

**Report No. 63288-ZR**

**The Inspection Panel** 

**Third and Final Report and  
Recommendation**

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

**August 25, 2011**

**The Inspection Panel**  
**Third and Final Report and Recommendation**  
**On**  
**Requests for Inspection**

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

**A. The Requests**

1. On February 27, 2009, the Inspection Panel (hereinafter the “Panel”) received a Request for Inspection (the “First Gécamines Request”) related to the Bank-financed Democratic Republic of Congo (DRC): Private Sector Development and Competitiveness Project (hereinafter the “Project”).<sup>1</sup> On March 13, 2009, the Inspection Panel received a second Request for Inspection (the “Second Gécamines Request”) related to the same above-referenced Project.<sup>2</sup> The main issue raised in both Requests is that former employees of the state mining company “Générale des Carrières et des Mines” (or Gécamines) who accepted to join a Voluntary Departure Program (VDP), financed by the Project, were not paid fully what they were legally entitled to in terms of wage arrears, final payouts and social benefits. The Requesters also claim that their decision to enroll in the VDP had been made under duress. Finally, they complain that the so-called “reinsertion program” to assist the retrenched workers (generally referred to as “*partants volontaires*” or PVs) was inadequate, ineffective and poorly managed. The purpose of this program was to help PVs and their families establish new sources of income, and to manage without social services and other in-kind benefits that had been provided by Gécamines.
2. On December 15, 2009, the Inspection Panel received a third Request for Inspection related to the retrenchment operation financed by the same Project. The Request concerned the Project’s impact on former employees of three state-owned banks (the “Three Banks Request”).<sup>3</sup> This Request is similar to the previous ones in its allegation

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<sup>1</sup> 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 mining enterprise “Générale des Carrières et des Mines” (hereinafter “Gécamines”), “*and as victims of the Voluntary Departures Operation initiated by the Congolese Government with the financial support of the World Bank.*” Requests, Responses, Panel Reports and all related documents, are available at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22512113~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html>

<sup>2</sup> Mr. Bidimu Kamunga, resident of Likasi, submitted the Request acting as President of the “Collectif des Ex-agents Gécamines ODV” (the Collective of former Gécamines employees participating in the Voluntary Departures Operation – also referred to as Voluntary Departure Program “VDP”). The Request included 14 signatures of other members of the collective.

<sup>3</sup> Mr. Freddy Kituba Kimbwel and Mr. Timothée Lobe Bangudu, both residents of Kinshasa-Gombe, Kinshasa, DRC, 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

that the severance pay was not adequate and did not include all that the Requesters were legally entitled to. According to the Requesters, since the three banks were to be liquidated, this was not a voluntary retrenchment operation and they had to accept the payment under duress.

## **B. The Project**

3. The Project has been financed through a Credit from the International Development Association (IDA) and a separate IDA Grant. The objective of the Project, according to the Project Appraisal Document (PAD), is to “*increase the competitiveness of the economy (...) 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.*”<sup>4</sup>
4. 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.*”
5. The IDA Credit Agreement was signed on August 16, 2004, with the Democratic Republic of Congo (DRC) providing a Credit for SDR 87,100,000,<sup>5</sup> or approximately US\$ 129 million. On May 26, 2008, the Bank and DRC entered into a Financing Agreement providing for a Grant of US\$ 56 million. The closing date for the Grant is December 31, 2012, while the original closing date for the Credit was March 31, 2010. The Credit’s closing date has since been extended to December 31, 2012, to coincide with the closing date of the Grant and to provide additional financing.<sup>6</sup>

## **C. Chronology**

6. The Panel registered the First Gécamines Request and the Second Gécamines Request, on March 12, 2009, and March 19, 2009, respectively, and notified the Executive Directors and the President of the International Development Association

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“Banque Congolaise du Commerce Exterieur” (BCCE) and the “Nouvelle Banque de Kinshasa” (NBK) (hereinafter collectively referred to as the “Three Banks”).

<sup>4</sup> Project Appraisal Document (PAD), Private Sector Development and Competitiveness Project, July 2, 2003. The Requests for Inspection relate to the Project’s Component 2, which 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 Gécamines, finance severance packages for the workers of the Office Congolais des Postes et Télécommunications and the three liquidated banks [BCA, NBK and BCCE].*” See PAD p. 10. The PAD, p. 21, identifies retrenchment of employees as a key social outcome of the project and points out that the Government’s retrenchment policy would provide severance packages to workers made redundant. It emphasizes that the amount of the severance package would “*be determined by the Government during project implementation and [would] reflect the nature of the company under restructuring (...).*”

<sup>5</sup> Agreement providing for the Amendment and Restatement of the Development Credit Agreement, Private Sector Competitiveness Project, August 16, 2004.

<sup>6</sup> Management’s First Response, para. 28.

(IDA) in accordance with the Resolution establishing the Inspection Panel (the “Resolution”).<sup>7</sup> 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 add this “*petition*” to the procedure initiated by the other two Requests, which the Panel did. Management submitted its Response to both Gécamines Requests on April 27, 2009 (hereinafter referred to as the “First Management Response”).

7. On May 27, 2009, the Panel issued its initial Report and Recommendation (hereinafter “Initial Report and Recommendation”). In the conclusion of that Report, the Panel, for reasons stated below, recommended that the Board approve the Panel’s proposal to refrain from issuing a recommendation at that time on whether an investigation was warranted.<sup>8</sup> The Board approved this recommendation.
8. The Panel registered the Three Banks Request on January 7, 2010. On March 9, 2010, Management submitted its Response (hereinafter referred to as the “Second Management Response”), which included a report on the progress in the implementation of actions listed in the First Management Response as described below.<sup>9</sup>
9. On April 5, 2010, the Panel issued its Second Report and Recommendation (hereinafter “Second Report and Recommendation”) in relation to all three Requests for Inspection. The Panel, for reasons stated below, recommended that, following the issuance of a Management progress report, the Panel would report back to the Board on whether an investigation of the claims alleged in the Requests for Inspection was warranted.<sup>10</sup> On May 5, 2011, Management submitted this progress report (hereinafter “Management Second Progress Report”).<sup>11</sup>

#### **D. Purpose of the Report**

10. The purpose of this Report, the Panel’s Third and Final Report and Recommendation, is to convey the Panel’s determination on whether Management’s progress on the implementation of the Action Plan constitutes adequate “*compliance or evidence of intention to comply*” and “*is supported by facts on the ground,*” and whether an investigation is warranted into the allegations concerning the Project.<sup>12</sup> The Requesters and their claims have already been determined eligible in the previous two

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<sup>7</sup> IDA Resolution 93 – 6, Resolution Establishing the Inspection Panel (September 22, 1993).

<sup>8</sup> Inspection Panel Initial Report and Recommendation, para. 70.

<sup>9</sup> The Second 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. See Inspection Panel, Second Report and Recommendation, para. 5.

<sup>10</sup> Inspection Panel Second Report and Recommendation, para 131.

<sup>11</sup> Management considered that the section entitled “Update on Gécamines Action Plan”, which was part of the First Response, was *in lieu* of its first progress report.

<sup>12</sup> Inspection Panel Second Report and Recommendation, para 131

Panel reports, as per the 1993 Resolution and Paragraph 9 of the 1999 Clarifications guiding the Panel's operations.

## **E. Summary of Previous Panel and Management Reports**

### **(1) First Management Response - Panel Initial Report and Recommendation**

11. The principal conclusion of the First Management Response was that Management believed the Bank had made every effort to apply its policies and procedures and to pursue its mission statement in the context of the Project. Management added that the Bank has followed the guidelines, policies and procedures applicable to the matters raised by the Requests and that, as a result, *“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.”*<sup>13</sup>
12. In addition, Management proposed undertaking a survey (“Survey”) of former Gécamines workers participating in the VDP. The purpose was to increase understanding of the PVs’ current situation and identify any progress in income restoration and reinsertion in the local economy. 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.”*<sup>14</sup>
13. Between May 3 and May 9, 2009, a team from the Panel visited DRC. In its meetings with the two separate groups of Requesters on May 7, 2009, in Likasi, the Panel shared Management’s proposal to undertake the Survey. The Panel also informed the Requesters of the possibility of deferring the Panel’s determination on whether an investigation was warranted, until the Survey was finalized and follow-up actions were determined. Both groups of Requesters stated their preference for this option.
14. In its Initial Report and Recommendation to the Board on May 27, 2009, the Panel determined that the Gécamines Requesters and respective Requests met the eligibility criteria set forth in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications. Furthermore, the Panel observed that the Requests, Management’s Response, the Panel’s visit 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. The Panel noted key areas of disagreement: first, on whether the terms and conditions of the VDP violated Congolese law at the time, and second, on the extent of impoverishment among ex-Gécamines workers and its causes. The Panel determined that the Requests and Management Response contained conflicting assertions and interpretations concerning the issues, the facts, and compliance with Bank policies and procedures. However, the Panel further determined that 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, since Management had stated its willingness to undertake the Survey

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<sup>13</sup> Management’s First Response, para. 83.

<sup>14</sup> Management’s First Response, para. 82.

and the Requesters had stated their willingness to see whether this Survey would lead to an effective resolution of their concerns.

15. The Panel, therefore, recommended that the Board approve the Panel's proposal to refrain from issuing a recommendation at that time on whether an investigation was warranted and await further developments on the matters raised in the Request for Inspection. The Panel expected to be able to make a determination within six months as to whether to recommend an investigation. On June 11, 2009, the Board approved the Panel's recommendation on a no-objection basis.

**(2) Second Management Response - Panel Second Report and Recommendation**

16. The Second Management Response (dated March 9, 2010) included: i) a response to the Three Banks Request and proposed actions to address the concerns of the Requesters; ii) an update on progress relating to actions taken concerning the PVs and further actions to be taken;<sup>15</sup> iii) information on the social costs of public enterprise reform in DRC; and, iv) lessons learned.
17. Specifically, Management proposed an action plan addressing the concerns in the Three Banks Request. This action plan included: 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 - *L'Institut National de la Sécurité Sociale*); 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.<sup>16</sup>
18. Also, following the Survey conducted on the PVs, Management proposed additional measures to the Government. These additional measures included assistance to the PVs to get access to health, education, and national pension benefits, and assistance to the Government in elaborating a strategy to address the social dimensions of the ongoing public enterprise reform and the provision of technical assistance to reform the national pension system.<sup>17</sup> The Government's response was supportive of these measures and added the establishment of a mechanism – acceptable to the PVs – to facilitate potential appeals on the labor contract terminations terms.<sup>18</sup>
19. Management stated that a proposed strategy containing action items was submitted to the Cabinet to tackle public enterprise reforms. This strategy, according to Management, included: i) the settlement of social debts; ii) the sound management of redundancy programs; and, iii) the review of the legal and regulatory framework for human resources management.<sup>19</sup> Management also stated that a Government

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<sup>15</sup> Management considered that this section entitled "Update on Gécamines Action Plan" was *in lieu* of its first progress report.

<sup>16</sup> Management's Second Response, para. 60.

<sup>17</sup> Management's Second Response, Executive Summary para. 11.

<sup>18</sup> Management's Second Response, para. 52.

<sup>19</sup> Management's Second Response, para. 55.

approved short term (January to March 2010) road map would, *inter alia*: i) set up 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.<sup>20</sup>

20. Additionally, Management stated that it had learned important lessons from the retrenchment programs of Gécamines and the Three Banks, and had integrated these lessons in the design of new operations.<sup>21</sup>
21. Management concluded, as in the First Response, that it believed that the Bank made every effort to apply its policies and procedures and to pursue its mission statement in the Project, given the very specific context of DRC at the time. Management added that the Bank had followed the guidelines, policies and procedures applicable to the matters raised by the Request.<sup>22</sup>
22. From January 19 through January 26, 2010, a team from the Panel again visited DRC. The purpose of that visit was to determine the eligibility of the Three Banks Request 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.
23. As stated earlier, on April 5, 2010, the Panel issued its Second Report and Recommendation. The Panel determined in that Report that the Three Banks Request met the eligibility criteria set forth in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications. The Panel further determined, as in its Initial Report and Recommendation, 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.*”<sup>23</sup>
24. The Panel’s Second Report and Recommendation included as annexes, in addition to the Three Banks Request and the Management Second Response, the Socioeconomic Survey<sup>24</sup> and a legal note Management prepared in view of the centrality of arguments and allegations in the Requests that the retrenchment violated Congolese laws.<sup>25</sup>
25. The Panel’s Report noted, in substance, that the three Requests raise similar concerns pertaining to four issues: legality (i.e. that VDP violated national legislation resulting

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<sup>20</sup> Management’s Second Response, para. 56.

<sup>21</sup> Management’s Second Response, Executive Summary para. 13.

<sup>22</sup> Management’s Second Response, para. 61.

<sup>23</sup> See Inspection Panel Initial Report and Recommendation, para. 67, and Inspection Panel Second Report and Recommendation para. 81.

<sup>24</sup> Socio-Economic Evaluation, Gécamines “Partants Volontaires”, November 17, 2009. See <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PSDCPSocioEconomicODV.pdf>

<sup>25</sup> *Résumé de la Note Juridique préparée par l’équipe de la Banque mondiale Décembre 2009*. See <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PSDCPLegalNote.pdf>

in a violation of workers' rights concerning termination of employment), duress (i.e. that retrenched workers were not in a position to properly negotiate the severance plan, adequate and timely payment (i.e. that retrenched workers did not receive their full indemnity on time), and reinsertion (i.e. that retrenched workers did not receive adequate support and hence suffered from increased vulnerability).<sup>26</sup>

26. The Panel's Report noted one more issue that was of particular interest to the Gécamines' Requesters. According to them, the duration of the provision of free schooling and medical services, following the implementation of the VDP, was less than the promised two years. They added that they often had difficulty accessing schooling and medical services and that the gradual reduction in Gécamines' investment in such services may have resulted in a decline in their quality.
27. Based on its analysis of the Second Management Response,<sup>27</sup> the three Requests for Inspection, Paragraphs 4 and 5 of the 1999 Clarifications,<sup>28</sup> and Management's commitment to the Board to report back on progress in the implementation of the Action Plan by February 2011, the Panel recommended to the Board that, following the issuance of the above-noted Management progress report, the Panel would report back to the Board on whether the Bank's compliance or evidence of intention to comply was adequate and was supported by the facts on the ground, and would make at that time a recommendation on whether an investigation of the claims alleged in the Requests for Inspection was warranted. On April 19, 2010, the Board approved the Panel's recommendation.

## **F. Second Management Progress Report**

28. On May 5, 2011, Management submitted the Second Progress Report.<sup>29</sup> In this Report, Management noted that the Management Action Plan (MAP) approved by the Board included actions to: i) address the critical issues raised by the Requesters in

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<sup>26</sup> Inspection Panel Second Report and Recommendation para. 107. In addition to the four issues listed above, the Panel observed that the expatriate-PVs (i.e. non-Congolese citizens mostly from neighboring countries) claimed to face particular difficulties in terms of housing rights and work permits. The problem was further compounded by the fact that they had not received any support for relocation to their place of origin. See Panel Second Report and Recommendation para. 125.

<sup>27</sup> The Panel noted that the Second Management Response was very constructive in the sense that it contained an action plan and a strategy to support the Government of DRC in its reform of public enterprises, which 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 are aimed at resolving the issues raised. See Panel Second Report and Recommendation para. 129.

<sup>28</sup> The 1999 Clarifications, para. 4, provides 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.*" 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.*"

<sup>29</sup> Management's first progress report was provided to the Panel as part of the Second Management Response ("Update on Gécamines Action Plan").



their three Requests; and, ii) further improve the quality of the overall Bank's portfolio in DRC in connection with social and other aspects of public sector reform, including State-Owned Enterprises (SOEs) and public administration. Management included some next steps to be taken in the implementation of the MAP, which are listed as follows:<sup>30</sup>

- Action plan for the Gécamines PVs;
- Action plan for the ex-employees of the three liquidated banks;<sup>31</sup>
- Applying lessons learned to forthcoming retrenchment and other social plans to be applied to SOEs or civil service and public administration; and,
- Support to the Government to develop a comprehensive strategy to settle social debts of SOEs.<sup>32</sup>

29. Management added that after the adoption of the action plan proposed in the First Management Response and further enhanced in the Second Response, a Bank team engaged with different Government agencies and entities at all levels, State-owned enterprises (including Gécamines), affected persons and groups, civil society organizations and labor unions' representatives *"to discuss the best ways and means to address the various challenges posed by the implementation of the Management Action Plan to correct past actions and help Government agencies and entities to better deal with retrenchment plans, retirement plans and other social plans involved in SOE reform and restructuring in a fragile and unstable socioeconomic environment."* Management added that *"regular field missions and activities including fact findings, surveys, policy dialogue sessions and workshops were conducted, which produced tangible outcomes and benefits."*<sup>33</sup>

30. Management further added that the implementation of the action plan provided an opportunity to pursue dialogue with Government officials at the highest level to ensure that they are exploring ways to *"address VDPs' requests, including financial claims in accordance with DRC's policy and legal framework."*<sup>34</sup>

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<sup>30</sup> Management stated that the action plan is now being fully integrated within the Project, and all its funding has been accommodated through Project restructuring (displacement of other components of the project and reallocation of approximately \$12-14 million). See Management Second Progress Report, Executive Summary, para. 9.

<sup>31</sup> Management includes in these actions, some that relate to the OCPT (the Congolese Post and Telecom Office - *Office Congolais des Postes et Télécommunications*). Although Management states in the Progress Report that *"though the VDPs of OCPT did not file a formal Request to the Inspection Panel, the Bank took note of their grievances being similar to those of the Gécamines VDPs and included them in the MAP as a pre-emptive measure to involve them in the dialogue and problem-solving."* However, the Panel cannot consider matters related to Requests for Inspection that neither have been submitted to the Inspection Panel, nor is the Panel aware of their existence.

<sup>32</sup> Management Second Progress Report, Executive Summary, para. 4.

<sup>33</sup> Management Second Progress Report, Executive Summary, para. 5.

<sup>34</sup> Management stated that *"this dialogue is yielding some positive results, as illustrated by the release of a Prime Minister's instruction to competent ministers and agencies requesting them to take actions to address all of VDP's requests"* (Prime Minister's Letter dated April 4, 2011, under reference CAB/VPM/MIN/PTT/BGS/SF/sm/449/2011). See Management Second Progress Report, Executive Summary, para. 8.

31. **Action plan for the Gécamines PVs.** Management initially proposed, based on the results of the Socioeconomic Survey and in agreement with the Government, a short term action plan to provide: a) free access for eligible PVs' children of school age to the Gécamines school system, for a period of two years (i.e. until the closure of the Project in December 2012), and b) free access for eligible PVs' family members to the Gécamines health care system (also for two years), limited to consultations with medical staff excluding the cost of medicines or further treatment, and c) restored access to the national pension system (INSS) upon re-creation of their work histories and calculation of pension contributions owed to INSS, for which financing would be provided through collaboration with the government.<sup>35</sup>
32. On access to Gécamines' school and health systems, Management stated that two "Protocoles d'accord" (Accord) were negotiated between Gécamines and COPIREP, laying out modalities for the payment of stipends ("*motivation payments*") to Gécamines education and health service providers. It also added that the reason for the motivation payments to Gécamines teachers and health care providers was so they would allow PVs' children into their classrooms, and PVs and their families into Gécamines health centers.<sup>36</sup> Management stated that a survey was conducted to confirm the numbers eligible for the two services and those currently benefitting. This survey together with Management's supervision revealed several limitations of the existing plan.<sup>37</sup>
33. In February 2011, according to Management, a supervision team assessed the limited impact of the current approach to education and health services, and proposed several major adjustments, including the enhancement of the action plan benefits, inclusiveness,<sup>38</sup> effectiveness and sustainability.<sup>39</sup>
34. According to Management, the new scheme for education services would pay tuition fees for PV children without requiring them to change from the schools of current enrollment. The costs of this program are now being evaluated, using an updated census of school-age children by age category and level of education. This new scheme would provide benefits to a much larger portion of eligible PV children. The

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<sup>35</sup> Management Second Progress Report, p. 10, para. 10.

<sup>36</sup> Management Second Progress Report, p. 11, para. 12.

<sup>37</sup> Management Second Progress Report, pp. 11-12, paras. 14, 15, and 17, and fn 10.

<sup>38</sup> Management points out that "*a basic census was carried out in the fall of 2010 under the auspices of COPIREP, organized by the consultant Jacques Bajika, based on the 2004 findings of survey carried out by the NGO "URK". This census found that 34% (3647), 32% (3384), and 31% (3319) of the PVs were living in the South, Center and West regions of Katanga, respectively. 3 % (291) were found to be living in Kinshasa-Matadi. Of the 34% living in the southern region, about 52% were in Lumbumbashi, and 47 in Kipushi. Further breakdowns of the geographical distribution of the PVs are available (See October 2010 report by Jacques Bajika). The study also found that the annual death rate for PVs is about 2.3%.*" See Management Second Progress Report, p. 11, fn. 9.

<sup>39</sup> Management Second Progress Report, Executive Summary, para. 6. Management added that the new approach would not only deliver greater benefits to a larger population in a more cost-effective way, but it would also deepen reforms by accenting stakeholder empowerment and incentives for self-reliance to realize their social security outside the confines of a financially distressed, capacity-constrained mining enterprise.

current Accord with Gécamines would be honored for the existing school year but, would be revised before the commencement of registration to cover the 2011-12 school year (June).<sup>40</sup>

35. Also, according to Management, the new scheme for health care would be based on outsourcing of the services to an established medical care network providing both consultation and treatment (including a basic package of medicines) nationwide.<sup>41</sup> This approach would give the advantage of access to a national network of primary and secondary care centers accessible to all PVs no matter where they are located. An additional advantage of this approach is that the PVs would be able to take part in management, monitoring and evaluation of their services through representation on the Health Committees (*Comité de Santé*) that exist for each health care center in the country and are staffed by elected citizens from the user populations.<sup>42</sup>
36. Management added that outsourcing the health (and eventually education) services to a non-Gécamines network would address short term needs of the PV population through provision of benefits that are more favorable (including drugs and medical treatment), inclusive and accessible (reaching PVs throughout DRC), and better targeted and demand driven (not dictated by supply constraints of Gécamines intermediaries). Management added that it would also pave the way for solutions that would be sustainable beyond the life of the Project, through the creation of a Mutual (insurance scheme) that is custom-designed for the needs of the PV population. Furthermore, the flexibility embedded in this approach was broad enough to allow for continued utilization of Gécamines' networks, where desired and agreed among the stakeholders.<sup>43</sup>
37. On PVs' access to the national pension system (INSS), Management stated that the Government had engaged a consultant to calculate the pension contribution arrears owed to INSS, for each individual PV of Gécamines. Subsequently, COPIREP would ensure the availability of legal counsel to the PVs to understand and pursue their legal rights to pension, and to assist with the negotiations between Gécamines and INSS. Upon completion of the calculations of the outstanding dues to INSS, the Bank and Government would agree on a scheme to ensure INSS is retroactively reimbursed in order to enable the servicing of pensions to eligible PVs, including any arrears.
38. Management noted that, in line with the "best practice" techniques now being applied by the Bank to all labor retrenchment or retirement programs in DRC, the Bank would require that all calculations and legal outputs be certified by independent

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<sup>40</sup> Management Second Progress Report, p. 16, para. 24.

<sup>41</sup> According to Management, the savings on consultation cost within the Gécamines facilities (about \$2 per PV) were outweighed by costs of transport to the facility, PVs residing outside of Katanga province could not benefit from Gécamines facilities, and the lack of provision of medicine and follow-up treatment acted as a deterrent to seeking care within Gécamines. See Management Second Progress Report, p. 15, para. 22.

<sup>42</sup> Management Second Progress Report, pp. 16-17, para. 25.

<sup>43</sup> According to Management, such Mutuals already exist in DRC, based on solidarity of members to co-finance (at minimal cost) their participation (i.e. whether sick or not, the members pay a monthly fee, largely subsidized by the membership). See Management Second Progress Report, p. 18, para. 28(b) (c).

auditors, and that legal opinions be issued by the Minister of Justice and the Labor Inspectorate, before any payments were approved from the PSDCP. This is in line with lessons learned from prior experiences.<sup>44</sup>

39. **Action plan for the ex-employees of the three liquidated banks.** Management stated that planned actions consist of: i) connecting them to the national pension system (INSS) as for the Gécamines PVs; and ii) explaining the discrepancies between the amounts arrived at by the independent consultant (at the time of liquidation of the banks) and those of the Labor Inspectorate, and discussing them with all the stakeholders to achieve a common understanding and agreement on the implications.<sup>45</sup>
40. According to Management, this work is predicated upon recreating the work history for all ex-employees of the banks. This task is severely challenging since most records have largely been destroyed or lost over the years. Management notes that workers were severed from employment as a result of owner-led liquidation, and not through an incentive-based retirement or retrenchment scheme. Therefore, they are subject to laws on bankruptcy and liquidation in addition to labor laws and labor agreements; this is further complicated by the involvement of multiple institutions coordinating the work from different angles. New databases of the ex-workers from the liquidated banks would be compiled by building upon whatever personnel records can be located and/or recreated from the bank liquidation exercise (which took place after years of inactivity by the banks), in order to produce fresh archives on each of the former workers with work history and payroll records.<sup>46</sup>
41. Subsequently, it would be necessary to calculate the value of social contributions due to INSS on an individual basis, as is now underway for the PVs. Then, after the arrears due to INSS have been assessed, it would be necessary for the Government (along with the Central Bank) to pay back the contributions to INSS so the latter can start paying the former workers of these enterprises.<sup>47</sup>
42. Management stated that, while supporting the reform of INSS, the Management Action Plan would also provide technical assistance to Requesters to allow them to access INSS. Management added that by the end of September, 2011, it would have information relating to the bank employees in order to allow COPIREP to start with

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<sup>44</sup> Management pointed out that in order to properly accompany the process allowing former employees access to INSS, it is critical to: i) assist directly the PVs to negotiate their pension payment with INSS; ii) identify the individuals concerned; iii) for each individual, check for the presence or lack of INSS social security number; iv) identify individuals who fall within the legal retirement age within various groups of retrenched workers; vi) identify the amounts contributed to the pension fund by both employer and employee; vii) assess the amount the individual may be entitled to; viii) assess how ex-employees may have access to their retirement money; and viii) hold meetings with INSS to expose and discuss the results of the process. See Management Second Progress Report, pp. 18-19, paras. 29-33.

<sup>45</sup> Management Second Progress Report, p. 20, para. 34.

<sup>46</sup> Management Second Progress Report, p. 20, para. 35.

<sup>47</sup> Management Second Progress Report, p. 21, para. 37.

an existing database of ex-bank employees and proceed with individual consultations.<sup>48</sup>

43. **Applying lessons learned to forthcoming retrenchment and other social plans to be applied to SOEs or civil service and public administration.** Management stated that it had provided assistance to COPIREP on developing and implementing good practices on retrenchment plans through additional technical assistance on labor policy, public sector restructuring and the development of a comprehensive program to monitor social dimension of SOEs. Management stated that the cornerstone of this learning was a national workshop on the social dimension of SOEs reform, which was organized and attended by high level decision makers on February 2, 2010. The workshop made recommendations to ensure sound implementation of retrenchment plans and/or social plans of SOEs which may cost at least US\$ 1 billion. Management added that on the basis of outcomes of this workshop, the Government confirmed its resolve to take leadership of future retrenchment and social reform programs at SOEs, with continued assistance from the Bank.<sup>49</sup>
44. Management stated that the lessons learned from past retrenchment plans were used in the design and implementation of the restructuring of SNCC and REGIDESO,<sup>50</sup> including individualized payment calculations duly audited and certified, approved by labor unions, endorsed by the Labor Inspectorate and officially mandated by the government through formal legal opinions. Management added that the SNCC and REGIDESO plans involve payments of salary arrears (by the Government) and arrears to INSS (by Bank-supported projects). This assistance to INSS is part of the support provided to the Government to settle social debts of SOEs.<sup>51</sup>
45. **Support to the Government to develop a comprehensive strategy to settle social debts of SOEs,** Management stated that the Bank is engaged in a dialogue with the Government to understand how best to assist in dealing with the social concerns of reforming public enterprises.<sup>52</sup> A workshop held by COPIREP on February 2, 2010, identified issues to be addressed during the reform process.<sup>53</sup>

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<sup>48</sup> Management Second Progress Report, p. 23, para. 43.

<sup>49</sup> Management Second Progress Report, pp. 21-22, paras. 38-39.

<sup>50</sup> The REGIDESO (*Régie de Production et Distribution d'Eau*) is the National Water Supply Authority and the SNCC (*Société Nationale des Chemins de Fer du Congo*) is the National Railways Company of Congo.

<sup>51</sup> Management Second Progress Report, p. 22, para. 40.

<sup>52</sup> Management Second Progress Report, p. 22, para. 41.

<sup>53</sup> Management added that, in order to ensure a smooth implementation of State-Owned-Enterprise (SOE) reforms, the workshop made the following recommendations: (i) Adopt a clear legal framework to deal with rights and obligations of the SOEs, workers and Government; (ii) Develop better knowledge and management of retrenchment programs to avoid massive departure of needed workers and loss of institutional knowledge; (iii) Avoid massive workers departure and planning to avoid unbearable social liabilities and gradual replacement of qualified staff; (iv) Assess the effects of decreasing payroll expenses that account in some cases for up to 40% of the annual revenues of some companies. This needed to be done urgently and jointly with involvement of all stakeholders, including workers; and, (v) Ensure that any retrenchment or social plan within a SOE would be done in compliance with existing labor laws and regulations, standards of the International Labour Organization, as well as taking into consideration the different collective labor agreements. See Management Second Progress Report, pp. 22-23, para. 42.

46. Management stated that its support to Government would focus on the following elements: (i) Providing the terms of reference for the positions needed in the dedicated structures; (ii) Conducting a survey that would lead to the certification of the social debt of the six largest enterprises; (iii) Launching a feasibility study of a complementary pension system that would compensate part of the social debt; (iv) Providing assistance to the Government to create a communication strategy for the social cost of public enterprise reform; (v) Launching a feasibility study for a social debt defeasance structure; (vi) Supporting the development of a standard contract for the negotiations of new collective bargaining agreements; (vii) Reviewing the labor code and renegotiation of collective bargaining agreements; (viii) Conducting a retrospective analysis of the reinsertion, (i.e. redeployment) process; and, (ix) Providing assistance to the steering committee to set up a monitoring mechanism for PVs regarding the terms of their separation contracts.<sup>54</sup>
47. **Next steps in the implementation of the Management Action Plan of relevance to the Requesters.** Management has created a timeline for addressing the concerns of the PVs. This timeline includes the expected dates for the revision of the Accord for free access to education, the establishment of the NGO-operated provision of free access to health care and the Participatory Monitoring and Evaluation system for these programs, the calculations of the supplemental INSS contributions and the completion of the legal consultation with the PVs to assist in inclusion in the INSS, all of which should be completed by October 2011. Management also stated that it would continue to work with the Government on seeking solutions to PVs' claims for additional financial compensation, according to government policy on the matter.<sup>55</sup>
48. Management has also created a similar timeline to address the concerns of the former employees of the three Banks, which includes the expected dates for the completion of the former employees' data base and for the consultant to produce an analysis of the total severance compensation that the ex-workers were entitled to and the individual payments still owed to INSS. After these tasks are completed, COPIREP would present its findings to the Government. According to Management, these actions should also be completed by October 2011.<sup>56</sup>

## **G. Additional Information from Management**

49. On July 1, 2011, while it was finalizing the Report, the Panel had a constructive meeting with Management to inquire about three matters on which it wanted to learn more:
- the most recent efforts undertaken to address the Requesters' concerns relating to claims about inadequate and untimely payments in the retrenchment operations and the Bank's specific role concerning the identified gap (in many cases, a year or more) between the cut-off date and actual payment for the Gécamines PVs;

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<sup>54</sup> Management Second Progress Report, pp. 24-25, para. 47.

<sup>55</sup> Management Second Progress Report, pp. 26-27, para. 49.

<sup>56</sup> Management Second Progress Report, p. 27, para. 50.

- whether the education benefits for PVs' families would cover at least two full school years, as per the original design of the Project; and,
- the Management's efforts to incorporate lessons learned from these Requests to benefit other similar operations the Bank is financing in DRC and other countries.

50. During the meeting, Management proposed to get back to the Panel with specific answers to these three areas of concern. On August 4, 2011, Management provided the Panel a note with the following answers.

51. **Concerning the most recent efforts undertaken to address the Requesters' concerns relating to claims about inadequate payments,** Management indicated that the Government of DRC issued on March 31, 2011, Decree No. 011/15, which institutes a Commission to examine the implementation of two recommendations from the country's National Assembly concerning the dismissal of workers from 24 public enterprises, and other enterprises. These two recommendations called for, *inter alia*, the calculation of all debt per enterprise, per retrenched employee, and the determination of means to repay the employees.<sup>57</sup>

52. According to this Decree, the Commission would be composed of four sub-Commissions, one of which would focus on "*retrenchment, calculation, and certification of final balances.*" Also according to the Decree, the Commission would, *inter alia*, examine the calculation of the final balances, in accordance with Congolese laws and regulations; have these final balances certified; and, determine the salary arrears due to specific ex-employees and propose solutions for the payment of such arrears.<sup>58</sup> The Decree further states that Commission's work should last 60 days.<sup>59</sup>

53. Management stated in its note that the Bank considers that this Commission is fulfilling an important public service, as it provides an appropriate forum for policy dialogue and government action for treatment of grievances in a socially and fiscally accountable and responsible manner. Management added that it is "*supporting this dialogue by maintaining its strong communication links with representatives of*

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<sup>57</sup> Democratic Republic of Congo, Prime Minister Decree No. 011/15 dated March 31, 2011, "*On the Creation, Organization and functioning of a Commission set to Examine and Implement Some Recommendations of The National Assembly on Social Issue*" ("*Portant Création, Organisation et Fonctionnement d'une Commission d'examen et d'exécution de Quelques Recommandations de l'Assemblée Nationale en Matière Sociale*"), hereinafter the "Decree establishing the Commission".

<sup>58</sup> The first page of the Decree establishing the Commission indicates that this Decree is based on, *inter alia*, Recommendation No. 003/CAB/P/AN/EB/2009 dated November 20, 2009, and Recommendation No. 006/CAB/P/AN/EB/2010 of the National Assembly. These are Recommendations from the National Assembly to the Government of DRC. Recommendation No. 003 states in its paragraph 3, concerning the Gécamines PVs, that the Prime Minister would "*sign a decree acknowledging all the rights of the 10,655 employees affected by the retrenchment of 2003 and 2004, in particular wage arrears, the final balances (...)*" Recommendation No. 006 states, *inter alia*, in its paragraph 8, that the Government proceeds with the restoration of the "*full rights to the former workers of Gécamines in accordance with Decree No. 036/2003 of March 18, 2003.*"

<sup>59</sup> Decree establishing the Commission, Articles 2, 6, and 10.

*organized labor and government because, as a credible intermediary, the Bank is able to bridge the different paradigms of both sides and help them overcome some of the many potential misunderstandings.”*

54. **Concerning the extension of PVs’ education benefits for two years**, Management stated that the Management Action Plan is committed to providing the equivalent of two full school years of education benefits to the children of eligible PVs in the form of tuition cost coverage by the Government through the Project. Management also stated that since the benefits from the first year of implementation (school year 2010-11) did not reach a sizable portion of the eligible population, the Bank and the Government reformulated the benefits package in order to maximize outreach and inclusiveness of the eligible population in school year 2011-12. And, in order to attain the original objectives of the program, it would be extended for an additional year (2012-13). Management’s note stated that the financial requirements would be secured through the restructuring of the Project and its extension until December 2013.
55. **Concerning lessons learned**, Management stated that in DRC, the Bank has encouraged and catalyzed the learning and application of lessons from the participatory problem solving experience to the benefit of the broader SOEs reform. More specifically, the Bank has provided support to COPIREP to make a better assessment of the overall social costs of the reform and to adopt a systematic approach to upgrade and modernize its social safety net provisions for new transactions and restructuring (e.g. the water utility and the railways companies). Management added that this is being done in close collaboration with the International Monetary Fund (IMF) under the Extended Credit Facility.
56. At the institutional level, Management’s note stated that *“the lessons learned from this Inspection Panel case have been useful in helping the Bank advise Governments more effectively about the various steps for undertaking effective Public enterprise reforms. This includes taking account of the social costs of such reform, not only at a macro level but within the context of each public enterprise that is restructured. This has been done through such efforts as ensuring that any restructuring adheres to national labor laws and codes, is based on sound Human Resources records and methodical calculations of benefits, includes grievance redressal, and addresses social impacts of various voluntary departure or retrenchment programs.”*

## **H. Summary and Concluding Observations**

57. As stated earlier, the purpose of this Report and Recommendation is to convey the Panel’s determination on whether Management’s Second Progress Report on the implementation of the Action Plan constitute adequate *“compliance or evidence of intention to comply”* and is supported by facts and whether an investigation is



warranted into the allegations concerning the Project.<sup>60</sup> The Requesters and their claims have already been determined eligible in the previous Panel reports.<sup>61</sup>

58. In its Initial Report and Recommendation, the Panel recommended that a decision on whether to investigate should await the completion of a survey among PVs, proposed by Management, and any specific actions to address the needs of the PVs that would emanate from the survey and further dialogue with Government. The Requesters concurred with this recommendation. The Initial Report and Recommendation noted relevant Bank Policy issues and sharply differing views on the key issues in this context, as described previously.

59. In its Second Report and Recommendation, the Panel recommended that a decision on whether to investigate should be further deferred awaiting progress on the Action Plan submitted by Management as part of its Second Response. The Panel's Second Report and Recommendation noted relevant issues of Bank Policy and further noted that the allegations of harm in the Requests pertain to four main issues:

- *The issue of legality*: the claim that VDP violated national legislation resulting in violation of workers' rights concerning termination of employment. **On this issue, the Panel emphasized that it does not pass any judgment on the application of national legislation.**<sup>62</sup>
- *The issue of duress*: the claim that retrenched workers were not in a position to properly negotiate the severance plan. **On this issue the Panel noted that the process of retrenchment appears to have been conducted in circumstances that may not have allowed for full, informed participation of the Requesters or their representatives.**<sup>63</sup>
- *The issue of adequate and timely payment*: the claim that retrenched workers did not receive their full indemnity on time. **On this issue the Panel noted that under the circumstances it is understandable that the pay-out process took time. The Panel observed that the compensation amounts for the PVs were**

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<sup>60</sup> Second Report and Recommendation, para 131.

<sup>61</sup> Panel Reports and all related documents, are available at:  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22512113~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html>

<sup>62</sup> The Requesters allege that there is a difference between legal entitlements and the lump sum indemnity amount paid out. Their claims have been supported by the General Labor Inspector in regard to Gécamines and the three banks. The Panel noted that the Requesters 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. See Panel Second Report and Recommendation para. 111.

<sup>63</sup> The Panel noted that the ex-Gécamines employees accepted the VDP in a situation of grave economic distress as confirmed by the surveys of 2003 and 2009. The Panel also noted that the Gécamines Requesters considered that the certificates of termination of employment 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. The Panel further noted that the Three Banks Requesters claim that negotiations between the Consultant and trade unions were hastily terminated without reaching an agreement. See Panel Second Report and Recommendation paras. 113-114.

**calculated on the basis of a defined cut-off date, but actual payment took place often a year or more later. The Panel understands that this issue was not incorporated in the severance pay agreements.**<sup>64</sup>

- *The issue of reinsertion:* the claim that retrenched workers did not receive adequate support after termination of employment and hence suffered from increased vulnerability. **On this issue the Panel noted the overall finding of the survey that the living conditions of PV-households relative to the pre-project situation do not appear to have deteriorated, but confirmed that PVs, due to age and skills background, had been constrained in benefitting from the recent economic growth in the Katanga Province. The survey also confirmed that access to education and health services for PV-households had deteriorated since 2003. Management concurs with the Requesters' view that the reinsertion program for the PVs suffered from a series of weaknesses and had "disappointing results."**<sup>65</sup>

60. The Panel notes that the Prime Minister of DRC, in a letter to the Bank, confirmed on January 19, 2010 the Government's commitment to actions proposed by the Bank and added the establishment of a dispute resolution mechanism for ex-Gécamines employees to address any outstanding claims. The Panel in its Second Report and Recommendation noted that the Action Plan and Management's strategy to support the Government of DRC in its reform of public enterprises contain elements aimed at addressing key issues raised in the Requests. These elements are, *inter alia*, a conflict resolution mechanism, a certification of the social debt per enterprise and per employee, and reform of the national pension scheme (INSS).

61. In its Second Report and Recommendation the Panel described the Action Plan as "very constructive,"<sup>66</sup> but noted that additional time was required before reporting on its effectiveness in addressing issues of compliance and harm raised in the Request.

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<sup>64</sup> The Panel noted that all Requesters allege that indemnity payment was delayed, and some of them had to incur substantial travel costs to receive it. These time lags invariably raise the question of the rights of workers in this interim period. The Panel understands that the contract of the Gécamines' ex-employees was not terminated and they remained on the payroll of the company until the final payments. The Panel noted that this issue of delay in payment was not factored in the design of the operation and in the severance pay agreements. The Panel observed that, according to Management's 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). See Panel Second Report and Recommendation paras. 116 to 118.

<sup>65</sup> The Gécamines Requesters claim that the reinsertion program was not tailored to their needs, poorly implemented, delayed, and mismanaged. Management acknowledges that the reinsertion program was not successful. The Panel noted that the reinsertion program for the PVs suffered from a series of weaknesses related to both design and implementation. As for the reinsertion of ex-employees of the three banks, the Panel noted that the lack of decisiveness on whether to have such a program or not, created confusion in the minds of the ex-employees. The Requesters claimed that they were not informed when a decision to not prepare such a program was taken. See Panel Second Report and Recommendation paras. 122-123, Management's First Response, para. 49, and Management's Second Response, para. 48.

<sup>66</sup> Second Report and Recommendation, para 129.

According to the Second Progress Report, the following achievements have been made of relevance to the Requesters' concerns:

- Free access to education (for PVs' children): This scheme is currently being redesigned because few families opted for the original entitlement. The Action Plan included financing only for the 2011-2012 school year.
- Free access to health care (for PV-households): This scheme is currently being redesigned with benefits to be provided directly to PV-households rather than service providers, as in the original design. The Action Plan included financing until end 2012.
- Formalize access to INSS (for PVs, former employees of the three banks and OCPT): Consultancy services have been procured and are estimated to be completed by the end of October 2011. Actual payment of pensions, however, is not part of the Action Plan and would require a Government decision to capitalize INSS *“to enable INSS to recover its capacity to deliver pension entitlements to eligible workers and former workers.”*<sup>67</sup>

62. The Second Progress Report also noted that the Action Plan would, after restructuring of the Project in June 2011, be fully integrated in the Project and benefit from Management's enhanced supervision efforts. This includes monthly meetings with stakeholder representatives in Kinshasa and the Katanga Province.

63. With respect to the four issues mentioned above and whether a Panel investigation is warranted, the Panel's conclusions are as follows:

- ***The issue of legality: The Panel has already determined that the issue of legality of the VDP falls outside its mandate.***
- ***The issue of duress: Management in its Responses and Progress Reports has recognized, among the lessons learned from the Gécamines and Three Banks operations, that affected and entitled employees need to be properly informed and consulted. The Panel is pleased to note the Bank's support to the Government Commission established on March 31, 2011. This provides an important forum in which to address different legal paradigms, help overcome potential misunderstandings, and ensure that the VDP and other similar operations are taking place in accordance with national legislation.***
- *The issue of adequate and timely payment: The Panel notes that this issue is among the Requesters' many arguments for why the total pay-out was illegal, irregular, unfair and inadequate. Management reports that the implementation of the Action Plan provided an opportunity to pursue dialogue with Government officials at the highest level to ensure that they are exploring ways to “address*

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<sup>67</sup> Management Second Progress Report, para 50c.

*VDPs' requests, including financial claims in accordance with DRC's policy and legal framework.*"<sup>68</sup> **This issue is closely related to the previous one, and the Panel notes that the Commission established by the Government in March of this year will address this matter as part of its determination on whether the VDP and other similar operations have taken place in accordance with national legislation. As noted above, the Commission will determine, among other things, salary arrears due to ex-employees and propose solutions for payment of such arrears.**

- ***The issue of reinsertion: The Panel notes Management's acknowledgement of the "disappointing results" of the reinsertion program. The Panel also notes, however, Management's description of progress following one year of implementation of the Action Plan providing evidence of concrete efforts that promises to yield positive benefits to the Requesters, including access to education and health benefits, and access to INSS. The Panel further notes Management's continued commitment to close supervision of these efforts.***

64. Finally, the Panel wishes to note the seriousness and importance of the claims of the Requesters, and appreciates the trust placed in it by Requesters to consider these claims. The Panel notes that the two retrenchment programs that are the subject of the three Requests took place soon after the civil war, under conditions that entailed substantial risks. In retrospect, as acknowledged by Management, the Bank's management of these risks could have been better, not least in its implementation support. The Panel welcomes Management's concern for the Requesters' claims, and its commitment to a time-bound plan coupled with robust supervision. The Panel recognizes that reaching a full solution to the Requesters' grievances is the responsibility of the Government and is encouraged by the release of a Prime Minister's decision on April 4, 2011 to competent ministers and agencies "*requesting them to take actions to address all of VDP's requests.*"<sup>69</sup>

## **I. Recommendation**

65. In light of the foregoing and taking into account paragraph 5 of the 1999 Clarifications, which 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*", the Panel does not recommend an investigation of whether the Bank has complied with its Operational Policies and Procedures with respect to the allegations contained in the three Requests for Inspection. If the Board of Executive Directors concurs with this recommendation the Panel will advise the Requesters and Management accordingly.

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<sup>68</sup> Management stated that "*this dialogue is yielding some positive results, as illustrated by the release of a Prime Minister's instruction to competent ministers and agencies requesting them to take actions to address all of VDP's requests*" (Prime Minister's Letter dated April 4, 2011, under reference CAB/VPM/MIN/PTT/BGS/SF/sm/449/2011). See Management Second Progress Report, Executive Summary, para. 8.

<sup>69</sup> Management Second Progress Report, p. 6 para 8.