

THE DEMOCRATIC REPUBLIC OF CONGO

INTERSYNDICALE (TRADE GROUP)

OF THE CONGOLESE GOVERNMENT PORTFOLIO BANKS:

BCA, BCCE, NBK, in forced liquidation

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Reference number: IBPL/FKK/LTB/017/09

Kinshasa, December 7, 2009

REQUEST FOR INSPECTION

Addressed with our sincere regards to:

The Executive Director of the World Bank Inspection Panel
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cc: Werner Kiene, Panel Chairperson (wkiene@worldbank.org)
Serge Selwan, World Bank (sselwan@worldbank.org)

From: The *INTERSYNDICALE* (TRADE GROUP) of former employees of state-owned banks:

- the former Banque de Crédit Agricole (BCA),
- the former Banque Congolaise du Commerce Extérieur (BCCE),
- and the former Nouvelle Banque de Kinshasa (NBK), in forced liquidation since March 10, 2003

Re:

- Private Sector Development and Competitiveness Project pursuant to Credit Agreement 3815-DRC WB/IDA of August 11, 2003;
- Violation by the signatories of the provisions of Article 1, Paragraph “n” of said agreement;
- Flagrant violation of the rights (final payouts) owed to the beneficiaries specified in said Article 1, consistent with the Labor Code in effect in DRC;
- Compensation of said rights and damages suffered by victimized former employees, contingent upon a subsequent additional amount.

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1. [I.] In our capacity as representatives of the **former employees, preferential creditors** of the above-mentioned banks, we are submitting this **request** in accordance with Article 110 of the Congolese Labor Code as incorporated into Credit Agreement 3815-DRC, in regard to the methods of calculating severance pay owed to beneficiaries, on the one hand, and the right to effective credit preference for payment of said pay, on the other. The prescribed procedures have, unfortunately, been violated with impunity, and the legal rights of the former employees have been compromised, flouted, and whittled down to nothing, with **lump sum payments** unilaterally imposed in arrogant fashion - “take it or leave it,” in the words of the Governor of the Central Bank of Congo.
 2. We therefore ask for your kind attention to this matter, for the purpose of obtaining a review of the terms of Credit Agreement 3815-DRC and fair compensation for the weighty losses resulting from the tremendous harm caused to former employees of the three banks, specifically due to noncompliance with the provisions of Paragraph “n” of Article 1 of said Credit Agreement.
 3. Our position as representatives of the former employees derives from our appointment by the latter, at the conclusion of the General Assemblies for electing delegates of preferential creditors, designated to represent them at the signing of the Memorandum of Understanding with the Central Bank of Congo, in relation to the payment framework for the final payouts. Furthermore, the powers thereby given to the delegates of preferential creditors were established and sanctioned in a statement duly notarized by the competent authorities of the civil administration of the Congolese Government (Annexes 1, 2, 3, 4).

4. **[II.] Brief Review of the Facts:**

- December 5, 1995: Summary exclusion of the public banks BCA, BCCE, and NBK from the Clearinghouse of the Central Bank of Congo, pursuant to decisions by the Government at that time. It should be noted that the bankruptcy of the three above-mentioned banks was the result, upstream, of direct or indirect mismanagement of the executives and directors of the Central Bank of Congo, who were responsible for the three banks.
5. It should also be noted that the work contracts binding employees to their employers had not been terminated and, consequently remained legally binding as do other contractual benefits.
 6. May 17, 1997: With the fall of President Mobuto’s regime, the AFDL came into political power under the leadership of Mzée Laurent-Désiré Kabila, President of the Republic. The Government’s three banking institutions – the BCA, BCCE, and the NBK -- were rehabilitated. This enabled the employees to continue to serve at the express and urgent request of the Government of Restoration.

7. March 10, 2003: Fateful decision to place the three state-owned -- BCA, BCCE, and NBK -- into forced liquidation, by government fiat based on a public announcement on the same date by the Central Bank of Congo.
8. April 30, 2003: Effective breach of the work contracts of former employees of BCCE by the Central Bank of Congo.
9. May 5, 2003: Effective breach of the work contracts of former employees of NBK by the Central Bank of Congo (Annex 5).
10. June 20, 2003: Effective breach of the work contracts of former employees of BCA by the Central Bank of Congo (Annex 5).

11. [III.] Project Description:

Credit Agreement 3815-DRC of August 11, 2003 promotes better qualified financial support based on prefinancing negotiated and obtained from the World Bank by the Congolese Government and the Central Bank of Congo, for the dual purpose of maintaining social peace in the general context of a postwar government and, more specifically, prefinancing the severance pay or final payouts for former employees of the three banks, as well as employees of Gecamines and OCPT (Annex 6).

However, in the opinion of the Central Bank of Congo, this financing should amply cover the following expenses:

12. The cost of audits to assess the assets of said institutions and certify their financial statements;
13. The social component for the aforementioned banks, concerning particularly the payment of:
 - (i) final payouts for these former employees;
 - (ii) wage arrears that remain unpaid due to the bankruptcy of these institutions;
 - and
 - (iii) compensation for social reintegration of the former employees following the sudden loss of their jobs;
14. The operating expenses for entities charged with carrying out the liquidation operations of said banks, commonly called independent liquidators.

15. [IV.] Credit Agreement 3815-DRC:

The obligation or substance forming the irrevocable, sealed commitment of both signatories, i.e. the DRC and the World Bank, based on good faith, is found in Article 1, Paragraph "n" on pages 3 and 4 and stipulates that:

16. The term ‘eligible employees’ refers to the employees of Gecamines, BCA, BCCE, and NBK (as defined below) and OCPT (as defined below) who are eligible to receive severance pay in accordance with labor law, including the borrower’s labor code. This alludes to Articles 77, 78, 103, and 110, without prejudice to the provisions of Article 104 of the same code.
17. In the context of the mass dismissal of employees, this requirement called for strict compliance with the provisions of Articles 62, 78, 100, **104**, 110, 144, and 152 of the Congolese Labor Code, which were judiciously incorporated so as to form the very basis of the Credit Agreement in its previously noted article.

18. [V.] Violation of Article 1, Paragraph “n” of Credit Agreement 3815-DRC:

This Credit Agreement acts as a contract between the two signatories. The World Bank is the partner of the Democratic Republic of Congo, which is the debtor to the former employees, and, as such, the beneficiary of the financial guarantee; the World Bank is thus required in good faith to strive for successful achievement of the objective of said agreement, namely, proper payment of the legal final payouts of the former employees involved (in the case of the three above-mentioned banks).

19. Unfortunately, the World Bank has instead stood as guarantor for illegality and has allowed total disregard of the provisions of the law establishing the Labor Code, notwithstanding its own agreement and the basic principles of propriety. Moreover, in terms of the method of calculation for all payments, the World Bank has not prevented the implementation of lump sum payments unilaterally computed by Mr. Jacques Catry, the World Bank-approved consultant to the Government.

20. [VI.] Evidence of the Illegal Nature of the Conclusions of Mr. Jacques Catry:

While the above-mentioned government consultant has callously infringed upon the provisions of the law establishing the Labor Code, specifically Articles 77, 78, 79, 103, 104, and 110 – as well as the provisions of Article 1, Paragraph “n” of Credit Agreement 3815-DRC, at the instigation of certain lawyers of the Central Bank of Congo, the author of what very much resembles a crime against humanity (specifically in terms of depriving victimized bank employees of their basic rights) – the World Bank is not only fully cognizant of this but is an actual accomplice, as its representation in Kinshasa has been an associate or participant in this conspiracy or genocidal strategy against the very vulnerable minority of “bank employees.”

21. The trade delegates representing the employees are at this stage simply ignored, while the consultations initiated at Fatima Parish in Kinshasa between the delegates and Mr. Jacques Catry have been suspended and coldly and indefinitely postponed.

22. Based on the table developed by Mr. Jacques Catry, employees are grouped into brackets of 10, 15, 20, 25, and 30 years of seniority. This violates the above-mentioned legal provisions in this area. The final payout owed to employees is based on individual merit in terms of the related rights, derived or stemming from the very existence of a contract, from the date when it is signed until it is terminated.
23. The lump sums in case of death therefore subject to challenge were approximately US\$620 for an employee in the second category (bailiff) who had served for 10 years; US\$650 for a bailiff with 15 years of seniority; and US\$710 for a bailiff with 20 years of service, while the amount for a director with 15 years of seniority was US\$29,000.
24. In contrast, the lump sums for employees whose period of seniority falls between two of Catry's seniority groups were simply ignored or cynically considered nonexistent.
25. The double final payout, even though this is a principle enshrined in the Catry plan on behalf of the trade delegates, has never been paid to them to date. This situation calls for reparations respecting the actual payment given the sacrosanct legal principle established by the implementation of Catry's plan.
26. The World Bank has allowed, if not endorsed, the lack of consideration for social partners of the Congolese Government, specifically the former employees. There has been no regard for consultation, social dialogue, or compromise, all of which are tokens of social peace, thus playing into the fundamental principles inherent in the frustrating lack of justice under postwar governments, as in the DRC.
27. Despite having been fiercely contested, World Bank financing in the amount of US \$11.5 million was made available, not without some measure of arrogance and swindling in a "take the deal or leave it" manner, following the words of the Governor of the Central Bank of Congo (Annexes 7 and 8).
28. **[VII.] Legal – but Flouted – Employee Rights:**
On the Government's instructions, the General Inspectorate of Labor went on a mission to amend Mr. Catry's calculations for the three banks (BCA, BCCE, NBK) in order to ensure compliance with Articles 103 and 110 of the Labor Code as required by the Credit Agreement 3815-DRC (Annex 9).
29. The conclusions and final report on the recalculations, conducted by the mission of the labor inspectors, raised the final payouts to:
 - US\$10,003,028 for former BCA employees,
 - US\$26,196,770 for former BCCE employees
 - US\$23,808,679 for former NBK employees

resulting in a total amount of: US\$60,008,447. This should be considered as an act of reconciliation between the employees seriously mistreated by the Jacques Catry plan and the Congolese Government, the owner of the three banks, under the financial guarantee of the World Bank for the Private Sector Competitiveness Project, which was the object of their partnership.

30. [VIII.] Material Elements of the Flagrant Violation of Rights:

Instead of the amount of US\$60,008,477, in compliance with Article 1, Paragraph “n” of Credit Agreement 3815-DRC, only US\$11,500,000 were released, of which US \$10,698,895 were actually paid to active former employees (2601)/3 banks, while a total of US\$2,710,791, released under a WB supplemental credit, was paid to inactive former employees (879).

31. In total, US\$13,409,686 were paid to 3,480 former BCA, BCCE, and NBK employees, without prejudice to the provisions of Article 104 of the DRC Labor Code, which stipulates that: “Neither the employee’s unresisting or unconditional acceptance of a compensation payout, nor his or her signing of same, nor a ‘paid-in-full’ notation on the payment slip, nor any equivalent notation signed by him or her, shall result in the partial or full termination of his or her legal rights that he or she derives from legal, regulatory, or contractual provisions. Nor shall this result in a ‘final and settled account’ under the provisions of Article 317 of said Code.”

32. This provision forms the very basis of the relationship between the two parties, the DRC and the World Bank, as corroborated in substance by the principle of prefinancing as intended under Article 1, Paragraph “n” of the Credit Agreement referred to numerous times above.

33. N.B.

- a. The amount of US\$11,500,000 appears nowhere in the estimates used for the three banks BCA, BCCE, and NBK, following the example of other categories of the breakdown of Credit 3815-DRC, cf. the case of Gecamines, OCPT and others, COPIREP, BCECO (Annex 6).
- b. This implies that calculations were made beforehand with an eye to limiting the real financial impact of the social component for the three banks. There are thus grounds for our assertion that the amount of US\$11,500,000 imposed on a “take it or leave it” basis is a result of the irrationality that determined allocations for different costs, with priority given to the dissipation of resources under vague categories such as Miscellaneous (several instances), Works (several instances), Other (several instances), Unassigned, or Other Insurance, thus creating a diffuse but real, mafia-like network, to the detriment of employees who had given the better part of their professional lives to render faithful service to their country.

- c. As if the only mistake the employees made was to work for their banks, all the more so since they bear no responsibility for the mismanagement that led to the banks' bankruptcies, the Central Bank of Congo and its agents – accomplices viewed as guilty by virtue of their joint managerial responsibility and in regard to the criminal liquidation of the three state-owned banks – still happily go about their business and lounge in their posh offices and homes. Too bad. The time has now come to settle these organized injustices in a fairly manner.
- d. Even Satan himself, the father of evil oppressors and the insane, is unhappy with the behavior of the unjust torturers of the former BCA, BCCE, and NBK employees. He duly repents and now affirms with us: *never can the guilty be continuously exonerated, and the true victims unfairly made to feel guilty*. Thus, taking quick action by joining forces in universally condemning this injustice, and allowing the tears of the 3,480 former employees of said banks to dry up, would be a triumph for humanity and our common nature; while our contractual rights as (international) employees or workers may seem inviolable, when faced with an unjust conspiracy we all can be vulnerable. We refuse to believe that on the Inspection Panel one would expect to see a single World Bank official struck by such cruel injustice, who could only then understand the horrible pain and suffering felt by thousands of Congolese employees harmed by the failure to execute properly the provisions of Article 1 of Credit Agreement 3815-DRC, intentionally violated by the signatories, under the complicit eye of World Bank officials.
34. The amount of US\$11,500,000 was not even 10 percent of the total amount of Credit 3815-DRC (US\$120,000,000).
35. More than US\$48,000,000 of said Credit was allocated to vague categories such as Miscellaneous, Other, Works, Unassigned, and Insurance. This amounted to a diffuse mafia-like network, the significant hidden intelligence of which is shocking to us even today.
36. The former employees denounced at the time, and continue to denounce today, this substantial imbalance which, in their view, constitutes a serious failure on the part of the World Bank, in clear contradiction with its commitment to good faith in executing the above-mentioned Credit Agreement.
37. The Congolese Government, in knowledge of the illegal nature of the Catry calculations and the tremendous harm caused to beneficiaries, decided that the sum of US\$11,500,000 financed by the Agreement in question should be considered as a *down payment* on the employees' full rights, as amended by the General Inspectorate of Labor, the legal entity charged with settling labor disputes. Any potential reconciliation between employer and employee falls under its jurisdiction, including the case of the former BCA, BCCE, and NBK bank employees in their dispute with the government consultant, Mr. Jacques Catry.

38. The Government's acceptance of the principle of a down payment implied ipso facto its *irrevocable commitment to provide for payment of the balance* of the full rights thereby recognized. Furthermore, this political commitment on the Government's part went so far as to specify the source of the resources, which would come from liquidating the assets of said banks, which are exclusive government property (Annex 10).

39. A Memorandum of Understanding was signed between the Central Bank of Congo and the delegates of the former employees, preferential creditors, on the condition of firm and full payment (referring to the balance due) as agreed therein (Annexes 11, 12, and 13).

40. [IX.] Tremendous Harm Suffered by Former Employees:

The sudden loss of their jobs by employees, who were not given the legally required advance notice, or not prepared to re-orient their lives differently, were effectively damned to unemployment, too old to apply for new employment, and therefore left under a social guillotine. Even the newly emerging commercial banks paid no heed and provided no opportunity to utilize their expertise, even though it is in short supply.

41. After the payment of US\$13,409,686 and optimal liquidation of the assets of the three banks, the Central Bank of Congo, as "chief liquidator" and in this regard both the judge and the judged, buttressed by the World Bank's financial guarantee, refuses to authorize payment to the former employees, notwithstanding the commitment, deemed irrevocable, to provide the balance due, incumbent on the government as owner of the assets sold and principal debtor. In fact, if the Governor of the Central Bank of Congo is to be believed, the amount of US \$11.5 million already paid out represents payment in full of all accounts. This is patently paradoxical, not to mention cynical.

42. This refusal by the debtor, i.e. the Congolese Government, represented by the Central Bank of Congo, to execute in good faith a contractual commitment reveals the World Bank's complicity in regard to the failure to execute properly an obligation herein deplored, by maintaining an equally guilty silence. *There are thus grounds for questioning the meaning and relevance of the wise principle of prefinancing, on which Credit Agreement 3815-DRC is based, and as discussed in Article 1, Paragraph "n" of said Agreement, which is in fact explicit about severance pay for former employees of BCA, BCCE, NBK, Gecamines, and OCPT.*

43. COPIREP did not bring the social reintegration project to fruition, although the related funding was released and made available, unsuccessfully, to the well-known organizer. It is regrettable that this extremely rare expertise has not yet been put to good use (Annex 14).

44. The trade delegates have never received the double final payout recommended by Mr. Jacques Catry. In reality, the actual payment of controversial lump sums to former employees has set a favorable precedent.
45. Failure to make payment in accordance with the law, i.e. within 48 hours of breaking the contract, which occurred on March 10, 2003, i.e. more than six years ago, makes the debtor liable for damages proportional to the extent of the hardship endured by the workers.
46. The debtor has failed to discharge its obligation stemming from the issue of proximity for former employees in regard to the point of payment; this applies to beneficiaries in the provinces, particularly Equateur, both Kasaïis, North and South Kivu, Maniema, Katanga, and other eastern provinces where hundreds of people have been obliged to travel, at their own peril and in desperate times, at least 200 km to receive modest payments that have often turned out to be much lower than the travel costs incurred along the way. This is unacceptable, but well known to COPIREP and the World Bank through Mr. Ivan Rossignol.
47. Since March 10, 2003, the date when the three above-mentioned banks were placed into forced liquidation, the debtor has failed to provide financial coverage for expenses related to medical care for employees and dependents. The debtor has also failed to cover funeral expenses for the deaths of several hundred employees and family members.
48. The long-term legal benefits of older employees have been compromised, as have those of younger employees who have made monthly payments for more than ten years to the social security system in the DRC (i.e. to the *Institut National de Sécurité Sociale* INSS).

49. [X.] Disastrous Social Conditions – A True Disaster and Genocide:

- There have been hundreds of deaths, if not thousands, of former employees and dependents because of their precarious circumstances and because the former employees and their family members could not get access to even the most basic level of appropriate quality care because of financial reasons, thus effectively requiring the afflicted, in the twenty-first century no less, to resort to traditional practitioners and other unlicensed healers and charlatans.
50. Dishonor and a loss of decency and social consideration have come on the heels of the sudden loss of our jobs, inasmuch as employment is in itself morally ennobling, and we have been condemned to degrading unemployment. This creates a spirit of self-flagellation as we realize that we cannot be productive and are therefore in effect useless to society, with our own children growing more demanding and rebellious and even going so far, rightly or wrongly, as adopting an extreme attitude toward their parents, the former employees of the three above-

mentioned banks, harshly accusing them of being unable to provide for studies and allowing them to have a childhood.

51. The former employees, once morally upstanding and highly responsible parents who have been capriciously turned into outright bums, have found themselves in the position of being totally unable to raise and educate their children properly and to love them as cherished beings who aspire to all basic human rights. Meanwhile, our torturers are able to throw out their leftovers and even feed their watchdogs at home with no problem, while the former employees and their dependents bite the dust, vainly trying to move heaven and earth to find means of survival. Today, we are no more than indigents who have lost even the right to African solidarity as we have imposed for too long on African hospitality.
52. Thousands of households have been dislocated, thousands of divorces have taken place, and no fewer than 3,345 children have gone without schooling over the last four years. Other children have regularly begun the school year but been unable to finish, for lack of financial resources for paying off old school fees and for paying new school fees when due.
53. Other consequences include juvenile and even adult delinquency among our family members; a predisposition toward debauchery and HIV/AIDS and other sexually transmitted diseases; and all the characteristics of material poverty, undernourishment, and substandard human living conditions.
54. This accumulation of frustration and intolerance smacking of fundamentalism has been caused by those who have unjustly and cynically deprived us of the right to a decent life and respect as human beings

55. [XI.] Irrevocable Government Commitment (by way of illustration):

March 10, 2003: Appointment of the independent liquidators of BCA, BCEE, and NBK;

March 4, 2004: Act of closure for the amended calculation of final payouts (Annex 9).

56. March 30, 2004: After endorsing the details of the calculations, the final payouts (in the case of BCA) are transmitted to the Ministry of Labor and Social Welfare by the Governor of the Central Bank of Congo, in person, based on calculations performed by the General Inspectorate of Labor (establishing a favorable precedent for NBK and BCCE) (Annex 15).
57. March 31, 2004: The mission report by the General Inspectorate of Labor is sent to the Minister of Labor and Social Welfare, involving the closure report on calculating the final payouts for former employees and officials of the banks in liquidation, i.e. BCA, NBK, and BCCE) (Annex 16).

58. April 22, 2004: The final payouts for BCA, NBK, and BCCE are transmitted to the Executive Secretary of COPIREP in Kinshasa by the Minister of Labor and Social Welfare (Annex 17).
59. July 17, 2004: An **organic** instrument is sent to the Independent Liquidator by letter of decision of the General Inspectorate of Labor concerning payment of the balance of the final payouts for former employees of BCA and NBK specifically, thereby forming the basis of the Government's decision in this area (Annex 18).
60. August 6, 2004: The government reaches the decision to accept the total amount of final payouts at +/- US \$60,000,000, of which US \$11,500,000 is in the form of a down payment with the balance of US\$48,500,000 payable from the proceeds derived by liquidating the assets of the banks in liquidation (see Point 2, Page 3 of the memorandum serving as minutes of the Government's meeting of August 7, 2004) (1+4) (Annex 10).
61. August 25, 2005: The Central Bank of Congo invites representatives of the former employees to sign a Memorandum of Understanding strictly limited to disbursement of the sum of US\$11,500,000, provided by World Bank prefinancing under Credit Agreement 3815-DRC (Annex 19).
62. August 26, 2005: The delegates of the former employees express their reservations and other prerequisite conditions (Annex 11).
63. The Central Bank of Congo takes note of said conditions (see Letter of the Vice-Governor of the Central Bank of Congo; Annex 12).
64. September 8, 2005: A letter from the Minister of Labor and Social Welfare on the Government's decision is sent to the Independent Liquidators of BCA, NBK, and BCCE (Annex 20).
- 65. Following liquidation of the assets of BCA, NBK, and BCCE:**
- October 6, 2008: Date of the letter, unfortunately not executed, from Prime Minister Antoine Gizenga issuing a formal decree and **executory** instructions from the government for payment of the balance of the final payouts for former employees of BCA, BCCE, and NBK (Annex 21).
66. November 25, 2008: Date of the letter, not executed, from the Minister of Finance, sent to the Governor of the Central Bank of Congo, for execution of the above-referenced instructions from the Prime Minister (Annex 22).
67. March 19, 2009: Date of the first letter from Prime Minister Adolphe Muzito reiterating the Government's political position and ordering the Governor of the Central Bank of Congo to pay the balance of the final payouts to the former

employees of BCA, BCCE, and NBK. Unfortunately, this was unsuccessful (Annex 23).

68. August 18, 2009: Date of the second letter from Prime Minister Adolphe Muzito sent to the Minister of Finance, with terms of request to the Independent Liquidators of BCA, NBK, and BCCE, insisting that financial statements related to the liquidation of the three aforesaid banks be transmitted in order to bring final closure to the claims of the above-mentioned former employees (Annex 24).
69. To date, none of these letters have been successful or have produced any guarantee of a successful conclusion, given the extremely cynical hostility displayed by the Central Bank of Congo.

70. [XIII.] Obstruction, Freezing, Rebellion, and Refusal to Execute Government Orders regarding Payment of Said Balance by the Central Bank:

The Governor of the Central Bank of Congo has consistently refused to receive representatives of the trade group of the former employees of the said banks. Their oft-repeated requests for a hearing have gone unheeded.

April 1, 2009: Date of the zealous letter from the Governor of the Central Bank of Congo (which is in a state of rebellion) outlining his categorical refusal to comply with the orders of the Prime Minister, Head of Government, sent to the above-mentioned principal (Annex 25).

71. [XIV.] Numerous Contacts with the World Bank:

With the prospect of the return of Mr. Jacques Catry to resume the suspended consultations in Fatima parish in Kinshasa.

September 26, 2003: An e-mail from Mr. Jacques Catry informing the representatives of the former employees of the World Bank's no-objection, thus authorizing him to resume consultations between the parties. In this e-mail Mr. Catry authorized the updating, by the trade group party, of employee data bases, deemed indispensable for carrying out financial simulations based on rates set by mutual agreement (Annex 26).

72. [XV.] Subsequent to the Presentation of the Table of Lump Sum Payments unilaterally computed by Mr. Jacques Catry, Unsuccessful Follow-Up with our Contacts:

November 6, 2003: An e-mail from the trade group of former employees of the BCA, BCCE, and NBK vigorously protesting Mr. Jacques Catry's report, *Le point au 3 et 4.11.2003* ("State of Affairs on November 3-4, 2003") (Annex 27).

73. November 7, 2003: Vigorous letter of protest from the trade group against the Mr. Jacques Catry's report, *Le point au 3 et 4.11.2003* ("State of Affairs on November 3-4, 2003") (Annex 28).

74. November 19, 2004: SOS sent by former BCA, BCCE, and NBK employees, along with their grievances, to the World Bank Mission in Kinshasa in November 2004, concerning nonpayment of final payouts in the amount of +/- US \$60,008,477 in accordance with the letter and spirit of Article 1, Paragraph “n” of Credit Agreement 3815-DRC (Annex 29).
75. April 28, 2005: Report by Mr. Ivan Rossignol, World Bank Director of the Private Sector Development and Competitiveness Project, recommending in vain to the World Bank hierarchy three specific actions for improving on the amounts deemed meager and precarious according to Mr. Jacques Catry’s conclusions:
- (1) renegotiations on the total amount of severance payments and obtain an agreement among stakeholders;
 - (2) the ignition of reintegration activities for the employees; and
 - (3) the potential relocation of other project resources to this component to finance further activities for CDSP (see, in this regard, the extract of Mr. Ivan Rossignol’s report concerning the BCCE, NBK, and BCA banks in liquidation) (Annex 30).
76. E-mail of gratitude from the trade group, in support of the above-mentioned mission report by Mr. Ivan Rossignol (Annex 31).
77. September 9, 2005: E-mail from Mr. Ivan Rossignol concerning the availability of US \$11,500,000 and an amount, unknown to us, designated for the economic and social reintegration of former BCA, NBK, and BCCE employees (Annex 32).
78. August 9, 2007: Provocative and bothersome position taken by Mr. Michel Happi, World Bank Resident Representative in Kinshasa, concerning the formal notice given to COPIREP by the trade group of former employees of the three banks, with respect to:
- (i) the intentional confusion he created by considering the amount of US \$11,500,000 as already paid to constitute full and final payment of all accounts, thus clearly revealing his complicity within the circle of culprits reducing our former employees to poverty, in disregard of the provisions of Article 1, Paragraph “n” of Credit Agreement 3815-DRC, to which the signatories had however freely given their approval, based on the principle of prefinancing and adherence to the Congolese Labor Code, concerning full payment of the beneficiaries’ severance pay (final payouts); and
 - (ii) his deliberate intention to cover or mask the remainder, totaling US\$801,105, drawn from the payment of US \$11,500,000, made available to active agents of the three banks, and of which US \$10,698,895 was actually paid out, while the trade group delegates of the three banks— BCA, BCCE, and NBK—never received their double final payouts and have yet to do so, in accordance with the recommendation made under the same Catry plan, implemented notwithstanding

our objections. This has nevertheless created a favorable precedent for our claims today (Annex 3).

79. August 22, 2007: Lively statement from the trade group sent to the above-mentioned Mr. Michel Happi to clarify the letter and the spirit of Credit Agreement 3815-DRC (Annex 34). In addition, the systematic refusal by the World Bank Resident Representation in Kinshasa and by Ms. Marie Françoise Marie-Nelly, World Bank Director of the Private Sector Development and Competitiveness Project, to meet with the trade group of former employees of BCA, BCCE, and NBK banks, should be noted. Several requests for a hearing filed by these delegates of preferential creditors have gone unanswered. This sidestepping of the issue borders on disdain for the former employees, who are the victims of the complicity of World Bank officials in Kinshasa in regard to the unfortunate failure to implement Article 1, Paragraph “n” of the above-mentioned Credit Agreement. Such behavior can only give rise to frustration and the risk of violence on the part of these victims, whose thoughts inevitably turn to any possible means of release.

80. [XVI.] World Bank Involvement:

Its financial support of the Democratic Republic of Congo under Credit Agreement 3815-DRC/WB/IDA (Private Sector Development and Competitiveness Project) comes to roughly SDR87,000,000, equivalent to +/- US\$120,000,000 at a rate of SDR1 per US\$1.38.

81. [XVII.] World Bank Responsibility:

- (a) Having at the outset instigated and pushed the Congolese government and the Central Bank of Congo to liquidate, without due consideration, the banks in the government’s portfolio, namely BCA, BCCE, and NBK, in favor of the option of government divestiture from the banking sector specifically , which is now doomed to competition and a monopoly in the hands of private economic operators backed by foreign capital and multinationals, most of whom fit the profile of speculators and money launderers of capital, derived from the blood profits of war victims or from drugs;
- (b) Its status as the partner of the Congolese Government, and thus a participant and signatory of Credit Agreement 3815-DRC, and, mutatis mutandis, the provider of funds for prefinancing; on these grounds, the World Bank is obliged to comply strictly with the terms of Article 1, Paragraph “n” of said Credit Agreement, and thus with the legal provisions of Articles 62, 77, 103, and 110 specifically, without prejudice to Article 104 of Congolese Law 015/2002 of October 16, 2002 establishing the Labor Code;

- (c) The recognized responsibility of the World Bank is evident here because of its financial guarantee to the DRC, for the successful completion of the forced liquidation operation of the BCA, BCCE, and NBK banks, instituted by government fiat, without having forewarned the former employees, or having first prepared them for other socially useful alternatives. Because of all this, the World Bank is obliged to provide moral guarantees as well. Its credibility, its marketing requirements, and its brand image so dictate;
- (d) This obligation is required of the World Bank as a result of its complicity in good-faith execution of the contract signed between the World Bank and the DRC, inasmuch as the former provided financial assurances of covering the commitments incurred by the latter (DRC) and thus the weaknesses of the latter; and
- (e) In this regard, we agree with legal doctrinarians that, as in the case of the World Bank, “third-party” stakeholders have an obligation to do nothing that could hinder or compromise the successful execution of a contractual commitment by the debtor, i.e. the DRC or its government, concerning payment, in accordance with the law (Labor Code), of the final payouts for former employees recognized as beneficiaries under the terms of Article 1, Paragraph “n” of Credit Agreement 3815-DRC. On this matter, see Michel Waelbroeck, “*Les conditions de la responsabilité du Tiers complice dans la violation d’une obligation contractuelle, en droit belge et en droit comparé,*” *Revue Critique de Jurisprudence Belge*, 1962, p. 335, cited by Professor Kalongo Mbikay and Tshimanga, “*La responsabilité du Tiers complice dans l’inexécution d’une obligation contractuelle,*” *RJZ* No. 1, 2, and 3, p. 9, 1979.

82. [XVIII.] Current Situation:

The independent liquidators of said banks have liquidated all assets, in the case of BCA and NBK, while some assets reportedly remain unsold in the case of BCCE. It appears, however, that at the order of the Central Bank of Congo, all other creditors have been paid. According to the Governor of the Central Bank of Congo, the independent liquidators assigned to conduct the forced dissolution operations for BCA, BCCE, and NBK banks had not been tasked by the World Bank, as part of their contract and mandate, with execution of the social component. Is this not in itself sufficient to corroborate the relevance of our endeavor in referring to the responsibility of the World Bank? This represents a flagrant violation of Article 110 of the Labor Code, which is quite fortunately incorporated into Credit Agreement 3815-DRC, under the above-mentioned article of same. As such, since the National Assembly of the DRC ratified this Credit Agreement and the President of the Republic promulgated it, the Labor Code in this instance prevails over any other Congolese law for the purposes of calculating and paying the severance pay (final payouts) for former employees of the banks in forced liquidation, i.e. BCA, BCCE, and NBK. Inasmuch as Credit Agreement 3815-DRC has released only part of the US \$11,500,000 earmarked for beneficiaries, failure to pay the remaining balance is tantamount to nothing

less than a deliberate intention to send some of the victims to a mass death, deprived of their most basic rights. Otherwise, why would one have supposedly pre-financed the final payouts for these former employees if providing said payouts would require that they await the completion of the asset liquidation operations? Furthermore, the employees of the said banks are impatiently awaiting the beginning of operations aimed at their social and economic rehabilitation. They also challenge and vehemently denounce the COPIREP closure report attesting to proper payment, certified in error or even worse, in complicity, unless we are mistaken, by KPMG, an auditing firm approved by the World Bank, according to Mr. Ivan Rossignol. The trade group delegates expect to receive their due.

83. [XIX.] Our Desiderata:

While deploring the lack of timely upstream involvement of the trade group of former employees of the BCA, BCCE, and NBK banks in the appropriations made under the Credit Agreement 3815-DRC breakdown, we nevertheless want to assure you of our full availability for useful collaboration, as well as our confidence in the virtue of responsible dialogue, based on fruitful cooperation, with a view to achieving a favorable compromise for an appropriate resolution between the World Bank and the delegates of preferential creditors. May your sensitivity allow you to integrate into your agenda our ardent desire to be honored by such a High Delegation of the World Bank as yourselves, during a future mission in Kinshasa, the capital of the Democratic Republic of Congo. We nonetheless respectfully request that you take steps to ensure that your just, prestigious, and noble institution, the World Bank, shall:

- A. Promptly correct the technical errors described above and proceed to make legal amends for the flaws exposed.
- B. Restore the rights of the victims, i.e. the relevant former employees, in accordance with the letter and spirit of the provisions of Article 1, Paragraph “n” of Credit Agreement 3815-DRC involving the Congolese Labor Code, inasmuch as said former employees bear no responsibility for the mismanagement of their respective banks, which can moreover be attributed to the Central Bank of Congo. This is the sole real explanation leading to the precipitous decision by the Central Bank of Congo, as both judge and judged, in favor of the forced liquidation of the three government portfolio banks, in an effort to erase all traces of its shocking management failures and thereby escape the clutches of the Congolese courts. It is unfortunate that all bodies, except for the World Bank Inspection Panel if we are correct, have long allowed the lies and trickery of a “genocidal” entity to be heard most clearly, without lending the same ear to the many victims, whose cries have gone unheard, as though, in their case, all of humanity had covered its ears and gone mad. Has the time not finally come for the Inspection Panel, which is teeming with members who are ostensibly sensible men and women, whose sense of fairness and responsibility is well established, to hear the cries of alarm,

the SOS from the former employees of these banks, who refuse to believe that they live in a desert, or even a jungle, but rather in a world of humanity that is fully compatible with and sensitive to the just cause that is ours; and

- C. Make available, as quickly as possible, an additional amount to cover the balance due as recognized by the Government of the Republic.; - Ask the Congolese party, its partner in the Credit Agreement cited repeatedly above, to undertake the preparation of a formal request for additional funds with all due haste, in order to settle definitively the balance of final payouts, the socioeconomic reintegration of former employees, the double final payout for trade group delegates, and all other aspects of damages related to the harm suffered by victims; - Ask both the Congolese Government and the Central Bank of Congo, its guilty advisor, to open the doors to the trade group of former employees of BCA, BCCE, and NBK, and thus make dialogue and consultation a priority so as to develop the technical preparation of requests for additional funding, which would prevent any possible future dispute and encourage a spirit of responsible compromise.

84. [XX.] Our Profession of Faith:

“It is never too late to do better.” Only a reparative outlook of this sort, bearing the stamp of rationality and unambiguous responsibility, would be sure to dispel the notions of the victimized former employees, so deep is their sense of disaster, bordering on genocide, inflicted upon them by their torturers, the Central Bank of Congo and its accomplices, and affecting a minority professional circle that is vulnerable to the majority of other categories composing the Congolese population of +/- 64 million. Trusting in your trademark sense of compassion and of fairness, we remain confident that the World Bank Inspection Panel will deign to attach to this request the benefit of urgency, with a view to prompt and fair reparation of the trampled rights of former employees of BCA, BCCE, and NBK banks. We would be obliged by your kind and responsible compassion.

Very truly yours,

Attachments: Yes

Requesters

Timothée Lobe Bangudu
Delegate, Member of the *Intersyndicale* Trade Group
/s/

Freddy Kituba Kimbwel
Delegate, President of the *Intersyndicale* Trade Group
/s/