Notice of Registration

Request No.: RQ2016/1

Country: Mali

Project: Diversification of the Activities of Modern Mills Project in Mali

1. On 23 September, 2015, the Compliance Review and Mediation Unit (CRMU) received the Request relating to the Diversification of the Activities of Modern Mills Project (the M3 Project) in Mali through the Integrity and Anti-Corruption Department (IACD) of the African Development Bank (AfDB). The complaint was addressed also to the members of the Board of Governors.

2. The Request (included in Annex 1 of this Notice of Registration) was submitted by an international NGO called the Afrique-Europe Interact with local representation in Mali. The NGO complained about land grabbing by the Project which has had adverse effects on the people living in the villages of Sanamadougou and Sahou. The inhabitants of these villages, who refused to leave their agricultural lands at the beginning of the project, have allegedly been subjected to serious violations of their rights and they have received threats to their physical security. In addition, a number of them, affected by the project (PAPs), were not compensated while a few others received only symbolic compensation amounts for their lands and properties.

3. The Requestor alleged that the Bank loan was granted to the M3 Project on two conditions. First that no proceedings were pending before the courts about the project and second that the families affected had received financial compensation. The complainant accused the M3 Project of having received the Bank loan solely by deliberately providing misleading and/or fraudulent information that there was no court case and that all the villagers received their compensation when only a small number of families (8) received what is referred to as merely symbolic compensation. The Requestor included in its complaint a list of PAPs with their signatures and asked that this list be compared with any list submitted by the M3 Project.

4. A senior loan of EUR 16.8 million was approved by the Boards of Directors on 23 June 2014 to finance the M3 Project in Mali. The Borrower is a company with limited liability belonging to the Group Keita and was established in 2007. The project involves the installation of units for the production of couscous and pasta. These include silos for the storage of raw materials (hard wheat, soft wheat, maize, millet and sorghum), three (03) mills for the production of meal and flour to be used to supply production lines. Other facilities associated with the project include: boilers
(steam and hot water), air compressors (compressed air production), refrigerators (cooling water production), and electric transformers.  

5. The M3 Project is located approximately 230 km from Bamako, in the Rural Commune of Sébougou which is almost melted in the city of Ségou. It is located on a plot involving eight contiguous land titles (TF No. 1133-1140) with a total area of 7 ha 15 a 38 ca. The town is under the supervision of the Sous-Prefect of Ségou. The project’s influence extends to the rural commune of Sébougou and Ségou and its surroundings. The M3 Project activities include manufacture of pasta, couscous and flour from wheat, millet and maize. Seven production chains will be set up on the M3 Project site at Ségou. The project is expected to promote local agricultural development and to strengthen the value chains by creating direct and indirect jobs and business opportunities for local entrepreneurs. By producing import substitutes, the project is expected to have a positive impact on the trade balance, and the increased local production will enhance food security by creating jobs and wealth for the country.

6. The M3 project is classified in Category 2 medium risk. In order to mitigate its primarily negative environmental effects, the Environmental and Social Management Plan (ESMP) was disclosed in 2012. The ESMP was prepared in line with the regulations in Mali, the policies of the African Development Bank (AfDB), the World Bank policies and the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (IFC), 2012. The AfDB’s policies included Environmental and Social Procedures (ESAP), Policy on the Environment Guidelines for the Integrated Assessment of Environmental and Social Impacts, Gender Policy, Cooperation with Civil Society Organizations and the Policy on Poverty Reduction. Finally, the ESMP Summary describes the project’s negative environmental effects on soil, air quality, surface and ground waters and health and safety of population and workers along with the corresponding mitigation measures.

7. With regard to the potential reputational risk of the project, the Appraisal Report, mentioned that in 2013, “a person claiming to represent the villages of Sanamadougou and Saou in the Office du Niger area lodged a complaint against M3 and CAI-SA concerning land grabbing. This complaint was dismissed by the Segou Court of First Instance as inadmissible. However, it is proposed that the loan agreement should include a clause requiring the Keita Group to notify the Bank of any developments regarding the case and monitoring will be stepped up as required. Also, the loan agreement will include a clause to suspend disbursement or speed up repayments in the event of conviction of M3 Project or the Keita Group”.

8. When CRMU received it, the initial assessment of the request indicated that the land dispute between the M3 project and the PAPs may have been pending before the national courts. It was unclear from the Request whether or not the legal cases were still pending or resolved. Paragraph 2 (d) of the Operating Rules and Procedures of the Independent Review Mechanism (IRM) on Limitations prevents the IRM from

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1 Environmental and Social Management Plan (ESMP) Summary, p. 1.
2 ESMP Summary, p. 1.
7 ESMP Summary, pp. 6-11.
8 Project Appraisal Report 23 June 2014, p.14
handling matters before the national courts. Therefore, with the uncertainty surrounding the court cases, CRMU did not register the Request.

9. By March 2016, CRMU received additional information confirming that the court proceedings were closed at the time the request was sent to IACD and later transmitted to CRMU. In light of the information available today, there is adequate prima facie evidence to suggest that the M3 Project has caused or is likely to cause material harm on PAPs and there is no ostensible action taken or proposed to be taken to remedy such harm.

10. Also, the appraisal report had rightfully spotted some reputational risk to the Bank. It is unclear whether Management implemented the measure proposed in Paragraph 7 above to mitigate the reputational risk of the Bank that was clearly identified. Failure to do so would be considered a violation of Bank procedures and compromise due diligence.

11. Given the circumstances surrounding this project, the request meets the registration requirements of the IRM Operating Rules and Procedures, except for the requirement that PAPS’ representation by an international NGO must be justified. The documentary evidence available suggests that the Requestor may have acted on behalf of the PAPs. However, CRMU will ascertain this representational authority in due course.

12. Therefore, in keeping with Paragraph 23 of the IRM Rules and Procedures, the request relating to the Diversification of the Activities of Modern Mills Project in Mali was registered for compliance review in the IRM Register of Request, this 12 May, 2016. The Notice of Registration has been sent the same day to the Requestor, the Boards of Directors and the President of the Bank. The Register of Request is accessible on the Bank website: www.afdb.org/IRM.

13. In accordance with paragraph 36 of the IRM Rules, the AfDB Management must submit its Response to CRMU indicating how the Bank has complied, or intends to comply with the Bank’s safeguard policies and procedures applicable to this project within twenty one (21) working days, after the receipt of this Notice of Registration, which shall be by no later than 13 June 2016.

14. For any future correspondence about this complaint, the Requestor, the Bank’s Management and any other interested parties shall refer to the request number RQ2016/1 as posted on the IRM Register of Requests.

15. The Requestor has been notified that all communications in connection with the Request will be sent to the address stated in the Request until another address is indicated to the CRMU.

Sekou Toure
Director
Compliance Review and Mediation Unit
Cc:
1. The Requestors and Afrique-Europe Interact
2. The President, African Development Bank Group
3. The Boards of Directors, African Development Bank Group
Annex 1
The Request

Suspected Credit Fraud by Moulins Modernes du Mali (M3)

Dear members of the Board of Governors,
dear members of the Anti-Corruption and Fraud Investigation services,

we would like to discuss a very serious issue. The reason we are contacting you is that the Mallian contractor Modibo Keita, whose company Moulins Modernes du Mali (M3) received on the 17th of September 2014 a credit from the African Development Bank amounting to 16.8 million euros (10.8 million CFA). There is evidence that Modibo Keita has received this loan solely by deliberately providing misleading and/or fraudulent information to the African Development Bank.

Of particular concern is an unresolved conflict over land between Moulins Modernes du Mali and the two villages Sanamadougou and Sahou that has been going on since May 2010 and during which severe human rights violations have been committed on several occasions. These incidents have become well known far beyond Mallian national borders: The case has been examined in a recent report that has been published by the renowned American Oakland Institute [1]. Additionally the human rights organisation FIAN, which operates in over 50 countries, extensively addressed the issue in a 100-page-report in December 2014 [2]. Furthermore, numerous journalists and delegates of the Mallian and international public have visited both villages, among them activists from our network, who have visited Sanamadougou and Sahou seven times since January 2014. The last visit of a Mallian/European delegation took place in March 2015.

The ongoing conflict over land (that has resulted in Sanamadougou in particular losing almost 100% of its agricultural land) is the reason why Germany – among other countries – has abstained from voting in the above mentioned decision to grant credit to Moulins Modernes du Mali. This information was disclosed to us on the 19th of February 2015 during a meeting at the German Federal Ministry for Economic Cooperation and Development in Bonn, in which participated: four representatives from our network and eight members of: the Federal Ministry, the German Investment and Development Company (DEG), the KfW Development Bank and the German embassy in Mali. Additionally, at this meeting we were informed that the committee of the African Development Bank

Bremen, 13th April 2015
had only agreed to grant the credit to Modibo Keita under two conditions: First, that no more court proceedings were pending; second, that the families affected had received financial compensation. Modibo Keita claimed both conditions had been met. However, as we have learnt at our latest delegation visit four weeks ago, both these assertions were inaccurate. More precisely: The court proceedings that started on the 22nd of February 2012 have not finished, they have merely been suspended; only 8 families (7 in Sanamadougou and 1 in Sahou) have accepted compensation—which is a logical consequence of the fact that the villagers do not want financial compensation, but the return of their land (not to mention the fact that the legal proceedings have never been brought to a close).

Against this background, we would like to appeal to the African Development Bank to urgently review the recent credit agreement with Modibo Keita. Not only because this conflict over land prevents sustainable development and social progress in the affected region—which stands in stark contrast to the aims of your institution—but also because the African Development Bank explicitly takes a firm stand against fraud, corruption and other illegal activities.

In order to substantiate our accusation, we would like to present the results of our latest research as briefly as possibly—however, beforehand we would like to elaborate on the link between our network Afrique-Europe-Interact and Sanamadougou and Sahou.

a) The Link between Afrique-Europe-Interact and Sanamadougou and Sahou

Afrique-Europe-Interact is a grassroots network with initiatives in Mali, Burkina Faso, Togo, Germany, Austria and the Netherlands. We work on a voluntary basis on both continents and are funded exclusively through donations. Members of our network have regularly visited Sanamadougou and Sahou since early 2014; in May 2014 and in March 2015 European members of our network have also participated in these visits. In August 2014 we supported Sanamadougou and Sahou with four tons of millet to bridge the food shortage that still continues to this day. Additionally, in Germany we have organised several rallies in solidarity. On the 27th of November a large farmers assembly took place, supported by our network; several Malian journalists also participated. Ten activists from Banako and three from Europe have participated in our latest (but not last) delegation visit (6th – 10th March 2015), the focus here was talks to individuals and an exchange of small groups, as well as two meetings with the inhabitants of Sanamadougou and Sahou (3).

b) History of the Conflict

The history of the conflict cannot be quickly summarized, especially because of the numerous initiatives and protests that have been organised by the villages' inhabitants during its course. That is why we would like to refer to the aforementioned FIAN report, published in December 2014, which delineates the events until the end of 2013. Another report has been compiled by the Malian government in June 2014; however, the village chiefs of Sanamadougou and Sahou have contradicted this account in a detailed letter, as a result of which a new report has since been commissioned (4). Finally, in October 2014, we outlined the events ourselves in a letter to the Malian president Boubacar Keita; this letter is documented on our website (5).
c) Legal disputes in the conflict over land

The first legal disputes began in June 2010 when Modibo Keita - without warning - ordered the logging of numerous trees that had been essential for the village’s agroforestry. More than 40 farmers were arrested, others were injured – some seriously – by the security forces on site. Court proceedings began, charging villagers with Breach of the Peace and were concluded in 2011; in the end four villagers were convicted. The villagers decided not to appeal the court’s decision, because at that point in time they did not see any chance of success.

The villages on their part have also attempted to resolve the dispute through the courts: proceedings began on the 22nd of February 2012 in Markala, but were delayed after only four days of proceedings. To be specific, the latest order of the court in this case was issued on the 20th of December 2012. At the time, an external reviewer was appointed who was supposed to provide an expert’s report on the controversial issues. However, this never happened, as Mr Me Amadou T. Diarra, the former lawyer of the two villages, confirmed in March 2015. The exact reasons why a report was never issued are uncertain. All we know is that the lack of funds on behalf of the village inhabitants and the supporting organisations played a significant role. Against this background, the two villages have retained with our support a new lawyer who has already contacted the court in Markala and taken action to continue the proceedings.

The central question of the unfinished court proceedings is: How do the areas farmed by Moulins Modernes du Mali correspond with the region assigned in the lease contract? The issue is that the relevant territory is described only rather vaguely in the contract. The contract's wording:

"The property is bordered as follows:

- In the North by the property of FORAS and the property of ECORICE;
- In the South by the Falal de Bokor- Wére;
- In the East by the property of SOSUMAR;
- In the West by the property SOSUMAR."

We have had comprehensive talks with the inhabitants of Sanamadougou and Sahou about these boundaries. Moreover, we examined the area described in the contract by motorbike. As a result, two things became apparent: first, that the boundaries set out in the contract do not correspond to the observable reality regarding the cardinal directions; second, that the area seems to be significant larger than 7,400 hectares described. Additionally – and this is arguably the biggest contradiction – the canal Falal de Bokor-Wére which, in article 5.6 of the contract, is stated to be the location of water abstraction, is approximately 20 to 30 kilometres away from the agricultural land currently used by Moulins Modernes du Mali: an entirely different canal is utilised for the actual water abstraction. Together, these issues demonstrate that the controversial question about which areas are officially intended for use by Moulins Modernes du Mali have not been solved – and will probably only be solved, if a cartographic map, that is equally accessible to all affected parties, is utilised.

Finally, we would like to draw your attention to a third legal dispute that we became aware of during our talks in Sanamadougou and Sahou: Against the background of the unfinished trial in Markala, the villages applied to the courts on the 3rd of May 2013 that the works be temporarily suspended until the original trial was concluded. However, this case was dismissed by the court for substantive and formal reasons. It needs to be emphasized that the information that served as a basis for this
decision is still in need of elucidation. For example, the corresponding verdict from the 19th of June 20:3 states that Moulins Modernes du Mali had established the boundaries of its areas based on GPS data. This is, however, implausible, as one of the key problems is precisely the absence of any clearly defined boundaries in the contract.

In light of the above, it should be obvious that the assertion “no court proceedings are pending” presented in the credit negotiations by Modibo Keita, is more than doubtful. Therefore, we would like to appeal to the African Development Bank to carry out an investigation into this matter. At the same time we have requested the new lawyer to inform us promptly about any developments in the resumed proceedings.

d) Compensation

Concerning compensation, Modibo Keita presented the African Development Bank with a list of all the names of those families that supposedly have received compensation in Sanamadougou and Sahou. We have received this information from an employee of the German embassy in Bamako who has viewed this list. This information caused some indignation among the inhabitants of the villages. According to the villagers, only a small number of families accepted a - merely symbolic - compensation for the loss of their land, at an early stage of the conflict: specifically, one family in Sahou and seven families in Sanamadougou. To substantiate their statement, the inhabitants of Sanamadougou and Sahou have compiled two lists (attached to this document) that detail the names (and signatures) of all families that have not received any compensation. In this context, the fact that the villagers almost unanimously reject compensation should not be overlooked. The main reason for this rejection is that they question the lawfulness and political legitimacy of Moulins Modernes du Mali’s actions. From their perspective it is even more incomprehensible that the rumour that many families had accepted compensation continues to persist – despite numerous and unambiguous rectifications from both villages (the last time in the aforementioned letter from June 20:4).

From our perspective this means that we would like to ask the African Development Bank to closely examine the lists created by Modibo Keita. Especially, it needs to be clarified which names are on these lists and it would also be desirable to compare this information with the tax and resident registration office. To put it more precisely: Have the signatures been forged or are the persons listed, inhabitants from other villages? Or, as some villagers suspect, has Modibo Keita on paper split up the seven families that have accepted compensation into smaller family units, and so artificially increased the number of signatures? It also needs to be established, if any of the 25 families are on the list that admittedly pay taxes in Sanamadougou, but in fact live in a neighbouring village which so far has not been affected from loss of land (Dossiguila).

Finally, we would like to point out that for reasons of clarity and comprehensibility these issues have only been outlined and by no means been presented to their full extent. One of the reasons for this is our desire to address, within one letter, as many people as possible, who are directly or indirectly responsible for the occurrences in Sanamadougou and Sahou. On the one hand, because both of the villages face an immediate threat to their existence and with that the livelihood of several thousand people is at risk. On the other hand, because the case affects fundamental questions of good governance – in the case at hand, this dimension is asking especially how to deal with the specific recommendations of the World Agriculture Report (2008), in an area like Office du Niger that is characterised mainly by smallholding agriculture. At this point we would like to extend an invitation
that you are welcome to contact us anytime. We also could establish personal contact to inhabitants of Saramadougou and Sahou or to members of our network in Bamako.

Kind regards,

Volker Mörchen

(1) See report (engl.): http://www.oaklandinstitute.org/understanding-land-investment-deals-africa-mali
(5) http://afrique-europe-interact.net/1310-2-Lettre-Ouverte-au-President-malien.html

Annex

Two lists that detail the names (and signatures) of all families that have not received any compensation.
Village de Sanamadougou le 10/03/2015

Nous, chefs de famille et des mémoires à-dessus mentionnés, indiquons que aucun de nous n’a réçu le fonds en espèce ni autres indemnités matérielles de la part de M. Modibo Keita, de se faire nous revendiquons encore et toujours nos droits ancestraux sur les terres de nos ancêtres. Nous signons cette petition pour servir et valoir à que de droits.

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