

AFRICAN DEVELOPMENT BANK GROUP



MANAGEMENT RESPONSE ON THE REQUEST FILED ON THE DIVERSIFICATION OF THE ACTIVITIES OF THE MODERN MILLS PROJECT (*MOULINS MODERNES DU MALI*) IN MALI.

22nd August 2016

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Acronyms

AfDB	African Development Bank
BTOR	Back To Office Report
CRMU	Compliance Review and Mediation Unit
ESMP	Environmental and Social Management Plan
IACD	Integrity and Anticorruption Department
M3	Moulins Modernes du Mali
PAP	Project-Affected People

1. Introduction

This Management Response is a reaction to the Notification of Registration of application No: RQ2016/1 dated May 12, 2016 (the "**Request**"), following referral to verification of compliance Review and Mediation Unit ("**CRMU**") by Africa-Europe Interact (the "**Requester**"), a Non-Governmental Organization ('NGO') with local representation in Mali.

The Requester accuses Moulins Modernes du Mali ("M3") Company of grabbing land belonging to the populations of Sanamadougou and Sahou («**the Populations affected by the project**» or "**PAP**") and that they have not been compensated or refuse the principle of compensation.

In addition, the Requester claims that the Bank has financed the M3 project, on the basis of false/fraudulent information. In this regard, the Requester accuses M3 of having made false statements *"by stating that they were not subject to any court cases and that all the villagers had been compensated, while the Populations affected by the project (PAP)" have never received compensation, and those who did, only received symbolic sums as compensation for their land and properties.* The Requester included in its complaint a list of PAP with their signatures and asked that this list be compared with any list submitted by the M3 Project.

On the basis of these allegations CRMU has concluded, that **"given all the available information today, there is adequate prima facie evidence to suggest that the M3 project has caused or is likely to cause material harm to the PAP and there is no ostensible action taken or proposed to be taken to remedy such harm."**

Therefore, CRMU has requested Management to prove that it has met the measures and recommendations referred to in the Project Appraisal Report (PAR) and reiterated in paragraph 7 of the request *"in order to mitigate the risk that had been clearly identified,"* and highlighted by the Bank. Failure to do so would be considered a *"violation of the Bank's procedures and compromise due diligence"* (item 10 of CRMU's Notice of Registration.)

2. Background and Relevant Project Information

The Moulins Modernes du Mali (M3) is a company belonging to the Keita Group and was created in 2007. During 4 years of operation, its turnover increased by 72.5%. That indicates the strong potential of the Malian and regional market in the food sector. M3 intends to focus its efforts on meeting the high local market demand for pasta and couscous, which are mainly imported, by building factories to produce these commodities. The project is justified by the existence of a buoyant market for structured companies such as the Keita Group.

The project is located approximately 235 km from Bamako, in the Rural Commune of Ségoubougou on the outskirts of Ségou, the 4th largest city in the country, in terms of population, following Bamako, Sikasso and Mopti. It is situated on a plot involving eight contiguous land titles (TF No. 1133-1140) with a total area of 7 ha 15 a 38 ca, all belonging to the M3

Company. Ségoubougou is under the jurisdiction of the Sous-Préfet of Ségou. The project's influence extends to the rural communities of Ségoubougou and its surroundings.

3. Project Description

The project involves the installation of industrial units, more or less related, 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. These lines will be used in the production of long pulp, short pasta and couscous, based on mixing, baking, drawing, cutting, screening, drying, wrapping and the packaging. Associated facilities include: boilers (steam and hot water), air compressors (compressed air production), refrigerators (cooling water production), and electric transformers (conversion of equipment voltages). The waste product (cereals bran) is valued for the production of cattle feed for which there is a production unit. The project will result in the creation of 123 direct jobs for a total investment of 26.058 billion FCFA.

The project has been classified in Category 2, medium risk operation in accordance with the Bank's environmental and social guidelines in existence prior to the Integrated Safeguards System. A detailed Environmental and Social Management Plan was prepared, cleared and disclosed in 2012. The ESMP Summary describes the project's negative environmental effects on soil, air quality, surface and ground water and on the health and safety of the population and workers along with the corresponding mitigation measures.

4. Context of the Complaint

Three institutions, including the Banque Atlantique, Mali; the West African Development Bank and the African Development Bank, have agreed to finance the M3 project's activities. For the purposes of the project, the Malian Government, through the Office du Niger, a parastatal company, assigned an area of 7400 ha, owned by the State of Mali, to the Keita Group, particularly the M3 Company. The disputed lands are leased and remain registered in the name of the Malian government.

On September 17, 2014, the Board of Directors of the Bank, having been duly informed of the land dispute and particularly of land grabbing accusations brought against M3, approved the M3 project, subject to compliance with the following 03 (three) specific conditions before signing the loan agreement with the Bank:

- i.) Inquire about the status of land and land grabbing charges brought against M3 in the Office du Niger area;
- ii.) Check if compensation has been made by the M3 Promoter in exchange for surrendered lands; and
- iii.) Require legal advice from an Independent International Office into allegations of land grabbing.

In addition, the Project Appraisal Report (PAR) recommended that the loan agreement should include a clause requiring the Keita Group to inform the Bank of any developments concerning the charges brought against M3 Company and that monitoring be stepped up, if necessary. It also recommended that the loan agreement should include a clause of suspension of disbursement or acceleration of repayment in case of conviction of M3 or the Keita Group.

Management does not agree with allegations of the Requestor and does not believe that the Requestor has any representational authority over the claimed villages. Details of Management's responses are contained in the following table.

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5. Management Response

Issues Raised in the Request	Management Response
<p><u>1. The land dispute resulting from allegations of land grabbing</u></p>	
<p><u>1.1. Authenticity of the land allocation to M3</u></p>	<p>Management has conducted several field missions which also reviewed the allegations of land grabbing that the M3 project is accused of. Following these missions, Management was informed that the land is registered in the name of the State and the Decree N ° 96-188 / P – RM of July 1996, fixed the terms of land use organization and management in the Office du Niger. It appears from the due diligence exercised by Management that the land belongs to the State, who leased it to the M3 Company, in accordance with national laws and regulations.</p> <p>In accordance with Board recommendations, Management has sought legal advice from an independent International Legal Office, who performed additional checks and concluded that:</p> <p>"The agreements signed between the Government of Mali and M3 and CAI-SA, on the one hand, and between M3 and the Office du Niger, on the other, comply with legal and regulatory provisions in force in Mali. The 7,400 hectares of land area leased to M3 by the Office du Niger is a regular transaction in line with the Decree N ° 96-188 / P – RM of July 1996. The 7400 ha are listed in the Land Register of Segou (Title No. 2215 of 2004) as property of the Republic of Mali.</p> <p>Management notes that <i>afrique-europe Interact</i> has provided no evidence to support its accusations and therefore concludes that allegation of land grabbing on the part of M3 Company is unfounded.</p>
<p><u>1.2. Legal Proceedings Against M3</u></p> <p>In the 3rd point of the Notice of Registration, the Requestor claims that M3 has "received the loan from the bank by providing fraudulent information," indicating there were no legal cases against them.</p>	<p>While this is an allegation of fraud that is within the purview of IACD, management affirms the conclusion of the report of IACD of March 23, 2016 that states that:</p> <p><u>"The Bank was not misled into extending a loan to M3; IACD has not uncovered evidence in support of M3 having provided any kind of false assurance to the Bank related to the court proceedings or to the compensation of affected families. (...) and the Bank was also aware that the compensation process is yet to be finalized by M3. (...). Lacking both the constructive elements of misrepresentation and of disappointment that constitutes fraud, as defined in the Bank's Sanctions Procedure, it is recommended that the case be closed without undertaking further investigation"</u>.</p>

	<p>Regarding the Legal Proceedings, Management affirms that these cases were closed before disbursements were made. CRMU has acknowledged that they received a confirmation that the court proceedings were closed at the time the request was sent to IACD and later transmitted to CRMU. At the time Management decided to formally go ahead with the financing agreement and disburse the first tranche of funding, these legal proceedings were no longer in effect. By CRMU rules, it cannot handle matters before the National Courts. That CRMU is proceeding with this case proves that there are no cases before the national courts.</p>
<p><u>1.3. Concerns Raised on the Compensation of Project-Affected People (PAP)</u></p> <p>The Requestor claims that only a small number of families (8) received compensation and those who did, received what it referred to as “merely symbolic compensation”. The Requestor included in its complaint a list of PAP with their signatures and asked that this list be compared with any list submitted by the M3 Project.</p>	<p>Management reiterates that the Bank co-financed the construction of an agro-industrial unit for the processing of wheat, millet and corn for food pulping, couscous and flour (the "Project") on an existing land, free from any type of dispute, which belongs to the promoter. Management wishes to state that the Bank’s investment has not resulted in involuntary resettlement (physical or economic) that has required compensation of PAPs.</p> <p>However, Management acknowledges that this is a source of concern even if it is on aspects of the project that are not financed by the Bank. Management will intervene where necessary to ensure that appropriate and timely steps are taken by the Government of Mali and the promoter to compensate all affected people.</p>
<p><u>2. Implementation of the Recommendations related to reputational risks highlighted in the Project Appraisal Report</u></p> <p>a.) Including a clause in the loan agreement requiring the Keita Group to notify the Bank of any developments regarding the case and that monitoring will be stepped up as required; and</p> <p>b.) The loan agreement will include a clause to suspend disbursement or speed up repayments in the event the M3 Project or the Keita Group is convicted.</p>	<p>Management has fully complied with the proposed recommendations:</p> <ul style="list-style-type: none"> a) The loan agreement makes it mandatory for M3 to notify the Bank of any court case in relation to this project. Thus far, there has been no such case. If there is occurrence of any judicial procedure or it is established that M3 has made false or inaccurate statements, the Bank is entitled to terminate or suspend the loan. Project monitoring has been strengthened and regular updates have been provided to the Bank on the investigations into the integrity of the promoter (in 2015). These updates did not flag any reputational risk to the Bank. b) The loan agreement contains this clause and Management reiterates that disbursement will be terminated and repayments will be sped up in the event the M3 Project or the Keita Group is convicted.

3. The representational authority of the Requestor

The 2015 Revised IRM Operating Rules and Procedures have clearly identified that any organization that seeks to file a request on behalf of Project-Affected People must be duly appointed to do so and must have representational authority.

Management is of the view that the Requestor does not meet the requirements to file a request on behalf of the PAPs. However, CRMU is yet to ascertain this representational authority of the Requestor and has the intention to do so in due course.

A list for compensation was not prepared and submitted to the AfDB because the Bank's financing did not lead to any physical or economic displacement and therefore no person was to be compensated. However, Management is of the view that the list of PAPs submitted by the Requestor as needing compensation is fictitious judging from the fact that the list has been prepared and signed by a single individual with family sizes that are uncommon in that region. All of which cast serious doubt on the authenticity of the list of names provided by *afrique-europe Interact*.

6. Conclusions

- Management reiterates that the Bank is co-financing the construction of an agro-industrial unit for the processing of wheat, millet and corn for food pulping, couscous and flour (the "Project") on an existing land, free from any type of dispute, which belongs to the promoter. Management wishes to state that the Bank's investment has not resulted in involuntary resettlement (physical or economic) that has required compensation of PAPs. However, Management acknowledges that this is a source of concern even if it is on aspects of the project that are not financed by the Bank. Management will intervene where necessary to ensure that appropriate and timely steps are taken by the Government of Mali and the promoter to compensate all affected people;
- Management has fully complied with the recommendations related to reputational risks highlighted in the Project Appraisal Report in that:
 - a.) The loan agreement makes it mandatory for M3 to notify the Bank of any court case in relation to this project. Thus far, there has been no such case. If there is occurrence of any judicial procedure or it is established that M3 has made false or inaccurate statements, the Bank is entitled to terminate or suspend the loan. Project monitoring has been strengthened and regular updates have been provided to the Bank on the investigations into the integrity of the promoter (in 2015). These updates did not flag any reputational risk to the Bank.
 - b.) Management reiterates that disbursement will be terminated and repayments will be sped up in the event the M3 Project or the Keita Group is convicted, in line with the clause contained in the loan agreement.
- Management is of the view that the Requestor does not meet the requirements to file a request on behalf of the PAPs. However, CRMU is yet to ascertain this representational authority of the Requestor and has the intention to do so in due course. A list for compensation was not prepared and submitted to the AfDB because the Bank's financing did not lead to any physical or economic displacement and therefore no person was to be compensated. However, Management is of the view that the list of PAPs submitted by the Requestor as needing compensation is fictitious judging from the fact that the list has been prepared and signed by a single individual with family sizes that are uncommon in that region. All of which cast serious doubt on the authenticity of the list of names provided by *afrique-europe Interact*;
- Regarding the Legal Proceedings, Management affirms that these cases were closed before disbursements were made. CRMU has acknowledged that they received a confirmation that the court proceedings were closed at the time the request was sent to IACD and later transmitted to CRMU. At the time Management decided to formally go ahead with the financing agreement and disburse the first tranche of funding, these legal proceedings were no longer in effect. By CRMU rules, it cannot handle matters before the National Courts. That CRMU is proceeding with this case proves that there are no cases before the national courts; and

- Management notes, based on the conclusions of additional checks from an Independent International Legal Office that the leasing of the land area to M3 by the Office du Niger is a regular transaction. Management notes that the Requester has provided no evidence to support its accusations and therefore concludes that allegation of land grabbing on the part of M3 Company is unfounded.

7. Action Plan

- Management takes interest in and will inquire into the compensation program of the PAP already initiated by the promoter, the Office du Niger, the regional and local administrative authorities.
- Management will intervene where necessary to ensure that appropriate and timely steps are taken by the Government of Mali and the promoter to compensate all affected people.