

**Report No. 48634-ZR**

**The Inspection Panel** 

**Report and Recommendation**

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

**May 27, 2009**

## The Inspection Panel

### 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 Congo (DRC): Private Sector Development and Competitiveness Project (the “Project”). This Request (the “First Request”) was submitted by Mr. Chola Kabamba and Mr. Assani Kyombi, both residents of Likasi, Katanga, in the Democratic Republic of Congo, acting as former employees of the state enterprise “Générale des Carrières et des Mines,” abbreviated as “Gécamines,” *“and as victims of the Voluntary Departures Operation initiated by the Congolese Government with the financial support of the World Bank.”* The Panel registered this Request on March 12, 2009, and notified the Executive Directors and the President of the International Development Association (IDA) on March 12, 2009 in accordance with the Resolution establishing the Inspection Panel (“the Resolution”).<sup>1</sup>
2. On March 13, 2009, the Inspection Panel received a second Request for Inspection (the “Second 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] of former Gécamines employees*”). The Request included 14 signatures of other members of the collective. The Panel registered this Second Request on March 19, 2009 and informed the Executive Directors and the President of the International Development Association (IDA) on March 19, 2009.
3. On March 26, 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.

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

4. 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.
5. For the same reasons, the Panel has processed both Requests jointly as it has done in previous similar cases. The Panel will continue to process the Requests jointly in eventual subsequent additional phases of the Inspection Panel process.
6. As provided in paragraph 19 of the Resolution, the purpose of this report is to determine the eligibility of the Requests and to make a recommendation to the Executive Directors as to whether the Panel should investigate the matters alleged in the Requests.

## **A. The Project**

7. 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.
8. 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.”*<sup>2</sup>
9. The Project is described in the PAD as having the following four components, out of which the second relates to the Requests for Inspection:<sup>3</sup>
  - (i) **Project Component 1 (US\$36.10 million): Improving the investment climate** by strengthening the judiciary system and improving the legal and fiscal framework.
  - (ii) **Project Component 2 (US\$71.69 million): Implementing parastatal reform** by strengthening regulatory authorities in the telecommunication,

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<sup>2</sup> Project Appraisal Document (PAD) on a proposed credit in the amount of US\$120 million to the Democratic Republic of Congo for a Private Sector Development and Competitiveness Project, July 2, 2003.

<sup>3</sup> PAD p. 10.

transport and energy sectors through technical assistance and training, facilitate divestiture from public enterprises, support 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.

- (iii) **Project Component 3 (US\$7.41 million): Initiatives for economic development in the Katanga region** by increasing its competitiveness through the creation of new economic opportunities for the workers retrenched from Gecamines and other parastatals present in Katanga, and support the establishment of a monitoring and evaluation system for the program.
- (iv) **Project Component 4 (US\$7.13 million): Project Coordination and Implementation arrangements** by providing BCeCo with resources to implement this project through provision of technical assistance, equipment, staff and by coordinating retrenchment payments and organizing worker training and reintegration through the '*Unite de Reinsertion au Katanga*' (URK).

The PAD adds that "*the lessons learned in the Katanga province will be used for subsequent severance package distribution to workers in other sectors.*"

10. Project Component 3 involved the activities most directly linked to the issues raised in the Requests, namely financing of a voluntary departures program for mining workers at Gécamines with a cost of \$40 million (Sub-component 3). The PAD states that more than 10,000 workers have decided to benefit from the program and their severance packages will be distributed during project implementation. In addition, activities to support the economic and social *reinsertion* of retrenched mine workers were financed under Project Components 2 and 3. According to the Management Response the actual budget for these activities amounted to \$4.5 million (Box 12).
11. 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.*" Moreover, the PAD states:

*"The World Bank Group (...) has been the leading provider of assistance for parastatal reform during the past decade and can help the DRC apply the lessons learned from reforms undertaken in other countries"* and "*the involvement of the Bank with the parastatal reforms will help ensure that social safety nets and*

*assistance to move into new occupations are provided to retrenched workers that would otherwise face impoverishment.”<sup>4</sup>*

12. The Project was classified as category “B” for the purposes of EA screening under OP 4.01 – Environmental Assessment. An environmental “pre-audit” was carried out for six enterprises<sup>5</sup> slated for privatization; Gecamines, the subject of the complaint, was not amongst these. The PAD states that “*wide consultation*” was carried out with various stakeholders, including unions and other civil society organizations. The PAD provided the option to carry out environmental audits in the future for Project component 2 (parastatal reforms) where the results could help define the divestiture strategies and monitoring mechanisms “*including the set-up of monitoring committee involving all stakeholders - will be developed as part of the environmental audits.*”<sup>6</sup>
13. 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. To ensure sustainability, this activity would be provided on a private sector basis and would take model on similar programs developed in South Africa in the mining sector. Social baseline studies will be carried out to serve as basis for the monitoring and evaluation of these programs. The first study is currently underway in Katanga for Gecamines.*”<sup>7</sup>

## B. Financing

14. 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,<sup>8</sup> 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

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<sup>4</sup> PAD, p. 18.

<sup>5</sup> The six included OCPT (postal and telecommunication services), SNCC (Congolese national railways), SNEL (National electric utility), RVA (airways and airports board), LAC (Congolese airline), and City Train (state bus company), PAD, p. 20.

<sup>6</sup> PAD, p. 21.

<sup>7</sup> PAD, p. 21.

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

December 31, 2012, to coincide with the closing date of the Grant providing additional financing.<sup>9</sup>

### C. The Requests

15. The Requesters claim that the “*World Bank financed the design, evaluation, and implementation of the operation known as ‘Voluntary Departures,’ which resulted in the dismissal of 10,655 Gécamines workers from August 11, 2003 to February 6, 2004 in exchange for severance payments ranging from US\$1,900 to US\$30,000.*”<sup>10</sup>
16. They state that the reintegration effort (e.g. the Reinsertion Program<sup>11</sup>), in the form of social assistance and training, for employees who voluntarily left their work at Gécamines, should mean that the employees receive their severance allowance and be engaged in individual or collective activities enabling them to earn the necessary income for their own survival and that of their dependents.<sup>12</sup>
17. The Requesters state that the Bank adopted “*special rules and procedures for adopting the loan of US\$43,483,422 intended ‘to facilitate the departure of employees freely seeking to end their careers in the enterprise’.*” According to the Requesters the conditions “*determined*” by the Bank, including the payment of a lump-sum amount, are in contravention of the provisions of Articles 67, 78, 100, 144, and 152 of the Congolese Labor Code. They add that each employee was presented with a standard transaction instrument entitled “*Agreement to terminate the labor contract by mutual agreement*”, which each had to sign in exchange for a letter of credit drawn up by the Katanga Reintegration Coordination Unit in order to collect the severance payment at a bank in Likasi.<sup>13</sup>
18. They state that “*under pressure from the World Bank,*” Gécamines dismissed an initial tranche of 10,655 employees in contravention of the Congolese Labor Code.<sup>14</sup> In addition, they claim that the supervisory authority of Gécamines, with approval from the World Bank, ignored the legal standards and the conventions that the government had agreed to for the settlement of wage arrears and the payment of final reckonings to the Gécamines employees. They add that their “*rights and interests were directly and negatively affected by the criminal participation of the World Bank in violating the contractual obligations between our former employer Gécamines and each of us.*” They further add that this has deprived them of wage arrears and the final reckoning to which each of them is entitled, and which they should have collected if their contracts had not been terminated in this manner. They also add that they are

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<sup>9</sup> Management Response, para. 28.

<sup>10</sup> First Request, paragraph 1.

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

<sup>12</sup> First Request, paragraph 1.

<sup>13</sup> First Request, paragraph 2.

<sup>14</sup> First Request, paragraph 4.

*“deprived of all other social advantages (...) and have lost all acquired benefits of any kind.”* They state that this sudden adaptation to *“a life of poverty”* has caused great harm to the victims of the Voluntary Departures Operation such as themselves.<sup>15</sup>

19. The Requesters also claim that the reintegration efforts for former Gécamines employees were limited. They state that the Katanga Reintegration Coordination Unit, in the small project support program and the “KIJENGA UHURU” program, supported only activities involving self-promotion and *“automatically covered only a portion of the former Gécamines employees, selected as being those most motivated and with the greatest potential, so as to permit them to achieve the objectives of their economic reintegration.”* According to the Request, one of the Requesters has been placed on retirement by Gécamines and the other is unemployed and not receiving adequate support.<sup>16</sup> Also, the Request makes references to a civil lawsuit between one of the Requesters and another employee of Gécamines.
20. 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. They also state that *“the World Bank failed to observe its rules and procedures in the context of the programs agreed with the Congolese government on the restructuring of Gécamines with a view to finding an honorable solution to reducing the labor costs of our former employer Gécamines and properly indemnifying the [Gécamines employees].”*<sup>17</sup>
21. They maintain that the World Bank is responsible for the violation by Gécamines of its contractual obligations. They state that the Bank *“must ensure that the state enterprises to which it extends loans, even with the guarantee of the Congolese government, apply and observe such rights”*, arguing that the Bank must act in a manner consistent with the undertakings and obligations of the DRC in respect of the rights of man and workers acknowledging that it is contrary to the law to support and participate in the arbitrary dismissal of workers. The Requesters also make reference to jurisprudence concerning the liability of a third party involved in the violation of contractual obligations under Belgian law and comparative law and the liability of third parties *“complicit”* in the failure to carry out a contractual obligation.<sup>18</sup>
22. The Requesters state that the *“payments that Gecamines, as ‘promising party’, and the World Bank, as ‘stipulating party’, granted to former employees and workers who were objectified, impoverished, and bruised after 36 months of wage arrears and non-distribution of foodstuffs sufficed only to pay debts contracted to ensure their survival.”*<sup>19</sup>

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<sup>15</sup> First Request, paragraph 5.

<sup>16</sup> First Request, paragraph 2.

<sup>17</sup> First Request, paragraph 4.

<sup>18</sup> First Request, paragraph 6.

<sup>19</sup> Second Request, letter of February 19, 2009, p. 5.

23. 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).*”<sup>20</sup>
24. The Requesters state that they have written to World Bank staff in Washington and in Kinshasa, but to no avail. They state that they first tried, on January 27, 2009, to obtain clear and precise answers on the measures contemplated in the short term to address their respective problems. Then, in on January 31, 2009, they pointed out to the harm they suffer. According to the Requesters, they proposed a solution in line with the Bank’s objective to fight against poverty. They also declare that they wrote to the World Bank on February 27, 2009, but “*received no reply*” or acknowledgement of their letters.<sup>21</sup>
25. The Requesters, in the Request for Inspection, ask the Inspection Panel to recommend to the Board of Executive Directors an investigation “*in order to resolve [their] problem.*” They indicate that this Request is presented in a brief form and that they could provide the Panel with more detailed information to facilitate the “*finding of failures or omissions on the part of the World Bank.*” They also authorize the Panel to make the Request public.<sup>22</sup>
26. The Requesters suggest some solution to mitigate the harm they allege to have suffered as a result of this Project. 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.*”<sup>23</sup>
  - (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.*”<sup>24</sup>
27. 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

<sup>20</sup> Second Request, letter of February 19, 2009, p. 5.

<sup>21</sup> Second Request, letter of March 13, 2009, p. 2.

<sup>22</sup> First Request, paragraph 8.

<sup>23</sup> Second Request, letter of March 13, 2009, p. 2.

<sup>24</sup> First Request, paragraph 6.

## D. Management Response

28. As stated earlier in this Report, Management submitted its Response on April 27, 2009. In its Response, Management stated that the “*Bank has made every effort to apply its policies and procedures and to pursue concretely its mission statement in the context of the Project.*” 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.*”<sup>25</sup>
29. According to the Management Response, the Gécamines Voluntary Departure Program (VDP) took place between March 2003 and February 2004.<sup>26</sup> At that time, the country was marked by the mismanagement of the Mobutu regime (1965-1997) which led to the suspension of economic assistance by most bilateral and multilateral institutions, including the World Bank, and was gradually emerging from a decade of political instability and conflict.<sup>27</sup>
30. The 1990s was decade of instability and conflict, and civil war broke out in 1998 involving the Government and several militias opposing the government and drawing in six other nations.<sup>28</sup> The Lusaka Accord, brokered in August 1999, calling for a ceasefire, was widely violated by all parties until in January 2001 the President of DRC, Laurent Kabila, was assassinated and all parties observed a spontaneous ceasefire. This created a new window of opportunity for stabilizing the country. The new president, Joseph Kabila, stated his support for the Lusaka process and inter-Congolese dialogue, and affirmed his commitment to improving living conditions in the country and to liberalizing the economy. International assistance was also resumed.<sup>29</sup> It is in that difficult context that the Bank reengaged with DRC.
31. At the center of the Government economic recovery program in 2001-2002, was the mining sector restructuring and, more specifically, Gécamines’ restructuring. It was considered that, with a conducive investment climate, DRC could, over the next ten years, return to its historical level of mineral exports of more than US\$1 billion per year, and collect significant tax revenue.<sup>30</sup> Two Bank operations were aimed at supporting Gécamines restructuring: the Economic Recovery Credit (ERC – a budget

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<sup>25</sup> Management Response, para. 83.

<sup>26</sup> Management Response, para. 8.

<sup>27</sup> Management Response, para. 9.

<sup>28</sup> Management Response, para. 10.

<sup>29</sup> Management Response, para. 11.

<sup>30</sup> Management Response, para. 16.

support operation) and the Private Sector Development and Competitiveness Project,<sup>31</sup> the latter being the subject of these Requests for Inspection.

32. According to Management, the VDP at Gécamines 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 cost 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 this Project component is implemented by COPIREP (*Comité de Pilotage de la Réforme des Entreprises Publiques* – Steering Committee for Public Enterprise Reform), which is the Government body in charge of preparing and undertaking, following Government’s approval, the restructuring of public enterprises in DRC.<sup>32</sup> COPIREP is the successor of BCeCo in the implementation of the this Project’s Component.
33. Management states that Project implementation has always been rated satisfactory and the Mid-Term Review which took place in June 2007 noted the generally satisfactory implementation of the project in a difficult environment.<sup>33</sup> While considering that “*the VDP in DRC had demonstrable success*” Management states that expectations should not be overestimated since the Program was implemented in the challenging context of a small private sector base and devastated infrastructure.<sup>34</sup>
34. Management states that the VDP program originates from the Letter of Development Policy (2002 – 2003) prepared by the Government for the ERC, which highlights the Government restructuring strategy for Gécamines. This strategy included the following actions: (a) creation of a Restructuring Committee for Gécamines within the Presidency; (b) implementation of a detailed restructuring analysis for Gécamines; (c) implementation of a restructuring plan, based on the analysis; and (d) preparation and implementation of a VDP to reduce the surplus workforce of Gécamines.<sup>35</sup> According to Management, it was initially estimated that 11,200 employees would be eligible for the VDP, however, 10,655 benefitted from it.<sup>36</sup>
35. Management also states that Gécamines’ management 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.<sup>37</sup>

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<sup>31</sup> Management Response, para. 17.

<sup>32</sup> Management Response, para. 27.

<sup>33</sup> Management Response, para. 28.

<sup>34</sup> Management Response, para. 34.

<sup>35</sup> Management Response, para. 39.

<sup>36</sup> Management Response, para. 38.

<sup>37</sup> Management Response, para. 43.

36. 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 (Jacques Catry)<sup>38</sup> 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 (US\$25 million financed by the ERC and US\$18.5 million financed under the PSDC).<sup>39</sup>
37. Management states that the consultant (Catry) undertook a thorough analysis of the Gécamines labor force, which, as of August 31, 2002, numbered 23,730 employees with 22.3 percent over 55 years of age.<sup>40</sup> The consultant then undertook an analysis of the legal framework (the 1967 and 2002 Labor Code, as well as relevant decrees) and the 1996 Collective Bargaining Agreement, which governs the termination of employment contracts between Gécamines and its employees, as well as the provisions pertaining to social security. The Consultant also analyzed the applicable regulations for retrenchment in private enterprises and reviewed the experiences of other African countries.<sup>41</sup>
38. Following the analysis of the labor force and of the legal and regulatory framework, the consultant worked with the Gécamines Human Resources Department, on different scenarios for the VDP, which led to the approach described below. During the design of the VDP, the consultant had several meetings with Gécamines' trade unions. The VDP payment scale was presented to Gécamines' 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.<sup>42</sup>
39. 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. Management adds that in its understanding “*the Government decided to follow the VDP consultant's advice given the financial impact of adding these two benefits*” (i.e. the pension fund (*capital pension*) and life insurance).<sup>43</sup> The payment scale under the VDP varied for active employees and for inactive employees called

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<sup>38</sup> 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.

<sup>39</sup> Management Response, para. 44.

<sup>40</sup> Management Response, para. 49.

<sup>41</sup> Management Response, para. 50.

<sup>42</sup> Management Response, para. 51.

<sup>43</sup> Management Response, para. 52.

DOPs (*Dispense Temporaire de l'Obligation de Prester* – Temporary Work Interruption).

40. According to Management, the difference between the VDP and the payment that would apply with an exact application of the Collective Bargaining Agreement varied among categories of employees. For directors the VDP payments were 15 to 40 percent lower. For managers and workers the gap was between 3 and 9 percent. One group, mid-level managers, got about 6 percent more under the VDP.<sup>44</sup> 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.<sup>45</sup>
41. According to Management, the VDP was approved by ECOFIN (Ministerial Committee in charge of Economic and Financial questions) on March 11, 2003, and was “officially” announced by the Minister of Mines on March 13, 2003.<sup>46</sup> Gécamines issued several memoranda to explain details of the program.<sup>47</sup> By May 21, 2003, Gécamines finalized the list of candidates for the VDP and an audit firm checked the accuracy of the list compiled by Gécamines. In particular, the auditing firm checked the accuracy of the following information for each candidate: (a) number of years worked in Gécamines (*ancienneté*); (b) job category or rank in Gécamines; and (c) exit payment amount being strictly in line with the established payment scales.<sup>48</sup> The payments started on August 11, 2003, and ended on March 11, 2004.<sup>49</sup>
42. Concerning reinsertion, Management states that the consultant estimated, on the one hand, that about 25 percent of the VDP beneficiaries would not seek, for various reasons (in particular because of their age), to participate in reinsertion activities, and on the other hand, that due to the context of Katanga at the time, the reinsertion program would not be able to achieve ambitious results.<sup>50</sup>
43. A Poverty and Social Impact Analysis (PSIA) was undertaken at the beginning of the VDP in 2003 and completed in 2007 and the University of Lubumbashi carried out part of the research. The assessment led to the design of interim programs to support Gécamines schools and health centers, which had not been foreseen at project preparation.<sup>51</sup> The PSIA revealed that at the start of the VDP, Gécamines employees were worse off than the general population in Katanga. The interruption in food distribution by Gécamines, as well as the non-payment of salaries for more than two years, contributed to a dramatic decline in living conditions.<sup>52</sup>

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<sup>44</sup> Management Response, para. 55.

<sup>45</sup> Management Response, para. 63.

<sup>46</sup> Management Response, para. 54.

<sup>47</sup> Management Response, paras. 58-59 and 61.

<sup>48</sup> Management Response, para. 60.

<sup>49</sup> Management Response, para. 63.

<sup>50</sup> Management Response, para. 66.

<sup>51</sup> Management Response, para. 67.

<sup>52</sup> Management Response, para. 70.

44. Management reports that a number of reinsertion activities were undertaken for VDP beneficiaries. These were based on demand-driven approaches – e.g. VDP beneficiaries had to apply for training, technical assistance or matching grants. Interviews at the start of these activities indicated that about 80 percent wanted to establish income-generating activities related to agriculture. According to Management, URK (*Unité de Coordination pour la Réinsertion au Katanga* – Coordinating Unit for Reinsertion in Katanga) underlined that many VDP beneficiaries did not apply for funding or specific training.<sup>53</sup>
45. An evaluation of the reinsertion activities was undertaken between November 2005 and January 2006 by CRETES. This evaluation showed that less than two years after the start of the VDP, 93 percent had initiated an income-generating activity. However, Management states that this high reinsertion rate would not typically be sustained in the medium to long term. The evaluation recommended shifting the focus from collective activities to individual activities.<sup>54</sup> Analysis of the VDP and of the reinsertion activities highlights a number of challenges in their implementation (including limited local capacity for reinsertion, slow disbursement of matching grants, and problems managing economic activities such as local cooperative or agricultural enterprises).<sup>55</sup>
46. Concerning Component 3 of the Project “*initiatives for economic development in the Katanga region,*” Management states that the component aimed at creating new economic opportunities for the workers retrenched from Gécamines and other public enterprises present in Katanga and at fostering regional economic development. It adds that as of the end of March 2009, US\$5.3 million had been disbursed out of the US\$7.41 million allocated.<sup>56</sup>
47. 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.<sup>57</sup> 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 is based in Kinshasa since October 2007.<sup>58</sup>
48. In March 2009, 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 Gécamines’ VDP and actions to be taken for other past and forthcoming retrenchment plans. In terms of actions taken with regards to the

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<sup>53</sup> Management Response, para. 71.

<sup>54</sup> Management Response, para. 73.

<sup>55</sup> Management Response, para. 76.

<sup>56</sup> Management Response, para. 65.

<sup>57</sup> Management Response, para. 79.

<sup>58</sup> Management Response, para. 80.

Gécamines' VDP, Management proposed to “Undertake a new survey of Gécamines ‘partants volontaires’ to have a better understanding of their current situation including progress in reinsertion efforts. This survey will help analyze if special actions are needed for ‘partants volontaires’. The results of the survey will also provide a basis for further dialogue with the Government on any specific actions that might be needed for the ‘partants volontaires’.”<sup>59</sup> Management expects to have the results of the survey by end September 2009.

## E. Eligibility

49. The Panel must determine whether both Requests satisfy the eligibility criteria set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,<sup>60</sup> and recommend whether the matters alleged in the Requests should be investigated.
50. The Panel has reviewed the Requests and Management’s Response. The Panel Chairperson, Werner Kiene, together with Panel Member Alf Jerve, and Panel Operations Officer Serge Selwan, visited DRC from May 3 through May 9, 2009. During their visit, the Panel team met with Government officials and representatives of the project implementing unit COPIREP 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 representative in Lubumbashi. The Panel also met with staff of the World Bank country office.
51. The Panel is satisfied that the two Requests meet all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
52. During the visit, the Panel 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 Requests 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.
53. 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).
54. In particular, the Requesters allege 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. These actions seem to relate to the Bank’s procedures on retrenchment activities and severance pay.

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<sup>59</sup> Management Response, para. 82.

<sup>60</sup> Conclusions of the Board’s Second Review of the Inspection Panel (the “1999 Clarifications”), April 1999.

The Requesters also allege that the design of the severance arrangement did not take into account what they believe was due to them, and that the re-insertion program did not benefit them. Further, they claim that the Bank is responsible for the negative consequences of the terms, conditions and implementation of the VDP.

55. During the Panel's visit, the Requesters stressed their grave concern about the deterioration of their standards of living, which depended on the benefits and income they were getting from their employment with Gécamines. The Requesters assert that they have not benefited from the re-insertion program because of delays of several months between the payments and the launch of the re-insertion program, and because the support offered benefitted only those who had entrepreneurial skills.
56. The Requesters state that this operation deprived them of wage arrears and final reckoning to which each of them is entitled, and which they would have collected if their contracts had not been terminated in this manner. They state that the reintegration effort did not meet their expectations.
57. The Panel confirmed that the World Bank has been aware of concerns from 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).
58. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
59. As stated above, the Project closing date is December 31, 2012.<sup>61</sup> As of the date the Request was filed about 32 percent of the Credit and about 100 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.<sup>62</sup>
60. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).

## **F. Observations**

61. 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 Request for Inspection. The Panel notes two main issues of disagreement: firstly, on the issue of

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<sup>61</sup> Management Response, para. 28.

<sup>62</sup> 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).

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.

62. The Panel notes the importance of retrenchment initiatives in parastatal enterprises to ensure their financial viability and contributions to economic development in DRC. It also appreciates the importance of providing financing for activities in a post-conflict reconstruction context and the difficulties in doing so.
63. The Panel notes that the VDP participants started voicing their grievances soon after payments had been effected (2003), and that the issues have been discussed at company and government level on several occasions without reaching a solution or a road map towards a solution. The Requesters have hopes that the Bank can bring a new momentum to the process.
64. The Panel met with the two groups of Requesters separately on May 7, 2009, in Likasi. During the discussions, the Panel shared with the Requesters Management's proposal, which suggests undertaking a new survey of Gécamines partants volontaires to have a better understanding of their current situation including progress in reinsertion efforts. Management states 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>63</sup>
65. 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 to see the Panel delay its determination until the survey proposed by the Bank has been carried out and the outcomes reviewed by them.

## **G. Conclusion**

66. The Requesters and the Requests meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.
67. The Requests and Management Response contain conflicting assertions and interpretations about the 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, This can only be done in the context of an investigation of the issues raised in the Requests and related alleged harm.

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<sup>63</sup> Management Response, para. 82.

68. In this case, however, the Management has stated its willingness to undertake a survey for the purpose of analyzing if special actions are needed for the '*partants volontaires*', and to enter a dialogue with Government on any specific actions. Furthermore, the Requesters stated their willingness to see whether this survey would lead to an effective resolution of their concerns.
69. In light of the foregoing, and in fairness to all the parties concerned, the Panel, as it has done in similar situations in the past with Board approval, will not take a position at this time on whether the issues of non-compliance and harm raised in the Requests merit an investigation.
70. The Panel, therefore, recommends to the Board of Executive Directors that it approve the Panel's proposal to refrain from issuing a recommendation at this time on whether an investigation is warranted in this case, but rather await further developments on the matters raised in the Request for Inspection. The Panel expects to be able to make a determination in six months as to whether to recommend an investigation.