

THAILAND INSTITUTE OF JUSTICE
IN COLLABORATION WITH
THE INSTITUTE FOR GLOBAL LAW AND
POLICY AT HARVARD LAW SCHOOL



WORKSHOP SUMMARY

BANGKOK  THAILAND

January 6-11, 2017



In Collaboration With



March 2017

Disclaimer:

This work is intended to be a summary of the TIJ Workshop proceedings as compiled by TIJ's academic team. The views and opinions expressed by the TIJ Workshop faculty and the editors of this publication do not necessarily reflect the official policy or position of Thailand Institute of Justice (TIJ) and the Institute for Global Law and Policy (IGLP).

Rights and Permissions:

The Thailand Institute of Justice encourages dissemination of its knowledge base and this work may be reproduced, in whole or in part, for non-commercial purposes as long as full attribution is given

INDEX

Foreword	4
Acknowledgement	5
Introduction	6
The Participants	9
The Faculty	10

Plenary Sessions	12-18
TIJ Opening Plenary	13
Plenary Lecture 1	15
TIJ Special Lecture	16
Policy Skills Teams	19-30
TIJ-IGLP Policy Streams	30-38
TIJ Fieldtrip	39-42
Faculty Roundtable	39
TIJ Public Forum	41
Appendix 1	42

About IGLP

About TIJ



DR. KITTIPONG KITTAYARAK

Executive Director, Thailand Institute of Justice

FOREWORD

I am pleased that the first TIJ Workshop for Emerging Leaders on the Rule of Law and Policy concluded with great success, exceeding our expectations for the first iteration of a collaborative effort with the Institute for Global Law and Policy (IGLP) at Harvard Law School. TIJ sincerely appreciates the dedication and commitment from the IGLP team in making this program possible, by working with us as seamless partners to promote the shared common vision together, our organizations can be pioneers in the realm of rule of law education.

This Workshop was first conceived as a project to foster dialogue that would find the intersection between the rule of law, sustainable development, and practical applications of these theories across all sectors. The broad-based approach of the curriculum facilitated fruitful discourse that encompassed the symbiotic nature of all these things, including a thorough understanding of the necessity of “Goal 16: Peace, Justice and Strong Institutions,” of the 2030 Agenda for Sustainable Development. We would like to extend our deepest gratitude to the diverse group of IGLP Faculty, who devoted their time and effort in engaging with over 40 TIJ Fellows from 14 countries over the course of 6 days.

TIJ remains deeply committed to expanding the network of emerging leaders, be it professionals, practitioners, policy makers and beyond, who share a passion of finding pathways towards effective rule of law reform. To make the rule of law reform a reality, it is undoubtedly a continuing effort that will require a concerted effort from all parties. We look forward to future opportunities to expand our network of change makers, who together, will certainly create a lasting impact on the rule of law and development agenda.

ACKNOWLEDGEMENTS

The Thailand Institute of Justice (TIJ) would like to thank the Institute for Global Law and Policy (IGLP) at Harvard Law School for their collaboration and making the inaugural TIJ Workshop for Emerging Leaders on the Rule of Law a success. Our sincerest appreciation goes to Prof. David Kennedy and his team, Ms. Kristen Verdeaux and Mr. Peter Slate for their hard work and dedication.

This TIJ Workshop Summary Report was made possible thanks to our contributors, Ms. Bowornluk Thongmark, Ms. Kanravee Kittayarak, Ms. Thanaporn Techaritpitak and Mr. Ukrit Sornprohm and our contributing editors Ms. Sumathi Chandrashekar and Ms. Soramon Urapeepatanapong.

TIJ Workshop Management Team

Program Director	Dr. Kittipong Kittayarak
Program Associate Director	Ms. Sommanat Juaseekoon
Project Manager	Ms. Anuwan Vongpichet
Project Coordinators	Ms. Napatsorn Iamsuranaan Ms. Soramon Urapeepatanapong

TIJ WORKSHOP FOR EMERGING LEADERS ON THE RULE OF LAW AND POLICY



I INTRODUCTION

The TIJ Workshop for Emerging Leaders on the Rule of Law and Policy was a landmark initiative hosted by the Thailand Institute of Justice (TIJ) at the Dusit Thani Hotel Bangkok from 6-11 January, 2017. The workshop, held in collaboration with the Institute for Global Law and Policy (IGLP) at Harvard Law School, sought to identify and nurture emerging leaders from various fields. The workshop was conducted by world-class faculty from the IGLP network. The workshop's success was due in no small part to the close partnership between TIJ and IGLP, and an interactive, interdisciplinary and innovative approach to fostering policy discourse through peer-to-peer learning.

The workshop offered a unique opportunity for practitioners from Asia and beyond to unlock the complex and dynamic linkages between the rule of law and policy making processes at different levels. With the United Nations including the rule of law as a Sustainable Development Goal (SDG) under Goal 16, participants received the unique opportunity of gaining a nuanced understanding of the rule of law in various contexts that are relevant to their work and their lives. It also led to the formation of a premier network of change makers across sectors who are devoted to continue working for the betterment of society through using the rule of law as a guiding framework.

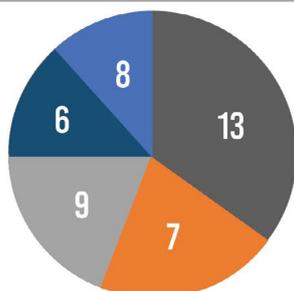
II THE PARTICIPANTS

The TIJ Workshop was conceived as a project to foster dialogue that would find the intersection between the rule of law, sustainable development, and practical applications of these theories across all sectors. The first cohort of TIJ Fellows came from diverse backgrounds and nationalities.

Participants (Admitted Applicants) Breakdown



PARTICIPANTS BY SECTOR



III THE FACULTY

Alvaro Santos (Mexico) Professor, Georgetown Law
Areas of Expertise: International Trade; Economic Development; Drug Policy and Transnational Labor Law

Benjamin Hurlbut (United States) Assistant Professor,
Arizona State University
Areas of Expertise: Science and Technology Studies; Bioethics; Political Theory

Dan Danielsen (United States) Associate Dean for Academic Affairs,
Professor of Law, and Faculty Director, Program on the Corporation, Law and
Global Society, Northeastern University School of Law
Areas of Expertise: Corporate Law; International Economic Law;
Law and Economic Development; Anti-corruption; Business Law;
Corporate Accountability; International Law; Political Economy

Grietje Baars (The Netherlands) Senior Lecturer, City University of London
Areas of Expertise: Political Economy; International Law; Corporate Power
in Global Society; Global Value Chains

Günter Frankenberg (Germany) Professor of Law, Goethe-Universität
Frankfurt am Main
Areas of Expertise: Constitutional Law; Security and Police Law; Criminal and
Administrative Law; Comparative Law; Comparative Constitutional Studies

Jason Jackson (Jamaica and United States) Lecturer, Massachusetts
Institute of Technology
Areas of Expertise: Global Value Chains; Political Economy; Economic
Sociology; International Development; Postcolonialism

Jason Yackee (United States) Associate Professor, University of Wisconsin
Law School
Areas of Expertise: Arbitration; Contracts; International Law; Administrative
Law; Business Transactions

Jorge Esquirol (United States) Professor of Law, Florida International
University College of Law
Areas of Expertise: International Law; Comparative Law; Commercial Law;
Law and Development; Property Law and Informality

Julia Dehm (Australia) Research Fellow, University of Texas School of Law
Areas of Expertise: International Law; Sustainability and Climate Change Law;
Carbon Markets; Environmental Justice.

Kerry Rittich (Canada) Professor and Associate Dean,
University of Toronto Faculty of Law
Areas of Expertise: International Law and International Institutions; Law and
Development; Human Rights; Labour Law; Feminist Theory

Leo Specht (Austria) Partner, Specht & Partner

Areas of Expertise: International Taxation; Privatization; Project Financing; International Contracts; Mergers and Acquisitions; International Arbitration; Corporate/Commercial Law

Nikolas Rajkovic (Canada) Professor, Tilburg Law School

Areas of Expertise: International Politics; Globalization; International Law; International Relations

Onur Ince (Turkey) Postdoctoral Fellow; Assistant Professor, Singapore Management University

Areas of Expertise: History of Political and Economic Thought; Global Political Economy; Development

Osama Siddique (Pakistan) Professor, Law and Policy Research Network

Areas of Expertise: Comparative Constitutional Law; Justice Sector Reform; Judicial Policy Making and Administration; Sociology of Law; Legal and Constitutional History of South Asia; Law and Development; Legal Education; Empirical Approaches to Legal Research; Human Rights

Robert Wai (Canada) Professor, Osgoode Hall Law

Areas of Expertise: International Law; Globalization; International Economic Law; Contracts

Scott Newton (United States) Lecturer, SOAS, University of London

Areas of Expertise: Post-Soviet Law and Legal/Institutional Reform in Central Asia and CIS; Law and Development; Law, Governance and Post-Conflict Reconstruction; Human Rights

Sheila Jasanoff (United States)

Pforzheimer Professor of Science and Technology Studies; Director, Program on Science Technology and Society, Harvard Kennedy School

Areas of Expertise: Science and Technology in the Law; Politics Policy of Modern Democracies with particular attention to the nature of public reason

Sinja Graf (Germany)

Assistant Professor, Singapore Management University

Areas of Expertise: International Law and Political Violence; Human Rights; International Law and Legal History; International Criminal Law

Usha Natarajan (Australia)

Assistant Professor, The American University in Cairo

Areas of Expertise: Law and Development; Sustainable Development; Refugee and Migration Law

Yugank Goyal (India)

Professor, Jindal Global University

Areas of Expertise: Law and Economics; Environment

THE WORKSHOP: OVERVIEW

Over the course of six days, the Workshop included Plenary Sessions, Special Lectures, Policy Skills Teams, IGLP-TIJ Policy Streams and an off-site field trip. Each of these will be discussed in detail in this report

I PLENARY SESSIONS

In the Plenary Sessions and Special Lectures, experts from various fields presented their perspective about the rule of law, the key issues at stake and suggested approaches to reform and examples of best practices of reform in action.

TIJ OPENING PLENARY

Topic: Introduction to the Rule of Law and the Sustainable Development Goals (SDGs)
*Please refer to Appendix 1 for the accompanying presentation

Speaker: Dr. Kittipong Kittayarak
Executive Director, Thailand Institute of Justice (TIJ)

The Opening Plenary provided an overview of the TIJ's vision for the Workshop, as the first of its kind since the adoption of Goal 16 for peace, justice and strong institutions of the SDGs.

Dr. Kittipong explained that the UN's decision to transition from the Millennium Development Goals (MDGs) to the SDGs was a recognition of the limitations of the MDGs framework. The MDGs, which followed a silo-based approach, and had a sectoral focus, had failed to view the rule of law as an integral tool in the development agenda. With the shift to the SDGs, there is now a focus on the aggregate, and an emphasis on the rule of law, and good governance as a target to be achieved and an enabling factor to other economic & social goals. There is a crucial shift towards a partnership approach, where the responsibility for change rests not only on governments, but also on academia, civil society, and the private sector.

Dr. Kittipong also provided a few operational definitions of the rule of law. As a fluid concept, the understanding of the rule of law depends on the context in which it is operating. A minimalist definition of the concept would mean rule by law. A midrange definition would translate into a liberal democratic rule of law, where law is viewed as public, prospective, and certain; and guarantees certain basic minimums such as equality before the law, and other human and basic rights, where lawmaking is carried out by democratically legitimized bodies, and where power is controlled by checks and balances, and where the judiciary operates as an independent body. At the other end of the spectrum, a maximalist definition of the rule of law translates into a social democratic rule of law, and brings in social universal rights institutionalized in a welfare state, with legal regulation designed to reduce socioeconomic inequality.



The rule of law extends its reach far beyond the profession of the law, and is a means of achieving sustainable development itself. When laws are stable and predictable, i.e., a rule of law framework subsists, a host of possibilities become realistic: we can, among other things, achieve economic development, create a meaningful social justice environment, prevent and mitigate conflict by building a trustworthy justice system, provide a system of checks and balances on power, and reduce corruption by ensuring a fair allocation of resources.

Recognising that rule of law is indispensable to inclusive growth and the betterment of society, Dr. Kittipong stressed that if it is absent or if it is weakened, any reform efforts will almost always fail. He related his own experience in this regard. When he started his career as a prosecutor, his ambition was to send criminals to prison for long lengths of time. But a weak defence usually meant that often, innocent persons were sentenced to prison. This led him to move away from legal practice towards improving due process in society. This is an example of why good law is not enough, and what is important is how it is implemented. He then laid out the reasons as to why rule of law reform has failed. It has been plagued by a narrow scope, insufficient political will, inadequate stakeholder participation and an inability to accommodate the diverse perspectives.

This Workshop was a platform to overcome these failures, and mobilize change makers and influencers from across all fields to think constructively. It is increasingly accepted that rule of law is relevant to all sectors, and that it is the cornerstone of inclusive and sustainable development. To ensure that all will benefit from security and prosperity, the Workshop will help explore ideas and identify practical measures and approaches to make the rule of law a tangible reality to achieve sustainable development for all. The takeaway for all must be to understand how integrate the rule of law into their work, and to understand its values and importance.

PLENARY LECTURE 1

Topic: Globalism, Context, Data and Comparativism:
Key Facets of Modern Policy Thinking

Speaker: Dr. Osama Siddique
Executive Director, Law and Policy Research Network & Senior Faculty
The Institute for Global law and Policy at Harvard Law School (IGLP)

Key points:

Dr. Siddique started by introducing the methodology used by IGLP in its workshops, which is different from the 'usual suspects' (namely international finance agencies, international development organization and professional policy institutions, etc.) in the policy discourse. The traditional players tend to answer questions about policy and how to implement them. IGLP does not necessarily fit into that mold. Instead, it comprises academics who come from a variety of backgrounds and belong in a space that is at the nexus of both law and policy, and thus look differently at how law connects with policy. The IGLP does not subscribe to orthodox approaches, but looks at doctrine and dogma with healthy skepticism.

Dr. Siddique highlighted that the policy-making process has changed a lot from the influences of globalism. He introduced a set of issues that need to be asked during the process of policy making. These include: the difference between policy and politics; the neutrality of policymaking; its interaction with law; the nature of law itself (is it an instrument, or does it enshrine wider values?); the boundaries of policy, if it must have any at all; whether policy is rational, quantifiable, scientific, and so on. On the policy making process itself, he placed more questions on the table. For example, who is responsible for framing policy questions, and how are these questions framed (should courts, for example, prioritize gender-related violence, or contract enforcement?), or how can general norms and local concerns be balanced? In a similar vein, Dr. Siddique laid out questions regarding the role of knowledge and experts, whose voices among the stakeholders tend to be heard or subdued, or when is knowledge trusted (for example, evidence-based policymaking).



The lecture concluded with a discussion on the challenges of policy-making in the global era. For instance, the translatability of best practices, or the usefulness of international benchmarks perhaps has yet to be fully understood. There is a tendency for international policymakers to offer cookie cutter solutions or merely transplant ideas. In doing so, they may risk ignoring the needs and concerns of the developing world, and the different traditional, religious, cultural, social and political contexts.

Through this theoretical discussion, Dr. Siddique's objective was to encourage the audience to be more critical and ask more questions in the policymaking process itself.

TIJ Special Lecture

Topic: **Alternative Development Model for Sustainable Growth
"The Doi Tung Development Project"**

Speaker: **M.R. Disnadda Diskul**
Chairman of the Mae Fah Luang foundation under Royal Patronage

The Special Lecture highlighted the linkages between sustainable development, and the rule of law, through the example of the alternative development model followed in the Doi Tung Development Project (the Project).

His Majesty King Bhumibol Adulyadej's wisdom has become the cornerstone of Thailand's alternative development initiatives and has shaped the United Nations' guiding principles on alternative development. M.R. Disnadda highlighted that Thailand has been a donor country in "software" - providing experiences in partnership with many countries and community with alternative development programs. Alternative development, also known as "Sustainable Alternative Livelihood Development (SALD)," has proven to be successful as it does not neglect the geo-socio-economic realities in communities with the recognition that there is no one-size-fits-all solution. In this development model, "sustainability" is firmly put at a heart of mission and implementation processes.

People are the key to sustainable development; therefore, empowerment, education and ensuring that they are resilient and capable of carrying on development is vital. This is a process that undoubtedly takes time. This people-centric approach model divides development into three phases: Survival, Sufficiency, and Sustainability, also referred to as the 3S model. M.R. Disnadda then proceeded to describe the application of this model in the context of the The Doi Tung Development Project:

3 PHASES TOWARDS SUSTAINABLE DEVELOPMENT



- **Survive:** Ensuring that people have enough to eat without the need to borrow and take loans to afford basic necessities is of paramount importance. Basic requirements must be met, starting with irrigation systems, soil improvement and planning for longer term activities. Moreover, to stabilize the income of the people, the Project facilitated the growth of crops that was suitable to the area such as Macadamia and Arabica coffee, which can maximize potential in the long run. This created a buffer zone that allowed for the forests to prosper alongside people while preserving their well-being.
- **Sufficiency:** The next focus is to increase the ability of villagers in the area to re-pay their debts by finding business models that would establish a sustainable income. This was done by utilizing a value-added approach and improving the quality of their products, which not merely increased revenue, but also created more job opportunities. Through this strategy, the Project has changed from being product-driven to market-driven, which will gain comparative advantage in the market. Partnerships have also been established with large organizations and institutions such as IKEA, MUJI, and Tokyo University, to help bring local products to the international market.
- **Sustainability:** The community has to become fully independent -- their finances and the business model must become fully operational and risk-proof so that it can survive even if the face of unprecedented market shocks. Local people are the ones who will continue to develop themselves in the future in their community and capable of sustaining their livelihood in the long run. Human-centered outcomes need to be measured. The community has to regain its pride and dignity, and children must receive the compulsory years of education and continue with vocational school and further higher education at the university level.

Moreover, cultural aspects must be taken into consideration. Certain key factors must be implemented throughout the three phases. M.R. Disnadda stressed that we have to learn from the community first, by mutually designing the development project or law together, truly addressing the root causes of the problems and capturing the potential of the areas. This is a bottom-up approach, but at the same time, top down decision-making should be adopted. All stakeholders need to be involved in the process, from central government, local authorities to the grass root level. Bringing the local community to work together in every step from beginning until the end will foster a sense of ownership for the locals so that they can develop on their own after we exit. For every project, an exit strategy and the need to be able to adapt into different socio-economic areas are of fundamental importance.

This model that was adopted by the Doi Tung Development Project can also be adopted and implemented elsewhere, and indeed the SALD model is gradually being implemented across the world through agreements with Myanmar, Afghanistan, Indonesia and other areas in Thailand as well.

M.R. Disnadda emphasised that alternative development and the rule of law are two sides of the same coin and that one cannot be attained without the other. A functional rule of law framework is a pre-condition for the actualization of alternative development and in turn, alternative development helps enhance rule of law from the grassroots level. Alternative development processes foster a culture of lawfulness and governance within the community, thereby promoting peace and national security. Participation from the people and communities will also allow the rule of law to be created and upheld. By employing a people-centric approach, it will contribute to strong and more transparent local governance with high involvement of community partnership.

With the shared global goal to realize the SDGs in the next 15 years in the face of the widening gap between the rich and the poor and increasing inequality in the world, it is imperative that all forces work together to find new ideas based on the spirit of the SDGs of "leaving no one behind". Our shared success will help us shape the future of the 21st century.

POLICY SKILLS TEAMS

The Policy Skills Teams were uniquely customized curriculum tailored to four topics:

TOPIC 1

Criminal Justice System Reform and Implementation in Developing Societies

TOPIC 2

Good Governance in the Public and Private Sectors

TOPIC 3

Informality, Development and the Challenge of Inequality

TOPIC 4

Science and Sustainability

Each TIJ Fellow was assigned two topics based on their preference rankings and faculty review, with one topic serving as the Fellow's primary team – where the TIJ Fellow and their designated partner worked to deconstruct their policy proposal to explore its strengths, challenges and weaknesses. In the primary teams, TIJ Fellows were given two opportunities to present: first, every Fellow presented their partner's policy proposal, to gather constructive feedback and to identify areas of improvement; second, each Fellow presented their own policy proposal at the concluding Policy Skills Team session. The second team to which each Fellow was assigned was an opportunity for participants to learn about their colleagues' policy proposals and provide feedback.

As part of the exercise, the co-conveners of each session referred to the framework designed by using the IGLP Method for TIJ Fellows to deconstruct their policy proposals:

1

Framing:

- a) What exactly is the policy problem that needs addressing?
- b) What makes this problem a policy question, as opposed to, for instance, a political or legal question?
- c) Would it be possible to frame this question differently?

2

Variables:

- a) How would you break down the policy problem and your proposed solution into political, legal and institutional variables?
- b) What are the major factors that might facilitate or obstruct the implementation of policy?
- c) Who are the key actors, existing or potential policy constituencies, allies and rivals?

3

Methodology:

- a) What would be the proper methodology or framework to analyze this problem?
- b) What kind of data would one need to formulate an adequately informed solution?

4

Alternatives:

- a) What do you think is the major strength of your policy proposal?
- b) What do you think is the major weakness of your policy proposal?
- c) Do you have a second-best option should the primary proposal fail to work?
- d) Are there other cases of reform where similar problems have been addressed by different policy initiatives?

I.POLICY SKILLS TEAMS:

Criminal Justice System Reform and Implementation in Developing Societies

Faculty: **Sinja Graf** (Germany) National University of Singapore
Onur Ince (Turkey) Singapore Management University
Osama Siddique (Pakistan) Law and Policy Research Network

This team discussed effective criminal justice system reform and implementation in consideration of national contextual realities as well as meaningful adaptation of what has proven to work well across national boundaries. In this workshop the team developed an analytical framework to examine reform projects from multiple lenses: historical, sociological, institutional, legal, geographical and knowledge/data focused. It evaluated reform not only as a technocratic domain but equally as a political phenomenon and strategy. Informed by select international literature, collaborative learning method had emphasize vital actual experiential insights from diverse faculty members as well as seasoned participants.

At the outset, the faculty pointed out that a great number of criminal justice issues are a result of stagnation in reform efforts and policies that fail to target the real issues at stake. There is no one-size-fits-all panacea for criminal justice reform policy and each initiative must take into account crucial factors, which may vary in different countries, cultures, and contexts. The rule of law is a valuable framework to consider in order to ensure justice and fundamental rights in the criminal procedure. Policymakers should also be wary of the audience they are speaking to in order to craft their proposal.

The co-conveners then encouraged the TIJ fellows to discuss and share their viewpoints on the ways the law can contribute to criminal justice reform by drawing from their own experiences and areas of interest. Particular attention was paid to various approaches to reform. Questions considered included the fact if whether outside donors, or "experts," should dictate policy by prescribing a standard hegemonic approach to certain issues, and the implications this would have on the global power balance alongside factors such as human rights and domestic interests.

As there is no single solution to issues in the criminal justice system, the team discussed different approaches to reform. First, customary laws, general principles of law, and social sanctions were emphasized as an

indirect means to support criminal justice reform on the ground that can informally help close loopholes in regulations and case proceedings. They can turn behavioral and mental commitment into practice and thus establish enforcement. Second, participants noted that it is essential to put under the spotlight the role and the expertise of those closely involved in the judicial process. At present, legal training and teaching practices are often too narrow in scope, preventing many practitioners from identifying gaps and issues in the justice system, which requires a more holistic approach involving the fields of economics, criminology, politics, and development sciences, among others. In reality, decision makers should have particular expertise and collaborate closely to study the root causes and employ a context-based approach when reforming the criminal justice system.

Fundamental rights and constitutional rights were also taken up as an illustration of basic issues concerning those involved in criminal procedures everywhere. Inequality in the justice system is undeniably a consequence of inadequate promotion and protection of fundamental rights, which requires the attention of states and governing bodies to prioritise in any reform policy. This approach calls for a reform agenda that emphasizes the protection of rights, an essential element of the rule of law, as a foundation to effective justice reform.

Police reform in Indonesia was used as a case study to identify key causes of failed reform. However, it was noted that there are gaps in the interpretation of what "failure" constitutes depending on the stakeholder – whether it was domestic agents or international observers using international standards. Some of the TIJ Fellows also pointed out that cultural reasons, entrenched opposition, lack of institutional capacity and political will for reform, among others, could hold back the achievement of certain standards that are integral to the rule of law.

The expansion of the city of Mumbai was also discussed to generate thoughts about the perils that come with rapid urban expansion. Modern aspirations lead to vast inequalities across multiple areas including access to justice, the labour market and economic disparity. The presentation highlighted a key point that in developing societies, extensive partnership between all relevant stakeholders partnership is crucial.



Tze Wei Ng

Deputy Director for Asia and
Hong Kong Director at PILnet

In Hong Kong, the legal needs of the poor and vulnerable are insufficiently met and there is a need to conduct a feasibility study to highlight these gaps in access to justice. This will in turn, push the government to increase financial resources for the legal aid system and foster an enabling environment for the proliferation of community law centers. Regionally, PILnet is also working to better support the fight against human trafficking by doing a number of things: growing a community of pro bono lawyers who are familiar with the basic legal needs of victims of trafficking, and who can help NGOs meet these needs; as well as involving more law students in clinic or legal outreach activities so more future lawyers will be interested in specializing in this area. Rule of law is also about making sure the law works for all, and that critical legal advice is available at an early stage. Improving the criminal justice system is about getting good laws in place, as well as to make sure that the laws are implemented in a rights-based way.



Sita Sumrit

Chief of Women and Children
Empowerment (WCE) Program at
Thailand Institute of Justice

The justice systems in many developing societies, including Thailand, suffer from structural constraints and lack mechanisms that support disadvantaged groups of people, particularly women and girls to pursue justice. There is a need for a gender sensitive approach to criminal justice reform, and this can be achieved by deconstructing the data, mobilizing relevant stake holders to work in synergy with one another to come up with a responsive approach. More importantly, women and children must not only be viewed as voiceless recipients of justice reform, but rather, their input, interests and participation must be articulated in the design of the criminal justice system. However, it is important to comprehend that top-down policy and reform as a meta-framework is not discernible unless it is rolled out into processes and procedures. Henceforth, the discussion around policy strategies needs to be tailored down to “policy-process and procedure” steps. More importantly, focus should be given on capacity-building for criminal justice personnel to sensitize them to these issues. The acceptance of the inextricable link between the law and development must be enhanced in tandem with a paradigm shift to devise a transformative set of policies and reform, which recognize women and children as and enable them to move from vulnerable to be “valuable” in the justice system.

02

II. POLICY SKILLS TEAMS: Good Governance in the Public and Private Sectors

Faculty: **Günter Frankenberg** (Germany) Goethe-Universität Frankfurt am Main
Nikolas Rajkovic (Canada) Tilburg Law School

This team explored the ways in which governance is performed in contemporary policy work by focusing on the role of law in governance as a site of choice rather than a ready-made solution to significant policy challenges. The limits of law, the unintended consequences of law and the importance of legal arrangements which may be difficult to perceive – private, informal, foreign – will all be considered.

In this Team, TIJ Fellows were advised to start by teasing out the definition of the main concepts and ideas featured to explore how the problem could best be approached. For instance, one's understanding of the terms 'policy' and 'politics' will have significant influence when they frame their policy issue. After a group discussion, the TIJ Fellows agreed on a basic definition of "policy" as a rational and planned set of measures designed to achieve particular goals that are undertaken by both public and private actors. This was contrasted with "politics," which is viewed as a relatively messier and unplanned process where interests of different parties are taken into account.

Next, the team discussed the concept of 'good governance,' and some expressed their views that it is not necessarily an invariably positive thing, as it is often associated with unnecessary bureaucratic red tape that can lead to inefficiencies in certain situations. Likewise, the social construct of transparency being good and how it is perceived as desirable for the people concerned was analysed. For example, transparency in the media or the private sector could have different implications for the government.

It is also beneficial to examine the politics of naming and to take note of the contributors of such definitions so that we are careful of the motives behind names and do not always accept things as universally proven. Corruption is a case in point; in fact, its conceptualization may be criticised as western-centric as it fails to recognize the varied cultural practices in some parts of the world in which many forms of bribery are not inherently viewed as unacceptable. After delineating the relevant definitions and concepts, the co-conveners also highlighted the need to have a clear research or policy problem. It is always better to break down big conceptual ideas such as governance and globalisation to present a more focused direction. The framing of the problem is equally important. Who sees the problem and how they see it should be clearly identified.

Further, it was suggested that the role of law in the triangle of the rule of law, governance, and constitutionalism should also be analysed and evaluated and that the law should not be viewed as isolated from policy and politics.

The group then discussed the path dependency of legal professionals to associate the rule of law with territoriality and the traditional mapping of nation-states which is used widely including by the United Nations. Such conventional conceptualisation fails to capture several developments including the emergence of super cities, railway networks, cyber and orbital space. Also excluded are socioeconomic realities such as inequality, distribution of wealth and the people who are affected. Therefore, it is recommended that when thinking about the policy problem and the rule of law, policymakers should try to visualise the actual terrain in which the rule of law can reach in scope.

During the sessions when TIJ Fellows were asked to present their partner's policy proposals and their own, the co-conveners stressed that in order to achieve the central goal of convincing the audience as to why the policy proposal is pertinent, the presenter should always tailor his/her presentation to the specific audience. For example, the language and style appropriate in front of the cabinet and the general public may be very different. Keeping the presentation concise and well-structured with the problem, its framing and solutions stated clearly in order enables the audience to follow the thought process and better understand the message.

Spotlight Cases from the TIJ Fellows



Sumathi Chandrashekar
Law and policy professional
Vidhi Centre for Legal Policy India

There is excessive case backlog in Indian courts. The causes observed are the limited number of Indian judges and their rather high statistics of absence; lawyers strategically delaying the judicial hearings; and also important is the common expectation that cases can be delayed at both local and national level. However, no empirical research has been conducted to investigate the problem systematically. The policy recommendations presented focus on behavioral change of the legal personnel, changes to civil and criminal judicial procedure and changes to substantive law to promote alternative to imprisonment. As the judiciary is independent and is seen as reluctant to initiate reform, the drive for change will need political support from the legislature to approve institutional reforms needed.

Spotlight Cases from the TIJ Fellows



Fermin M. Mabulo
Municipal Mayor of San Fernando,
Province of Camarines Sur
The Philippines

The government of the Philippines is considering a shift from the presidential system to a federal parliamentary system to rebalance the center of power from the executive to the legislature and allow for greater flexibility and accountability. It is believed that as Mr. Rodrigo Duterte, the incumbent President who was elected with 91 per cent of votes is in favor of the reform, the transition is timely. However, the major challenge lies in convincing the popular masses to adopt the same opinion. As of now, many have shown their reluctance to change since they are uninformed about the potential benefits. Therefore, it is proposed that the government engage more closely with the public through open discussion with periodic communication via varied types of media for consultation before the constitutional change.

03

III. POLICY SKILLS TEAMS: Informality, Development and the Challenge of Inequality

Faculty: **Jorge Esquirol** (United States) Florida International University
College of Law
Yugank Goyal (India) Jindal Global University
Robert Wai (Canada) Osgoode Hall Law School, York University

This team focused on issues of economic development and income inequality through the use of group exercises that combined policy planning with intensive legal analysis. Professionals working directly on concrete public policy projects were given the opportunity to share their intended objectives and the means available to them, from their perspective, for their implementation. These included both the traditional tools of policy planning, such as national laws and legal institutions, as well as informal tools such as reliably consistent social practices, deliberate official inaction, and long-standing areas of legal non-regulation.

This session began with a discussion regarding the distinction between formality and informality, using the form of employment as a determinant. The formal sector includes employees who are entitled to social security benefits / pension, earn a permanent income and are hired through a legal contract ensuring minimum wage. Beyond the realm of employment, the question of the differences between “informal” and “illegal” were also raised. The participants agreed that the boundaries between the two are quite porous.

Although there is often a disconnect between informality and formality in available literature, in practice the line between the two concepts are quite blurred. It eventually depends on the nature of policy making, which tends to favour 'formalization' as a solution to every problem. For example, to improve the condition of workers in the overall labour market, there is a need to identify 'informal workers', which in turn leads to formalization through their inclusion into the system where benefits and social security would be provided by law. Drawing from such examples, the definition of informality and formality is rather arbitrary and varies depending on the stakeholder. Therefore, it was concluded that policymakers' discretion play a significant role in formulation of the law and regulation, and thus the distinction between formality and informality cannot be distinguished simply as the difference between those in the regulated market and those who are not.

Spotlight Case from the TIJ Fellows



Ms. Suphannada Lowhachai
Policy and Plan Analyst
National Economic and Social
Development Board

Although Thailand has been able to reduce poverty rates at a remarkable rate, the shortcomings of this feat are that inequality is still on the rise. The challenges to the reduction of inequality are, among others, an aging society which demonstrates a changing of demography and new technology which is both threat and opportunity, depending on who get the access to use what technology.

04

IV. Policy Skills Teams: Science and Sustainability

Faculty: **Julia Dehm** (Australia) University of Texas School of Law
Benjamin Hurlbut (United States) Arizona State University
Sheila Jasanoff (United States) Harvard Kennedy School
Usha Natarajan (Australia) The American University in Cairo

This team focused on the relationship science, technology, and political power in contemporary policy making. The modern state's capacity to produce and use scientific knowledge is significant both in the production and maintenance of political order and in shaping or justifying the choices faced by policy elites. This team examined the role of scientific knowledge in policy-making oriented to environmental "sustainability."

Science and technology can be considered as both tools and the processes that play a part in driving society forward and help create modern governance. When finding the linkages between technology, sustainability and rule of law, it is important to envisage how technology is related to law and policy. Both technology and the law are man-made, can enable and/or constrain things, reflect social values and need professional operators for them to be effective. However, the key asymmetry is that law and policy are always seen as political tools while technology is often not. In reality, modern technology has consistently progressed in alignment with social and political dynamics. Dating back to 1945, the US believed that technology was the key to victory in World War II and emphasized the need for homegrown science and knowledge innovation instead of importing it from Europe, marking the first "social contract" for technological innovation. This was accompanied by the notion that more innovation would bolster social welfare and that technology should be a self-regulated institution fostered by the government given that any imperfections could be fixed by market mechanisms, regulation and ethics. Conventional technology policy in the US suggested that the government has a role in creating pre-conditions for technology development such as incentive structures through the provision of subsidies and tax incentives

Conventionally, technology is often seen as "asocial," driven by science, ingenuity, and material resources and its negative impacts are considered "unintended consequences". This makes some components less visible, namely expertise states should have in order to guide technology policy, indicators used to evaluate success and failure, responsibility for such consequences and ethics when evaluating impact of technologies. To mainstream such components should be done in line with the rule of law. The standard narrative suggests that technology continually improves through new materials, skills and instruments, and design imaginations. In turn, these new innovations help advance many facets of society, but are not necessarily always welcomed with enthusiasm and can face resistance, as exemplified in the anti-GMO movement.

When mapping out the development trajectory of science and technology, the co-conveners highlighted four approaches. Firstly, the linear approach of technological determinism is a reductionist theory that presumes that a society's technology drives the development of its social structure and cultural values. The dialogic approach is another view that views technology as a social construction of with user demand and evolution driving technology. Thirdly, the systemic approach of actor-network theory introduces the concept that technology as a heterogeneous network of social, materials and abstract elements with changes that can happen in any node of society (e.g., economy, law, user groups). Lastly, the structural approach of politics considers technology as power.

Society has long posed the question of whether technology development policies truly address the needs of the majority. It is therefore timely to critically deconstruct any technology policy together and consider multiple sides to help improve the decision making in such policies.

Spotlight Cases from the TIJ Fellows



Teeradetch Tungsubutra
PTT Public Company Limited
Thailand

The truism that economic growth always comes with waste has always been overlooked. When talking about sustainable development, waste management must not be neglected. In the world of ever expanding consumerism, packaging also matters -- when consumers purchase goods, there is inevitably waste and this subsequently undermines sustainability. Besides the allocation and arrangement of safe areas as landfills, it is essential to focus on raising awareness among people that they should think before buying and consume efficiently. Additionally, there should be adequate allocation of funding for trash separation and collection coupled with policy and regulation that encourages the habit of separating trash in daily life for the Thai people. Most importantly, using technology to our benefit with collective effort can play a part in creating a holistic environmental policy that helps reduce pollution.

Spotlight Cases from the TIJ Fellows



Rathapol Bhakdibhumi
President & CEO
General Electric Commerce
Services Co.,Ltd. Thailand

The innovation of the electronic transaction platform called “the electronic-Supply Chain Finance” provides information-technology that helps connect lenders with borrowers in Thailand. It is a tool that optimizes both availability and cost of capital with existing buyer-supplier trading relationship. The ability to share information in ‘real-time’ among firms is simply one key enabling factor to collaboration. The solution has helped SMEs in Thailand to gain easier access to capital they need to operate businesses. The key challenge that remains in this platform is how to build trust among all stakeholders. In order for this success to be initiative, it is not only the service provider’s responsibility to ensure data and information security, but regulators such as the Bank of Thailand and policymakers in the public sector will need to work in close collaboration to ensure there are adequate accountability measures and transparency alongside the strict enforcement of relevant privacy and finance laws.

TIJ-IGLP POLICY STREAMS

Utilizing the IGLP’s rigorous policy stream method, the Policy Streams involved three sessions. The first two were lecture-style learning sessions and the concluding session was a case-based session where participants were expected to learn more about topics they were interested in. The IGLP’s key expertise lies in helping bridge conceptual frameworks and abstract concepts into policy and practice.

The four TIJ-IGLP Policy Stream topics were:

- I. Labor and Migration in a Transnational Economy
- II. Finance and Development: The Silk Road Economic Belt Initiative
- III. Distribution and Regulation in the Transnational Economy
- IV. Law and Development

01

I. TIJ-IGLP POLICY STREAM: Labor And Migration In A Transnational Economy

Faculty: Jason Jackson (United States and Jamaica) Massachusetts Institute of Technology
Kerry Rittich (Canada) University of Toronto Faculty of Law

This stream investigated the role of debt in labor markets in the developing world as modes of work and employment shift with a focus on the policy challenges and choices opened up by recent experiences with microcredit lending in its various forms



The stream first explored the types of rules, institutes and policy making approaches that affect the labor market and possible solutions to address such problems, particularly in the context of developing countries.

A key issue is the enforcement level and effectiveness of labor laws, which mostly regulate registered laborers but fail to take into account unregistered workers. In many countries, unregistered laborers have grown significantly over the years and government officials are unable to keep record of them. This may affect the local population variously through increase in criminal activity, added stress to the public healthcare system, and further economic repercussions, among others. Informal practices can address problems and effectively support formal laws and judicial procedures. Informal practices may have law-like properties that aim to do many of things that the law does such as setting norms and standards, normalizing certain types of practices, and imposing particular social sanctions.

The informal labor regime is often characterized as typically having poor work conditions, low pay and economic insecurity. As such, work in the informal sector is viewed as a problem to be fixed through formalising the labor market. However, by merely extending bureaucratic structures to regulate work in the informal sector would not necessarily guarantee better protection and benefits for workers.

The Trafficking in Persons (TIP) report by the US Government was cited as an example to demonstrate a non-legal measure that can positively impact the informal labour market by advocating for the amendment of the anti-trafficking in persons laws. In Thailand, for example, unregistered workers from neighbouring countries are vulnerable to trafficking and violence and hostility in the workplace. Most cases remain unreported due to the fear of prosecution for illegal migration and working without license or work permit. Legal assistance is also often unaffordable to most migrant workers. The US report downgraded Thailand's performance ranking and resulted in the swift and robust collaboration between Thai organisations working in criminal justice to keep records of all foreign workers and establish an easier registration channel, thereby encouraging illegal workers to register and work legally. Progress was also made in an attempt to identify trafficking victims, forced labour, and debt bondage among foreign migrants in Thailand.

TIJ Fellows also discussed the effectiveness of international laws and international mechanisms, such, the United Nations Convention against Corruption, Convention against Torture, and relevant United Nations sub-organs, in reducing illegal migrants and labourers. The United Nations, in its role as peacekeeper can be an influential driving force in encouraging countries to comply with ratified treaties as well.



Gender sensitivity and child-sensitive social protection were also crucial aspects in labor policies. Especially in Southeast Asia, female workers and children are still victims of trafficking and forced labour, and they also face relatively more obstacles when accessing justice. A possible way forward is to pay more attention to the particular needs and shortcomings of the justice processes—at both the practitioner and policymaker levels in both the public and private sectors—without ignoring the realities of the informal labor market in developing countries.

The stream discussed the case of the worldwide online transportation network company, Uber. Participants discussed several dimensions about the growth of Uber and its impact on taxi and transportation service markets in many cities. In London, taxi drivers need to take an extensive and costly knowledge test before obtaining a license, but similar standards do not apply to Uber drivers. Singapore views this as not only an economic issue but that there are political and social dimensions as well, since most taxi drivers are the elderly. Approaching this matter with a view that supports the burgeoning informal labor market (i.e. Uber) will result in a different solutions. Going forward, this also poses the question of how governments can formalize the informal labor market. Given the market's ever-growing reliance on technology, which in turn spurs economic expansion, the state must learn to handle and adapt to the new trends and risks of the labor market.



02

II. TIJ-IGLP POLICY STREAM:

Finance and Development -- The Silk Road Economic Belt Initiative

Faculty: Leo Specht (Austria) Specht & Partner

Guest Speaker: Boonchai Charassangsomboon (Thailand)
Ministry of Finance/ Asian Infrastructure Investment Bank

The role of finance in development is widely acknowledged. Credit and debt are crucial to economic development from national infrastructure projects through investment in national champions and small or medium-sized enterprises to microcredit. This stream examined the political economic impact of the new financial resources and institutional arrangements associated with the Silk Road Economic Belt Initiative and its impact on development, inequality and political possibilities from China and Southeast Asia through to Europe.



This stream provided an overview of the Silk Road Economic Belt, also known as the One Belt One Road (OBOR), which has been described as the most far-reaching initiative that China has ever put forward. It is a development strategy and framework focusing on the creation of an economic land belt, which aims to redirect China's capacity and capital towards regional infrastructure development to improve trade and relations with ASEAN, Central Asian and European countries and fully fortifying China's status as a global manufacturing powerhouse. OBOR operates within the Chinese constitutional framework of development, which regards finance as the main catalyst for development, leading to the founding of China's very own development bank, using sovereign funds. However, critics have noted that finance is not an exclusive universally applicable technique to development and requires specific approaches, depending on the unruly mixture of norms, customs and differing social, political and legal contexts which must be taken into account in development.



The case study discussed in the stream was that of the Asian Infrastructure Investment Bank (AIIB). The progress of China's financial institutionalization in the global arena is already underway as seen by the establishment of the AIIB, which has been in operation since the beginning of 2016. The main objectives of AIIB are to foster sustainable economic development by investing in infrastructure and other productive sectors and to also promote regional cooperation and partnership with other development institutions. Currently, AIIB's investments prioritize green energy, cross-border infrastructure and private capital mobilization, all of which have a primary focus on OBOR-related projects. The AIIB is also notably different from existing multilateral development banks with regards to its expediency in internal review and risk assessment systems for project approval, proclivity to take on higher risk loans, and attempt to engage with development funds from the private sector. This approach, which does not enforce free market economic policies recommended by other institutions such as the World Bank has been viewed by some as China's attempt to expand its political and economic influence across the continent and beyond. However, the co-conveners of the session highlighted the need to consider that the skepticism surrounding the AIIB and OBOR initiative as self-serving need not undermine the fact that the AIB's impact-centered approach to loan approvals by being pragmatic, fast and less risk-averse can indeed yield greater benefits. By reducing bureaucratic red tape, projects can proceed at a faster pace, which will arguably be beneficial to the achievement of development goals, and on the larger scale, the SDG targets.

Since finance is an inextricable component of economic development, it is also necessary to critically examine finance in terms of the money creation mechanism. In the past, the process of money creation was explained by the money multiplier model, where the Central Bank is in total and sole control of the money supply available in the economy by setting a reserve requirement that banks must abide by. However, today, commercial banks create new money when they advance loans, expanding their money supply much faster than the growth rate of the real economy. This fresh supply of money is then injected into property and financial asset markets, which can lead to inflation and price bubbles. In light of the financial crisis of 2007-2008, the question about whether money creation should be left in the public hand or not remains. The preliminary response is that there must be more stringent regulations established to monitor money creation. The survival of the economy is not only based on a carefully crafted regulatory framework, but also in the ownership, control and management of financial institutions.



03

III. TIJ-IGLP POLICY STREAM:

Distribution and Regulation in the Global Economy

Faculty: **Dan Danielsen** (United States) Northeastern University School of Law
Grietje Baars (The Netherlands) City University of London
Jason Yackee (United States) University of Wisconsin Law School

When considering problems of unequal distribution in the global economy we often assume it is the state's role to regulate economic actors so as to resolve them. In reality, however, the economy is regulated, or governed, by a variety of actors – including the states, corporations, international NGOs and labor unions and many others. This stream examined the complex, dynamic and sometimes competitive ways in which these various rule-makers or 'normative agents' operate, with a South Asian case study focus



At the outset, this policy stream posed a question asking fellows to consider what the notion of “political economy” entails. The mainstream understanding of the “political economy” after the western enlightenment era has long shaped the debates on state interventions in private activities. At first, each state had the power to regulate property and exchange and in time, the law began to protect individual autonomy and property rights against encroachment by the state. The main role of the law was to facilitate unimpeded exchange of property.

The central question revolves around the circumstances in which the state may intervene and the extent to which it may take appropriate actions to preserve public interests. This proposition assumes that there is a state as a single unit and that the state is the actor which can effectively set the rules of the game. Following this observation, policymakers are left with restrictive choices. The question of equal and fair distribution is also left largely unaddressed.

Rules and regulations are the products of the interplay of policy-making processes and the bargaining of power. It is more helpful to acknowledge the roles of various state actors, for example, the executive, the legislature, the judiciary and the different national and international coalitions involved. In addition, various state actors mostly have diverging interests leading to constant negotiations and power bargaining.



The growth of international trade and investment laws also means that the power of the states to regulate is increasingly restricted by international agreements and their arbitration clauses. National governments are now at greater risk of being defeated by arbitration committees of international organizations or being sued by multinational companies.

The global economy has indubitably become ever more complex with a large number of actors involved. These actors have their own interests and methods of pursuing them. They operate and interact with the state and among themselves, and in many occasions, even outside the sphere of the formal policymaking system, beyond sovereign control. Hence, state-made laws are not the only instruments we need to take into consideration. FIFA regulations can be considered as a prime example.

This session used the case study of the textile industry in Bangladesh, particularly the Rana Plaza disaster, to illustrate the role that the pressures from the global economy has played perpetuating inequality by driving domestic factory owners to bypass regulations by maintaining cheap wages and long working hours with little provision for work safety, labour protection and welfare. Bangladesh is the second largest exporter of textile in the world after China and the growth of the textile sector in the country is mainly driven by cheap exports to foreign buyer firms. With low-value products and low-skilled labour easily replaced by other sources elsewhere, factories are in a very disadvantaged position in the global market and are obliged to make the most profits while keeping business costs at minimum. This is in contrast with Italian textile producers, who can charge much higher prices for very high quality products.

Multiple players can possibly intervene in the situation, such as the Bangladeshi state, the textile brands that employ these factories and other major textile exporting states. Private organizations such as the factory owners, the intermediaries in the supply chain, and the brand owners can also advocate against the exploitation of factory workers alongside civil society, consumers, media and international organizations.

04

Partnerships between these players must be encouraged to increase regulation, improve existing inequalities and address the problem more effectively. Policy options for the Bangladeshi government to adopt may include: supporting the transition from low-value to high value-added economy; implementation of international labour standards and strengthening of trade and investment laws; raising consumer awareness and pushing for favourable global public opinion; and possibly promoting the social responsibility of the purchasers.

IV. TIJ-IGLP Policy Stream: Law and Development

Faculty: **Scott Newton** (United States) SOAS, University of London
Alvaro Santos (Mexico) Georgetown Law

This stream investigated legal reform strategies geared towards inducing economic growth and social welfare in developing countries through the consideration of a range of approaches to government and markets and the influence of international legal regimes for trade, investment and human rights. The sessions explored the role of law in economic and social theories of development, the global and intellectual context that channels the range of development reform, and recent shifts in development theory and state practice. Particular emphasis was given on alternate legal arrangements, which may open alternate trajectories for development with different patterns of inequality or social justice.



This session started by introducing fundamental theories of property, law and development. Though 'law and development' has emerged as a significant issue in recent years, as seen by the adoption of the SDGs, the term has been used for over 50 years. However, the relationship between law and development can in fact be traced back as far as 500 years. The nexus of law and development appeared in the form of law as a tool to affect changes in all levels of society - domestically during the English Industrial Revolution and internationally during the colonial period. The law has long been viewed as a tool for development and at the same time, a constraint on development

Presently, the concept of law and development is widely accepted due to capitalist influences and the realization that there is use for a standard set of rules, which are applicable everywhere and can be understood by everyone. The use and respect of the law has arguably grown in tandem



with capitalism, creating and unlocking potential of private property, constructing the system of collateral lending, which in turn spurred the flow of money around the world. When the rule of law was recently enshrined as Goal 16 as of the United Nation's Sustainable Development Goals (SDGs), there was another significant shift in the purview of law and development. The law has become more than just a tool for development, but it is also a target in and of itself.

The session paid particular attention to the proliferation of private property rights. In deconstructing the theory of property, it becomes clear that society wants property to be owned by those who will use the land for the purposes of spurring further productivity. The private property rights system releases the economic potential of property ownership by allowing owners to enjoy their property beyond its physical use, such as using them as collateral for financial loans. This system is made available by laws, which combine and link one asset to another while maintaining a legal network of people to keep the transactions at arm's length.

The war on drugs in Mexico was used as a case study to identify factors that need to be considered when making policy decisions as well as to illustrate how different laws and policies play out in reality. The co-convenors pointed to potential unintended consequences of the law that are actually attributable to the magnitude of the market and the problem. The main conflicts can be traced to problems among the cartels themselves and the cartels against government officials.



The participants were offered four policy options to tackle the problem of the war on drugs, ranging from maintaining prohibition to complete legalization. The session involved an in-depth discussion of the benefits and disadvantages of each option, in the light of social and economic concerns (such as effects on health care, criminality, violence, etc.).

After discussion among the fellows, most of the groups chose complete legalization of marijuana. The reasons for this included the proven failures of marijuana criminalization combined with the potential to increase state revenue from taxation and the likely impact to reduce incarceration rates and general improvement of prison conditions.



As part of the Workshop, TIJ Fellows also visited the headquarters of the Siam Cement Group Public Company Limited (SCG) where several senior management executives spoke about SCG’s work in sustainable development. The Fellows also received a private tour of the “SCG 100th Year Building,” a cornerstone project for SCG’s green business development model. The eco-friendly building has received numerous awards and credentials, namely the LEED (Leadership in Energy and Environmental Design) certificate and the Thailand Energy Awards 2015.

The TIJ would like to extend our sincerest thanks to the following individuals:

Mr. Anont Bukkanasuta, Facility Management Division Director

Mr. Numpol Limprasert, Sustainable Development Director

Mrs. Pornpen Namwong, Corporate Secretary Director and Company Secretary of Siam Cement Public Company Limited (SCC)

Faculty Roundtable: Global Political Economy – when you look at the world, what do you see?



Moderator:

Dennis Davis, (South Africa) High Court of Cape Town

Speakers:

Gunter Frankenberg, (Germany) Goethe-Universität Frankfurt am Main

Vasuki Nesiah, (United States) New York University

Scott Newton, (United States) SOAS, University of London

Teemu Ruskola, (United States) Emory University School of Law

Alvaro Santos, (Mexico) Georgetown Law

Hani Sayed, (Syria) The American University in Cairo

Leo Specht, (Austria) Specht & Partner

The Faculty Roundtable provided an opportunity for the IGLP scholars and TIJ Fellows to hear from the IGLP-TIJ faculty about their personal perspectives on the future trends and development of the global economy and finance by also considering how politics will shift these expectations.

Gunter Frankenberg started the discussion with an overview of the formation of a common European identity then delved into the causes of rising levels of inequality in present-day Europe compounded with the unequal burden sharing in the face of increasing immigration. Above all, countries are beginning to move away from the notion that a common European identity is beneficial. The conversation then shifted to China, a powerhouse in its own right that is endeavoring to assert its status on the global stage. **Teemu Ruskola**, a Chinese legal expert presented his view on China's positioning, accepting that it must adapt to the modern world, but that its standing is still very much embedded in its own history, tradition and culture.



Russia was the next topic of discussion as **Scott Newton** questioned the government's adherence to a neoliberal approach to development since the fall of the Soviet Union. The effect of the Trump presidency also still has yet to play out for Russia and must be followed closely. Next, **Alvaro Santos** posed a question about the possibility of reimagining an alternative form of a global political economy. He then talked about Mexico's perspective in the current world order, given Trump's mandate to conduct an overhaul on trade, immigration and drug policy. Renegotiation of trade policies such as the repeal of NAFTA, among others, could perhaps benefit Mexico and in response to any hostility from the administration, Mexico could play a role in mobilizing others against threatening policies.

From a Middle Eastern perspective, **Hani Sayed** continued the conversation by remarking that one of the most influential global event of the twentieth century was the collapse of the colonial order, which had the promise of achieving a prosperous global economy for all. However, this has not been the class and we have witnessed countless catastrophes in the Arab world. The role of oil companies and their interests in the region is of central importance to the global political economy, but it is becoming increasingly obvious that these “social bargains” are not sustainable. **Vasuki Nesiah** then highlighted several perspectives from South Asia, particularly the feed of neoliberalism as a development model in the region as well.

The conversation then shifted to a more theoretical discussion where **Leo Specht**, disagreed with the assumption that neoliberalism and social democracy has been defeated. Following the recent global financial crisis, there have been attempts to increase financial regulation and find alternative financial instruments in the US and Europe with heavy emphasis on the public’s role in raising questions, which is a fundamental virtue of social democracy. He then called for the need to reconsider principles of distribution with more attention given to the vulnerable and disenfranchised as inequality remains a fundamental root problem in the development agenda. Lastly, **Dennis Davis** discussed Africa’s positioning in the global political economy. He asked if a true liberal democracy and a capitalist economy are compatible concepts and went on to discuss the dangers and risks of authoritarian populism. At present, it is inevitable that the world trade regime is skewed against the developing world and emerging economies but there must be a strong push to eliminate these inequalities.



TIJ Public Forum on the Rule of Law and Sustainable Development:
“Integrated Approach to the Rule of Law for Implementing the 2030 Agenda for Sustainable Development”

The TIJ Public Forum was a separate event on the last day of the TIJ Workshop for Emerging Leaders. The program consists of 3 sessions: the general discussion, the round table discussion and the panel discussion. The main audience of the forum are representatives from the Thai government agencies involved in the implementation of the 2030 Agenda for Sustainable Development in Thailand.

Four participants were selected from the TIJ Emerging Leaders Workshop to present their policy findings during the round table discussion from 10:00am-11:15am on January 11, 2016. The speakers who presented were:



Mrs. Suphannada Lowhachai
Policy and Plan Analyst
National Economic and Social Development Board

Mrs. Lowhachai represented the Policy Skills Team on “Informality, Development and the Challenge of Inequality,” and presented her policy proposals which target reducing inequality in Thailand by focusing on ensuring that the provision of quality public services are equally accessible to all.



Ms. Tze-wei Ng
Deputy Director for Asia
Global Network for Public Interest Law (PILnet)

Ms. Ng represented the Policy Skills Team on “Criminal Justice System Reform and Implementation in Developing Societies” and advocated for the Hong Kong government to direct more resources into legal aid provision for the poor who remain largely neglected in the current system. In order to actualize these goals, there is a need to conduct a full-scale analysis to identify the specific gaps within the system, involve a range of stakeholders and most importantly, outreach to relevant government leaders and policymakers.



Ms. Sumathi Chandrashekaran
Consultant
Vidhi Centre for Legal Policy

Ms. Chandrashekaran represented the Policy Skills Team on “Good Governance in the Public and Private Sectors” and her presentation focused on India’s dilemma with the largest backlog of cases in its courts numbering at a staggering 30 million pending cases. The recommendations put forward include the need to focus on behavioral change of legal personnel, reform of procedural court proceedings and promotion of alternatives to imprisonment, among others.



Mr. Teeradetch Tungsubutra
Executive Vice President
Research and Technology Institute
PTT Public Company Limited

Mr. Tungsubutra represented the Policy Skills Team on “Science and Sustainability” and highlighted that in the age of ever-expanding consumerism, it is essential to raise awareness that efficient consumption should become the new normal and this can be done through the use of technology and a holistic environmental policy.



MODERATOR
Dr. Phiset Sa-ardyen

Director of External Relations
and Policy Coordination
Thailand Institute of Justice

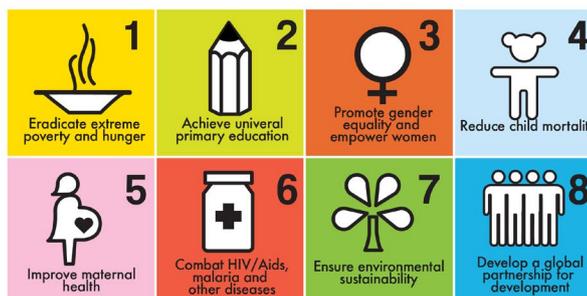
INTRODUCTION TO THE RULE OF LAW AND THE SUSTAINABLE DEVELOPMENT GOALS



RULE OF LAW AND SDGS: MDGS TO SDGS

Some lessons from the MDGs

- Limited linkages between planning budgeting
- Silo approach – sectorial focus
- Focus on the aggregate
- 2030 Agenda brings a new emphasis on [rule of law and governance](#)
- [Partnership approach](#) – not just government, but academia, civil society and private sector etc.



WHY RoL REFORM FAILS?

- too narrow in scope
- insufficient political will
- inadequate stakeholder participation
- the inability to accommodate the diverse perspectives



RULE OF LAW AND SDGS: ROL DEFINITIONS



Oxford Reference; Oxford Dictionary of Law (2016)

1. The supremacy of law
2. The rule of law embodied three concepts; (1) the absolute predominance of regular law, so that the government has no arbitrary authority over the citizen; (2) the equal subjection of all (including officials) to the ordinary law administered by the ordinary court; and (3) the fact that the citizen's personal freedoms are formulated and protected by the ordinary law rather than by abstract constitutional declarations.



United Nations
Report of the Secretary General (S/2004/616)

A principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws.

The laws are publicly promulgated, equally enforced, and independently adjudicated.

human rights norms and standards.

It requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.



Division for Public Education, 2014 WJP Rule of Law Index, 2016

1. The Government and its officials and agents as well as individuals and private entities are accountable under the law

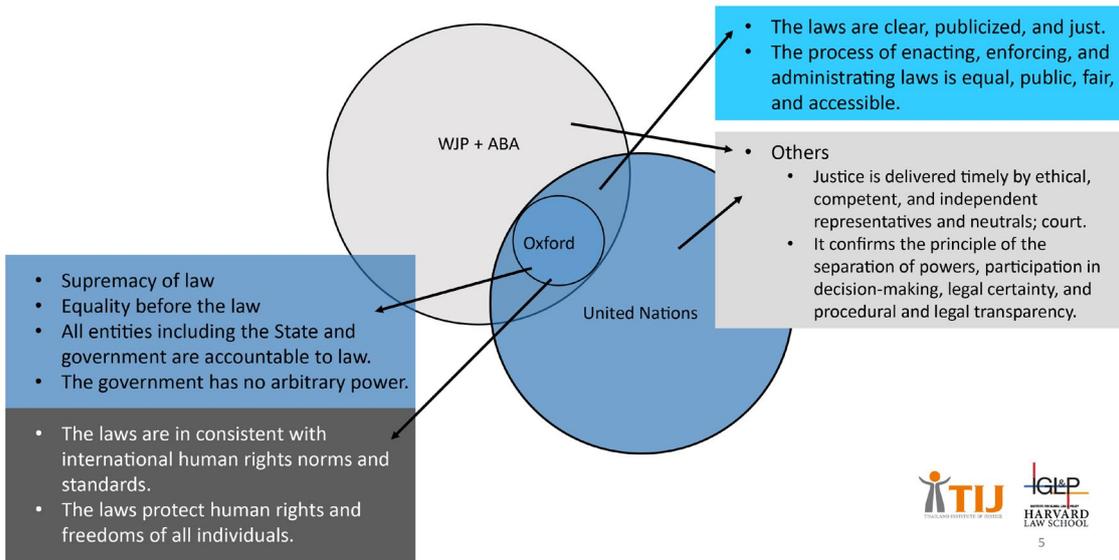
2. The law are clear, publicized and just; are applied evenly; and protect fundamental rights, including the security of persons and property.

3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.

4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

4

RULE OF LAW AND SDGS: ROL DEFINITIONS



5

RULE OF LAW AND SDGS: ROL THREE CONCEPTS

Minimalist	Midrange	Maximalist
Rule by law	Liberal democratic rule of law	Social democratic rule of law
Power executed by positive law:	Rule by law plus:	Democratic rule of law plus:
<ul style="list-style-type: none"> Maintaining order and regulating political and civic transactions 	<ul style="list-style-type: none"> Law is public, prospective, certain Equality before the law Guarantee of human and basic rights Lawmaking by democratically legitimized bodies Power is controlled by checks and balances Independent of the judiciary 	<ul style="list-style-type: none"> Social universal in a welfare state Legal regulation to reduce socioeconomic inequality to a minimum

Source: Adopted and modified from Møller and Skaaning (2010)



6

RULE OF LAW AND SDGS: ROL AS TOOL AND TARGET OF SDGS



SDG GOAL 16

- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

RULE OF LAW & SDGS



RULE OF LAW AND SDGS: ROL DEFINITIONS



Oxford Reference; Oxford Dictionary of Law (2016)

1. The supremacy of law
2. The rule of law embodied three concepts; (1) the absolute predominance of regular law, so that the government has no arbitrary authority over the citizen; (2) the equal subjection of all (including officials) to the ordinary law administered by the ordinary court; and (3) the fact that the citizen's personal freedoms are formulated and protected by the ordinary law rather than by abstract constitutional declarations.



United Nations
Report of the Secretary General (S/2004/616)

A principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws.

The laws are publicly promulgated, equally enforced, and independently adjudicated;

human rights norms and standards.

It requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.



Division for Public Education, 2014 WJP Rule of Law Index, 2016

1. The Government and its officials and agents as well as individuals and private entities are accountable under the law
2. The law are clear, publicized and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

4

SDG GOAL 16

- 16.1 Reduce all forms of violence and related death rates
- 16.2 End children
- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all
- 16.4 Reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime
- 16.5 Reduce corruption and bribery in all their forms
- 16.6 Effective, accountable and transparent institutions at all levels
- 16.7 Responsive, inclusive, participatory and representative decision-making at all levels
- 16.9 By 2030, provide legal identity for all, including birth registration
- 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements



OTHER GOALS....

Environment and Biodiversity

- 3.9 By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination
- 15.c Combat poaching and trafficking of protected species

Violence against women

- 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation



OTHER GOALS....

Inequality and Discrimination – gender, people with disabilities...

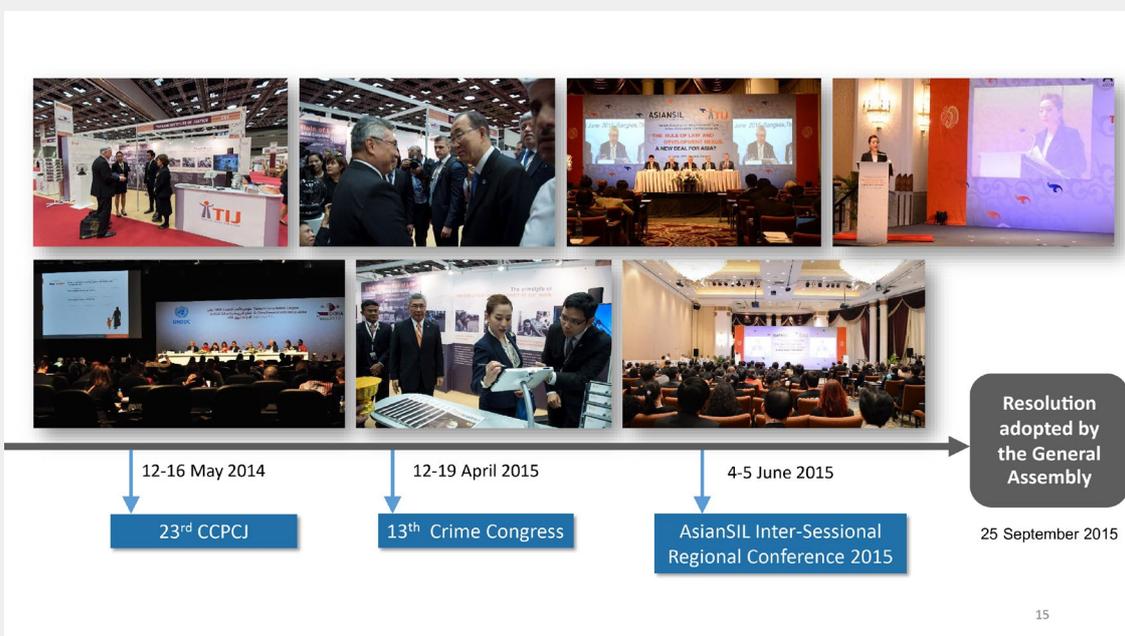
- 5.1 **End all forms of discrimination against all women and girls everywhere**
- 5.a **Women’s equal rights to economic resources, ownership and control over land and other forms of property**
- 8.5 **Decent work for all women and men**, including for young people and persons with disabilities, and **equal pay for work of equal value**
- 8.8 **Protect labour rights and promote safe and secure working environments** for all workers, including migrant workers, in particular women migrants, and those in precarious employment
- 10.3 **Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard**
- 11.7 **Universal access to safe, inclusive and accessible, green and public spaces**, in particular for women and children, older persons and persons with disabilities



TIJ JOURNEY TO DRIVE GOAL 16



14



15



ABOUT THE IGLP

The Institute for Global Law and Policy (IGLP) at Harvard Law School is a collaborative faculty effort to nurture innovative approaches to global policy in the face of a legal and institutional architecture manifestly ill-equipped to address our most urgent global challenges. Global poverty, conflict, injustice and inequality are also legal and institutional regimes. The IGLP explores the ways in which they are reproduced and what might be done in response. It aims to provide a platform at Harvard for new thinking about international legal and institutional arrangements, with particular emphasis on ideas and issues of importance to the global South.

For more information,
visit: www.iglp.law.harvard.edu



ABOUT THE TIJ

The Thailand Institute of Justice (TIJ) is a research institute affiliated with the United Nations Crime Prevention and Criminal Justice Program Network (UN PNI).

TIJ's vision is to be a catalyst for change to enhance the justice system and promote a culture of lawfulness in Thailand and the wider international communities through research, capacity - building and policy advocacy activities in crime prevention, criminal justice and the rule of law.

TIJ serves as a bridge that transports global ideas to local practices, focusing on cross-cutting issues including the interconnections between the rule of law and sustainable development, peace and security.

TIJ primarily seeks to promote criminal justice system reform through the implementation of international standards and norms related to vulnerable groups in contact with the justice system, while promoting coordination among domestic justice constituencies and strengthening regional cooperation, particularly within the ASEAN region.

One of the core beliefs of the TIJ is to invest in human resources and practical knowledge based on the rule of law, since the TIJ recognizes the rule of law and an effective and fair criminal justice system as integral components of inclusive economic growth, human rights protection and sustainable development.

For more information
please visit:
www.tijforum.org and
www.tijthailand.org



In Collaboration With

