

TIJ QUARTERLY

Thailand Institute of Justice's Newsletter

Issue 002 October 2015



The Power of Youth

SPECIAL SECTION

TIJ'S YOUTH NETWORK

ARTICLE

- PRO BONO : MAKING 'ACCESS TO JUSTICE' ACCESSIBLE
- EMPOWERING CHILD VICTIMS OF VIOLENCE TO ACCESS JUSTICE : THE CASE OF THAILAND

COVER STORY

THE POWER OF YOUNG GENERATION AND THE SUSTAINABLE DEVELOPMENT GOALS

International Conference on Alternative Development 2

19–24 November 2015

Chiang Mai, Chiang Rai, and Bangkok, Thailand

Since the adoption of the International Guiding Principles on Alternative Development at the High Level International Conference on Alternative Development held in Lima, Peru, in November 2012, has been endorsed by the Commission on Narcotic Drugs (CND) at its fifty-sixth session in March, 2013, the Guiding Principles on Alternative Development become an important tool for the international community to solve problems related to illicit cultivation of opium poppy, coca bush, and cannabis.

In order to build better understanding of the Guiding Principles, Office of the Narcotics Control Board (ONCB) will organize in partnership with the Thailand Institute of Justice (TIJ), the Royal Thai Project Foundation, the Mae Fah Luang Foundation under Royal Patronage, and the United Nations Office on Drugs and Crime the 'International Conference on Alternative Development 2' during 19–24 November 2015 in Chiang Rai, Chiang Mai and Bangkok. This conference will bring together over 100 policy makers, experts, practitioners, members of international organizations, and civil society representatives from all continents to exchange good practices on Alternative Development.

**TIJ invites you to
attend a side-event on
'Rule of Law and Alternative
Development : Strengthening
The Rule of Law to Achieve
Sustainable Development in
Areas of Illicit Crop Cultivation',
Tuesday 24 November 2015,
Pompadour Room,
Royal Orchid Sheraton
Hotel, Bangkok.**

For more information please contact
icad2.com

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Vipon Kititassanasorchai
Criminal Justice Advisor
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on Promoting the Rule of Law

ED's Talk

Dear reader,

As you might remember, in the previous issue of TIJ Quarterly, we talk a little bit about TIJ Youth Forum on Justice and the Rule of Law 2015, one of our successful activities that brought leaders of the next generation together to discuss the linkage between the rule of law and the development of the future.

Planning the activity, we expected that what we were giving to the youth should inspire them to go out there and exercise their potential, but instead, during the forum, they inspired us. Their enthusiasm tell us, the old people who have been here facing never-ending social problems, not to lose hope. It seems the passionate young ones hold the ability to change the perception the dialogue about what is important, and the world itself, in an impressive and surprising way. To me, the young ones are our hope. So this issue of TIJ Quarterly is dedicated to the "Power of Youth".

Recognizing the unlimited potential of the youth, especially in this critical time that the international stage is shaping the plan toward the post-2015 development, we start the issue with the story of 'The Power of Young Generation and the Sustainable Development Goals.' We also have a section that published articles from our youth network as proves that when it comes to ideas and innovations, age does not matter.

As our generation is growing older and physically weaker each day, it is our responsibility to encourage the next generation to raise their voice and lend their hands. We have to pass the torch on, encourage them to continue empowering those who are violated and forgotten, improving the life of the underprivileged, and working for inclusive and sustainable development in all aspects.

The world does not belong to us, but to our children. It is never too early for the young ones to step in, give their opinion, and make changes. By recognizing their voices, I hope, will allow those voices to keep echoing – from one generation to another.

With warmest regards,




Dr. Kittipong Kittayarak
Executive Director of TIJ



The Power of Young Generation and the Sustainable Development Goals

"Never before have there been so many young people. Never again is there likely to be such potential for economic and social progress. How we meet the needs and aspirations of young people will define our common future"

*Dr. Babatunde Osotimehin,
United Nations Population Fund*

Surrounded by the wind of change from days to days, from generations to generations, it is undeniable that youth's contribution to enhance the world becomes more and more essential. Stories of children who endeavour for changes with their fresh and firm creativity challenge us not to just support them but also to involve them in the milestones of evolution. No longer just the passive members that need nurture and care, they are, on the other hand our key partners in global sustainable development.

Malala Yousafzai¹ is a Pakistani girl with her statement *"One child, one teacher, one pen and one book can change*

the world." She gained international reputation in 2009 when the BBC Urdu publicised her diary presenting her dream of all youth entering education accessibility. It may sound not that surprising if the situation at the moment is not that the Taliban government prohibit women's schooling

Within three years, Malala is widely well-known as the 15-year-old girl who is the agent of change. In consequence of her active role, The Taliban hunted her down. One day while taking a bus to school, a gunman shot her in the head and the neck but that did not stop her. She was miraculously cured back to health and still contend for the

¹ <https://agenda.weforum.org/2015/10/4-girls-who-are-changing-the-world/>

² <http://tedxteen.com/speakers-performers/tedxteen-2010/63-dylan-mahalingam>

³ http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf

right to education in Pakistan. This day the whole world recognises her as the youngest Nobel Peace Prize winner.

Another notable agent of change, Dylan Mahalingam² co-founded the Lil'MDGs when he was only nine years old. Lil'MDGs is an international non-profit organisation for development and children empowerment. It also established the Jayme's Fund for Social Justice that works on inspiring people and supporting human rights for the child. The goal was to utilise digital media channels to engage the youth in the UN Millennium Development Goals (MDGs).

Dylan's organisation mobilised over 3,000,000 children from all parts of the world to join online and offline campaigns for all kinds of development activities, including raise fund to help tsunami victims and build libraries and schools in different countries. Besides, more than 24,000 volunteers from 41 countries get involved in various tasks to reach the MDGs targets. Dylan had an opportunity to deliver a speech at the United Nations as one of the distinguished strategic planners. The United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP) invite him to be a guest speaker regularly. He also received awards and recognitions from many national and international forums.

These are world-leading children. Perhaps just a few example but it provides solid prove that the age is no limit of capability, intellect, dream, dedication, and innovation. When an opportunity arises, these aspiring dreamers and powerful doers never hesitate to take the future of humanity in their hands.

The world population is increasing at an uncontrollable rate, recently reaching 1,800,000,000.³ And the age-gap is expanding. All studies point to the same direction that many counties are becoming ageing societies, with less qualified manpower to drive the economic sector. The youth will be playing a more significant role but the question here is how are we treating them? It seems a high percentage of young generation is living in less-developed areas with limited access to fundamental facilities, healthcare, sanitation, safety, and education. The only way forward is for us to invest more in our children, and invite them to take part in as many aspects of development as possible.

Another issue to consider when working to promote the potential of the youth is the resource constraint. With the rapid growth in the number of the world population, it is just inevitable that limited natural resource is running critically low. The United Nations General Assembly highlighted this by adopted the Sustainable Development Goals (SDGs) as the post-2015

development agenda to succeed the MDGs.

The world 'sustainable development' literally means *"development which meets the needs of the present without compromising the ability of future generations to meet their own needs."*⁴ With integrated perspectives of economy, society, and environment together, the 'SDGs' creates a modern and advanced method of development that replaces the former one using a separation-of-concerns basis. Like a golden compass, these goals will set forth a path for us to drive progress in sustainable way.

As an Indian proverb goes *"We do not inherit the earth from our ancestors, we borrow it from our children"*. Young people are the ones who should be shaping the decisions that affect their world. What we can do now is to support the young ones active participation, work toward sustainability, and rest our future too, in the hand of the young.

Editorial Team



⁴ United Nations, Sustainable Development: From Brundtland to Rio 2012, (United Nations Headquarters, 2010) Background Paper Executive Summary pp.2 <http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP1-6_Background%20on%20Sustainable%20Devt.pdf>



Pro Bono: Making 'Access to Justice' Accessible.

'Access to justice' is internationally recognized as one of the fundamental 'human rights' and as means and end to a peaceful society. It is included as one of the Sustainable Development Goal (Goal 16) of the United Nations, which is to replace Millennium Development goal in this September 2015. Every person should be able to get access to justice regardless of his or her social status and wealth. 'Access to justice' is the heart of the rule of law, which ensures a peaceful society and enables sustainable development.

Many years of service in the justice system, I have seen and partaken in

series of the Thai justice system evolution, it is extremely essential that 'all' elements in the system must be included in the consideration, and to promote a better access to justice is nothing different.

The right to equal access to justice and legal aid is well recognized by the written laws but relatively problematic in practice. And to alter that several reform efforts had been taken. However, it is worth mentioning that, most of the time, when speaking of the justice reform, the lights are shed on the improvement of policies, prosecutors and judges. But the one element that is often left out is 'lawyers'.

Lawyers play a very significant roles in administering justice, and ensure that justice, as promised in written laws, is delivered.



In reality, the opportunity for the underprivileged to receive good-quality legal assistance is constrained by many factors. Although the Lawyer Council of Thailand through its legal aid unit, NGOs, as well as state's entities have been working relentlessly to provide legal aids to everyone, the needs still abound.

Financial issue unavoidably comes into play when one wants to defend themselves in legal cases. Lacking an efficient budget to hire an experienced lawyer means you are more likely to end up losing, no matter what the crime is. And it is possibly one significant contributing factor that result in more poor people behind bars, comparing to the affluent ones. So, could 'pro bono lawyer' be the answer to this constraint?

Nowadays, the quality of Thai lawyers is second to none. We have many great lawyers whose skills and reputation are recognized by international clients worldwide. Those lawyers are abundant in private law firms. But when talking about lawyers who deliver services to people in need of legal aid, or 'pro bono' lawyers, the story goes in a completely different direction.

Sad but true that it is almost impossible for a lawyer to make a living from

working full time as a 'pro bono' lawyer, and therefore, numbers of those with potential would naturally 'choose' the path to wealth working for the top-class law firms. Only a small portion of them from governmental organizations, NGOs, and a minority of private law firms volunteer their time for the 'public good'. Pro bono activity in Thailand is considered low when comparing to the size and scope of the legal profession, and therefore not enough to meet the demand. And as long as pro bono lawyers are lacking, the equal access to justice for all will remain far from possible.

However, this does not mean that most legal practitioners simply deny to lend their helping hands. But it could be because, in our society, the track of a successful lawyer and a public lawyer fighting for the less privileged is so disconnected that lawyers in firms hardly have an opportunity to get involved in pro bono work. This is possibly what holds back the rise of pro bono.

PILnet, a non-profit organization, working to train, support and collaborate with public interest lawyers globally, invited TIJ to take part in the Asia Pro Bono Forum on 23 June, 2015. The event discussed feasible approaches to link the two distinct tracks of legal practice:

private firm, lawyers and public lawyers, together. It also works to bridge the gap between lawyers and those who need legal supports, and promote pro bono activity to assist marginalized people to gain access to justice.

With such initiative, the pool of great lawyers will be efficiently connected to the massive demand for legal aids among the less-privileged. Also, the proposed initiative suggested that lawyers do not need to choose between making a good living and contribute-so-little or devoting themselves entirely without making enough money. The two practices can co-exist. This initiative could be the key to the bloom of Pro Bono in Thailand.

Believing that 'pro bono' is the pathway to ensure equal access to justice for all, TIJ plans to cooperate with PILnet to promote and campaign for the 'spirit of pro bono.' It is also the work that aligns with TIJ's mission in cultivating the culture of lawfulness and mainstreaming the rule of law for the inclusive, and sustainable development in Thailand.

Adapted from the opening remarks by Dr. Kittipong Kittayarak at the Asia Pro Bono Forum, hosted by PILnet, on June 23, 2015, Bangkok Thailand

The Executive Director of TIJ gave talk at the UNGA Side-event

On 30 September 2015 during the United Nations General Assembly, UNODC with the support of Qatar, Italy, and Thai Government hosted High Level Side-event on Women, Crime Prevention, Criminal Justice and the Post-2015 Development Agenda

Dr. Kittipong Kittayarak, the Executive Director of TIJ, gave a talk to raise awareness on violence against women along with countries leaders, stars, political figures, and international experts on the issues. He stress the need to engage young generation in the fight for gender equality and shared experiences from several projects in Thailand under the leadership of HRH Princess Bajrakitiyabha. Mr. Yury Fedotov, UNODC Executive Director, was the moderator with one hundred diplomats and government representatives attended.



SPEAKUP SPEAKOUT

TIJ's women and Children Empowerment Programme works extensively to eliminate violence against women and protect human rights. It is TIJ's vision to support young people to work as change makers on this matter and to be leaders of the Culture of Lawfulness.

In collaboration with UN Women, TIJ has organized the "SpeakUp SpeakOut" workshop to share the knowledge and understanding of how everyone, male or

female, can help stop violence against women. This is in line with the HeforShe initiative that engage men in fighting for women empowerment because gender discrimination and violence affect the entire society rather than just individual victims.

Experts on gender issue, creative campaigning, and filmmaking led the activities that was designed to encourage university students to create a campaign that will best tackle such issue among teen

Campaigning to end violence against women needs the participation of both male and female. This is because violence effects the society as a whole and can even perpetuate down generations. We can mutually end such violence by creating the correct and positive attitude among youth and teens that women have complete right of her body in any situation. Also, we should support the female victims by not ignoring or judging them in any way.

and young people. The winning campaign will see their idea turned into a short film and later published in TIJ media channel. The first phase of the "Speakup Speakout" has drawn more than one hundred participants to one camp at Chiang Mai University in the north and another at Chulalongkorn University in Bangkok. The second phase will spread across the country starting in January 2016.

www.facebook.com/TIJSUSO



Seminar Marking the 25th Anniversary of Tokyo Rules

Thailand Institute of Justice (TIJ) Executive Director Dr. Kittipong Kittiyarak and TIJ team to the 25th Anniversary of the United Nations Minimum Rules for Non-Custodial Measures, or the Tokyo Rules. Held at the UNAFEI, Japan, from 7 to 9 September 2015, Dr. Kittipong joined to deliver a lecture on Non-custodial measures in Thailand, focusing on the treatment of vulnerable groups. The session is fruitful in facilitating the exchange of knowledge and experiences about non-custodial measures in different countries. It was also a good opportunity for TIJ to strengthen its ties with representatives from other United Nations Programme Network of Institutes.

Seminar on Criminal Justice Performance Indicators

TIJ organized a seminar on Criminal Justice Performance Indicators to highlight the need to develop a set of indicators that reflect the effectiveness of justice administration. More than 100 stakeholders including representatives from criminal justice agencies, experts, academia, and the public, joined to share their opinion on what should be measured and how this will enhance the rule of law within the system.



Seminar on Diversion of Cases and Offenders

This seminar took place on 19 August 2015 as a part of the Thailand Institute of Justice Series of Criminal Justice Seminar. One-hundred participants discussed three topics: over-criminalization, overwhelming court cases and the need for diversion, and prison overcrowding. Thai criminal justice system has been facing with the unnecessarily high workload, although there are several studies concluding in the same direction that over-criminalization and the use of harsh prison term don't deter crimes. It actually could have an adverse effect in causing higher recidivism rate. This is partly because prison overcrowding has hurt correctional facilities' ability to rehabilitate inmates.



TIJ and UNICRI Joint Research on Transnational Organized Crime

TIJ and the United Nations Interregional Crime and Justice Research Institute (UNICRI) co-hosted a stock-taking seminar for the new joint research on "Countering Emerging Threats and Challenges of Transnational Organized Crime in the Context of ASEAN Community". The objective of the research is to inform policies and support regional cooperation in respond to the threat of transnational organized crime that could emerge with the

ASEAN integration. Representatives from Thai criminal justice agencies, international organizations, foreign embassies, regional non-governmental organizations as well as academia and interested public were among the participants.

Dr. Cindy Smith, the Director of UNICRI, attended the three-day long seminar at TIJ office and took the opportunity to discuss closer cooperation with TIJ team, including the plan to sign a Memorandum of Understanding between the two organizations.



The 16th ASEAN Senior Law Officials Meeting (ASLOM)

TIJ joined the 16th ASEAN Senior Law Officials Meeting (ASLOM) held on 19-20 October 2015 in Bali, Indonesia, along with the high-level representatives from the Thai Ministry of Justice.

Member States accepted the proposal to establish an ASEAN Conference on Crime Prevention and Criminal Justice (ACPCJ) as proposed by TIJ, on behalf of the Thai government. According to the plan, a consultative meeting will be convened early 2016 to prepare for the ACPCJ, which is scheduled around the end of the year 2016 in Bangkok, Thailand. The ACPCJ under the purview of ASLOM aims to promote and examine legal cooperation at the regional level on the prevention of transnational organized crime and the strengthening of criminal justice institutions to facilitate greater ASEAN cooperation and support ASEAN integration.



The Fifth Anniversary of the Bangkok Rules

On 8 October 2015, Thailand Institute of Justice (TIJ) hosted the Expert Roundtable Meeting on “The Fifth Anniversary of the Bangkok Rules: International Perspectives on Good Practices and Lessons Learned.”

“United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders,” also known as the “Bangkok Rules” was adopted by the United Nations General Assembly in December 2010. These rules captured the distinctive needs of woman prisoners that were not adequately addressed before.

Her Royal Highness Princess Bajrakitiyabha, working continuously to promote gender sensitivity in

the correctional system and having played a major role in its drafting and adoption, attended the seminar as the chair of the opening session and a panelist. In the opening session, she stated, *“Today’s meeting is a venue to share and learn from our achievements and challenges that we have witnessed in the last five years. The role and possible contributions of governments, international agencies, NGOs, and academia are also a significant part of our discussion today because it is never enough to highlight the importance of mutual effort and solid partnership among them in promoting the effective management and treatment of women in prisons.”*

Her Royal Highness also joined a panel discussion with international experts,



sharing experiences and challenges in the implementation of the Bangkok Rules. She pointed out that although the specific needs of female inmates are starting to be widely recognized as different from their male counterparts, *“the number of women prisoners has radically increased in several countries and Thailand is no exception. The number of women prisoners in Thailand has almost doubled*

from 24,000 in 2007 to 44,000 in 2015.” This led to her stressing that one very important part of the Bangkok Rules calls for “gender-sensitive non-custodial measures” as the alternative to imprisonment. *“[Such measures] that recognize the history of victimization of women offenders and their caretaking responsibilities including the harmful impact of imprisonment on children.”*

TIJ’s primary objective is to promote and support the implementation of the Bangkok Rules and other United Nations rules, tools, and instruments related to the better, more gender-sensitive treatment of inmates and offenders. Several previous projects have resulted in the improvement of female inmate care, especially those in special situation e.g. being pregnant or raising babies in the facility.

However, the treatment and measures invested in rehabilitating the inmates and offenders will never be successful enough to make them become good citizens if social stigmatization still exists. For the future of the implementation of the Bangkok Rules, TIJ aims to raise awareness on this issue in order to alter the social perception, lessen stigmatization, and return productive, law-abiding ex-offenders to the society.



The Bangkok Rules Model Prison

In Thailand, the Department of Corrections has been pushing forward improvement in many female correctional facilities in order to comply with the Bangkok Rules. To support such effort, TIJ launched the “Model Prison” project to see how well each facility performs.

Working with our counterpart, the Penal Reform International (PRI), indicators and evaluation criteria that were used in

many other countries are adapted to fit the Thai context. Then TIJ team and experts in penology visited prison facilities across the countries to monitor their performance and suggested appropriate improvement. The best one that fully complies with the Rules and succeeds in creating a pleasant atmosphere for effective rehabilitation, despite having a very small space with the overcrowding problem, is Uthai Thani Prison.

On 16 September 2015, TIJ hosted a forum titled “The Quest for the Bangkok Rules Model Prison” with participants from the Department of Corrections and the Department of Probation. Invited panelists discuss the indicators, the evaluation process, and the experience working on this project. Then Uthai Thani prison representative shares his thought before receiving the certificate of recognition. TIJ plans to continue this project to support the implementation of the Bangkok Rules in domestic level.

Empowering Child Victims of Violence to Access Justice: The Case of Thailand

Federica Piovesana



In recent decades the understanding of the concept of access to justice has evolved from a procedural to a broader substantive notion of legal empowerment with strong links to democratic governance and poverty reduction¹, reflecting a global trend on using the law for empowering development². Candidate SDG 16 projects this idea in the post 2015 landscape.

Children represent not only the most vulnerable sector of our society but also the most disempowered group in terms of ability to access justice. This challenge can have a negative impact on long term individual and social development. “Children suffering an abusive family situation that the justice system does not remedy are very likely to suffer adverse educational and health consequences”, UNICEF argues³. Adapted measures and child-friendly procedures should therefore be available to empower

children to access justice, especially when they become victims of violence, abuse and exploitation⁴.

Some serious forms of violence against children are still prevalent in Thailand. This country has made significant progress in establishing a legal and institutional framework designed to cope with these phenomena. The child's right to be free from any form of violence is nowadays enforceable on the ground of the Protection of Domestic Violence Victims Act of 2007, the Anti-Trafficking in Person Act of 2008, and the more inclusive Child Protection Act of 2003. Interestingly, the latter incorporates most provisions contained in the Convention on the Rights of the Child (CRC) and attributes the power to initiate a complaint for acts of violence against children also to third parties⁵, in an attempt to create a protective environment for children and to denounce those cases that otherwise will remain unreported due to

legal guardians' unawareness or unwillingness to report.

Not only criminal courts, but also several human rights authorities are entitled to receive and manage cases of violence against children in Thailand. Justice is therefore accessible through several channels and the right to appeal a court's decision is guaranteed through four degrees of judgment, with the final degree being the UN Committee on the Rights of the Child by virtue of Thailand's recent ratification of the 3rd Optional Protocol to the CRC on a Communications Procedure⁶.

A set of substantively empowering factors have also been defined by law with a view to effectively enabling children to access justice. For example, children are entitled to lodge a complaint also without parental consent. Courts have the authority to apply provisional remedial measures and immediate protection measures when there is an urgent need to protect a child victim⁷. Some provisions within the Criminal Procedure Code mitigate the amount of involvement for child victims in justice proceedings⁸, especially through the use of child-sensitive inquiry procedures that are in line with relevant international

¹ UNICEF (2014). *Promoting equitable access to justice for all children*. UNICEF Insights Issue 1/2014. P.4.

² *Idem*, p.9.

³ UNICEF (2014). *Op.cit.* P.10.

⁴ In this regard, see the UN Committee on the Rights of the Child's General Comment No.5.

⁵ Child Protection Act, Article 29.

⁶ According to CRC-OP3, complaints can be addressed to the UN Committee on the Rights of the Child by individual or a group of children, or an adult or organization on their behalf, once all domestic remedies have been exhausted.

standards. Access to legal aid is facilitated by pro bono or minimal-fee legal assistance granted by the Lawyer's Council of Thailand, the Women Lawyers Association, and the One Stop Crisis Centers within hospitals across the country, along with the state-sponsored legal aid provided by the Office of the Attorney General⁹.

Despite these empowering circumstances, significant limitations to children's ability to access justice still persist. First and foremost, a crucial hindering factor is the inadequate enforcement of the existing laws¹⁰, coupled with a poor interagency coordination in case management. Some procedural limitations are also defined by law, such as the need for a victim to lodge a complaint within three months from the alleged violation, a timeframe that further hampers access to justice for those children who are initially reluctant to or prevented from reporting. It is also worth noting that refugee children whose refugee status has not been recognized by Thai authorities¹¹, stateless children and undocumented migrant children do not benefit from the same legal guarantees in accessing justice as accorded to Thai children, due to their "irregular status". Finally, a wide range of factors can negatively impact the children's willingness and/or ability to access justice to seek redress for violations of their rights: cultural mindsets considering domestic violence as acceptable or as a private matter; the fear of stigmatization; the fear of discrimination by the justice system, especially for girls involved

in sexual offences; the fear of reprisal from the perpetrator; the lack of persons to relate to; the lack of trust in the justice system; the lack of knowledge of their rights and the remedies they can resort; the fear of facing child-unfriendly language, proceedings, infrastructures and even violence within the justice system; and the lack of information on criminal justice proceedings and support from a person children trust throughout these proceedings.

All these challenges are a direct call for legal empowerment of children. A forceful answer to such a call would require some empowering legal reforms coupled with a diligent implementation of the existing laws, awareness raising among children, and more effective and child-friendly complaint mechanisms, protection and support services, in the efforts to make justice truly and independently accessible by children.

In recent years the international community has addressed the need to establish universal guiding principles on the treatment of child victims of violence by the criminal justice system, including their empowerment to access justice. The latest sets of UN standards and norms in this field draw on three guiding principles: firstly, justice mechanisms must be available, affordable and accountable, and children must enjoy the same legal guarantees as are accorded to adults; secondly, secondary victimization of children within the justice system must be avoided by given primary consideration to the child's best interest and by adopting child-sensitive

procedures to meet the child's unique needs; thirdly, adopting a multidisciplinary approach to access to justice for children is essential to respond to the multidimensional issues that this concept involves¹².

The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime of 2005 aim to inspire legislative, policy and procedural reform in accordance with the ten fundamental rights of child victims. More recently, the UN Model Strategies and Practical Measures on the Elimination of violence against children in the Field of Crime Prevention and Criminal Justice adopted in 2014, have further elaborated how to enhance the capacity of the criminal justice system to respond to violence against children and what practical measures can be put into practice to promote access to justice for child victims of violence (Part II, Strategies 4-10).

Thailand strongly supported the development of these international standards and has committed to their implementation, with TIJ promoting advocacy and capacity building in this area. Filling the gaps previously discussed would not only empower children to access justice directly and more effectively, but it would also contribute to consolidate the rule of law and advance long-term social development in Thailand.

⁹ CRIN (2014). *Access to Justice for Children: Thailand*. Accessed online. P.7.

¹⁰ *Ibidem*.

¹¹ *Idem*, p.9.

¹² As noted by the UN Committee on the Rights of the Child in its Concluding Observations of 2012 (Thailand).

¹¹ It is worth recalling that Thailand has not ratified the Convention Relating to the Status of Refugee of 1951 and has entered reservation on article 22 of the CRC (related to children seeking the status of refugee) upon ratification of this convention.

¹² See also: A/HRC/25/L.10 entitled: *Rights of the Child: access to justice for children*, of 25 March 2014.



Rule of Law

Shriram Jayakumar
Singapore Management University
School of Law

The rule of law, in its purest form, speaks of procedural fairness and ensuring the rights of all parties are respected in the eyes of the law. This mitigates against abuses of power or discriminatory practices.

By upholding this principle of equality before the law, a culture of accountability will be created that will keep our region vibrant and reliable. Where equality

is absent in a formulation of a rule of law, the perspectives of educated Youth are instrumental in wiping off prejudices and resolving differences between competing stakeholders who seek protection under the law.

Adherence to the rule of law creates effective checks and balances on power, in Asian societies. This in turn leads to a more reassured citizenry,

who knows their legal systems are responsive to civil and criminal violations by people in power.

In Hong Kong, the Sally Aw case stirred controversy, when the chairperson of a newspaper group, who had close ties with government officials, was not prosecuted in a fraud case though her employees were. This mounting public criticism led to the Legislative Council

¹ Albert H.Y. Chen and Anne S.Y. Cheung, "Debating Rule of Law in the Hong Kong Special Administrative Region, 1997-2002" in *Asian Discourses of Rule of Law: Theories and implementation of Rule of Law in twelve Asian Countries, France, and the US* (Randal Peerenboom ed) (Routledge, 1st ed, 2004), at pp. 264-265.

to introduce a motion of no confidence in her.¹

This emphasis on checks and balances by Asian nations has led to an increasing climate of incorruptibility. This will placate dissidents and usher in more investors, whose trust in the system will increase the region's appeal.

When citizens know that their voices count for something, they will take a more proactive role in the affairs of the country. This will mitigate dissent and reduce criticism of our communities by other international organizations.

In this vein, Thailand has embraced more and more participatory processes over the years. When a new constitution was drafted in 1992, there were many public hearings involving different parts of the community, before the draft was put to parliament for adoption.² Furthermore, at least 50,000 Thai citizens may submit a draft law to parliament for consideration, with the public having a right to participate in referendums.³ It is true there have been many political shifts within the country. However, citizens have been able in many ways to remain engaged in the political processes.

Many Asian societies may not strictly apply the Rule of Law, as their own priorities may require some flexibility with the concept. This can be seen through the concept of *guanxi* in China.

In *guanxi*, there is a strong emphasis on alliances and reciprocal expectations that militates against a formal articulation of disputes and grievances.⁴ For this reason, Chinese business communities often rely more on informal relationships than the letter of the law.⁵

Proponents of the rule of law may be disturbed by this finding, as *guanxi* may encourage Chinese businessmen to bypass legal mechanisms in their corporate dealings. However, there is an indisputable benefit that *guanxi* offers. It can be seen as an alternate form of trust that mitigates the risk of arbitrary bureaucratic interference that is not in the interests of investors,⁶ thus upholding mutual respect and trust.⁷ Differences in attitudes towards more contractual regulation, and continual emphasis on informal agreements, can only be resolved through measured dialogues on how governmental intrusion into economic activities can coexist with the need for efficient dealings between businessmen.

Equal treatment before the law can only become a reality if all classes of people are considered to be equal before the law intervenes.

The physical abuse of women in some parts of East Asia is an issue of equality as differing moral expectations are placed on them, compared to men. This affects their perception in Courts, where their testimonies carry less weight.

Similarly, Asian countries that boast a high percentage of billionaires but large swathes of slums or undeveloped villages face an equality crisis as well. Many of their citizens are deeply entrenched in systemic poverty, and may not have effective recourse to Courts to settle disputes, as the filing of administrative fees and processing times may put the wealthier people in an advantageous position. These attitudes that inhibit equal treatment for all can only be cured with continual education that exposes prejudicial individuals to egalitarian values of the present day.

¹ V. Muntarbhorn "Rule of Law and Aspects of Human Rights in Thailand: From conceptualization to implementation?" in *Asian Discourses of Rule of Law: Theories and implementation of Rule of Law in twelve Asian Countries, France, and the US* (Randal Peerenboom ed) (Routledge, 1st ed, 2004), at pp. 356-357.

² V. Muntarbhorn "Human Rights and Human Development: Thailand Country Study" in *Occasional Papers* (36) (UNDP, 2000) at p.10.

³ Carol A. Jones, "Capitalism, Globalization and Rule of Law: an Alternative Trajectory of Legal Change in China", *Social and Legal Studies* 1994; 3: 195-220, at 204.

⁴ Ch'u Tung-tsu, *Law and Society in Traditional China* (Mouton, 1961); Michael J. Moser, *Law and Social Change in a Chinese Community* (Oceana Publishers, 1982).

⁵ Alan Smart, "Gifts, Bribes, and Guanxi: A Reconsideration of Bourdieu's Social Capital", *Cultural Anthropology* 1993; 8(3): 388-408, at 398.

⁶ Berry Kwock, Mark X. James, and Anthony Shu Chuen Tsui, "Doing Business in China: What is the Use of Having a Contract? The Rule of Law and Guanxi when Doing Business in China", *Journal of Business Studies Quarterly* 1993; 4(4): 56-67, at 65.



Hear the Unheard Voice

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One of the primary underlying philosophies of laws regarding children is that children cannot speak for themselves and need someone to speak for them. State, parents, NGOs, lawyers, and judges 'think' for children and claim that it is in the Best Interests of the Child. However, it is questionable whether what these adults speak for children is what children really want to say, especially in the context of the justice system where decisions made by the court have long-term impact upon their lives. It is time to change the attitude towards children from considering them as a voiceless group to recognizing their voices and making sure that their voices are heard. In this manner, not only the aim of children laws will be achieved,

but also will children be empowered to think in their own ways, make their own decisions and stand for themselves.

There are signs in some countries that courts have been trying to listen to children. Earlier this year, it was announced by the Justice Minister of the U.K. that children would be able to communicate their opinions in family court cases, whether directly through papers, pictures and meetings, or through a third person, in addition to the traditional social worker report.¹ Similarly, the U.S. Supreme Court recently ruled in *Ohio v. Clark* that the conversation between teachers and abused children could be used as admissible evidence against the abuser

even though it was an out-of-court statement of a child who was not old enough to testify in court.² Even in cases where children were too young to express opinions, U.S. courts, instead of considering only other external factors concerning the Best Interests of the Child, implemented "substituted judgment analysis" where the judge made a dialog with himself as if he was that child.³

In Thailand, there are some provisions that expressly indicate that courts have to consider children's interests in making decisions, but those provisions do not require courts to ask children for their views. For example, Section 1520 and 1521 of the Civil and Commercial Code state that happiness and interests of children shall be taken into consideration in assigning parental power in divorce cases. Little or no research has been done to figure out whether the court asked children for their wishes. If yes, then how often did the court inquire them and how much weight did the court give to children's wishes, compared to parents' wishes, parents' wealth, environment, siblings, school concerns, etc.? Section 1598/20 requires consent of children at the age of 15 or above before they are adopted. In other words, the voice of children below the age of 15 cannot be heard. What is the justification for depriving them of their right to be heard?

The Best Interests of the Child cannot be reached without, at least, hearing the voice of the child. Otherwise, adults' intention to 'protect' children may turn out to be a 'harm' — a lifelong one. Please just hear the unheard voice.

¹ Ministry of Justice and The Rt Hon Simon Hughes, *Voice of the Child: children to be more clearly heard in decisions about their future*, THE U.K. GOVERNMENT PRESS RELEASE. (Feb. 19, 2015), <https://www.gov.uk/government/news/voice-of-the-child-children-to-be-more-clearly-heard-in-decisions-about-their-future>.

² *Ohio v. Clark*, 576 U.S. ____ (2015).

³ For example, U.S. courts did substituted judgment analysis in *Guardianship of Phillip B.* 139 Cal. App. 3d 407 (1983) and in *Curran v. Bosze* 141 Ill. 2d 473 (1990).

1955 Claudette Colvin

A 15-year-old African-American girl named Claudette Colvin had refused to relinquish her seat in a segregated bus. She was arrested in 1955. Ultimately, she challenged this law in court in *Browder v. Gayle*, where "a federal court suit involving Colvin eventually led to a Supreme Court order that outlawed segregated buses."


1955

1999 Divine Bradley¹

17-year-old Divine Bradley decided to start a community center for his underserved Canarsie, Brooklyn neighborhood. After noticing that there were few positive opportunities for youth after school, Divine connected with the community's youth and began plans for a center to provide an outlet for creative expression. In 2000, the nonprofit organization Team Revolution was created. By 2002, Team Revolution had raised \$25,000, which Divine used to convert half of his parents' home into a community center. Today, Team Revolution is focused on reaching out to children virtually, creating the next generation of community leaders and social entrepreneurs and an empowering educational environment for people in disadvantaged communities.


1998

1998–1999 Ryan Hreljac



In 1998, 6-year-old Ryan Hreljac was shocked to learn that children in Africa had to walk many kilometers every day just to fetch water. Ryan decided he needed to build a well for a village in Africa. By doing household chores and public speaking on clean water issues, Ryan's first well was built in 1999 at the Angolo

Primary School in a northern Ugandan village. Ryan's determination led to Ryan's Well Foundation, which has completed 667 projects in 16 countries, bringing access to clean water and sanitation to more than 714,000 people.

1998

2000 Alexandra 'Alex' Scott



Alexandra "Alex" Scott was diagnosed with neuroblastoma. After turning 4 years old, she informed her mother she wanted to start a lemonade stand to raise money for doctors to "help other kids, like they helped me." Her first lemonade stand raised \$2,000 and led to the

creation of the Alex's Lemonade Stand Foundation. Alex continued her lemonade stands throughout her life, ultimately raising over \$1 million toward cancer research. She passed away in August 2004 at the age of 8. Today, Alex's Lemonade Stand sponsors a national fundraising weekend every June called Lemonade Days. Each year, as many as 10,000 volunteers at more than 2,000 Alex's Lemonade Stands around the nation make a difference for children with cancer.

2000
2004

2004 Dylan Mahalingam

At the ripe age of 9, Dylan Mahalingam co-founded Lil' MDGs, a nonprofit international development and youth empowerment organization and an initiative of Jayme's Fund. Lil' MDGs mission is to leverage the power of the digital media to engage children in the United Nations Millennium Development Goals (MDGs). His organization has mobilized more than 3 million children around the globe to work on a variety of issues, with more than 24,000 regular volunteers hailing from 41 countries. Dylan is a youth speaker for the United Nations as well as a chief strategist and project ambassador for Under the Acacia. The recipient of numerous international and national honors, Dylan is now 15 years old and a sophomore at Pinkerton Academy in New Hampshire.


2007

2007–Reese Fernandez-Ruiz



Reese discovered that there is treasure in the trash. In 2007, she co-founded Rags2Riches, the first fashion and design house and social enterprise company that empowers community artisans in the Philippines' infamous dumpsite, Manila's Payatas area.

By focusing on empowering people, making sustainable profits both the company and the community, protecting the planet by repurposing waste and making a positive impact on society, Rags2Riches has improved the quality of life for its community artisans.

2009

2009 Malala Yousafzai²

"One child, one teacher, one pen and one book can change the world." Malala Yousafzai first caught international attention in 2009 when her diary, where she wrote about her dream of seeing all children access education, was published on BBC Urdu. She was writing from her home in the Swat Valley, Pakistan, after the Taliban had issued an edict banning girls from attending school. Three years later – and by now a well-known activist, despite being just 15 years old – a Taliban gunman boarded her school bus and shot her in the head and neck. But even an assassination attempt couldn't stop her: she went on to make a full recovery and became the youngest recipient of the Nobel Peace Prize.


2011

2011 Sejal Hathi



An avid social entrepreneur, Sejal Hathi founded both the nonprofit Girls Helping Girls at age 15, and the social enterprise girltink at age 19, dedicated to socially and economically empowering young women globally. Over the last few years, the 21-year-old's organisations have mobilized more than 30,000 young women change-makers in 104 countries to design sustainable social change.

2014

2014 Boyan Slat

Aged just 19, Boyan Slat has a remarkable vision for cleaning oceans that have been decimated by human waste. Inspired by fishing trawlers, Slat devised a way to recover waste that has been sent out to sea with huge nets. He does not view his age as a disadvantage to take action and succeed in his plan to clean up half the garbage patch in Pacific Ocean – in just 10 years. Slat is the founder of the Ocean Clean Up and CEO, and raise a huge amount of fund for his organization from his Ted Talk speeches.



¹<http://www.mnn.com/lifestyle/responsible-living/photos/8-amazing-kids-who-have-changed-the-world/dylan-mahalingam#top-desktop>

²<https://agenda.weforum.org/2015/10/4-girls-who-are-changing-the-world/>

TOYS FOR BABIES BEHIND BARS



Rule 51 of the Bangkok Rules states that for children living with their mother in prison “The environment provided for such children’s upbringing shall be as close as possible to that of a child outside prison”¹. In responding to this rule, Thailand Institute of Justice has partnered with Plan Creation Co.,Ltd, the manufacturer of PlanToys®, Thailand-based world-class wooden toys made from rubberwood trees that no longer produce latex to give out educational toys and make prison nursery more fun for the little ones.

Pregnant inmates giving birth while serving their time is not a new nor rare phenomenon. In Thailand, correctional

regulation allowed newborn babies to stay with their incarcerated mothers until the age of eighteen months in order to create healthy bonding critical for child development. It is estimated that more than two hundred infants are currently living in female correctional facilities across the country.² However, most mothers have to face with the hardest decision to send them out to kinship care quite earlier than what is allowed because the limitation of facilities and proper caring.

In promoting the implementation of the Bangkok Rules, TIJ set up criteria for “Model Prison” and included having a good nursery in the consideration.

Many facilities that we worked with have reported that they can allocate enough space to house babies separately from the crowded prison cells. But to create a pleasant environment is another story.

Believing that toys, is an essential part of growing up for everyone and that good toys allow children to learn through meaningful hands-on experiences to develop the physical strength and the emotional growth, TIJ and PlanToys® started a small project to give age-appropriate educational wooden toys to prison nurseries to make both mothers and babies a little happier. But having just high-quality toys that can last many years is not yet a sustainable improvement of prison condition. This humble initiative has drawn the attention of a few more private partners and the second phase, which involves wider public, is on its way.

After all, these innocent children are no others but the members of our future generation.

Editorial Team

¹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)

² Department of Correction data indicated that 256 babies were living with their mothers in prisons in 2014. <http://www.correct.go.th/correct2009/stat/stathomepage/>

VIPON KITITASANASORCHAI

Criminal Justice Advisor

Director of the Special Programme on Promoting the Rule of Law

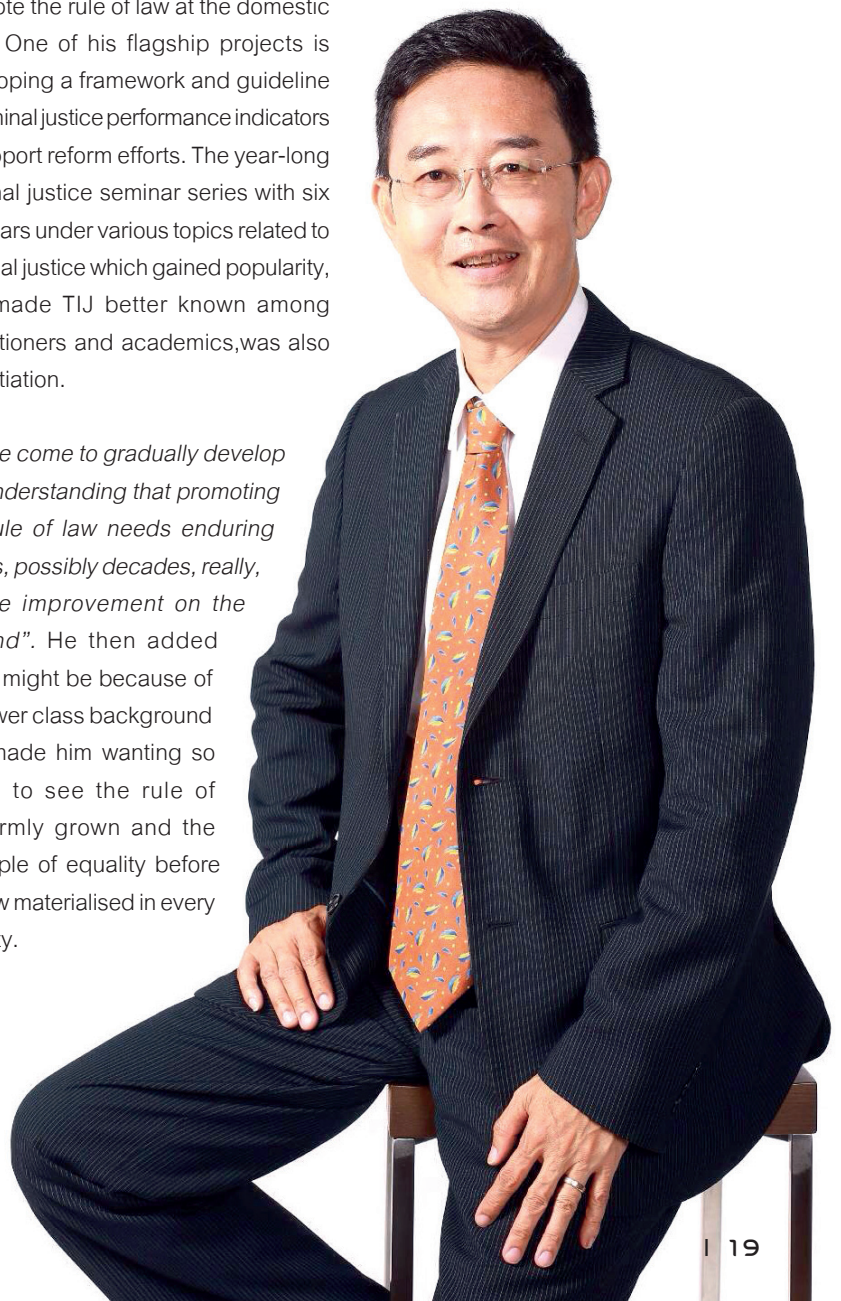
A former public prosecutor, with five years experience working as a legal expert at the United Nations Office on Drugs and Crime promoting the rule of law and strengthening criminal justice in Southeast Asia, Vipon has joined TIJ since November 2013

About twenty years ago, Vipon worked for the Thailand Criminal Law Institute of the Office of the Attorney General, which was established by the then Attorney General, Dr. Kanit Nanakorn, to be a kind of think tank on criminal justice reform. Vipon had the privilege to work under the great leadership of Dr. Kittipong Kittayarak, who was at the time the first Executive Director of the Criminal Law Institute. Vipon said, *"I learned to deeply appreciate the value of equality before the law as well as the rule of law-related principles. It was a great working experience. The vision, concept, principle and moral courage Dr. Kittipong demonstrated to me has somehow shape my perception about social justice."*

A set of experience and skills Vipon brought with him to the TIJ combines between practical understanding of how each criminal justice agency actually work and technical knowledge about programme development and implementation, which he said he learned from the time at the Thailand

Criminal Law Institute and the UNODC. Working for TIJ has also expanded his horizon. He enjoys leading his small team of young talented law graduates to promote the rule of law at the domestic level. One of his flagship projects is developing a framework and guideline of criminal justice performance indicators to support reform efforts. The year-long criminal justice seminar series with six seminars under various topics related to criminal justice which gained popularity, and made TIJ better known among practitioners and academics, was also his initiation.

"I have come to gradually develop the understanding that promoting the rule of law needs enduring efforts, possibly decades, really, to see improvement on the ground". He then added that it might be because of his lower class background that made him wanting so much to see the rule of law firmly grown and the principle of equality before the law materialised in every society.





LIFE IN RATCHABURI
CENTRAL PRISON



Daily life in prison is not like life in the free world. Those who have found their way behind the walls may well find their lifestyle being compromised.

Through the looking glass is a documentary film that explores female correctional facilities in Thailand. Step into a high security prison and see how the authority deals with overcrowding. Listen to the first-hand account from inmates of their daily lives, well-being, and health care when movements and choices are restricted.

Episode 1: Life in Ratchaburi Central Prison

Episode 2: Medical Care at Pattaya Remand Prison

Coming soon on Just Right Channel by TIJ
www.youtube.com/TIJThailand



HEALTHCARE IN
PATTAYA REMAND PRISON

