

THE INSPECTION PANEL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street, NW Phone: (202) 458-5200
Washington, DC 20433, USA Fax : (202) 522-0916
Internet: <http://www.worldbank.org/inspection>

Werner Kiene
Chairperson

IPN REQUEST RQ09/03

March 19, 2009

NOTICE OF REGISTRATION

Re: Request for Inspection

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

On March 13, 2009, the Inspection Panel received a Request for Inspection (the “Request”) related to the 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. On February 25, 2009, the Panel received a first Request related to this Project, raising similar issues on non-compliance and harm, and registered it in the Inspection Panel Register on March 12, 2009.

The Project

The Project’s objective is to “*support the Borrower’s policy of the promotion of private-sector led growth through: (a) improving the investment climate; (b) supporting parastatal reform in the telecommunications, energy, finance, transport, and mining sectors; and (c) improving mining competitiveness in the Katanga region of the Borrower.*”

According to the Project Appraisal Document (PAD), Component 3 of the Project will consist of “*financial assistance to retrenched mining workers at Gécamines [“Générale des Carrières et des Mines”] (...). Efforts to restructure the company have focused on cost-cutting measures and measures aimed at increasing efficiency. As a result, Government has approved a voluntary departures program, with a cost of \$40 million (...).*” 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 to distributing the payments, the project will finance social assistance and training to prepare workers for self-sustaining economic activities. The PAD adds that “*the lessons learned in the Katanga province will be used for subsequent severance package distribution to workers in other sectors.*”

The PAD also adds that fiduciary arrangements are made to ensure that: (i) Gécamines staff, beneficiaries of the severance packages, are properly identified; (ii) payments are made in full to eligible beneficiaries; and (iii) following IDA (International Development Association) disbursements to a special account, funds flow in a timely manner and appropriate amounts are made. The PAD further adds that supervision of the disbursements will be conducted by the Project implementing unit, BCECO (Bureau Central de Coordination), which will review the list of beneficiaries prepared by Gécamines and audit the payments, and that all necessary protocols, acceptable to IDA, will be drawn up and signed by the parties concerned in a legal agreement.

The Request

The Requesters state that Gécamines, “*in agreement with the World Bank*”, dismissed 10,655 employees and workers under the Voluntary Departures Operation (VDO), adding that the VDO would not have taken place if the World Bank was not a contracting party “*to finance the restructuring of Gécamines.*” They further add that the Bank imposed “*the requirement to dismiss and pay a portion of the work force [that it] deemed excessive in its view.*”

The Requesters state that employees accepted to be part of the VDO because they hadn't received their wages for 36 months. They also state that “*it was only to escape certain death, or at least immediate impoverishment, that employees instinctively signed on to this operation.*” They add that their signatures came “*under material, moral, and psychological duress.*”

The Requesters refer to the application Article 78 of the Congolese Labor Code in matters arising between employers and workers, including *en masse* dismissal. They state that the Congolese labor laws and regulations pertaining to *en masse* dismissal were not followed. They add that “*Gécamines and the World Bank granted former employees a miniscule amount, equivalent to one-fifth of what they were due, even though the campaign that was carried out to sign up these former employees had offered much more attractive payoffs.*” They also add that the amounts granted “*sufficed only to pay debts contracted to ensure their survival.*” The Requesters further add that Gécamines and the World Bank did not even comply with the recommendations laid out as law in Presidential Decree 035/2003 of March 18, 2003.

The Requesters enumerate the impacts of the VDO, stating that they include, among other: “*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).*” The Requesters add that the former Gécamines employees, who worked in Gécamines for more than 25 years, are hopeless and “*find themselves sentenced to a collective suicide.*” They also add that former Gécamines employees' hope resides in payment of their due.

The Requesters state that based on the Universal Declaration of Human Rights, the DRC Constitution, and the Congolese Labor Law, they have undertaken steps to reestablish their rights “*in all institutions of the Republic.*” They add that “*all institutions of the Republic have been unanimous in recognizing that [their] rights have been trampled upon and that there is a need to correct the harmful effects of the ill-conceived Voluntary Departures Operation by paying the*

final breakdown in full, in accordance with the spirit of Article 103 of the Congolese Labor Code, and as stipulated in Recommendation VII of the Permanent Framework for Social Dialogue.”

The Requesters conclude that the VDO caused “*the utter destitution*” of 10,655 direct victims and roughly 350,000 “*collateral victims*,” asking for speed in the implementation of Recommendation VII of the Permanent Framework for Social Dialogue.

In a separate communication, the Requesters state that they wrote to the World Bank on February 27, 2009, but “*received no reply*.” They also state that the Bank failed to take into account the “*social management of the restructuring that it imposed on Gécamines*.” They add that their “*rights were violated, causing [them] intangible and tangible damages with multiple and serious consequences*.” They ask the Panel to “*open an inquiry aimed at resolving this social conflict*.” In this regard, the Requesters ask for: “*payment of 36 months’ of arrears in compensation, pension principal, payment of legally paid leave, all social benefits associated with the contract*.” The Requesters authorize the Panel to publish the Request.

Registration

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 6.00	Bank Financing
OpMemo	Financing Severance Pay in Public Sector Reform Operations
OP/BP 13.05	Project Supervision

All communications with the Requesters in connection with this Request will be sent until further notice to Mr. Bidimu Kamunga.

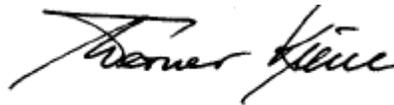
In accordance with paragraph 17 of the Panel’s Operating Procedures (the “Operating Procedures”), I am notifying you that I have, on March 19, 2009, which is also the date of the dispatch of this notice, registered this Request in the Inspection Panel Register.

In accordance with paragraph 18 of the Bank Resolution that established the Panel (the “Resolution”), paragraphs 2 and 8 of the “*Conclusions of the Board’s Second Review of the Inspection Panel*” (the “1999 Clarifications”), and paragraph 18 (d) of the Operating Procedures, Bank Management must provide the Panel, no later than April 17, 2009, with written evidence that it has complied, or intends to comply, with the Bank’s relevant policies and procedures in relation to the above-referenced Project. The subject matter that Management must deal with in a response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarifications.

After receiving the Management response, the Panel will, as outlined in the 1999 Clarifications and as provided by paragraph 19 of the Resolution, *“determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.”*

The Request has been assigned IPN Request Number RQ09/03.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Werner Kiene', written in a cursive style.

Werner Kiene
Chairperson

To:
Mr. Bidimu Kamunga
8 Avenue du Bronze
Commune de Panda
Likasi/Katanga

Mr. Robert B. Zoellick
President
International Development Association
Room MC12-750

CC:
The Executive Directors and Alternates
International Development Association