Multi-stakeholder Consultation Meeting
on the Review of the World Bank Group Sanctions System
Comments Received

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Here are some comments on the World Bank Sanctions Systems Report. The report as it stands is very hard to react to. It is very focused on technical critiques and fixes that look sensible, but I have no knowledge of the background, and the report does not provide much. For example, what does it mean to streamline procedures? Does that mean more effective and efficient processes or does it mean cutting key procedural corners to hurry along cases?

I hope that if the Bank really wants input from any outsiders not directly involved (contractors and their lawyers), that they will provide the longer background document that is now only in internal release. However, they would also need to preface it with a section that gives outsiders the needed background, that puts the issues in a broader context, and that flags issues for debate. What really are the goals of the sanctions system, and how might they be traded off against each other?

The steps already taken and proposed for more transparency, clearer standards, and more expeditious procedures all seem easy to support if the WB is willing to provide the resources. In addition, here are a few issues that occurred to me although I understand that some of them may be dealt with in subsequent reports.

1) A key issue that is not discussed much, is the link between the WB sanctions process and any domestic or international law enforcement. It would be good to spell out that relationship. Obviously, it is related to the transparency of the WB processes, and I certainly applaud the WB's effort to move toward more transparency and the report's advocacy of even more. That would not only increase the deterrent effect of debarment but would also help for prosecutions under domestic law (perhaps in connection with the OECD Convention). Has that happened?

2) Beyond formal legal action in host or home countries, could the World Bank publicize the results of the sanctions process more clearly and widely with the hope of providing additional deterrence through the risk of bad publicity? That could also alert other potential customers to potential problems with these firms.

3) The report mentions restitution as one type of penalty in addition to forms of debarment, but I was not clear how that works or if it is often combined with debarment. Who gets the restitution? The WB or the country or both? Are damages of a multiple of the harm ever levied or is that a job for the domestic courts? Do the cases ever overlap with disputes under BITs or other international treaties with their own dispute resolution mechanisms. Thus this second comment also relates to the links between WB actions and those of domestic courts. Some data would help here as well as some analysis of the issue.

4) I assume that the problem is often that officials in the borrower country are the other side of the corrupt deal so they won't cooperate unless the government has changed in the interim. This explains, I assume, why so many cases involve fraud not corruption. As the report mentions, fraud can be easier to prove than corruption and may just be a side effect of corruption. (One is reminded of the US cases against Mafia kingpins that focus on tax evasion, not their more basic illegal activities). Is there a worry that major instances of corruption are simply missed?

5) More could be said about what looks like a paradox. Most cases involve large multi-national firms, but the actual malfeasance uncovered is frequently fairly low level inside those firms. [Data on this would be useful to the reader; there do seem to be some big cases and lots of small ones--is that right?] SME's are seldom the target of investigations but do seem to be a locus of problems. Also when SMEs are targeted, they may simply fail to respond. Something interesting seems to be happening here, but what? The worst case could be that many firms simply give up on WB business so that bribes and fraud are fewer but so are bidders. Thus collusion or simple monopoly power might be increasing in some areas. That could be checked, Does the WB have systematic data on the number of responsible bidders by country and type of procurement and changes over time? Also bad is the case where they just reemerge under a new name and continue to misbehave so little has changed. Is this investigated?

6) The mention of malfeasance outside of procurement seems very important, and the report might develop that topic more especially since it was flagged by WB staff. Exactly where do problems arise and how might they be dealt with? Obviously if an honest procurement is followed by a corrupt or fraudulent implementation, not much has been gained. Two chapters in my edited book with Tina Soreide deal with the weaknesses of both multi-stakeholder groups and "red flags" in the WB. These results suggest that it would be good to put the WB analysis of the sanctions system in a broader context--both to include non-procurement malfeasance and to include other methods of control. Even in the procurement context, one option is to compare similar contracts across projects to isolate ones that seem particularly out of line in terms of cost.

7) The report mentions "integrity compliance programs" (p. 11). What are they, and does the WB know much about what actually works? In addition, many SMEs firms do not even contact the International Compliance Office to work out an acceptable compliance program after they have been debarred. Can better incentives be designed to induce these companies to seek a compliance plan? Is it just too easy to disappear as a corporate entity and reappear under a new name? However, even if one could induce more firms to work out a plan, how does anyone know if a system is "sufficiently robust"? I am concerned that there is a developing consensus on "best practices" developed by business firms that want to use them to limit the firms' liability without any real research on their effectiveness.