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# **What's Wrong With 'Good Governance'?**

## *A human rights perspective on governance reform in Indonesia<sup>1</sup>*

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### ***Introduction***

Since the fall of authoritarian regime of Soeharto in 1998, politicians have repeatedly promised to address the triple curse of corruption, collusion and nepotism known domestically as *KKN* that flourished during New Order years. But, so far, little progress has been made. During a year of Soesilo Bambang Yudhoyono's (SBY) reign, although the score of CPI (Corruption Perception Index) announced by Transparency International stated that Indonesia score has increased 2 to 2.2 from range score 0 (highly corrupt) to 10 (less corrupt), but the country rank of it has seriously decreased from 133 to 137. This latest corruption perceptions index ranks Indonesia as the fifth most corrupt country surveyed. If we look at this score and rank more detail, Indonesia has actually been decreasing from year to year since economic crisis 1997 until now. It means, corruption is still happening and worsening after the fall of Soeharto.

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On the other hand, during ‘reformation’ era or the period after the fall of which was well known as New Order, we have seen a situation in blaming economic crisis from internal countries which could not consistently apply the injections of international financial institution, or they denoted it as ‘poor/bad governance’ or ‘crisis of governance’. Corruption, arbitrary decision, and other bad governance became major issues in falsifying Asian crisis at domestic level, and it sneakily tended to hide international financial institutions responsibilities which actually have been involving and influencing to East and Southeast Asia development more than two decades. By giving million dollars of adjustment loan to collapse countries in supporting governance reform, the South countries are still sinking and washed away in circuit of neo-liberalism mainstream. These facts have raised critical perspective on ‘good governance’ and other governance reform projects that has been supported by international financial institutions.

This article will attempt to criticize discourse and implementation of ‘good governance’, especially in questioning why good governance could not reduce corruption effectively, and how the government stand for and respond to solve this problem in Indonesia. This will be described by human rights perspective.

### ***“Good Governance Free Market Assistance”***

The concept of ‘good governance’ is not new, and this issue has been concerned and criticized by many scholars (Bello 2005; Pieterse 2004; Robinson 2004; Quadir et al. 2001; Abrahamsen 2000; George 1995). Since early 1980s, and its prominently in 1990s have seen gradual emergence of the promotion of democracy and the strengthening of good governance as both an objective of and a condition for development cooperation (Abrahamsen 2000; Stokke 1995). It was World Bank as the first which introducing concept of ‘public sector management programs’ in order to maintain better governance in the frame of development assistance conditions, or well known as SAP or ‘structural adjustment program’ (World Bank 1983: 46; Dasgupta 1998). Actually process of

disciplining democracy at that time has been occurred by designing model of governance. Crisis in Africa brought clearer messages on establishing new concept on governance to encounter what World Bank has identified as ‘crisis of governance’ or ‘bad governance’ (World Bank 1994: xiv). In this context, governance is mentioned as ‘the manner in which power is exercised in the management of a country’s economic and social resources for development’ (World Bank 1989: 60).

In Indonesia experience, as common phenomena in Asia or Latin America countries, actually has had similar process in emerging concept of governance especially after economic crisis in mid-1997. Asian crisis has been identified by World Bank in designing ‘new governance’ concept to support better administration and market efficiency. The World Bank discourse on deepening governance has been influencing for more than two decades, and it became the locus for policy among the Organization of Economic Cooperation and Development (OECD) donor community and the major organizations of the inter-state system. Unsurprisingly after crisis, the idea of ‘good governance’ became famous, ‘booming’ and ‘sexy’ agenda in creating various projects proposed by not only government agencies, but also non-governmental groups and academics at many study centers. Here, the idea has been clearly shifted and adopted from Africa to Asia, and exported by the same international financial institutions.

What kind of ‘good governance’ or other governance reform that has been introduced to Asian post crisis? In World Bank (1992) terminology has defined ‘governance’ as the exercise of political power to manage a nation’s affair. This management – also called public sector management – has three components: (i) legal framework for development;

(ii) accountability; (iii) transparency and information.<sup>2</sup> In other approach, Quadir et al (2001: 4) argue that present conjuncture ‘governance’ involves continuous patterns of relations, decisions and/or policies among the heterogeneous trio of state, market, and civil society actors over a diverse range of issues and levels. Their conceptualization is rather different from the conventional state centric view. It acknowledges that governance also involves systems of ruler and patterns of behavior which are based upon norms and traditions outside formal laws and statutes.

In defining ‘good governance’, the World Bank distinguishes between two aspects of good governance, a political aspects concerning legitimacy and a technical aspect concerning capacity. ‘Good governance’ has been described by the World Bank as denoting ‘predictable, enlightened and open policy processes bureaucracy with a professional ethos, a government accountable for its actions, a strong civil society participating actively in public affairs, and all under the rule of law’ (World Bank 1994). From this, it is clear that although the World Bank’s mandate prohibits it from getting involved in domestic politics, the view of governance overlaps with matters of political controversy (Kjoer and Kinnerup 2002: 7). In several researches and policies done by World Bank, it has specific analysis on economic-politic technicalities as underpinning their argument on governance (Huther and Shah 1998; Dutz 2003).

Also, in terms of campaigning ‘good governance’, the World Bank has programmed a learning program, and it introduced concept on governance. Good governance is defined as the effective implementation of policy and provision of services that are responsive to citizen needs. Good governance embodies such qualities as accountability,

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<sup>2</sup> This definition is actually too narrow and using neo-institutionalist perspective. The weakness of this definition is that potentially rejecting social system which is not only at state level, but also at non-state level. Governance can be broader defined as a set of ideas about how direction is provided to human activity, functioning institution or social system. And it has system as a framework, included formal elements such as constitutions, laws, policies, and conventions, and also informal elements or traditions, such as accepted practices, unwritten codes of conduct that people follow it in shaping how governance works. The value of governance could be socially different between each and another, between one society and others.

responsiveness, transparency and efficiency. It assumes government abilities to maintain social, peace, guarantee law and order, promote and create conditions necessary for economic growth and ensure a minimum level of social security (World Bank 2002). This definition actually has been still and strongly established to encourage the rules that make market work efficiently and, more problematically, they correct for market failure (World Bank 1992). In theoretical perspective, it seems 'good' in proposing governance model to override problems of poor or bad governance. But, let's check in detail, particularly in the case of Indonesia.

As we have seen that the role of international financial institution during last two decades could not be separated in shaping governance system in the South. Once again, SAP has been introduced to discipline the government in order to maintain economic and political matters. In the case of Indonesia, even the idea of 'good governance' known before crisis 1997, but it has been extremely emerging after it. Interestingly enough if we look at one of the package of 'good governance' or anti corruption in the sense of governance reform, namely 'legal framework for development'. Legal framework in this context is developed by the Bank's projects in promoting the control of bribery and the fraud in the private sector, by helping countries to make laws and (or strengthen) institutions for supporting market economy and by encouraging the growth of professional bodies that set standards in areas like accounting and auditing. In the long run, controlling corruption in the private sector may require improvements in business culture and ethics (World Bank 1997: 11-12). It is pretty clear that idea of legal framework for development under governance reform project is corroborating neo-liberalist perspective in designing free market paradigm. Neo-liberalism as 'a dominant ideology' tries to construct 'politically lock-in neo-liberal reforms' (Gill 1997). The neo-liberal agenda for 'good governance' is ostensibly a search for solutions to the failure of the state, through unfettered freedom for the market. Hence, the neo-liberals see good governance as a technocratic exercise aimed at harmonizing the actions of the state, civil society and market (Parasuraman et al. 2004: 32).

Thereby, World Bank commitments for helping Indonesia in the fight against corruption could be seen easily in loan conditions, included imposition of legal means. And also, in allying and supporting free market paradigm, International Monetary Fund (IMF) and World Trade Organization (WTO) were also influencing the same ideas in shaping governance reform, especially on legal means. The first project as main target of the neo-liberals was article 33 of the 1945 Constitution which stating the role of state in controlling the country's assets, similar to socialist countries such as People's Republic of China and Russia.<sup>3</sup> Neo-liberalist group wanted to restraint the role of state by amending this constitution, but they had failed (Susanti 2002). Of course, failure in reforming constitution does not mean neo-liberals would not do anything for creating free market paradigm into laws. Neo-liberals have directly and indirectly ordered numerous laws under loan scheme, such as Autonomy Act (Act No. 22 of 1999, revised in 2004), Anti-Monopoly and Unfair Business Competition Act (Act No. 5 of 1999), Combating Corruption Crime Act (Act No. 31 of 1999) and many others. And the establishment of institutions following those laws is also considered as part of securing neo-liberal agendas, such as Commission of Business Competition Dispute (KPPU) and Commission of Combating Corruption (KPK).

In this situation, this is not really difficult to be known because the World Bank chairs at the annual Consultative Group on Indonesia and works closely with UNDP and ADB as founding sponsors of the Partnership for Governance Reform (World Bank 2003), and public can see their proceedings or reports. Hence, the role of international financial institutions and neo-liberal economist have been strongly and easily influencing and mainstreaming idea of neo-liberalism into various elements, economic, politics and laws.

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<sup>3</sup> Article 33 Indonesian Constitution of 1945 says: (1) The economy shall be organized as a common endeavour based upon the principles of the family system; (2) Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State; (3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. This provision is quite similar with Article 7 of the Constitution of People's Republic of China and Article 7 of the Constitution of Russia 1993.

Governance reform as part of political reform is also inevitable projects under neo-liberal paradigm, and 'good governance' is becoming a new mantra at every level of government, imitative pronounced from time to time by government official, and uniquely also lectured at all school of law and projected by non-governmental organizations. They honestly thought and supported it without considering the adverse idea behind 'good governance.'

In practical context, even the financial institutions were flooding with large amount of loan on governance reform during 1999 to 2003, but 'good governance' did not work properly. Adversely, the corruption in Indonesia has been ironically decentralized throughout government administration at every level. Phenomena of '*Korupsi berjamaah*' (collective corruption openly), '*nglencer*' or '*pelesiran*' (traveling abroad in the name of comparative study), and many others arbitrarily corruption, became usual happening during that time. Previously, corruptor was only involving elite position at bureaucracy or government bodies, but now corruptor is spreading out to many actors, from the center to the periphery, and from the top to the bottom. Corruption is also occurred in many places, included religious department, school or universities, parliament, and commission for general election. And finally, the country rank of Indonesia had fallen to one of the most corrupt country in the world. Shortly, the raise of 'good governance' model has been followed by increasing rate, type, and style of corruption and bribery.

Why is the 'good governance' under neo-liberalism mainstream torpedoing system of corruption itself in Indonesia? Learning from the ground, at least three major reasons precisely in contributing the failure of 'good governance'. First, 'good governance' is implemented like 'robotic type' of governance, which does not touch public participation in real meaning. It has prescriptive machinery model in involving the people to participate on decision making, but it is vulnerability hijacked by the hands of elite in government. For instance in local budget planning, even the discussion and aspiration of

people has been brought from the bottom, but it was just designed to complement designated projects done by elite bureaucracy, consultants, or contractor.<sup>4</sup> The role of community leader or non-governmental organization has been sat as sub-contractor.

Second, 'good governance' approach used positivistic ways to determine legal means. Rule of law as a foundation for implementing better governance is become a tool to interpret legality of policy. 'Law' in this context is narrowly interpreted by state laws, meaning laws or regulations which are based on state authorizations. Thereby, whatever product of law is enacted, 'good governance' proponent does not say 'bad' as long as the law is resulted and enacted by procedural or legal formal process, such as through democratic process in government as well as parliament, transparent and participative process. In many cases found that legality of law is used for legitimizing of corruption, or pretty well known as legalization of corruption.

Thirdly, because the nature of neo-liberalism ideology which supports free market paradigm, anti-corruption program is also driven in corroborating those policies. It means that anti-corruption program biases in the effort of growth economy and the promotion of the interest of private business, as practiced in Africa previously (Ng and Yeats 1998). Under projects of poverty reduction and economic management of World Bank, it was introduced explicitly that the role of Bank focused on controlling corruption in Bank-financed projects (World Bank 1997: 29-34). Most notably, the governance reform through 'good governance' tends to serve the promotion of economic and social reform consensus, especially through applying technocratic empowerment and liberal language of participation. In the fight against corruption, what the neo-liberals have addressed

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<sup>4</sup> In budget planning, it starts from the bottom mechanism, known as *Musyawarah Pembangunan Desa* (Musbangdes, Rural Development Meeting) or *Musyawarah Pembangunan Kelurahan* (Musbangkel, Sub-urban Development Meeting) for the lowest one. After people aspirations accommodated in both meeting, it will be brought and re-discussed to higher level by smaller number of people and local bureaucrats at *Kecamatan* (Sub-District), called *Unit Daerah Kerja Pembangunan* (UDKP, Development Work Sub-District Unit). But, after it, in final decision, most of people proposals are hindered, removed, and replaced by government bureaus projects. In many districts found that conflicting programs planned by government are violating people basic needs, and often attacking human rights (Wiratraman 2004).

through governance reform projects could negate the strong effort of corruption itself, because the matter of corruption is fixed at ‘designated-loan projects’ and pushed for ‘comprehensive facilitation of private development’.

In shortly, the notion of ‘good governance’ introduced in Indonesia aftermath economic crisis which is expected can minimize the ‘disastrous level of corruption’ is still conforming the neo-liberalism mainstream, particularly in piloting and securing free market paradigm.

### ***Governance Reform: Where does SBY stand for?***

The Indonesian society at large has agreed that creating ‘good governance’ is one of the main agendas of *Reformasi*, up till today. In jargon or theory seems a sexy language which tends to be capsule for repelling corruption and bad governance practices. However, it is contradictory with the implementation of ‘good governance’ which is still far away. In this point, it examines where the position of SBY so far in responding to governance reform, especially in the sense of human rights perspective.

Regardless whether the President *Susilo Bambang Yudhoyono* (SBY) is successfully recognized or not in leading the government, interestingly enough that he has strong performance in campaigning and presenting reform agendas. Clean performance and populism promises have brought him quickly into national elite politic. He promised to develop sustainable economic growth and uphold greater investment for increasing healthier business climate and reducing poverty. He pronouncedly promised to fight against corruption in any level bureaucracy without exception. Although his political party (*Democrat*) has sat only 7.45 % in parliament, but after collaborating with influential politician and businessman from *Golkar* Party, *Jusuf Kalla* (JK), they had won after passing second round general election. SBY’s minority position in the DPR (see table below) and the close ties between *Golkar* are factors in shaping current democracy

and political constellation. Thereby, learning from *Gus Dur* impeachment by parliament, he should consider carefully the power and role of big political parties in the parliament, mainly in making decision which would invite controversial matters.

*Table 1: Political Fortunes*

<b>Party *</b>	<b>% vote 1999</b>	<b>Seats 1999</b>	<b>% vote 2004</b>	<b>Seats 2004</b>
Golkar (s-n)	22.44	120	21.58	128
PDI-P (s-n)	33.74	154	18.53	109
PPP (I)	10.71	39	8.15	58
Partai Demokrat(s-n)	-	-	7.45	57
PKB (I)	12.61	51	10.57	52
PAN (I)	7.12	35	6.44	52
PKS (I)	1.01 (as PK)	6	7.34	45
PBR (I)	-	-	2.44	13
PDS (C)	-	-	2.13	12
PBB (I)	1.94	2	2.62	11
Others	10.37	55	12.75	13
Total		462		550

*s-n = statist-nationalist, I=Islamic, C= Christian (Source: www.ifes.org)*

More than a year in his presidency, he admitted that up till now the governance is not reflecting yet ‘good and clean governance’ (Kompas 2006), and so that is why he has seriously taken brave policies in attacking corruption and bribery in his administration, and making his cabinet works effectively. Reshuffling cabinet and giving permission for judicial process in investigating corruption at the government official or bodies are examples his policies in reforming governance.

In the latest programs announced by SBY after reshuffling his cabinet in December last year, it was six the most important agendas which would be tackled in the near future (Kompas 2005). First, sustaining and strengthening healthier macro economy, by fulfilling four indicators: tackling inflation problem, providing employment accessibility, increasing economic macro growth, and balancing financial matters. Secondly, reducing

poverty and protecting vulnerable people in facing inflation by giving BLT (*Bantuan Langsung Tunai*, or cash direct aid), revitalization agriculture and fisheries, and also strengthening small and middle business. Third, improving coordination and synchronization, between government as fiscal decision maker and Bank Indonesia as monetary authority. Fourth, local government should address budget for improving employment access and protecting the poor. Fifth, reforming budget, tax, and included finance sector. And sixth, steps on good governance will be continued and intensified.

These commitments are in the line of World Bank's projects, which are profoundly projected under loan-scheme, such as Poverty Reduction Strategies and Initiative for Local Governance Reform<sup>5</sup>. IBRD as a part of World Bank, in December 15, 2005, has approved loan amount US \$ 400 million for projecting three main areas to accelerate economic growth and poverty reduction: strengthened macroeconomic stability and creditworthiness, improved investment climate, and enhanced public financial management (World Bank 2005a). In similar context, before announcing increased fuel price, President Speech on 2<sup>nd</sup> September 2005 has been noted in Bank's report as an important commitment to obey neo-liberals directions. In that report says that,

“The President laid out an initial 4 part agenda to deal with the incipient currency crisis. The measures included reduce subsidies and increased production to deal with energy issue, monetary tightening, fiscal prudence and accelerating investment reforms” (World Bank 2005b).

In terms of governance reform based on those argumentation and planning, it seems that position of Indonesia government will continue (or cannot be detached) in conforming to

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<sup>5</sup> According to World Bank-Project Appraisal Document, May 16, 2005, on a proposed loan in the amount of US\$ 14.50 million and a proposed credit in the amount of US\$ 15.00 to the Republic of Indonesia for the Initiative for Local Governance Reform Project. Previously in 2004, the Bank's also approved loan program on “Mainstreaming Governance Reform” and Strengthening the Decentralization Process”.

neo-liberals paradigm, through facilitating loan-scheme projects and driving to economic growth into free market. This phenomenon is actually picturing not only in Indonesia situation, but more possibly also in many other countries which have strong dependency to foreign debt policy.

In human rights perspective, what the government has said and done to uphold neo-liberals injections, it would be taking serious risk in the sense of making democratization and better governance for the protection of human rights. In relation to the World Bank roles in injecting neo-liberal paradigm into government policies, we actually should learn from the experience of other countries in applying governance reform, such as the book which has been written by Rita Abrahamsen (2000) in the case of African Sub Saharan. Or, we can learn from our experience and reality in Indonesia before Asian financial crisis in 1997. Rhetoric on 'good governance' under governance reform project which has been loudly proclaimed through structural adjustment program had failed.

A report made by Commission mandated by the U.S. Congress has shown that 70 percent of the Bank's non-grant lending was concentrated in 11 countries, with 145 other member countries left to scramble for the remaining 30 percent; 80 percent of the Bank's resources was devoted not to the poorest developing countries but to the better off ones that have positive credit ratings and could raise their funds in international capital markets. The failure rate of Bank projects was 65 to 70 percent in the poorest countries and 55 to 60 percent in all developing countries. In short, the Commission found the World Bank was irrelevant to the achievement of its avowed mission of alleviating global poverty (in Bello and Guttal 2005). And now, in tackling after financial crisis, the World Bank with IMF released new program in September 1999 to replace structural adjustment program, namely Poverty Reduction Strategies Papers (PRSPs). It still has adjustment paradigm, such as unilateral trade liberalization, privatization of essential services and deregulation of labor and financial markets. So that is why *Bello and Guttal* (2005)

named PRSPs as “comprehensive program for structural adjustment, but in the name of the poor.”

Hence, poverty reduction program does not reflect in protecting and fulfilling economic, social and cultural rights. Privatization upon water resources as condition of World Bank loan, would be potentially harming poor people who have no enough access to water. In Indonesian context, debate and protest of people and non-governmental organizations have been widely happened in rejecting water privatization under Water Resource Act (Act No. 7 of 2004). The project of privatization upon water designed by World Bank and ADB in Indonesia was so financed by large number of structural adjustment loan for developing social and physical infrastructure of irrigation in the rural, facilitating uniform water user association, proposing legal framework upon water resources up till lower operational regulations, and enhancing governance institution and reform in district or sub-district level. In urban area, such as Jakarta, structural adjustment loan has been given to the Indonesian government for improving water infrastructure as required and proposed by private corporations (Thames Water Overseas Ltd and Suez).<sup>6</sup>

Privatization today in Indonesia is continued, not only in addressing water resources, but also expanding to privatize electricity and telecommunications sectors to private corporations. The World Bank, hand in hand with IMF, are prioritizing debt payments by shrinking public sectors (privatization) and cutting government subsidies. By learning from other experience in developing countries that privatizing public service assets has increasingly reduced the poor’s access to water, health care, and power services, education, etc. and tends to be ignored.

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<sup>6</sup> In 1998, World Bank approved a US\$ 300 million to the Indonesia Government, and this loan will be given through three tranche-loans. And about US\$ 190 million World Bank loan (of which US\$ 92 million was for water infrastructure improvements given to private corporations) had facilitated the privatization and would “further achieve development objectives” (Harsono, in Siregar 2003).

Whereas, on 1<sup>st</sup> October 2005, at the same day with announcement of increasing fuel price, Indonesian government ratified two important human rights law, namely International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966). By recognizing these covenants, Indonesian government has to respect, protect and fulfill human rights through progressive ways in implementing state obligations. Prioritizing budget for the poor, protecting them by legal means, and realizing rights are examples of governance challenges for SBY in the near future.

In this context, even though Indonesian government has socialism constitution and numerous international instruments which were ratified, SBY's position is governing within neo-liberalism mainstream and hard to exit from this circuit, because international financial institutions have been involving in driving Indonesian governance system and reform for more than two decades. The problems that he is facing now, such as corruption, impoverishment, and burden debt, are inseparable with neo-liberalism mainstream.

As long as the neo-liberalism mainstream is not seen as major problem by present government, and the government abandons 'governance reform' injected by neo-liberals as it is, it might be not surprisingly that those problems would be continually happening.

### ***Conclusion***

"The old wine in the new bottle." Previously, we have seen that structural adjustment program as one of the mechanism for mainstreaming 'good governance' in governance reform project based on neo-liberal paradigm. But present situation, poverty reduction program which is tightened by loan scheme adjustment in the name of the poor is still remaining neo-liberals interest to address the importance of market liberalization.

This description above is pretty clear under World Bank's project that reforms for improving governance and combating corruption in the sense of economic policy, still focusing on deregulation, privatization and competition policy. On the other side, 'good governance' and its descendant approaches (multi-stakeholder, civil society engagement, participatory and transparency) and 'poverty reduction' programs seem like rhetorical outburst which is far away from reality or substantial progressivism in terms of protecting and fulfilling economic, social and cultural rights. Good governance is quite often found that this concept is being argued like mantras by politician, bureaucrats, and included academics without understanding ideology behind it.

In responding to human rights advancement, the government could progressively apply provisions under constitution or ratified international instrument. And sensibility of human rights in this term should be taken into account as an important part of governance measure. In the context of Indonesia, even though *Undang-Undang Dasar 1945* or constitution provision strongly support socialism value, but in fact, neo-liberalism could play and hijack in many places through re-incarnation of structural adjustment loan. 'Good governance' has been simplified into procedural measures in the sense of fulfilling loan condition, but it does not touch human rights and structural impoverishment in substantial meanings. Here, construction of application the rights under legal provision should be struggled and enforced as consequences of state obligation. Shortly, governance reform has to advocate human rights constitutionalism as basis of economic-political transformation (Wiratraman 2005).

So, by designing governance reform based on human rights values, it could be able to fight against structural impoverishment, systematic corruption and arbitrary decision. If there is no significant reform to shift the robotic type of governance, of course it is not surprisingly the problem of corruption still torpedoing governance system in any level of government.

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- International Covenant on Economic, Social and Cultural Rights (1966)

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