

AFRICAN DEVELOPMENT BANK GROUP



Independent Review Mechanism
THE DIVERSIFICATION OF THE ACTIVITIES OF “MOULIN MODERNE
DU MALI” (M3) PROJECT

COMPLIANCE REVIEW REPORT
MALI

Request No.: RQ2016/1



February 2018

ACKNOWLEDGMENTS

The Director of the Compliance Review and Mediation Unit and the members of the Roster of Experts of the Independent Review Mechanism (IRM) would like to thank the Requestor, the Project Promoter, the Management and the Mali country office of the African Development Bank Group (AfDB) for their clarifications and cooperation during the preparation of this Compliance Review Report.

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ACRONYMS AND ABBREVIATIONS

ADB	African Development Bank
AEI	Afrique-Europe-Interact (NGO)
AfDB	African Development Bank Group
BCRM	Compliance Review and Mediation Unit
BOAD	Banque Ouest Africaine de Développement
CAI-SA	Complexe Agropastoral et Industriel
CTA	Common Terms Agreement
EDs	Executive Directors
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
FIAN	FoodFirst Information and Action Network
IRM	Independent Review Mechanism
ISS	Integrated Safeguards System
M3	Moulin Moderne du Mali
MLFO	AfDB Country Office in Mali
ON	Office du Niger
OpsCom	Operations Committee
PAPs	People affected by the Project
RAP	Resettlement Action Plan
RMCs	Regional Member Countries

EXECUTIVE SUMMARY

This Compliance Review Report focuses on the complaint relating to the “Diversification of the Activities of the Moulin Moderne du Mali” (M3) Project in Mali, which is financed by the African Development Bank (AfDB) and other donors. The AfDB loan of EUR 16.8 million was approved by the Boards of Directors on 17 September 2014. The complaint was submitted to the Compliance Review and Mediation Unit (BCRM) in September 2015 on behalf of the people affected by the project (PAPs). The Requestors complained about land grabbing by the project in the villages of Sanamadougou and Sahou. They also stated that the people in these villages were forcibly evicted from their traditional lands, which they have cultivated and relied on for their livelihoods for many generations. Those PAPs who refused to leave their lands were subjected to serious violations of their physical security and rights. The Requestors argued that the M3 Project will use the farmers’ lands for producing raw materials for the agro-industrial facility that is financed by the Bank.

The Office du Niger (ON), a parastatal entity and the legal owner of the land in question, has leased 20,000 ha to M3 for the purpose of growing mainly wheat. This land is being developed by the *Complexe Agropastoral et Industriel* (CAI-SA). Both M3 and CAI-SA are subsidiaries of the Keita Group. The project will expand the existing agro-industrial facility and promote agricultural development in Mali. The Bank loan covers the financing of M3’s agro-industrial facility, but not the land transaction between owner of M3 and the ON.

In accordance with the Operating Rules and Procedures of the Independent Review Mechanism (IRM Rules), the Director of the BCRM registered the Request on 12 May 2016. In its Eligibility Report, the IRM established that there was *prima facie* evidence of non-compliance with the AfDB Involuntary Resettlement Policy (2003) and Policy on the Environment (2004). On 23 November 2016, the Boards of Directors of the Bank authorized the IRM to conduct a compliance review of the M3 Project. This Compliance Review Report is prepared by the Review Panel (which comprises the IRM Experts). Its findings are based on the findings of the review of M3 project documents, interviews with the African Development Bank Group (AfDB) staff and Management, and the Review Panel’s field visit to Mali in March 2017.

Key Findings of the Compliance Review of M3 Project

A. Inadequate assessment and monitoring of land issues

Disputes over lands gained prominence in the media in June 2010 when violence erupted between the farmers under eviction notices and the evicting security forces. The farmers were protesting their expulsion from their ancestral land. The stalemate was widely covered in the media. Four years later, the owner of M3 approached the Bank for a loan to expand the M3 processing facility. The dispute continued to receive heightened international attention. The AfDB staff interviewed by the Review Panel stated that they were not aware of the land dispute neither during the preparation of the project nor during their Due Diligence Mission in September 2013 – the latter during which they did not visit the evicted farmers. The land conflict was brought to the attention of the Bank in April 2014 by the AfDB Country Office in Mali (MLFO) during the review of the draft Appraisal Report, which raised concerns about the potential reputational risks to the AfDB associated with this conflict.

As a result, the Review Panel notes that compared to the draft of the appraisal report, the presentation of linkages between the industrial processing facility and the land leased by M3 has been weakened in the final Appraisal Report. The Panel believes that this change in the presentation of the M3 Project was meant to mitigate the reputational risks associated with the land conflict.

In response to concerns about land disputes and compensations of farmers raised by Boards members, the AfDB Management provided assurances to the Boards that it will pay attention to and monitor closely the environmental and social aspects of the project, and that there were no linkages between the leased land and the industrial facility.¹ The Management confirmed that M3 had conducted its environmental and social assessments, the farmers were adequately compensated, and that there was no reputational risk for the AfDB. However, the Review Panel is concerned that the AfDB staff and Management gave assurances to the Boards of Directors of the Bank without adequate supervision and complete records and information about the project. The compensation records included lists of 90 names with thumbprints. However, there was no indication of the amounts paid or effort made by the AfDB staff to follow up with M3 to resolve the difficulties encountered by farmers who were allotted irrigated plots in consideration of their drylands.

Accordingly, the Review Panel is of the view that assurances given by the AfDB staff and Management to the Boards of Directors of the Bank were made without adequate due diligence. The Panel does not consider the irregular and inadequate supervision of the environmental and social aspects of the project as amounting to close monitoring of these aspects as emphasized by Management to the Boards of Directors during the approval of the project.

B. Non-Compliance with the AfDB Policy on Poverty Reduction (2004)

The Bank did not ask M3 to conduct a social impact assessment as required by the AfDB Poverty Reduction Policy (2004). Despite distancing the M3 Project from its associated land transaction, the project was presented as a development operation to support an integrated value chain, for which the leased land is an integral part. In addition, since the AfDB is a development institution for which poverty alleviation is a key priority, the Policy should have been applied appropriately to its funded projects. However, the focus was placed predominantly on reputational risks instead of development outcomes of the M3 Project.

¹ See: “*Questions et Réponses, Moulin Moderne du Mali, 15 Septembre 2014*,” 15 September 2014, p. ix: [After discussions with the MLFO and based on the latest and most reliable information in our possession, the Management reiterates that neither M3 nor CAI-SA nor Mr. Modibo Keita have been or are involved in land grabbing in Sahou or Sanamadougou].”

The Review Panel finds that the AfDB staff has not complied with the Policy on Poverty Reduction (2004), which in turn led to the displacement of vulnerable people, aggravating their living standards to below subsistence levels.

C. Non-Compliance with the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000)

The AfDB staff did not advise M3 to carry out an environmental audit of the existing M3 processing facilities as required for expansion projects or requested it to provide environmental or social performance reports during the construction phase. Surprisingly, the investment agreement overlooked this policy requirement. In addition, no supervision missions were conducted in 2015 and little attention was given to environmental and social issues in supervision mission reports carried out in 2016.

Accordingly, the Review Panel finds that the AfDB staff has not complied with the requirements of the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000).

Review Panel's Recommendations for Remedial Actions²

A. *Monitoring of the Compliance:* The AfDB Management will develop a Remedial Action Plan to be approved by the Boards of Directors to bring the project into compliance with the applicable AfDB policies and procedures. This Action Plan will be monitored by the IRM on an annual basis. For this purpose, Management will submit to the BCRM its supervision reports as well an annual progress report on the status of implementation of this Plan.

B. *Compliance with the Policy on Poverty Reduction (2004):* The AfDB staff needs to reassess M3's compensations made to farmers to ensure that they are adequate and all eligible farmers have been considered. All relocation support options should be explored including the implementation of the recommendations of the Report of the Commission established by the Prime Minister in December 2014. M3 should be urged to allow the PAPs, and particularly women, to cultivate the leased lands that still remain mostly unutilized. Offers to compensate them with irrigated land must be discussed with the PAPs.

C. *Focused Engagement of the AfDB staff and Management:* AfDB staff and Management need to be actively engaged, both technically and financially, in the assessment and payment of compensation. The assessment of a compensation scheme should be carried out through a participatory and transparent process and the Bank should participate in the public consultations.

D. *Compliance with the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000) and the Policy on the Environment (2004):* The Bank should ensure that an independent environmental audit of M3's existing industrial facilities is conducted. In addition, the AfDB staff should conduct their annual and regular supervision missions. They should ensure that these supervision missions adequately review and report on the project's social and environmental performances in line with the requirements of AfDB's policies and procedures.

² The recommendations for remedial actions will be followed up by a detailed Remedial Action Plan to be presented by the Management to the Boards of Directors for consideration; See IRM Rules, January 2015, para. 64 (a).

Review Panel's Recommendations Concerning Recurrence of Non-Compliance

A. *Review of the Policy on Poverty Reduction (2004)*: The AfDB Management should develop operational guidelines to help staff apply the requirements of this Policy and report on poverty reduction outcomes of the project.

B. *Review of Reputational Risk Assessment Training*: An assessment needs to be carried out to ensure that the reputational risks associated with the M3 Project are appropriately mitigated. In addition, the staff needs to have additional training with regard to AfDB's risk management policies and instruments. A set of guiding notes can also be developed for additional assistance.

C. *Supervision of Environmental and Social Impacts during Construction*: The AfDB staff should require M3 to submit reports on the project's environmental and social performance during both the construction phase as required by Bank policies and procedures and the operation phase in line with the Bank Senior Loan Agreement.

D. *Review of Management's Interactions with the Boards of Directors*: When developing projects that involve sensitive issues of land acquisition or lease, resettlement, and prior disputes similar to M3 Project, the Senior Management should pay special attention to the accuracy and completeness of information that it provides to the Boards. It should ensure that any assurances made to the Boards are **followed up appropriately and with adequate due diligence**. Incorrect or inadequate statements by the Management could undermine the relationship between the Boards and the Management on the one hand, and the shareholders and the AfDB on the other.

1. INTRODUCTION

1. This Report presents the findings and related recommendations of the compliance review of the Diversification of the Activities of the Moulin Moderne du Mali (M3) Project. It was prepared in response to the Complaint received by the Compliance Review and Mediation Unit (BCRM) on 23 September 2015 (Annex 1). The document is submitted concurrently to the Boards of Directors and Bank Management. The Request relating to the M3 Project was registered by the Director of the BCRM on 12 May 2016 following a preliminary assessment, in line with the Operating Rules and Procedures of the Independent Review Mechanism (IRM)³. These Rules call for an eligibility assessment followed by a compliance review. On 23 November 2016, the Boards of Directors approved the recommendations of the IRM Eligibility Assessment Report and authorized the Compliance Review of the M3 Project.

2. Upon receipt of this Compliance Review Report, Bank Management is required to provide a response to the findings and recommendations therein and determine how it intends to bring the project into compliance with the applicable AfDB policies and procedures and to remedy adverse material impacts on the people and the environment. The Management response will be prepared in the form of an Action Plan, which will be submitted to the BCRM and the Boards of Directors, within 90 business days after the receipt of this Compliance Review Report.⁴ Thereafter, a session of the Boards will be scheduled to consider both the recommendations of this Compliance Review Report and the Management Action Plan. When it is approved by the Boards of Directors, the IRM will then monitor the implementation of this Plan.

1.1 The Scope of the Compliance Review Report

3. The objective of this Report is to assess whether there has been non-compliance with the applicable policies and procedures of the African Development Bank Group (AfDB) that has caused or will cause harm to the people affected by the diversification of activities of the “Moulin Moderne du Mali” (M3) Project. The objectives and scope of the compliance review are laid out in the Operating Rules and Procedures of the IRM 2015 (IRM Rules). According to the IRM Rules, a compliance review should be carried out by a Review Panel comprising IRM Experts, and their findings and recommendations will form a Compliance Review Report. Unless it is provided in the Terms of Reference of the compliance review, the Panel’s findings are limited to determining whether or not any action or failure to act by the AfDB with regards to AfDB-financed projects has involved one or more material violations of policies.⁵ It also looks at instances of non-compliance with the applicable AfDB policies and procedures, and if these instances have caused harm or is likely to cause harm to the Complainants. If the compliance review finds non-compliance and related harm, the Compliance Review Report shall present relevant recommendations on changes to systems and procedures within the AfDB, and on remedial changes in the scope and implementation of AfDB-financed projects. The report should also

³

⁴ Ibid., para. 64 (a).

⁵ IRM Rules, January 2015, para. 59 (b) (ii).

recommend steps that should be taken by the IRM in monitoring the implementation of the recommended changes.⁶

1.2 The Project

4. The Boards of Directors of the African Development Bank (AfDB) approved the M3 Project on 17 September 2014. The sponsor is M3, a company with limited liability and registered in Mali in 2007. M3 is a subsidiary of the Keita Group which provided the guarantee for the diversification project. The project is ongoing and co-financed for CFA Francs 10.8 billion with equity capital and other banks loans of CFA Francs 25.2 billion. The AfDB loan was approved at EUR 16.8 million to M3 via the local currency framework in CFA Francs to M3. The project has also been granted a loan of CFA Francs 7 billion from the Banque Ouest Africaine de Développement (BOAD). Both the AfDB and BOAD loans have been used to procure project equipment. The Banque Atlantique Mali, the transaction arranger, has undertaken to finance the working capital to the amount of CFA Francs 3.9 billion and to mobilize CFA Francs 3.3 billion in additional financing required to fill the gap in the financing plan. By 26 September 2017, the AfDB had disbursed 87 percent of the senior loan to M3.

5. 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.

6. The M3 production facility is located approximately 230 km from Bamako, in the Rural Commune of Sébougou, which is adjacent to the city of Ségou. It is located on a plot comprising eight contiguous land titles (TF No. 1133-1140) with a total area of 20,000 ha which are leased by ON to the M3. Seven production chains will be set up on the M3 Project site at Ségou.⁷ The project is expected to promote local agricultural development and to strengthen the value chain 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 and create jobs and wealth for the country.⁸

7. 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 (3) mills for the production of meal and flour to supply production lines. Other facilities associated with the project include: boilers (steam and hot water), air compressors (compressed air

Ibid, para. 59 (b) (iii) (a-c).

⁷ Appraisal Report, 23 June 2014, p. 1.

⁸ Ibid., p. ii.

production), refrigerators (cooling water production), and electric transformers.⁹ Under the project, silos will be procured, allowing an increase of M3's storage capacity to 20,000 tons for durum wheat, 5,000 tons for maize, and 5,000 tons for millet.

8. According to the Appraisal Report, the raw materials needed for the diversification project will be purchased in large quantities through national and international markets, mainly during the harvest period. Some raw materials such as maize, millet, and sorghum will be produced locally. The Appraisal Report contains contradictory statements on linkages of M3 land to the AfDB financed facility.¹⁰ The report sometimes mentions that the wheat supply to the M3 facility will be procured from an agricultural farm operated by the industrial complex, while in other instances, it mentions that the AfDB does not finance either the acquisition of the land for production of the raw material or the infrastructure beyond the M3 facility, but the Bank finances only the procurement of industrial equipment for the facility.

9. The *Complexe Agropastoral et Industriel* (CAI-SA) is one of the subsidiaries of the Keita Group that is developing the land acquired through the lease agreement signed on 31 May 2010 between the owner of M3 and the Office du Niger (ON), a parastatal entity. The lease duration is for a thirty-year (30) renewable.¹¹ The initial land leased for the project covers 7,400 ha. Prior to the lease agreement, the local population used to farm this land to produce millet, maize, and other subsistence crops under rain-fed production.¹² The land was leased by M3 for agricultural production with wheat being the main crop to be produced from this land.¹³ The land under lease was expanded later to a total of 20,000 ha.

10. The M3 Project is classified as a Category 2 project. According to Management, the Environmental and Social Management Plan (ESMP)¹⁴ was prepared in accordance with the AfDB's Policy on the Environment (2004) and was disclosed in 2012. The ESMP covered the environmental effects of the industrial facilities on soil, air quality, surface and ground waters, health and safety of the local population and workers, and the corresponding mitigation measures.¹⁵ The ESMP only covered the activities directly financed by the Bank since the AfDB

⁹ Ibid., p. 15.

¹⁰ The Appraisal Report has contradictory statements on the issue of whether wheat will be imported or whether it will be imported during the first years and then produced locally. See Appraisal Report, 23 June 2014, p. ii. See also The Presidential Review Brief, "Moulin Moderne du Mali," September 2014, which states: "*The wheat will be imported during the first years and progressively sourced locally, through the development of an industrial irrigated farm, CAI-SA, in the Office du Niger zone.*" The Project Concept Note and the Draft Appraisal Report make consistent references to the use of wheat from an area leased by M3 once production on these areas is sufficient.

¹¹ See: Contrat de Bail Ordinaire No 001/PDG-ON, "*Le Preneur considèrera la culture du blé comme la principale spéculation,*" L'Office du Niger et La Societe Moulin Moderne du Mali (M3-SA), 31 May 2010, between the ON and Mr. Modibo Keita, owner and representative of M3. This information was obtained from the ON, the holder of the land. The ON is a parastatal company created by Act No. 94-004 on 9 March 1994.

¹² Appraisal Report, 23 June 2014, p. 7, Section 2.29.

¹³ Contrat de Bail Ordinaire No. 001/PDG-ON, 31 May 2010, Article 4.

¹⁴ ESMP Summary, 2012, pp. 8-10.

¹⁵ Project Appraisal Report, 23 June 2014, p. 15.

staff appraising the project did not consider the affected villages as within the project’s area of influence. In addition, no environmental audit of the existing M3 industrial facility was undertaken as required by Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000).

Table 1: Timeline of the M3 Project and the Associated Request to the BCRM

PROCEDURE	TIMELINE
Concept stage: OpsCom	18 July 2013
Due Diligence Mission (Bamako and Ségou, Mali)	23-27 September 2013
Final stage: <ul style="list-style-type: none"> • Credit Risk Committee • Country Team in MLFO • OpsCom 	31 March 2014 11 April 2014 5 June 2014
Project Approval: Boards of Directors	17 September 2014
Request for Compliance Review: Received by BCRM	23 September 2015
BCRM receives feedback from Requestors regarding clarification of some issues as requested	March 2016
Complaint Registered: BCRM	12 May 2016
Expected date when BCRM should receive Management Response as per the Notice of Registration of the Request (date not met)	13 June 2016
Extension to new Submission Date by the Director of the BCRM for Management Response	20 July 2016
Eligibility Assessment Mission to Mali	20-26 June 2016
BCRM receives Management Response	17 August 2016
BCRM receives Revised Management Response	22 August 2016

Boards' Approval of Recommendations in the IRM Eligibility Report	23 November 2016
Compliance Review Mission to Mali	12-17 March 2017

Table 2: Summary Table of the Loan as presented in the Appraisal Report (June 2014)

SUMMARY TABLE: Corporate Loan for Diversification of Activities of Moulin Moderne du Mali (M3)	
OVERVIEW	
Project Description	Diversification of activities of "Moulin Moderne du Mali" (M3) through manufacturing of pasta, couscous, and flour from wheat, millet, and maize. The wheat will be imported, while the millet and maize will be purchased locally. Seven production chains will be set up on the M3 site at Ségou, Mali, with an annual production capacity of 27,000 tons of pasta; 7,200 tons of wheat, millet, and maize couscous; and 55,000 tons of flour. Production residues will be recovered and used to produce animal feed (84,000 tons annually).
Client/Sponsor	The Borrower, M3, is a limited liability company established in Mali in 2007. Its lead shareholder is Mr. Modibo Keita—a Malian entrepreneur with extensive experience in the trading and agro-industry sector. In 2013, the M3 balance sheet showed an amount of CFAF 18.6 billion, with equity of CFAF 4.6 billion and financial debt of CFAF 1.81 billion. With a turnover of CFAF 18.1 billion in 2013, M3 showed profit of CFAF 865 million. M3 is a subsidiary of the Keita Group, which will be providing a guarantee for the diversification project. In 2013, the consolidated balance sheet of the Keita Group stood at CFAF 114 billion, the turnover at CFAF 104 billion, and profits at CFAF 1 billion.
Cost Structure and Financing Plan	The cost of diversifying M3 activities totals CFAF 36 billion, with investment expenditure of CFAF 27 billion. The M3 diversification will be financed by equity contribution in the amount of CFAF 10.8 billion and debt totaling CFAF 25.2 billion. Banque Atlantique Mali (BAML), the transaction arranger, will provide a short-term loan of CFA 3.9 billion to finance working capital needs. On 17 December 2013, the Boards of Directors of Banque Ouest Africaine de Développement (BOAD) approved funding for the M3 Project in the amount of CFAF 7 billion. The remaining funding will be provided by the AfDB (EUR 16.8 million to be provided via the local currency framework in CFA Francs) and mobilized by BAML.
Bank Role	A senior loan not exceeding EUR 16.8 million to be provided via the local currency framework in CFA Francs, with a 7-year maturity period and a 2.5-year grace period. Thanks to the Bank, M3 will be one of the few companies in the sub-region to meet international environmental and social standards.
Market	The Malian diet consists mainly of rice, millet, sorghum, and maize, with differentiation between rural areas, where there is a predominance of millet and maize, and urban areas, where rice and pasta consumption is higher. Demand for pasta in Mali is currently covered by imports estimated at 25,000 tons annually and partly by local production amounting to about 5,400 tons a year. The demand for wheat couscous is estimated at 2,000 tons per year and is covered entirely by imports as there is no local production. Demand for other products exceeds the expected production. Thus, millet and maize couscous are mainly produced locally, with an urban demand estimated at nearly 62,400 tons per year, of which only 7% will be produced by M3. Similarly, the production of flour is calculated based on equipment capacity and not on demand. Demand for these products is on an upward trend and will remain so for years to come, since it is linked to urban population growth in Mali.
RATIONALE FOR BANK INVOLVEMENT	
Strategic Alignment	The Transition Management Support Strategy (2013-2014) for Mali, as approved by the Bank Boards of Directors in May 2013, focuses on strengthening the resilience of the most vulnerable populations and the need to lay a solid foundation for economic recovery. The agricultural component is one of the key areas of intervention of this strategy. In addition, M3 will promote local cereal production and meet the needs of urban and rural areas of the country, thus considerably strengthening food security. The M3 Project is also in line with AfDB's Private Sector Development Strategy (2013-2022), which focuses on the development of value chains in Africa, especially in the agricultural sector.
Commercial Viability	The sponsor has over 10 years of experience in rice importation and the agri-food sector. M3's production costs for pasta, couscous, and flour are competitive and will generate a significant margin for both M3 and its customers (wholesalers). An analysis of M3's financial statements and the financial model reveals a considerable degree of financial soundness. The diversification will allow for a change in dimension with an estimated average yearly turnover of CFAF 77 billion, with the proposed project accounting for almost half of that amount. The M3 annual profit estimate averages CFAF 11 billion. Lastly, the estimated debt coverage ratio represents a minimum of 2x, and on average 3x, during the term of the Bank loan.
Development Outcomes	The M3 Diversification Project is expected to create 317 direct jobs. It will also promote local agricultural development and strengthen value chains by creating indirect jobs, especially upstream (agricultural production). By producing import substitutes, M3 will have a positive impact on the trade balance, despite the persistent need for wheat imports in the early years of the project. The project will have a demonstration effect and create attractive business opportunities for local entrepreneurs. Lastly, the increased local production will bring about a substitution effect with regard to imports, while enhancing food security by creating jobs and wealth for the country.
Additionality and Complementarity	The involvement of the Bank and BOAD is key to the successful implementation of the project, given the scarcity of financing in Mali. The additionality will also derive from the Bank's involvement in structuring the project and the implementation of environmental and social best practices. By granting this loan in local currency, the Bank will be participating in the development of WAEMU zone financial markets.

SCHEDULE				
Project Team	S. Kayodé-Anglade, OPSM.2; H. Diallo, OPSM.5; H. Kianyfarid, OPSM.1; A. Lam, Intern OPSM 2; D. Mpeng, OPSM.5; S. Alissoutin, EDRE.1; R. Aron, ONEC.3; M. Choumarov, FFMA.2; B. Diouf, GECL; G. Feliho, GECL; N. Conté, ORPF.1; S. Dah, ORPF.1; M. Soumaré, ORPF.1; M. Dioum, OSAN; D. Ihedioha, OSAN; M. Hamza, FTRY.4; M. Ndiaye, FTRY.4; T. Teinila, OPSM.1.			
Key Dates	Explanatory review	April 2013	Concept review	June 2013
	Final Review	September 2013- March 2014	Boards' approval	8 September 2014

Source: Appraisal Report, 23 June 2014, p. ii.

1.3 Regulatory Framework of the Compliance Review

11. The Compliance Review process is governed by Section 7 of the IRM Rules, Paragraph 59 of the IRM Rules states that the Review Panel shall:

- (a) *Prepare a draft compliance review report containing the Panel's findings and recommendations and circulate it to the Bank Management for review and comments on factual matters only. 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/IRM; and*
- (b) *Upon receipt of comments from Bank Management, the Panel shall finalize its report ("Compliance Review Report"), which shall:*
 - (i) *Include a summary discussion of the relevant facts, the respective positions of interested party in relation to the subject matter of the Request, areas of disagreement, if any, between the IRM Experts and Management and the steps taken to conduct the compliance review;*
 - (ii) *Set out the findings of the Panel which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies....*
 - (iii) *If it concludes that any Bank Group action, or failure to act, in respect of any Bank Group-financed project has involved one or more material violations..., recommend:*
 - a. *Any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;*
 - b. *Any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements*

already committed to by the respective Bank Group institution or any other relevant party in existing project-related agreements; and/or

- c. Any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above....*

2. THE REQUEST

12. On 23 September 2015, the Compliance Review and Mediation Unit (BCRM) received a Request (see Annex 1) from an international NGO, the 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 Sanamadougou and Sahou (i.e. the people affected by the project (PAPs)). The NGO claimed that the inhabitants of these villages who refused to leave their agricultural lands at the beginning of the project had been subjected to serious violations of their rights and threats to their physical security. The Requestors stated that a number of people (but not all) have received compensation, but the authenticity of the list of these recipients is questionable. Moreover, the Requestors alleged that the AfDB loan was granted to the M3 Project upon two conditions: (i) guarantees will be provided by the client to ensure that the project is not subject to litigation; and (ii) adequate compensation is to be paid to the families affected by the M3 Project. The Requestor argued that these two conditions were not met. The Requestor accused the M3 Project of presenting fraudulent information to receive the Bank loan. In addition, the Requestors stated that only eight (8) families were compensated with merely “symbolic amounts.” The Requestors in the complaint asked that the list of PAPs and their signatures be compared with the one submitted to the Bank by the M3 Project.

13. The BCRM undertook the necessary due diligence before registering the complaint, confirming that AEI has a registered office in Mali. Also, the representative of AEI linked the BCRM with two PAPs who supported the issues raised in the Request. Moreover, during the Eligibility Mission, the IRM team confirmed AEI has proper representation authority from the PAPs at the time of its submission of the complaint to BCRM. The mission met with the AEI office in Mali and noted that it will provide technical assistance to the PAPs. In addition, the IRM team received a formal letter indicating that four PAPs will act on behalf of the affected farmers during the complaint-handling process.

14. In accordance with Paragraph 23 of the IRM Rules, the Director of BCRM registered the Request on 12 May 2016 and notified the Boards of Directors and the President of the AfDB.¹⁶ The PAPs represented by the Requestors are from the two villages of Sanamadougou and Sahou. Sanamadougou’s a community is approximately 3,500 inhabitants who claim that they have lived

¹⁶ Notice of Registration RQ 2016/1 was distributed to the Boards of Directors on 16 May 2016.

in this village and farmed their land acquired by the project for many generations. Sahou is a small hamlet near Sanamadougou. The inhabitants of this village cultivated millet, pigeon pea, and sesame on non-irrigated land, which has now been leased to the owner of M3 by the ON.

3. MANAGEMENT RESPONSE TO THE REQUEST

15. Paragraph 36 of the IRM Rules provides that Management shall submit a response to the Request within twenty one (21) working days after the receipt of the Notice of the Registration of the Request. However, the BCRM did not receive the Management Response on the due date of 13 June 2016. Considering that this Response is crucial, and that the IRM needed to prepare the eligibility report which should fully consider the views of both the Bank and the PAPs, the Director of the BCRM extended the deadline to 20 July 2016.¹⁷ The Management Response was received by the BCRM on 17 August 2016, followed by a revised draft of this Response received by BCRM on 22 August 2016 ((Annex 2). The Response covered the issues raised by the Request and stated that: “*Management does not agree with the allegations of the Requestors and does not believe that the Requestor NGO has any representational authority over the claimed villages.*”¹⁸ Therefore, the Management’s view was that the Request should be dismissed. Specific points raised in the Management Response include the following:

- (a) The AEI has provided no evidence to support its accusations against the project for land grabbing. Therefore, the Management concludes that these allegations are unfounded. Similarly, the NGO has not shown any evidence to the satisfaction of the Management which indicates that M3 has provided the Bank with false documents on court proceedings and the compensation of affected families.
- (b) The legal proceedings were closed before project disbursements were made.
- (c) The Bank is co-financing the construction of an agro-industrial unit. The Bank’s investment has not caused involuntary resettlement (physical or economic) that requires compensation to the 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. The 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.*”¹⁹
- (d) There are no reputational risks associated with the project and the sponsor.

¹⁷ The IRM Rules authorizes the Director of the BCRM to extend by any time period for as long as it is strictly necessary to ensure full and proper investigation assessment, review, and initiative; See IRM Rules, January 2015 Paragraph 35.

¹⁸ Revised Management Response, 22 August 2016, p. 3.

¹⁹ Ibid., p. 5.

- (e) The NGO acting as a representative of the PAPs is not authorized by the PAPs to represent them.

4. THE ELIGIBILITY REPORT

16. In accordance with Paragraph 50 of the IRM Rules, the Director of the BCRM and two members of the IRM f Experts undertook a fact-finding mission to Mali from 20 to 26 June 2016. Consequently, the IRM Eligibility Report was submitted for consideration by the Boards of Directors. The Eligibility Report found *prima facie* evidence of non-compliance with AfDB's Involuntary Resettlement Policy (2003) and Policy on the Environment (2004). The Eligibility Report also concluded that the Requestors have appropriate representational authority. On 23 November 2016, the Boards of Directors approved the recommendation of Eligibility report for the IRM to conduct the compliance review of the M3 Project.²⁰ As part of the Eligibility Report, the Boards of Directors also approved the Terms of Reference of the compliance review (Annex 3).

5. THE LAND DISPUTE

17. The Request was filed by the Requestors who are involved in a land dispute over land leased by M3 owner and to be developed by CAI-SA. The ON owns about 120,000 ha of irrigated land (including land leased to private owners) and a significantly larger area of non-irrigated land. The lands held by the ON are regulated by special legal ordinances and decrees.²¹

18. The Complainants argued that, as a result of the lease agreement signed between the owner of M3 and the ON, they were evicted from their traditional lands. On 18 June 2010, a serious conflict erupted between the M3 and the people of Sanamadougou and Sahou because the villagers refused to leave their lands. The company, meanwhile, claimed that it had legally leased this land and compensated the villagers.

19. M3 signed a land lease agreement on 31 May 2010, for 7,400 ha for a duration of 30 years and renewable for another 30 years.²² According to the lease agreement, the wheat is the principle crop to be produced from this land, and the farmers residing on the land can be removed after being compensated as per the ON policy; that is, for each 10 ha of dryland, 1 ha of irrigated land will be granted.

20. A second lease agreement was signed on 20 June 2010 between the ON and CAI-SA for an additional 12,600 ha. Thus, a total of 20,000 ha of land was leased by M3 and CAI-SA, both

²⁰ IRM Eligibility Report, November 2016.

²¹ See Decree No. 96-188 /P-RM, 1996.

²² Contrat de Bail Ordinaire No. 001/PDG-ON, 31 May 2010.

subsidiaries of the Keita Group. To date, only 2,500 ha is under cultivation, with a major portion of it being utilized for potato cultivation. The remaining 17,500 ha is unutilized. According to the information provided by the owner of M3, the company does not have the financial means to develop all of the leased land. This is while the evicted farmers, who used to cultivate only 800 ha of this unutilized land, can no longer access it as protected by the security forces of M3.

Figure 1: A photograph of one of the affected farmers taken during the site visit to the affected village of Sanamadougou during the Compliance Review Mission to Mali.



Source: IRM

21. The Requestors and the PAPs explained to the Review Panel that shortly after the lease was signed, bulldozers moved in and cleared the land of all the trees. On 18 June 2010, men, women and youth from the community protested and blocked the roads. Trucks with security forces arrived to quell the protest. The PAPs stated that they were beaten by the security forces, including elderly people and two pregnant women. For example, Mrs. Kaninfin Diarro informed the IRM Experts that she was beaten and arrested because she tried to stop the felling of her 100 karite trees. She

pointed to the scars on her knees sustained from the injuries she suffered. About 40 people were arrested, and among them were 14 women. Most of them were released without any charges, but five months later some were still in prison. Representatives of the ON and the owner of CAI-SA and M3, disagreed with the allegations made by the villagers. The lawyer of M3 informed the Review Panel that the security forces intervened to calm down the situation but they were assaulted by some of the villagers who were armed with machetes and weapons, and hence the convicted villagers were imprisoned. The incident was reported in the media as land grabbing.²³

22. The Prime Minister of Mali formed a special Task Force to investigate the land conflict. The Task Force concluded that there was no issue of land grabbing in Sanamadougou and Sahu.²⁴ In March 2013, FoodFirst Information and Action Network (FIAN), an international NGO that advocates land rights for self-sustenance, issued a report “*Accaparement des Terres et Droits Humains au Mali* [Land Grabbing and Human Rights in Mali],” which strongly contested the report prepared by the Prime Minister’s Task Force and characterized the eviction of farmers as “land grabbing.” The Government and the ON categorically stated that the land in question is a public land with no private ownership or claims to this land.²⁵ The ON operates under a special legal regime that is different from the national land laws and regulations of Mali. For people farming on irrigated plots, the ON has conditional land-use rights under their farming contracts and licenses.²⁶ A vast area owned by the ON is not irrigated and people have farmed on this dryland for many generations, even before the colonial decree that established the ON. Land leased to agro-processing industries typically lead to land disputes between farmers, who claim to hold customary rights to non-irrigated land, and the ON, which claims to have exclusive ownership rights to the land. However, the ON has a compensation policy for farmers who are evicted for agribusiness development. For each ten (10) ha of non-irrigated land (dryland), the ON provides one (1) ha of irrigated land. However, there is no provision as to where this allocated irrigated land should be located, and can be assigned far from the farmer’s old dryland plots. In addition, once the investor leases land from the ON, it is the former’s responsibility to pay any compensation to the displaced farmers.

²³ Pierre Fo’o Medjo, “Bail entre l’Office du Niger et le groupe GDCM: Fronde des populations de Sanamadougou contre le PDC Denon, 22 Septembre,” *MaliWeb.net*, 24 June 2010, <http://www.maliweb.net/category.php?NID=62256>; See also: “Understanding Land Investment Deals in Africa; Country Report: Mali,” *The Oakland Institute*, 2011, <http://allafrica.com/download/resource/main/main/idatcs/00021029:0d0f31641207deae38bb314ff8a1bccd.pdf>;

“Accaparement des terres et droits humains au Mali: Les cas de Sanamadougou-Saou, Sansading et San,” *FIAN*, March 2013, http://www.fian.org/fileadmin/media/publications_2015/Rapport_Mali_Final.pdf.

²⁴ Cabinet of the Prime Minister of Mali, “Rapport de Mission de la Primature sure l’Etat d’Exécution des Recommandations des Conflits Fonciers dans es Localites de Sanamadougou, Sahu et San, dans la Région de Ségou,” *Primature*, December 2014.

²⁵ The ownership of ON land is regulated in by Presidential Decree No. 96-188/P-RM, 1 July 1996.

²⁶ “USAID Country Profile: Property Rights and Resource Governance Mali,” *USAID*, July 2010.

23. The reviews of ON's compensation practices have shown that this compensation scheme is not always implemented.²⁷ The need to compensate based on ON's criteria is also mentioned in the Task Force Report issued in December 2014.²⁸ However, the same Report also makes the following recommendation: "[to monitor the full payment of all compensation for the transfer of the farms to the producers, in accordance with the results of the evaluation of the leased areas to the Company]."²⁹ The Task Force Report also stated that CFA 60,516,000 should be paid to the affected farmers as compensation by no later than 5 June 2014. The IRM could not clarify or get any explanation as to how this compensation amount was calculated.

24. The ON informed the IRM Experts that prior to agreeing to a lease, the investors are required to submit an Environmental and Social Impact Assessment (ESIA). The IRM Experts examined the ESIA report³⁰ prepared by M3 and found it incomplete. It includes an environmental assessment on the 7,400 ha leased by M3 in 2010, but it does not include any assessments of the social impacts. The section titled "Environment and Social Management Plan (ESMP)" is left blank.³¹

25. The AfDB Management states that the owner of M3 has paid compensation to the villagers. The Management Response to the Boards Members' queries dated May 2015 states that "*The sponsor (M. Keita), owner of both M3 and CAI-SA, following the Prime Minister's recommendations and according to the concession agreement with Office du Niger, has compensated villagers.*"³² Despite the repeated requests to the owner of M3, the IRM could not obtain any records on compensation paid to the villagers. The records provided by the AfDB staff to the IRM are inconclusive and incomplete. They consist of one "[Minutes concerning handing over of (compensation) payments for a definitive transfer of farms to the peasants in the village of Sanamadougou-Marka-Sanamadougou]," dated 9 September 2014, which lists 18 beneficiaries who received irrigated plots based on the ON criteria. Another record, dated 10 September 2014, includes a list of 11 names with signatures and thumbprints with a statement that [our village received from CAI-SA our compensation relative to our customary rights, in this case, plots of lands and cash]. However, no amounts were mentioned in these records. The attestation also includes a list of 5 names of people who refused the compensation.³³

26. Based on these two records, it is impossible to judge whether adequate compensation has been paid to all of the PAPs or to verify whether the amounts provided in the Task Force Report have been paid. As no base line was prepared in 2010 on the people removed from their land, and no

²⁷ "Mali: Mali Land Tenure Assessment Report," *USAID*, September 2010, p. 23.

²⁸ Cabinet of the Prime Minister of Mali, "Rapport de Mission de la Primature," pp. 4-5.

²⁹ *Ibid.*

³⁰ ESIA, Groupement SCET Mali/Fourmies (Consultant), June 2010.

³¹ *Ibid.*, p. 55.

³² Responses to EDs' Questions, May 2015, para. II.5.

³³ "Attestation de Reconnaissance," signed by Master Amadou Maiga, Bailiff, 10 September 2014.

social impact assessment is available, the Review Panel cannot judge whether or not the compensation offered is adequate and whether all people entitled to the compensation were paid. The Panel considers the information provided in these two records as insufficient to make a judgement. Since no additional records were provided by the owner of M3, the ON, or the AfDB staff, the Panel assumes that no other records of compensation exist.

27. Interviews conducted by the Review Panel during the Compliance Review Mission revealed two issues:

- (a) The Requestors argued that irrigated plots allocated to the people of Sanamadougou and Sahou in consideration of their drylands are located far away from the villages. The villagers confirmed that they could not go to work on these plots as they are located far away and they do not have the means of transport to access these new plots. The representatives of the ON confirmed that some of the allocated plots are at significant distances from these two villages. The Panel can attest that the villagers are vulnerable and poor³⁴ and have no means of transport to their newly allocated fields.³⁵
- (b) A number of people from the village refused compensation, arguing that they do not want to leave their ancestral lands. They only wish to reacquire their lands. The villagers also informed the Panel that the owner of M3 had offered them cash compensation; some accepted it, while others refused. The Panel could not obtain from Mr. Modibo Keita, the owner of M3, the list of people he stated that he had compensated. No further information could be obtained to show the amounts paid.

28. The Review Panel found a community that was deeply divided between those who have accepted compensation and those who have not. Those who have refused compensation believe that they have been deeply affected by the loss of their traditional lands and the project encroachment on their communal rights. This is compounded by their sense of insecurity due to the way in which their issues have been handled, in addition to their fear of losing food security for their families because their agricultural practices have been shifted to irrigated cultivation on much smaller areas which are too far away for many of them to access. Those PAPs who have accepted compensation only wish to close the matter. As a result, the IRM believes that the land

³⁴ No disaggregated poverty statistics are available on the two villages, Sanamadougou and Sahou. The last national poverty data for Mali is dated 2010. According to this survey, 49.65 percent of people live below the absolute poverty line established for Mali (USD 1.90/day (PPP)). Poverty is overwhelmingly concentrated in rural areas, with poverty levels in urban areas, especially in Bamako, being lower. As Sanamadougou and Sahou are rural communities, it can be safely assumed that more than 50 percent of the villagers have living standards below the absolute poverty line.

³⁵ The mission noticed only one bicycle during the entire visit to these villages.

conflict has severely affected the cohesion of the community.³⁶ The land dispute in Mali continued to attract significant international attention even in 2016.³⁷

29. During project preparation, the AfDB was not involved in the land conflict and did not visit the affected villages and farmers. During its Due Diligence Mission from 23 to 27 September 2013, the AfDB mission only visited the ON to familiarize themselves with the agricultural industrial estate to assess the provision of raw materials. However, the mission did not contact or visit the farmers or the NGOs concerned. The AfDB staff confirmed during the interviews with the Review Panel that it was not aware of the land dispute. It was only brought to the staff's attention by the MLFO during the review of the draft Appraisal Report in April 2014, since it was a critical reputational risk that needed to be closely assessed.

6. ASSESSMENT OF NON-COMPLIANCE WITH AFDB POLICIES AND PROCEDURES

30. The compliance review needs to assess whether or not, through any action or failure to act, the AfDB staff has materially violated any applicable AfDB policies and procedures. It is important to emphasize that the task of the compliance review is to assess the actions or failure to act of the AfDB staff and Management in the application of AfDB policies and procedures. The Review Panel reviewed the AfDB's compliance with the following policies and procedures that are applicable to the M3 Project:

- (a) Policy on Poverty Reduction (2004)
- (b) Involuntary Resettlement Policy (2003)
- (c) Policy on the Environment (2004)
- (d) Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000)
- (e) Operational Risk Management Framework (2011) as a Reputational Risk Assessment Procedure

31. The M3 Project was approved by the Boards of Directors of the Bank in September 2014, after the adoption of the Integrated Safeguards System (ISS) in 2013.³⁸ When approving the ISS, the Boards of Directors of the AfDB decided that the previous environmental and social policies and procedures would continue to apply for projects whose Project Concept Notes were approved by OpsCom (Operations Committee) prior to 1 July 2014 (when the ISS became effective). Since the M3 Project was cleared by OpsCom in April 2014, the ISS is therefore not applicable to the M3 Project.

³⁶ Moussa Bamba, "Mali: Accaparements des terres des villages de Sanamadougou et Saou: Les villageois sur le pied de guerre contre le PDG du DGCM, Modibo Keita," *MaliActu.net*, 15 March 2016, <http://maliactu.net/mali-accaparements-des-terres-des-villages-de-sanamadougou-et-saou-les-villageois-sur-le-pied-de-guerre-contre-le-pdg-du-dgcm-modibo-keita/>.

³⁷ The German Parliament conducted a hearing on "Land Grabbing in Mali—Die Dörfer Sanamadougou und Sahou," to which the Ministry of Economic Development and Cooperation provided responses in May 2016. The records of this inquiry are publicly available in the German Parliament.

³⁸ See: ADB/BD/WP/2012/184/Rev.2_ADF/BD/WP/2012/135/Rev.2 and ADB/BD/WP/2012/184/Rev.2/Add.2/Corr.1/Approved_ADF/BD/WP/2012/135/Rev.2/Add.2/Corr.1/Approved, 17 December 2013.

6.1 Policy on Poverty Reduction (2004)

32. The Review Panel assessed whether there has been non-compliance with the AfDB Policy on Poverty Reduction (2004). The Policy affirms the AfDB's commitment to its role in alleviating poverty in its Regional Member Countries (RMCs), and its overarching goal of integrating poverty reduction perspectives in all of AfDB's activities and financed projects, as well as in the development of appropriate operational mechanisms and institutional arrangements.³⁹ Thus, it is applicable to growth-oriented projects, particularly to private sector developments like the M3 Project. An integral component of the Policy is the preparation, implementation, and evaluation of Poverty Reduction Strategy Papers (PRSPs) of the RMC. Once approved by the Boards, the country's PRSP becomes the base line for the application of the Policy on Poverty Reduction (2004) on AfDB-associated projects.

33. At the time when the M3 Project was prepared and approved by the Bank, Mali had already adopted its 3rd Growth and Poverty Reduction Strategy Paper (GPRSP-3; 2012-17).⁴⁰ Mali's GPRSP prioritizes the development of agricultural value chains and further development of agro-processing industries as an economic growth engine to alleviate poverty. The M3 Project was justifiable in terms of Mali's poverty reduction strategy. The strategy also underlines the need for land conflict resolution and the clarification of land tenure issues. In particular, the strategy highlights the poverty rate in Mali, which is among the highest in the world. In 2014, when the M3 Project was approved by the Boards of Directors of the Bank, Mali was ranked 160 out of 169 countries in human development.

34. The AfDB Policy on Poverty Reduction (2004) lays out the relevance of poverty reduction for different AfDB activities. For the Project Cycle, the Policy states:

6.2.2.4 The subsequent stages of preparation and appraisal require social impact assessments. The Bank will assess the likely impacts of projects on the poor and vulnerable groups. As much as possible, participatory techniques of rural appraisal and beneficiary assessment will be used. If negative effects and high risks are anticipated, the Bank will consider specific mitigating measures.

6.2.2.5 At the implementation stage, the Bank will take additional measures to enhance greater involvement of community-based organizations and NGOs. When monitoring and evaluating projects, emphasis will be placed on outcomes and impact assessments will be conducted with greater frequency. Furthermore, participatory techniques of project monitoring and impact evaluation will be used extensively.⁴¹

35. The Review Panel argues that the AfDB staff should have conducted or should have advised M3 to conduct a social impact assessment in accordance with the aforementioned Paragraph 6.2.2.4 of the Policy. In particular, such an assessment could have helped the staff to identify the extent of the project's impacts on poor and vulnerable groups. Using the required participatory

³⁹ Bank Group Policy on Poverty Reduction, February 2004, p. i, para. 1.

⁴⁰ "Mali: Troisième Document de Stratégie pour la Réduction de la Pauvreté (CSCR-3, 2012-17)," IMF, May 2013.

⁴¹ Bank Group Policy on Poverty Reduction, February 2004, p. 35.

techniques, the staff could have designed appropriate mitigation measures. However, such an impact assessment was not carried out.

36. The Compliance Review Report examines whether the PAPs are (i) poor and vulnerable, and (ii) to what extent have they been negatively impacted by the project?

37. The Review Panel take the view that people who had to leave their traditional lands for agribusiness development by M3 are poor and vulnerable. The evidence on the poverty level is derived from the 2010 survey and from visual observations during the site visits to the villages by the Review Panel. The Panel noted that there is no site-specific poverty data for the two villages where the PAPs live since the national poverty survey was conducted on a more aggregated level. The last poverty survey conducted in Mali was in 2010. It shows absolute poverty levels at 49.6 percent with significantly higher levels in rural areas. The national poverty line of USD 1.90 (PPP) per day was applied. During the site visits to the villages by the Panel, there was no apparent evidence of asset holding, such as transistor radios, mobile phones, bicycles, and mopeds—which, in poverty research, are typically taken as indications of some level of very modest wealth. The PAPs had to leave their traditional lands and—they claim—many are not able to access their allotted irrigated plots which are located far from their villages. The PAPs can also be categorized as vulnerable. Agricultural production is primarily for self-sufficiency and thus vital for food intake and a minimal level of well-being. If the AfDB staff had conducted a social impact assessment, a solid database would have been available to assess the well-being and vulnerability of the residents of the affected villages. In the absence of such information, the Review Panel assessed the available information at the time of the compliance review and concluded that residents of the two affected villages of Sanamadougou and Sahou can be considered poor and vulnerable.

38. The more difficult question is whether these people fall within the criteria described in Paragraph 6.2.2.4 of the Policy on Poverty Reduction (2004). The Review Panel analyzed whether there is a linkage between the industrial facility financed by the Bank and the land from which the PAPs were evicted. The Management Response argues that the M3 Project is a freestanding project which is not directly linked to the agricultural areas operated by CAI-SA. The Management states that: (i) the Bank will only finance a portion of an industrial unit to produce pasta (M3); (ii) this unit will be based in Ségou, a plant in the industrial zone, and about 50 km away from the agricultural land of CAI-SA; (iii) the Bank will not finance any agricultural land; and (iv) the Bank will not take any security on agricultural land.⁴² The Management thus argues that the Bank-funded M3 Project has no relationship with the CAI-SA project, and hence to any resettlement that has resulted from the CAI-SA agro-production plant.⁴³ However, in the Management Response to the Request, the Management makes a statement which is inconsistent with its general position: “For

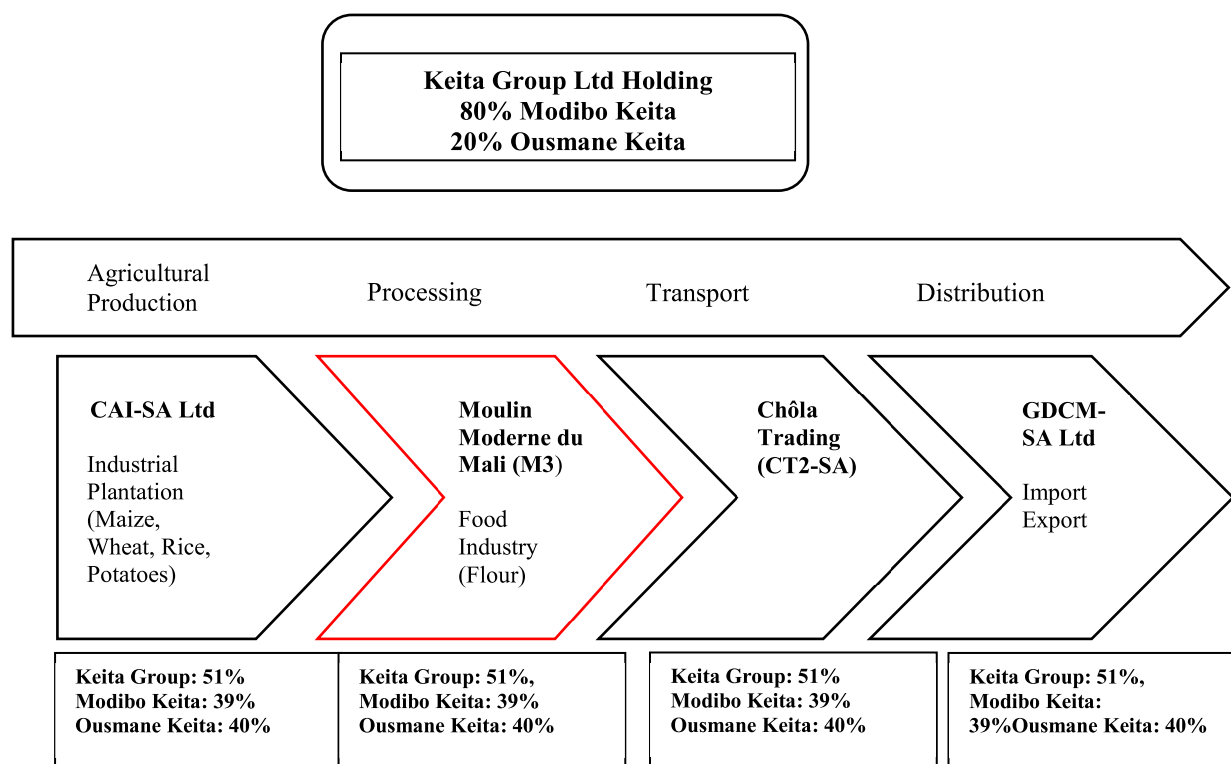
⁴² Responses to EDs’ Questions, May 2015.

⁴³ Revised Management Response, 22 August 2016, p. 5: “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. 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 purposes of the project, the Malian Government, through the Office du Niger, a parastatal company, assigned an area of 7,400 ha, owned by the State of Mali, to the Keita Group, particularly the M3 Company.”⁴⁴ This statement infers a linkage between the project and the agricultural land leased by the owner of M3. The land was leased “for the purposes of the project.”

39. The project documents reviewed by the Review Panel also indicate a linkage between the agricultural land leased from the ON by the owner of M3 and the Bank-financed industrial facility. This linkage is particularly strong in the project documents up to the draft Appraisal Report, which clearly emphasized the benefit of the integrated operation between the agricultural production and processing. The M3 industrial complex was presented as an integrated value chain to be supported by the M3 Project. The close integration was lauded as efficiency-increasing and beneficial for development outcomes. These linkages were presented in the Appraisal Report and in the Presidential Review Brief of September 2014 (Figure 2).

Figure 1: Structure of the Keita Group



Source: Appraisal Report and in the Presidential Review Brief (September 2014)

40. The Project Concept Note and the draft Appraisal Report clearly demonstrate the linkages between the agricultural plantation and the industrial facility. M3 was to procure its raw materials—mainly wheat—from CAI-SA, the subsidiary of Keita Group that operates the leased

⁴⁴ Ibid., p. 2.

land from the ON. The wheat would be imported only in the initial years; thereafter, it will be produced by CAI-SA in the leased land to provide inputs to the M3 facility.⁴⁵ The final Appraisal Report loosens this linkage between the project and the CAI-SA agricultural production. The project description does not make specific reference to the raw materials to be procured from CAI-SA and states that the wheat will be imported.⁴⁶ The final Appraisal Report de-emphasizes the importance of agricultural value chains and instead emphasizes the important efficiency gains which will be achieved by working with the vertically integrated value chain of the Keita Group. The final Appraisal Report argues that with the outcome of this project, the Keita Group will strengthen its vertical integration and reduce further its production, transport, and distribution costs. The Appraisal Report highlights the vertical integration of the Keita Group as a particular asset of the project. In the Presidential Brief submitted to the President prior to the Board Meeting of 17 September 2014, the reliance on the agricultural production facility operated by CAI-SA is re-emphasized. It stated: “*The wheat will be imported during the first years and progressively sourced locally, through the development of an industrial irrigated farm, CAI-SA, in the Office du Niger zone.*”⁴⁷

41. The strong integration between the agricultural production area and the agricultural processing facility was also emphasized by the AfDB Management during the Board presentation. In the Board Speaking Note, it is stated: [The supply of raw materials (wheat and maize) to the project will be partly ensured by the production of the agro-industrial complex of M3 (CAI-SA). The CAI-SA possesses to date 1,000 ha of developed land and cultivates using advanced techniques for water supply from the Modibo Keita canal which is 10 km long. In addition, an agreement has been concluded with the Malian State covering an area of 20,000 ha (7,400 ha signed with the Office du Niger for development). There are plans for increases to the developed areas from 500 to 1,000 ha per year].”

42. At the time when the project was prepared during 2012-2014, the land conflict associated with evicted villagers and the land leased by the owner of M3 was well in the public domain with wide media coverage.⁴⁸ The villagers’ eviction by the M3 was presented as a case of “land grabbing” in several publications. Two comprehensive reports focused on this issue.⁴⁹ The AfDB staff had not taken note of this conflict until a concern about AfDB’s reputational risk was raised during the review of the draft Appraisal Report in April 2014. The staff did not meet with people who were forced to leave their land and the NGOs concerned. The staff did not assess whether the land conflict would in any way reflect on the AfDB project. The Review Panel questions why, once the AfDB staff noted the existence of the land conflict in April 2014, they exclusively focused on the

⁴⁵ Draft Appraisal Report Review, MLFO, April 2014, which states the diversification of activities of M3, located in Ségou, Mali, through a new production unit for pasta, couscous and flour from wheat, millet and maize. The wheat will be imported during the first years and then progressively sourced locally, through the development of an industrial irrigated farm, CAI-SA, in the ON zone. Millet and maize will be purchased locally. Production residues will be recovered and used to produce animal feed (existing activity).

⁴⁶ The reference to “imported wheat” is not consistent throughout the Appraisal Report. In some sections of the Appraisal Report, reference is made to wheat which needs to be imported during the initial years and will subsequently be procured locally.

⁴⁷ The Presidential Review Brief, “Moulin Moderne du Mali,” September 2014.

⁴⁸ For more information on the issues that reached the public domain, see Section 6 of this Report.

⁴⁹ See: “*Accaparement des terres et droits humains au Mali*,” FIAN; and “Understanding Land Investment Deals in Africa,” *The Oakland Institute*.

mitigation of potential reputational risks to the AfDB with no consideration of the impacts of the project on the people removed from the leased land. The staff did not take into account the possible consequences of this conflict for AfDB's developmental agenda and possible inconsistencies with the poverty reduction strategy of Mali as an RMC. To minimize the potential reputational risk, it seems that the AfDB subsequently redrafted some sections of the Appraisal Report to weaken the linkage between the industrial facility funded by the AfDB and the M3 agricultural land, and added precautionary measures to mitigate the reputational risks for AfDB.

43. The Review Panel questions why, once it became aware of the land conflict, the Management did not send a mission to assess the nature of the land conflict and the poverty reduction implications of the project. The development mandate of the AfDB and the Policy on Poverty Reduction (2004) would have called for an assessment of the situation of the displaced people. A social impact assessment should have then been conducted as is required by the Policy (Paragraph 6.2.2.4). The Bank should have taken an interest to ensure that people removed from the land are fairly compensated to maintain their subsistence standards. The Panel is also of the view that the Bank involvement at that point could have leveraged the resolution of the conflict since the project was not yet approved and the sponsor and the people would have been amenable to resolve their disputes in amicable terms. Instead, the Bank proceeded with submitting the project to the Boards of Directors for approval and sent a mission in November 2014 only after the Board and the Executive Directors (EDs) raised significant concerns about the land conflict. It seems that the intention of this mission was to follow up with the Management's assurances that were made to the Boards of Directors. The outcome of this mission was inadequate. **The Review Panel finds that there has been negligence on the part of the AfDB staff and Management by not considering, applying and complying with the AfDB Policy on Poverty Reduction (2004).**

6.2 Involuntary Resettlement Policy (2003)

44. The Review Panel assessed whether there is non-compliance with the Involuntary Resettlement Policy (2003). The relevant section of the 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..."*⁵⁰ The Policy furthermore states that the Policy applies *"when a project results in relocation or loss of shelter by the persons residing in the project area, assets being lost or livelihoods being affected."*⁵¹ It continues to specify that *"this policy covers economic and social impacts associated with Bank financed projects... which result in: ... (b) Loss of assets... (c) Loss of income sources or means of livelihood as a result of the project...."*⁵²

45. **The Review Panel, after lengthy deliberations, concluded that the Involuntary Resettlement Policy (2003) is not applicable because the project did not cause resettlement.** The resettlement of the farmers already took place in 2010 after the lease agreement was signed by the ON and the owner of the M3. Two years later in 2012, the project sponsor approached the Bank for the financing of the project. The preparation of the project took place in 2013 and 2014. Thus, the engagement of the Bank came after the resettlement of the farmers. The Panel takes the

⁵⁰ Involuntary Resettlement Policy (2003), p. i, para. 1.

⁵¹ Ibid.

⁵² Ibid, p. 11, para. 3.4.1.

position that there is no direct causal relationship between the resettlement of the farmers and the Bank-funded project. The Panel argues that the project was not “*sine qua non*” for the resettlement of the farmers, which is the condition for a causal relationship. The IRM Experts are of the view that the Involuntary Resettlement Policy (2003) calls for a more restrictive application than the Policy on Poverty Reduction (2004). The Involuntary Resettlement Policy (2003) lays out very clear criteria as to when it is applicable and what are the necessary follow-up actions if applied. Instead, the Policy on Poverty Reduction (2004) is broader and mainly guided by its overall fundamental objective to reduce poverty and/or to mitigate any poverty impacts which might be attributed to an AfDB-funded project. Under the circumstances of the M3 Project, the Review Panel concludes that only the Policy on Poverty Reduction (2004) is applicable. This position differs from the position adopted by the IRM in the Eligibility Report, where *prima facie* evidence for non-compliance with the Involuntary Resettlement Policy was identified given the available evidence at the time. The Review Panel verified this *prima facie* evidence during the compliance review and concluded that the Policy was not applicable to the project.⁵³

46. During the Compliance Review Mission, and after discussing with representatives of the central and local government, local NGOs, and some local residents, it was clear that no one (with the exception of M3) understood what the Bank is financing. There is a continuous misperception that the Bank is financing and/or is closely involved in the agricultural farming of the 7,500-hectare lands, which is factually incorrect. This is still a persistent area of concern as the Bank project team and Senior Management have not succeeded so far to communicate what the Bank is actually funding. They have also failed to clarify the role of the Bank in trying to find solutions to the problems of the villagers of Sanamadougou and Sahou, as part of preserving the reputation of the AfDB as a respectful regional development institution that cares about the quality of life of the citizens of its clients. It was also clear that the ON was in a very defensive mood and not interested in AfDB’s interference in what it considered to be an internal Malian affair. Furthermore, during the meeting with the Review Panel, the head of the village of Sanamadougou indicated that they just want to reacquire their land. This situation has put the AfDB in a delicate position, given that the Management has taken the position that the project is delinked from the land issues and therefore did not develop any remedial measures.

6.3 Policy on the Environment (2004) and Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000)

47. The M3 Project is classified as a Category 2 project due to its environmental and social impacts. According to Paragraph 6.6 of the Policy on the Environment (2004), Category 2 projects require the development of an ESMP. Compared to Category 1 high-risks projects, Category 2 projects are likely to have site-specific environmental and/or social impacts that can be minimized by the application of mitigation measures or the incorporation of internationally recognized design criteria and standards. The project sponsor carried out an ESIA.⁵⁴ The Bank posted an ESMP Summary on the AfDB website on 18 April 2014. The ESMP Summary described the project’s potential negative environmental impacts on soil, air quality, surface and ground water, and on the health and safety of the population and workers. It also included potential mitigation measures

⁵³ IRM Eligibility Report, November 2016, p. 1.

⁵⁴ ESMP, February 2014.

without providing any figures on the status of air, water, noise, and soil pollution or waste. The mitigation plan did not include, as required, the issues to be addressed during the construction and operation of the facility. The ESMP focused exclusively on the project site where the industrial units are located.

48. According to the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000), for expansion or modernization projects, the entire plant (existing and proposed new facilities) should undergo an evaluation of environmental and social issues.⁵⁵ The AfDB may require the project sponsor to retain an independent consultant to complete the environmental audit of the existing plant. It may also require the project sponsor to bring the existing plant into compliance with applicable AfDB policies and guidelines within a reasonable time. The Environmental Review conducted by the sponsor on the M3 Project did not include an environmental assessment of the existing facility as required by these Procedures. The assessment focused solely on the new industrial equipment and facilities which are funded by the Bank. The ESMP was reviewed by AfDB staff who did not alert the sponsor that such an audit should be conducted. **The Review Panel finds that failure to prepare an environmental audit on the existing facility constitutes a non-compliance with the applicable Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000).**

49. The Review Panel further reviewed whether the AfDB staff has adequately conducted the project supervision in line with the requirements of AfDB's environmental and social procedures. The Environmental Review Procedures state that "*The Investment Officer... is responsible for ensuring that supervision reports include information on the compliance with environmental and social requirements of the project by the project sponsor.... The Investment Officer notifies the project company of this action and necessary follow-up requirements.... The Bank's supervision reports must include a section on environmental and social compliance in the investment contract [Translation].*"⁵⁶

50. According to the documents provided to the Review Panel, a special mission was conducted in November 2014 following the discussions with the Boards of Directors in September 2014.⁵⁷ No supervision missions were conducted in 2015. Supervision missions were carried out in March and October 2016,⁵⁸ which in the opinion of the Panel did not adequately review the project's environmental and social issues. The supervision note of 15-16 March 2016 only states that "[The project encounters some difficulties which are the recurring problem of land grabbing in the zone of the Office du Niger, which are escalated by certain international NGOs in complicity with the indigenous population in the locality]." The note also provides the status of compensation; however, it concludes that the mission took note that a fraction of the population refused any compensation by the promoter and that actions to create awareness were ongoing with the regional and local communities as well as with the ON.

⁵⁵ Environmental Review Procedures, May 2000, para. 27.

⁵⁶ Ibid., para. 43-44.

⁵⁷ MLFO, Note—Mission Ségou, MLFO, 12 November 2014.

⁵⁸ See Note de Supervision de la Société Moulin Moderne du Mali.M3 : Rapport de Retour de Mission, Octobre 2016, and, MLFO, Note—Mission Ségou, 15-16 March 2016.

51. The Back-To-Office Report (BToR) of the supervision mission in October 2016 does not provide information related to environmental issues. It only states: “[The project has not yet produced an environmental and social report at the construction phase in accordance with the clauses of the Common Terms Agreement (CTA), but draws the project's attention to the environmental and social repercussions that the diversification activities of M3 may have even at the construction phase].”

52. While the CTA of the M3 Project does not require a report on environmental and social issues at the construction phase, emphasis was made on them even at the construction phase. The supervision report referred to compensations being underway and concluded that the “[The Mission welcomes the continuation of the compensation process for the farmers affected by the land transfer and urges the borrower to work towards this in accordance with the relevant regulations].” The Review Panel wonder why the environmental impacts during the construction phase are not monitored in the supervision reports. Many projects have important environmental impacts during the construction phase (such as, for example, noise and air pollution, labor standards, etc). Paragraph 17.4 (d) of the CTA specifies that the borrower has to submit the AfDB progress reports during the operational phase until the closure of the credit.

53. The Review Panel reviewed the CTA and the senior loan agreement. Notwithstanding Paragraph 17.4(d) of the CTA, the CTA does not include other clauses to the contrary. Article 13 of the Bank Senior Loan Agreement explicitly obliges the borrower to comply with AfDB’s environmental and social policies, namely, the Policy on Poverty Reduction (2004), the Involuntary Resettlement Policy (2003), the Policy on the Environment (2004), the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000) and the Gender Policy (2001). The staff should request M3 to conduct an environmental and social performance report during the construction phase for the M3 Project in order to be consistent with AfDB’s aforementioned policies. The Panel cannot understand why no supervision missions were conducted in 2015. In the Highlights of the Ordinary Meeting of the African Development Bank’s Boards of Directors held on 17 September 2014, it is mentioned that: “*The Board welcomed the proposal and stressed the importance of ensuring competitive markets and close monitoring to ensure management of social and environmental aspects.*”⁵⁹ This provision was entered into the records after the EDs raised numerous questions on the social impacts relating to the land dispute, and the Management gave assurances that the social impacts would be carefully monitored.⁶⁰ In the view of the Review Panel, failure to conduct supervision missions in 2015 is inconsistent with the Boards’ instructions on close monitoring of social and environmental issues summarized in the Boards’ records.

54. The monitoring of social issues in the 2016 supervision reports is cursory. The missions reports dated October 2016 and March 2016 focused essentially on the issue of payment of compensation to the farmers (i.e., to those who have accepted or refused compensation) without providing a detailed breakdown of the amounts paid.⁶¹ The Review Panel thus finds it surprising that the

⁵⁹ See ADB/BD/SD/2014/984/HL, 12 November 2014.

⁶⁰ For a more extensive discussion on the assurances provided to the Boards, see Section 6.5 of this Report.

⁶¹ See MLFO, Note—Mission Ségou, March 2016, in which it states: “*Il ressort donné des constatations ci-dessus que les indemnisations ont été faites et continuent en fonction des aménagements. Par contre, la mission a pris bonne que une fraction de la population refuse toute indemnisations avec le promoteur. Cependant, des actions de*

reports of the 2016 missions made such summarily positive statements that adequate compensation did take place.

55. The Review Panel finds that the project supervision did not adequately review the compliance with AfDB's environmental and social safeguard requirements as prescribed under the Environmental Review Procedures. The Panel also finds that supervision missions did not closely monitor the social and environmental aspects of the project, as was highlighted in the summary notes of the Board Meeting for the approval of the project. **Thus, there is non-compliance with the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000).**

6.4 Reputational Risk Assessment Procedures

56. The Review Panel assessed whether the land conflict posed and continues to pose a reputational risk for the AfDB. Concerns on reputational risk resulting from the land dispute were first raised in the review of the draft Appraisal Report by the country team in April 2014. The Review Note of the Country Team of the Mali Field Office [MLFO], dated 11 April 2011, mentions that: *“un accent particulier a été mis sur la nécessité de la prise en compte des questions liées à l'exploitation des terres agricoles et le risque de réputation potentiel [A particular emphasis was placed on the need to take into account issues related to agricultural land use and the potential reputation risk].* The records of the review meeting show that the response of the AfDB staff to the question on reputational risk was that *“there was no land conflict as the legal situation is clear and that there was only a case presented to the court by a non-authorized representative which was subsequently turned down by the court.”*⁶²

57. Subsequent to the comment made on the review, the following provision was added to the final Appraisal Report: *“Reputational Risk: In 2013, a person claiming to represent the villages of Sanamadougou and Sahou in the Office du Niger area lodged a complaint against M3 and CAI-*

sensibilisation continuent avec les autorités administratives régionales, communales et celles de l'Office du Niger [It is clear from the above statements that compensations have been made and continue according to the arrangements. On the other hand, the mission has understood that a fraction of the population refuses any compensation with the Promoter. However, awareness-raising activities continue with the regional and communal administrative authorities and those of the Office du Niger]”; and see: Mission de Supervision de la Société Moulin Moderne du Mali-M3, Rapport de Retour de Mission, October 2016, in which it reports: “La mission prend bonne des compensations faites par le promoteur (l'emprunteur) dans le cadre de la convention avec l'Office du Niger pour la cession des terres des paysans vivant dans la zone) [The mission considers the compensation made by the Promoter (the Borrower) under the terms of the agreement with the Office du Niger for the transfer of the lands from the farmers living in the area].”

⁶²See Evaluation Report Note, List of Comments, Business Loan for the Diversification of Mali's Modern Mill Activities (M3), April 2014, Question 103, states: "It is important to note that there is no dispute over the land between the Keita group and the villagers, but an individual presented himself as representative of the villages of Sanamadougou and Sahou in the Office du Niger area and filed a complaint against M3 and CAI-SA because of land grabbing. He was dismissed by the Ségou Court of First Instance. It is also important to note that the areas developed and operated by CAI-SA belong to the Malian State and are made available by the Malian State to different investors, according to the terms and conditions specified in the agreements. In the framework of CAI-SA and M3, agreements have been signed with the Office du Niger (2010), the Office of the Secretary of State for the Development of the Office du Niger Zone (2010) and the Minister of Economy and Finance (2011). The perimeters granted to CAI-SA and M3 are demarcated by terminals established by geo-satellite system. In addition, 100 ha have been developed by CAI-SA for the villages of Sanamadougou and Sahou, including gravity irrigation systems.

*SA concerning land grabbing. This complaint was dismissed by the Ségou 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 repayment in the event of conviction of M3 or the Keita Group.*⁶³ The Review Panel confirms that the loan agreement does not provide a special clause requiring the Keita Group to make such reporting. The loan agreement also does not include a special clause for suspension of disbursements or early repayment in the event that M3 is found liable in land legal claims. The members of the AfDB staff that were interviewed informed the Review Panel that the general clause of Paragraph 16.14 of the CTA, which requires the borrower to inform the Bank about any litigation, was judged sufficient to meet the objective of minimizing reputational risk laid out in the Appraisal Report.

58. The Review Panel notes that the discussions of reputational risk were restricted to the risk resulting from a court case. No other reputational risks were discussed at the time of the review by the country team. Reputational risks are not only associated with legal proceedings; they can be significantly broader, such as in this case, where the land dispute was in the public domain and was characterized by some parties (rightly or wrongly) as “land grabbing.” Moreover, “land grabbing” in Mali has been prominently discussed in the international press and NGO reports as a contentious issue for the country.⁶⁴ The Review Panel reiterates its position that it has no stand on land grabbing by the M3 Project, but the Panel notes that the issue got widespread international attention. Under such circumstances, the argument by the AfDB staff that a reputational risk would emerge only from a court judgement against M3 was shortsighted. In researching the the case of the M3 Project, the Review Panel came across an official inquiry conducted at the German Parliament in 2016, where the engagement of the Bank in the M3 Project was questioned in significant detail.⁶⁵ The fact that such an inquiry was launched at the Parliament of a shareholder points to the reputational risk which the land dispute could pose for the AfDB as a whole. This was clearly a concern strongly expressed by a number of Board Members during the discussion of the M3 Project.⁶⁶

⁶³ Project Appraisal Report, 23 June 2014, p. 15, Paragraph 3.11.

⁶⁴ See, for examples: Madeleine Bunting, “Mali: Whose Land is it Anyway?,” *The Guardian*, 29 December, 2010, <https://www.theguardian.com/world/2010/dec/29/mali-farmers>, Accessed: 23 April 2016; Franziska Frielinghaus, “Hunger als Folge von Landgrabbing in Mali,” *Who Owns The World*, 20 August 2014, <http://www.who-owns-the-world.org/2014/08/20/hunger-landgrabbing-mali/>; “Kleinbauern-Aktivist aus Mali: Kämpft gegen Landgrabbing,” *Taz*, 9 April 2015, www.taz.de/!5013345/; Ernst August Ginten, “Landgrabbing: Investoren Kaufen Knappe Ackerflächen Weltweit,” *Welt*, 19 January 2016, <https://www.welt.de/wirtschaft/article151170043/Ruecksichtslose-Jagd-auf-den-neuen-alten-Bodenschatz.html>; “Mali Land Grabs: ‘You can Take Everything From a Farmer but not his Land,’” *The Guardian*, 7 July 2014, <https://www.theguardian.com/global-development/video/2014/jul/07/mali-land-grabs-farmer-video>; and “Land Grabbing by Global Agribusiness,” *Global Research*, 14 July 2016, <https://www.globalresearch.ca/land-grabbing-by-global-agribusiness/5530797>.

⁶⁵ See: Bundesdrucksache 18/8565 vom 26.5.2016

⁶⁶ See MLFO, Note—Mission Ségou, 10-12 November 2014, in which it states: “ [As a reminder, the Boards of Directors of the Bank approved the financing of the extension activities of Moulin Moderne du Mali (M3) at its session on 17/09/2014. At this session, some Directors expressed strong concerns about land grabbing charges against the proponent and the project for the 7,400 ha in the Office du Niger area]”; For more information, see Section 6.5 in this report.

59. The Review Panel notes that subsequent to the Board's discussion in September 2014, the AfDB Management engaged a consulting firm to monitor the legal case for mitigating the reputational risks posed by the M3 Project.⁶⁷ The Panel observed that throughout the year 2015, the AfDB received regular assessments about the reputational risks associated with the Keita Group within Mali and at the international level. The assessments concluded that there were no such reputational risks from the Keita Group at the national level, but the reputational risks already at the international level could be minimized.

60. The Review Panel finds that the AfDB staff did not assess appropriately the reputational risk of the land dispute and how it might affect the AfDB during the project preparation and appraisal. The focus on the issue came very late, that is, in the country team/MLFO review in April 2014. The Bank's position that only a court case against M3 and CAI-SA could constitute reputational risk is too narrow in assessing such types of risk. The Panel is of the view that the land dispute poses a reputational risk for the AfDB, and that it should have been adequately assessed and mitigated by the staff throughout the project screening, appraisal, and implementation. The Review Panel notes that the monitoring of this risk took place after the Board's approval. The Review Panel also recognizes that the Operational Risk Management Framework which was in place 2011 did not provide operational guidance to staff on how to assess reputational risk within a project context. A much more comprehensive policy, Integrity Due Diligence Policy –Non-Sovereign Operations, was only adopted in January 2016. This Policy was not in place when the M3 Project was prepared and approved. Thus, **the Review Panel does not find the staff in non-compliance with AfDB risk assessment procedures.**

6.5 Assurances Given to the Boards of Directors

61. The Boards of Directors of the Bank held a meeting on 17 September 2014 to discuss and approve the funding of the M3 Project. The Highlights of the Ordinary Meeting distributed on 24 November 2014 note the following: *“The Board welcomed the proposal and stressed the importance of ensuring competitive markets and close monitoring to ensure management of social and environmental aspects. The Board noted the abstention of the German and UK Chairs owing to the need for additional clarification on land tenure issues.”*⁶⁸

62. Prior to the Boards' Meeting, the EDs raised numerous questions about the M3 Project. The responses by the Management are provided in a note titled *“Questions et Réponses, Moulin Moderne du Mali, 15 Septembre 2014.”* In their answers, the Management emphasized that the Bank has not been involved in the financing of the land and that the leased land is distinct from the project. The Management took affirmative positions on questions raised by the EDs on whether people removed from the land had been appropriately compensated. The Management also assured the EDs that people removed from the land would not fall below their subsistence level and that an ESIA had been conducted as a prior condition for M3 to lease the land from the ON. The Review Panel is concerned about these assurances that were based on information which the Panel considers was inadequately verified by the Management.

⁶⁷ Report: Project Hoseana (code), Africa Risk Consulting. There are numerous reports between December 2014 and December 2015.

⁶⁸ See: AFDB/BD/SD/ 2014/984/HL, 12 November 2014.

63. The responses provided by the AfDB Management to the EDs were partly inaccurate. The Management informed the Boards that as part of the conditions of the lease agreement between M3 and the ON, an ESIA had been conducted. It was stated: “ [The development project of 7,400 ha was the subject of an environmental and social assessment, one of the *sine qua non* conditions for the awarding of the lease contract as required by the ON].” An ESIA was provided by M3 to the Review Panel. However, this study covers only the environmental aspects.⁶⁹ A social impact assessment was not conducted.⁷⁰

64. With regard to the question from the EDs on whether people removed from their land would remain above subsistence income levels, the AfDB Management answered that the irrigated plots offered to the farmers in compensation are significantly more productive than their previous drylands, and these irrigated lands can be farmed twice a year. The Requestors, however, argued that many of the farmers have been allocated irrigated plots which are far away from their villages,⁷¹ restricting them from going to farm their allocated plots. The Review Panel discussed this issue with the ON, which confirmed that the plots assigned are at significant distances from the villages. The Management did not seem to be aware of this concern when giving assurances to the EDs that farmers would not fall below their subsistence income levels. If the AfDB staff had interacted with the PAPs prior to the Boards Meeting, this issue would have received adequate attention.

65. The AfDB Management also gave assurances to the EDs on compensation payments made by the sponsor, which in the view of the Review Panel had not been adequately verified. The Management had assured the Boards of Directors that [After discussions with the MLFO and based on the latest and most reliable information in our possession, the Management reiterates that] “neither M3 nor CAI-SA nor Mr. Modibo Keita have been or are involved in land grabbing in Sahou or Sanamadougou.”⁷² The Panel wonders why the Management provided such affirmative assurances on a highly sensitive and prominent matter, in spite of the fact that the staff had never visited and interacted with the people involved in the land conflict prior to the Boards’ Meeting. The EDs represent the shareholders of the Bank, and hence it is essential that they are provided with reliable information to share with their constituencies. The AfDB staff and Management need to conduct adequate due diligence when providing such assurances to the EDs.

66. The AfDB Management stated to the EDs that a number of follow-up measures would be taken: “ [However, in addressing the concerns of the members of the Boards of Directors, the Management would like to propose the following conditions precedent for the signature of the loan agreement: (a) A legal opinion from a firm (on the status of pending legal claims against the owner of M3) to be recruited for legal due diligence in order to rule on this issue; (b) Make available to the EDs a statement of payments (to the PAPs) and other obligations of the promoter in accordance with the recommendations of the (Prime Minister’s) Commission; and (c) A letter of No-Objection from the Malian Government, which will include specific reference to this problem (the land issue)].”

⁶⁹ ESIA, Groupement SCET Mali/Fourmies (Consultant), June 2010.

⁷⁰ See Section 5, para. 22 in this report.

⁷¹ See Section 5, para. 25, and Section 6.1, para. 35 in this Report.

⁷² “*Questions and answers Moulin Moderne du Mali*, 15 September 2015, p. ix.

67. The Review Panel is of the view that the AfDB Management has only followed up with condition (a). The Bank contracted a consultancy firm to offer a legal opinion on the possible pending court proceedings. With respect to condition (b), the Panel could not obtain evidence that payments were done in accordance with the amounts suggested by the Prime Minister's Commission. For condition (c), the AfDB received a letter from the Minister of Economy and Finance which states that the Malian authorities have no objection to the disbursement of the loan;⁷³ but this letter does not make any reference to the land dispute as committed by the Management as a requirement in the text to the EDs.

68. The Review Panel finds that in spite of the emphasis given by the Boards of Directors on the need for close monitoring to ensure the management of social and environmental aspects, no supervision mission of the project was conducted in 2015 and social and environmental aspects were only cursorily addressed in the two supervision missions of 2016.⁷⁴ The Review Panel notes that the AfDB conducted a mission from 10 to 12 November 2014 to verify whether conditions of the loan's signature had been met. This mission conducted a site visit, met with the villagers, and concluded that all compensations had been adequately paid, except to a group of farmers that refused compensations and demanded the return of their traditional lands. The Panel is of the view that the AfDB Management appears to have rushed to close this issue without careful follow-up. The Panel also notes that the Management carefully followed up on issues of reputational risks and legal proceedings as specified in item (a) listed above.

7. THE MATERIAL CONSEQUENCES OF NON-COMPLIANCE WITH APPLICABLE AfDB POLICIES AND PROCEDURES

69. The IRM Rules require that when the PAPs are subjected to adverse actual or potential material effects, as a direct result from non-compliance with AfDB policies and procedures at any time during the design, appraisal, and/or implementation of an AfDB-financed project, the compliance review is required to investigate these adverse material effects.⁷⁵

70. The Review Panel assessed whether there has been adverse effects on the PAPs resulting from the non-compliance with AfDB's Policy on Poverty Reduction (2004) and the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000). The Review Panel visited the PAPs during the Eligibility and the Compliance Review Missions. It found that approximately 90 families residing in Sanamadougou and Sahou villages had to give up about 885 ha of land that is now a part of the land leased to M3 by the ON. The Requestors and other PAPs argued that they have lived on these lands for many generations and have used it for dryland farming. While some PAPs agreed to the compensation scheme of the ON and received some payments from the owner of M3, the others believe that M3 is occupying their lands and its proposed compensation does not match their customary rights to the lands. They argue that:

⁷³ See : Letter of [Mr. Vice President, In reference to the correspondence mentioned above, I have the honor to inform you that the financing of the African Development Bank for the benefit of the Project cited in the subject does not call any objection on my part].”

⁷⁴ See Section 6.3, para. 46 and 49, in this Report.

⁷⁵ IRM Rules, January 2015, para. 1 and 59 (ii).

- (a) They have ancestral rights to the land and abandoning this land would seriously undermine their family traditions and social cohesion. It will breach far-reaching cultural traditions maintained by the families and their villages.
- (b) They do not wish to abandon their dryland farming practices since they are vital for their livelihoods, i.e., they provide them with staple crops for feeding themselves and their families. 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 food self-sufficiency.
- (c) They have been offered low-quality irrigated land, which in many areas is not suitable for rice cultivation. This is in addition to the fact that these irrigated plots are located far away from their villages, which they cannot practically access for farming.
- (d) For women especially, access to firewood and other land products (shea butter, food crops, and medicinal plants) are key to their income generation, which becomes more difficult with the remoteness of the new plots.
- (e) Their relocation violates their traditional customs and rights, and the consultations with the affected families were inadequate.
- (f) They are deeply angered that others had accepted payments.
- (g) They are deeply concerned about the absence of a transparent and participatory process in the course of how their lands have been handled, as well as the compensation process.

71. The negative impact on the social cohesion of the community was obvious and strongly felt during the site visits by the Review Panel.

72. In the absence of a social impact assessment, the Review Panel cannot confirm the allegations made by the Complainants. However, the Panel is of the view that a social impact assessment should have been conducted in accordance with the Poverty Reduction Policy (2004)⁷⁶ as such an assessment is the only way to appraise the full extent of these adverse effects. Based on the evidence available at the time of the compliance review, **the Review Panel concludes that material harm has been caused to the PAPs, and there is a causal relationship between non-compliance with the Policy on Poverty Reduction (2004) and this adverse material impact on the Requestor and other PAPs.** The Panel points out that the Bank had the opportunity to

⁷⁶ Bank Group Policy on Poverty Reduction, February 2004, p. 35, para. 6.2.2.4 and 6.2.2.5.

leverage mitigation measures for these negative impacts prior to the approval of the project. If done then, such harm would have been avoided.

8. CONCLUSION

73. The Review Panel finds the following:

- (a) There was non-compliance with the Policy on Poverty Reduction (2004) as the AfDB neither conducted a social impact assessment nor did it mitigate the negative impacts of the project on the poor and vulnerable PAPs. The Review Panel considers this a significant non-compliance as poverty reduction is a key priority for the AfDB. In the view of the Review Panel, with the land conflict in the public domain, the AfDB staff should have taken remedial actions once they became aware of the land dispute, particularly given that the M3 Project approach was based on a vertically integrated value chain where some raw materials will be produced and procured from the land from which the farmers were evicted. By failing to conduct a social impact assessment, the Review Panel finds that the actions of the AfDB staff were not in compliance with AfDB's Policy on Poverty Reduction (2004).
- (b) There was non-compliance with the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000) as the M3 Project financed by the Bank is an expansion project and no environmental audit was conducted on the existing M3 industrial facility. Furthermore, there is non-compliance on the part of the Bank as the supervision of the project did not adequately encompass the monitoring of environmental and social impacts.
- (c) There are substantial reputational risks associated with the M3 Project that were not timely and adequately assessed. However, the Review Panel recognizes that the Operational Risk Management Framework (2012) that was in place at the time when the project was prepared did not provide operational guidance to the AfDB staff. Therefore, the Review Panel does not find the staff in non-compliance with this AfDB Framework.
- (d) The Bank Management gave assurances about the M3 Project, the land dispute, and compensation issues to the Boards of Directors of the Bank in September 2014. These were done without having undertaken adequate due diligence prior to providing this information and these assurances. The Review Panel also finds that the AfDB Management did not adequately follow up on all the conditions of the loan signature, a step it had assured the EDs.

9. RECOMMENDATIONS

74. According to the IRM Rules,⁷⁷ a compliance review report should lay out three sets of policy recommendations:

- (a) The strategies by which to bring the project into compliance, if the Review Panel finds non-compliance with the applicable AfDB policies and procedures.
- (b) Steps to take to monitor the implementation of the remedial actions to bring the project back into compliance.
- (c) Remedial changes to systems or procedures within the AfDB to avoid a recurrence of such or similar violations.

9.1 Strategies to Bring the M3 Project into Compliance and to Remedy Adverse Material Impacts

75. The recommendations made by the IRM in this Report are intended to advise Bank Management with respect to bringing the project into compliance with the applicable AfDB policies and procedures and to remedy adverse material impacts. For this purpose, Management will prepare an Action Plan to be considered by the Boards of Directors of the Bank, together with this Report. The Review Panel recommends the following:

- (a) Compliance with the AfDB Policy on Poverty Reduction (2004): To bring the M3 Project into compliance with this Policy, the Bank needs to ensure that compensation is adequate so that people who were removed from their land are at least as well off as they were prior to their eviction. This requires that the farmers are assigned adequate-quality irrigated plots in an area adjacent to their villages so that they can continue their farming activities. Moreover, adequate amounts need to be paid to compensate for transaction costs and for lost income since the PAPs' removal from their lands, based on transparent criteria. Accordingly, the AfDB Management shall assess the compensation process, followed by M3 taking into consideration the report by the Prime Minister's Task Force. For all the PAPs, and particularly women, who were removed from their lands and have no access to redeem their farming and subsistence activities, every effort should be made to return to them their ancestral lands for farming, which are at the moment leased to M3. These lands remain currently unutilized. Offers to compensate them with irrigated land must be discussed with the PAPs.
- (b) Focused engagement of the AfDB staff and Management: They need to be actively engaged, both technically and financially, in the assessment and implementation of appropriate compensation. The assessment of adequate compensation should be made through a participatory, transparent, and accountable process.

⁷⁷ IRM Rules, January 2015, para. 59 (b) (iii) (a-c).

- (c) Compliance with the Policy on the Environment (2004) and the Environmental Review Procedures of Private Sector Operations of the African Development Bank (2000): To bring the M3 Project into full compliance with this Policy and the associated Procedures that guide the application of this Policy, the AfDB Management should ensure that an environmental audit is conducted on the existing industrial facility of M3. In addition, the AfDB staff should conduct yearly supervision missions consistently. Moreover, the Management should ensure that these supervision missions adequately review and report on the project’s social and environmental performances in line with the requirements of AfDB’s policies and procedures.

9.2 IRM Steps to Monitor the Implementation of the Management’s Remedial Action Plan

76. The IRM Rules provide for IRM monitoring of recommendations approved by the Boards to bring the project into compliance, particularly the implementation of the Management Remedial Action Plan once it is approved by the Boards.⁷⁸ The IRM’s monitoring should take place at least once a year and be conducted by the Director of the BCRM and one of the IRM Experts.⁷⁹ The Review Panel recommends the Boards of Directors to approve the Director of the BCRM together with Mr. Sherif Arif—one of the IRM Experts—to conduct the monitoring activities for the M3 Project. The Management should submit semi-annual progress reports to the BCRM on the implementation of the Remedial Action Plan. Such regular reports would encourage rapid implementation of the remedial actions and allow the BCRM and the Boards to monitor the progress.

9.3 Remedial changes to AfDB Systems and Procedures to Avoid Recurrence of Violations

77. Policy recommendations with regards to mitigating risks of recurring issues with like projects are as follows:

- (a) Operational Guidelines for the Policy on Poverty Reduction (2004): The Review Panel found that there was non-compliance with this Policy. The Policy emphasizes the centrality of poverty alleviation for all AfDB operations and activities. However, there is no operational guidance on how AfDB staff and Management are expected to implement this Policy. In order to make the Policy operationally relevant, guidelines need to be developed for the staff to mitigate negative impacts and risks for the poor and vulnerable people, particularly when such risks are not foreseeable at the time of the project’s preparation or appraisal. The application of the Policy to both private and public sector operations should be duly considered.
- (b) Reputational Risk: The Review Panel notes that there are significant reputational risks associated with the M3 Project. The Bank adopted an Integrity Due Diligence Policy for

⁷⁸ Ibid., para. 59 (b) (iii) (b-c).

⁷⁹ Ibid., para. 67 and 59 (b) (iii) (c).

Non-Sovereign Operations in January 2016. An assessment should be made to investigate whether the reputational risks incurred under this project are appropriately addressed under the new Due Diligence Policy. Training on risk assessments need to be provided to AfDB staff.

- (c) Supervision of Environmental and Social Impacts during Construction: Notwithstanding Paragraph 17.4(d) of the CTA, Article 13 of the Bank Senior Loan Agreement explicitly obliges the borrower to comply with the following AfDB environmental and social policies: the Policy on Poverty Reduction (2004), the Involuntary Resettlement Policy (2003), the Policy on the Environment (2004), the Environmental Review Procedures for Private Sector Operations of the African Development Bank (2000), and the Gender Policy (2001). The staff should request M3 to submit environmental and social performance reports during the M3 construction phase for the project to be consistent with the CTA requirement, that is, for the Borrower to comply to environmental and social procedures.
- (d) Management Interactions with the Boards of Executive Directors: Senior Management needs to signal to AfDB managers the importance of well-researched positions when responding to concerns of EDs. Moreover, if assurances are given to EDs, it is essential that the AfDB Senior Management monitors the follow-up actions to observe if they are carried out adequately and with the required attention.

ANNEX 1: REQUEST/COMPLAINT



Afrique-Europe-Interact | Hardenbergstr. 52/54 | 28201 Bremen

**African Development Bank
Integrity and Anti-Corruption Department
Immeuble CCIA, Avenue Jean Paul II
01 BP 1387 Abidjan 01, Cote d'Ivoire, 21th Floor
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 17th of September 2014 a credit from the African Development Bank amounting to 16.8 million euros (10.8 million CFA). There is evidence that Modibo Keita has received this loan solely by deliberately providing misleading and/or fraudulent information to the African Development Bank.

Of particular concern is an unresolved conflict over land between Moulins Modernes du Mali and the two villages Sanamadougou and Sahou that has been going on since May 2010 and during which severe human rights violations have been committed on several occasions. These incidents have become well known far beyond 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 19th of February 2015 during a meeting at the German Federal Ministry for Economic Cooperation and Development in Bonn, in which participated: four representatives from our network and eight members of: the Federal Ministry, the 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 22nd of February 2012 have not finished, they have merely been suspended; only 8 families (7 in Sanamadougou and 1 in Sahou) have accepted compensation— which is a logical consequence of the fact that the villagers do not want financial compensation, but the return of their land (not to mention the fact that the legal proceedings have never been brought to a close).

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

In order to substantiate our accusation, we would like to present the results of our latest research as briefly as 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 27th 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 (6th – 10th March 2015), the focus here was talks to individuals and an exchange of small groups, as well as two meetings with the inhabitants of Sanamadougou and Sahou (3).

b) History of the Conflict

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

c) Legal disputes in the conflict over land

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

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

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

"The property is bordered as follows:

- in the North by the property of FORAS and the property of ECORICE;
- in the South by the Fala de Boky- Wéré;
- in the East by the property of SOSUMAR;
- in the West by the property SOSUMAR."

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

Finally, we would like to draw your attention to a third legal dispute that we became aware of during our talks in Sanamadougou and Sahou: Against the background of the unfinished trial in Markala, the villages applied to the courts on the 3rd of May 2013 that the works be temporarily suspended until the original trial was concluded. However, this case was dismissed by the court for substantive and formal reasons. It needs to be emphasized that the information that served as a basis for this

decision is still in need of elucidation. For example, the corresponding verdict from the 19th of June 2013 states that Moulines 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 Moulines 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/

(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 si-dessous nommes 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	Nombres de membres dans la famille	Signature
1	Ma Coulibaly	Madou ojo	9	D
2	Dombélé	Mossé	50	+
3	Coulibaly	Toni Massa	35	+
4	Diarra	Bamassa	41	0
5	Dombélé	Kony	25	+
6	Coulibaly	Soumaïla	6	+
7	Diarra	Moussa	6	x
8	Diarra	Soumane	13	0
9	Diarra	Fessan	7	+
10	Coulibaly	Bahinin	35	+
11	Coulibaly	Bakary	25	+
12	Coulibaly	Seydou	6	+
13	Coulibaly	Oumar N'Gassa	39	+
14	Coulibaly	Bourama	5	0
15	Diarra	Kony	44	D
16	Tangara	Lamine	20	+
17	Diarra	N'Ko	17	D

18	Diarra	Nafa	15	
19	Ballo	Ballo Barema	17	
20	Ballo	Konibe	8	
21	Ballo	Sontoro	19	
22	Ballo	Mathia	12	
23	Diarra	Yacouba	10	
24	Daou	Barimadje	180	
25	Goulbaly	Sidiblen	46	
26	Diarra	Moetar	57	
27	Diarra	Tieloro	05	
28	Diarra	Madougnama	21	
29	Diarra	Tieman	31	
30	Diarra	Dasson	12	
31	Diarra	Natoura	15	
32	Diarra	Barimefankelen	25	
33	Diarra	Choba	05	
34	Goulbaly	Dramanecho	10	
35	Diarra	Moussa	13	
36	Diarra	Bakary Bakoro	16	
37	Diarra	Bassi	09	
38	Diarra	Siaka Binte Bolly	18	
39	Diarra	Anassa	21	
40	Diarra	Soulemane	15	
41	Diarra	Batieman	24	
42	Diarra	Soungoba	10	
43	Diarra	Modibo	10	
44	Diarra	N'ji	25	

45	Diarra	Ladji NiKa	08	08
46	Diarra	Magnama	11	09
47	Coulibaly	Karamogo	15	12
48	Coulibaly	Sekou	05	08
49	Coulibaly	Dorra	04	m
50	Coulibaly	Sibutie	05	08
51	Sangare	Bakary	10	00
52	Coulibaly	Dusse	20	08
53	Coulibaly	Bodjoukou	12	08
54	Coulibaly	Barema	05	08
55	Diarra	Koko	31	m
56	Diarra	Maussagnatie	22	08
57	Coulibaly	Fousseyni	13	08
58	Coulibaly	Soungouba	15	08
59	Coulibaly	Seyiri	13	08
60	Coulibaly Maore	Yankoro	16	08
61	Tangara	Djokolo	08	08
62	Tangara	Kony	10	08
63	Tangara	Koko	20	08
64	Coulibaly	Fatama	06	08
65	Coulibaly	Boih	11	08
66	Coulibaly	Bina	06	08
67	Coulibaly	Seydou	11	08
68	Diarra	Fatama	15	08
69	Diarra	Toukane	21	08
70	Diarra	Fassoun	20	08

71	Diarra	Dede	33	LD
72	Diarra	Tahirou	12	2P
73	Diarra	Balame	16	2S
74	Diarra	Melobaly	06	NA
75	Bouare	Alou	22	9
76	Bouare	Daouda	07	8
77	Diarra	Bacherou	51	8
78	Goulbaly	Betlin	07	8
79	Diarra	Bagnini	19	F
80	Diarra	Battara	07	8
81	Diarra	Sibiry	11	8
82	Goulbaly	Binke	16	8
83	Goulbaly	Moussa	17	8
84	Goulbaly	Betlin	32	8
85	Goulbaly	Fouladye	23	8
86	Diarra	Niazon	10	8
87	Diarra	Bina	13	8
88	Diarra	Amadou	11	8
89	Diarra	Medibo	10	8

Numéro d'ordre de familles	Prénom et	Nom des chefs de familles	Nombre Personnes par famille	Dommage 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 1 ^{er}	Coulibaly	12	
09	Josa	Coulibaly	07	
10	H	Coulibaly	08	
11	Hou	Coulibaly	15	
12	Seydou 2 ^e	Coulibaly	07	
13	Doulaye	Coulibaly	78	
14	Gracissou	Coulibaly	12	
15	Korô	Cissé	06	
16	Hobou	Tao	08	
La liste des personnes qui dit nous avoir des dommages de Modibo Keita sur leur territoire à SAO			Total 416	

ANNEX 2: MANAGEMENT RESPONSE

AFRICAN DEVELOPMENT BANK GROUP



MANAGEMENT RESPONSE ON THE REQUEST FILLED ON THE DIVERSIFICATION OF THE ACTIVITIES OF THE MODERN MILLS PROJECT (*MOULIN MODERNE 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	Moulin moderne 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 Moulin Moderne 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 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.

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 Moulin Moderne 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 Boards 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.

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> <p>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.</p> <p>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.</p>

**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.

ANNEX 3: Terms of Reference for the Compliance Review of the M3 Project Approved by the Boards of Directors of the Bank on 23 November 2016

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 M3 Project 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. Timeframe of Compliance Review

The proposed duration/ timeframe 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 timeframe.
- (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.

12. Budget

The Budget proposed for the compliance review activities for the Diversification of the Activities of "Moulin Moderne Du Mali" (M3) Project is presented in Table 1.

Table 1: Budget for the compliance review

Description		Unit Cost (USD)	Quantity	Cost (USD)	
IRM Expert 1, Lead	Fees	1550	15	23250	*
	Airfare	5000	1	5000	
	Per Diem	224	5	1120	
IRM Expert 2	Fees	1550	10	15500	*
	Airfare	1000	1	1000	
	Per Diem	224	5	1120	
IRM Expert 3	Fees	1550	10	15500	*
	Airfare	8000	1	8000	
	Per Diem	224	5	1120	
Sub-Total 1				71610	
Miscellaneous	Car Rental	600	3	1800	
	Miscellaneous			1000	
Sub-Total2				2800	
Total (USD)				74410	

* IRM Experts' Mission: 5 travel days and 10 Workdays for the Lead Expert
5 travel days and 2 Workdays for revision for the other Experts

ANNEX 4: List of Other Supporting Documents Relied Upon by the Compliance Review Panel During the Compliance Review of The M3 Project

A. Documents from the African Development Bank

African Development Bank
ADB/BD/IF/2016/76

Registration of a Request Related to the Diversification of the Activities of Modern Mills Project in Mali

13 May 2016

African Development Bank
CRMU Department

Mali-Diversification of the Activities of Modern Mills Project-The Independent Review Mechanism: Eligibility Assessment Report for Compliance Review

November 2016

African Development Bank

Management Response on the Request Filed on the Diversification of the Activities of the Modern Mills Project

22nd August 2016

African Development Bank

Project Concept Note: Mali Modern Mills

May 2013

African Development Bank Evaluation Report - List of Comments, Business Loan for the diversification of the activities of the Mali Modern Mills du Mali (M3) April 2014
West Africa Region (ORWA)

Mali: Report of the Country Team Meeting of April 11, 2014

April 2014

African Development Bank

ADB/BD/WP/2014/117

Mali- Diversification of the Activities of “Moulin Moderne du Mali” (M3)

16 June 2014

African Development Bank

ADB/BD/WP/2014/117/Add.1

Mali- Diversification of the Activities of “Moulin Moderne du Mali” (M3)

16 June 2014

African Development Bank
Aide-Mémoire for the Boards of Directors, Corporate loan for the diversification of the activities of the Moulin Moderne du Mali (M3)
September 2014

African Development Bank
ADB/BD/IF/2014/79
Mali- Modern Mills Project, Environmental and Social Management Plan (ESMP)
21 April 2014

African Development Bank
ADB/BD/SD/2014/984/HL
Highlights of the Ordinary Meeting of the ADB Boards of Directors held on 17 September 2014
12 November 2014

African Development Bank
Note - Mission Segou, MLFO, 10 & 12 November 2014

African Development Bank
Feedback on the Compliance Review and Mediation Unit (CRMU) mission in Ségou and Bamako from 20 to 27 June 2016
July 11, 2016

African Development Bank
Segou Mission Note, MLFO 1516 March 2016
African Development Bank Group
Moulin Modern du Mali Company M3 supervision Mission: Post Mission Report
October 2016

African Development Bank
End of mission report – Project evaluation of the production of pasta and couscous by the Moulin Moderne du Mali, Bamako, 23-27 September 2013, October 7, 2013

African Development Bank
December 19, 2014
Multi-currency Medium Term Credit Opening Agreement between Mali's Modern Mill and the African Development Bank in the presence of Banque Atlantique du Mali

African Development Bank
Common Terms Agreement Relating to the opening of a Multi-Currency Credit Facility with Medium Term Credit and Reusable Credit, dated December 19, 2014, between Moulin Moderne du Mali and Banque Atlantique Mali S.A. and African Development Bank and West African Development Bank

African Development Bank
Mali Modern Mills project: Executive Summary of the Environmental and Social Management Plan (ESMP)

African Development Bank, Responses to ED's Questions, Moulin Moderne du Mali (M3), May 2015

African Development Bank
Questions and responses on Moulin Moderne du Mali
Mali, 15 September 2014

B. Documents from Mali

ARC
AFRICA RISK CONSULTING
Project Hoseana
Memo, 18 December 2014

ORRICK-Rambaud Martel

Financing of the Société Moulin Moderne du Mali (M3) - Legal Opinion on the Validity of Financing Documents April 23, 2015
HC- Hera Conseils
Legal Notice of Capacity
19. December 2014
Jurifs Consult
Legal Opinion
24 April 2015

Ministry of Economy and Finance - General Secretariat. Project of Diversification of the Activities of "Moulin Moderne du Mali": Letter of no objection relative to the loan of the AfDB
December 09, 2014

General Secretariat of the Government. Bearing Organization of the Management of Lands assigned to the Niger Office July 10, 2016
- Office of the Prime Minister
Mission Report of the Prime Minister's office on the State of Implementation of the Land Conflict Recommendations in the Localities of Sanamandougou, Sahou and San, in the Region of Segou December 2014
Minister of Rural Development- Office du Niger- General Management
Explanatory Note on the Dossier of the Modern Agricultural Farm of Mali (3M-SA) Situation on August 31, 2014
August 31, 2014

ESDCO-SARL

“Moulin Moderne du Mali” - Environmental and Social Management Plan of the Pasta and Couscous Production Project, Final Version
February 2014

Republic of Mali

“Moulin Moderne Mali” - Detailed design study of the development of 7 400HA in the Seribabougou locker, Volume 5, Environmental and Social Impact Assessment Report June 2010
USAID/MALI
Mali Land Tenure Assessment Report
September 2010

Ministry of Interior and Security
Region of Segou, Cabinet of the Governor,
Mission Report, November 5, 2014

Office du Niger
Mission Report
7 November 2014

Appeal Court of Bamako
Court of First Instance of Segou, Order of Referrals
Extracts from the Minutes of the Registry of the court
March 18, 2013
Law Firm
Maitre Ahmadou Maiga
Ahmadou o Maiga

Bailiff, Segou
Statements of Final Report of Assignment of Fields to the Peasants of the Village of Sanamadougou -Marka-Sanamadougou,
09-09-2014

Republic of Mali
Certificate of Recognition,
10-09-2014

Office du Niger
Executive Management
Ordinary Lease Agreement No. 001 / PDG-ON
Between Office du Niger and Mr. Modibo Keita

C. Others

The Oakland Institute
Understanding Land Investment Details in Africa: Mali
2011

FIAN
Land grabbing and human rights in Mali
The cases of Sanamadougou-Saou Sansanding and San
March 2013

Deutscher Bundestag
Drucksache 18/8565
Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Niema Movassat, Heike
Hänsel, Christine Buchholz, weiterer Abgeordneter und der Fraktion DIE LINKE.
Mai 2016

International Monetary Fund
Mali: Poverty Reduction Strategy Paper- Joint Staff Advisory Note
April 17, 2013

AFRICAN DEVELOPMENT BANK GROUP



MANAGEMENT RESPONSE AND ACTION PLAN ON THE COMPLAINT FILED ON THE DIVERSIFICATION OF ACTIVITIES OF THE MOULIN MODERNE DU MALI PROJECT

MARCH 2018

Questions on this report should be referred to:

Mr. C. BOAMAH	Senior Vice President	SNVP	Extension 2003
Mr. M. DIOP	OIC Director	SNSC	Extension 3831
Ms. R. ARON	Principal social development specialist	SNSC	Extension 8467

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LIST OF ACRONYMS

AfDB	African Development Bank Group
BCRM	Compliance Review and Mediation Unit
BOAD	Banque Ouest Africaine de Développement
CAI-SA	Complexe Agropastoral et Industriel
CTA	Convention des Termes Communs
AEI	Afrique-Europe Interact NGO
EDs	Executive Directors
E&S	Environmental and Social
ESMP	Environmental and Social Management Plan
ESIA	Environmental and Social Impact Assessment
IRM	Independent Review Mechanism
ISS	Integrated Safeguards System
MFLO	Bank Country Office in Mali
M3	Moulin Moderne du Mali
ON	Office du Niger
PAPs	People affected by the Project
RAP	Resettlement Action Plan
RMCs	Regional Member Countries
OpsCom	Operations Committee

1. INTRODUCTION

This Management Response is a reaction to the submission of the draft Compliance Review Report prepared by the Independent Review Mechanism (IRM) Experts on the “*Moulin Moderne du Mali*” (M3) Project. The Management Response derives from a review of the IRM findings, project documents and internal consultations.

The project is classified as Category 2, a medium risk operation in accordance with the Bank’s environmental and social (E&S) policies and guidelines in existence at the time of the approval of the Project Concept Note and prior to the effectiveness of the Bank’s current Integrated Safeguards System. An Environmental and Social Impact Assessment (ESIA) was prepared by the sponsor in 2012 in accordance with Malian legislation and regulations. With the support of the Bank, the sponsor prepared a detailed Environmental and Social Management Plan (ESMP) integrating and expanding further upon the initial ESIA’s findings. The ESMP was prepared in line with the Bank’s previous E&S policies and guidelines and other relevant international best practices and standards. The ESMP assessed the project’s E&S impacts and proposed measures for mitigating E&S risks and enhancing E&S benefits. The ESMP and the Executive Summary of the ESMP were reviewed and validated by the Bank, and the Executive Summary of the ESMP was disclosed by the Bank in April 2014.

The project was presented to the Board of Directors in September 2014 and was subsequently approved. Throughout the project identification, preparation, and appraisal stages, the Bank had continually assessed and addressed existing and emerging E&S considerations in light of the nature of the M3 Project and the financial resources the Bank intended to invest in the existing industrial processing facility of the project.

2. SUMMARY OF ISSUES RAISED IN THE IRM COMPLIANCE REVIEW REPORT

In responding to the complaint, the IRM report analyzed specific issues and made various claims that are summarized below:

LAND DISPUTE: INADEQUATE ASSESSMENT AND MONITORING OF LAND ISSUES

- *Land grabbing:* IRM considers that there is no evidence of “land grabbing” because the land is “owned by the Office du Niger” and leased to the Keita Group but posits that there is a land dispute that has not been adequately monitored and reported by Bank teams to alleviate any reputational risk the Bank may be exposed to.
- *Land valuation and compensation:* IRM report also claims that the land valuation based on *Office du Niger* criteria was not properly justified and subsequent compensation was not satisfactory to the affected individuals in the villages and brought some individuals to refuse the compensation scheme.
- *Environmental and social assessment:* The IRM report posits that the ESIA report prepared by M3 was incomplete as it did not include an environment and social management plan (ESMP).
- *Monitoring of compensation and mitigation measures:* The IRM report claims that project implementation monitoring by the Bank and the submission of environmental and social performance reports by the client were not adequate, especially regarding the monitoring of compensation.

NON-COMPLIANCE WITH THE BANK'S POLICY ON POVERTY REDUCTION

- The Review Panel claims that there has been negligence on the part of the Bank staff and Management by not applying and complying with the Bank Group Policy on Poverty Reduction (2004).
- *Social impact assessment*: The IRM panels claims that the Bank should have conducted or should have advised M3 to conduct a social impact assessment to assess the likely impacts of projects on the poor and vulnerable groups.
- The IRM report also suggests that the monitoring and evaluation of projects should lay more emphasis on outcomes and impact assessments should be conducted at greater frequency.

NON-COMPLIANCE WITH PRIVATE SECTOR ENVIRONMENTAL REVIEW PROCEDURES

- The IRM report claims that the Bank failed to prepare an environmental audit on the existing facility
- The report also claims that supervision missions did not closely monitor the social and environmental aspects of the project.

3. RESPONSE TO ISSUES RAISED IN THE COMPLIANCE REVIEW REPORT

Management welcomes the IRM Compliance Review Report on the M3 Project. Management would like to restate its main positions as presented in the November 2016 Board examination of the complaint and notice of registration by BCRM as follows:

INVOLUNTARY RESETTLEMENT

- ***The Bank's investment has not resulted in involuntary resettlement (physical or economic)*** that has required the compensation of Project affected people. However, 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. *This is agreed to by the IRM experts.*

MANAGING REPUTATIONAL RISK

- ***Management has fully complied with the recommendations related to reputational risks*** highlighted in the Project Appraisal Report and reiterates that disbursement will be terminated and repayments will be sped up in the event the M3 Project or the Keita Group is found liable, in line with the clauses contained in the loan agreement. *This is agreed to by the IRM experts.*

CLOSURE OF LEGAL CASE

- ***Regarding the Legal Proceedings, cases were closed before disbursements were made by the Bank.*** BCRM has acknowledged that they received a confirmation that the court proceedings were closed at the time the request was sent to PIAC and later transmitted to BCRM. *This is agreed to by the IRM experts.*

STATUS OF LAND LEASE

- ***The leasing of the land area to M3 by the Office du Niger is a regular transaction*** on the basis of conclusions of additional checks from an Independent International Legal Office. *This is agreed to by the IRM experts.*

4. CONCLUSION

Management is of the opinion that the IRM compliance audit report on the M3 project did not take into consideration all the technical, factual and contextual information available on the project, and this has influenced the final conclusions and recommendations made in the report.

Nevertheless, Management has prepared the attached action plan following internal consultations with PISD and PGCL. The Bank will work closely with the Client and the Government of Mali to ensure the proper implementation of the Management Action Plan and will report to the Board of Directors in a timely manner.

MANAGEMENT ACTION PLAN			
Recommendation	Action	Timeline	Responsible
Recommendation a) : Review Panel's Recommendations to bring the M3 Project into compliance with Bank Group policies and procedures and to remedy material adverse impacts			
<p><i>1.1 Compliance with Poverty Reduction Policy. Bank to ensure that compensation is adequate through a participatory and transparent process</i></p> <p>Bank staff and Management need to be actively engaged, both technically and financially, in the assessment and implementation of appropriate compensation. The assessment of adequate compensation should be made through a participatory, transparent and accountable process</p>	<p>Bank to engage the Client 3M as well as Government of Mali in the assessment and monitoring of compensation and extinction of compensation dispute</p>	<p>Q4, 2018</p>	<p>Bank, Client and Govt of Mali</p>
<p><i>1.2 Compliance with the Environment Policy (2004) and the Environmental Review Procedures of Private Sector Operations (2000).</i></p>	<p><i>Agree: Correctives measures already taken in the ISS 2013. ISS midterm review due in 2018/2019 will look into ways of strengthening compliance of private sector operations with the requirements of the ISS and ESAP procedures.</i></p>	<p>Q2, 2019 onward</p>	<p>Bank</p>

	<p>Bank will disseminate its Guidance Notes to provide support to Bank staff have been developed and cover social considerations including participatory process, consultation, vulnerability assessment, compensation and necessary measures for poverty reduction.</p> <p>Environment policy and Environmental review procedures for private sector have been updated and replaced by the ESAP 2013 which cover both public and private operations.</p>		
<p><i>2.1 The Review Panel recommends to the Board of Directors of the Bank to approve that the Director of the BCRM together with Mr. Sherif Arif- one of the IRM Experts- will conduct the monitoring activities for the M3 Project</i></p> <p><i>2.2 Management should submit semi-annual progress reports to the BCRM on the implementation of the aforesaid M3 Action Plan.</i></p>	<p><i>Management takes note of this demand from BCRM and will cooperate with BCRM in conducting this activity</i></p>	<p><i>2018 onward</i></p>	<p><i>Bank</i></p>
<p>Recommendation c): Changes in Bank systems and procedures to avoid a recurrence of such or similar violations</p>			
<p><i>3.1 Develop operational guidelines for the poverty reduction policy</i></p> <p><i>3.2 Reputational risk: Check and ascertain that the Integrity Due Diligence Policy for Non-Sovereign Operations adopted in January 2016 is robust and covers risks incurred under this project</i></p> <p><i>3.3 Supervision of environmental and social impacts during construction: request M3 to submit environmental and social performance report during the M3 construction phase for the</i></p>	<p>Agreed:</p> <p>Integrated Safeguards System and accompanying Environmental and Social Assessment Procedures and Guidance Notes to provide support to Bank staff have been developed and cover social considerations including participatory process, consultation, vulnerability assessment,</p>		

<p><i>project to be consistent with the CTA requirement for the Borrower to comply on environmental and social procedures.</i></p> <p><i>Senior Management monitors that these follow-up actions are carried out adequately and with the required attention.</i></p>	<p>compensation and necessary measures for poverty reduction</p> <p><i>SNSC will carry out proper monitoring of activities during construction phases.</i></p>	<p>2018 onward</p>	<p>Bank, Client</p>
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