1.

¹³ First Gécamines Request, para. 2.

¹⁴ First Gécamines Request, para. 4.

30. They state that the consequences of this “*ultimate swindle*” are many and include: “*impoverishment; dismantling and destruction of households; prostitution of girls who are still minors; juvenile delinquency among boys; lack of school enrollment for children; famine and malnutrition (one meal per day, or even one meal every other day); 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).*”¹⁵
31. To mitigate the harm they allege to have suffered as a result of this Project, the Requesters suggest some solutions. Specifically, they ask:
- (1) for “*payment of 36 months’ of arrears in compensation, pension principal, payment of legally [accrued] paid leave, all social benefits associated with the contract.*”¹⁶
- (2) that the World Bank be responsible for the violation by Gécamines of its contractual obligations. They state that the Bank “*must ensure that state enterprises to which it extends loans, even with the guarantee of the Congolese government, apply and observe [employee’s] rights.*”¹⁷
32. **The Requesters from the three banks** state that the Central Bank of the Democratic Republic of Congo (DRC), under the Project’s umbrella, liquidated the three state-owned banks, the “*Banque de Credit Agricole*” (BCA), the “*Banque Congolaise du Commerce Exterieur*” (BCCE) and the “*Nouvelle Banque de Kinshasa*” (NBK). The Requesters state that this operation led to the dismissal of 3480 employees under conditions determined “*unilaterally*”¹⁸ by the Government’s consultant, who was financed under the Project and agreed upon by the World Bank. They complain that according to the Governor of the Central Bank of the DRC the only choice they had was to “*take the deal or leave it.*”¹⁹
33. The Requesters state that the amounts owed to them were not paid within the mandatory time, the last payment being made in 2009, with several years delay. Further, they add that the payments were not made in close proximity to their location and they had to travel up to 200 kilometers to receive their money. According to them, this lack of proximity extended the “*hardship endured by the workers.*”²⁰
34. The Requesters also state that this operation led to “*disastrous social conditions*” for the affected ex-employees.²¹ Among other impacts they include: displacement of households; numerous divorces; and no less than 3345 children not benefiting

¹⁵ Second Gécamines Request, letter of February 19, 2009, p. 5.

¹⁶ Second Gécamines Request, letter of March 13, 2009, p. 2.

¹⁷ First Gécamines Request, para. 6.

¹⁸ The Banks Request, para. 1, also para. 19 and 72.

¹⁹ The Banks Request, para. 27, also para. 1 and 33.

²⁰ The Banks Request, para. 45.

²¹ The Banks Request, para. 49.

from school education over the past four years.²² They also state that this operation led to delinquency and the spread of HIV/AIDS and other sexually transmitted diseases.²³ The Requesters describe their increasing frustration and intolerance against those who denied them “*the right to a decent life and respect as human beings.*”²⁴

35. The Requesters state that the attempted reintegration efforts failed. They claim that the situation was insufficiently assessed and participants were not “*prepared to re-orient their lives.*” According to the Requesters, they were “*damned to unemployment, too old to apply for new employment, and therefore left under a social guillotine.*”²⁵
36. The Requesters refer to Article 1(n) of the Credit agreement, providing that the amount of the severance payments comply with the Congolese Labor Code. The Requesters state that the calculation used in their case violates several articles of the Congolese Labor Code including paragraphs 77, 78, 103, 104 and 110. Further, they refer to a recalculation of the Congolese Labor Inspector in 2004, which estimated that a total amount of 60,008,447 USD should be paid in contrast with the consultant’s estimate of 13,409,686 USD that was to be paid.²⁶
37. The above claims may constitute non-compliance by the Bank with provisions of the following Operational Policies and Procedures:

- OD 4.15 Poverty Reduction
- OP/BP 12.00 Disbursement
- OpMemo Financing Severance Pay in Public Sector Reform Operations, April 5, 2002
- OP/BP13.05 Project Supervision

D. The Management Responses

38. Management submitted two separate Responses. The first was in relation to the Gécamines Requests (the First Response) and the second in relation to the Banks Request (the Second Response). This latter Response also included an update relating to the Gécamines Requests, a section on the social costs of public enterprises reforms in DRC, and a section on lessons learned in the context of this Project.
39. **Management Response to the Gécamines Requesters** (the First Response) was submitted on April 27, 2009. In this Response, Management stated that the “*Bank has made every effort to apply its policies and procedures and to pursue concretely*

²² The Banks Request, para. 52.

²³ The Banks Request, para. 53.

²⁴ The Banks Request, para. 54.

²⁵ The Banks Request, para. 40.

²⁶ The Banks Request, paras. 16, 17, 20, 29, 31, and 81.

its mission statement in the context of the Project.” Management added that the Bank followed the guidelines, policies and procedures applicable to the matters raised by the Requests. Management further concluded 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.”²⁷

40. According to the Management Response, the Gécamines VDP took place between March 2003 and February 2004.²⁸ This operation was undertaken in the context of Component 2 of the Project, which involves a number of subcomponents: (a) creating a regulatory framework; (b) facilitating divestiture from public enterprises; and (c) supporting the social costs of reform. This component was to be complemented by activities financed under Component 3, aiming at supporting economic development in the Katanga region. Management adds that Component 2 is implemented by COPIREP which is the Government body in charge of preparing and undertaking, following Government’s approval, the restructuring of public enterprises in DRC.²⁹
41. Management states that of the initial estimate of 11,200 employees eligible for the VDP, 10,655 benefitted from it.³⁰ Management also states that Gécamines had calculated, at the time the VDP was implemented, the cost of terminating employment on an involuntary basis for 11,000 employees at around US\$120 million. 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 to put in place a program of mutually agreed separation and to request the support of the World Bank.³¹
42. According to Management, the initial VDP proposal by the Government to Gécamines employees in June 2002, amounting to a total 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 (Mr. Jacques Catry, hereinafter the Consultant)³² with experience in retrenchment plans to help reach an agreement with the trade unions. 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.³³

²⁷ Management’s First Response, para. 83.

²⁸ Management’s First Response, para. 8.

²⁹ Management’s First Response, para. 27.

³⁰ Management’s First Response, para. 38.

³¹ Management’s First Response, para. 43.

³² Management notes that Mr. Jacques Catry is now deceased and that Mr. Catry was selected on the basis of his previous experience in managing large retrenchments operations in Togo and Cote d’Ivoire.

³³ Management’s First Response, para. 44.

43. Management states that the Consultant undertook a thorough analysis of the Gécamines labor force, the legal framework, the 1996 Collective Bargaining Agreement, and the provisions pertaining to social security. The Consultant also analyzed the applicable regulations for retrenchment in private enterprises and reviewed the experiences of other African countries.³⁴ Following this analysis, the Consultant worked with the Gécamines Human Resources Department on different scenarios for the VDP. During the design of the VDP, the Consultant had several meetings with Gécamines' trade unions and a payment scale was presented to the trade unions on March 8, 2003. As stated earlier, the proposed payment scale was significantly higher than the payment scale initially proposed by the Government to Gécamines employees in June 2002.³⁵
44. According to Management, the payment scale proposed by the Consultant respected all provisions of the collective bargaining agreement, except the pension fund (*capital pension*) and life insurance (for managers). It took into account the termination indemnity (notice, paid leave and leave gratification) and salary arrears until August 31, 2002.³⁶ According to Management, VDP established an average payment amount of US\$4,083 with a minimum actual amount of US\$825 and a maximum amount of US\$60,773.³⁷ On March 11, 2003, Government approved the VDP, which was “officially” announced by the Minister of Mines on March 13, 2003.³⁸ Gécamines issued several memoranda to explain details of the program.³⁹ By May 21, 2003, Gécamines finalized the list of candidates for the VDP.⁴⁰ The payments started on August 11, 2003, and ended on March 11, 2004.⁴¹ Management's Response states that in the end, 10,655 benefitted from the VDP.⁴²
45. Management reports that a number of reinsertion activities were undertaken for PVs. These were based on demand-driven approaches. Interviews at the start of these activities indicated that about 80 percent wanted to establish income-generating activities related to agriculture or livestock farming.⁴³ Management states that the Consultant estimated that about 25 percent of the PVs would not seek to participate in reinsertion activities, and, in addition, the reinsertion program would not be able to achieve ambitious results.⁴⁴ An evaluation of the reinsertion activities was undertaken between November 2005 and January 2006 by CRETES (Center for Research and Studies on Economy and Surveys – “*Centre de Recherche et d'Etudes en Economie et Sondage*”). This evaluation showed that less than two years after the start of the VDP, 93 percent had initiated an income-generating

³⁴ Management's First Response, para. 50.

³⁵ Management's First Response, para. 51.

³⁶ Management's First Response, para. 52.

³⁷ Management's First Response, para. 63.

³⁸ Management's First Response, para. 54.

³⁹ Management's First Response, paras. 58-59 and 61.

⁴⁰ Management's First Response, para. 60.

⁴¹ Management's First Response, para. 63.

⁴² Management's First Response, para. 38.

⁴³ Management's First Response, para. 71.

⁴⁴ Management's First Response, para. 66.

activity. However, Management states that this high reinsertion rate would not typically be sustained in the medium to long term.⁴⁵

46. On compliance with Bank Policies, Management states that the Bank team made every effort to meet the requirements of Bank policies. It adds that 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 outlined in the OP Memo on Financing Severance Pay in Public Sector Operations.⁴⁶ With regards to supervision, Management states that twelve supervisions missions were undertaken from July 2003 to the Mid-Term Review in June 2007. Additionally, the Task Team Leader has been based in Kinshasa since October 2007.⁴⁷
47. In March 2009, after the First and Second Requests were registered, Management sent a team to Katanga and met with both groups of Requesters in Likasi. As a result of this visit, Management proposed some actions to be taken with regards to the PVs and for other past and forthcoming retrenchment plans. In terms of actions taken with regards to the PVs, Management proposed to undertake a new survey of Gécamines ‘partants volontaires’ (PVs)⁴⁸ Management expected to have the results of this survey by end September 2009.⁴⁹
48. **Management Response to the Banks Request** (the Second Response) was submitted on March 9, 2010. In this Response, Management: i) responded to the Request sent by former employees of the three banks and proposed some actions to address their concerns; ii) provided an update on actions taken and actions to be taken concerning the PVs; iii) provided some information on the social costs of public enterprise reform in DRC; and, iv) highlighted some lessons learned on this Project.
49. *Concerning the ex-employees of the three banks*, Management stated that each of the three banks had stopped its operations at one time or another. *NBK* had stopped operating in 1995 without terminating or formally suspending labor contracts with its employees. *BCCE* was closed between August 1996 and April 1997. When it reopened in 1997, it did so “without any governance structure” and did not undertake any banking operation until 2000, when it was placed under the Central Bank’s temporary administration. *BCA* also stopped operating as a bank in 1995 after its exclusion by the Central Bank from the clearing house.⁵⁰ However, the Government continued to use *BCA* sporadically to pay civil servants, and that was its only activity.⁵¹

⁴⁵ Management’s First Response, para. 73.

⁴⁶ Management’s First Response, para. 79.

⁴⁷ Management’s First Response, para. 80.

⁴⁸ Management’s First Response, para. 82.

⁴⁹ Socio-Economic Evaluation Gécamines “*Partants Volontaires*” November 17, 2009 (“socioeconomic survey”).

⁵⁰ The clearing house is an office where banks exchange checks and drafts and settle accounts. It is part of the Central Bank.

⁵¹ Management’s Second Response, para. 22.

50. Management stated that by September 2002, the Government intended to place the three public sector banks identified as non-viable into liquidation.⁵² The liquidation of the three banks was officially announced on March 10, 2003. Labor contracts of the employees of these banks were formally terminated on April 30, 2003 for BCCE; on May 5, 2003 for NBK; and on June 20, 2003 for BCA. The Government requested the World Bank's support to carry out the liquidation of the state-owned banks by: (a) financing the liquidators; and (b) supporting the financing of severance packages for the banks' employees.⁵³
51. According to Management the calculation of the severance payments was extraordinarily complicated by the situation of the banks at the time because of: a) unreliable or limited human resources data; b) the absence of binding collective bargaining agreements between the banks and trade unions; c) the difficulty to establish salaries on which the severance payments calculations should be based; and, d) the extent of arrears that would need to be factored in.⁵⁴
52. Management stated that an international consultant (the same as for Gécamines⁵⁵) was hired with World Bank financing to analyze the situation based on available data and propose a compensation scale.⁵⁶ Not having reliable data, the Consultant recommended in 2004 using a *barème* (a fixed salary scale) for two major reasons: 1) it increased transparency of calculations, was impartial, and reduced opportunities for fraud; and 2) it avoided complex and possibly erroneous calculations.⁵⁷
53. Management also stated that establishing a consensus at the national level on addressing the severance payments was complicated. There were differing opinions on many aspects including the calculations of the total indemnity (namely the US\$11.5 million estimated by the Consultant and US\$60 million estimated by the Labor Inspectorate) and intra-governmental debate as to whether the debts to former employees should be settled through the liquidation proceeds of the banks, or through the state budget or other sources of funding.⁵⁸
54. According to Management, the severance payments were made between November 2005 and August 2006.⁵⁹ Effectively, payments were made to 3,473 employees of the three banks who received a total of US\$13.4 million, which represented an

⁵² Management's Second Response, Executive Summary para. 5.

⁵³ Management's Second Response, para. 24.

⁵⁴ Management's Second Response, para. 25.

⁵⁵ Jacques Catry (now deceased) also elaborated the Gécamines VDP, as well as the voluntary departure program for the post and telecom public enterprise (OCPT) that are also part of the project.

⁵⁶ Management's Second Response, para. 26.

⁵⁷ Management's Second Response, Executive Summary para. 9.

⁵⁸ Management's Second Response, Executive Summary para. 9.

⁵⁹ Management's Second Response, para. 42.

average of US\$3,860 per employee. Only seven eligible “inactive” employees⁶⁰ did not collect their indemnity.⁶¹

55. Management stated that the liquidation of NBK and BCA started in October 2004 and the liquidation of BCCE started in October 2005. Management further stated that in March 2007, the BCCE-liquidator was instructed by the Central Bank not to factor debts to the bank’s ex-employees into the use of liquidation proceeds. According to Management, the reports on NBK and BCA liquidation are not clear with regard to instructions they received from the Central Bank. However, according to Management, the liquidator of NBK and BCA was also instructed not to factor debts to ex-employees into the use of liquidation proceeds.⁶² Management indicated that the recent monthly reports on the liquidations have not been made available by the Central Bank. Management also indicated that according to the Central Bank, the NBK and BCA liquidations were completed, while the BCCE liquidation was near completion. Management will ask the Central Bank to provide the final liquidation reports.⁶³
56. According to Management, exchanges between the World Bank and former employees of liquidated banks took place between April and November 2009. These exchanges led COPIREP to send a letter to the World Bank, with a copy of the latest letters between the Prime Minister, Ministry of Finance and the Governor of the Central Bank on this matter, informing the World Bank that this sensitive question was an internal matter to be solved by the Government of DRC.⁶⁴
57. Management believes that to-date, *“this issue has not been resolved within the Government and the World Bank has not taken a position on the matter. However, the Bank has expressed its readiness to continue supporting the Government's efforts at restructuring the parastatal sector, including identifying solutions for addressing the related social costs in a way that reflects the fiscal situation of the country and political economy considerations.”*⁶⁵
58. As for the Requesters’ concerns that the ex-employees of the three banks did not benefit from a reinsertion program, Management stated that in 2003 the Consultant initially proposed a reinsertion program for these employees. Management adds that the disappointing results of the reinsertion efforts with the Gécamines ex-employees led COPIREP to question the effectiveness of reinsertion programs and to decide not to launch another one for the three bank’s ex-employees considering that: i) their average age, in 2003, was 51; and, ii) they will have difficulties in re-

⁶⁰ Management states that *“It had indeed proved difficult, considering the size of the country and the fact that some of the “inactive” employees lived in remote regions, to reach all eligible employees.”*

⁶¹ Management’s Second Response, para. 43.

⁶² Management’s Second Response, para. 44.

⁶³ Management’s Second Response, para. 44, fn. 10.

⁶⁴ Management’s Second Response, Executive Summary para. 10.

⁶⁵ Management’s Second Response, Executive Summary para. 10.

establishing themselves as “entrepreneurs” after having worked many years in hierarchical and organized business environments.⁶⁶

59. In its Second Response, Management proposed a specific action plan for the ex-employees of the three banks. This action plan includes: i) undertaking an analysis of the differences between the calculations of the Consultant and those of the Labor Inspectorate; ii) providing technical assistance to the former employees of the liquidated banks to access the national pension system (INSS); and, iii) providing support to the Government to undertake a qualitative survey of former employees of the banks to have a better understanding of their current situation.⁶⁷
60. In the conclusion of its Second Response, Management stated that it believed that it followed the guidelines, policies and procedures applicable to the matters raised by the Request.⁶⁸
61. *Concerning the ex-employees of Gécamines*, Management stated that it had contracted an advisory team of three experts, with professional backgrounds in governance, socio-economic analysis, and privatization, to provide advice and guidance on the proposed action plan and help the team draw the lessons in order to address similar issues in future projects in DRC.⁶⁹ Management also noted that the delay between the negotiated settlement of the VDP packages and payment to the PVs was exacerbated by the very difficult working environment in DRC.⁷⁰ In addition, Management stated that following the socioeconomic survey (the Survey) it conducted on the PVs, it had proposed to the Government additional measures for follow-up in the Project.⁷¹
62. According to Management, these additional measures include the assistance to the PVs to get access to health, education, and national pension benefits. Management’s proposal also included assistance to the Government in elaborating a strategy to address the social dimension of the ongoing public enterprise reform and the provision of technical assistance to reform the national pension system.⁷² The Government’s response has been supportive of these measures and has added the establishment of a mechanism – acceptable to the PVs – to facilitate potential appeals on the labor contract terminations terms.⁷³ Management added that an

⁶⁶ Management’s Second Response, para. 48.

⁶⁷ Management’s Second Response, para. 60.

⁶⁸ Management’s Second Response, para. 61.

⁶⁹ Management’s Second Response, para. 50.

⁷⁰ Management’s Second Response, para. 57. Management stated, in footnote 18 to paragraph 57, that “salary arrears for Gécamines’ departing employees were calculated up to August 31, 2002. However, payments effectively took place between August 2003 and February 2004. This delay was due to: 1) the need for the Government to meet the disbursement conditions of the floating tranche of the ERC (with US\$25 million allocated to the VDP); 2) the necessity to put in place an effective financial management mechanism (to correctly manage payments of US\$43 million in a very weak fiduciary environment); and 3) the necessity to mobilize additional funding to the ERC from the PSDC, which was approved in July 2003.”

⁷¹ Management’s Second Response, Executive Summary para. 11.

⁷² Management’s Second Response, Executive Summary para. 11.

⁷³ Management’s Second Response, para. 52.

additional financial envelope of about US\$30 million is being made available to the Project to allow, in particular, further support to the reform of the national pension system (INSS - the National Social Security Institute “*Institut National de la Sécurité Sociale*”).⁷⁴

63. Subsequently, according to Management, the Government wrote Gécamines on January 20, 2010, indicating that it would like to be informed about the outstanding payments to be made to each of the PVs and about the way Gécamines will settle this debt. The letter also requires Gécamines to provide each agent with a “*work termination certificate*” (*certificat de fin de service*).⁷⁵
64. **Concerning the proposed strategy to tackle public enterprise reforms actions**, Management stated that in October 2009, COPIREP hired a consultant (Core Advice) to help the Government think through the social costs of public enterprise reform.⁷⁶ On December 19, 2009, this consultant met with the Government’s Economic and Reconstruction Commission (ECOREC) on the social dimension of public enterprises reform and highlighted the urgency to tackle this issue. According to Management, as of October 2009, social debts of the six major public enterprises amounted to US\$607 million, and if all public enterprises are included in the calculations, the social cost amounts to over US\$1 billion.⁷⁷
65. Management stated that a proposed strategy was also presented to Ecorec and was to be submitted to the Cabinet. This strategy, according to Management, would aim at building a consensus within the Government and with the social partners, while being fiscally sustainable. This proposed strategy includes:⁷⁸
 - a) **The settlement of social debts** - certification of social debts per enterprise and per employee, schedule for settlement of social debts, partial renunciation with or without compensation, partial settlement through other options (capital participation, pension fund, in kind benefits), partial externalization of the social debts through a defeasance structure, partial buy back by the state of the social debts converted into capital, and progressive payment of INSS contribution arrears to allow for full payment of pensions;
 - b) **Sound management of redundancy programs** - no financing of “waiting indemnities”, preserving health and education benefits after the departure of the employee, consideration of pre-retirement, and support to professional reinsertion;
 - c) **Review of the legal and regulatory framework for human resources management** - adapt the legal framework to the current challenges of public enterprises in DRC, review the legal framework to protect the interests of the

⁷⁴ Management’s Second Response, para. 53.

⁷⁵ Management’s Second Response, para. 52.

⁷⁶ Management’s Second Response, para. 54.

⁷⁷ Management’s Second Response, Executive Summary para. 12.

⁷⁸ Management’s Second Response, para. 55.

employees and the enterprises generating jobs, revise the Labor Code and end fully or partially existing collective bargaining agreements.⁷⁹

66. Management also stated that a short term (January to March 2010) road map was approved during the ECOREC meeting. According to Management, this road map aims to, *inter alia*: i) set up of a task force reporting to the Vice Prime Minister; ii) undertake a technical and a ministerial workshop on the social dimensions of public enterprise reform; and, iii) launch a social debt audit to certify the debt owed to employees and INSS.⁸⁰
67. ***Concerning the lessons learned***, Management states that it has learned important lessons from the retrenchment programs of Gécamines and the three banks, and it has integrated the lessons learned in the design of new operations.⁸¹ Among the key lessons learned is the need for:⁸²
- A national debate and consensus on the ways to address the social costs of public enterprise reform, with a view to reaching a national consensus on the most appropriate, and fiscally sustainable, strategy;
 - Ensuring that high level expertise in labor law and negotiations with social partners is available *both* during the design phase of a project and throughout implementation of a retrenchment program;
 - Supporting a potentially long and difficult negotiation process must be recognized, and lead time for building consensus factored into the process;
 - The existing social security system to be taken into account, and eligibility of departing employees for social security benefits ensured;
 - Supervision teams of projects dealing with retrenchment programs to include a social development specialist to monitor social development outcomes (and thus ensure that baselines and follow-up studies are effectively undertaken).⁸³

E. Eligibility

68. As stated above, in this Report, the Panel must determine whether the Banks Request satisfies the eligibility criteria set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,⁸⁴ and recommend whether the matters alleged in this Request, as well as those related to Gécamines, should be investigated.
69. In its Report submitted to the Board of Executive Directors, the Panel stated its satisfaction that the Gécamines related Requests met all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.

⁷⁹ Management's Second Response, para. 55.

⁸⁰ Management's Second Response, para. 56.

⁸¹ Management's Second Response, para. 57.

⁸² Management's Second Response, Executive Summary para. 13.

⁸³ Management's Second Response, Executive Summary para. 13.

⁸⁴ Conclusions of the Board's Second Review of the Inspection Panel (the "1999 Clarifications"), April 1999.

70. As for the banking sector related Request, the Panel is also satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
71. During the visit conducted from January 19 through January 26, 2010, the Panel team (composed of Panel Members Alf Jerve and Eimi Watanabe, and Panel Senior Operations Officer Serge Selwan), confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The persons who signed the Request live in Project-affected areas, have common interests and common concerns, and reside in the Borrower's territory, as required by item (a) of the said Paragraph 9.
72. The Panel confirms that the Request "*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters,*" as per the requirement of Paragraph 9(b).
73. The Requesters assert that World Bank actions within the context of this Project constitute a violation of the Bank's rules and procedures and that these actions had a significant adverse effect on the Requesters' rights and interests. The Requesters also allege that the World Bank stood "*as guarantor for illegality and has allowed total disregard of the provisions of the law establishing the Labor Code, notwithstanding its own agreement and the basic principles of propriety.*"⁸⁵ They add that the method of calculation for all payments was unilaterally computed by the World Bank-approved consultant to the Government.⁸⁶
74. The Requesters further assert that the Project led to the dismissal of 3,480 employees under conditions that were of concern to them. They considered that the calculation of the amounts of severance pay owed to them and the lack of reinsertion into the workforce were in violation of the Congolese Labor Code. They assert that the Project has infringed upon the provisions of the law establishing the Labor Code, specifically Articles 77, 78, 79, 103, 104, and 110, as well as the provisions of Article 1, Paragraph "n" of Credit Agreement 3815-DRC. They also assert that the World Bank is an "*accomplice*" to this.⁸⁷
75. They assert that this Bank-financed Project has caused: the dislocation of thousands of households; thousands of divorces; and the loss of school education for no fewer than 3,345 children.⁸⁸ They also assert that the Project's consequences include "*the characteristics of material poverty, undernourishment, and substandard human living conditions.*"⁸⁹

⁸⁵ The Banks Request, para. 2.

⁸⁶ The Banks Request, para. 19.

⁸⁷ The Banks Request, para. 20.

⁸⁸ The Banks Request, para. 52.

⁸⁹ The Banks Request, para. 53.

76. The Panel confirmed that the World Bank has been aware of concerns from banking sector retrenched workers about the Project's adverse effects on them. The Panel is therefore satisfied that the Request "*does assert that the subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.*" Hence, the Request meets the requirement of Paragraph 9(c).
77. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
78. As stated above, the Project closing date is December 31, 2012.⁹⁰ As of the date the Request was filed over 19 percent of the Credit and over 86 percent of the Grant were undisbursed. The Request therefore satisfies the requirement in Paragraph 9(e) that the related Credit and Grant have not been closed or substantially disbursed.⁹¹
79. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).
80. In light of the complexity of the present case, and in consideration of the efforts and proposed actions of Bank Management to address key concerns presented, and following the Panel's visits, interactions with Requesters, Government officials, and Management, and Management's latest detailed Response, the Panel includes in this Report a detailed section on the Project's implementation since the receipt of the Requests and observations relating to the main issues raised in the Requests.

F. Project's Progress since Receipt of Requests

81. The Panel notes that the Requests for Inspection, the Management Responses, the Panel's visits to DRC, and interviews with Government officials, Bank staff, Requesters and other affected persons, confirmed that there are sharply differing views on the issues raised by the Requests for Inspection.
82. The Panel also notes that the Requests for Inspection submitted nearly one year ago have triggered or stimulated several actions and proposals to address the concerns of the Requesters. As stated earlier, in its first report the Panel recommended to "*await further developments on the matters raised in the Request for Inspection.*"
83. Subsequent to the submission of its first report (Report and Recommendation), the Panel interacted with Management on several occasions to be briefed on progress of the initial action plan. In view of the centrality of legal arguments in the Requests and the allegation that the retrenchment violated Congolese laws, Management prepared a legal note of the VDP.

⁹⁰ Management Response, para. 28.

⁹¹ According to the Resolution that established the Panel, "*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*" Footnote to Paragraph 14 (c).

84. The Panel further notes that during its last visit to DRC it had seven meetings with different groups of ex-employees from the three banks and from Gécamines. In all these meetings the Panel repeatedly heard, with little difference, the same story of harm and noted the deep sentiments of an injustice suffered by the Requesters. The bitterness and emotion expressed at the last meeting in Kolwezi attended by some two hundred ex-employees of Gécamines, was compelling.
85. What follows is the Panel's account of developments of relevance to the Requests since its earlier Report and Recommendation, dated May 27, 2009. The discussion includes a review of the status at the time of the Panel's second eligibility mission on January 19 through January 26, 2010.
86. **Socioeconomic Survey of the Gécamines' *Partants Volontaires***. As stated above, in its initial action plan, Management proposed to undertake the Survey to have a better understanding of the PVs' current socioeconomic situation including both the extent of economic reinsertion and access to social services and provide a basis for further dialogue with the Government on any specific actions needed. The results of the Survey were first communicated to the Panel by Management in a meeting in November 2009 (see Annex 3). **The Panel cannot present definitive views on the Survey and its results at this stage in its process, but it is worth noting some of the analysis contained in the Survey.**
87. The Survey, concluded in October 2009, was based on a random sample of 800 PVs for whom baseline information was available from 2003. Of these PVs and their households, 547 were located and interviewed. The Survey report acknowledges that the base year of 2003 represented a particularly low point for Gécamines workers following several years with irregular or no payment of wages and benefits. Nevertheless, the 2003 survey depicted the actual pre-project situation.
88. A control group was established for the Survey consisting of households representing the population of urban Katanga at large. While noting the relevance of this comparison, it might have been more relevant to compare the living conditions of PVs today with a control group among current Gécamines workers since the PVs formally had the option of remaining on the payroll of Gécamines.
89. The Survey found that the living standard of PV households by and large had not deteriorated since 2003: *"there is no evidence of tangible socioeconomic decline relative to the baseline (...)." The Survey adds that "on most indicators (with the exception of enrollment ratio) the PV is not worse off – and in some cases better off – than other urban Katangais in their age group (...), that is not the same thing as saying that the PVs do not have to struggle."*⁹²
90. This overall finding pertains to assets, consumption as well as income/employment. The quality of housing and access to running water on average had improved. Food

⁹² Socioeconomic survey, p.8

intake had improved although 59% still reported eating only one meal per day – 75% in 2003. In 2009, 23% reported that they had been eating meat during the previous week, whereas in 2003 the response was 11%. Incomes compared with actual payments received in 2003 had improved but had decreased if compared with contractual salaries. Apparently these figures are more indicative of the gravity of the situation in 2003, than of an improvement in living standard today. In contrast to the findings above, however, access to health and education services for PV-households seems to have deteriorated since 2003. In fact, according to the Survey, 30% of the households report having taken children out of school for economic reasons.

91. According to the Survey, the levels of formal employment had not been regained. The majority of the ex-Gécamines employees had not returned to salaried employment (84%) and mostly engaged in subsistence agriculture. Given the relatively high age of PVs (average age 56 in 2003) a relatively low rate of reinsertion into salaried work would have to be expected.
92. According to the overall findings of the Survey, the PVs have been coping economically after the VDP due to above average education level and asset base of PV-families at the time of the VDP (41% of PV households have a household member who has attained professional or university level education). Key to PV's coping strategy has been the assistance provided by family members. Only 4.5% of PVs stated that they receive a social security payment from INSS.
93. The Survey looked specifically at indicators of vulnerability. It concludes that vulnerability had decreased on most indicators and that vulnerable groups today generally represent only 3% or less of the PVs. At the same time, the Survey (and focus-group discussions) revealed that most PV-households have not been well placed to benefit from the recent economic growth in the region.
94. **Actions related to other retrenchment plans.** The other elements of the action plan presented in Management's First Response reflected the Bank's wider engagement on public enterprise reform: technical assistance to COPIREP on retrenchment plans, assistance to Government to develop a strategy to cope with the social costs of reform of public enterprises (including national level workshops), and a commitment to encourage Government to distil lesson learned from past retrenchment operations and apply these in forthcoming plans.
95. The Panel observes that these actions were still being implemented at the time of the Panel's mission in January 2010. Central to all actions is the hiring of a consultant (Core Advice) working with COPIREP. As stated above, this consultant analyzed and estimated overall costs related to retrenchment of workers in public enterprises and presented the findings at a national workshop. Furthermore, Core Advice assisted in proposing a national strategy to deal with the social costs of these reforms. The consultant has also facilitated negotiations with labor unions on retrenchment plans concerning the national railway company (SNCC "*Société*

Nationale des Chemins de Fer du Congo”) and the national water utility company (Regideso – “*Régie de Distribution d’Eau*”).

96. These actions seem to represent a step towards getting in place retrenchment plans for several key public enterprises. It is not possible at this stage to assess the relevance of these efforts for the Requesters, but the Panel’s meetings in DRC seem to indicate that:
- a) There is a growing consensus about the need to revise the Labor Code to make it more adapted to the economic and social realities of the country before moving ahead with new retrenchment operations.
 - b) Current negotiations with the national railway company and the national water company seem to introduce different standards in the sense that entitlements provided are likely to be better than those offered to the PVs of Gécamines and the employees of the liquidated state banks.
97. **Management’s legal note.** On January 13, 2010, Management provided the Panel a legal note (see Annex 4), which states that:
- The VDP was a legally valid operation, even if certain benefits owed to the participants were not taken into consideration in the negotiations.
 - The VDP was a negotiated process which included salary arrears and other benefits (excluding life insurance for managers or Gécamines’ pension fund). This amounted to 75% of what was due. However it did not include the amounts that were due between the date of calculation of indemnities and the date of effective payment of compensation (this period stretched for over a year).
 - The VDP does not preclude PVs from claiming rights or benefits at a later stage before competent courts.
98. **The advisory team.** As stated above, Management hired a team of three experts to act as an independent advisory team to the Government. The Panel learned that the advisory team visited DRC in December 2009 and prepared a draft report. To the Panel’s knowledge, the advisory team’s report has apparently not been finalized as of the date of submission of this Report and the Panel has not received a copy.
99. **Government proposed actions.** According to Management’s Second Response, following the socioeconomic Survey, Management forwarded a set of proposals to the Government of relevance to the Gécamines Requesters. The Prime Minister responded on January 19, 2010, agreeing to these proposals and confirming the Government’s commitment to pursue them. The Prime Minister’s confirmation included the prospect of establishing a dispute resolution mechanism for ex-Gécamines employees to address any outstanding claims.
100. Also, according to Management, on January 20, 2010, the office of the Prime Minister wrote Gécamines requesting that Gécamines: calculate what is owed (*décomptes finals*) to every PV; inform the Government how it intends to pay the amounts due, if any; and, issue the termination of service certificates.

101. Upon its arrival in DRC on January 19, 2010, the Panel was made aware of these two letters. In meetings with the Requesters, the Panel noted these letters and commitments and solicited the Requesters reactions. The Requesters generally accepted the proposed actions in the letter of January 19, 2010, as a step forward, but unanimously voiced serious doubts about how and how fast these new commitments would be implemented. They all reiterated that their main concern was not reflected, namely their claim for additional severance pay. Several union leaders confirmed their willingness to participate in the dispute resolution mechanism envisaged to address any outstanding claims. The Requesters reminded the Panel that Government institutions already on two specific occasions had issued statements supporting their claims.⁹³
102. On January 28, 2010, two days after the Panel's departure from DRC, two members of Gécamines' senior management responded to the Prime Minister's office acknowledging receipt of the January 20, 2010, letter.⁹⁴ They stated that the VDP was a Government decision and that Gécamines was in no way indebted to former employees who left the company as part of this operation and who freely agreed to its governing conditions. They added that Gécamines did not have a decision-making role in this operation and could not be held accountable. They further added that the determination to participate in the operation was the free choice of each individual ex-employee.
103. The Panel notes that the position of Gécamines' officials seems to suggest that the company does not acknowledge direct responsibility for any additional sums owed to the Requesters for the period between the date of calculation of indemnities and the date of effective payment of compensation (a period which stretched for over a year).

G. Observations on the Main Issues in the Requests

104. As stated above, in its first Report and Recommendation the Panel confirmed the eligibility of the Gécamines-related Requests and Requesters and, in this Report, the Panel confirms the eligibility of the Request and Requesters relating to the three banks. What follows are the Panel's observations pertaining to the main issues raised in these Requests.
105. **Main issues raised in the Gécamines Requests.** The Panel observes that the Requesters' focus is on one key issue: the workers, accepting the VDP, were deprived of legal rights enshrined in Congolese Law. They claim that they were not paid fully what they were legally entitled to in terms of wage arrears, final payouts

⁹³ Letter of the General Labor Inspector, August 13, 2005, to Minister of Labor and Social Welfare, and the Permanent Framework for Social Dialogue (Cadre Permanent du Dialogue Social - CPDS), Recommendation VII, September 4, 2008, published by "www.forumdesas.cd" on September 5, 2008, and by "*Politique*" on September 6, 2008.

⁹⁴ Letter from Gécamines' Director of Human Resources and Chief Managing Director to the office of the Prime Minister, January 28, 2010.

and social benefits. Furthermore, they claim that their acceptance, in writing, of the severance pay offered under the VDP was made under duress and does not relinquish their rights according to the Congolese Labor Code and ILO Convention 158. They consider this primarily as an issue of rights, regardless of whether the VDP resulted in a decline in living standard or not. The Requesters also claim that the so-called ‘reinsertion’ was inadequate, ineffective and poorly managed. This, however, is not their main concern.

106. **Main issues raised in the Banks Request.** This Request is similar to the previous ones in its allegation that the severance pay was not adequate and did not include all what the Requesters are legally entitled to. Furthermore, they allege that this was not a voluntary retrenchment operation, as for Gécamines, since the banks were to be liquidated, and therefore they had to accept the payment under duress. Another issue in this Request that differs from the Gécamines case, is that the Requesters claim that Government and the Bank made promises that a reinsertion program would be offered but that this never materialized.
107. The allegations of harm in the Requests seem to pertain to four issues:
- a) The issue of legality: the claim that VDP violated national legislation resulting in violation of workers’ rights concerning termination of employment.
 - b) The issue of duress: the claim that retrenched workers were not in a position to properly negotiate the severance plan.
 - c) The issue of adequate and timely payment: the claim that retrenched workers did not receive their full indemnity on time.
 - d) The issue of reinsertion: the claim that retrenched workers did not receive adequate support and hence suffered from increased vulnerability.
108. **The issue of legality.** The Gécamines-Requesters allege that there is a difference between all entitlements, as per the Labor Code and the Collective Bargaining Agreement, and the lump sum indemnity amount paid out under VDP. They claim that only one-fifth of their legal entitlement was provided to them. This estimate has been contested and there is disagreement on what legally should have been included in the final calculations of indemnities. The exchange rate between Congolese Franc and US dollar is also an issue. The Requesters’ claims have been supported by the General Labor Inspector in regard to both Gécamines and the three banks. The General Labor Inspector presented a calculation arriving at a significantly higher figure than the final settlements.⁹⁵
109. Another legal question concerns the fact that the VDP was designed to be a negotiated settlement. The issue is whether the VDP in this respect was legally valid. Management, in its legal note, concludes that it was.

⁹⁵ The General Labor Inspector wrote the Minister of Labor and Social Welfare, in March 2004, stating that the total amount owed to the ex-employees of the three banks was US\$60,008,447. And on August 13, 2005, the General Labor Inspector wrote the Minister of Labor and Social Welfare stating that the amount still owed to the ex-employees of Gécamines was US\$196,516,558.

110. The Panel emphasizes that it does not pass any judgment on the application of national legislation. The question of the legality of the VDP under domestic law has to be resolved by competent Congolese institutions. The Panel observed during its last mission that the Requesters generally were not aware of the Panel's role, and were hoping for some sort of "court ruling" which would be binding upon key actors, the World Bank in particular. The Panel, therefore, in every meeting with the Requesters, carefully explained its role in an attempt to forestall further proliferation of unrealistic expectations.
111. The Panel wants to put on record that the ex-Gécamines employees and the ex-employees of the three banks want recognition of their legal rights even if these cannot be met fully in the immediate future. The issue, for them, is not only about money, but also about equity and fairness.
112. **The issue of duress.** The Requesters allege that the negotiations and acceptance of final settlement were conducted under duress. The Panel notes that the ex-Gécamines employees accepted the VDP in a situation of grave economic distress. This is confirmed by the surveys of 2003 and 2009.
113. The Panel also notes that the Gécamines Requesters raised the concern that certain prescribed procedures were not adhered to in the process of terminating employment contracts: the termination contracts were not notarized, and all termination agreements were pre-signed by a labor inspector with no jurisdiction instead of the right labor inspector being present to witness the signing. This, according to the Requesters, did not ensure free and informed agreement on the part of PVs. Additionally, the fact that ex-Gécamines employees were not given a copy of their termination contract, except for a few who explicitly requested it, limited their opportunities to raise a formal complaint later on. Management states that it has no knowledge of ex-Gécamines employees filing cases in courts (except on the issue of housing). The Panel was informed, while in DRC, that some Kinshasa-based Gécamines PVs and one of the Katanga-based Requesters had filed cases in courts regarding the VDP-process.
114. The Panel notes that the Requesters from the three banks claim that negotiations between the Consultant and trade unions were hastily terminated without reaching an agreement. In both the Gécamines and the banking sector operations, preliminary Panel observations indicate that the processes of retrenchment appear to have been conducted in circumstances that may not have allowed for full, informed participation of the Requesters or their representatives, notwithstanding the emphasis in the PAD on the involvement of all stakeholders in the development of the severance packages.
115. **The issue of adequate and timely payment.** All Requesters allege that they have not received their full indemnity, and furthermore complain about delay in payment, and some of them at having to incur substantial travel costs to receive payment.

116. The Panel notes that the retrenchment operation related to ex-employees of the three state-owned banks differed from that relating to the Gécamines ex-employees in that it was not based on a voluntary departure concept. The ex-employees of the banks claim that the decision to reduce the workforce of these banks was unilaterally taken and they considered the severance pay as a part payment of their full entitlement. The Panel notes that the Government and the Central Bank differed on whether any additional amounts should be paid from the liquidation of the three banks' assets or from the national budget.
117. It is understandable that, in retrenchment operations of this scale, the pay-out process takes time. According to the Requesters from the three banks, they received their last installment of payments in 2009. As for the Gécamines, the VDP compensation amounts were calculated on the basis of a defined cut-off date (August 31, 2002). The date when Gécamines ex-employees actually signed the "*Convention for terminating the work contract by mutual consent*" was several months later, and actual payment was further delayed. These time lags invariably raise the question of the rights of retrenched workers in this interim period. The Panel understands that this issue was not factored in the design and in the severance pay agreements.
118. The Panel observes that, according to the legal note referred to above, the negotiations for the VDP did not include any amounts to cover the period between the date of calculation of indemnities and the date of effective payment of compensation (this period stretched for over a year). Furthermore, it is the Panel's understanding that the PVs received no financial compensation for this period. Gécamines, however, in its latest correspondence with the Government of DRC, seems not to address this fact. The Panel heard concerns that over the years there may have been a tendency to transfer responsibility among different parties in addressing these issues, leaving key issues unaddressed.
119. The above concerns relating to the issue of adequate and timely payment give rise to serious questions about the quality of the Bank's supervision efforts to detect weaknesses and propose solutions in a timely manner. In addition, the Requesters claimed that since they were not issued a formal letter of termination of service when agreeing to the principles of the VDP, they remained on the payroll of the company until the final payments. The Requesters informed the Panel during its visit that such a letter is needed to receive pension from INSS.
120. **The issue of reinsertion.** There are two kinds of allegations related to the issue of reinsertion. First, more broadly, Requesters claim that the retrenchment operations caused a decline in living standard and resulted in increased vulnerability – or in other words that economic reinsertion failed. Although the Panel cannot make definitive judgments on this matter at this stage, it notes the serious concerns raised in the three Requests, which convey a sense of relative deprivation and impoverishment over time.

121. Second, more specifically, the Requesters claim that the additional support for reinsertion activities, over and above the indemnity, was not delivered as promised. Gécamines Requesters claim that it was not tailored to their needs, poorly implemented, delayed, and mismanaged. Management acknowledges that the reinsertion program was not successful. It had a rather low rate of participation among PVs, and the bulk of expenditures represented institutional costs and advisory services (close to 90%) with only 10% being transfers of assets or financial assistance directly to the PVs.
122. The Panel notes that the socioeconomic Survey looked into the aspect of reinsertion: *“data shows that there is no correlation between having received reinsertion assistance and the wealth index (...) This suggests that reinsertion is indeed very difficult and that reflection is needed both on the objectives and the approaches to reinsertion for this type of a demographic group in this context.”*
123. As indicated in Management’s First Response, the reinsertion program for the PVs suffered from a series of weaknesses related to both design and implementation. The program relied heavily on promoting entrepreneurship. In retrospect, it turned out to be unrealistic to expect the PVs, most of whom were over 55 years of age and with over 25 years of working for a single, paternalistic enterprise, to successfully develop new income generating ventures. The Panel also notes that the consultant, who had designed the reinsertion, had estimated that 25% of PVs would likely not be reinserted economically, yet no special measures were designed for them.
124. Concerning the reinsertion of ex-employees of the three banks, the Panel notes that the lack of decisiveness on whether to have such a program or not, has created confusion in the minds of the ex-employees. The Requesters claim that they were not informed of the decision to not prepare such a program.
125. Finally, the Panel observes for the record that two particular grievances were brought to its attention during its last visit to DRC. According to the Requesters, the promise of free schooling and medical services for two years following the implementation of the VDP turned out to be for less time and often difficult to access. Furthermore, the gradual reduction in Gécamines’ investment in such services may have resulted in a decline in their quality. In addition, the expatriate-PVs (i.e. non-Congolese citizens mostly from neighboring countries) claim to face particular difficulties in terms of housing rights and work permit. The problem has been further compounded by the fact that they had not received any support for relocation to their place of origin. These issues may also raise questions about the adequacy of the Bank’s supervision of the Project.

H. Recommendation

126. As stated above, all Requesters and Requests meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.

127. In addition to issues of alleged non-compliance with Bank Operational Policies and Procedures, the Requesters' claims refer to the above four issues pertaining to the alleged harm suffered by them. The Requests and Management Responses contain conflicting assertions and interpretations about these issues, the facts, and compliance with Bank policies and procedures. In order to ascertain compliance or lack thereof with Bank policies and procedures in relation to these issues the Panel would need to conduct an appropriate review of all relevant facts and applicable policies and procedures.
128. The 1999 Clarifications provide that "*when Management responds, admitting serious failures that are attributable exclusively or partly to the Bank, it will provide evidence that it has complied or intends to comply with the relevant operating policies and procedures. This response will contain only those actions that the Bank has implemented or can implement by itself.*"⁹⁶
129. Management's Second Response is very constructive in the sense that it contains an action plan, a strategy to support the Government of DRC in its reform of public enterprises, and lessons learned in the context of this Project. The action plan and the strategy have direct implications for the Requesters, as they contain elements (a conflict resolution mechanism, a certification of the social debt per enterprise and per employee, and reform of the national pension scheme) that seem to be aimed at resolving the issues raised by the Requesters.
130. However, the proposed actions will take additional time to be fully operational. This would require the Panel to wait until some progress is seen, in order to issue an opinion on the effectiveness of such measures to address the issues of compliance and harm raised in the Requests for Inspection. In this regard, Bank Management has indicated to the Panel its commitment to report back to the Board of Executive Directors on progress on the implementation of the action plan and strategy by February of 2011.
131. In light of the foregoing and taking into account paragraph 5 of the 1999 Clarifications,⁹⁷ following the issuance of the above-noted Management progress report, the Panel will report back to the Board on whether the Bank's compliance or evidence of intention to comply is adequate and is supported by the facts on the ground and make at that time a recommendation on whether an investigation of the claims alleged in the Requests for Inspection is warranted. If the Board of Executive Directors concurs with this recommendation the Panel will advise the Requesters and Management accordingly.

⁹⁶ The 1999 Clarifications, para. 4.

⁹⁷ The 1999 Clarifications, para. 5, provides that "*the Inspection Panel will satisfy itself as to whether the Bank's compliance or evidence of intention to comply is adequate, and reflect this assessment in its reporting to the Board.*"