

THE INSPECTION PANEL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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IPN REQUEST RQ10/01

January 7, 2010

NOTICE OF REGISTRATION

Re: Request for Inspection

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

On December 15, 2009, the Inspection Panel received a Request for Inspection (the “Request”) related to the retrenchment operation financed by the above-referenced Project. Mr. Freddy Kituba Kimbwel and Mr. Timothée Lobe Bangudu, both residents of Kinshasa-Gombe, Kinshasa, in the Democratic Republic of Congo, submitted the Request acting on behalf of the “*Intersyndicale*”. The *Intersyndicale* represents former employees of three state-owned banks: the “*Banque de Credit Agricole*” (BCA), the “*Banque Congolaise du Commerce Exterieur*” (BCCE) and the “*Nouvelle Banque de Kinshasa*” (NBK).

On March 12, 2009 and on March 19, 2009 the Panel has registered previous Requests related to the retrenchment of another state owned enterprise (GECAMINES) and financed by the same Project (the “Previous Requests”). Both previously registered Requests raised similar issues on non-compliance and harm and are being processed simultaneously. Likewise, since this Request raises similar issues relating to a retrenchment operation financed by the same Project, for reasons of economy and efficiency, the Inspection Panel intends to process this Request jointly with the Previous Requests. The Panel has not yet issued a recommendation on whether to investigate the claims relating to the Previous Requests.

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 includes providing financial assistance to retrenched workers at parastatal companies Gécamines, BCA, NBK, and BCCE. It states that the Project “*will support broad financial sector reform by*

assisting with the liquidation of three state-owned banks and by strengthening the BCC [Congoles Central Bank].”

The PAD adds that efforts to restructure the parastatal companies “*have focused on cost-cutting measures and measures aimed at increasing efficiency.*” The PAD adds that the financial and telecom sectors have undergone studies, which have led to a needs assessment of approximately US\$25 million to finance severance packages for those sectors. In addition to distributing the payments, the project will finance social assistance and training to prepare workers for self-sustaining economic activities. The PAD further adds that “*Gécamines will spearhead this process, the lessons learned in the Katanga province will be used for subsequent severance package distribution to workers in other sectors*” and “*a similar fiduciary arrangement will be worked out for the other public enterprises to be reformed.*”

The PAD also adds that fiduciary arrangements are made to ensure that: (i) beneficiaries of the severance packages are properly identified; (ii) payments are made in full to eligible beneficiaries; and (iii) following the International Development Association’s disbursements to a special account, funds flow in a timely manner and in appropriate amounts. The PAD further adds that supervision of the disbursements will be conducted, the list of beneficiaries will be reviewed and payments will be audited. It also adds 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 the Central Bank of the Democratic Republic of Congo (DRC), under the Project’s umbrella, liquidated the three state-owned banks mentioned above, which led to the dismissal of 3480 employees. According to the Requesters the conditions determined for their retrenchment were drafted “*unilaterally*” by the consultant hired by the Government, financed under the Project and agreed upon by the World Bank. They complain that according to the Governor of the Central Bank of the DRC the only choice they had was “*to take the deal or leave it,*” which according to them violates their rights.

The Requesters state that the amounts owed to them were not paid within the mandatory time, the last payment being made in 2009 that is with several years delay. Further they add that the payments were not made in close proximity to their location and they had to travel up to 200 kilometers to receive their money. According to them, this lack of proximity extended the “*hardship endured by the workers*” and constitutes a basis for payment of a proportional indemnity.

The Requesters state that this operation led to “*disastrous social conditions*” for the affected ex-employees. Among other impacts they include: displacement of households; numerous divorces; and no less than 3345 children not benefiting from school education over the past four years. They also state that this operation led to delinquency and the widespread of HIV/AIDS and other sexually transmitted diseases. The Requesters describe their increasing frustration and intolerance against those who denied them “*the right to a decent live and respect as human beings.*”

The Requesters state that the attempted reintegration efforts failed. They claim that the situation was insufficiently assessed and participants were not “*prepared to re-orient their lives.*” According to the Requesters, they were “*damned to unemployment, too old to apply for new employment, and therefore left under a social guillotine.*”

The Requesters refer to Article 1(n) of the Credit agreement, providing that the amount of the severance payments comply with the Congolese Labor Code. The Requesters state that the calculation used in their case violates paragraph 77, 78, 103, 104 and 110 of the Congolese Labor Code. Further, they refer to a recalculation of the Congolese Labor Inspector in 2004, which estimated that a total amount of 60,008,447 USD should be paid in contrast with the consultant’s estimate of 13,409,686 USD that was to be paid.

The Requesters state that they began contacting the World Bank office in Kinshasa on November 19, 2004, informing them about the outstanding payments and disagreement with the calculation of the total amount of the severance payments. The response received in April 2005 informed them about “*renegotiations on the total amount of severance payments*”, “*the ignition of reintegration activities for the employees*” and “*the potential relocation of other project resources to this component to finance further activities.*” The Requesters describe further communication with Bank staff dating up to August 2007 but express their dissatisfaction with the outcome of these communications. On November 24, 2009, they also contacted the Bank’s representative in DRC.

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. Freddy Kituba Kimbwel and Mr. Timothée Lobe Bangudu.

In accordance with paragraph 17 of the Panel’s Operating Procedures (the “Operating Procedures”), I am notifying you that I have, on January 7, 2010, which is also the date of the dispatch of this notice, registered this Request in the Inspection Panel Register. Please note that the Panel’s registration is an administrative procedure and it implies no judgment whatsoever concerning the merits of the Request for Inspection.

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 February 8, 2010, 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.*”

As stated above, the Panel intends to consider these matters jointly with its processing of the Previous Requests.

The Request has been assigned IPN Request Number RQ10/01.

Yours sincerely,

Roberto Lenton
Chairperson

To:

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CC:

The Executive Directors and Alternates
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