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DEMOCRATIC REPUBLIC OF CONGO

No. 001/ACK/AK/02/2009

Likasi, February 25, 2009

REQUEST TO THE WORLD BANK INSPECTION PANEL

Executive Director [sic], Inspection Panel
1818 H Street NW, Washington DC, 20433, USA
P.O. Box 57566, Washington DC, 20038, USA
Fax: 1-202-522-0916

Subject: Request for inspection of the World Bank's actions in the Democratic Republic of Congo (DRC) that affected our rights and interests following the Voluntary Departures Operation (ODV) and the program to support economic initiatives in Katanga

Sir:

We, the undersigned, CHOLA KABAMBA and ASSANI KYOMBI, acting as former employees of the state enterprise "Générale des Carrières et des Mines," abbreviated as "Gécamines," created by Presidential Decree No. 0049 of November 7, 1995, with its head office in Lubumbashi at Boulevard Kamanyola, No. 419, Commune of Lubumbashi, B.P. 450, Fax 002432341041, in the Democratic Republic of Congo, and as victims of the Voluntary Departures Operation initiated by the Congolese Government with the financial support of the World Bank,

Hereby state as follows:

1. 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; and
 - The program to support economic initiatives in Katanga.

The Private Sector Development and Competitiveness Program (PCDSP), supported by the World Bank, is aimed at improving the competitiveness of the DRC economy and

contributing to national economic growth. The PCDSP is coordinated by the Public Enterprise Reform Steering Committee (COP/REP), itself a part of the Katanga Reintegration Coordination Unit (URK). In the view of the World Bank, reintegration for a person who has voluntarily left his or her job at Gécamines constitutes that person having **received his or her severance allowance** and being engaged in an individual or collective activity enabling him or her to earn the income necessary for his or her own survival as well as that of his or her dependents.

Furthermore, the support for the reintegration of those voluntarily leaving Gécamines is intended to make them **competitive** and have them participate effectively in the economic growth of the DRC. The term “**competitive**” should be understood to mean capable of producing or creating, at a lower cost, goods or services that are low in cost and of better quality.

The **design and implementation** of the aforementioned social measures were decided in the context of the “Economic Recovery Credit” and the “Private Sector Development and Competitiveness Program (PCDSP).” Indeed, pursuant to its request the Congolese government received support from the World Bank under the “Economic Recovery Credit” for introducing financial assistance as an **incentive for voluntary departure** on the part of redundant workers at Gécamines. The Congolese government also received World Bank support for financing a social component to promote the reintegration of those voluntarily leaving Gécamines (hereinafter: PVGs) into the economic fabric.

This mechanism was part of the measures to combat poverty and bring about economic recovery.

The voluntary departures program at Gécamines was financed by the World Bank, for the first tranche in the amount of US\$28.2 million drawn against the Emergency Recovery Credit, and for the second tranche in the amount of US\$11.8 million drawn against the funds of the Private Sector Development and Competitiveness Program, while US\$3,483,442 was covered by a supplementary credit requested by the Congolese government.

Evaluation of the activities relating to the reintegration of those voluntarily leaving Gécamines was entrusted to the consulting firm CRETES (*Centre de Recherche et d’Etudes sur l’Environnement et Sondage*– E-mail: cretes20002001@yahoo.fr) by the Public Enterprise Reform Steering Committee (COP/REP) created by Presidential Decree No. 136/2002 of October 30, 2002 and tasked with coordinating the PCDSP. The objective of the mission entrusted to the CRETES international consulting firm was, on the basis of an inventory of the activities, cooperatives, and partnerships initiated by PVGs in the wake of the ODV and the program to support economic initiatives in Katanga, to evaluate:

- The number of jobs created;
- The value added by these activities in their immediate environment;
- The amount of income generated;
- Problems encountered;

- Effects on the social and cultural level, as well as all other ripple effects throughout the areas concerned by this economic reintegration (Lubumbashi, Likasi, and Kolwezi and adjacent sites).

2. It is our understanding that the World Bank adopted certain 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.**” (See in this regard the summary minute of the special union consultation meeting held in Lubumbashi from June 22 to 24, 2002 by representatives of the employer, Gécamines, and workers in the presence of the Advisor to the Ministry of Mining.) However, said departures were supposed to be voluntary and meet certain conditions determined by the World Bank, such as the payment of a lump-sum amount in full settlement of any final reckoning (op.cit.).

In fact, Gécamines cut its staff throughout the entire DRC in contravention of the provisions of Articles 67, 78, 100, 144, and 152 of the Congolese Labor Code.

To do so, it presented each of us with a standard transaction instrument entitled “Agreement to terminate the labor contract by mutual agreement” and a minute of this finding of conciliation agreement in lieu of a “minute of full reconciliation,” which were prepared in advance and which each of us had simply to sign in exchange for remittance of a payment instrument (**irrevocable letter of credit**) drawn up by the Katanga Reintegration Coordination Unit (URK), a part of COP/REP, in order to collect the severance payment at the Likasi agency of the Banque Commerciale du Congo (BCDC).

The assistance programs for former Gécamines employees were limited. Indeed, COP/REP-URK, in its small project support program and its “KUJENGA 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.

At present, Mr. ASSANI KYOMBI has been placed on retirement by Gécamines while Mr. CHOLA KABAMBA is unemployed and not receiving adequate support. What is worse, the latter has been cited for abandonment of his company housing by Mr. NDONDJI KAWAYA, Director of Agropastoral Activities of Gécamines, who has fraudulently acquired the Gécamines dwelling situated at Avenue de l’Hopital, No. 1, Commune of Likasi, Likasi.

It bears recalling that Mr. NDONDJI KAWAYA fraudulently claimed the status of occupant of that dwelling, which was the determining factor in his being selected to be a potential beneficiary of the Gécamines Housing Lease-Purchase Operation (LVM). In addition, Mr. NDONDJI KAWAYA arranged to have his written declarations supported, and his false assertions corroborated, by several persons responsible for reviewing applications to purchase Gécamines housing (acts covered and punishable by Articles 4, 98, 124, and 126 of the CPL I and II—on this subject see also General LIKULIA BOLONGO, *Droit Pénal Spécial Zaïrois* [Zairian Special Criminal Law], 1 GDJ Paris, 19/6, pp. 281-301). On February 20, 2009 Mr. CHOLA KABAMBA lodged a complaint, with acknowledgment of receipt, with the General Prosecutor’s Office of Lubumbashi against Mr. NDONDJI KAWAYA for attempted swindling by forgery and false statements following the latter’s appeal of the civil case that had been stayed at the

Lubumbashi Court of Appeals under No. RCA 12589, CHOLA KABAMBA (appellant) against Mr. NDONDJI KAWAYA (defendant)—see Letter No. 003/ACK/02/2009 of February 7, 2009, attached.

3. Our rights and interests guaranteed by the DRC Constitution, the Congolese Charter on the Rights of Man and the People, Law No. 015/2002 of October 16, 2002 establishing the Labor Code, the Collective Bargaining Agreement of May 17, 1985 concluded between Gécamines and the Workers' Union Organizations, individual labor contracts, and Presidential Decree No. 035/2003 of March 18, 2003, are as follows:
 - The right to work (Article 2, Paragraph 1 of the Congolese Labor Code);
 - Protection against unemployment (Articles 62 and 78 of the Congolese Labor Code);
 - The right to official housing (Article 138 and Article 152, Paragraph 2, of the Congolese Labor Code);
 - The right to claims arising from various causes (Articles 81, 93, 100, 104, and 162 of the Congolese Labor Code); and
 - Protection of the civil interests of workers (Article 258 of the Congolese Labor Code, Book III).

4. 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 PVGs in observance of the fundamental rights of Congolese workers, as had been done by ZAMBIA.
However, under pressure from the World Bank, which made the financing of activities to revitalize the activities of state enterprises conditional on a drastic cutback in their staffing, Gécamines was obligated to dismiss an initial tranche of 10,655 employees in contravention of the Congolese Labor Code, which requires a special procedure in this type of operation (see Articles 62 and 78 of Law No. 016/2002 of October 16, 2002, establishing the Labor Code, as supplemented by Ministerial Order No. 12/CAB MIN/TPS/116/2005 of October 26, 2005, determining the modalities for dismissing workers). In addition, the incomplete communiqué of the Minister of Mining, the supervisory authority of Gécamines, rounded out by the findings of the work of the expert Jacques CATRY approved by the World Bank, struck a sledgehammer blow to the legal standards and conventions that the government had undertaken to observe on the basis of Presidential Decree No. 035/2003 of March 18, 2003, ordering the settlement of wage arrears and the payment of final reckonings to the Gécamines employees having opted to voluntarily leave the enterprise, this in order to avoid social unrest (in this connection, see the technical note on the matter of massive dismissals at Gécamines known as the "Voluntary Departures Operation" in connection with the restructuring of this state enterprise, sent in 2005 to the Executive Secretary of the Governmental and Cultural Committee by the Minister of Labor and Social Welfare).

5. We are of the opinion that our 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. This caused the following damages: the damage incurred by being deprived of wage arrears and the final reckoning to which each of us is entitled, and which we should have collected if our individual labor contracts had not been terminated in an irregular manner. Damages also stem from being deprived of all other social advantages (repatriation allowance, provision of various essential commodities, waiting fees for former employees transferred, company housing, etc.) until the date of organization of our final return trip to the hiring site (Lubumbashi). Thus, with the abusive breaking of our labor contracts and the deprivation of amounts incontestably owed by our former employer, we have lost all acquired benefits of any kind.

We must now extricate ourselves from our affairs completely by ourselves. This sudden and mandatory adaptation to a life of poverty, in sharp contrast to the life we have led for over 25 years as wage-earning workers, cannot but have caused great harm to victims of the Voluntary Departures Operation such as ourselves.

6. We maintain that the World Bank is responsible for the violation, by our former employer Gécamines, of its contractual obligations following the breaking of our contracts in question.

To be sure, the World Bank is fully cognizant, as an employer itself, of its obligations in respect of observing the laws of man and workers. It must ensure that the state enterprises to which it extends loans, even with the guarantee of the Congolese government, apply and observe such rights. It must act in a manner consistent with the undertakings and obligations of the DRC in respect of the rights of man and workers. It knows full well that it is contrary to the law to support and participate in the arbitrary dismissal of workers.

Indeed, jurisprudence tells us that third parties have an obligation not to do anything that might facilitate a debtor's failure to enforce a contract (see Michel Waelbroeck, "*Les responsabilités du tiers complice dans la violation d'une obligation contractuelle en droit belge et en droit compare*" [The liability of a third party involved in the violation of contractual obligations under Belgian law and comparative law], *Rev. Crit. De Jurisp. Belge*, 1962, p. 335, cited by KALONGO MBIKAYI, and TSHIMANGA, "*La responsabilité du tiers complice dans l'inexécution d'une obligation contractuelle*" [The liability of third parties complicit in the failure to carry out a contractual obligation], *RJZ*, No. 1, 2, and 3, 1979, p. 9).

7. We have approached the staff of the World Bank **in writing**, namely its Africa Region Vice President in Washington and the Director of the its Office in Kinshasa, but to no avail (see our letters No. 001/ACK/AK/01/2009 of January 27, 2009 and No. 002/ACK/AK/01/2009 of January 27, 2009).

In these approaches to the World Bank we first endeavored, by our letter of January 27, 2009, to obtain clear and precise answers on the measures contemplated by that international financial institution in the short term to address our respective problems. Then, in our letter of January 31, 2009 we pointed out the fact that the World Bank had deprived us of an honorable end to our careers, of our wage arrears, of our final reckoning, and of all the other social advantages prescribed by the relevant provisions of

the Congolese Labor Code and of the Collective Bargaining Agreement of May 17, 1996 (of which Mr. CHOLA KABAMBA is **one of the signatories**), of our individual labor contracts, and of Presidential Decree No. 035/2003 of March 18, 2009, which have not been observed.

To avoid any public impugning of the World Bank's beneficent reputation in its fight against poverty, we even proposed that our claims be resolved in accordance with the provisions of Articles 352, 353, and 354 of the Congolese Civil Code, Book III. Under same, the transfer of a wage claim is the legal act whereby a Congolese worker transfers his or her rights over his employer to a third party, making the latter the claimholder in his or her place.

8. We have not received any response. Indeed, the World Bank Representative's Office in DRC and the Africa Region Vice Presidency of the World Bank have not even, out of simple courtesy, acknowledged receipt of our two aforementioned letters. Even the retransmission to these two World Bank offices of Letter No. PR/MIN ET/058/vk/2007 of April 10, 2007 concerning the matter of 10,655 Gécamines workers terminated in 2003 and sent to the Prime Minister and Head of the Congolese Government by the Minister of State in the office of the DRC President resulted in no reaction of which we are aware. However, an information copy of that letter was sent to the World Bank Representative in Kinshasa. That letter states in particular the following: "Informed by the copy to me of the letter under reference that you sent to the Association of former Gécamines employees, I examined all aspects of the problem you raised and found as follows:
- The matter went through all stages required by law in respect of labor disagreements;
 - The amount of US\$240,000,000 (two hundred forty million dollars) was unilaterally halted by the beneficiaries;
 - The overall amount of US\$43,483,442 was made available voluntarily by the World Bank without taking account of all of Gécamines' liabilities vis-à-vis its separated employees;
 - This disagreement has remained unresolved, whereas Gécamines claims to have closed the matter, and the former employees state they have received only down payments..."

In consequence, we maintain that the aforementioned criminal participation, which is contrary to the rules and procedures of the World Bank, has seriously damaged our rights and interests, and we ask that the Inspection Panel recommend that the Board of Executive Directors of the World Bank open an investigation in order to resolve our problem.

As required by your regulations this inspection request is presented in a brief form. However, we can provide you with more detailed information on request.

To that end, please find as attachments to a number of e-mails the literal proofs that will facilitate your research and the finding of failures or omissions on the part of the World Bank in the context of its emergency economic revitalization project of 2001, to wit:

- Our letter No. 001/ACK/AK/01/2009 of January 27, 2009 with the subject: “PCDSP Project—Update and request for complete reparation of damages sustained from deeds of the World Bank”;
- Our letter No. 002/ACK/AK/01/2009 of January 31, 2009 with the subject: “PCDSP Project—Evaluation of the damages sustained owing to World Bank activities in the DRC and proposal for transfer of claims”;
- Letter No. PR/MIN/ET/159/W/2007 of April 10, 2007 with the subject: “The matter of 10,655 Gécamines workers terminated in 2003” and addressed to the Prime Minister and Head of the Congolese Government by the Minister of State in the Office of the President of the RDC;
- CRETES report on the evaluation of the activities for the reintegration of personnel voluntarily leaving Gécamines; and
- Final report on the work of the first special session of the General Assembly on the Permanent Framework for Social Dialogue (CPDS) held in Kinshasa and containing the recommendations made to Gécamines and the Congolese government with respect to the matter of 10,655 terminated workers.

Finally, we hereby authorize you to make this request public.

It goes without saying that we are entirely at your service for any requests for additional information.

We hope that our request will be favorably received.

Sincerely yours,

The Requesting Parties

/s/ CHOLA KABAMBA

/s/ ASSANI KYOMBI

Attachments: YES