

Good Governance and State Mechanisms:

Defending Human Rights and Anti-Corruption

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Abstract—This essay deals with the international literature with a multi-pronged approach in combatting corruption. It aims to share an important strategy in combating a contextual approach. It also suggests that Good Governance should include issues of quality rather than just providing the decent minimum for human life. This paper argues that in setting priorities for action, priority should be given to putting in place measures which alleviate poverty.

Keywords—Good Governance; State Mechanism; combatting corruption; poverty

I. INTRODUCTION

Corruption kills. The money stolen through corruption every year is enough to feed the world's hungry 80 times over. Nearly 870 million people go to bed hungry every night, many of them children, corruption denies them their right to food, and, in some cases, their right to life.[1]

In the period 2000-2009, developing countries were estimated to have lost US\$8.44 trillion to illegal conduct, 10 times more than foreign aid payments.[2] The topic for this presentation is State mechanisms for good governance which both protects human rights and attacks the problem of corruption.

A great deal has been written about tackling anti-corruption and the good governance measures that states can take to reduce corruption. In this short presentation I would like to just make a few key points. The first is that States in implementing good governance should give priority to addressing poverty. The second is that good governance can no longer ignore issues of equality and distributive justice. The third point refers to the current debate about what works in reducing corruption and whether uniform approaches are the answer. In conclusion I offer some comments in relation to Anti-Corruption agencies.

II. GOOD GOVERNANCE AND ADDRESSING POVERTY

A. Giving priority to reducing poverty

My first point is that in developing countries in tackling corruption, priority should be given to measures alleviating poverty. This is referred to as the bottom up approach. It starts by identifying the most urgent needs within the

particular country and then determines which measures will best respond to those needs. [3]

B. Setting strategic priorities

The key concepts for good governance, responsibility, transparency, accountability and participation are well understood. But what is lacking are strategic approaches to dealing with poverty and underdevelopment. [4] The problem is that no priorities are set nor strategies sequenced to take into account what might be easily achieved in the short or longer term. [5] As the leading Harvard researcher indicates, the best strategy may be to aim for 'good enough governance', and to ask not what is missing but what is improving and what is working [6].

Recent research questions whether good governance is a necessary pre-requisite for economic development and alleviation of poverty. [7] In some countries small changes can lead to significant gains for poverty reduction even when institutional governance may be quite weak. There is compelling evidence that the particular context in each country is crucial. There is no one size fits all, what will work depends upon the state of development so that interventions must be 'appropriate to time, place, historical experience, and local capacity'[8]. It may be that informal institutions and processes will work just as well as institutional approaches [9].

The questions we need to ask are: what types of corruption disproportionately affect the poor,[10] whether good governance pays off for reducing poverty and what is gained from measures to reduce corruption. Measures which enhance democratic, open, transparent government do not necessarily lead to a more equal society or reduce poverty so that the current view is that whilst democracy is a desirable goal, it is not necessarily linked to development [11]. In developing countries with democratically elected governments, the constituent majority are poor. The natural expectation is the influence of the majority would have a redistributive effect and translate into greater services for the poor. But this has not been proven to be the case with politically powerful groups wielding the most influence on government policies [12]. It is clear that in developed democratic countries there continues to be significant inequality and poverty. For example, in Australia, on the most

recently available statistics, 13.3% of Australians lived in relative poverty. [13]

If ‘good governance’ goals set as a priority the reduction of poverty, this should involve careful weighing of benefits of any particular strategy. For example, would protection from police and the ability to access public services without having to pay a bribe be given priority? Where poverty is the focus, it may be preferable to provide health services to women and children in rural areas rather than engage in costly public service reforms [14].

C. Strategic responses targeting the poor

Corruption most directly affects the most vulnerable citizens indirectly through the diversion of resources from government revenue and directly as a consequence of having to pay bribes to access basic public services. [15] The 2017 Transparency International Report on the Asia Pacific reported that 25% of those surveyed reported paying a bribe/favour for government services; this was equivalent to over 900 million people across the Asia pacific. [16]

				%	%	
Malaysia*	10%	10%	9%	6 %	13 %	5%
Mongolia*	10%	16%	11%	*	16 %	*

* Utilities was not asked in Mongolia and China. In Malaysia the results are based on the total population due to differences in how the questions were implemented during fieldwork.

The chart shows that in Indonesia access to public services is compromised by corruption. This has a very serious impact on the very poor. The KPK has recently made an arrest in relation to corruption involving the ID card which may help in addressing this issue [18]. In relation to the bribing of police, it is often argued that increasing police pay (so there is no implicit assumption by the state that they will be paid through bribes) might, initially, be a cheaper alternative than setting up expensive institutional structures.

TRANSPARENCY INTERNATIONAL CHART
2017 FULL RESULTS, BY COUNTRY [17]

	Public Schools	Hospital	ID document	Utilities Services	Police	Courts
Australia	4%	2%		1%	0 %	1 %
South Korea	5%	3%		1%	1 %	3 %
Japan	0%	0%		0%	0 %	0 %
Cambodia	10%	19%		30%	6 %	11 %
Indonesia	15%	15%		23%	14 %	25 %
Thailand	35%	0%		17%	0 %	46 %
Vietnam	57%	59%		41%	24 %	66 %
Taiwan	8%	5%		0%	6 %	1 %
Hong Kong	2%	2%		0%	0 %	*
China*	29%	18%		16%	20 %	20%
India	58%	59%		59%	53 %	55 %
Pakistan	9%	11%		38%	61 %	75 %
Myanmar	16%	21%		40%	20 %	49 %
Sri Lanka	14%	3%		9%	7	24
						10%

In Georgia (formerly part of the USSR) extreme measures were taken. About half the force were fired, salaries were increased, traffic police disbanded and additional training introduced. [19] That does not mean that this would always work. There is no ‘one size fits all’. It depends so much upon the political climate and committed political leadership. [20]

I recall a story I was told by a law academic in one of the ASEAN countries. Final year law students were asked whether they had ever bribed a policeman when stopped for a traffic offence. Almost the whole class had. In contrast if this same question were asked in Australia law schools, one would not expect any student to say they had. Law students would be frightened that they would be prosecuted and even worse that they would never be admitted to practice if convicted of an offence. Consequently, there may be very strong biases in particular populations which would need to be taken into account in any attempt to counter bribery or corruption.

III. GOOD GOVERNANCE AND DISTRIBUTIVE JUSTICE

The second issue I would like to raise is the question of distributive justice. I want to suggest that ‘good governance’ requires States not only to be concerned with providing a ‘decent minimum’ for life but also with the fair distribution of economic wealth. The wealthier have become wealthier through the influence of powerful groups and the beneficial effects of government policies. A measure of existing inequality is the gini index which measures the differences between the income of the poorest and richest. A zero index shows perfect equality and a ranking of 100 perfect inequality. Indonesia and Australia are similar with an index of about 35% and ranked respectively 93 and 100 on the inequality index. [21] Oxfam reported on 16th January 2017 that 9 billionaires owned the same wealth as poorest half the world and that since 2015, the richest 1% has owned more wealth than the rest of the planet.[22] In 2017, it was reported that

Indonesia's four richest men are worth as much as poorest 100 million.[23] In Australia the disparity is worse with Oxfam reporting in 2014 that Australia's richest 1% own as much as bottom 60%. [24] The greatest inequality is in Africa and the greatest equality is in the Scandinavian countries (26%).

IV. GOOD GOVERNANCE AND REDUCING CORRUPTION.

A. Diverting resources.

Much has been written and said on how corruption negatively affects human rights. At its simplest, corrupt activities divert resources which reduce governments' ability to deliver basic social goods [25] such as education, health and welfare which are the key to economic, social and cultural rights. [26] Corruption also threatens civil and political rights by weakening the trust in government and public institutions and decisions by public officials which do not promote the public interest [27]. In the legal arena, equality before the law, the right to a fair trial, access to justice are all compromised by corruption affecting the police, prosecutors, lawyers and judges [28].

Corruption in the rule-of-law system weakens the very accountability structures which are responsible for protecting human rights and contributes to a culture of impunity, since illegal actions are not punished and laws are not consistently upheld [29].

B. Tackling corruption – what works?

What is to be done? What will make the difference? What works? There is general agreement that there is no magic solution. What may work in one country may not necessarily work in a different political, economic and cultural environment

There is surprisingly little empirical evidence about what actually works in reducing corruption. The countries that are very low on the corruption index, New Zealand, Denmark, Sweden and Finland, [30] are characterised by open, accountable and transparent government, and a strong commitment to human rights [31]. It may be a factor that these countries have quite small populations [32].

The available evidence suggests that public finance management reforms, strengthening horizontal accountability mechanisms and transparency tools, such as freedom of information, transparent budgeting and asset declarations can have an impact on controlling corruption [33]. Lessons drawn from successful approaches indicate that there is no silver bullet against corruption, and that contextual factors linked to the local political economy, as well as the legal and institutional framework, are key to the success of anti-corruption interventions [34]. The effectiveness of anti-corruption approaches is usually maximised by a combination of complementary (top-down and bottom-up) approaches and success driven by the interaction of a number of reforms introduced simultaneously [35].

Some attempts to deal with petty corruption have utilised cashless payment systems. In India payments are paid directly to bank accounts accessible by the recipients through mobile

phones preventing skimming by government agents. The Indonesian city of Surkarta now allows online booking for services such as waste collection and electronic payment using mobile phones. [36] But Nigerian research suggests that this likely to be of fairly limited value with its effectiveness largely limited to petty corruption [37]. But for the poor this may be more important than establishing new institutions to combat corruption. In relation to mobile payments, this may substitute one set of risks with another set of risks; there are also significant issues with access to mobile phones and financial risks arising out of the use of mobile technology.

More important for Indonesia is the proposed reform of judicial appointment processes and judicial training to ensure the integrity of the judicial system [38]. These involve measures to ensure merit based selection of candidates and judicial training provided by the KPK (Corruption Eradication Commission). [39] The World Justice Project, *Rule of Law Index 2016* ranks Australia 11 and Indonesia 61 out of 113 countries. This index is a practical measure of open government, accountability, lack of corruption, limitations on government powers, fundamental rights, order and security, regulatory enforcement, civil and criminal justice. Notably the Scandinavian countries are ranked 1,2,4 (Denmark, Norway, Sweden), so the countries with the greatest equality also demonstrate the strongest commitment to the rule of law. [40]

Beside a strong commitment to anti-corruption by political leaders, Finland, Sweden, Denmark and to a certain extent New Zealand all share a common set of characteristics that are typically correlated with lower levels of corruption. These include freedom of the press, high GDP per capita, low inequality, literacy, priority to human rights and freedom of information. Finland, Denmark, Sweden and New Zealand all have high GDP per capita, low inequality rates, literacy rates close to 100 %, and prioritise human right issues (e.g. gender equality, freedom of information) [41]. One important factor in Australia has been investigative journalism which has uncovered serious corruption by politicians.

The evidence relating to institutional structures such as Anti-corruption commissions is that such Commissions have not generally been very effective, KPK may be the exception.

C. Anti-Corruption Commissions

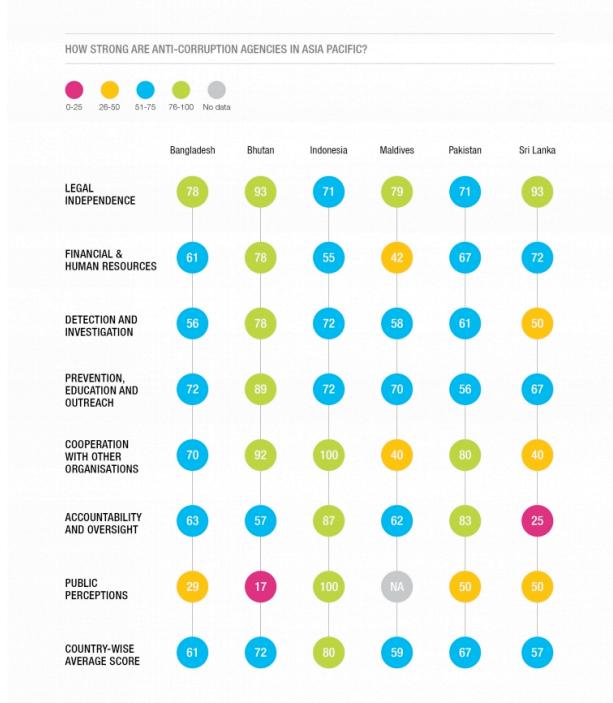
The UN Convention against Corruption required state parties to establish Institutions (Commissions) to combat corruption. The Indonesian equivalent is the Corruption Eradication Commission (KPK Komisi Pemberantasan Korupsi), the English version of the enabling legislation is, No 30 of 2002 '*Commission for the eradication of criminal acts of corruption*'. [42] In NSW, the largest Australian state, the relevant body is the Independent Commission against Corruption, ICAC established in 1988 by the *Independent Commission against Corruption Act 1988*. [43] Indonesia and Australia have signed and ratified the Convention. [44] These bodies were seen as 'integrity warriors'[45] necessary to deal with systemic corruption at the highest levels. A chart from Transparency International's Report, Strengthening Anti-Corruption Agencies in the Asia-Pacific,[46] (see below) assesses agencies across the Asia-Pacific in terms of their

independence, see below. Agencies are however expensive to administer, involve political risks and target the higher levels of administration and government. But in relation to Indonesia, despite the risks, the KPK has been fearless in combatting corruption. Its recent high profile arrests for corruption [47] sends a critical message to government and citizens that it will prosecute those guilty of corruption at the highest levels.

The NSW, ICAC, has not had significant outcomes in terms of successful prosecutions and it continues to be the subject of costly civil suits testing the limits of their jurisdiction [48]. It has shifted its priorities from investigation to education and prevention. For example, ICAC assisted my university to develop a gift policy. Under that policy all gifts to staff over \$AUD25.00 (the price of several boxes of quality chocolates) must be reported to the university and recorded by the University.

In contrast to the Indonesia KPK,[49] ICAC has no power to prosecute cases of corruption. It can only recommend prosecution to the Director of Public Prosecutions (DPP). Indeed, if success is judged by the number of successful prosecutions, ICAC in its early years would not be considered particularly successful. Prosecutions have been few and slow. A key reason for this is that ICAC has been able through its investigative processes to garner large volumes of evidence much of which may not be admissible as evidence in a prosecution; the criminal standard of proof ‘beyond reasonable doubt’ is difficult to satisfy.

A particular problem relates to public hearings which ICAC conducts which are regarded as ‘naming and shaming’ and leading to serious injury to reputations with no redress available when no illegal conduct has been proven before the courts.



V. CONCLUSION

The international literature suggests a multi-pronged approach to combatting corruption. The measures must be adapted to the particular context so what may be effective in one country may not be effective in another. I have argued that in setting priorities for action, priority should be given to putting in place measures which alleviate poverty. These may involve informal mechanisms rather than costly institutional structures and that the emphasis should be on ‘good enough governance’. I have also suggested that ‘good governance’ should include issues of equality rather than just providing the decent minimum for human life.

REFERENCES

- [1] Navi Pillay : <http://thesop.org/story/20130313/un-corruption-hurts-human-rights.html>
- [2] Navi Pillay, UN High Commissioner for Human Rights, 22nd session of the Human Rights Council, Thematic panel on ‘the negative impact of corruption on human rights’, opening statement, p.9.
- [3] United Nations, Dept of Economic and Social Affairs, *Public Governance Indicators: A Literature Review*, 2007 p.37.
- [4] Merilee S Grindle, ‘Good Enough Governance: Poverty Reduction and Reform in Developing Countries’, (2004) 17(4) *Governance: An International Journal of Policy, Administration, and Institutions* Oct 2004, 525-548, at 527 based on *World Development Reports*.
- [5] Merilee S Grindle, ‘Good Enough Governance: Poverty Reduction and Reform in Developing Countries’, (2004) 17(4) *Governance: An International Journal of Policy, Administration, and Institutions* Oct 2004, 525-548, at 530, 537..
- [6] Merilee S Grindle, ‘Good Enough Governance Revisited’ (2007) 25(5) *Development Policy Review* 553-574.
- [7] Merilee S Grindle, ‘Good Enough Governance Revisited’ (2007) 25(5) *Development Policy Review* 553-574 at 555,558; Mustaq H Khan, *Review of DFID’s Governance Target Strategy Paper* (UK) 2, 16-17,20.
- [8] Merilee S Grindle ‘Governance Reform: The New Analytics of Next Steps’ (2011) 24(3) *Governance: An International Journal of Policy, Administration, and Institutions* 415-418 at p. 415.
- [9] Merilee S Grindle ‘Governance Reform: The New Analytics of Next Steps’ (2011) 24(3) *Governance: An International Journal of Policy, Administration, and Institutions* 415-418 at p. 415.
- [10] Estimate for Indonesia of those below the poverty line is 10.9 % in 2015, Basic statistics, Asian Development Bank, available at: <https://www.adb.org/publications/basic-statistics-2017>. The World Bank’s “moderate” poverty line is \$3.10-a-day, which means that about 93 million Indonesians live in poverty, The Guardian, Thursday 23rd Feb 2017, <https://www.theguardian.com/world/2017/feb/23/indonesias-four-richest-men-own-same-as-countrys-poorest-100-million>.
- [11] Mustaq H Khan, *Review of DFID’s Governance Target Strategy Paper* (UK) 6, http://eprints.soa.ac.uk/9955/1/Review_of_Dfid_Governance_TSP.pdf.
- [12] Mustaq H Khan, *Review of DFID’s Governance Target Strategy Paper* (UK) 21-22, available at: http://eprints.soa.ac.uk/9955/1/Review_of_Dfid_Governance_TSP.pdf.
- [13] Australian Council for Social Services and the Social Policy Research Centre, *Poverty in Australia, 2016*, poverty is defined as an income 50% below median income. <http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>
- [14] Merilee S Grindle, ‘Good Enough Governance: Poverty Reduction and Reform in Developing Countries’, (2004) 17(4) *Governance: An International Journal of Policy, Administration, and Institutions* Oct 2004, 525-548, at 535.
- [15] United Nations Office of the High Commissioner, The Human Rights case Against Corruption p.4.

- [16] Transparency International, Perceptions of Corruption: Government Action, 2017.
- [17] In relation to those services, the following percentages had paid a bribe across the Asia Pacific (less in Indonesia): Police: 30%; Public school: 22%; Courts: 23%; Public hospital 18% Utilities 20%; Id voters card, permit: 23%.
- [18] Transparency International, Perceptions of Corruption: Government Action, 2017.
- [19]
- [20] <http://www.abc.net.au/news/2017-11-20/indonesia-parliament-speaker-taken-into-custody-by-anti-graft/9171726>
- [21] Transparency International, Anti-corruption helpdesk, providing on demand research to help fight corruption, Marie Chêne, Transparency International, tihelpdesk@transparency.org
- [22] Reviewer(s) Dr. Finn Heinrich, Transparency International Date: 30 April 2015; Alexander Kupatadze ‘Similar events, Different Outcomes: accounting for Diverging corruption patterns in post-revolution Georgia and Ukraine’, West Caucasus Analytical Digest, No. 26, 26 April 2011, 2, available at: <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CAD-26-2-4.pdf>
- [23] Transparency International, Anti-corruption helpdesk, ‘Similar events, Different Outcomes: accounting for Diverging corruption patterns in post-revolution Georgia and Ukraine, Alexander Kupatadze, West Caucasus Analytical Digest No. 26, 26 April 2011, 2 available at: <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CAD-26-2-4.pdf>
- [24] World Bank Index, 2010 figures available at <http://www.indexmundi.com/facts/indicators/SI.POV.GINI/rankings>
- [25] Oxfam Briefing Paper, Jan 2017, AN ECONOMY FOR THE 99%
- [26] Based on the World Bank’s “moderate” poverty line of \$3.10-a-day, some 93 million Indonesians are living poverty. The Guardian, Thursday 23rd Feb 2017, <https://www.theguardian.com/world/2017/feb/23/indonesias-four-richest-men-own-same-as-countrys-poorest-100-million>
- [27] <https://www.theguardian.com/world/2014/jun/16/australias-richest-1-own-as-much-as-bottom-60-says-oxfam>
- [28] The UN High Commissioner for Human Rights, Navi Pillay forcefully linked the fight against corruption and protection of human rights in the quotation at the beginning of this presentation, United Nations Office of the High Commissioner The Human Rights case Against Corruption p.3; Navi Pillay, High Commissioner for Human Rights, 22nd session of the Human Rights Council, Thematic panel on ‘the negative impact of corruption on human rights’, opening statement.
- [29] International Council on Human Rights Policy and Transparency International, *Corruption and Human Rights: Making the Connection*, www.ichrp.org/files/reports/40/131_web.pdf
- [30] Under the International covenant on Economic, Social and Cultural Rights, (both Indonesia and Aust are signatories to this covenant), article 2, provides that states are to devote maximum available resources to the progressive realization of rights under the covenant. Corruption threatens almost every aspect of the enjoyment of economic, social and cultural rights.
- [31] United Nations Office of the High Commissioner The Human Rights case Against Corruption p.4
- [32] United Nations Office of the High Commissioner The Human Rights case Against Corruption p.4
- [33] United Nations Office of the High Commissioner The Human Rights case Against Corruption p.4
- [34] Note the importance of civil society organisations in Finland and the report that nearly 75% of Finns belong to an organization, see <http://www.business-anti-corruption.com/country-profiles/finland>.
- [35] Marie Chêne, Transparency International,
- [36] tihelpdesk@transparency.org 2015 available at https://www.transparency.org/files/content/corruptionqas/2015_HelpdeskAnswers_EN.pdf
- [37] Finland, about 5.5 million Denmark about 5.7 million Sweden about 10 million, New Zealand 4.7 million.
- [38] Marie Chêne, Transparency International,
- [39] tihelpdesk@transparency.org 2015 available at https://www.transparency.org/files/content/corruptionqas/2015_HelpdeskAnswers_EN.pdf
- [40] Marie Chêne, Transparency International,
- [41] tihelpdesk@transparency.org 2015 available at
- [42] Marie Chêne, Transparency International,
- [43] tihelpdesk@transparency.org 2015 available at https://www.transparency.org/files/content/corruptionqas/2015_HelpdeskAnswers_EN.pdf
- [44] The *Jakarta Post*, Wed Nov 1, 2017 ‘Pay online for trash pickup in Surakarta’ p. 4. Note there are approximately 62.69 million pone for a population of 265 million in 2017; 25% of the population is under 15, http://www.indexmundi.com/indonesia/age_structure.html; https://www.indexmundi.com/indonesia/demographics_profile.html
- [45] Tajideem J Ayoola, ‘The Effect of Cashless Policy of Government on Corruption in Nigeria’, (2013) 2(3) *International Review of Management and Business Research* 682.
- [46] See Jakarta Post, Monday 6th Nov 2017.
- [47] The Jakarta Post, Monday Nov 6, 2017, ‘Supreme Court recruits 1,500 judges after 7 year break’.
- [48] https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf. The relevant criteria are: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice, <https://worldjusticeproject.org/our-work/publications/rule-of-law-index-reports/wjp-rule-of-law-index%C2%AE-2016-report..>
- [49] og.transparency.org/2011/12/07/what-makes-new-zealand-denmark-finland-sweden-and-others-'cleaner'-than-most-countries/
- [50] The establishment of national bodies to fight corruption is an obligation under the UN *Convention against Corruption* articles 6, 36 which requires each state party to ‘ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement’. Such bodies must be independent, free from influence and appropriate staffing and resources. Both Australia and Indonesia have signed and ratified the convention.
- [51] The principal objects of this Act are: (a) to promote the integrity and accountability of public administration by constituting an Independent Commission Against Corruption as an independent and accountable body: (i) to investigate, expose and prevent corruption involving or affecting public authorities and public officials, and (ii) to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community, and (b) to confer on the Commission special powers to inquire into allegations of corruption.
- [52] Australia, signed 9th Dec 2003, ratified 7th Dec 2005; Indonesia signed 18th Dec 2003, ratified 19th Sept 2006.
- [53] Luis de Sousa, (2010) 53 *Crime Law Soc Change* 5.
- [54] At p.4.
- [55] <http://www.bbc.com/news/world-asia-24344995>; <http://www.scmp.com/week-asia/politics/article/2103395/how-agency-waging-war-against-corruption-indonesia-and-winning>; <http://www.abc.net.au/news/2017-11-20/indonesia-parliament-speaker-taken-into-custody-by-anti-graft/9171726>
- [56] See, for example, Independent Commission Against Corruption v Cunneen [2015] HCA 14 (15 April 2015)
- [57] No 30/2002 articles 8 & 9