Path away from hypocrisy begins with better accountability for national action: Lessons from, and for, the Brisbane G20 anti-corruption outcomes

A J Brown

Anti-corruption locked in at the G20

As the heat of the Brisbane G20 Summit dissipates, the devilish detail is already starting to emerge which marks how – or whether – the G20 is really going to sustain its credibility.

An important achievement of the Brisbane summit, and the Australian Government’s leadership, is the adoption of a third two-year G20 Anti-Corruption Action Plan.

References to climate change and ‘inclusivity’ in the G20 mission of economic coordination may have been subject to political battles in the leaders’ meeting... but the seriousness of corruption as a brake on growth, and of integrity failures as a risk to economic and financial resilience have been locked down as an indispensable part of the group’s work program.

Moreover, there is now a broadening of the G20’s anti-corruption work as not simply a mandate for helping stamp out “hard” corruption like foreign bribery or the siphoning off of public assets, but also a broader integrity and transparency agenda.

A new, streamlined Implementation Plan, published the day after the summit, includes stronger and clearer commitments to open data, and fiscal and budget transparency. In the plan, there is also greater clarity that the job of the G20 Anti-Corruption Working Group is to support the work of the G20 across its entire program, on issues like tax and trade, investment and infrastructure.

How this is really going to happen, though, remains something of a challenge. Anti-corruption only gets a few lines in the leaders’ communique itself. And while the Anti-Corruption Working Group might now be freshly charged with working on ‘integrity in public procurement’, there is not much cross-reference back to integrity safeguards in the main infrastructure announcement of the Summit, the new G20 Global Infrastructure Initiative.

So how is it going to work, and how will we know what is really being achieved? This is perhaps the key issue thrown up by the new G20 commitments – large and small.
Shell companies in the firing line!

Of course, the high point from the summit was G20 leaders’ decision to follow the G8 with High Level Principles on Beneficial Ownership Transparency – otherwise known as rules for ensuring the real owners of corporations, trust and other legal entities can be identified, in order to clamp down on the use of anonymous shell companies as vehicles for engaging in corruption and tax evasion.

The principles have been welcomed by civil society groups including Transparency International. The principles commit governments to ensuring that information about the real identities of company owners is kept and made available to law enforcement, tax authorities and other institutions, and shared internationally.

Advocacy organisation Global Witness described these ‘dry sounding’ principles as a statement destined to ‘pass most of the world by’, but in fact US President Barak Obama immediately listed it as one of the top three outcomes of the Brisbane summit, and unlike his host Prime Minister Tony Abbott, spoke to it directly in his post-summit media conference.

Many, including TI, the Financial Transparency Coalition, Global Witness and ONE would prefer if G20 countries also committed to public registers of this information. However, the road begins with enforceable and enforced regulation to require the crucial identity information to be kept by companies and those who create, sell and deal with them, in a form that can be readily accessed and shared by the authorities charged with fighting these crimes.

Now, the devil falls to the implementation and the detail.

Griffith University’s professor Jason Sharman, a co-author of the leading 2011 World Bank study The Puppet Masters and the recent Global Shell Games (Cambridge University Press, 2014), describes the text of the principles as – for the most part – a ‘sensible and realistic list of improvements, without over-promising’.

However, according to Sharman, they also face the inevitable problem that ‘talk is cheap’, with two big problems going to the credibility of G20 leaders and the G20 process.

The first trouble lies in the fact that the “new” G20 commitments essentially repeat promises made by most countries since 2003, through the Financial Action Task Force (FATF), to require beneficial ownership information to be kept and made available. Despite these existing commitments, most of the countries involved have ‘spectacularly failed to do so, in law and practice’ – as revealed by the subsequent research.

Contrary to some stereotypes, the worst offenders are not isolated tax havens, which have been responding to the moral and legal pressures to keep better records for years... it is the United States itself, followed by the United Kingdom, Canada and many others.

As Transparency International says, this is not reason to give up – rather, the new G20 principles mean ‘the moral and political mandate for action has now been lifted to a new level’, and in some ways, brought home to roost. But it begs the question: why should anyone believe these new commitments, when they just repeat old unfulfilled promises?

The second problem lies in the story that G20 countries are telling each other, and the world, about the extent to which they are already achieving progress against their anti-corruption goals.

Also released on the second day of the Brisbane summit, were the “accountability reports” of each G20 country, in which they self-assess whether they have achieved commitments in the previous action plan. There is already some confusion, mixed with gilding of the lily.

Eleven of the 19 countries report that their country already requires ‘the beneficial ownership and company formation of all legal persons organized for profit [to] be reported’, but in how many countries are these requirements real?
The UK’s claim is based on proposed reforms which its fine print confirms have not yet been implemented. Turkey – next year’s G20 president – claims to have the requirements in place when actually it does not, including still being a country that allows bearer shares, which is one of the worst, most untraceable ways of transferring company ownership.

This year’s president, Australia, does not seem to be sure. Its individual accountability report claims that, ‘yes’ it has the necessary requirements in place under basic company registration rules, but the all-country summary contradicts this, by appearing to confess the true answer, which is ‘no’.

Such confusion undermines the achievement of having shepherded the new High Level Principles into existence. And we might ask, is this standard of accountability just an isolated problem?

**Whistleblower protection: getting there… or not?**

Unfortunately, there are also other issues on which countries are reporting progress which they are not actually making – potentially on a more serious scale.

In another good move, the Action and Implementation Plans will have the G20 continuing to work towards comprehensive whistleblower protection laws in both their public and private sectors, as a key strategy for ‘effectively detecting corruption activities… and combating corruption’.

Why is this a good move? Because even though this commitment has already been worked on for four years, it would be a mistake to believe the claims of many countries that the job is largely done.

In their accountability reports, every country claims it now has whistleblower protection legislation in place for the public sector, and all but four for the private sector. One might presume, or hope, this means laws which at least meet the principles agreed by the G20 itself in 2011, on advice from the OECD. Yet we actually know that it doesn’t.

In fact, 12 of the 19 countries are claiming they have this legislation in place, when a comprehensive assessment this year by Blueprint for Free Speech, Griffith and Melbourne Universities and Transparency International Australia showed their laws – if they exist at all – to be missing six or more of the 14 basic elements that define reasonable best practice.

Importantly, this assessment was released in draft in June 2014, with all G20 countries encouraged to comment on it through the Think20 engagement group. Many did so, before the report *Whistleblower Protection Laws in G20 Countries: Priorities for Action* was finalised and published in September… two months before release of the latest accountability reports.

On this measure, ten of the G20 countries’ claims to have public sector laws in place can be seen as dubious overstatements, along with eight of the claims about private sector laws. Six of these countries (Brazil, Indonesia, Japan, Russia, Saudi Arabia and Turkey) make their dubious claim for both sectors.

Australia is again no saint. There is no mention of major gaps in its new federal public sector law, like the fact that claims of corruption against any government minister, politician, elected official or member of their staff will attract no protection at all.

And despite claiming to have protection laws in place for private sector whistleblowers, Australia’s limited Corporations Act provisions are missing or defective on 9 of the 14 criteria, and ‘very or quite comprehensive’ on none.

Australia’s self-assessment simply identifies that as a new move, the Australian Securities and Investments Commission proposes to establish an ‘Office of the Whistleblower’. What it fails to disclose is that this is in response to much more far reaching recommendations of the June 2014 Senate Economics Committee inquiry, identifying the need for more serious overhaul of the G20 host nation’s inadequate private sector whistleblowing laws.
Can we do better?

Can Australia, or the G20 as a whole do better than this? The answers are yes – not only can we, but we must.

On something as specific and straightforward as whistleblower protection, it becomes a mystery why Australia would not seize the opportunity of the G20 to accept that Senate Inquiry finding, and say publicly it will get on with the recommended reforms, rather than gloss over the problem.

Indeed, given the high quality of its leadership of the Anti-Corruption Working Group, Australia’s real commitment on these issues bears ongoing scrutiny on a wider range of fronts.

Why would Australia not also show its leadership by completing the decision to join the Open Government Partnership?

Or announce that it intends to become a full member of the Extractive Industries Transparency Initiative, another international mechanism endorsed and encouraged by the G20?

Or back its commitments to transparency with a positive blueprint for open data and citizen rights to information, rather than abolishing the Office of the Australian Information Commissioner as is currently underway?

Or say how it intends to clean up its own ‘know your customer’ requirements and enforcement, under the new beneficial ownership principles?

Are these things all just signs of what many average citizens fear – a huge gap between the high rhetoric of leaders and the reality of their governments’ actions?

It is also clear that the level and quality of accountability reporting of G20 countries on what they are actually doing, under Turkey’s presidency in 2015 and thereafter, needs a massive shake-up.

This includes no longer relying on minimalist self-assessment and self-reporting by countries about what they are doing to implement their commitments. That is simply not enough to provide a meaningful picture of what is really going on or what needs to be done.

The credibility of the G20 as a whole now rests on doing better, on the detail. After all, the driving reason why leaders have consolidated anti-corruption as part of the core G20 agenda is to promote honesty and integrity in the world’s governmental and financial affairs.

If there are reasonable doubts about how honest or accurate G20 countries are being about their progress on agreed issues of anti-corruption, how can leaders expect to be trusted on the rest of their G20 agenda?

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