

# AFRICAN DEVELOPMENT BANK GROUP



## MALI - DIVERSIFICATION OF THE ACTIVITIES OF MODERN MILLS PROJECT – THE INDEPENDENT REVIEW MECHANISM ELIGIBILITY ASSESSMENT REPORT FOR COMPLIANCE REVIEW

**Request No.: RQ2016/1**

**CRMU DEPARTMENT**

**November 2016**



## Acknowledgments

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## Acronyms and Abbreviations

AfDB	African Development Bank Group
BOAD	Banque Ouest Africaine de Développement
CAI-SA	Complexe Agropastoral et Industriel
CRMU	Compliance Review and Mediation Unit
AEI	Afrique-Europe Interact NGO
ESMP	Environmental and Social Management Plan
ESAP	Environmental and Social Assessment Procedures for Private Sector
ESIA	Environmental and Social Impact Assessment
IRM	Independent Review Mechanism
ISS	Integrated Safeguards System
M3	Moulin Moderne du Mali
ON	Office du Niger
PAPs	People affected by the Project
RAP	Resettlement Action Plan
Ops Com	Operations Committee

## Executive Summary

The eligibility assessment of the Request relating to the Diversification of the Activities of Moulin Moderne du Mali (M3) Project in Mali was undertaken in June 2016 in accordance with the Operating Rules and Procedures of the Independent Review Mechanism (IRM) and partially financed by the African Development Bank Group (AfDB). Its purpose is to determine if there is *prima-facie* evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed project and if the harm or threat was caused by a failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures. This Eligibility Report is based on the findings of desk review of the project documents, the information collected during the IRM mission to Mali from 20 to 26 June 2016 and the Management Response to the Request.

The Request was submitted by an international NGO, Afrique-Europe Interact, with local representation in Mali. The NGO complained about land grabbing by the project and its 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 have received threats to their physical security. In addition, a number of those affected by the project (i.e. PAPs), were not compensated while a few others received only symbolic compensation amounts for their lands and properties. The Director of the Compliance Review and Mediation Unit (CRMU) registered the Request on 12 May, 2016 pending verification of two issues: (a) if there was any land dispute case pending before any courts in Mali at the time of submission of the Request, and (b) if the NGO, being a foreign representative, had obtained representational authority to act on behalf of the people affected by the project.

The IRM mission to Mali established that there was no legal case pending before the courts in Mali and was also able to clarify the issue of representational authority by the affected people. The CRMU received proof that the NGO Afrique-Europe Interact (AEI) is registered in Mali as a local NGO. Further, four of the people affected by the project confirmed their authorization of AEI to act on their behalf as well as other PAPs. However, since establishing direct contact with the CRMU, the four PAPs have clarified that they wish to stand on their own in the complaint handling process, but with the support of the NGOs that have long been their partners.

This Eligibility Report finds *prima-facie* evidence of non-compliance with applicable AfDB policies and procedures, including the Involuntary Resettlement Policy (2003) and the Environment Policy (2004). The IRM found also *prima-facie* evidence of harm caused to the people by the M3 project as a result of the non-compliance with these policies and procedures. Therefore, the IRM recommends that the Boards of Directors authorize a compliance review of the M3 Project. The Terms of Reference (TORs) of the compliance review are included in Annex 5 of this Report, for consideration by the Boards.

# 1. INTRODUCTION

## 1.1. Scope of the Report

The objective of this report is to assess the eligibility of the Request relating to the Diversification of the Activities of Moulin Moderne du Mali (M3) Project for compliance review. In accordance with paragraph 51 of the Operating Rules and Procedures of the Independent Review Mechanism (IRM Rules) approved by Boards of Directors of the African Development Bank Group (AfDB) in 2015, the Director of the Compliance Review and Mediation Unit (CRMU) and the IRM Experts jointly determine the eligibility of Requests. In particular, they determine whether “...*there is prima facie evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group’s staff and Management to comply with any of the Bank Group’s relevant policies and procedures....*”<sup>1</sup> If the report finds prima-facie evidence of non-compliance with AfDB policies and procedures and that harm has been or is likely to be caused to the people or the environment, the IRM recommends to the AfDB Boards of Directors to authorize a compliance review of the project complained of.

Any finding presented in this report constitutes prima facie evidence. Should the Boards of Directors authorize a compliance review, such a review will assess this evidence more comprehensively and might draw conclusions which differ from those established by this report. The positions taken in this Eligibility Report do not prejudice the work to be undertaken during the compliance review when the IRM Experts will conduct a thorough assessment. This Eligibility Report is based on the findings of desk review of the project documents, the information collected during the IRM Experts/CRMU mission to Mali from 20 to 26 June 2016 (the IRM Eligibility Mission) and the Management Response to the Request.

## 1.2. The Project

The Boards of Directors approved the M3 Project on 17 September, 2014. The sponsor is Keita Group, a company with limited liability and registered in 2007. The Project is ongoing and co-financed to the amount of CFAF 10.8 billion with equity capital, and CFAF 25.2 billion by banks loans. The AfDB’s loan is EUR 16.8 million via the local currency framework in CFAF to M3. The project has also been granted a loan of CFAF 7 billion from the Banque Ouest Africaine de Développement (BOAD). Both the AfDB and BOAD loans have been used to procure the project equipment. The *Banque Atlantique Mali*, the transaction arranger, has undertaken to finance the working capital to the amount of CFAF 3.9 billion and mobilize CFAF 3.3 billion in additional

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<sup>1</sup> See Art. 51 African Development Bank Group, The Independent Review Mechanism, Operating Rules and Procedures, January 2015

financing required to fill the gap in the financing plan. By 19 June 2016, the AfDB had already disbursed Euro 1,524,490, the first out of the two agreed installments.

The project will expand M3's existing processing facilities to produce: (i) semolina from durum wheat, millet and maize; (ii) long and short pasta, as well as couscous from wheat, millet and maize; and (iii) flour from kibbled millet and maize. M3 will also acquire a new flour mill for the production of bread-quality wheat flour or "flour mill". The production residue will be used to produce animal feed.

The M3 is located approximately 230 km from Bamako, in the Rural Commune of Sébougou which is almost part of 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 communes of Sébougou and Ségou and their surroundings. Seven production chains will be set up on the M3 Project site at Ségou.<sup>2</sup> The project is expected to promote local agricultural development and to strengthen the value chains by creating direct and indirect employment as well as business opportunities for local entrepreneurs. By producing import substitutes, the project is expected to have a positive impact on the trade balance, while the increased local production will enhance food security by creating jobs and wealth for the country.<sup>3</sup>

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), and 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.<sup>4</sup> Under the project, silos will be acquired, allowing for an increase in M3 storage capacity to 20,000 tons for durum wheat, 5,000 tons for maize, and 5,000 tons for millet.

According to the Appraisal Report, the raw materials needed for the diversification project will be purchased in large quantities, mainly during the harvest period, and stored on the M3 site. The AfDB does not finance any of the land required for the production of raw materials nor does it finance infrastructure beyond the plant. AfDB only finances the procurement of industrial equipment used for the processing of wheat, maize, and millet under sorghum. While the wheat is the only raw material imported, the other raw materials, such as maize millet and sorghum, are produced locally on land obtained from the Office du Niger (ON), the national land registry office.

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<sup>2</sup> Project Appraisal Report 23 June 2014, page 1.

<sup>3</sup> Project Appraisal Report 23 June 2014, page i.

<sup>4</sup> Ibid. p.15.

For the production of the anticipated local raw materials, the Complexe Agropastoral et Industriel (CAI-SA) one of the Keita Group subsidiaries, is developing the land that M3 acquired through a lease agreement signed on 31 May 2010 with the Office du Niger for a renewable thirty year (30) term<sup>5</sup>. The project land covers seven thousand and four hundred (7400) ha of agricultural land which was used by the local population to produce millet, maize, other subsistence crops, as well as grazing and animal breeding.<sup>6</sup> The Environmental and Social Impact Assessment (ESIA) undertaken by M3, noted that only 5,120 of the 7,400 ha allocated to M3 is suitable for development, and did not mention Sanamandougou and Sahou villages.

The M3 project was classified as Category 2 because of its potential social and environmental impacts. The Environmental and Social Management Plan (ESMP),<sup>7</sup> disclosed in 2012, covered the project's environmental effects on soil, air quality, surface and ground waters as well as the health and safety of population and workers, along with the corresponding mitigation measures.<sup>8</sup> No impact assessment was carried on the impact of M3's land acquisition on the local population. The focus of AfDB's financing of the M3 facility overlooked the value chain supply, i.e., the land where the raw materials will be produced for the project.

### 1.3. Regulatory Framework of the Eligibility Assessment

The Compliance Review Process is governed by Section VII, Para 50-54, of the IRM Rules. Para 51 specifies that:

*“If .....the Director and the IRM Experts determine that there is prima facie evidence that the Requestors have been harmed or threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures, they shall within thirty (30) business days of such determination submit a report recommending a compliance review of the project at issue to .....the Boards if the Request relates to a Bank-group financed operation that has been approved by the Boards.”*

Paragraph.52 of IRM Rules further states:

*“The compliance review recommendation shall include draft Terms of References which shall set out the scope and time frame for the compliance review and shall provide an estimate of the budget and a description of additional resources required to complete the review.....”*

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<sup>5</sup> Information obtained from the Office du Niger. The Office du Niger which is the holder of the land is a semi-autonomous government agency in Mali that administers a large irrigation scheme in the Ségou Region of the country. The Office was created by Act No. 94-004 of 9 March 1994.

<sup>6</sup> Section 2.29 of Appraisal Report page 7.

<sup>7</sup> Executive Summary of the Environmental and Social Management Plan (ESMP) 2012, pp. 8-10.

<sup>8</sup> Project Appraisal Report 23 June 2014, p.15.



If the Eligibility Report prepared by the Director of the CRMU and the IRM Experts recommends a compliance review, in line with Paragraph 53 of the IRM Rules, the Boards may:

- (a) *Approve the recommendation(s) on a “non-objection basis; or*
- (b) *Remit the Request to the Director and the IRM Experts to reassess the recommendation regarding the draft Terms of References for the compliance review, with a new recommendation, if any, being submitted to ..... The Boards....”*

## 2. THE REQUEST

The Request (included in Annex 1 of this Report) was submitted by an international NGO, Afrique - Europe Interact (AEI) which has a local office in Mali. The NGO complained about land grabbing by the project arguing, that this act had negatively affected the people living in the villages of Sanamandougou and Sahou. The NGO claimed that the inhabitants of these villages, who had refused to leave their agricultural lands at the beginning of the project, were subjected to serious violations of their rights and serious threats to their physical security. A number of the people affected by the project (PAPs) refused to leave their land, while the authenticity of the list of those people who received compensation for leaving the land is questionable. Moreover, the Requestors alleged that the AfDB loan was granted to the M3 Project upon two conditions: (i) that guarantees be provided by the client to assure that the project is not subject to litigation; and (ii) adequate compensation be paid to the families affected by the M3 project. The Requestors argued that these two conditions had not been met. The Requestors accused the M3 Project of presenting fraudulent information to receive the Bank loan. In addition, the Requestors stated that only eight (8) families had been compensated and they had received merely “symbolic amounts”. The Requestors in the complaint asked that the list of PAPs and their signatures be compared with the one submitted by the M3 Project.

### 2.1. Requirements for the Registration of the Request

Paragraph 23 of the IRM Rules states that the Director of the CRMU, while considering the preference of the Requestor, shall register the Request for problem solving and/or compliance review. Prior to registering, the Director needs to assess whether the Request falls within the mandate of the IRM and that none of the exclusion clauses listed in Paragraph 2 of the IRM Rules apply. The registration of this Request by the Director was subject to the clarification of two issues: (i) whether a land dispute case was pending before any courts in Mali; and (ii) whether the Request was admissible since it was submitted by a foreign representative.

### 2.2. Limitations

Paragraph 2 of the IRM Rules on Limitations prevents the CRMU from registering any Request that is before judicial review or other similar bodies. The Request made reference to the land

dispute being before the national courts; however, the CRMU conducted a preliminary review and established that there was no pending court case.

### 2.3. Admissibility of the Request

Paragraphs 14, 15 and 16 of the IRM Rules require, among other things, that Requests received from non-local entities on behalf of the PAPs should be registered only when the Requestors provide: a written signed proof that they have authority to act on behalf of the affected people; evidence of representational authority, which should consist of the original signatures, the names and contact addresses of the affected parties; and clear evidence of inadequate or inappropriate representation in the country or countries where the project is located or has a direct and material impact. The CRMU received proof that the NGO, Afrique-Europe Interact (AEI) is registered in Mali as a local NGO. In addition, four of the people affected by the project confirmed their authorization of AEI to act on their behalf as well as other PAPs. However, since establishing direct contact with the CRMU, the four PAPs have clarified that they wish to stand on their own in the complaint handling process, but with the support of the NGOs that have long been their partners.

In keeping with Paragraph 23 of the IRM Rules, the CRMU registered the Request on 12 May, 2016 in the IRM Register of Requests for Compliance Review, and subsequently informed the Requestors, the President and the Boards of Directors.

### 2.4. Management Response to the Request

Paragraph 36 of the IRM Rules provides that Management should submit its response to the Request within twenty one (21) working days after the receipt of the Notice of the Registration of the Request. However, the CRMU did not receive the Management Response on the due date of 13 June 2013. Considering that this Response is crucial, and that the IRM needed to prepare an eligibility report that had fully considered all the facts, the Director of the CRMU extended the deadline to July 20, 2016<sup>9</sup>. The Management Response was received by the CRMU on 17 August, 2016 followed by a revised Response on 22 August, 2016. The Revised Management Response of 22 August, 2016 is included in Annex 2 of this Report. The Response covered the issues raised by the Request and stated that: “Management does not agree with the allegations of the Requestor and does not believe that the Requestor has any representational authority over the claimed villages.....”<sup>10</sup> Therefore, Management’s view is that the Request should be dismissed. The

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<sup>9</sup> Para 35 of the IRM Rules authorize the Director of CRMU to extend any time period, for as long as it is strictly necessary to ensure full and proper investigation assessment, review and initiative.

<sup>10</sup> Revised Management Response dated 22 August, 2016, p. 3.

following eligibility assessment consolidates the information obtained by the IRM eligibility assessment team from the desk review of project documents, the Management's revised response and the findings of the Eligibility Mission.

### 3. ELIGIBILITY ASSESSMENT

Para 51 of the IRM Rules requires the Eligibility Mission to determine whether there is prima-facie evidence that the Requestors are or are likely to be harmed by a Bank Group-financed project and whether such harm is due to the failure of the Bank Group's staff and Management to comply with any of the Bank Group's applicable policies and procedures. To assess the prima-facie evidence, the IRM Experts and the Director of CRMU (the IRM team) conducted a mission to Mali from 20 June to 26 June 2016. The Eligibility Mission met with different stakeholders (Government officials, including the Ministers in charge of Finance, the PAPs, the project promoter and his team, the representatives of the AEI, and the ON). The mission also visited the M3 project sites and gathered factual information in order to assess the eligibility of the Request for compliance review. The mission program along with the list of the people met is included in Annex 3 of this Report.

#### 3.1. Representational Authority of the Requestors

The Revised Management Response states that *“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.*

The CRMU undertook the necessary due diligence before registering the complaint, confirming that Afrique - Europe Interact (AEI) has a registered office in Mali. Also, the representative of AEI linked the CRMU with two PAPs who supported the issues raised in the Request (section 2.3 of this Report). Moreover, during the Eligibility Mission, the IRM team verified the representation authority given to AEI by the PAPs at the time AEI was submitting the complaint. The mission met with the AEI office in Mali and noted that the AEI will provide technical assistance to the

PAPs. In addition, the PAPs provided the IRM team with a formal letter stating that four (4) representatives of the PAPs will be standing on their behalf during the complaint handling process. A copy this letter is included in Annex 4 of this Report.

### 3.2 Legal proceedings against M3

While the investigation of allegations of fraud is beyond the scope of the IRM and this Report, the IRM team noted the Bank Management's statement that the report of the Bank Integrity and Anti-Corruption Department (IACD) on March 23, 2016 affirmed that: *"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"*.

The information available to the Director of the CRMU prior to the registration of the Request was that there was no case pending before the courts against M3. During the Eligibility Mission, the IRM team met with the Judge of the Markala court where the land dispute between M3 and the PAPs was filed. The Judge confirmed to the IRM team that this case was no longer pending before the Markala or any other court in Mali. The IRM mission concluded that there is no prima facie evidence of any pending legal proceedings between M3 and the PAPs.

The Director of the CRMU and the IRM Experts point out the independence of the IRM in the exercise of its functions, in particular, the exclusive power of the Director of the CRMU to determine admissibility of Requests. The fact that there are no legal proceedings against M3 does not amount to compelling grounds to dismiss the Request and not to register it. The CRMU was guided in its action by the requirement of the IRM Rules that includes among others, the proper representational authority letter from the PAPs who had suffered harm due to the acquisition of their lands by M3. During the mission, the IRM team met with PAPs and visited the affected villages, and noted that the number of people likely to be adversely affected by the M3 project may be larger than the figures indicated in the records.

### 3.3. Key Findings of the IRM Eligibility Assessment

#### *i. Have Requestors been harmed or threatened with harm by the M3 project?*

The IRM Eligibility Mission met with the Requestors and the PAPs and assessed prima-facie evidence that the M3 project had caused harm to the people. The IRM team found that approximately 90 families residing in Sanamandougou and Sahou villages had had to give up about

885 ha of land given to M3 by the Office du Niger. The Requestors and the PAPs argued that they have occupied this land for many generations and used it for dry land farming (mostly for millet, sorghum and maize), and rely on this land for food security. Although, the land is located within the territory of the Office du Niger and considered as public land under the national laws, the affected families have customary land user rights, which are also recognized by the Office du Niger. While some PAPs agreed to the compensation scheme of the Office du Niger, others claimed that M3 is occupying their land, which is not part of the land being leased from the Office du Niger.

Therefore, the issue concerns the right to occupy the land and also the compensation for the loss of traditional land user rights. The Office du Niger leased a total area of 7,400 ha to M3 to produce millet, sorghum and maize as raw materials for agro-processing by the facility. The Office du Niger compensation formula is 10 (ten) hectares of dry land farmland for 1 (one) hectare of irrigated land, assuming that the latter is more productive. All affected families were offered compensation on this basis but only some of them accepted the compensation package since they had no alternative.<sup>11</sup>

The IRM team has not assessed the actual number of PAPs who refused the compensation as opposed to those who were compensated. The numbers provided by the Office du Niger, the owner of M3, and the PAPs interviewed, varied widely. However, it is evident to the IRM team that a significant number of PAPs have adamantly refused to accept the compensation offered by the Office du Niger. They argue that:

- They have ancestral rights to the land and abandoning this land would seriously undermine their family traditions and social cohesion, and will be a breach of far reaching cultural traditions maintained by the families and the village.
- They do not wish to abandon their dry land farming practices since it provides them with staple crops essential for food self-sufficiency. Millet, maize and sorghum are basic staples in rural Malian diets and are considered essential for the food security of farming families. As Mali is a drought prone area which has experienced numerous famines, rural communities give the highest priority to self-sufficiency.
- The shift to cash crops, cultivated on irrigated land under the auspices of the Office du Niger system, entails high risk: the output prices of rice are highly volatile due to world market fluctuations; it will be costly to maintain the arable land, (for example, the cost of water utilities to be paid to the Office du Niger); and the Office du Niger land use license

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<sup>11</sup> In addition to the compensation of land provided by the Office du Niger, the owner of the M3 has offered some additional small sum of cash compensation in an effort to satisfy the Requestors.

could be revoked. Due to these risks, the PAPs are not willing to leave their lands or accept any compensation.

- The PAPs also stated that they had been offered low quality irrigated land which in many areas is not suitable for rice cultivation. Even for maize cultivation, the size of the land offered (1 hectare of irrigated land for 10 hectares of dry land) represents a significant economic loss.
- The PAPs considered that the way in which the land had been acquired from their families amounts to an act of “land grabbing” especially since the M3 occupies some land which is not part of the land leased from the Office du Niger.
- For women especially, access to firewood and other land products (shear butter, food crops, and medicinal plants) that they rely on for income generation becomes more difficult because of the remoteness of the new land allocated by the Office du Niger. This issue was raised by the representatives of the women during the IRM team meeting in Sibila.
- The PAPs believe that their relocation is not in line with their traditional processes, and the consultations with the affected families were inadequate.

More importantly, the IRM team was informed that prior to the project approval on 18 June, 2010, a serious conflict had erupted between the M3 and the people of Sanamandougou and Sahou due to the land grabbing of 885.6 ha by the M3. The company, meanwhile, claimed that it had leased this land from the Office du Niger. The villagers reported that the M3 brought in the security forces who beat and bloodied some men and women, caused the imprisonment of children and elderly men over 70 years, and attacked pregnant women. However, the M3 lawyer gave a different account, claiming that the security forces who intervened to calm down the situation were assaulted by some of the villagers armed with machetes and weapons and that therefore, the convicted villagers were imprisoned. In spite of these conflicting views, both the villagers and the M3 acknowledge that the violent incident occurred and the matter was widely reported in the international media as an instance of land grabbing<sup>12</sup>. An informative report on the issues surrounding the acquisition of the land by M3<sup>13</sup> was published by the Oakland Institute.

The IRM team found a community deeply divided between those who have and those who have not accepted the compensation. More importantly, those who have refused compensation believe that they have been acutely affected by the loss of their traditional lands and the encroachment on their communal rights. This is compounded by their high sense of insecurity due to the way in which their issues have been handled and the mounting risks of losing food security for their

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<sup>12</sup> In MALI ACTU Mali, Société: Accaparements des terres des villages de Sanamadougou et Saou : Les villageois sur le pied de guerre contre le PDG du DGCM, Modibo Keita, 15 mars 2016

<sup>13</sup> See

[https://www.google.co.uk/?gfe\\_rd=cr&ei=BKfrV77Zluzv8AflyqbwAQ&gws\\_rd=ssl#q=Oakland+Institute+report+on+Mali](https://www.google.co.uk/?gfe_rd=cr&ei=BKfrV77Zluzv8AflyqbwAQ&gws_rd=ssl#q=Oakland+Institute+report+on+Mali), Page 35-39.

families because their agricultural practices have been shifted to irrigated cultivation on a much smaller area to grow rice whose prices are unstable. In addition, the PAPs and Requestors argued that the Office du Niger's formula of one for ten hectares will exacerbate their vulnerability and threaten their secured food self-sufficiency means.

The Involuntary Resettlement Policy (2003) applicable to this project highlights the importance of avoiding resettlement, and, if unavoidable, providing adequate compensation for the loss of land to be paid to the affected people. The policy also states that "*particular attention must be given to socio-cultural consideration... of the affected people*".<sup>14</sup> In particular, this implies that, among other things, attention needs to be paid to the quality and quantity land allocated to affected women to ensure the means to achieve income generation and food security.<sup>15</sup> The Involuntary Resettlement Policy recognizes the traditional value of land, which, under the policy, requires special attention. The policy also gives special protection to the poor, vulnerable and women. The PAPs are indeed poor and vulnerable, their living standard is low and, with a few exceptions, all PAPs are dependent on farming as their sole source of income. Women are particularly affected as they have been relocated to remote land and far from the areas where they used to generate their income activities.

**Conclusion:** The IRM found prima facie evidence of harm caused to the Requestors and the villagers. This harm results from the economic loss due to the acquisition of their land, and the violations of the cultural and traditional rights associated to their land. The serious erosion of social capital and cohesion constitutes real harm in a rural community. There is also prima-facie evidence that the Office du Niger compensation formula of one hectare of arable land for ten hectares of dry land could trigger further economic losses due to the higher risks associated with cash crop farming. The shift from farming for self-sufficiency to cash crops might constitute a threat to their food security. The extent of this economic loss and the associated risks would need to be established during the compliance review, should it be authorized by the Boards of Directors, since detailed data on production patterns and costs and associated risks would need to be collected and assessed before a concrete conclusion can be made on the economic costs. The IRM team also found prima-facie evidence of harm inflicted on women due to the disruption of their access to the area used to generate their income.

**i. Have AfDB staff and Management failed to comply with Bank Groups' Policies and Procedures?**

Paragraph 51 of the IRM Rules requires that any relevant harm should be caused by the failure of Bank Group management and staff to comply with Bank Group's policies and procedures. The

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<sup>14</sup> Involuntary Resettlement Policy, November 2003, para. 3.2

<sup>15</sup> Ibid Paragraph 3.4.7.

IRM assessed evidence of compliance with the Involuntary Resettlement Policy (2003) and the Environment Policy (2004).

The M3 project was approved in September 2014 after the AfDB Integrated Safeguards System (ISS) came into effect in July 2014. However, the project was prepared in accordance with the 2003 Involuntary Resettlement Policy and the 2004 Environment Policy applicable at the time of the project preparation. The IRM eligibility team noted this fact and assessed the extent of project compliance accordingly. The ESMP prepared for the project focused exclusively on the environmental impacts of the industrial facility and overlooked the assessment of the impact of M3's land acquisition. This land will be used to grow raw materials to supply the M3 mills for processing.

Management Response *“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. 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”*.

The IRM team argues that this restrictive focus is inconsistent with AfDB policies. The Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000), which are the applicable guidelines to the project, state that *“impacts of the project may be larger than the site where the project is located.”*<sup>16</sup> *This broader impact – beyond the narrow site of a project – needs to be considered when assessing environmental and social impacts, including especially resettlement impacts”*. In addition, the ESMP explicitly adopted the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (IFC), January 2012<sup>17</sup> which *inter alia* states that *“where the client can reasonably exercise control, the risks and impacts identification process will also consider those risks and impacts associated with primary supply chains, as defined in Performance Standard 2 (paragraphs 27–29) and Performance Standard 6 (paragraph 30).*

**(a) Non-compliance with Environment Policy (2004):** The IRM eligibility team argues that the project has broader environmental impacts than the specific small site where the industrial machinery financed by the AfDB is located. This broader impact should have been covered in the environmental assessment. The IRM does not take a view on the categorization of the project but

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<sup>16</sup> See reference to Category 1 projects.

<sup>17</sup> Summary ESMP, page 3.



the IRM argues that focusing only on the environmental impacts of M3's industrial site is misguided. The ESMP should have covered the areas from which the raw materials will be produced since the availability of these raw materials is "sine qua non" for the project ability to operate. With no further assessment of the broader impacts, M3 is non-compliant with the Bank's Environment Policy.

**(b) Non-compliance with Involuntary Resettlement Policy (2003):** The IRM eligibility team is of the opinion that the Involuntary Resettlement Policy (2003) should have been invoked as the project financed by the Bank causes resettlement of people:

The Resettlement Policy states: *"The Bank Group involuntary resettlement policy has been developed to cover involuntary displacement and resettlement of people caused by a Bank financed project and it applies when a projects results in ....assets being lost and livelihoods being affected."*<sup>18</sup> Para. 3.4.1 (b) and (c) furthermore states: *"This policy covers economic and social impacts associated with Bank financed projects ... which result in (b) loss of assets....or (c) loss of income sources or means of livelihood as a result of the project."*

This project does cause loss of assets as the PAPs were and continue to be forced to give up their land. It affects the PAPs' livelihoods by shifting the norms of cultivation of their lands without offering sustainable alternatives. The Involuntary Resettlement Policy (2003) is thus applicable.

The Involuntary Resettlement Policy protects those people who may not have formal legal rights to land but can prove that they have a claim to such land or assets which are recognized under the customary laws of the country.<sup>19</sup> The PAPs do not have formal legal rights to the land of the Office du Niger but their land user rights are equally recognized in Mali. Evidently the Office du Niger compensates any person who is being relocated from their lands regardless of his land titles. In particular the AfDB's Involuntary Resettlement Policy (2003) provides protection of the rights to land use under para. 3.4.3.

The IRM team is of the view that the Involuntary Resettlement Policy (2003) is applicable to the project and that either a full or an abbreviated resettlement plan should have been prepared. The Involuntary Resettlement Policy requires that a full resettlement plan should be prepared for any project that involves displacing a significant number of people with a loss of their assets, or access to assets or reduction in their livelihoods.<sup>20</sup> The policy defines "significant" as:

*"200 or more persons will experience resettlement effects. In addition to this numerical guidance, project planners and the Bank should also determine the 'significance' of a project by evaluating the severity of adverse impacts on disadvantaged groups (for example, female headed households, the poorest, most isolated communities, including those without title to assets and pastoralists).*

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<sup>18</sup> Involuntary Resettlement Policy (2003) para. 1

<sup>19</sup> See Involuntary Resettlement Policy para 3.4.2 (c)

<sup>20</sup> Ibid para. 3.4.6.

*Any project that has adverse impacts on disadvantaged groups or ethnic, religious and linguistic minorities or which affects the poorest and most marginalized communities who do not have the capacity to absorb such impacts, should be considered significant, requiring a full resettlement plan.”<sup>21</sup> For projects for which the resettlement impact is small (i.e. less than 200 people) an abbreviated resettlement plan should be prepared.<sup>22</sup>*

During the preparation of this Report, the IRM team was not in a position to assess the total number of people who should be resettled by the M3 project. Further information-gathering would be feasible should the compliance review of the project be approved by the Boards. The group of PAPs assessed at the time of the Eligibility Mission is about 90 families, in addition to the other villagers already resettled and not part of the complaint submitted to the IRM. The number of people resettled might be well above 200 people. Moreover, the PAPs visited by the IRM are poor and vulnerable and should have been provided special protection in line with the Bank’s Involuntary Resettlement Policy para. 3.4.6. Without further investigation, the IRM cannot make a judgment whether or not a full resettlement plan should have been prepared. However, the IRM team firmly believes that at least an abbreviated resettlement plan, as outlined by the Involuntary Resettlement Policy (2003), should have been prepared, and therefore the AfDB staff has not adhered with the Bank’s Resettlement Policy. More importantly, the AfDB staff and management have also overlooked the issue of resettlement in spite of being aware of disputes between the PAPs and M3 which had erupted prior to the approval of the project by the Boards of Directors. In addition, the M3 Appraisal Report made explicit reference to these land disputes and court cases filed as part of its assessment of the project’s potential reputational risks.

*“...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 the M3 Project or the Keita Group”.*<sup>23</sup>

The Management Response stated that *“Management has fully complied with the proposed recommendations made in the appraisal report which are:*

- 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; however, if a judicial procedure should occur, 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

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<sup>21</sup> Ibid para 3.4., footnote 1.

<sup>22</sup> Ibid para. 3.4.9.

<sup>23</sup> Project Appraisal Report p.14.

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.

In the absence of evidence of project monitoring of these issues or of the regular updates on the integrity of the project promoter which at least should have been attached to the Management Response, the IRM team finds it difficult to understand, why, in the presence of such acute disputes on land resettlement at time of project appraisal, AfDB staff and Management took the view that the resettlement impacts caused by the project should not be reassessed or addressed.

**Conclusion:** The IRM finds prima-facie evidence that ADB staff and Management have failed to comply with AfDB policies and procedures, and the Appraisal Report did not mentioned the issues surrounding the land disputes as a reputational risk.

*ii. Has Harm been caused by failure to comply with AfDB Policies and Procedures?*

The Involuntary Resettlement Policy (2003) requires a comprehensive set of measures to be conducted in the preparation of a full or abbreviated resettlement plan. It requires the preparation of a socio-economic survey, an extensive consultation process with PAPs, and monitoring. While it is the task of the Borrower to prepare the survey, the resettlement plan and to conduct the consultations, a specific role is assigned to AfDB staff to guide the Borrower through this process. Particular emphasis is given to meaningful consultations during the project planning.<sup>24</sup> According to the the Bank Policy on Resettlement the “*Displaced persons should be informed about their options and rights pertaining to resettlement. They should be given genuine choices among technically and economically feasible resettlement alternatives.*”<sup>25</sup> Particular attention should also be given to disadvantaged groups.<sup>26</sup> AfDB Task Managers are called upon to give special attention to the consultation processes and to the extent to which the views of affected groups have been considered in the environmental and social management plan.<sup>27</sup> A survey to assess the number of the displaced persons and their socio-economic status, the consultation requirements with affected people, a description of compensation options and a discussion of these options, as well as monitoring of the plan are required for the abbreviated resettlement plans.<sup>28</sup>

The IRM is of the view that a careful consultation process with the PAPs, the preparation of a resettlement plan and the active engagement of AfDB staff in the consultation process could have mitigated the harm caused to the Requestors and the other PAPs they represent. The consultations

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<sup>24</sup> Involuntary Resettlement Policy (2003) para 3.3 (b).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid para 3.3 (c).

<sup>27</sup> Involuntary Resettlement Policy (2003) para. 3.4.10 and para. 4.1.3.

<sup>28</sup> Ibid Annex B

could have helped the Requestors and other PAPs to articulate their concerns with regard to their ancestral rights to the lands, and the food security risks associated to the shift from food crops on dry land to cash crop cultivation on irrigated land. Moreover, the women could have expressed their grievances relating to their difficult access to the areas used to generate income. Given the large size of land leased from the Office du Niger (about 7,400 hectares) for the production of raw materials for the M3, it might well have been possible that resettlement could have been avoided altogether as alternative areas might have been found for production. This is a key principle of the Involuntary Resettlement Policy (2003) that involuntary resettlement should be avoided or minimized where feasible.<sup>29</sup> With the exploration of different options, the resettlement impacts on the Requestors and other PAPs in their communities, harm caused to them from acquisition of their lands and transformation of their cultivation activities could have been avoided.

**Conclusion** The IRM finds prima-facie evidence that harm has been caused by the failure of AfDB staff and Management to comply with the Involuntary Resettlement Policy (2003).

#### 4. CONCLUSION AND RECOMMENDATION

This Eligibility Report finds prima-facie evidence of harm caused to people by the M3 project as a result of the non-compliance with applicable ADB policies and procedures. The Director of the CRMU and the IRM Experts recommend that the Boards of Directors to authorize the compliance review of the M3 project to be conducted according to the Terms of Reference included in Annex 5 of this Report.

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<sup>29</sup> Ibid para. 3.2

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Integrity and Anti-Corruption Department  
Immeuble CCIA, Avenue Jean Paul II  
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Abidjan, Cote d'Ivoire**

Bremen, 13th April 2015

**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 Malian contractor Modibo Keita, whose company Moulins Modernes du Mali (M3) received on the 17<sup>th</sup> 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 Malian 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 Malian 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 Malian/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 19<sup>th</sup> 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 Germany 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

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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 22<sup>nd</sup> 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 possible— 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 27<sup>th</sup> of November a large farmers assembly took place, supported by our network; several Malian journalists also participated. Ten activists from Bamako and three from Europe have participated in our latest (but not last) delegation visit (6<sup>th</sup> – 10<sup>th</sup> 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).

decision is still in need of elucidation. For example, the corresponding verdict from the 19th of June 2013 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**

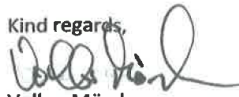
Concerning compensation, Modibo Keita presented the African Development Bank with a list of all the names of those families that supposedly have received compensation in Sanamadougou and Sahou. We have received this information from an employee of the German embassy in Bamako who has viewed this list. 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 2014).

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 Sanamadougou 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>

(2) see report (fr.):

[http://www.fian.org/en/news/article/detail/land\\_grabbing\\_and\\_human\\_rights\\_in\\_mali/](http://www.fian.org/en/news/article/detail/land_grabbing_and_human_rights_in_mali/)

(3) See photos: <http://afrique-europe-interact.net/1301-1-Mobilisation-Office-du-Niger-March-2015.html>

(4) See the report and the letter (fr.): (4) Voir lettre: <http://afrique-europe-interact.net/1311-2-Lettre-Sanamadougou-et-Sahou-Juillet-2015.html>

(5) <http://afrique-europe-interact.net/1310-2-Lettre-Ouverte-au-Prsident-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 menages ci-dessous nommés indiquons que aucun de nous n'a reçu de l'argent en espèce ni autres dédommagements matériels de la part de Monsieur Modibo Keita; de ce fait nous revendiquons encore et toujours notre droits coutumiers sur les terres de nos ancêtres Nous signons cette pétitions pour servir et valoir ce que de droits.

N°	Noms	Prénoms	Nombre de membres dans la famille	Signature
1	<del>M</del> Coulibaly	Madou gjo	9	D
2	Dombélé	Mossé	50	h
3	Coulibaly	Tou Massa	35	h
4	Diarra	Bamassa	41	o
5	Dombélé	Kony	25	+
6	Coulibaly	Soumaïla	6	9
7	Diarra	Moussa	6	x
8	Diarra	Soumane	13	o
9	Diarra	Fasson	7	2
10	Coulibaly	Bahinin	35	o
11	Coulibaly	Bahary	25	h
12	Coulibaly	Seydou	6	o
13	Coulibaly	Oumar N'Gassa	39	h
14	Coulibaly	Bourama	5	o
15	Diarra	Kony	14	D
16	Tangara	Lamine	20	2
17	Diarra	N'ko	17	D

18	Diarra	Nafa	15	0
19	Ballo	<del>Ballo</del> Barema	17	8
20	Ballo	Koube	8	00
21	Ballo	Sontoro	19	00
22	<del>Ballo</del>	Mathia	12	6
23	Diarra	Yacouba	10	00
24	Daou	Barimadje	180	0
25	Boulbaly	Sidiblen	46	02
26	Diarra	Moetar	57	0
27	<del>Diarra</del>	Tieboro	05	x
28	Diarra	Madougnama	21	5
29	Diarra	Tieman	31	8
30	Diarra	Dasson	12	0
31	Diarra	Natoura	15	2
32	Diarra	Barima fankelen	25	3
33	Diarra	Ghoba	05	t
34	Boulbaly	Dramane cho	10	0
35	Diarra	Moussa	13	00
36	Diarra	Bakary Bakoro	16	00
37	Diarra	Bassi	09	00
38	Diarra	Siaka Binké Bally	18	8
39	Diarra	Anassa	21	00
40	Diarra	Soulemane	15	0
41	Diarra	Batieman	24	00
42	Diarra	Soungoba	10	0
43	Diarra	Modibo	10	00
44	Diarra	N'ji	25	00

45	Diarra	Ladji Ni Ka	08	♂
46	Diarra	Nagnama	11	♂
47	Coulibaly	Karamogo	15	♂
48	Coulibaly	Sekou	05	♂
49	Coulibaly	Dorra	04	m
50	Coulibaly	Sibirutie	05	♂
51	Sangare	Bakary	10	♂
52	Coulibaly	Misse	20	♂
53	Coulibaly	Bodjoukou	12	♂
54	Coulibaly	Barema	05	♂
55	Diarra	Koko	31	m
56	Diarra	Moussagnatie	22	♂
57	Coulibaly	Fousseyni	13.	♂
58	Coulibaly	Soungouba	15	♂
59	<del>Coulibaly</del>	Soujiri	13	♂
60	<del>Coulibaly</del> Maore	Yankoro	16	♂
61	Tangara	Djokolo	08	♂
62	Tangara	Kony	10	♂
63	Tangara	Koko	20	♀
64	<del>Coulibaly</del>	Fatama	06	♂
65	Coulibaly	Beih	11	D
66	Coulibaly	Bina	06	♂
67	Coulibaly	Seydou	11	♂
68	Diarra	Fatama	15	♂
69	Diarra	Toukane	21	♂
70	Diarra	Fassoun	20	♂

71	Diarra	Dédé	33	LD
72	Diarra	Tahirou	12	SP
73	Diarra	Balamé	16	AS
74	Diarra	Molobaly	06	AA
75	Bouaré	Abou	22	0
76	Bouaré	Daouda	07	0
77	Diarra	Bacherou	51	0
78	Coulbaly	Betlin	07	0
79	Diarra	Bagnini	19	F
80	Diarra	Battara	07	B
81	Diarra	Sibiry	11	D
82	Coulbaly	Binke	16	0
83	Coulbaly	Moussa	17	0
84	Coulbaly	Betlin	32	0
85	Coulbaly	Fouladjé	23	0
86	Diarra	Niazon	10	0
87	Diarra	Bina	13	0
88	Diarra	Amadou	11	0
89	Diarra	Medibo	10	0

Nombres à ordre de familles.	Prénom et	Nom des chefs de familles	Nombre Personnes par famille	Engagement de chefs de famille
01	Sékou	Coulibaly	30	
02	Brouma	Coulibaly	87	
03	Kassoum	Diarra	17	
04	Karim	Coulibaly	15	*
05	Drissa	Coulibaly	13	
06	Mouy	Coulibaly	10	
07	Amidou	Coulibaly	31	
08	Seydou N°1	Coulibaly	12	
09	Josa	Coulibaly	07	
10	H	Coulibaly	08	
11	Hou	Coulibaly	15	
12	Seydou N°2	Coulibaly	07	
13	Doulaye	Coulibaly	78	
14	Gracoussou	Coulibaly	12	
15	Kerô	Cissé	06	
16	Hobou	Tao	08	
La liste des personnes qui dit nous être de dommages de Modibo Keita sur leur territoire à SAO			Total 416	

## Annex 2: Program and List of People Met

### Program of the Eligibility Mission

Date & Time	Institution	Meeting/Activities	Location	Participants / Individuals
9.00 - 11.00	MLFO	Meeting IRM Team with Task Manager of M3	MLFO	IRM experts Arna Hartmann, Mafing Konde, CRMU staff Birima Fall, and Task Manager Diall, Hammadoun Amadou
11.00 – 13.30	MLFO	Debriefing IRM Team	MLFO	Arna Hartmann, Mafing Konde, Birima Fall
15.00 – 16.00	AFDB /MLFO	Briefing with Res Rep., MLFO (Briefing)	MLFO	Helene N'garnim-Ganga, Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
16h00 – 16h30	MLFO	Security Briefing by Mr. Dicko, Security Focal Point	MLFO	Arna Hartmann, Mafing Konde, Birima Fall
17.00 – 18.00	Afrique-Europe Interact-Bamako	NGO representative of Requestors	Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Hammadoun Amadou
<b>Wednesday, 22 June, 2015</b>				
08.00 – 09.00	Moulin Moderne du Mali (M3)	M3 Representatives (Mr. Modibo Keita & others)	Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
9.00 - 10.00	Ministry responsible for resettlement		Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
10.30 -11.30	Ministry responsible for industrialization		Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou

<b>Date &amp; Time</b>	<b>Institution</b>	<b>Meeting/Activities</b>	<b>Location</b>	<b>Participants / Individuals</b>
12.00 -13.00	Ministry responsible for environment/ agriculture		Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
14.00-18.00	IRM Mission	Travel to Ségou, located 235km North-east of Bamako	Ségou	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
<b>Thursday 23 June, 2016</b>				
9.00 - 10.30	Office du Niger		Ségou	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
11.00 - 13.00	Requestors	Requestors and their Representatives	Ségou	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
14.00 - 15.30	M3	M3 & its Lawyer(s) at M3 factory site	Commune of Sébougou	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
15.30 – 17.30	Field visit	Visit to the affected villages	Sanamado ugon and Sahou	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
<b>Friday 24 June, 2015</b>				
9.00 - 10.00	Court in Makala/ Ségou	Court Administrator	Ségou / Makala / Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
10.30 - 11.30	Consultant on land delineation		Ségou / Markala / Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
12.00 -13.30	Lawyer(s) for Requestors		Ségou / Markala / Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
14.00-18.00	IRM Mission	Travel back to Bamako	Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
<b>Saturday 25 June, 2015</b>				

<b>Date &amp; Time</b>	<b>Institution</b>	<b>Meeting/Activities</b>	<b>Location</b>	<b>Participants / Individuals</b>
9.00 -10.00	IRM Mission	Debriefing with the Res Rep.	Bamako	Helene N'garnim-Ganga, Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall, Diall, Hammadoun Amadou
10.30 - 16.00	IRM Mission	Mission debriefing and Working Session	Bamako	Sekou Toure, Arna Hartmann, Mafing Konde, Birima Fall

### **List of People met during the IRM Eligibility Mission**

#### **Bank Country Office in Mali (MLFO)**

1. Helene N'Garnim-Ganga, Resident Representative
2. Hamadoun Amadou Diall, Private Sector Specialist

#### **Ministry of Investment Promotion and Private Sector**

1. Konimba Sidibé

#### **Office du Niger**

1. Boubacar Sow
2. Brahim Coulibaly
3. Tidiani Traoré
4. Abdouramane Traoré
5. Sadio Dembele
6. Seydou Dembélé
7. Joall Hammadou

#### **Moulin Moderne du Mali (M3)**

1. Modibo Keita
2. Modibo Sylla
3. Amadou Maiga

#### **Representatives of Segou Region**

1. Georges Dogo (Governor of Segou)
2. Mouassa Bouaré
3. Pakuy Konaté
4. Mamadou G Traoré
5. Malick Maiga
6. Yaya Bamba

#### **Representative of Sahou village**

1. Souleymane Coulibaly



## **PAPs Representatives from Sanamandougou Bamana, Sahou and Diado Villages**

1. Salif Coulibaly
2. Lamine Daffé
3. Ngrima Diarra
4. Hamidou Coulibaly
5. Modibo Diarra
6. Drissa Coulibaly
7. Binke Diarra
8. Seydou Diarra
9. Yah Diarra
10. Daouda Dao
11. Oumar Coulibaly
12. Bicar Botie
13. Aminata Toungara
14. Modibo Coulibaly
15. Sidi Biara
16. Binai Biara
17. Koni Baba Coulibaly
18. Rokiya Coulibaly
19. Koni Ballo
20. Moussa Coulibaly
21. Bayini Coulibaly
22. Daba Coulibaly
23. Idrissa Diarra
24. Souleymane Dembélé
25. Lamine Daffé
26. Yacouba Diabi
27. Bah Daffé
28. Barguini Diarra
29. Tiekoro Coulibaly
30. Siradigui Tangara
31. Kokeboly Dqou
32. Yah Diarra
33. Bah Kouma
34. Madou Takassiki Daou

### **Other people Meet**

1. Hamadi Karembe, Lawyer of PAPs in Sanamandougou and Sahou Villages
2. Drissa Ngolo Coulibaly, Judge of the Markala Court
3. Souleye Sidibé, the expert designated by the court to clarify the limits of the land allocated to M3.

## Annex 3 – Power of representation

### Nous soussignons

**M. Madou Benké DIARRA Tél 79 13 09 58**  
**M. Seydou DIARRA Tél 76 41 10 40**  
**M. Karamoko DIARRA Tél 73 31 16 09**  
**M. Arouna DIARRA Tél 73 13 94 28**

Confirmons que nous représentons les populations de Sanamandougou et de Sahou qui ont subi des préjudices du projet Moulins Modernes du Mali et confirmons notre plainte auprès du Mécanisme indépendant d'inspection de la BAD, requête qui avait été soumise par l'ONG Europe – Afrique – Interact.

En vous rassurant de notre franche collaboration et de notre détermination à récupérer nos terres, nous vous adressons nos salutations distinguées.

Bamako, le 24 Juin 2016

**M. Madou Benké DIARRA Tél 79 13 09 58**

**M. Seydou DIARRA Tél 76 41 10 40**

**M. Karamoko DIARRA Tél 73 31 16 09**

**M. Arouna DIARRA Tél 73 13 94 28**

## **DIVERSIFICATION OF THE ACTIVITIES OF MODERN MILLS PROJECT IN MALI**

### **1. Introduction**

On 23 September, 2015, the Compliance Review and Mediation Unit (CRMU) of the African Development Bank Group [hereinafter, “the Bank Group”] received a Complaint from an international NGO, the - Afrique - Europe Interact (AEI) relating to the Diversification of the Activities of "Moulin Moderne du Mali" (M3) Project which was approved for financing by the Boards of Directors of the Bank Group on 17 September, 2014. The NGO that has a local representation in Mali complained about land grabbing by the M3Project which has adversely affected the people living in the villages of Sanamandougou and Sahou.

The Requestors argued that some Bank policies and procedures have been violated and asked for a Compliance Review of the M3 Project in Mali.

Upon conducting a preliminary review of the Request and in line with the Operating Rules and Procedures of the Independent Review Mechanism (IRM), CRMU Registered the Request on 12 May, 2016 and notified on the same day the Boards of Directors and the President of the Bank Group. In the Notice of Registration, Management was asked to provide a response by 13 June 2016. This date was later extended by the Director of CRMU to 07 July, 2016.

Management submitted to CRMU an initial response on 18 August 2016. It sent a Revised Response to CRMU on 22 August 2016.

In accordance with Paragraph 50 of the IRM Operating Rules and Procedures, the Director of CRMU and two members of the IRM Roaster of Experts undertook a fact-finding mission to Mali from 20 to 26 June 2016 and prepared an Eligibility Report for consideration by the Boards of Directors of the Bank Group. In light of their finding, they recommended a Compliance Review of the project.

The Review Panel is expected to conduct an independent review within the established framework of the IRM Operating Rules and Procedures of 2015. The present Terms of Reference (TORs) provides specific guidance for the compliance review of the project. It includes the scope of work, procedures, time-frame, conditions, budget, prerogatives and limitations of the Compliance Review Panel are enclosed for your consideration.

## **2. Scope of Work for the Compliance Review Panel**

The assignment of the Compliance Review Panel is governed by both the IRM Operating Rules and Procedures 2015 (hereinafter the “IRM Rules”) and the relevant Bank Group policies and procedures. In this respect, the Review Panel will:

- (i) Assess the alleged non-compliance of the M3 Project with the relevant Bank Group policies and procedures as a result of which the people may adversely affect in a direct and material way.
- (ii) Prepare a Compliance Review Report containing their findings and recommendation for consideration by the Boards of Directors of the Bank Group.
- (iii) Recommend actions that are likely to remedy the problems, propose modifications to the Bank policies and procedures in order to avoid the recurrence of similar harm in the future, propose changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed by the Bank or any other relevant party in existing project-related agreements; or propose any remedial action to be taken by Management and to ensure independent monitoring of the implementation of the recommended remedies.

## **3. Procedures of Undertaking Compliance Review**

Upon approval by the Boards of Directors to undertake the Compliance Review, the IRM Compliance Review Panel will:

- (i) Determine the methods of conducting the compliance review that at the outset appears to be the most appropriate, taking into account the nature of the Request.
- (ii) Determine if there is need to engage Specialists during the review, and if so, the qualifications and experience required of such specialists.
- (iii) Prepare an initial schedule for conducting the review, including the ways of gathering information, conducting interviews with Bank staff and other stakeholders.
- (iv) Take the necessary steps in presenting and translating the findings and recommendations of the Compliance Review Report prepared by the Review Panel for distribution to the Boards of Directors and the Bank Management for preparing a Response and an Action Plan.

## **4. Time-frame of Compliance Review**

The proposed duration/ time-frame of the Compliance Review shall not exceed two (2) months from the date of commencement of the compliance review. The total input in terms of time of the Experts on the Review Panel shall not exceed forty (40) working days as follows:

- (i) Ten (10) days for each of the Experts of the Review Panel to conduct desk review, interviews and to compile other necessary data at the Bank Headquarters in Abidjan.

- (ii) Ten (10) days for each of the Experts of the Review Panel to conduct a field visit to Mali to interview the Requestors and other affected people, the project implementers, sponsors and Bank staff in Bank Country Office in Mali (MLFO) other stakeholders, including a visit to the project site.
- (iii) Twenty (20) days for each of the Experts of the Review Panel for drafting reporting and conducting the related research.

## **5. Conduct of the Compliance Review Panel**

Taking into account the nature of the Request, the Review Panel will, among other things:

- (i) Conduct the compliance review in accordance with the Terms of Reference to be approved by the Boards of Directors and within the required time frame.
- (ii) Review all documents relevant to the project along with the relevant Bank Group's policies and procedures.
- (iii) Meet with the Bank Management and Staff to solicit additional information, if necessary.
- (iv) Meet with the Requestors, affected people, Government officials, project sponsors, and representatives of Governments institutions (e.g. Office du Niger) and other stakeholders as considered relevant.
- (v) Visit the project site.
- (vi) Hold meetings with the project affected people (PAPs) and any other interest parties in the project area.
- (vii) Request written or oral submissions on specific issues from the Requestors, affected people, independent specialists, government or project officials, Bank staff, or other relevant stakeholders.
- (viii) Take any other action as may be required to complete the compliance review within the required time frame and approved budget.

## **6. Conditions**

- (i) Confidentiality

The Review Panel will undertake the compliance review of project in a transparent manner.

The Panel will handle and/or use of any document in accordance with the Bank Group Policy on Disclosure and Access to Information.

(ii) **Independence**

The Review Panel will be neutral in its discussions and interviews with the Requestors, the Bank Management, Staff and other stakeholders. The Review Panel will always bear in mind that the focus of the review is the Bank Group's compliance with its own policies and procedures applicable to the M3 project.

(iii) **Information Release**

The Review Panel will:

- (i) Ensures that all interested parties in the project understand the objectives of the Compliance Review.
- (ii) Maintain open communications with all the parties involved including the Requestors and the affected people, project sponsor, government officials and all other relevant governmental and non-governmental institutions and local communities.
- (iii) Notify the Requestors of any new material facts provided by Bank staff, or authorities in Mali, and vice versa.
- (iv) Contact, during the field visit, all concerned parties and pay due diligence in their contacts with the media or any other party to maintain its neutrality.
- (v) Decline to release information to any party if it deems that it will circumvent the independence of the compliance review or may directly affect the image or interests of the Bank Group, the Borrower and the Requestors.
- (vi) Accept any supplementary information collected during the course of the review or provided by a member of the public either directly or through the Bank Country Office in Mali, if found to be credible and relevant to the Compliance Review.

**7. Limitations**

- (i) The Compliance Review Panel shall not review matters considered as limitations under Paragraph 2 of IRM Operating Rules and Procedures.
- (ii) Under Paragraph 60 of IRM Rules the Review Panel should not recommend the award of compensation to the Requestors or any other person beyond that which may be expressly contemplated in a relevant Bank Group policy.
- (iii) In the event that the Review Panel encounters information related to fraud or corruption, the matter shall be reported to the responsible entity of the Bank Group and will use the rules established by the Bank Group to regulate such issues.

## **8. Panel Deliberations**

According to the Paragraph 58 of the IRM Rules, the Review Panel should aim to reach a consensus of opinion on all decisions. If a consensus cannot be reached, all the opinions shall be reported to the Boards of Directors. This will enable the Boards to take into account all the views expressed on the matter by the IRM Experts.

## **9. Compliance Review Report**

Within thirty (30) business days of completion of its investigations, the Review Panel shall report its findings and recommendations in a Report in English and French to the Boards of Directors of the Bank Group. The Review Panel shall:

- (i) Prepare a draft compliance review report containing the Panel's findings and recommendations. The Report shall be submitted to Bank Management for comments and validation of factual issues only.
- (ii) The Bank Management shall submit its comments to CRMU/IRM within twenty-one (21) business days from the date of receipt of the draft report from CRMU.
- (iii) Upon receipt of comments from Bank Management, the Review Panel shall finalize the report ("Compliance Review Report"), which shall:
  - a) Include a summary discussion of the relevant facts.
  - b) Set out the findings which shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of the "Moulin Moderne du Mali" (M3) Project has involved one or more material violations of applicable policies and procedures.
  - c) If the Review Panel concludes that any Bank Group action, or failure to act, in respect of the M3 Project has involved one or more material violations of policies, the Panel shall recommend:
    - Any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;
    - Any remedial changes in the scope or implementation of M3 Project, subject to consideration of any restrictions or arrangements already committed by the Bank Group or any other relevant party in existing project-related agreements; and/or
    - Any steps to be taken to monitor the implementation of the changes referred to in the (i) and (ii) above, and the person in charge of such monitoring (who shall be the Director of CRMU and one of the IRM Experts) so appointed unless the Boards decide otherwise.

The Compliance Review Report should include in its attachments, a copy of the original request, the response of the Bank Management and a list of supporting documents relied upon in the compliance review

## **10. Submission of the Compliance Review Report**

The Director of CRMU will submit the Compliance Review Report to the Boards of Directors for consideration and decision. A copy of the Report will also be submitted to the President.

## **11. Publicity of Decision**

CRMU will publish a summary of the decision made by the Boards of Directors on the website of the Bank Group.