

**BANK MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION PANEL REVIEW OF THE
DEMOCRATIC REPUBLIC OF CONGO PRIVATE SECTOR DEVELOPMENT
AND COMPETITIVENESS PROJECT (Credit No. 3815-DRC)**

Management has reviewed the Request for Inspection of the Democratic Republic of Congo Private Sector Development and Competitiveness Project (Credit No. 3815-DRC), received by the Inspection Panel on December 15, 2009 and registered on January 7, 2010 (RQ10/01). Management has prepared the following response.

CONTENTS

Abbreviations and Acronyms	iv
EXECUTIVE SUMMARY	1
I. INTRODUCTION.....	6
II. PROJECT BACKGROUND.....	7
III. SPECIAL ISSUES RELATED TO THE REQUEST	11
IV. UPDATE ON GECAMINES ACTION PLAN	21
V. LESSONS LEARNED.....	26
VI. MANAGEMENT’S RESPONSE.....	27

Annex

Annex 1.	Claims and Responses
Annex 2.	Major Milestones

ABBREVIATIONS AND ACRONYMS

BCA	Banque de Crédit Agricole (Agricultural Credit Bank)
BCCE	Banque Congolaise du Commerce Extérieur (Congoese External Commerce Bank)
BP	Bank Procedures
CCLB	Comité de Coordination des Opérations de Liquidation des Banques (Coordination Committee for Bank Liquidation Operations)
COPIREP	Comité de Pilotage de la Réforme des Entreprises du Portefeuille de l'Etat (Pilot Committee for the Reform of State Enterprises)
DRC	Democratic Republic of Congo
ECOREC	Economic and Reconstruction Commission
ERC	Economic Recovery Credit
FIGEPAR	Fiduciaire de Gestion et de Participation (Management and Participation Trust)
GDP	Gross Domestic Product
Gécamines	Générale des Carrières et des Mines (General Quarry and Mining)
HR	Human resources
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IMF	International Monetary Fund
INSS	Institut National de la Sécurité Sociale (National Social Security Institute)
IPN	Inspection Panel
KPMG	International auditing firm
NBK	Nouvelle Banque de Kinshasa (New Bank of Kinshasa)
NGO	Nongovernmental organization
OCPT	Office Congolais des Postes et des Télécommunications (Congoese Post and Telecommunications Office)
OD	Operational Directive
OP	Operational Policy
OpMemo	Operational Memorandum
PRGF	Poverty Reduction and Growth Facility
PSDC	Private Sector Development and Competitiveness Project
REGIDESO	Régie de Distribution d'Eau (Congoese water utility)
SMIG	Salaire minimum interprofessionnel garanti (Minimum wage)
SNCC	Société Nationale des Chemins de Fer du Congo (Congoese National Railways)
TSS	Transitional Support Strategy
UNTZA	Union Nationale des Travailleurs Zaïrois (National Trade Union of Zairian Workers)
VDP	Voluntary Departures Program

Currency Unit (as of February 10, 2010)

US\$1 = CF895.4

CF1=US\$0.00108

EXECUTIVE SUMMARY

1. ***Requests for Inspection.*** On March 12 and 19, 2009, respectively, the Inspection Panel received and registered two Requests for Inspection concerning the Democratic Republic of Congo (DRC): Private Sector Development and Competitiveness Project (PSDC), financed by the International Development Association. The two Requests for Inspection concerned claims regarding one of the project subcomponents, in particular, the Voluntary Departures Program, which resulted in the retrenchment of over 10,000 employees of the State enterprise “Générale des Carrières et des Mines (Gécamines).” In its eligibility report, the Inspection Panel noted the Management Response and recommended to the Board of Executive Directors that it approve the Panel’s proposal to: (i) refrain from issuing a recommendation at this time on whether an investigation was warranted, and (ii) to await further developments on the matter raised in the Requests for Inspection. The Board approved the Panel’s recommendation on June 11, 2009.

2. On January 7, 2010, the Inspection Panel registered a third Request for Inspection, which is the subject of this response. This third Request was submitted by two individuals on behalf of a group that represents former employees of three state-owned banks: the Banque de Crédit Agricole (BCA), the Banque Congolaise du Commerce Extérieur (BCCE) and the Nouvelle Banque de Kinshasa (NBK), hereafter referred to as the “Requesters.”

3. The Requesters state that the Central Bank of the DRC liquidated the three banks cited above, leading to the dismissal of 3,480 employees. They have raised concerns about the conditions attached to the severance payments, the calculation and amounts of severance pay owed to them, the social consequences for the affected ex-employees, problems in reintegrating the former employees into the workforce, lack of compliance with applicable sections of the Congolese Labor Code, and dissatisfaction with their communications with the World Bank on issues in the project.

4. ***In its Response to the first two requests, Management described the political instability and conflict, from which DRC emerged in 2001-2002, as well as the dire financial situation at the time.*** Considering that a unique window of opportunity for peace had opened, the World Bank and the international community moved to re-engage in the DRC in 2001. The first DRC Transitional Support Strategy, endorsed by the Board on July 31, 2001, aimed to support the transition to peace and stability in both DRC and the sub-region by helping the Government: (a) meet basic and urgent needs; (b) rebuild effective public institutions and policies; (c) revitalize economic activity; and (d) rebuild implementation capacity. This was followed by several lending operations to support the implementation of this strategy.

5. ***Recognizing that the recovery of the financial sector was essential to stability and private sector recovery and growth, the Government proposed a major restructuring of the banking sector, and requested urgent support from the IMF and the World Bank.*** In May 2002, the private banks were placed under liquidation and, by September 2002, the Government intended to place the three public sector banks identified as non-viable (BCA, NBK and BCCE) into liquidation. However, implementing this restructur-

ing plan could not proceed without first addressing the question of severance payments to the employees of the banks that needed to be liquidated, and the Bank was called in to help the Government deal with this issue.

6. ***Private Sector Development and Competitiveness Project (PSDC)***. The US\$120 million PSDC was approved on July 29, 2003 and became effective on December 2, 2003. The project's development objective was to increase the competitiveness of the economy, and thereby contribute to economic growth. The project was to contribute to mitigating the social cost of the reform, by helping the Government finance retrenchment payments for employees from Gécamines, the three liquidated state owned banks (BCA, NBK and BCCE) and the Congolese Post and Telecommunications Office (OCPT). In designing and implementing the project, the Bank was guided by several applicable policies and memoranda, supported by country economic and sector work and a poverty assessment in the mining sector.

7. ***Project implementation has been carried out by COPIREP***, the Steering Committee for Public Enterprise Reform. The project is 80 percent disbursed and 90 percent committed, as of February 2010. Given the centrality of investment climate reforms to generate growth, and the need to pursue the restructuring of other parastatals, additional financing of US\$60 million was approved for the project in April 2008, and it is proposed to extend the project to December 31, 2012. The Mid-Term Review of June 2007 noted the progress of the project in an extremely difficult environment.

8. ***Calculating the severance payments***. Calculations for severance payments were extraordinarily complicated by the situation of the banks (which have had no or very little operations since 1995), characterized by: (a) unreliable or limited human resources (HR) data due to the destruction of the banks' archives during the civil unrest and civil war (1991 – 2001); (b) the absence of binding collective bargaining agreements between the banks and trade unions; (c) the difficulty to establish salaries on which the severance payments calculations should be based; and (d) the extent of arrears that would need to be factored in.

9. ***Use of a simplified matrix (barème) for payments***. The consultant was aware that, in the case of lay-offs, individualized indemnities should be calculated on the basis of specific information for each individual. Given the lack of reliable HR data, the consultant recommended in 2004 using a *barème* for two major reasons: (a) it increased transparency of calculations, was impartial, and reduced opportunities for fraud, a major concern; and (b) it avoided complex and possibly erroneous calculations, based on faulty information.

9. ***Difficulty in securing a national consensus on the approach for severance payments***. Establishing a consensus at the national level on addressing the severance payments was complicated by several factors: lack of agreement by the trade unions on the proposed payment scale; differing calculations of the indemnity by the consultant (US\$11.5 million) and the Labor Inspectorate (US\$60 million) as a basis for the payments; additional adjustments to the proposed amounts; differences of opinion as to whether the Bank-financed packages were an advance payment or not; and, intra-

governmental debate as to whether the debts to former employees should be settled through the liquidation proceeds of the banks, or through the budget or other sources of funding. The lack of consensus within the DRC Government on this sensitive question is a critical issue.

10. Following exchanges between the World Bank and former employees of liquidated banks between April and November 2009, COPIREP sent a letter to the World Bank, providing a copy of the latest letters between the Prime Minister, Ministry of Finance and the Governor of the Central Bank on this matter, and informing the World Bank that this sensitive question was an internal matter to be solved by the Government of DRC. To date, this issue has not been resolved within the Government and the World Bank has not taken a position on the matter. However, the Bank has expressed its readiness to continue supporting the Government's efforts at restructuring the parastatal sector, including identifying solutions for addressing the related social costs in a way that reflects the fiscal situation of the country and political economy considerations.

11. ***Initial and additional action plans for Gécamines.*** Following the Request for Inspection from Gécamines former employees (*Partants Volontaires*), Management proposed an action plan, which included a survey of the *Partants Volontaires*, and assisting the Government in addressing the social costs of reform. Following the survey, Management proposed to the Government additional measures for follow-up in the project, including assistance to the *Partants Volontaires* to get access to health, education, and national pension benefits, provision of technical assistance to reform the national pension system, assisting the Government in elaborating a strategy to address the social dimension of the ongoing public enterprise reform, and assisting the Government to establish a dispute resolution mechanism for former Gécamines employees to address any outstanding claims.

12. A consultant was recruited in October 2009 by COPIREP, under the PSDC, to help the Government think through the central issue of the social cost of public enterprise reform in a more comprehensive way. A presentation was made to ECOREC (the Government's Economic and Reconstruction Commission) on the social dimension of public enterprise reform on December 19, 2009. This presentation highlighted the urgency to tackle this issue and to outline a potential strategy to address it. As of October 2009, social debts of the six major public enterprises amounted to US\$607 million and retrenchment cost (to tackle overstaffing) is estimated between US\$85 and US\$175 million. If all public enterprises are included in the calculations, the social cost amounts to over US\$1 billion. The proposed strategy – discussed at ECOREC and to be submitted to the Cabinet – would be complemented by strategies tailored to specific enterprises. Such a strategy would be based on the following pillars:

- Settlement of social debts;
- Sound management of redundancy programs; and
- Review of the legal and regulatory framework for human resources management.

13. **Lessons learned.** The World Bank has learned important lessons from the retrenchment programs undertaken in Gécamines, the three liquidated banks, and OPCT and it has integrated the lessons learned in the design of new operations involving public enterprise reform. Among the key lessons learned is the need for:

- A national debate and consensus on the ways to address the social cost of public enterprise reform, with a view to reaching a national consensus on the most appropriate, and fiscally sustainable, strategy;
- Ensuring that high level expertise in labor law and negotiations with social partners is available *both* during the design phase of a project and throughout implementation of the retrenchment program;
- Supporting a potentially long and difficult negotiation process must be recognized, and lead time for building consensus factored into the process;
- The existing social security system to be taken into account, and eligibility of departing employees for social security benefits ensured;
- Supervision teams of projects dealing with retrenchment programs to include a social development specialist to monitor social development outcomes (and thus ensure that baselines and follow-up studies are effectively undertaken).

14. **Action Plan.** Management proposes the following specific action plan for the former employees of the three liquidated banks, in addition to the action plan developed following the Request for Inspection from Gécamines' former employees.

Action	Timeline
Undertake a detailed analysis, with the support of a specialized consultant, to fully explain the differences between the calculations of the consultant and those of the Labor Inspectorate	By end April 2010
Continue supporting the Government in developing a comprehensive strategy to settle social debts of public enterprises (as per the Gécamines additional action plan) It is proposed that the second additional financing to the PSDC finance the feasibility study and the implementation of a defeasance structure for public enterprise debt to employees, in a fiscally responsible way.	October 2009 – June 2010 Second additional financing to be presented to the Board before end June 2010
Provide technical assistance to the former employees of the liquidated banks to access the national pension system (INSS) – in parallel to the support to the reform of INSS (as per Gécamines additional action plan)	March – December 2010
Management will also recommend and provide support to the Government to undertake a qualitative survey of former employees of the banks to have a better understanding of their current situation.	By the end of 2010

I. INTRODUCTION

1. On March 12 and 19, 2009, respectively, the Inspection Panel received and registered two Requests for Inspection (RQ09/02 and RQ09/03) concerning the Democratic Republic of Congo (DRC): Private Sector Development and Competitiveness Project (PSDC), financed by the International Development Association (IDA Credit No. 3815-DRC). Management submitted its Response on April 27, 2009 and the Inspection Panel's eligibility report was submitted to the Executive Directors on May 27, 2009 (INSP/R2009-0002).

2. The two Requests for Inspection concerned claims regarding one of the project subcomponents, "support to the social cost of reform," and more particularly, the Voluntary Departures Program (VDP), which resulted in the retrenchment of over 10,000 employees of the State enterprise "Générale des Carrières et des Mines (Gécamines)." Those Requests were registered, respectively, by two residents of Likasi, Katanga, DRC who were former employees of Gécamines and by the President of "le Collectif des Ex-agents Gécamines ODV" ("the VDP Collective of former Gécamines Employees"). In its eligibility report, the Inspection Panel noted the Management Response and recommended to the Board of Executive Directors that it approve the Panel's proposal to: (i) refrain from issuing a recommendation at this time on whether an investigation was warranted, and (ii) to await further developments on the matter raised in the Requests for Inspection. The Board approved the Panel's recommendation on June 11, 2009.

3. On January 7, 2010, the Inspection Panel registered a third Request for Inspection, IPN Request RQ10/01 (hereafter referred to as "the Request"), concerning the PSDC, which is the subject of this response.

4. This third Request for Inspection was submitted by Mr. Freddy Kituba Kimbwel and Mr. Timothée Lobe Bangudu, on behalf of the "Intersyndicale," which represents former employees of three state-owned banks: the Banque de Crédit Agricole (BCA), the Banque Congolaise du Commerce Extérieur (BCCE) and the Nouvelle Banque de Kinshasa (NBK), hereafter referred to as the "Requesters." Attached to the Request are 32 annexes, including correspondence, meeting minutes and various reports in support of the Request.

5. In summary, the Requesters state that the Central Bank of the DRC liquidated the three banks cited above, leading to the dismissal of 3,480 employees. They have raised concerns about the conditions attached to the severance payments, the calculation and amounts of severance pay owed to them, the social consequences for the affected ex-employees, problems in reintegrating the former employees into the workforce, lack of compliance with applicable sections of the Congolese Labor Code, and dissatisfaction with their communications with the World Bank on issues in the project.

6. The third Request contains claims that the Panel has indicated may constitute violations by the Bank of various provisions of its policies and procedures, including the following:

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

7. The third Request concerns the same project subcomponent of the PSDC, “support to social cost of reform,” and focuses on the severance packages paid out to former employees of the three state owned banks, BCA, NBK, and BCCE. Management’s previous Response included a detailed overview of the economic context and World Bank operations in public enterprise reform. Therefore, this Management Response focuses on specific issues raised in the new Request. It also provides an update on Management actions with respect to matters raised in the initial Requests. The Panel has informed Management that it will issue its eligibility report on all three Requests, following submission of the Management Response to the third Request.

8. **Structure of the Text.** The document contains the following sections: Section II presents background to the project; Section III discusses special issues related to the Request; Section IV provides an update on the Action Plan for Gécamines; Section V presents lessons learned; and Section VI comprises Management’s response. Annex 1 presents the Requesters’ claims, together with Management’s detailed responses, in table format, and Annex 2 includes major milestones in the project related to the Request.

II. PROJECT BACKGROUND

A. Economic Context

10. ***In its Response to the first two requests, Management described the political instability and conflict, from which DRC emerged in 2001-2002.*** At the time when the Bank re-engaged in DRC (mid-2001), the country was facing a deep economic crisis, with high debt, the collapse of physical and social infrastructure, and grave economic hardship for citizens. The estimated total stock of DRC external debt at the end of 2001 stood at US\$12.9 billion. The loss of life between 1997 and 2001 associated with the collapse of physical and social infrastructure caused by the conflict was estimated to be as high as 1.5 million persons. The FAO estimated that about a third of the population was starving or malnourished, while UNICEF estimated that the majority of the population lived on 20 cents a day. Government resources had shrunk to 5 to 7 percent of GDP. These resources were largely allocated to the military to finance the war effort, to the detriment of social sectors, while the service pay scale had fallen to about US\$0.40-4.00 a month.

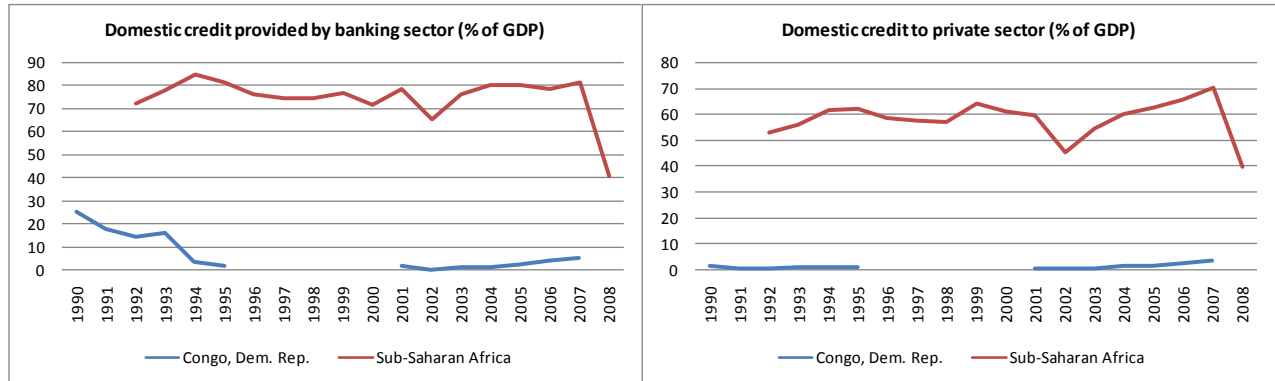
11. Considering that a unique window of opportunity for peace had opened, the World Bank and the international community moved to re-engage in the DRC. The first DRC Transitional Support Strategy (TSS) was approved by the Board on July 31, 2001. This strategy aimed to support the transition to peace and stability in both DRC and the

sub-region by helping the Government: (a) meet basic and urgent needs; (b) rebuild effective public institutions and policies; (c) revitalize economic activity; and (d) rebuild implementation capacity. This was followed by several lending operations to support the implementation of the strategy by: (i) improving governance and reducing corruption in order to foster private sector development and increase the supply of public services; (ii) improving public sector financial management; and reform and restructuring of the public enterprise sector; (iii) beginning the reform of the financial sector, especially the restructuring of commercial banks; (iv) supporting policy actions in the forestry sector; and (v) providing support to urgent special actions within the mining sector to foster restructuring.

12. ***Public enterprises were found to be a key bottleneck to economic recovery.*** At the time the project was being considered, the Government recognized that the poor performance of public enterprises was (and remains) a major constraint to private sector development and economic growth. The enterprises dominated the mining sector and controlled the transport (airports, railways, and ports), water, and power sectors, accounting for around 80 percent of formal employment in the country. As public monopolies, they were not adequately regulated or monitored for many decades, resulting in large losses to the country in terms of misdirected investment, high user charges, revenue leakages, etc. While the sustainability of such enterprises was being challenged, it was recognized that restoring key infrastructure services was critical to stimulate growth in the areas that are the most likely to attract investments and generate revenues in the foreseeable future (e.g., power, extractive industries and transport). As a result, reforming public enterprises became a major focus of the World Bank strategy in DRC. Within this general context, as described below, at the time of the World Bank reengagement in DRC, three public banks were bankrupt and needed to be liquidated to allow for a recovery of the financial sector in DRC.

13. ***Actions to stabilize and reform the financial sector were critically needed.*** The financial sector was nearing collapse. A June 2001 International Monetary Fund (IMF) report noted that – as of December 31, 2000 – of the fourteen authorized banks, only eight were operating. Six banks, three of which were state owned, were no longer in operation. The Economic Recovery Credit (ERC) program document (dated May 2002) describes the state of the financial sector. In 2001, bank deposits represented just 2 percent of broad money (M2), and domestic credit provided by the banking sector represented 1.9 percent of GDP, compared to 78.6 percent for Sub Saharan Africa. Domestic credit to the private sector stood at 0.7 percent of GDP, compared to 60 percent for Sub-Saharan Africa. As the figures below show, no data on domestic credit in DRC is available between 1996 and 2000. Confidence in the system was low: many depositors had lost or were unable to access their deposits, whose value had been seriously eroded by hyperinflation. An audit of four banks found them to be undercapitalized, illiquid and insolvent, with over 60 percent of their portfolios consisting of non-performing assets. Profitability was low or negative, and prudential norms were not met.

Figure 1: Domestic Credit Provided by Banking Sector and Domestic Credit to Private Sector (as a % of GDP)



Source: World Bank Development Data Platform

14. ***Recognizing that the recovery of the financial sector was essential to stability and private sector recovery and growth, the Government proposed a major rehabilitation of the banking sector, and requested urgent support from the IMF and the World Bank.*** The Government identified five private and three public sector banks as non-viable. In May 2002, the private banks were placed under liquidation and, by September 2002, the Government intended to place the three public sector banks identified as non-viable (BCA, NBK and BCCE) into liquidation. However, as clearly outlined in the ERC, implementing this restructuring plan would not proceed without first addressing the question of severance payments to the employees of the banks that needed to be liquidated.

B. World Bank Operations Supporting Banking Sector Restructuring

15. Two World Bank operations were aimed at supporting the government's objective to urgently restructure the banking sector: the ERC (a budget support operation) and the PSDC.

16. ***Economic Recovery Credit.*** This budget support operation, for an amount of US\$450 million (P057293, Cr. 3660-DRC) was approved on June 13, 2002. The ERC closed on June 30, 2003. Its objective was to help advance the TSS goals of supporting economic stabilization and structural reforms, and lay the basis for economic recovery as presented in the Government's Interim Poverty Reduction Strategy Paper. More specifically, the ERC built on the wide ranging reforms already undertaken and was to support the Government's efforts to pursue policy and structural reforms needed to: (a) improve governance and reduce corruption in order to foster private sector development and increase the supply of public services; (b) improve public sector financial management, especially regarding expenditures; (c) deepen its reform and restructuring of the public enterprise sector; (d) *begin the reform of the financial sector, especially the restructuring of commercial banks*; (e) support policy actions in the forestry sector in anticipation of implementation of new regulations; and (f) provide support to urgent special actions within the mining sector to foster restructuring. These reforms were to help pave the way for a transformation from an inefficient and concentrated State-controlled economy to a mar-

ket-based one, better able to deliver services and to reduce the extraordinary levels of poverty in the DRC.

17. ***Private Sector Development and Competitiveness Project.*** The US\$120 million PSDC was approved on July 29, 2003 and became effective on December 2, 2003. The project's development objective was to increase the competitiveness of the economy, and thereby contribute to economic growth. The project planned to achieve these objectives by: (a) improving the investment climate; (b) *supporting the reform of public enterprises in the mining, telecommunications, financial, transport, and energy sectors*; and (c) stimulating economic diversification and development in the Katanga region through community-driven development approaches and by facilitating the reintegration of retrenched employees in the local economy through support for training, business development services and finance.

18. ***Project Components.*** The project included the following components:

- Component 1: Improving the investment climate (US\$36.10 million). This component was designed to help strengthen the judiciary system and improve the legal and fiscal framework.
- Component 2: Implementing public enterprise reform (US\$71.69 million). This component was designed to help strengthen regulatory authorities in the telecommunications, transport and energy sectors, as well as facilitate divestiture from public enterprises, including banks.
- Component 3: Initiatives for economic development in the Katanga region (US\$7.41 million). This component supported measures aimed at increasing competitiveness of the economy of Katanga.

19. The project was to contribute to mitigating the social cost of the reform, by helping the Government finance retrenchment payments for employees from Gécamines, the three liquidated state owned banks (BCA, NBK and BCCE) and OCPT (Congolese Post and Telecommunications Office). In designing and implementing the project, the Bank was guided by the applicable policies, including OD 4.15 (*Poverty Reduction*),¹ supported by country economic and sector work and a poverty assessment, and the Operational Memo on financing severance payments for public sector reform operations.²

20. ***Project Status.*** Implementation has been carried out by COPIREP, the Steering Committee for Public Enterprise Reform. COPIREP is the Government body in charge of preparing and undertaking the restructuring of public enterprises in DRC. Project supervision has been intensive, with three missions a year until the Mid-Term Review (June

¹ OD 4.15 was archived in August 2004 and replaced by OP 1.00 (*Poverty Reduction*) in August 2004.

² "Financing Severance Pay in Public Sector Reform Operations", issued April 5, 2002 and archived in April 2007. For countries with approved financing parameters, OP 6.00 (*Bank Financing*), issued April 2004 is the applicable operational policy.

2007). The Task Team Leader of the project has been based in DRC since September 2007.

21. The project is 80 percent disbursed and 90 percent committed. Given the centrality of investment climate reforms to generate growth, and the need to pursue the restructuring of other parastatals, additional financing of US\$60 million was approved for the project in April 2008, and the project was extended at that time to December 31, 2012. The purpose of the additional financing was to support investment climate reform activities and jump start the reform of SNCC, the public railway, while a proposed World Bank-financed transport operation was being prepared. The Mid-Term Review of June 2007 noted the progress of the project in an extremely difficult environment.

III. SPECIAL ISSUES RELATED TO THE REQUEST

22. ***NBK, BCCE and BCA had collapsed in the mid-1990s.*** NBK had stopped operating in 1995; however, it had not terminated or formally suspended labor contracts with its employees. BCCE was closed between August 1996 and April 1997. It reopened in 1997, but did so without any governance structure. During that period of “reopening”, it did not undertake any banking operation. Then in 2000, it was placed under the Central Bank’s temporary administration. While under the Central Bank’s temporary administration, it progressively resumed banking operations although it was still insolvent as noted in the ERC program document. BCA also stopped operating as a bank in 1995, when it was excluded by the Central Bank from the clearing house. However, the Government continued to use BCA sporadically to pay civil servants, and that was its only activity: BCA would use small “payment teams” and would pay these teams with per diems.

23. Given their collapse, completing the liquidation of the three banks was set as a key priority in the context of the negotiation of the ERC and an IMF Poverty Reduction and Growth Facility (PRGF) program in 2002. The Coordination Committee for Bank Liquidation Operations (*Comité de Coordination des Opérations de Liquidation des Banques*, CCLB) was created on November 16, 2002 by the Central Bank Governor, with a mission to supervise the liquidation process.

24. The liquidation of the three banks was officially announced on March 10, 2003. Labor contracts of the employees of these banks were formally terminated on April 30, 2003 for BCCE, May 5, 2003 for NBK and June 20, 2003 for BCA. The Government requested the Bank’s support to carry out the liquidation of the state-owned banks by: (a) financing the liquidators; and (b) supporting the financing of severance packages for the banks’ employees. The PSDC was presented to the Board in July 2003, just after the announcement of the liquidation of the three banks. Annex 2 provides a timeline of the severance payments for the three banks’ employees, with the major milestones, which are discussed further in the following paragraphs.

25. ***Design of the severance payment operation.*** As noted earlier, dealing with the social cost of the liquidation was seen as a priority by the Government, and was a centerpiece of Bank support. However, calculations for severance payments were extraordinari-

ly complicated by the situation of the banks at the time, characterized by: (a) unreliable or limited human resources (HR) data due to the destruction of the banks’ archives during the civil war; (b) the absence of binding collective bargaining agreements between the banks and trade unions; (c) the difficulty to establish salaries on which the severance payments calculations should be based; and (d) the extent of arrears that would need to be factored in.

26. *A first major difficulty was the paucity of reliable HR data.* HR data for the banks were unreliable as a result of the closures, low level of operations and loss of archives due to conflict. An international consultant³ was hired by BCECO⁴ with Bank financing to analyze the situation based on available data and propose a compensation scale for the former employees of the state owned banks under liquidation.

27. The consultant’s HR analysis showed that **BCA** had 195 agents, with 129 (66 percent) in Kinshasa. In addition, BCA had 93 “inactive” agents who also needed to receive an indemnity (these agents had been laid off, had resigned or died before their contracts had been formally terminated). **NBK** had 1,049 agents (61 percent in Kinshasa), with 197 “inactive” agents. **BCCE** had 1,358 agents; within this number, 843 had been “excused from working” (“*dispensés de prester*”). Fifty two percent of the BCCE workforce in Kinshasa was thus “excused from working.” The table below shows the provincial distribution of the banks’ workforce (including the “inactive” workforce). The consultant’s analysis shows that the average employee age was 51, a quarter of the “active” workforce was over 55, and 10 percent were over 60. Women represented 21 percent of the workforce.

Table 2: Provincial Distribution of Bank Employees

Kinshasa	Katanga	Bas Congo	Nord Kivu	Orientale	Equateur	Kasai Oriental	Bandundu	Kasai Occidental	Sud Kivu	Maniema
60%	12%	6%	5%	4%	4%	4%	2%	1%	1%	1%

28. As it assessed the available data, the consultant noted a number of irregularities in the data concerning grades of staff in BCCE and BCA. In the case of the BCCE, it appeared that a number of promotions had been decided in the weeks just preceding the liquidation. As for BCA, the consultant remarked that a number of positions appeared to have been wrongly classified (i.e., classified at a higher grade than justified by the actual position).

³ Jacques Catry (now deceased) also elaborated the Gécamines VDP, as well as the voluntary departure program for the post and telecom public enterprise (OCPT) that are also part of the project.

⁴ The *Bureau Central de Coordination*, Central Coordination Office (BCECO) implemented the PSDC until COPIREP became a fully operational Project Implementation Unit in 2005. BCECO had been established to manage and implement projects financed by development partners, such as the World Bank and the African Development Bank.

⁵ As noted above, the commercial bank had closed and had then re-opened while being insolvent, its banking activities were very limited and it did not require its entire workforce. It therefore put a number of staff on technical leave (*dispense de l’obligation de prester*).

29. ***A second difficulty was the lack of prevailing collective bargaining agreements.*** In 1989, the collective bargaining agreement for the banking sector was denounced by the *Union Nationale des Travailleurs Zaïrois*, or National Trade Union of Zairian Workers (UNTZA), which was the sole trade union in the country representing all employees. Commercial banks had to negotiate with UNTZA through individual collective bargaining agreements. In 1990, pluralism was established in (former) Zaïre (now DRC) and UNTZA was dissolved. In 1995, commercial banks belonging to the Zairian Banking Association (including NBK, BCA and BCCE) individually denounced their collective bargaining agreements to the Ministry of Labor as UNTZA had been dissolved and none of the newly created trade unions had formally adhered to these agreements. This denunciation was accepted and formalized by the Minister of Labor and the General Labor Inspector. Faced with this difficulty, the consultant analyzed the key provisions of the collective agreements that had been denounced and noted that they provided a useful guide, consistent with labor agreements in other parts of sub-Saharan Africa. In doing its work, the consultant sought to take into account the clauses of the Labor Code, as well as clauses of the non-binding Collective Bargaining Agreements.⁶

30. ***A third set of uncertainties concerned payment scales.*** In calculating the severance packages for *BCA and NBK*, the consultant faced a major difficulty in that it was not possible to find the official payment scale of BCA or NBK as the banks' archives were damaged during lootings in the early 1990s and the subsequent civil war.

31. The situation in BCCE was fraught with similar issues, as there was no official payment scale between 1997 and 2003. BCCE employees who worked between 2000 and 2003 (38 percent of the BCCE workforce) received a small indemnity, while waiting for banking operations to be re-launched and for an official payment scale to be approved. A new payment scale was finally approved between BCCE management and the trade unions on March 9, 2003. However, the consultant raised the issue of the validity of a new salary scale approved one day before the liquidation of the insolvent bank (March 10, 2003).

32. Faced with the uncertainties concerning salaries, as a result of unreliable information about payment scales in all three banks, the consultant proposed to adopt a "reference payment scale" (*barème salarial de référence*) based on the average salaries paid in Kinshasa as of April 30, 2003. This scale took into consideration salary additions typically provided in DRC such as transport and housing indemnities. The consultant also took into account the newly approved minimum salary⁷ (*salair minimum interprofessionnel garanti* (SMIG)) in the proposed "reference payment scale."

33. ***A fourth set of uncertainties concerned the extent of arrears that needed to be factored into the calculations.*** BCCE employees claimed 6 years of salary arrears from April 1997 to February 2003, corresponding to times when the bank was closed, reo-

⁶Consultant's report dated November 24, 2003.

⁷ In DRC, the SMIG impacts the whole salary structure because of the required multiplier effect ("*tension*") between the different salary levels. Thus, a middle manager minimum salary must represent ten times the minimum salary of the lowest rank worker.

pened but was insolvent, or under temporary administration. NBK and BCA employees claimed 8 years of salary arrears from 1995 to 2003, while these two banks had not been operating (as labor contracts had not been suspended or terminated).

34. Considering that the majority of employees of the banks under liquidation had not worked since 1995, the consultant followed Article 317 of the Labor Code which states that salary arrears over one year reach the statute of limitations (*prescription*), except in specific circumstances that were not met in this case. He therefore proposed including one year of salary arrears in the severance payments.

35. **Proposed indemnity.** The consultant was aware that, in the case of lay-offs, individualized indemnities should be calculated on the basis of specific information for each individual. However, considering the lack of reliable HR data, the consultant recommended using a simplified matrix (*barème*) for two major reasons: (a) it increased transparency of calculations, was impartial, and reduced opportunities for fraud, a major concern; and (b) it avoided complex and possibly erroneous calculations, based on faulty information.

36. Box 1 below summarizes components of the proposed indemnity, which is the basis for the consultant’s recommendation of US\$11.5 million for the severance payments to the active employees of the three banks under liquidation. In the table, the consultant differentiated between workers that were working in their last year before the contract was terminated, and those that were not working (all NBK and BCA employees and BCCE employees who were “excused from working”, see paragraph 26), resulting in two different matrices (Tables 3 and 4).

Box 1: Components of the Proposed Indemnity

<p>The indemnity proposed by the consultant includes the following components (to the extent the employee has not committed a gross negligence (“<i>faute lourde</i>”).</p> <ul style="list-style-type: none"> • Notice indemnity <ul style="list-style-type: none"> ○ 14 working days + 6 days per year of service for technical staff (<i>agents d’exécution</i>) ○ 26 working days + 8 days per year of service for middle management (<i>cadres de collaboration</i>) ○ 91 working days + 15 days per year of service for executives (<i>autres cadres</i>) ○ Calculation basis: base salary + annuities + housing indemnity ○ This indemnity is doubled for trade union representatives if their mandate is valid • Bonus (for the current year): only the June bonus is included (the December bonus is conditional on a rating of the employee) • Paid leave and leave savings (<i>pécule congé</i>), <ul style="list-style-type: none"> ○ Paid leave and leave savings equivalent to one year of service ○ Calculation basis: base salary + annuities + housing indemnity <ul style="list-style-type: none"> ▪ The transport indemnity should be integrated only if the employee worked during the last year (as it is the case for 515 employees from BCCE) • Salary arrears: as stipulated by article 317 of the Labor Code, up to one year of salary arrears were included, including gratification. <ul style="list-style-type: none"> ○ The consultant noted that this was confirmed by the legal commission set up in November 2003, but challenged by trade unions that refer to Article 93. ○ Calculation basis: base salary + annuities + housing indemnity
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- The transport indemnity should be integrated only if the employee worked during the last year (as it is the case for 515 employees from BCCE)

In addition, the consultant proposed a different level of indemnity for employees that were working in their last year before their contract was terminated, and those that were not working:

- Indemnity for “non-worked” periods (*périodes non prestées*) based on a scale including the base salary and the housing indemnity;
- Indemnity for “worked” periods (*périodes prestées*) based on gross salary, including all premiums and indemnities.

Table 3: Payment Scale for Employees Not Working in the Year Before Their Contract Was Terminated (May 2003 – April 2003), in US\$

Hierarchical ranking		Years of service					Number of employees				
		10	15	20	25	30	BCA	BCCE	NBK	Total	%
Technical staff	1	-	-	-	-	-	-	-	-	-	-
	2	620	660	700	740	780	8	67	47	122	5.8%
	3	700	755	810	865	920	10	109	96	215	10.3%
	4	820	880	940	1,000	1,060	11	73	122	206	9.9%
	5	950	1,020	1,090	1,160	1,230	16	62	81	159	7.6%
	6	1,260	1,355	1,450	1,545	1,640	24	73	122	219	10.5%
	7	1,420	1,540	1,660	1,780	1,900	20	189	193	402	19.3%
	8	1,680	1,810	1,940	2,070	2,200	23	161	142	326	15.6%
Sr technical staff	CB	2,030	2,230	2,430	2,630	2,830	22	55	67	144	6.9%
	CBP	2,450	2,670	2,890	3,110	3,330	12	19	44	75	3.6%
Middle management	CS	4,760	5,480	6,200	6,920	7,640	16	10	43	69	3.3%
	CSP	5,600	6,400	7,200	8,000	8,800	12	13	34	59	2.8%
Executives	FP	11,310	12,850	14,390	15,930	17,470	11	10	25	46	2.2%
	FPP	13,400	15,050	16,700	18,350	20,000	5	2	13	20	1.0%
	SD	24,000	27,000	30,000	33,000	36,000	1	-	6	7	0.3%
	DA	24,500	28,000	31,500	35,000	38,500	2	-	9	11	0.5%
	D	27,000	31,000	35,000	39,000	43,000	2	-	5	7	0.3%
							195	843	1,049	2,087	

Notes:

1. This table applies for all employees of BCA and NBK, as well as for 843 employees of BCCE.
2. CB = Chef de Bureau, CBP = Chef de Bureau Principal, CS = Chef de Service, CSP = Chef de Service Principal, FP = Fondé de Pouvoir, FPP = Fondé de Pouvoir Principal, SD = Sous-Directeur, DA = Directeur Adjoint, D=Directeur

Table 4: Payment Scale for Employees Who Worked the Year Before Their Contract Was Terminated (May 2003 – April 2003), in US\$

Hierarchical ranking	Years of service					Number of employees		
	10	15	20	25	30	Total	%	
Technical staff	1	-	-	-	-	-	-	
	2	2,690	2,930	3,170	3,410	3,650	15	2.9%
	3	2,755	2,995	3,235	3,475	3,715	35	6.8%
	4	2,800	3,045	3,290	3,535	3,780	23	4.5%
	5	2,895	3,150	3,405	3,660	3,915	23	4.5%
	6	3,000	3,260	3,520	3,780	4,040	25	4.9%
	7	3,325	3,615	3,905	4,195	4,485	80	15.5%
	8	3,860	4,270	4,680	5,090	5,500	35	6.8%
Sr technical staff	CB	7,520	8,575	9,630	10,685	11,740	119	23.1%
	CBP	7,745	8,835	9,925	11,015	12,105	50	9.7%
Middle management	CS	8,380	9,560	10,740	11,920	13,100	29	5.6%
	CSP	8,900	10,150	11,400	12,650	13,900	25	4.9%
Executives	FP	17,855	20,365	22,875	25,385	27,895	29	5.6%
	FPP	20,505	23,380	26,255	29,130	32,005	15	2.9%
	SD	36,450	41,600	46,750	51,900	57,050	10	1.9%
	DA	38,700	44,200	49,700	55,200	60,700	2	0.4%

515

Note:

- This table applies for 515 employees of BCCE (out of 1,358).

37. ***Inability of the consultant to reach an agreement with the trade unions on the proposed severance payment scale.*** Over a period of several weeks, the consultant discussed with the trade unions the proposed severance payment scale. Despite several attempts to find compromises, they were not able to come to an agreement. Faced with this situation, the consultant therefore recommended that the Government make a final decision on these proposed payments. The Labor Inspectorate undertook its own severance payment calculations in March 2004, three months after the completion of the consultant's work.

38. ***Calculations of the Labor Inspectorate.*** In March 2004, the Labor Inspectorate submitted to the Ministry of Labor its calculation of the total severance payments owed to the former employees of NBK, BCA and BCCE, representing a total "final payment" amount of US\$60 million. As the Government had decided to pay on the basis of the methodology described above, the Bank did not pursue the basis for the Inspectorate's calculations at the time. In the absence of further details, it would appear, however, that the difference could originate from the following factors: (a) the inclusion by the Labor Inspectorate of all salary arrears (the consultant proposed to include only one year of salary arrears); (b) the currency (US\$ or Congolese Francs) and exchange rate used to assess the salary arrears (the years 1995–2003 were characterized by hyperinflation); and (c) differences with respect to the basis to include in the "reference salary" (i.e., which indemnities should be included in this reference salary). Further analysis with the support of a specialized consultant will be conducted to fully explain the difference.

39. ***Difficulty in securing a national consensus on the approach for severance payments.*** Establishing a consensus approach within the Government for the severance

payments was complicated by several factors: lack of agreement by the trade unions on the proposed payment scale; differing calculations of the indemnity by the consultant and the Labor Inspectorate as a basis for the payments; additional adjustments to the proposed amounts; differences of opinion as to whether the Bank-financed packages were an advance payment or not; and, intra-governmental debate as to whether the debts to former employees should be settled through the liquidation proceeds of the banks, or through the budget or other sources of funding.

40. In August 2004, the Social and Cultural Commission of the Transition Government (a subset of the Cabinet of Ministers, chaired by a Vice President) decided that the US\$11.5 million financed by the World Bank would constitute an *advance payment*, while the balance would be paid from the proceeds of the banks' liquidation. This decision was then reversed by the same Commission on July 20, 2005 when it decided to follow the consultant's general methodology, which arrived at an estimate of US\$11.5 million for indemnity payments.

41. While broadly following the consultant's methodology, however, the Government decided in the second half of 2005 to make a few relatively minor adjustments: (a) to also compensate "inactive employees" (i.e., employees who had been laid off, who had resigned, and/or their widows or orphans) and (b) to avoid double notice payments to trade union representatives, that the consultant had initially included, following its interpretation of the Labor Code (see Table 2)⁸. The table below highlights the difference between the initial severance payments proposed by the consultant (about US\$11.5 million) and the revised payment scale certified by KPMG (about US\$13.7 million).

Table 5: Revised Severance Total Payments as per KPMG Certification

<u>Original consultant proposal</u>	<u>KPMG certification</u>
2,602 active employees	2,601 active employees
US\$11.465 million	US\$10,699 million
	879 inactive employees
	US\$2.284 million
<u>Total = US\$11.465 million</u>	<u>Total = US\$13.683 million</u>

42. Following this decision, agreements between CCLB and representatives of the former workers of the three banks under liquidation were signed in September 2005 and the severance payments to former employees were made between November 2005 and August 2006. A new consultant (FIGEPAR) was hired by COPIREP in 2005 to undertake the detailed, individual calculations of severance payments based on the methodology decided by the Government. Subsequently, an auditing firm (KPMG) was hired to certify the amounts calculated (KPMG final audit report is dated 20 January 2006). A commercial bank was then hired to undertake the payments, and a third consultant (AJM&A) un-

⁸ According to Article 258 of the Labor Code, the notice period for trade union representative is twice the notice period for regular employees. As a result, the consultant had initially proposed that trade union representatives (if their mandate was valid) would receive the "notice of indemnity" (*indemnité de préavis*) proposed for regular employees multiplied by two.

dertook the audit of the payments made. The audit concluded that the payments had been correctly carried out.

43. *Effective payments.* The table below shows that 3,473 employees of the three banks received a total of US\$13.4 million, which represented an average of US\$3,860. The table also shows that 7 eligible “inactive” employees⁹ did not collect their indemnity.

Table 6: Summary of Payments Made

	BCA			BCCE			NBK			Total		
	Number	Amount	Average	Number	Amount	Average	Number	Amount	Average	Number	Amount	Average
Certified lists												
Active	220	899,595	4,089	1,369	6,428,765	4,696	1,012	3,370,535	3,331	2,601	10,698,895	4,113
Inactive	73	213,440	2,924	541	1,806,128	3,338	265	691,223	2,608	879	2,710,791	3,084
Total	293	1,113,035	3,799	1,910	8,234,893	4,311	1,277	4,061,758	3,181	3,480	13,409,686	3,853
Paid list												
Active	220	899,595	4,089	1,369	6,428,765	4,696	1,012	3,370,535	3,331	2,601	10,698,895	4113.38
Inactive	73	213,440	2,924	539	1,804,597	3,348	260	688,083	2,646	872	2,706,120	3103.35
Total	293	1,113,035	3,799	1,908	8,233,362	4,315	1,272	4,058,618	3,191	3,473	13,405,015	3,860
Not paid												
Active												
Inactive				2	1,531	766	5	3,140	628	7	4,671	667
Total				2	1,531	766	5	3,140	628	7	4,671	667

Source: AJM&A audit report, November 2008

Notes: The average column was calculated by the author. In addition, obvious clerical errors and typos in the source document were corrected in this table.

44. *The question of the use of the proceeds of the banks’ liquidation.* The liquidation of NBK and BCA started in October 2004, while the liquidation of BCCE started in October 2005. In March 2007, reflecting the fact that indemnities had been paid to the former workers of the banks according to the methodology decided by the Government, the liquidator of BCCE was instructed by the Central Bank not to factor debts to former employees of the bank into the use of liquidation proceeds. The reports on NBK and BCA liquidation are less clear with regard to the instructions they received from the Central Bank regarding the treatment of the debts to former employees. However, it is the World Bank’s understanding that, as was the case for BCCE, the liquidator of NBK and BCA was instructed not to factor debts to former employees into the use of liquidation proceeds¹⁰.

45. *Further developments since 2008 and intra governmental debate on the issue of indemnities.* Between August 26 and September 2, 2008, the Permanent Commission for

⁹ It had indeed proved difficult, considering the size of the country and the fact that some of the “inactive” employees lived in remote regions, to reach all eligible employees.

¹⁰ Monthly reports were transmitted by COPIREP as long as its contracts with the liquidators were in effect. However, recent reports have not been made available by the Central bank, which has continued to oversee the liquidation of the banks after the end of the liquidators’ contracts with COPIREP (the liquidators continued working under the oversight of the Central Bank). The Central Bank indicated that NBK and BCA liquidations are completed, while BCCE’s liquidation is near completion. Management will ask the Central Bank to provide the final liquidation reports.

Social Dialogue organized its first national general assembly. Contrary to the position of the Central Bank in March 2007 (see paragraph above), the Commission recommended that the Minister of Finance and the Governor of the Central Bank instruct the liquidators to settle debts to former employees and suspend payments to other creditors to reflect the priority ranking that should be attached to settling social debts.

46. Following this recommendation, the Prime Minister, the Minister of Finance and the Governor of the Central Bank exchanged letters on the question of the debt to former employees of banks under liquidation. While the Prime Minister and the Minister of Finance requested that the debts to former employees be settled through the liquidation proceeds of the banks, the Governor asked in return that this question be settled through the budget or other sources of funding, as the proceeds of the banks liquidation have been used in priority to compensate depositors¹¹. The lack of consensus within the DRC Government on this sensitive question is a critical issue.

47. Following exchanges between the World Bank and former employees of liquidated banks between April and November 2009, COPIREP sent a letter to the World Bank, providing a copy of the latest letters between the Prime Minister, Ministry of Finance and the Governor of the Central Bank, and informing the World Bank that this question was an internal matter to be solved by the Government of DRC. To date, this issue has not been resolved within the Government and the World Bank has not taken a position on the matter. However the Bank has expressed its readiness to continue supporting the Government's efforts at restructuring the parastatal sector, including identifying solutions for addressing the related social costs in a way that reflects the fiscal situation of the country and political economy considerations.

48. ***It should be noted that no reinsertion activities have been proposed to the former employees of the liquidated banks.*** The consultant in charge of elaborating the payment scale for the former employees of the liquidated banks had also proposed a reinsertion program for these employees in 2003. However, following the disappointing results of the reinsertion efforts with former employees of Gécamines, COPIREP became concerned about the effectiveness of reinsertion activities for former employees of public enterprises. COPIREP did attempt to recruit a nongovernmental organization (NGO) in 2007 to undertake reinsertion activities for former employees of the liquidated banks and OCPT, but the procurement was unsuccessful: there was no serious bidder, despite efforts to identify suitable contractors. Following this unsuccessful attempt, COPIREP did not re-launch another procurement process, questioning the justification for launching a reinsertion program considering the major challenges posed to it: (a) the average age of former employees: in 2003, the average age of NBK, BCA and BCCE employees was 51; and (b) their difficulty in re-establishing themselves as “entrepreneurs” after having worked many years in hierarchical and organized business environments.

¹¹ Following its request, the World Bank received in February 2010 the liquidation reports on the three state-owned banks from the Central Bank.

49. Given these reservations, the general difficulties with the Gécamines reinsertion program, which was ongoing, and the unsuccessful efforts to select an NGO, the Bank recommended leveraging other retrenchment plans under preparation in DRC (in particular for REGIDESO, the water utility) and revisiting – with COPIREP – the question of reinsertion for retrenched employees. Thus, the final report commissioned by COPIREP (dated September 2008) on the proposed retrenchment program at REGIDESO (to be financed by the water operation)¹² proposed the establishment of a specific reinsertion mechanism for REGIDESO retrenched employees that could also be used for other retrenchment programs, the “advice and support to professional reinsertion” mechanism (*Conseil et Appui à la Réinsertion Professionnelle*, CARP). Such a mechanism had shown promising results in Madagascar.¹³ Management will recommend and provide support to the Government to undertake a qualitative survey of former employees of the banks to have a better understanding of their current situation.

IV. UPDATE ON GECAMINES ACTION PLAN

50. **Initial action plan.** Following the Request for Inspection from Gécamines former employees (*Partants Volontaires*), Management proposed an action plan summarized in the table below. This table also indicates the status of the different proposed activities. In addition, Management has contracted an advisory team of three experts, with professional backgrounds in governance, socio-economic analysis, and privatization, to provide advice and guidance on the proposed action plan and help the team draw the lessons in order to address similar issues in future projects in DRC.

Table 7: Initial Action Plan

Action	Timeline	Status
<i>With regard to the Gécamines' VDP</i>		
<ul style="list-style-type: none"> Undertake a new survey of Gécamines <i>partants volontaires</i> 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 <i>partants volontaires</i>. 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 <i>partants volontaires</i>. 	May – July 2009	Completed
<i>For other past and forthcoming retrenchment plans</i>		
<ul style="list-style-type: none"> Provide best practices technical assistance to COPIREP on retrenchment plans. 	Starting in April 2009, with consultants hired on sole source basis	Technical assistance on-going
<ul style="list-style-type: none"> Assist the Government in preparing a workshop on the social dimensions of public enterprise reform. COPIREP is in the process of drafting a 	By end 2009	Presentation to ECOREC (Economic and Reconstruction Commission) on De-

¹² The PSDC financed different studies to prepare for the reform of the water utility (REGIDESO). The reform itself was to be supported through a sectoral operation (Urban Water Supply Project), approved in December 2008 and which became effective in November 2009.

¹³ According to the consultants who prepared the retrenchment program for reinsertion.

<p>note on this to be discussed at a Cabinet meeting. The workshop would aim at presenting and agreeing upon common principles among public enterprises to address the social aspects of reform. This workshop would also aim at agreeing on a Government strategy to cope with the social cost of reform, given the Government's budgetary situation and the critical need for public enterprise reform for DRC's economic recovery.</p>		<p>ember 19, 2009. Technical workshop held on February 2, 2010.</p>
<ul style="list-style-type: none"> Encourage the Government to apply lessons learned when undertaking forthcoming retrenchment plans in other public enterprises, including the SNCC and REGIDESO in particular, to undertake rapid poverty assessment surveys at the time of the retrenchment to benchmark progress and closely monitor reinsertion activities. 	<p>April 2009 – April 2011</p>	<p>On-going</p>

51. **Additional action plan.** Following the results from the survey on socio-economic conditions of Gécamines' *Partants Volontaires*, Management has proposed to the Government additional measures for follow-up, as highlighted in the table below. The additional measures were submitted to the Prime Minister on November 30, 2009.

52. In his answer, dated January 19, 2010, the Prime Minister indicated that he fully supports the action plan proposed by the Bank. The Prime Minister in addition suggested the establishment of a mechanism acceptable to Gécamines *Partants Volontaires* to facilitate potential appeals on the labor contract terminations terms. The Bank was subsequently informed by the Government that, on January 20, 2010, the Chief of Staff of the Prime Minister wrote to the Chief Executive Officer of Gécamines indicating that the Prime Minister would like to be informed about the outstanding payments to be made to each *Partant Volontaire* and about the way Gécamines will settle this debt. The letter also requires Gécamines to provide each agent with a "work termination certificate" (*certificat de fin de service*).

53. An additional financial envelope (about US\$30 million) is being made available to the PSDC. This additional financing will allow, in particular, provision of further support to the reform of the INSS (the national pension system).

Table 8: Additional Action Plan

Action	Timeline	Status
<ul style="list-style-type: none"> Reactivate the program that allowed <i>Partants Volontaires</i> and their families free access to Gécamines health centers and schools 	From March 2010 to December 2012	Pending reallocation ¹⁴ of credit (to be completed in February 2010)
<ul style="list-style-type: none"> Provide technical assistance to <i>Partants Volontaires</i> to facilitate their access to the national pension system (INSS) 	March – December 2010	A meeting with INSS took place on January 28, 2010 and this issue was raised. It was agreed to organize a working group including INSS and COPIREP representatives to identify solutions to ensure access by PV to INSS pension payments
<ul style="list-style-type: none"> Provide technical assistance to the reform of the national pension system (INSS) 	January 2010 - December 2012	Initiated (consultant recruited) and discussed during the meeting with INSS on January 28, 2010. It is proposed that a second additional financing to the PSDC (to be presented to the Board before end June 2010) provide significant financial support for reform of INSS
<ul style="list-style-type: none"> Provide technical assistance to the Government to elaborate a strategy to address the social dimension of the ongoing public enterprise reform (ongoing) 	October 2009 – June 2010	Ongoing
<ul style="list-style-type: none"> Provide technical assistance to the Government to elaborate a communication strategy on the social cost of public enterprise reform 	October 2009 – December 2012	Ongoing
<ul style="list-style-type: none"> Assist the Government of DRC to establish a suitable dispute resolution mechanism for former Gécamines employees to address any outstanding claims 	March 2010 – December 2011	Ongoing

54. ***Tackling the social dimension of public enterprise reform is urgent.*** A consultant was recruited in October 2009 (Core Advice) by COPIREP, under the PSDC, to help the Government think through the central issue of the social cost of public enterprise reform in a more comprehensive way. As highlighted in Table 7 (Initial Action Plan), a presentation was made to ECOREC (the Government’s Economic and Reconstruction Commission) on the social dimension of public enterprise reform (“the social dimension at the heart of public enterprise reform”) on December 19, 2009. This presentation highlighted the urgency to tackle this issue and to outline a potential strategy to address it. As of October 2009, social debts of the six major public enterprises amounted to US\$607 million (compared to US\$410 million in November 2008), as highlighted by the table below. If all public enterprises are included in the calculations, social debts amount to over US\$1 billion.

¹⁴ A reallocation between credit categories (grants, works, consultants, operating costs, severance payments, etc.) is required for the continuation of the PSDC. This reallocation will also ensure that sufficient funds are available for this proposed activity.

Table 9: Social Debts of Six Major Public Enterprises (SNEL, REGIDESO, SNCC, RVA, ONATRA and Gécamines)*

	November 2008	October 2009
Workforce	51,300	51,230
Overstaffing	20,660	20,660
Debts to employees and INSS	US\$410 million	US\$607 million
Salary arrears	US\$224.5 million	US\$336.7 million
Final payments arrears	US\$158.5 million	US\$237.3 million
Arrears towards INSS and tax authorities	US\$27 million	US\$33 million
Retrenchment cost (to address overstaffing)	In addition, between US\$85 and US\$175 million¹⁵ (according to the selected options)	

* SNEL is the power utility, REGIDESO is the water utility, SNCC is the railway, RVA is the airport authority, and ONATRA is the Port Authority and the railway between the Port (Matadi) and Kinshasa.

55. *National strategy to tackle the social dimension of public enterprise reform.* The proposed strategy – presented at ECOREC (see paragraph above) and to be submitted to the Cabinet – would be complemented by strategies tailored to specific enterprises. Such a strategy would aim at building a consensus within the Government and with the social partners, while being fiscally sustainable, and would be based on the following pillars:

- Settlement of social debts (estimated at US\$607 million for only the six main public enterprises; there are another 11 for which estimates are underway):
 - Certification of social debts per enterprise and per employee
 - Schedule for settlement of social debts
 - Partial renunciation with or without compensation
 - Partial settlement through other options (capital participation, pension fund, in kind benefits)
 - Partial externalization of the social debts through a defeasance¹⁶ structure
 - Partial buy back by the state of the social debts converted into capital
 - Progressive payment of INSS contribution arrears to allow for full payment of pensions;
- Sound management of redundancy programs (staff costs represent around 80 percent of public enterprise turnover in DRC, the average for Sub-Saharan Africa is between 28 and 35 percent):
 - No financing of “waiting indemnities” when the public enterprise is not able to finance the full “final payment”; alternatives are available
 - Maintain health and education benefits after the departure of the employee

¹⁵ This represents the cost to retrench around 20,000 employees (based on estimated over-staffing in the 6 public enterprises) in addition to the social debt costs.

¹⁶ Under this proposed mechanism, which needs to be further analyzed, the social debts of public enterprises would be transferred to a dedicated structure responsible for settling this debt. Any funding or resources would need to be assessed in light of DRC’s fiscal situation.

- Consider pre-retirement
- Support to professional reinsertion;
- Review of the legal and regulatory framework for human resources management:
 - The legal framework is not adapted to the current challenges of public enterprises in DRC
 - The legal framework no longer protects the interests of the employees and of the enterprises generating jobs
 - Urgent need to revise the Labor Code and to end fully or partially existing collective bargaining agreements.¹⁷

56. **Short term road map.** A short term road map (for the next 3 months: January to March 2010) was approved during the ECOREC meeting:

- Set up of a task force (reporting to the Vice Prime Minister);
- Technical workshop on the social dimension of public enterprise reform, followed by a ministerial workshop to share the key findings. The technical workshop took place in February 2010;
- Launch of a social debt audit (to certify the debt owed to employees and INSS);
 - Evaluation of the budget contribution to the financing of retrenchment programs;
 - Analysis of the feasibility of implementing a defeasance structure to settle the social debt over time, taking into account the context of DRC's fiscal situation;
 - Social debt settlement strategy to be adopted in a Cabinet meeting.

V. LESSONS LEARNED

57. The World Bank has learned important lessons from the retrenchment programs undertaken in Gécamines, the three liquidated banks, and OPCT and it has integrated the lessons learned in the design of new operations. Good design of such programs is key, bolstered by project implementation that aims for prompt payments. Management notes that the delay between the negotiated settlement of the VDP packages and payment to the *Partants Volontaires* was exacerbated by the very difficult working environment in DRC.¹⁸ Thus, the retirement program at SNCC (the railway) to be financed by the Addi-

¹⁷ The Labor Code also includes a number of provisions that are not well tailored to fit the Congolese socio-economic context (for example, there is no mandatory retirement age; as a result, employees cannot be forced to leave and stay within public enterprises until their mid-70s or later) and in addition many of its provisions are too general and lack implementing regulations. There is recognition from social partners that absent amendments to make it fit the Congolese context and clarification of numerous provisions through implementing regulations, the Labor Code in its current form and content does not serve well the purpose of aiding a quick and strong economic recovery of the DRC.

¹⁸ Salary arrears for Gécamines' departing employees were calculated up to August 31, 2002. However, payments effectively took place between August 2003 and February 2004. This delay was due to: 1) the need for the Government to meet the disbursement conditions of the floating tranche of the ERC (with

tional Financing of the PSDC (approved in May 2008) took into account such lessons. Similarly, the Urban Water Supply Project, approved in December 2008, took into account such key lessons when designing the retrenchment program at the water utility (REGIDESO). Both programs will provide individualized payments and will ensure that employees will be eligible for INSS pension payments. Regarding REGIDESO, a consultant specializing in retrenchment operations was hired ahead of the retrenchment program to prepare and implement the program, including the reinsertion activities.

58. **Key lessons learned.** The key lessons learned include:

- Considering the magnitude of the issue at stake (as highlighted above, the *social* cost of public enterprise reform is estimated at over US\$1 billion) compounded by DRC's extremely difficult socio-economic situation, there is a critical need for a national debate on the social cost of public enterprise reform with a view to reaching a national consensus on the most appropriate, and fiscally sustainable, strategy, as a purely legalistic approach to addressing it would be unsustainable from a fiscal point of view, and would result in a stalemate;
- Given the complexity of such retrenchment processes and the specialized skill set required to handle them, there is a need to ensure that high level expertise in labor law and negotiations with social partners is available *both* during the design phase of a project and throughout implementation of the retrenchment program;
- The need to support a potentially long and difficult negotiation process must be recognized, and lead time for building consensus factored in to the process. The negotiation process must be finalized through a detailed agreement to be signed by the management of the enterprise and the trade unions; and it is important to ensure that the results of such negotiations are clearly communicated and explained to all parties involved in the process;
- The accountability of the Labor Inspectorate must be ensured through its full participation in the negotiations and its signature to the agreement;
- Where possible, individualized payments should be used, rather than a payment scale (*barème*) and each employee should verify the amount of his/her indemnity on the payment day (before payment);
- The existing social security system (such as INSS) should be taken into account, and eligibility of departing employees for social security benefits (such as pension) ensured;
- It is important to work with the Government and public enterprises in considering ways to help former employees, for example, by supporting during a transition period access to education and health benefits after the departure of the employee – in cases when the public enterprise owns a network of hospitals and schools;

US\$25 million allocated to the VDP); 2) the necessity to put in place an effective financial management mechanism (to correctly manage payments of US\$43 million in a very weak fiduciary environment); and 3) the necessity to mobilize additional funding to the ERC from the PSDC, which was approved in July 2003.

- It is important to include in the supervision teams of projects dealing with retraining programs a social development specialist to monitor social development outcomes (and thus ensure that baselines and follow-up studies are effectively undertaken);
- Recognizing the challenges of reinsertion of an aged workforce in a country like DRC, it is important not to overestimate the potential of reinsertion and to manage expectations. In addition, it is essential to support Government's efforts to generate jobs and foster private sector growth, as a way to generate new opportunities in the economy.

VI. MANAGEMENT'S RESPONSE

59. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

60. **Action Plan.** Management proposes the following specific action plan for the former employees of the three liquidated banks, in addition to the action plan developed following the Request for Inspection from Gécamines' former employees.

Action	Timeline
Undertake a detailed analysis, with the support of a specialized consultant, to fully explain the differences between the calculations of the consultant and those of the Labor Inspectorate	By end April 2010
Continue supporting the Government in developing a comprehensive strategy to settle social debts of public enterprises (as per the Gécamines additional action plan) It is proposed that the second additional financing to the PSDC finance the feasibility study and the implementation of a defeasance structure for public enterprise debt to employees, in a fiscally responsible way	October 2009 – June 2010 Second additional financing to be presented to the Board before end June 2010
Provide technical assistance to the former employees of the liquidated banks to access the national pension system (INSS) – in parallel to the support to the reform of INSS (as per Gécamines additional action plan)	March – December 2010
Management will also recommend and provide support to the Government to undertake a qualitative survey of former employees of the banks to have a better understanding of their current situation	By the end of 2010

61. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue concretely its mission statement in the Project, given the very specific context of DRC at the time. In Management's view, the Bank has followed the guidelines, policies and procedures applicable to the matters raised by the Request.

**ANNEX 1
CLAIMS AND RESPONSES**

No	Claim/Issue	Response
OP/BP 6.00 Bank Financing		
1.	<p>[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.</p> <p>[IV.] Credit Agreement 3815-DRC:</p> <p>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:</p> <p>The term 'eligible employees' refers to the employees of Gécamines, 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.</p> <p>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.</p> <p>[V.] Violation of Article 1, Paragraph "n" of Credit Agreement 3815-DRC:</p> <p>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).</p> <p>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 the World Bank-approved consultant to the Government.</p>	<p>Response. Dealing with the social cost of the liquidation was seen as a priority by the Government, and was a centerpiece of Bank support. However, calculations for severance payments were extraordinarily complicated by the situation of the banks at the time, characterized by: (a) unreliable or limited HR data due to the destruction of the banks' archives during the civil war; (b) the absence of binding collective bargaining agreements between the banks and trade unions; (c) the difficulty to establish salaries on which the severance payment calculations should be based; and (d) the extent of arrears that would need to be factored in.</p> <p>In 1995, commercial banks belonging to the Zairian Banking Association (including NBK, BCA and BCCE) individually denounced their collective bargaining agreements to the Ministry of Labor as UNTZA had been dissolved and none of the newly created trade unions had formally adhered to these agreements. This denunciation was accepted and formalized by the Minister of Labor and the General Labor Inspector. The Government's consultant therefore analyzed the key provisions of the collective agreements that had been denounced and noted that they provided a useful guide, consistent with labor agreements in other parts of sub-Saharan Africa. In doing its work, the consultant sought to take into account the clauses of the Labor Code, as well as clauses of the non-binding Collective Bargaining Agreements.</p> <p>In designing its proposal, the consultant considered the relevant provisions of the Labor Code including : (a) Article 110, which states that in case of bankruptcy or liquidation, employees are considered preferential creditors and their salaries must be fully paid before other creditors can be reimbursed, (b) Articles 77 and 104, which state that employees can still make claims, after they have signed a "final payment receipt" (<i>quittance pour solde de tout compte</i>), (c) Article 78, which describes lay off procedures, (d) Article 103, which states that the employer must provide the employee with a written statement of the remuneration, (e) Article 62, which describes the valid grounds for contract termination, (f) Article 100, which states that payments due when a contract is terminated must be paid within 2 days of the termination date, (g) Article 144, which states that when a contract is terminated the leave is replaced by an indemnity, (h) Article 152, which states that following contract termination, the employer must provide repatriation from the workplace to the hiring place and an indemnity until the effective departure.</p>

No	Claim/Issue	Response
		<p>Management also wishes to clarify that the PSDC does provide “support to Eligible Employees” under Part E of the Project and these employees are defined in Article 1.n mentioned by the Requesters.</p> <p>Action: No action necessary.</p>
2.	<p>[XVI.] World Bank Involvement:</p> <p>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.</p> <p>[XVII.] World Bank Responsibility:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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</p> <p>(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, “<i>Les condi-</i></p>	<p>Response. At the time the PSDC project was being considered, the Government recognized that the poor performance of public enterprises, including such the state-owned banks, was (and remains) a major constraint to private sector development and economic growth. The restructuring of the banking sector was considered by the authorities and the international financial institutions as a priority following the reengagement of the international community in the DRC in 2001. The economy could not recover without a stabilized banking sector. The banking sector is still slowly recovering from the years of mismanagement, hyperinflation and conflict.</p> <p>See Item 1 above regarding the consultant’s calculations of the severance payments and the applicability of the Labor Code and Collective Bargaining Agreements. Management considers that the consultant tried to provide the best possible solution in a very complex environment.</p> <p>In terms of the three banks: <i>NBK</i> had stopped operating in 1995; however, it had not terminated or formally suspended labor contracts with its employees. <i>BCCE</i> was closed between August 1996 and April 1997. It reopened in 1997, but did so without any governance structure. During that period of “reopening”, it did not undertake any banking operation. Then in 2000, it was placed under the Central Bank’s temporary administration. While under that administration, it progressively resumed banking operations although it was still insolvent. <i>BCA</i> also stopped operating as a bank in 1995, when it was excluded by the Central Bank from the clearing house. However, the Government continued to use <i>BCA</i> sporadically to pay civil servants, and that was its only activity: <i>BCA</i> would use small “payment teams” and would pay these teams with per diems. The liquidation of <i>BCA</i>, <i>NBK</i> and <i>BCCE</i>¹⁹ was announced in the Government of DRC Letter of Intent to the IMF dated April 2002.</p> <p>The liquidation of the three banks was officially announced on March 10, 2003. Labor contracts of the employees of these banks were formally terminated on April 30, 2003 for <i>BCCE</i>, May 5, 2003 for <i>NBK</i> and June 20, 2003 for <i>BCA</i>. The Government requested the Bank’s support to carry out the liquidation of the state-owned banks by: (a) financing the</p>

¹⁹ The Letter of Intent announces: “(iii) the closing of those credit institutions deemed to be insolvent and beyond recovery, namely, Nouvelle Banque de Kinshasa (*NBK*) and Banque de Crédit Agricole (*BCA*), which will be placed in receivership by end-September 2002. Banque Congolaise du Commerce Extérieur (*BCCE*), which was declared insolvent and barred from the clearinghouse, will also be placed in receivership by end-September 2002.”

No	Claim/Issue	Response
	<p><i>tions de la responsabilité du Tiers complice dans la violation d'une obligation contractuelle, en droit belge et en droit comparé,</i> 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.</p>	<p>liquidators; and (b) supporting the financing of severance packages for the banks' employees. The PSDC was presented to the Board in July 2003, just after the announcement of the liquidation of the three banks.</p> <p>NBK's and BCA's liquidation process commenced in October 2004, while the liquidation of BCCE started in October 2005. In March 2007, reflecting the fact that indemnities had been paid to the former workers of the banks according to the methodology decided by the Government, the liquidator of BCCE was instructed by the Central Bank not to factor debts to former employees of the bank into the use of liquidation proceeds. The reports on NBK and BCA liquidation are less clear with regard to the instructions they received from the Central Bank regarding the treatment of the debts to former employees. However, it is the World Bank's understanding that, as was the case for BCCE, the liquidator of NBK and BCA was instructed not to factor debts to former employees into the use of liquidation proceeds (See Item 5).</p> <p>Action: No action necessary.</p>
<p>OpMemo, Financing Severance Pay in Public Sector Reform Operations</p>		
<p>3.</p>	<p>[VI.] Evidence of the Illegal Nature of the Conclusions of [the Consultant]:</p> <p>While the above-mentioned government consultant has callously infringed upon the provisions of the law establishing the Labor Code, specifically Articles 77, 78, 79²⁰, 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."</p> <p>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 [the Consultant] have been suspended and coldly and indefinitely postponed.</p> <p>Based on the table developed by [the Consultant], 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.</p> <p>The lump sums in case of death therefore subject to challenge were approximately US\$620 for an employee in the second category (bailiff)</p>	<p>Response. See Item 1 above. Management has worked closely with the Government to address the social cost of the banks' liquidation, despite the serious challenges cited above, and is helping the Government to develop a national strategy to tackle the social dimension of public enterprise reform. Management disagrees with the Requesters' assertion that its representation in Kinshasa has been an associate or participant in a conspiracy or otherwise against the former employees of BCA, NBK, and BCCE.</p> <p>The consultant was aware that, in the case of layoffs, individualized indemnities should be calculated on the basis of specific information for each individual. However, considering the lack of reliable HR data, the consultant recommended using a simplified matrix (<i>barème</i>) for two major reasons: (a) it increased transparency of calculations, was impartial, and reduced opportunities for fraud, a major concern; and (b) it avoided complex and possibly erroneous calculations, based on faulty information.</p> <p>Box 1 in the main text summarizes components of the proposed indemnity, which was the basis for the consultant's recommendation of US\$11.5 million for the severance payments to the active employees of</p>

²⁰ Note from Management: Article 79 states that, at contract termination, the employer must provide the employee within 2 days a certificate attesting the nature and length of work accomplished, the date of beginning and end of work and the INSS number.

No	Claim/Issue	Response
	<p>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.</p> <p>In contrast, the lump sums for employees whose period of seniority falls between two of [the Consultant]’s seniority groups were simply ignored or cynically considered nonexistent.</p> <p>The double final payout, even though this is a principle enshrined in the [the Consultant]’s 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 [the Consultant]’s plan.</p> <p>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.</p> <p>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 it or leave it” manner, following the words of the Governor of the Central Bank of Congo (Annexes 7 and 8).</p>	<p>the three banks under liquidation. The consultant differentiated between workers that were working in their last year before the contract was terminated, and those that were not working, resulting in two different matrices (see Tables 3 and 4).</p> <p>For the payment scale, the consultant considered the following categories of years of service: up to 10, between 11 and 15, between 16 and 20, between 21 and 25, between 26 and 30, and over 30. The lowest payment was US\$620 for employees with the lowest grade (grade 2) with up to 10 years of service from BCA and NBK (these banks were not operating since 1995) and from BCCE for those who had not worked the year before their contract termination.</p> <p>The lowest payment for BCCE employees who had worked the year before their contract termination was US\$2,690 (grade 2, up to 10 years of service). The average paid amount was US\$3,861 (for all former employees of the three banks).</p> <p>The Government held consultations with employees of the public enterprises both on the ERC program and the PSDC. With respect to the bank severance packages, over a period of several weeks, the consultant discussed with the trade unions the proposed severance payment scale. Despite several attempts to find compromises, the consultant did not come to an agreement with them. Faced with this situation, the consultant therefore recommended that the Government make a final decision on these proposed payments (See Item 4 below).</p> <p>Action: No action necessary.</p>
4.	<p>[VII.] Legal – but Flouted – Employee Rights:</p> <p>On the Government’s instructions, the General Inspectorate of Labor went on a mission to amend [the Consultant]’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).</p> <p>The conclusions and final report on the recalculations, conducted by the mission of the labor inspectors, raised the final payouts to:</p> <ul style="list-style-type: none"> - US\$10,003,028 for former BCA employees, - US\$26,196,770 for former BCCE employees - US\$23,808,679 for former NBK employees <p>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 [the Consultant]’s 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.</p>	<p>Response. In doing its work on the severance payments, the consultant sought to take into account the 2002 Labor Code, as well as clauses of the non-binding Collective Bargaining Agreements. In March 2004, the Labor Inspectorate submitted to the Ministry of Labor its calculation of the total severance payments owed to the former employees of NBK, BCA and BCCE, representing a total “final payment” amount of US\$60 million. As the Government had decided in July 2005 to pay on the basis of the methodology described in Item 3 above, the Bank did not pursue the basis for the Inspectorate’s calculations at the time. In the absence of further details, it would appear, however, that the difference could originate from the following factors: (a) the inclusion by the Labor Inspectorate of all salary arrears (the consultant proposed to include only one year of salary arrears); (b) the currency (US\$ or Congolese Francs) and exchange rate used to assess the salary arrears (the years 1995–2003 were characterized by hyperinflation); and (c) differences with respect to the basis to include in the “reference salary”.</p> <p>In August 2004, the Social and Cultural Commission of the Transition Government (a subset of the Cabinet of Ministers, chaired by a Vice President) decided that the US\$11.5 million financed by the</p>

No	Claim/Issue	Response
		<p>World Bank would constitute an <i>advance payment</i>, while the balance would be paid from the proceeds of the banks' liquidation. This decision was then reversed by the same Commission on July 20, 2005 when it decided to follow the consultant's general methodology, which arrived at an estimate of US\$11.5 million for indemnity payments.</p> <p>However, while broadly following the consultant's methodology, the Government decided in the second half of 2005 to make a few relatively minor adjustments: (a) to also compensate "inactive employees" (i.e., employees who had been laid off, who had resigned, and/or their widows or orphans); and (b) to avoid double notice payments to trade union representatives, that the consultant had initially included, following its interpretation of the Labor Code. The initial severance payments proposed by the consultant (about US\$11.5 million) were revised to a payment scale of about US\$13.7 million, certified by KPMG.</p> <p>The agreements between the Banking Liquidation Committee of the Central Bank and the representatives of the former employees of the bank were signed on September 12, 2005 for BCCE and September 27, 2005 for NBK and BCA. Severance payments to former employees were made between November 2005 and August 2006. A new consultant (FIGEPAR) was hired by COPIREP in 2005 to undertake the detailed, individual calculations of severance payments based on the methodology decided by the Government.</p> <p>Action: The government, through the PSDC project, will undertake a detailed analysis, with the support of a specialized consultant, to fully explain the differences between the consultant's and the Labor Inspectorate's calculations.</p>
5.	<p>[VIII.] Material Elements of the Flagrant Violation of Rights:</p> <p>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).</p> <p>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."</p> <p>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"</p>	<p>Response. The objective of the PSDC is to increase the competitiveness of the economy, and thereby contribute to economic growth. The project aimed to achieve these objectives 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 employees in the local economy through support for training, business development services and finance. Part of the budget allocated to the project was specifically allocated to supporting "Eligible Employees" defined in Article 1.n of the DCA.</p> <p>The project financed retrenchment payments for a total amount of US\$40.9 million (out of US\$120 million) for Gécamines, the three banks under liquidation and OPCT. This amount was complemented by US\$25 million from the Economic Recovery Credit.</p>

No	Claim/Issue	Response
	<p>of the Credit Agreement referred to numerous times above.</p> <p>The amount of US\$11,500,000 was not even 10 percent of the total amount of Credit 3815-DRC (US\$120,000,000).</p> <p>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.</p> <p>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.</p> <p>The Congolese Government, in knowledge of the illegal nature of the [the Consultant]'s 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 <i>down payment</i> 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.</p>	<p>The 2008 audit report reports that 3,473 employees were paid a total of US\$13,405,015.</p> <p>As indicated in Item 4 above, the consultant report focused on "active" employees. The Government decided to also compensate "inactive" employees, i.e., employees who had been laid off, who had resigned or stopped working without a formal resignation, as well as widows and orphans. A specific pay scale was established (based on the pay scale established by the consultant) by the firm selected to calculate the final payments.</p> <p>The World Bank understands that under the Congolese Labor Code an employee does not renounce his/her rights when signing a "final payment receipt," he/she can claim and enforce this right, taking into account the statute of limitations under the applicable laws. Article 317 of the Labor Code states that actions based on the labor contract have a three year statute of limitations (or less with regard to salary arrears and repatriation expenses). The Article also states under what conditions the statute can be lifted.</p> <p>The categories of expenditures referred to in the claim refer to the Disbursement Categories, as stated in the Project Appraisal Document and further defined in the Development Credit Agreement.</p> <p>With regard to the question of the US\$11.5 million payment to the former employees being a down payment, Management would like to clarify the facts. Between August 26 and September 2, 2008, the Permanent Commission for Social Dialogue organized its first national general assembly. Contrary to the position of the Central Bank in March 2007, the Commission recommended that the Minister of Finance and the Governor of the Central Bank instruct the liquidators to settle debts to former employees and suspend payments to other creditors to reflect the priority ranking that should be attached to settling social debts.</p> <p>Following this recommendation, the Prime Minister, the Minister of Finance and the Governor of the Central Bank exchanged letters on the question of the debt to former employees of banks under liquidation. While the Prime Minister and the Minister of Finance requested that the debts to former employees be settled through the liquidation proceeds of the banks, the Governor asked in return that this question be settled through the budget or other sources of funding, as the proceeds of the banks' liquidation have been used in priority to compensate depositors. It should be noted that the Bank received in February 2010 the liquidation reports on the three banks.</p> <p>Following exchanges between the World Bank and former employees of liquidated banks between April and November 2009, COPIREP sent a letter to the World Bank, providing a copy of the latest letters between the Prime Minister, Ministry of Finance and</p>

No	Claim/Issue	Response
		<p>the Governor of the Central Bank and informing the World Bank that this question was an internal matter to be solved by the Government of DRC. To date, this issue has not been resolved within the Government and the World Bank has not taken a position on the matter. However, the Bank has expressed its readiness to continue supporting the Government's efforts at restructuring the parastatal sector, including identifying solutions for addressing the related social costs in a way that reflects the fiscal situation of the country and political economy considerations.</p> <p>Action: Management will continue supporting the Government in developing a comprehensive strategy to settle social debts of public enterprises (as per the Gécamines additional action plan). The second additional financing to the PSDC could include financing for the feasibility study and the implementation of a defeasance structure for public enterprise debt to employees, consistent with fiscal constraints.</p>
6.	<p>[XVIII.] Current Situation:</p> <p>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 the task team leader. The trade group delegates expect to receive their due.</p>	<p>Response. See Items 1, 2, 4 and 5 above. The liquidators of the banks have been partly financed by the PSDC. The liquidators were hired by COPIREP and their activities were supervised by the Central Bank.</p> <p>The reinsertion activities for the former employees have not taken place. Given the general difficulties with reinsertion, both with regard to the former bank and Gécamines employees, and after the unsuccessful efforts to select an NGO, the Bank recommended to leverage other retrenchment plans under preparation in DRC (in particular for REGIDESO, the water utility) and revisit – with COPIREP – the question of reinsertion for retrenched employees.</p> <p>KPMG audited the payment amounts calculated by FIGEPAR and concluded that these amounts had been correctly calculated, as per the consultant's proposal approved by the Government. AJM&A audited the payment operation and concluded that the payments had been correctly undertaken following the list certified by KPMG.</p> <p>Action: Management will also recommend and provide support to the Government to undertake a qualitative survey of former employees of the banks to have a better understanding of their current situation.</p>
7.	<p>[XIX.] Our Desiderata:</p> <p>While deploring the lack of timely upstream involvement of the trade group of former employees of the BCA, BCCE, and NBK banks in the</p>	<p>Response. Management thanks the trade union representatives for their offer of collaboration and their trust and is committed to working with key</p>

No	Claim/Issue	Response
	<p>appropriations made under the Credit Agreement 3815-DRC break-down, 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:</p> <ul style="list-style-type: none"> - 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. - 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. 	<p>stakeholders on reforms in the public sector.</p> <p>The World Bank has engaged a dialogue with the Government of DRC on the challenging and sensitive question of the social debts of public enterprises. The World Bank considers that this complex question must be tackled nationally, which would allow establishment of common principles across public enterprises, consistent with the financial situation. Specific strategies to deal with social debts could then be established for each enterprise.</p> <p>With regard to points A, B, and C: See Items 1, 5 and 6 above.</p> <p>Action: No action necessary.</p>
OD 4.15, Poverty Reduction		
8.	<p>[IX.] Tremendous Harm Suffered by Former Employees:</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>Response. See Items 1, 2, 4 and 5 above. Management recognizes the hardship of employees and former employees of public enterprises. The Bank has strived to provide support to these employees through the PSDC. It has therefore engaged in a dialogue with the authorities, as described above, to identify solutions to the complex and pressing issues of social debts of public enterprises.</p> <p>A consultant was recruited in October 2009 (Core Advice) by COPIREP under the PSDC to help the Government think through the central issue of the social cost of public enterprise reform in a more comprehensive way. A presentation was made to ECOREC (the Government's Economic and Reconstruction Commission) on the social dimension of public enterprise reform ("the social dimension at the heart of public enterprise reform") on December 19, 2009. This presentation highlighted the urgency to tackle this issue and to outline a potential strategy to address it.</p> <p>The proposed strategy – presented at ECOREC</p>

No	Claim/Issue	Response
	<p>maintaining an equally guilty silence. <i>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, Gécamines, and OCPT.</i></p> <p>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 of Request).</p> <p>The trade delegates have never received the double final payout recommended by [the Consultant]. In reality, the actual payment of controversial lump sums to former employees has set a favorable precedent.</p> <p>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 employees.</p> <p>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 Kasaï, 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 the task team leader.</p> <p>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.</p> <p>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 <i>Institut National de Sécurité Sociale</i> INSS).</p>	<p>(see paragraph above) and to be submitted to the Cabinet – would be complemented by strategies tailored to specific enterprises. Such a strategy would be based on the following pillars:</p> <ul style="list-style-type: none"> • Settlement of social debts (estimated at US\$607 million for only the six main public enterprises; there are another 11 for which estimates are underway) • Sound management of redundancy programs • Review of the legal and regulatory framework for human resources management. <p>A short term road map (for the next 3 months: January to March 2010) was approved during the ECOREC meeting:</p> <ul style="list-style-type: none"> • Set up of a task force (reporting to the Vice Prime Minister) • Technical workshop on the social dimension of public enterprise reform (held on February 2, 2010), followed by a ministerial workshop to share the key findings • Launch of a social debt audit (to certify the debt owed to employees and INSS); • Evaluation of the budget contribution to the financing of retrenchment programs; • Analysis of the feasibility of implementing a de-feasance structure to settle the social debt over time, taking into account the context of DRC's fiscal situation; • Social debt settlement strategy to be adopted in a Cabinet meeting. <p>The consultant's report indicates that NBK and BCA had ceased to operate since 1995. The report also indicates that 515 employees out of the 1,358 employees of BCCE were working the year before their contract was terminated (May 1, 2002 to April 20, 2003).</p> <p>With regard to reinsertion, see Item 6 above.</p> <p>Management notes that it is correct that the trade delegates did not receive the double final payout as proposed by the Consultant.</p> <p>Management is aware that Article 100 of the Labor Law requires final payments to be made within two days. The World Bank is also aware that many public enterprises have enormous difficulties, due to their precarious financial situation, to make such payments within two days. The PSDC was approved on July 29, 2003 (5 months after the official liquidation announcement).</p> <p>Payments were undertaken by a commercial bank and they were made in the main cities of DRC: Kinshasa, Lubumbashi, Mbuji-Mayi, Kananga, Kisangani, Goma, Bukavu, Bandundu, Mbandaka and Matedi. Management is aware of the important transportation challenges in a vast country such as DRC. Transferring funds to remote villages is a key issue.</p>

No	Claim/Issue	Response
		<p>The banks used to provide the financial coverage for health expenditures. As the banks have been liquidated, such benefits are no longer available.</p> <p>The question of INSS payments for former employees of public enterprises will be closely analyzed within the proposed support for the reform of the INSS. The World Bank recognizes the importance of facilitating access to INSS for former employees of public enterprises who have reached retirement age and is working with the Government to address this issue.</p> <p>Action: Provide technical assistance to the former employees of the liquidated banks to access the national pension system (INSS) – in parallel to the support for the reform of INSS (as per Gécamines additional action plan).</p>
OP/BP 13.05, Supervision		
9.	<p>[XIV.] Numerous Contacts with the World Bank:</p> <p>With the prospect of the return of [the Consultant] to resume the suspended consultations in Fatima parish in Kinshasa.</p> <p><u>September 26, 2003:</u> An e-mail from [the Consultant] 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 [the Consultant] 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).</p> <p>[XV.] Subsequent to the Presentation of the Table of Lump Sum Payments unilaterally computed by [the Consultant], Unsuccessful Follow-Up with our Contacts:</p> <p><u>November 6, 2003:</u> An e-mail from the trade group of former employees of the BCA, BCCE, and NBK vigorously protesting [the Consultant]'s report, <i>Le point au 3 et 4.11.2003</i> ("State of Affairs on November 3-4, 2003") (Annex 27).</p> <p><u>November 7, 2003:</u> Vigorous letter of protest from the trade group against the [the Consultant]'s report, <i>Le point au 3 et 4.11.2003</i> ("State of Affairs on November 3-4, 2003") (Annex 28).</p> <p><u>November 19, 2004:</u> 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).</p> <p><u>April 28, 2005:</u> Report by the task team leader 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 [the Consultant]'s conclusions:</p> <p>(1) renegotiation of the total amount of severance payments and obtain an agreement among stakeholders;</p> <p>(2) the launching of reintegration activities for the employees; and</p> <p>(3) the potential relocation of other project resources to this component to finance further activities for CDSP (see, in this regard, the extract of the task team leader's report concerning the BCCE, NBK, and</p>	<p>Response. Management acknowledges that there have been a number of exchanges between the World Bank and the trade unions representing the former employees of the banks under liquidation between 2003 and 2007. Throughout these exchanges, Management has endeavored to explain the project and address issues raised by the former employees. Noting a lack of progress on the payment of the former employees of the banks under liquidation, the task team recommended in April 2005 to (i) restart discussions among stakeholders and obtain an agreement on the payment amounts, (ii) immediately start the reinsertion activities and (iii) possibly propose a reallocation of the proceeds of the credit to other activities of the project.</p> <p>It should be noted that the task team did not propose to increase the credit allocation for the payment of the former employees of the banks under liquidation.</p> <p>The letter dated August 2007 from the Country Manager to the trade union representing the former employees of the bank under liquidation provided a summary of the payments made. Thus it highlighted that US\$13,409,686 were paid and that there was no remaining funding in the project for this activity.</p> <p>The letter also mentions that only the Government can take a position on the question of the "double payment" for trade union representatives. The consultant's proposals were not binding on the Government.</p> <p>Action: See Items 6 and 8 above.</p>

No	Claim/Issue	Response
	<p>BCA banks in liquidation) (Annex 30).</p> <p>E-mail of gratitude from the trade group, in support of the above-mentioned mission report by the task team leader (Annex 31).</p> <p><u>September 9, 2005</u>: E-mail from the task team leader 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).</p> <p><u>August 9, 2007</u>: Provocative and bothersome position taken by the Country Manager in Kinshasa, concerning the formal notice given to COPIREP by the trade group of former employees of the three banks, with respect to:</p> <p>(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</p> <p>(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 [Consultant] plan, implemented notwithstanding our objections. This has nevertheless created a favorable precedent for our claims today (Annex 3).</p> <p><u>August 22, 2007</u>: Lively statement from the trade group sent to the above-mentioned Country Manager 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 the Country Director 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.</p>	

Annex 2: Major Milestones

10 March 2003	Official announcement of the liquidation of NBK, BCA and BCCE
30 April 2003	Termination of BCCE labor contracts by the Central Bank
5 May 2003	Termination of NBK labor contracts by the Central Bank
20 June 2003	Termination of BCA labor contracts by the Central Bank
29 July 2003	World Bank Board approval of the Private Sector Development and Competitive-ness Project
24 November 2003	Draft report from the international consultant proposing a severance payment scale for the three banks under liquidation and a reinsertion program
10 March 2004	Report from Labor Inspectors setting the “final payment” (<i>décompte final</i>) amounts as follows: BCA: US\$10,003,028 NBK: US\$23,808,679 BCCE: US\$26,196,770
6 August 2004	Decision from the Social and Cultural Commission of the Transition Government: The US\$11.5 million World Bank financing is a prepayment. The balance of the “final payments” would be paid through the proceeds of the liquidation of the banks
October 2004	Signature of a contract between COPIREP and the liquidator for NBK and BCA to launch its assignment
20 July 2005	Decision from the Social and Cultural Commission of the Transition Government, (held on July 20, 2005) to proceed according to the recommendations of the consultant; and requiring COPIREP to proceed with the payments of the former employees (as recorded in the letter dated 28 July 2005 from the Governor of the Central Bank to COPIREP)
12 September 2005	Signature of the agreement between the CCLB and the representatives of the former employees of BCCE for the severance payment operation
27 September 2005	Signature of the agreement between the CCLB and the representatives of the former employees of BCA for the severance payment operation
27 September 2005	Signature of the agreement between the CCLB and the representatives of the former employees of BCCE for the severance payment operation
September – November 2005	Calculation of final severance payments (<i>décomptes finals</i>) by FIGEPAR and audit of calculation by KPMG
October 2005	Signature of contract between COPIREP and BCCE liquidator
5 December 2005 to 7 August 2006	Severance payments paid to former employees of BCA, NBK and BCCE through a commercial bank
March 2007	Instruction from Central Bank to BCCE liquidator not to take into account the question of debts to former employees
2 September 2008	Decision from the Permanent Council for Social Dialogue to invite the Minister of Finance and the Governor of the Central Bank to instruct the liquidators to settle debts to former employees and to suspend payments to other creditors
6 October 2008	Letter from Prime Minister to Minister of Finance inviting him to instruct the Governor of the Central Bank to mandate the liquidators to settle debts to former employees
25 November 2008	Letter from the Minister of Finance to the Governor of the Central Bank asking him to suspend payments to other creditors, so as to settle debts of preferential creditors
15 December 2008	Letter from the Governor of the Central Bank to the Minister of Finance informing him that the liquidators, in response to a request from the Government not to take into account debts to former employees, have allocated the proceeds of liquidation to other creditors, mostly depositors, to rebuild trust in the banking sector

- 19 March 2009 Letter from Prime Minister to Governor of the Central Bank asking to proceed as quickly as possible with the payment of debts to former employees
- 1 April 2009 Letter from Central Bank Governor to Prime Minister asking that the question of the debts to former employees be solved through the budget or through other sources of funding
- 18 August 2009 Letter from Prime Minister to Minister of Finance requesting the final reports of the banks' liquidation and proposals for settling debts to former employees