

4th February 2016 | Open letter to the German Ministry of Development (concerning Sanamadougou et Sahou)

To the State Secretary Mr Thomas Silberhorn – as answer to your letter from 16th December 2015

Dear Mr Silberhorn,
Dear Ms Kaiser,
Dear Mr Rauh,

On 16th December 2015, you have once more responded in detail to information we have been conveying to you concerning the occurrence of land grabbing in the Malian villages of Sanamadougou and Sahou. While we would like to cordially thank you for your effort, we also have to express our astonishment, if not confusion, as your statements in significant matters are based on factually false information (which we are sure you are not accountable for). Specifically, a court sentence is mentioned, supposedly passed on 20th December 2012, in the legal dispute between the two villages Sanamadougou and Sahou and the company M3-SA by investor Modibo Keita. Correct, however, is that on this day, the court has merely decided for the appointment of an external consultant (see the ruling included in attachment 1) and that hence, to this day the case is far from being closed. Additionally, there are several other inaccuracies in your letter. Therefore, we would like to turn to you once again. You may be interested to know that an almost identical letter is being sent to the Malian president Ibrahim Boubacar Keita.

In the meantime, we would feel very obliged to you, if you promptly initiated an extensive investigation of the circumstances, we will relate to you in the following. In our eyes the current situation is as dramatic as it is paradoxical: On the one hand, German and European political actors point to the importance to combat the structural causes of flight and migration almost on a daily basis – particularly in West Africa. On the other hand, the German government actually supports companies like M3-SA, which are responsible for large scale land grabbing, by providing loans – in this case through the African Development Bank and the DEG (Deutsche Entwicklungsgesellschaft). Moreover, as we have already pointed out in our letter to you in April 2015, M3-SA should not have received the 16.8 Million Euro loan, provided by the African Development Bank in September 2014, in the first place, as Modibo Keita has massively violated the loan conditions in at least one respect. Not only for reasons of migration and development politics, but also in terms of democratic practice, we regard it as imperative to take note of this fact and consequently demand the repayment of the loan, as laid down in the contract. It is not acceptable that the German government acts based on obviously incorrect information. In Africa as well as in Europe incidents like this undermine the trust in democratically legitimised institutions.

a) Court Ruling from 20th December 2012

As already mentioned, in your letter you refer to a supposed court judgement issued by the competent court in Markala on 20th December 2015 to the disadvantage of the villages Sanamadougou and Sahou, against which these villages allegedly had failed to lodge an appeal. We do not know how this information came about. What we do know, however, is that to this day no such ruling exists. Instead, the ruling of the court in Markala on 20th December 2012 merely ordered the appointment of a consultant who, in particular, was meant to clarify, if the leasing contract between Modibo Keita and the Office du Niger encompasses the land of Sanamadougou and Sahou. (1).

However, this consultant, Mr Lamine Souley Sidibe, has still not taken up his work. Worse yet: He has not even taken the first step, which is to issue an invoice to the three parties involved in the court case (that is the two villages, the investor Modibo Keita and the administration of the Office du Niger). The payment of this would have been the precondition for the activities of the consultant to start. In relation to this, it might also be of interest, that due to a lack of adequate legal counsel, these villages were not informed about the possibility to independently demand a bill from the consultant. This would be one way to enable, if not force, the court proceedings to progress, at least if the villagers would have been prepared to initially cover the total costs of the consultancy. In contrast, Modibo Keita and the authorities of Office du Niger are very likely to have been aware of the fact that their course of non-action ultimately leads to delaying the proceedings virtually indefinitely. This illustrates that, despite the fact that the Office du Niger as a state agency is bound to act according to the rule of law, both these actors are not particularly interested in elucidating the facts.

Apart from that, the recently (7th April 2015) appointed attorney of the villages, Mr Hamadi Karambe, explicitly pointed to the fact that according to Malian law, under these circumstance trials are by no means considered closed, but in fact are merely suspended and can be taken up again at any time. This was discussed during a meeting in his office on 13th January 2016 in Bamako – in which Ms Dorette Führer and Mr Olaf Bernau also participated as representatives of the European branch of Afrique-Europe-Interact.

Finally, an additional note concerning the current status of the trial: After receiving the relevant files from the court in Markala, Mr Hamadi Karambe wrote on 19th June 2015 to Mr Mohamed Sanogo, who as court bailiff fulfils the role of a court representative. In this letter, he pointed to the yet pending expert opinion (attachment 2). Accordingly, on 2nd July 2015, the bailiff once again sent the court assignment to the consultant Lamine Souley Sidibe (attachment 3). Still, nothing further happened after that. As a consequence, Hamadi Karambe sought personal contact with Lamine Souley Sidibe on 18th January 2016. During that conversation Hamadi Karambe found out that the consultant in question was not willing to take on the assignment, albeit more than three years after his appointment! When shortly after, Hamadi Karambe contacted the competent judge in Markala to demand the appointment of a new consultant, he was told that a change of judges for this case was imminent and that only the new judge, whose name is already known, would deal with the issue.

b) Payments of compensation

The fact, that the lawsuit is not closed until today, does not only constitute a violation of the first credit term of the African Development Bank, it also has consequences for the second credit term, as we have explained several times in the past. Because the payments of compensation make only sense under the condition, that the lawfulness of the contract between M3-SA and the Office du Niger is judicially definitely confirmed. In a still open lawsuit, however, the acceptance of payments of reparation would equal a factual withdrawal of the claims that have been filed via lawsuit. However, the villagers have rejected payments of reparation from the beginning and instead demanded the restoration of their land.

Nevertheless, we want to go more in detail into the question of payments of reparation at this point. Because not only Modibo Keita, or M3-SA respectively, asserted several times that reparation had been paid. Also, in the government report, which you quote and which was developed with participation of CMAT (Convergence Malienne contre les Accaparements de Terres), it says that the inhabitants of Sanamadougou had received 60.516.000 CFA (92,390 euros) as reparation. More concrete: Only 5 families are supposed to have refused the money in this village – other than in Sahou, where not a single family had accepted payments of reparation. (2)

It is exactly these and similar assertions which the two villages have again and again emphatically rejected – for example, in an open letter in July 2014 (3) and at a meeting of the two villages with two representatives of the African Development Bank at the end of December 2014 (4). In addition, in April 2015, we handed over a list to the BMZ and the African Development Bank with the names of all those families in Sanamadougou and Sahou, who according to their own statement have not gotten any payments of reparation. The villagers have explicitly stated that there were only 8 families in Sanamadougou and Sahou, in which, in fact, only individual family members had accepted money, but not the heads of family themselves. Insofar, it would be wrong to talk about reparations. In fact, it can be assumed, that Modibo Keita, or M3-SA respectively, had tried to win over individual family members with corrupting gifts and so to weaken the social cohesion of the villages.

For further clarification, we therefore want to propose again (as we already have done in April 2015) to check the list of names of the bailiff, who was authorized by M3-SA, and who is supposed to have paid the reparations in Sanamadougou (this task would probably be one to be conducted by the African Development Bank in cooperation with the Malian authorities). In order to do so, first, it had to be clarified if the recipients really are inhabitants of the two villages (in comparison with the local resident and tax register). Secondly, the respective heads of the family had to be asked to what extent they had known of these monetary payments and what their opinion was about individual family members having supposedly accepted money. Thirdly, it would have to be clarified to what extent explicit acts of cession are available to the bailiff, on which the recipients – with the exact nomination of the land worked by them (position and seize) declare their willingness to accept reparation for the land which was so far worked by them. Because a mere receipt for having received a certain amount of money is not quite the same as receiving the reparation for a certain piece of land.

Altogether a lot suggests that M3-SA has breached at least one loan condition of the African Development Bank, probably both. Therefore, we want to urgently ask you, dear Mr Silberhorn, to take the necessary measures in the context of the African Development Bank so that from the part of the bank a procedure for the refunding of the loan by the M3-SA can be instigated.

c) Measurements in May 2015

In May 2015, two surveyors, who had been appointed by the governor in Segou, have measured all fields, which the inhabitants of Sanamadougou and Sahou have lost through the activities of Modibo Keita respective M3-SA. Since then, however, nothing has happened. Even more: Until today the two villages have not been informed about the purpose of these measurements (It only seems to be clear, that the area which was lost is at least an area of 886 hectares). Instead, the situation in Sanamadougou and Sahou has been extremely controversially discussed in the Malian public, for example, on the 2nd of July 2015 in the Malian parliament. In addition, numerous talks of the inhabitants with representatives of different government offices and authorities have taken place: First, in July 2015, after the two villages had announced a symbolic field occupation for the end of the fasting month Ramadan. Thereafter, when the two village heads were received for talks by the responsible ministers recently on the 3rd and 4th of February 2016. Overall, this highlights that in Malian politics the case of the two villages Sanamadougou and Sahou is by no means treated as concluded. Therefore, we urgently want to appeal to you to address this problem also in the context of German-Malian government consultations, especially when addressing the governmental development cooperation concerning the Office du Niger. Because the other side of the described developments is that since 2010, numerous young people from the villages Sanamadougou and Sahou have already set out for Europe – and this with the well-known consequences. In April 2015, for example, about 1.200 people died in two maritime disasters in

front of the Libyan coast, among them also several people from Mali. This is the reason why Afrique-Europe-Interact has held a commemoration ceremony in Kita on the 19th of December 2015 with 250 participants.

With best regards, sincerely,

Volker Mörchen

Footnotes:

(1) 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."

Afrique-Europe-Interact has had comprehensive talks with the inhabitants of Sanamadougou and Sahou about these boundaries. Moreover, the representatives of the network have 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 want to point to a third trial of which we have obtained knowledge during our talks in Sanamadougou and Sahou: Against the background of the unfinished trial in Markala, the two 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 Moulins Modernes du Mali had established the boundaries of its areas based on GPS data. This is, however, implausible, as one of the key problems is precisely the absence of any clearly defined boundaries in the contract.

(2) The delegation visit has taken place on the 26/27 of November 2014, after there had been a first report following the first delegation visit in April 2014. The participation of CMAT in both visits has been massively criticized by the two villages. The report is documented on the following website: <http://uacddd.org/spip.php?article87>

(3) The letter is documented on the website of Afrique-Europe-Interact – together with the government report on Sanamadougou and Sahou from April 2014 which we mention in footnote

4: : <http://afrique-europe-interact.net/1311-2-Lettre-Sanamadougou-et-Sahou-Juillet-2015.html>

(4) This meeting has taken place in the townhall of Sibila at the invitation of the African Development Bank (presumably on the 30th of December 2014). Besides two representatives of the bank (one Malian employee and one from Chad) as well as numerous villagers several representatives of the Office du Niger and other (government) authorities have participated. In the meeting, the two employees of the African Development Bank have primarily inquired if and to which amount reparation has taken place.

Enclosures:

- Court decision of the court in Markala from the 20th of December 2012
- Letter of the lawyer Hamadi Karambe to the bailiff Mohamed Sanogo from the 19th of June 2015
- Letter of the bailiff Mohamed Sanogo to the consultant Lamine Souley Sidibe from the 2 of July 2015.

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Attechements: Décision de Markala etc.

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