Some thoughts on the monitoring of international anti-corruption instruments and initiatives

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• ‘It is not enough to say that people in Africa are corrupt, but to ask who is corrupting them and how do we deal with them’ (Anna Tibaijuka)
• Who is doing the monitoring
• What is being monitored
• How ‘effective’ is such monitoring

Who is doing the monitoring?
• OECD anti-bribery convention: Working Group on Bribery in International Business Transactions (WGB)
• Council of Europe initiatives: Group of States against Corruption (GRECO)
• Inter-American anti-corruption convention: MESICIC
• African Union anti-corruption convention: Committee of State Parties
• ADB/OECD Anti-Corruption Initiative for Asia-Pacific: ‘Steering Group’
• UNCAC: Conference of State Parties/Implementation Review Group
• Financial Action Task Force (FATF)
  + EU?

What is being monitored?
• WGB: single issue of combating the bribery of foreign public officials
• Others have a much wider mandate and inevitably have taken a ‘bite-size’ approach to monitoring e.g. GRECO
• Some are particularly concerned with addressing the issue of implementation (critical monitoring approach)
• Others focus more broadly on highlighting good practice and providing advice and technical assistance to States (information gathering/assistance approach)

The procedure for monitoring varies:
• Self reporting: Asia Pacific initiative
• Peer-review/mutual evaluation
  – Mandatory: WGB
  – Voluntary UNCAC
Review and publication of reports
• Country reports and recommendations are published as are follow-up reports
• Country reports remain confidential although the state party under review is encouraged to publish it (UNCAC)

How ‘effective’ is such monitoring?
The WGB:
• The OECD Convention requires state parties to criminalise (not to prosecute) the bribery of foreign public officials
• The WGB is to monitor and promote full implementation of the Convention through a programme of systematic follow-up
Monitoring has been very effective at one level: e.g.

- ‘Encouraging’ states to introduce the necessary legislative reforms
- Highlighting ‘weaknesses’ in prosecutorial policy

- The TI 2011 Progress Report on the enforcement of the convention argues that the Convention is in danger of ‘losing forward momentum’ because there has been no increase in prosecutions: only 7 of the 37 parties examined are actively enforcing the convention
The indirect benefits

**UNCAC**

One of the key functions of the review process is the monitoring of good practice and the provision of technical assistance
1st 5 year cycle reviews the implementation of chapters III (criminalisation and law enforcement) and IV (international cooperation)

2nd cycle will review chapters II (prevention) and V (asset recovery)

Asia-Pacific initiative

- The Action Plan encourages participating states to develop a range of good governance measures both within the public and private sectors.
- Whilst there is no formal reporting mechanism at the steering group meetings states may file reports on their activities in support of the initiative.
- Information on these reports is readily available
- This provides ‘an accessible overview of legal and institutional frameworks as well as trends and priorities in the fight against corruption’
• Allows the establishment of a database of progress (or otherwise)
• Provides lessons for other countries and encourages them to follow suit
• Helps identify areas for technical assistance
• It also allows civil society organisations to monitor the implementation of these practices.

The future
• 1. Need to retain and enhance the ‘will’ to make the anti-corruption instruments and initiatives work in practice, including the monitoring processes
2. A movement towards developing more critical monitoring?

3. Need to avoid ‘monitoring fatigue’: is all this monitoring necessary?
   • The UNCAC review mechanism will ‘complement existing international and regional review mechanisms... in order ...to avoid duplication of effort’ (Resolution 3/1 section 3)
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