



World Bank & Co. Do we really need Development Banks?

Workshop, May 2015

WU (Vienna University of Economics and Business)



Fighting Fraud & Corruption in the African Development Bank Group

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World Bank & Co. – Do we really need Development Banks?

May 2015

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Outline

- ▶ Fighting Fraud and Corruption in the African Development Bank Group

1. The African Development Bank Group
2. Sanctions Procedures
3. Cross-Debarment
4. Settlement Agreement
5. Case Study



1. The African Development Bank Group

Overview, Mission, Integrity and Anti Corruption Department

Building today, a better Africa for tomorrow

- ▶ **Founded**
 - ▶ 1964
- ▶ **Constituent Institutions**
 - ▶ African Development Bank
 - ▶ African Development Fund
 - ▶ Nigeria Trust Fund
- ▶ **Shareholders**
 - ▶ 54 Regional Member Countries (RMCs)
 - ▶ 26 non-Regional Member Countries



Building today, a better Africa for tomorrow

- ▶ **Mission & Objective**
 - ▶ Spur sustainable economic development and social progress in its RMCs
- ▶ **AfDB Strategy for 2013–2022**
 - ▶ **Two objectives:** Inclusive Growth and the Transition to **Green Growth**
 - ▶ **Five operational priorities:** Infrastructure, Regional Economic Integration, Private Sector Development, Governance and Accountability, Skills and Technology
 - ▶ **Three areas of special emphasis:** Fragile States, Agriculture and Food Security, Gender

Building today, a better Africa for tomorrow

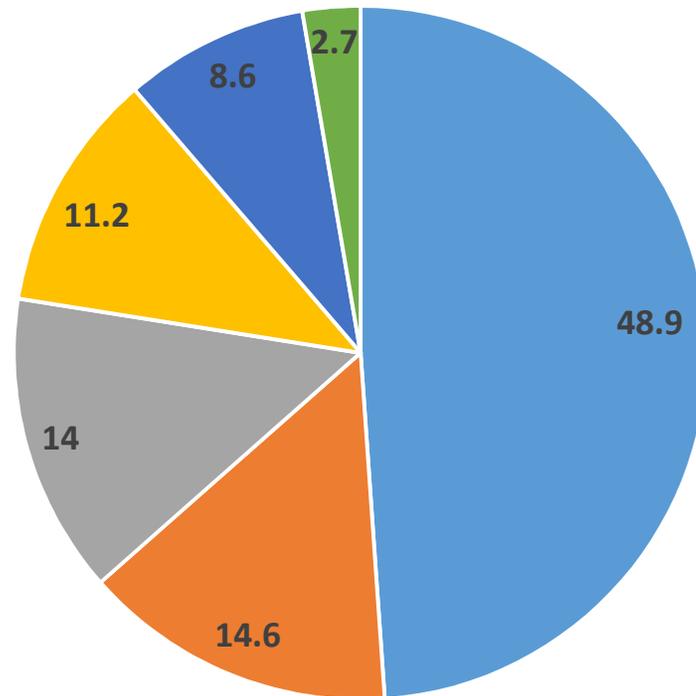
- ▶ **Authorized Capital as of 31 December 2013**
 - ▶ UA 66.98 billion

- ▶ **Approved Operations 2013**
 - ▶ 317 operations (UA 4.39 billion)
 - ▶ ADB: UA 1.83 billion
 - ▶ ADF: UA 2.27 billion
 - ▶ NTF: UA 31.2 million
 - ▶ Special Funds: UA 253.4 million



Building today, a better Africa for tomorrow

▶ Sector Approvals



- Infrastructure
- Social
- Multisector
- Finance
- Agriculture
- Industry, Mining and Quarrying

Integrity and Anti Corruption Department (IACD)



Improve Africa's investment climate



Deters, Prevents and Detects corruption



Safeguard resources by working closely with other departments



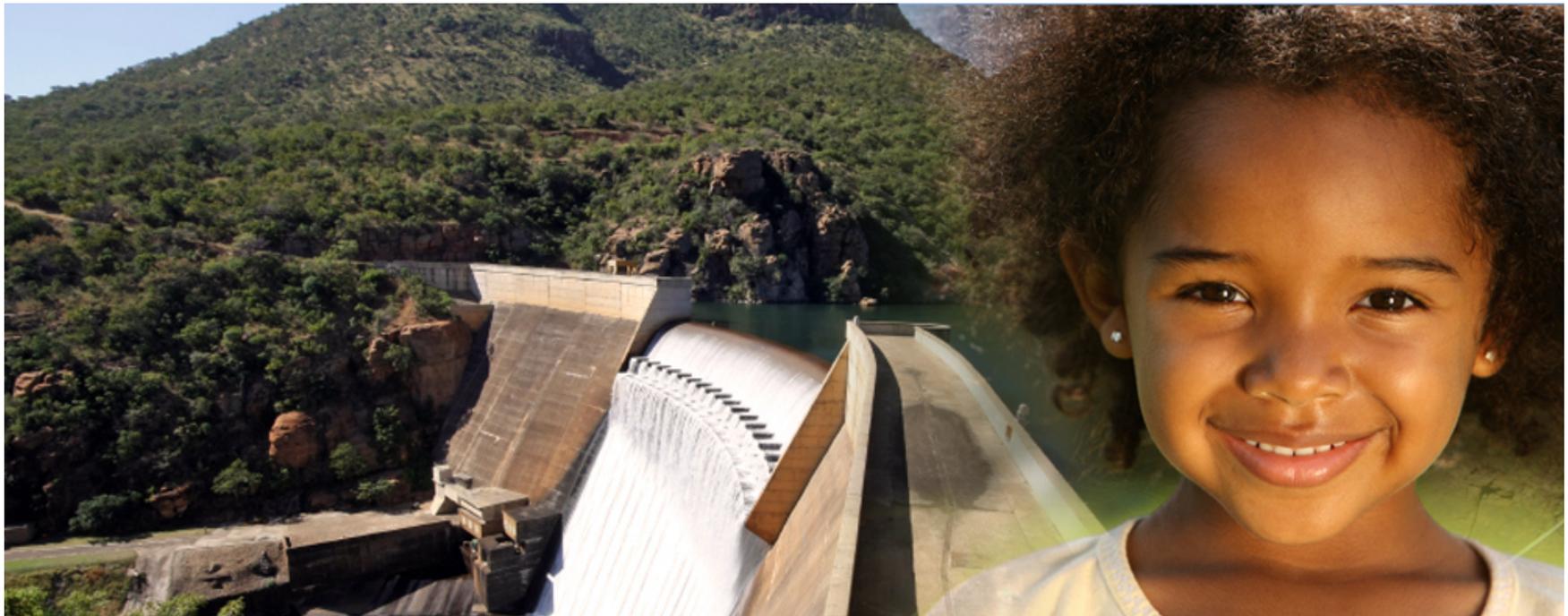
2. Sanctions Procedures

Background, Sanctionable Practices, Process, Range of Sanctions, Aggravating and Mitigating Factors

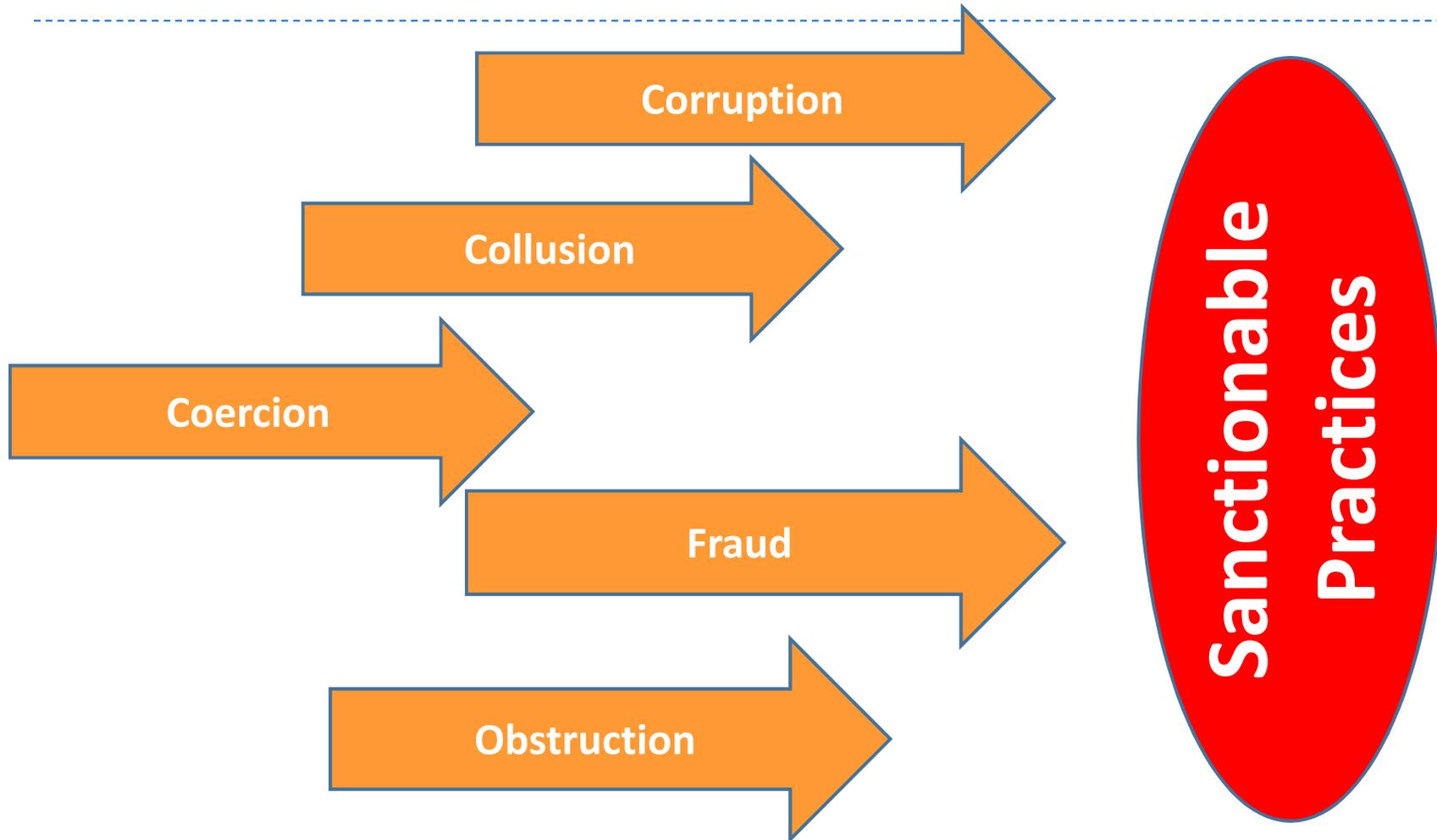
Sanctions Procedures

- ▶ **Background**

- ▶ Derived from the mandate, a fiduciary and legal duty to ensure that funds are used for the purposes for which they were intended



Sanctions Procedures



Sanctions Procedures

- ▶ **Corrupt practices**

- ▶ The offering, giving, receiving or soliciting, directly or indirectly, of anything of value to improperly influence the actions of another party.

- ▶ **Fraudulent Practices**

- ▶ Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

- ▶ **Collusive Practices**

- ▶ An arrangement between two or more parties designed to achieve an improper purpose, including to improperly influence the actions of another party.

Sanctions Procedures



▶ Process

- ▶ Investigation done by IACD
- ▶ Issuance of Findings of Sanctionable Practices to the **independent** Sanctions Commissioner
 - *Including Exculpatory or Mitigating Evidences*
- ▶ The Sanctions Commissioner reviews the Findings of Sanctionable Practice(s) and the Respondent's Response to determine whether a preponderance of the evidence supports a finding that the Respondent has engaged in a Sanctionable Practice
 - burden of proof: **more likely than not**
- ▶ Sanctions Appeals Board
 - *Two tier process*

Sanctions Procedures

▶ Range of Sanctions

- ▶ Letter of Reprimand
- ▶ Conditional Non-Debarment
- ▶ Debarment with Conditional Release
 - base sanction of 3 years
- ▶ Permanent Debarment
- ▶ Restitution and/ or Remedy (independently or joint with other sanctions)



Sanctions Procedures

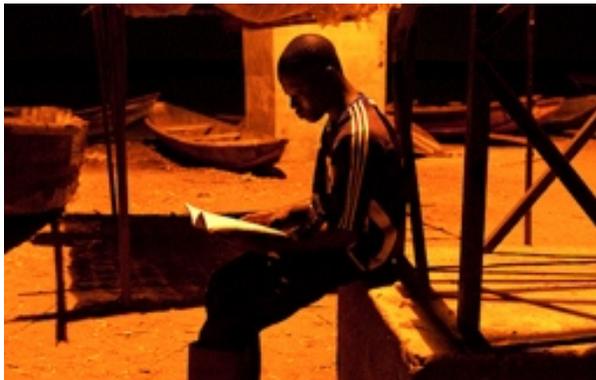
▶ Aggravating Factors



Increase in Base Sanction	Aggravating Circumstances
1 – 5 years	Severity <ul style="list-style-type: none"> ▪ Repeated pattern of sanctionable conduct; ▪ Sophisticated means; ▪ Central role in the sanctionable conduct; ▪ Management’s role in the sanctionable conduct; ▪ Involvement of public official or IFI staff.
1 – 5 years	Harm Caused <ul style="list-style-type: none"> ▪ Harm to Public Welfare; ▪ Harm to the Project.
Up to 10 years	<ul style="list-style-type: none"> ▪ Past History of sanction by any institution; ▪ Violation of Sanction or Temporary suspension.

Sanctions Procedures

▶ Mitigating Factors



Increase in Base Sanction	Aggravating Circumstances
1 – 5 years	Severity <ul style="list-style-type: none"> ▪ Repeated pattern of sanctionable conduct; ▪ Sophisticated means; ▪ Central role in the sanctionable conduct; ▪ Management's role in the sanctionable conduct; ▪ Involvement of public official or IFI staff.
1 – 5 years	Harm Caused <ul style="list-style-type: none"> ▪ Harm to Public Welfare; ▪ Harm to the Project.
Up to 10 years	<ul style="list-style-type: none"> ▪ Past History of sanction by any institution; ▪ Violation of Sanction or Temporary suspension.

3. Cross Debarment

Uniform Framework for Preventing and Combating Fraud and Corruption
and the Agreement on Mutual Enforcement of Debarment Decisions

Cross Debarment

- ▶ **Uniform Framework for Preventing and Combating Fraud and Corruption**
 - ▶ Signed 18 February 2006
 - ▶ Participating Institutions: AfDB, AsDB, EIB, EBRD, IDB and WB
- ▶ **Key points**
 - ▶ Common definitions for corrupt, fraudulent, coercive and collusive practices (obstruction not included)
 - ▶ Common principles and guidelines for investigations
 - ▶ Exchange of information
 - ▶ Integrity Due Diligence
 - ▶ Mutual Recognition of Enforcement Actions
 - ▶ Support for Anti-Corruption Efforts in Member Countries

Cross Debarment

▶ Agreement on Mutual Enforcement of Debarment Decisions

- ▶ Signed 9 April 2010
- ▶ Participating Institution will enforce debarment decisions made by another Participating Institution if:
 - ▶ Decision is based on sanctionable practices
 - ▶ Debarment decision exceeds one year
 - ▶ Publication
 - ▶ Decision within 10 years
- ▶ Each Participating Institution may pursue independent debarment proceedings for separate Sanctionable Practices by the same entity, which may result in concurrent, consecutive or subsequent periods of debarment

Signatory Banks



Cross Debarment

- ▶ **AfDB debars and fines China First Highway Engineering Co. Ltd**

- ▶ Fraud and collusion

- ▶ Published 15 December 2015

- ▶ Debarred for 3 years

- ▶ Financial penalty of USD 18.86 million

- ▶ *There is no such thing as 'too big to sanction'.*

Signatory Banks



www.afdb.org



www.adb.org



www.ebrd.com



www.iadb.org



www.worldbank.org

4. Settlement Agreement

Overview and example

Settlement Agreement

- ▶ **Stay of Proceedings**
 - ▶ Requested by IACD together with the respondent

- ▶ **Submission and Review of Settlements**
 - ▶ Prior to the final decision
 - ▶ Subject to review by the Sanctions Commissioner to ensure fairness, transparency and credibility
 - ▶ Subject to review by the General Counsel to ensure that all Bank's policies are adhered to

- ▶ **Publication**

Settlement Agreement - Example

- ▶ AfDB Levies US \$17 Million in Financial Penalties in Corruption Case (21/03/2014)
 - ▶ Kellogg Brown & Root LLC, Technip S.A. and JGC Corp. agree to pay the equivalent of US \$17 million in financial penalties as part of Negotiated Resolution Agreements with the African Development Bank following admission of corrupt practices by affiliated companies in relation to the award of services contracts for liquefied natural gas production plants on Bonny Island, Nigeria, from 1995 until 2004.

4. Case Study

Fraud and Collusion in a Bank Financed Project

Sanctionable Practices on the Ground





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