



**WORKSHOP
FOR EMERGING
LEADERS**
ON THE RULE OF LAW & POLICY



SUMMARY REPORT

Bangkok, Thailand | 7-12 January, 2018

In Collaboration With



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

**TIJ WORKSHOP FOR EMERGING LEADERS
ON THE RULE OF LAW AND POLICY WORKSHOP SUMMARY**
BANGKOK, THAILAND
7-12 JANUARY, 2018

March 2018

Disclaimer:

This work is intended to be a summary of the TIJ Workshop proceedings as interpreted and compiled by the 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).

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FOREWORD



Prof. Kittipong Kittayarak
Executive Director, Thailand Institute of Justice

I am delighted that the second TIJ Workshop for Emerging Leaders on the Rule of Law and Policy concluded with great success. On behalf of the Thailand Institute of Justice, I would like to thank the IGLP team and faculty for making this program possible, as we move forward with our common vision to become pioneers in the realm of rule of law education.

I would also like to congratulate and commend the Class of 2018 TIJ Fellows for their commitment and insightful contributions throughout the duration of the Workshop and I hope that they left the Workshop inspired to take on the opportunity at hand to achieve real impact and advocate for tangible changes in their respective fields. This 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 and our work must continue. We would like to also thank the network of IGLP Faculty, who devoted their time and effort in coaching and engaging with over 50 TIJ Fellows from 15 countries over the course of 6 days.

The publication of this workshop summary is intended to reflect and highlight the key discussions that took place over the course of the Workshop so that it can contribute to the knowledge base of rule of law education. Making rule of law reform a reality is a continuing effort that will require a concerted effort from all stakeholders. The TIJ looks forward to continuing our endeavor in expanding our network of change makers, who together can ensure that rule of law reform becomes a reality.

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 continued collaboration and for making the TIJ Workshop for Emerging Leaders on the Rule of Law a great success. A special thanks to Prof. David Kennedy and his team, Ms. Kristen Verdeaux and Ms. Ginelle MacDonald, for their tireless commitment towards this project.

This TIJ Workshop Summary Report was made possible thanks to our contributors Ms. Araya Arayawuth, Ms. Bowornluk Thongmark, Ms. Intiranee Khanthong, Ms. Kankanit Sawasdeepon, Ms. Kohnwilai Teppunkoonngam, Ms. Prarthana Jagannatha Rao, Ms. Samantha de Vries, Mr. Sippakorn Chongchuwanich, Ms. Thanaporn Techaritpitak, Mr. Ukrit Sornprohm and Ms. Yodsawadi Thipphamongkol. A special thank you also to the design team at the Knowledge Development Center Co. Ltd. (KDC), our contributing editor, Dr. Matti Joutsen and the editor in chief, Ms. Soramon Urapeepatanapong



INTRODUCTION

The 2018 TIJ Workshop for Emerging Leaders was the second iteration of the continued collaboration between the Thailand Institute of Justice (TIJ) and the Institute for Global Law and Policy (IGLP) at Harvard Law School, which took place at the Dusit Thani Hotel Bangkok from 7-12 January, 2018. It is the centerpiece of TIJ's landmark initiative to become a leader in rule of law education, by providing practitioners from different sectors an opportunity to engage with their global peers in policy dialogue facilitated by a network of international and interdisciplinary faculty members from the IGLP and TIJ.

The workshop served as a platform for policy practitioners and professionals to work together in unlocking the linkages and understanding the synergy between the rule of law and policy making processes in the economic, political and social development at local, regional and international levels. Upon completion of the Workshop, the newly anointed TIJ fellows joined the ever-growing network of change makers devoted to the betterment of society through using the rule of law as a guiding framework.

WORKSHOP OVERVIEW

The Workshop core curriculum consists of Plenary Sessions, Special Lectures, IGLP-TIJ Workshop Streams, Policy Skills Teams and an off-site field trip. An overview of each of these sessions is provided in this report.

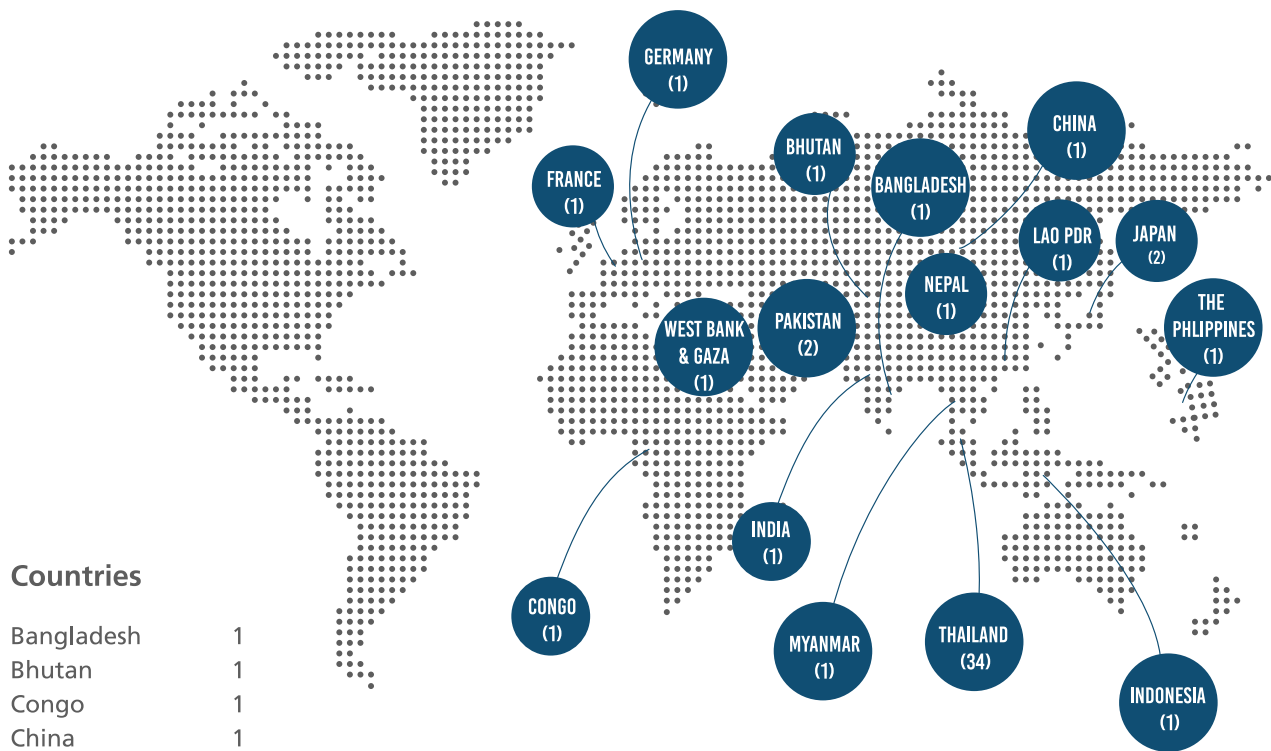
THE PARTICIPANTS & WORKSHOP FACULTY

THE PARTICIPANTS

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

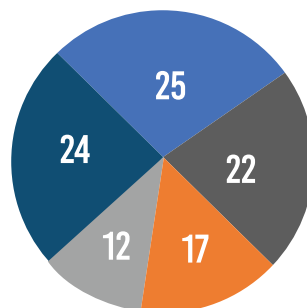
ADMITTED PARTICIPANTS BREAKDOWN (TOTAL OF 51)

GENDER		NATIONALITY	
25 (49%) Female	26 (51%) Male	Thai 34 (67%)	International 17 (33%)



Countries

Bangladesh	1
Bhutan	1
Congo	1
China	1
France	1
Germany	1
India	1
Indonesia	1
Japan	2
Lao PDR	1
Myanmar	1
Nepal	1
Pakistan	2
Thailand	34
The Philippines	1
West Bank & Gaza	1



Participants By Sector

Public Sector (Justice)	22%
Public Sector (Other)	25%
Private Sector	24%
Academia	12%
Other	17%

THE PARTICIPANTS & WORKSHOP FACULTY

WORKSHOP FACULTY

Helena Alviar (Colombia), Universidad de los Andes & Northeastern University School of Law

Antony Anghie (United States), National University of Singapore

Arnulf Becker (Chile), Brown University

Yishai Blank (Israel), Harvard Law School

Yun-Ru Chen (Taiwan), College of Law National Taiwan University

Madelaine Chiam (Australia), La Trobe University

B.S. Chimni (India), Jawaharlal Nehru University

Robert Chu (United States), Sullivan & Cromwell LLP

Wei Cui (China), University of British Columbia

Dan Danielsen (United States), Northeastern University School of Law

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

Julia Dehm (Australia), La Trobe Law School

Karen Engle (United States), University of Texas at Austin

Luis Eslava (Colombia & Australia), Kent Law School

Jorge Esquirol (United States), Florida International University College of Law

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

Chris Gevers (South Africa), University of KwaZulu-Natal

Sinja Graf (Germany), National University of Singapore

Vanja Hamzic (Bosnia and Herzegovina), SOAS, University of London

Hisashi Harata (Japan), University of Tokyo

Onur Ince (Turkey), Singapore Management University

Jason Jackson (Jamaica & United States), Massachusetts Institute of Technology

Sheila Jasanoff (United States), Harvard Kennedy School of Government

Richard Joyce (Australia), Monash University

Ratna Kapur (India), Queen Mary University of London

David Kennedy (United States), Harvard Law School

Vidya Kumar (Canada), University of Leicester

Lucas Lixinski (Brazil), University of New South Wales

Zinaida Miller (United States), Seton Hall University

Horatia Muir Watt (France), Sciences Po Law School

Vasuki Nesiah (United States), New York University

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

John Ohnesorge (United States), University of Wisconsin

Sundhya Pahuja (Australia), Melbourne Law School

Rose Parfitt (Australia), Kent Law School

Jothie Rajah (Singapore), American Bar Foundation

Nikolas Rajkovic (Canada), Tilburg University

Kerry Rittich (Canada), University of Toronto Faculty of Law

Surakiart Sathirathai (Thailand), Former Foreign Minister & Deputy Prime Minister of Thailand

Hani Sayed (Syria), The American University in Cairo

Osama Siddique (Pakistan), Law and Policy Research Network

Leo Specht (Austria), Specht & Partner

Cait Storr (Australia), Melbourne Law School

Chantal Thomas (United States), Cornell University

Robert Wai (Canada), Osgoode Hall Law School

Mark Wu (United States), Harvard Law School

Mika Yokoyama (Japan), Kyoto University

PLENARY SESSIONS

In the plenary sessions and special lectures, experts from various fields presented their unique perspectives on the rule of law and the key issues at stake, unpacked policy processes, and suggested approaches to reform. The discussions also drew on examples of best practices of reform in action.



TIJ WORKSHOP OPENING PLENARY INTRODUCTORY REMARKS

Speaker: Prof. Kittipong Kittayarak
Executive Director,
Thailand Institute of Justice

In his introductory remarks to the participants, Prof. Kittipong outlined the importance of the rule of law, formally enshrined in Goal 16: Peace, Justice and Strong Institutions of the United Nations Sustainable Development Goals (SDGs). At the outset, he stressed that Goal 16 is not merely a stand-alone goal, but a fundamental enabling factor that allows for the realization of other interrelated goals and targets of the development agenda. In this respect, any reform effort would likely fall short if inadequate attention is paid to fulfilling the necessary requirements of the rule of law. He also highlighted how rule of law reform is too large and too important of an endeavor to be left exclusively in the hands of lawyers, or to a single generation alone.

In a nutshell, the rule of law provides a society with a clear sense of assurance that the use of coercive power by the government, the utilization of natural resources and the promotion of economic development shall be for the benefit of everyone. It is underscored by the need to respect fundamental human rights, adherence to the principal of non-discrimination, and appreciation of genuine due process when state agencies apply executive power. The rule of law creates conditions enabling an effective legal and operational infrastructure, and simultaneously protects the rights and mutual interests of all parties concerned in order to ensure inclusive growth and development. In order to promote the rule of law, a country must also foster a “culture of lawfulness,” to acclimatize members of society and enable them to understand that everyone must be held accountable to laws.

Prof. Kittipong demonstrated that most attempts in the past to undertake rule of law reform have failed because of the narrow approach in understanding what the rule of law entails. This is further exacerbated by insufficient political will, lack of stakeholder participation, and the inability to accommodate the diverse perspectives that must be included for the rule of law reform to succeed. His suggested solution was a synergistic approach, where three important frameworks: the criminal justice system; the rule of law; and development, work in tandem to build a peaceful and just society.



Prof. Kittipong concluded by setting out the goals for the Workshop, urging participants to consider how they can contribute to make the rule of law a living reality for everyone and how they can then integrate the rule of law into their line of work and encourage those around them to understand its value and importance.



PLENARY LECTURE I

INTRODUCTION TO THE RULE OF LAW AND SDGs

Speaker: Mr. Nicholas Booth

Program Advisor

Governance, Conflict Prevention, Access to Justice and
Human Rights, United Nations Development Program

As part of the Opening Plenary, Mr. Booth introduced the United Nation's approach to the Rule of Law framework. At the outset, he delineated what the 'thick' concept of law encompasses – stressing that it not only focuses on strong procedural elements of transparency, accountability, participation and universality, but also requires that these laws be substantively aligned with human rights. He then drew comparisons between the current development agenda with the preceding Millennium Development Goals (MDGs), noting that the 2030 Agenda is much more comprehensive and integrated than were the MDGs. The SDGs encompass 17 ambitious goals and 169 targets, which mainstreams the urgency of "leaving no one behind." Close partnership and active participation is required of all stakeholders, including government, civil society and the private sector.

Another salient theme across the current development agenda is the linkage between sustainable development and justice, peace and freedom from violence. There can be no doubt that the respect for the rule of law is critical for progress in development. Moreover, the rule of law framework plays a prime role in the fight against corruption, human trafficking, organized crime and illicit financial flows. The private sector also plays a fundamental role in the achievement of these development goals, but without strong domestic legal frameworks that fully respect the rule of law, states will lack the necessary tools to ensure that businesses are also held accountable for their actions that adversely impact society.

Mr. Booth concluded his remarks by addressing the emerging opportunities and challenges to address in the effort to fulfill the development agenda as follows:

- 1) Culture (transforming awareness): generating a common understanding among governments, the private sector, civil society and the general public of the need for a “culture of lawfulness” (accountability, transparency and participation) across all development goals;
- 2) Partnerships (transforming ways of working): Building inclusive multi-stakeholder partnerships that involve civil society, academia and the private sector that can effectively monitor progress and promote accountability;
- 3) Business and human rights: Ensuring that the private sector is fully accountable for its impact on sustainable development and rights;
- 4) Measurement (the data revolution): Finding ways to effectively measure the contribution of governance and rule of law across the agenda



PLENARY LECTURE II

ASKING BETTER POLICY QUESTIONS

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)



Dr. Siddique introduced the methodology used by the IGLP in its Workshops, which differs from the traditional approach that is mostly utilized by international financial institutions, international development organizations and professional policy think tanks in the current policy discourse. The IGLP method prioritizes the analysis of the intersection between law and policy in order to shed light on how law determines development agendas, and ultimately shapes policy outcomes. In order to truly understand all of the interrelated nuances in reform processes, the IGLP values a more multi-disciplinary lenses, which takes into account the underlying contexts of and the perspectives of parties involved in policy discourses.

Dr. Siddique outlined a set of questions to consider during the policymaking process. Firstly, it is crucial to recognize the roles of law in the policymaking domain, and how policy interacts with the legal landscape to assess whether choices made are just, neutral or biased. In line with this, it is important to analyze the parameters used to gauge the effectiveness and outcomes of policy in order to rid them of underlying biases. Secondly, Dr. Siddique demonstrated how policymaking frameworks may reflect conflicting norms, standards and concerns of international players, as well as of local political elites and grassroots communities. Thirdly, it is critical to note that there is no “one-size-fits-all” solution, no standard policy decision that would be applicable across different milieus. Lastly, Dr. Siddique encouraged participants to be more critical of the roles of knowledge and experts, in that they may obfuscate dynamic situations or voices of vulnerable groups, exacerbate structural inequalities, and maintain entrenched socio-economic and political norms.

In light of the global era, the policymaking process faces a multitude of challenges. For instance, international benchmarks and standards (e.g. the Ease of Doing Business Index, worldwide governance indicators, etc.) along with best practices are not only imbued with hidden biases, norms and ideals of those advocating for them, but are also not fully understood. There is a tendency for policymakers to offer cookie-cutter solutions or to merely transplant development agendas without contextualizing them. In doing so, they often risk sidelining the concerns of the developing world, and the diverging traditional, religious, cultural and socio-political contexts altogether. Therefore, Dr. Siddique urged participants to ask these questions throughout policymaking processes in order to engender a more nuanced development framework that is effective, fair, value-neutral and inclusive.



TIJ SPECIAL LECTURE

TOPIC: SUSTAINABLE DEVELOPMENT AND CULTURE OF LAWFULNESS

Speaker: Dr. Royol Chitradon

Advisor at the Hydro and Agro Informatics Institute & Chairman of the Natural Resources and Environment Reform Committee

Dr. Royol is a pioneer and leading expert in the field of water resource management in Thailand and has led various national committees and decision-making bodies working on flood-related disaster prevention and management. As part of the TIJ Workshop Special Lecture Series, he shared his invaluable insight on lessons learned from his work in Huay Pla-lod Village in Tak Province of Thailand and how the promotion of the rule of law as a core community principal engendered inclusive and sustainable growth.

Huai Pla Lod is home to approximately 1,013 “Black Muser” people. In the past, these hill tribe villagers were heavily reliant on opium cultivation. As a result the community suffered from issues related to deforestation, including barren soil and regular drought. The water shortage was further exacerbated by poor natural resource management, lack of education and social mobility. These were pressing issues that needed to be addressed in order to bring equity and justice to the community.

In 1974, His Majesty the late King Bhumibol Adulyadej visited Huai Pla Lod community, ushering in development initiatives. Realizing that merely relying on law enforcement would not be a sustainable solution to the opium cultivation problem, His Majesty King Bhumibol introduced coffee cultivation to the villagers as an alternative means to sustain their livelihood. His Majesty also advised community members to choose a way of living that would conserve soil, water and the forest. The community was introduced to the “3 Forests and 4 Benefits,” approach, which aimed to restore the forest and maintain the balance of nature while planting trees for industrial use and cultivating agricultural products for food and income. Household income started to rise as people could earn a living from reforested areas while planting vegetables and winter fruits in foothill areas, thanks to improved water resource management.



In 1981, when the King Taksin National Park project was announced, conflicts emerged between the community and government officers as people were ordered to evacuate their homes, which were now within the area of the national park. Negotiations between villagers and the state eventually brought about an agreement that people in the Huai Pla Lod community could remain in place so long as they preserved the forest ecosystem. Consequently, the community started to realize the need for reforestation in order to prevent the expropriation of their land. The villagers received aid, which led to the creation of the Community Land Management Maps that demarcated boundaries between community forest and conservation forest. The maps were used to develop an upstream forest conservation framework and regulations. However, despite community reforestation efforts, people still suffered from problems involving water shortages, soil degradation and insufficient income.

In 2008, the Hydro and Agro Informatics Institute and Utokapat Foundation introduced H.M. the King's initiative and upstream forest rehabilitation and Community Water Resource Management to Huai Pla Lod. Among other things, the villagers were trained to apply science and technology to map their water source and carry out water balance analysis. They designed and developed systems to increase the water storage capacity. In addition, villagers also learned to make use of hydropower to generate electricity for their community.

Today, the Huai Pla Lod community is a successful reflection of His Majesty King Bhumibol's Sufficiency Economy Philosophy. It serves as an illustration that sustainable development requires careful management of natural resources, access to education and community engagement. The community has continued to thrive, and has also become self-sufficient and knowledgeable in the area of natural disaster risk reduction.

The key takeaway from the Huai Pla Lod development model is that people and communities should be placed at the center of any reform initiative. This success story exemplifies a bottom-up development approach that can be integrated with top-down policy implementation.

"Development must take into account the local environment in terms of both geographical and sociological landscape. By the sociological landscape, we mean certain characteristics and ways of thinking which we cannot force people to change. We must give them advice. We cannot go in to help people by trying to make them to be the same as us. However, if we go in and get involved, we should find out what the people really need and then give them explanations. This principles of development can be fully applied and bring great benefit."

Royal Address by H. M. King Bhumibol Adulyadej, given at the Graduation Ceremony of Kasetsart University, 18 July 1974



IGLP-TIJ SPECIAL LECTURE

TOPIC: RULE OF LAW :
ANALYZING DISTRIBUTIONAL IMPACT

Speaker: Prof. Kerry Rittich

Professor at the Faculty of Law and the Women's and Gender Studies Institute at the University of Toronto

Prof. Kerry Rittich's lecture outlined the ways that societal benefits and burdens are allocated through laws under the presumption that legal rules and legal institutions are both directly and indirectly connected to socio-economic outcomes. The fundamental question that the analysis of distributional impact intends to answer is how laws produce varying outcomes and impact the "winners and losers" in society. The underlying theory is that policy and legal problems are not naturally occurring in the world and in some ways must be defined by people. In doing so, the ways in which people identify regulatory or policy problems are often influenced by the prevailing socio-economic hierarchy.

In this light, trade-offs are almost always made when framing or developing policy and regulation. For this reason, careful management and prioritization is crucial in targeting this inherent inequality. Prof. Rittich's presentation centered on "inequality" as the central conundrum to the development agenda, and highlighted the need to identify exactly how laws are implicated in the creation of unequal outcomes as a result of the differing levels of bargaining power that people have.



Prof. Rittich then proposed some key concepts to consider when thinking about the linkage between laws and inequality, including the notion that laws and institutions are instruments used to build social institutions, and the ways in which these constructs are built can matter a great deal to people across all groups. She drew on examples such as:

- Family law, wherein the state essentially allocates duties and obligations between husbands and wives and/or parents and their children; and
- Labor Laws, where regulations ensure the loyalty and obedience of employees to their employer's commercial interests over their own.

When laws are being designed and implemented, meticulous policy choices should take into consideration how these laws will impact people across the social spectrum. For every legal entitlement that exists, whether it be in the form of rights, power, privilege or freedom, there is a correlating subset of relationships that are affected. Prof. Rittich stressed how these choices should be made by identifying particular sets of goals, values and interests that are for the greatest benefit of society.

IGLP-TIJ SPECIAL LECTURE

TOPIC: CHANGE IN THE INTERNATIONAL ECONOMIC AND POLITICAL STRATEGIC LANDSCAPE: THE RULE OF LAW



Speaker: Prof. Surakiart Sathirathai

Chairman of the Asian Peace and Reconciliation Council,
former Deputy Prime Minister
and former Minister of Foreign Affairs of Thailand

Prof. Surakiart provided an overview of the changes in the international economic and political landscape with a broad focus on the dynamics in Asia in order to underscore the crucial role of the rule of law in the formulation and implantation of sound regional and global development policies. He noted that there has been a multitude of transformations in the economic dimension. Rapid expansion and growth of the Chinese and Indian economies, along with the creation of the ASEAN Community are instrumental in the rise of Asia as an economic powerhouse. Coupled with this, the Regional Comprehensive Economic Partnership (RCEP) framework, which calls for more openness, is not only responsible for an increase in the free flow of trade in goods, services, investment and capital, but is also the foundation for the Free Trade Area of the Asia Pacific (FTAAP), which emerged due to the lack of progress in the Doha round of the World Trade Organization (WTO) negotiations.

A few apparent challenges to the old Bretton Woods Institutions, namely the World Bank and the International Monetary Fund (IMF), were also outlined during the presentation. The New Development Bank (NDB) and the Asian Infrastructure Investment Bank (AIIB), as well as the Chiang Mai Initiative (CMI) have provided competing alternatives to the traditional mechanisms for development financing and stabilization of monetary systems. As such, these institutions serve as counterbalances to Western-perpetuated norms and standards, as well as rules and regulations inherent in the Washington Consensus, which have permeated the international economic sphere. Against this backdrop, the continuing appreciation of the Chinese Yuan or Renmibi (RMB), and its recent addition to the IMF's reserve currencies have highlighted the increasing appeal of the RMB as one of the major global currencies.

The presentation then highlighted how China's regional grand strategy on connectivity has allowed it to extend its partnership and power on land and sea in order to decrease the United States' spheres of political and economic influence in Asia. This strategy includes the following key policy initiatives: the Lancang-Mekong River Cooperation, the Silk Road Economic Belt or One Belt and One Road Initiative (OBOR), and the String of Pearls maritime strategy. In light of these developments, the United States has even referred to the Asia Pacific as the 'Indo-

Pacific region' as a response to the OBOR. Simultaneously, major economic players have also attempted to contain China through an alternative strategic option such as the Asia-Africa Growth Corridor (AAGC), as well as to exclude Beijing from the Quadrilateral Meeting in 2017, held among the United States, Japan, India and Australia.



Prof. Surakiart noted that this continuing competition among major powers, along with the anti-globalization movement (which led among others to Brexit and the "America First" policies), the upsurge of disruptive technology and the growth of e-commerce have together contributed to the creation of a new strategic landscape in Asia. On the other hand, he attributed the changes in the political dimension to the following prominent trends: 1) heavy economic sanctions on Qatar; 2) ongoing threats posed by ISIS; 3) Washington's stance towards the recognition of Jerusalem; 4) rising tension on the Korean Peninsula; and 5) the devastating crisis in Myanmar's Rakhine State.

In the face of these transformations in the politico-economic landscape, Prof. Surakiart emphasized the vital role that the rule of law has to play, especially in the formulation and implementation of sound development policies. He concluded the presentation by leaving the audience with some essential questions to consider: Do new rules and regulations serve to induce, slow down or obstruct changes? Are these sets of rules and standards based on concepts of fairness, good governance, justice and human security? Do these changes strengthen individuals, or render them more vulnerable? Ultimately, besides understanding, accepting and living with these changes, what are our roles as global citizens?



IGLP-TIJ SPECIAL LECTURE

TOPIC: RULE OF LAW - WAYS OF KNOWING

Speaker: Dr. Sheila Jasanoff

Pforzheimer Professor of Science and Technology Studies,
Harvard Kennedy School

Dr. Jasanoff began her lecture by illustrating the main parallels between law and science as institutions, especially in terms of their expectations of normality and regularity. Certain ingredients that fall under the definition of rule of law or rule by reason such as equality of treatment, fairness, objectivity, transparency, participation, stability and accountability are similarly reflected in science in the universalism of facts, impartiality, peer review, reliability, reasoning and rationality.

This should not be surprising, since science was built on some of the institutions that law had already perfected. Arguably, law and science have developed and shaped our world side-by-side throughout the centuries. They also continue to engage in conversations with each other. To Dr. Jasanoff, a breakdown in the domains of science will affect decision-making institutions, which include the law. For this reason, a crisis of modernity, if there is one, is a crisis of modern institutions—of public reasoning and making sense of the normative world, not just the world of facts.



Against this backdrop, Dr. Jasanoff highlighted how science has always been a highly political endeavor, and thus invaded by politics. In other words, science has always been within and permeated by politics. She noted the importance of resituating the ways of knowing, or the ways in which five key institutions or actors know, under a different light in order to examine the necessary changes within the legal landscape.

In the first dimension, the knowledge of science illustrates how science has increasingly become trans-disciplinary and motivated not solely by curiosity, but also by the societal implications of the work. Although science is interwoven with politics, many still refer to a separate domain of science, and how it has been contaminated by politics.

In the second and third dimensions, Dr. Jasanoff demonstrated how underlying values and biases of different expert sources could permeate the knowledge of states and big data. It is also crucial to recognize that a single, universal process of state knowledge-making does not exist –instead, knowledge-making of a particular state should be viewed as a distinct cultural phenomenon.

In regard to the fourth dimension, Dr. Jasanoff noted that decision-making procedures should take into account the knowledge of people or how the public knows. Lastly, the knowledge of policymakers should not only be produced through a combination of analytic and deliberative processes, but should also remain transparent and inclusive.

From this discussion, the essential question is not how science links to policies, but how much respect should policymakers pay to science. Dr. Jasanoff suggested that law has work to do in taking into consideration political culture, as well as theories and practices of participation. It should be sensitive enough to understand the nuances of the interplay between political and economic powers in order to respond to epistemic uncertainties. More importantly, it is critical to include lay perspectives, knowledge and insights in decision-making processes through long-term education and engagement initiatives.

FACULTY ROUNDTABLE

**TOPIC: POOR AND MIDDLE INCOME COUNTRIES
IN GLOBAL LAW & POLICY**

Moderator: Dennis Davis, High Court of Cape Town

Speakers: Antony Anghie, National University of Singapore
Arnulf Becker, Brown University
B.S. Chimni, Jawaharlal Nehru University
Ratna Kapur, Queen Mary University of London
Rose Parfitt, Kent Law School
Osama Siddique, Law and Policy Research Network
Chantal Thomas, Cornell University



This roundtable discussion focused on the global standing of poor and middle income countries and how they play a role in international law and policy dialogue.

The discussion started with an overview of global income growth, highlighting how in recent decades, liberalization of the global economy has opened trade barriers and allowed emerging economies in Asia such as China and India to transform into economic powerhouses. Income distribution analysis in these contexts cannot focus solely on one country, but should be a comparative study across countries with similar development experiences. However, from a policy perspective, trade openness does not necessarily help income growth and reduce poverty.

The next point touched on a brief history of international law and the intersection between law and development. It was noted that it is worth reaffirming that a country such as China has undergone a specific set of circumstances, specifically a regime change that has led it on the development path that it is on today. When the status of a country changes from a low-income country to a middle-income country, this is usually due to a combination of factors, for example, political influences and leadership accountability.

Next, several observations about post-colonial neoliberalism were made. Despite criticisms, neoliberalism is not all negative. The openness that comes with it include access to economic opportunities and individual choices. Neoliberalism advocates the mainstreaming of international law and the strengthening of criminal law, which results in more punitive approaches that can often lead to re-victimization. These interventions are more about security of the state and market stability rather than true empowerment of the populace.

The discussion then proceeded to how governments must learn to navigate in the realm of international law. The main role of the government of each state is to protect its citizens and ensure the proper functioning and sovereignty of the state itself. International legal subjects such as corporations have become essential to the existence of capitalism, but their success is still conditioned upon the individual states' acceptance of them. The key lesson is that strong and consistent policies and a stable government are foundational to economic growth. In particular, a robust legal infrastructure is crucial so that a state can prosper both domestically and globally.

The next matter that was discussed was the fact that at present, the prevailing trend is to categorize countries based on their level of income. However, more inclusive indicators might be considered. Defining where a country stands should not be based only on the proliferation of markets or materials in its economy, but also on other factors, such as its history, its prioritization of human rights, and perhaps even its level of commitment to sustainable development.

The discussion proceeded to how the homogenization of revolutions introduced by some low and middle income countries is significant in terms of distribution of resources and the strengthening of the role of their citizens at different levels. It is also important to look at how certain countries respond to global events. This can be exemplified by the shifting geopolitical values between countries. Nowadays, culture, national security, technology, and labor are influencing global movements.

The last question that was analyzed in the roundtable discussion was why poorer country are poor. The observation was made that this might be as a result of the loss of their ability to dictate their own policy. Many low-income countries are arguably conditioned to depend on higher income countries. This loss of economic sovereignty further delays development. Another crucial reason is the role of international economic institutions and their stringent policies that govern low and middle-income countries. Perhaps an avenue to consider in the pursuit of more equality in the international economic order is for low-income countries to focus more effort on social development and employment in marginalized areas.

POLICY SKILLS TEAMS

The Policy Skills Teams are a unique component of the TIJ Workshop and are specially designed as peer-to-peer sessions that provide an opportunity for one-on-one brainstorming on innovative ways to approach pressing policy challenges. Each participant contributes a recent policy experience to the group for discussion. IGLP faculty members serve as mentors to the participants and also facilitate thematic discussions. This small group interactive learning centers on drawing from personal experiences of the participants and provide real-time feedback on their policy proposals. Each participant must also contribute by developing a short presentation on a policy issue with which they are familiar, to the rest of their assigned team.

For the 2018 TIJ Workshop, TIJ Fellows were divided into a total of five teams. Prior to the conclusion of the Workshop, one member from each team was selected to present their policy experience at the “TIJ Public Forum: Converging Perspectives from Global to Regional on the Rule of Law”, which took place on January 12th, 2018. The cases presented by the nominated TIJ Fellows can be found in Section 9 of this publication.



STREAM SESSIONS

A number of “streams,” or intensive mini-courses, were offered during the Workshop, allowing participants to convene around thematic areas of interest, review current scholarly development and discuss policy implications. TIJ Fellows attended these sessions alongside IGLP Scholars from the 2018 IGLP Scholars Workshop, a concurrent Workshop to the TIJ Workshop that is a regionally- focused residential program that brought together an international cohort of young doctoral scholars, post-doctoral scholars and junior faculty for intensive collaboration, mentoring, and cross-training.

The 2018 Workshop Streams included:

I. CORPORATIONS IN A GLOBAL SOCIETY

Faculty: Dan Danielsen (United States), Northeastern University School of Law
Sundhya Pahuja (Australia), Melbourne Law School



This stream examined the evolution of the corporation as an institution, and explored some of its complex contributions to the organization and governance of social, economic and political life across the globe from the 16th century to the present. Key ideas that unlock the history of the corporation as a governance institution were discussed in order to understand contemporary patterns of global ordering.

The discussion began by asserting that corporations have an expansive global footprint and their legal personalities, rights and responsibilities yield far-reaching consequences for governments and the concept of sovereignty. It is from this observation that the participants came to the view that corporations are jurisdictionally ambiguous. In contemporary discourse, corporations are viewed as governance institutions, as they have the capacity and authority to set and regulate trends in society – they not only conduct business, but shape political and regulatory trends as well. In this light, the capacity of corporations to rival the state was explored by

asking if corporations can be too powerful. The focus then shifted to the scope of responsibilities that corporations have and how morally ambiguous undertakings that are often tolerated for economic gains pose challenges to the regulatory affairs of the states.

Monitoring and the enforcement of laws was the approach most commonly suggested to ensuring accountability. Another possible option that was considered was market-based approaches, such as the establishment and implementation of corporate social responsibility measures that can bolster the reputation of corporations. Another alternative suggested was the hybrid approach, which combines both the coercive and the market-based approaches.

The status of corporations under international law was also considered. Since states are the principal actor under international law, these laws should be used to bring companies into compliance with international standards. In essence, international law should be called upon to provide protection of private property and enforceability of contracts. The problem with this notion is that in the international sphere, corporations are often unregulated, since they are often deemed "too big to fail" and the cumbersome processes of the international legal regime have yet to adapt to being able to effectively keep corporations in check. The discussion touched on how the influence of corporations in international politics is undeniable. Historically, corporate influence was a means used by first world nations to assert their power on developing nations. While there has been progress in moving away from systematic exploitation, remnants of this dynamic still indubitably exists today, revealing how the influence of corporations extends far beyond the legal sphere to international politics as well.

Another important point of discussion was the purpose of corporations and the nature of corporate power. Corporations exist to create benefits, capital, and revenue; they are, in essence, merchants. Corporations are mercantile, mobile, and have expertise. Furthermore, they do not owe allegiance to any flag. These factors lend themselves to the creation of authority. When that authority is exercised rightfully, such as through the making of sound foreign investments, which is crucial to development specifically in poorer countries, corporations wield power that may rival that of even the principal actors of international law – which are the nation states themselves.

In conclusion, the omnipresent nature of corporations in the world today creates far-reaching impact across all fields whether this be international law or politics. Corporations can be a source of change and trends and can be a force for good, as exemplified in the commitment of some corporations to the Paris Climate Agreement. At present, economic growth is often prioritized, but these goals must be tempered by the fact that accountability and inclusive growth should still be an even bigger priority, as they are foundational to sustainable development. Corporations must be kept in check and should not be able to operate above the law, as the international legal infrastructure is still plagued with blind spots and loopholes, and cannot keep pace with the growth.

II. CRIMINAL JUSTICE

Faculty: Sinja Graf (Germany) National University of Singapore
Osama Siddique (Pakistan) Law and Research Policy Network



In this stream, participants were encouraged by the faculty members to develop an analytical framework to examine criminal reform projects through multiple lenses: historical, sociological, institutional, legal, geographical and knowledge/data focused. In this context, reform was viewed not only as a technocratic domain, but equally as a political phenomenon and strategy. The underpinning framework for discussion was also grounded in the notion that effective criminal justice reform thinking and implementation requires deep appreciation of national contextual realities, as well as meaningful adaptation of what has proven to work well across national boundaries.

The discussion began by highlighting the trend that criminal law reform should move beyond the domestic agenda and be viewed as a borderless movement, particularly because of the proliferation of transnational crimes. In this light, the international community can work together to create policies that generate positive outcomes, by using the outside-in approach to reform. It was also observed that approaches to criminal justice reform should not be limited only to the police, the prosecution of cases and the judiciary, but that there are other socioeconomic factors at play. The example of the Philippines in the past was utilized to showcase how reforming the criminal justice system under dictatorial rule proved unsuccessful, as reform must take a people-centric approach. This is foundational to respect for the rule of law, which is not merely confined in the idea that those in power have the authority to undertake reform, but that ultimately, the will of the majority of the people must be respected.

The concept of measuring accountability in the justice system in order to evaluate the success of any reform attempt was also discussed in this stream. Using Thailand as an example, in the past where judges were often viewed as "untouchable" due to their high status, there was no robust case management system in place to prevent delays in the administration of justice. More recently, judges are now placed under the oversight of the chief judge of each court, and must provide justification should there be any unreasonable delays in the processing of their cases. This measure was initiated by the judiciary itself, and is the embodiment of the inside-out approach to reform, which also must not be neglected.

Following on from the initial discussion, the case studies from the readings were discussed in order to explore a broad view and a sampling of where policy has failed. An interesting policy issue that was highlighted centered on the “institutional apathy” towards prisoners wherein institutionalized disregard of prisoners’ rights can lead to a series of rights violations that include but are not limited to: lack of legal representation, denial of legal aid, delayed trials, case overload in the system and a lack of a system for the monitoring of legal counsel. Thailand and Brazil were used as examples where the police often arrest people, specifically underprivileged adolescents without cause. In Thailand, more than 50% of arrests are for minor drug-related offences, but the suspects can remain in jail for years as they cannot afford bail and the processing of their cases is delayed. In Brazil, black adolescent youths are often arrested and imprisoned at night without cause in order to keep the streets “safe”, which is blatantly a preventative measure with strong racial undertones. It was proposed that alternative measures to imprisonment should be considered, such as rehabilitation, probation and/or parole. Imprisonment can “brand” a person for life and as such, a rehabilitative approach may be more appropriate.

It was also noted that the sociology of crime is integral to any criminal justice reform approach. The underlying social causes of crime should be assessed and addressed. For instance, in Pakistan, findings showed that most criminals involved in street crime are not part of large organized groups, and that they are actually educated, but unemployed. Therefore, using an economic lens to resolve inequality might be another approach in conjunction to reform of technical solutions.

III. DEVELOPMENT FINANCING: ONE SILK ROAD INITIATIVE

Faculty: Scott Newton (United States) SOAS, University of London
Leo Specht (Austria) Specht & Partner



This stream examined the political and economic impact of the new financial resources and institutional arrangements associated with the One Belt One Road (OBOR) initiative, and its impact on development, inequality and political possibilities from China and Southeast Asia through to Europe.

The One Belt, One Road initiative was developed to increase connectivity between China, other countries and international organizations. Based on the ancient Silk Road that used the lay of the land and sea routes to link different regions through vital infrastructure, this initiative aims to promote economic development, breed political stability, spread prosperity and drive global development. To frame the discussion, the faculty provided the historical and political context as a mix of strategies that drove OBOR. Internationally, somewhat similarly to the U.S.-sponsored Marshall Plan that aided in the reconstruction of post-World War II Europe, China focused on boosting its international trade and improving foreign economic relations to foster close ties with its neighbors, which would become its trading partners and outlets for Chinese companies to export their goods.

Throughout the discussion, participants identified issues related to Asia's development and industrial policy. The case study discussed in the stream was that of the Asian Infrastructure Investment Bank (AIIB), a Chinese-backed development bank with the goal of fostering sustainable economic development by investing in infrastructure and other productive sectors and of also promoting 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. Some concerns have been raised about the underpinning geopolitical motives that China may have that are reflected in the AIIB's investment strategy and the impact this may have on the global economy. Nevertheless, this does not detract from the fact that the AIIB's impact-centered approach to loan approvals by being pragmatic, fast and less risk-averse can indeed expedite the pathway towards the achievement of the SDGs. The OBOR continues to play a critical role by serving as a conduit to increase connectivity across the region in terms of infrastructure, trade and finance while simultaneously bringing disparate communities closer together.

IV. GOOD GOVERNANCE: PUBLIC AND CONSTITUTIONAL LAW

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



This stream explored the ways in which governance is performed in contemporary socio-political and cultural milieu with an emphasis on the role of law in governance as a site of choice rather than a ready-made solution to significant policy challenges.

At the outset, this stream asked participants to consider what the notion of “governance” entails, and how it differs from “government.” While “governance” means the methods or manner of governing, government is a body, the responsibility of which is to make binding decisions in a given geopolitical system, in particular, by establishing laws. It could be said that public international law emerged in political units that could be described through cartography, which served to translate and inscribe the ways in which we universally understand power, countries and authorities. But new developments in the past few decades such as railway systems, energy pipelines, undersea cables, internet connectivity and space communications networks have not been incorporated into ‘modern cartography’. As such, they continue to challenge the traditional concepts of territoriality and jurisdictions, as well as highlight ways of thinking about modes of governance in contemporary contexts.

Against this backdrop, participants were urged to reconsider these notions in light of the age of new materialism, whereby power and authority are no longer territorially bounded. For example, a sovereign state now has the capacity to govern far beyond its traditionally demarcated space, and actors such as multinational corporations also have their own geopolitical spheres as stipulated in bilateral investment treaties and intellectual property laws. Traditional cartography does not embody a single universal reflection of what governance and government looks like. Rather, while states still remain the focal points whereby these new relations are established, it is important to recognize that there are multiple layers of interactions and overarching infrastructures that govern modern inter-state and intra-state relations.

The facilitators also highlighted the need to acknowledge how the construction of legal narratives may serve to improve or hinder access to justice. Arguably legal narratives become understandable as attempts are undertaken to map out, from the perspective of the present, a coherent or plausible story about a series of disparate past events. However, legal methods, argumentative techniques and procedural requirements filter, reduce complexity and recycle what appears to be the whole story. Often, “real life” conflicts are de-politicized and normalized into “cases,” especially in the translation of grievances into the legal vocabularies. In doing so, access to justice is generally not prohibited but delayed, displaced and submitted to criteria of selection (exclusion), and is fraught with risk and alienation.



V. GLOBAL REGULATION, FINANCE AND TAX POLICY

Faculty: Robert Chu (United States) Sullivan and Cromwell LLP

Wei Cui (China) University of British Columbia

Dennis Davis (South Africa) High Court of Cape Town & University of Cape Town



This stream explored the forces which structure the global regulatory terrain by considering the tension between global, regional or bilateral trade regimes and the policy space for national regulation, as well as the vastly unequal power of different national regulators, all of which affect economic life beyond their borders in ways they have and have not anticipated.

The first discussion centered on the case of artificial intelligence (AI) and the threat it poses to the global trade regime, including mass unemployment and economic inequality on a global scale. There is the prospect of a zero-sum game in which companies and countries that invent and use AI are the winners and developing countries that lack access to this technology are the losers. Participants then discussed policy proposals that could redistribute wealth and allow for fair access to intellectual property.

Another focus in this stream was the generation of rents and distribution of gains in the global operations of governed global value chains by studying the case of South Africa. Following the end of Apartheid in the 1990s, the country was still faced with economic segregation wherein the white minority continued to possess more property, capital, market share and purchasing power than the black majority. Compounded with the arrival of foreign brands and enterprises, new economic dynamics came to the fore, creating an environment that called for new legal mechanisms, such as robust corporate and competition laws, that could cope with growth.

The participants also discussed the impact of global production on the different types of rent, namely: resource rents, innovation rents, exogenous rents and market rents and the ways in which these four factors influence distribution and production. In the age of globalization, these rents are a means for us to explore relations between the economy and the legal systems and to understand how legal infrastructures can impact the use of things, such as natural resources, property rights, and intellectual property rights, to name a few.

The final discussion in the stream touched on the effects of globalization on the political and economic spheres. The case of the United States was utilized as an example of how the current administration has altered the dynamics in the international economy as a result of its shift in stance on matters such as economic and environmental policies, as well as international relations. Other global trends such as the rise of consumerism and the impact it has had on economic, social and political paradigms were also identified, since legal mechanisms must adapt and respond to these new challenges. The main takeaway from this session highlighted how the policy tools of the past can no longer address the current global challenges and that policymakers must use an inclusive approach to innovate new tools and systems in order to address social and economic instability.

VI. HUMAN RIGHTS AND SOCIAL JUSTICE

Faculty: **Ratna Kapur (India)** Queen Mary University of London
Zinaida Miller (United States) Seton Hall University



This stream explored the relationship between violence and human rights law and advocacy. Respect for human rights is often championed as a necessary precondition to the abolishment of violence – but individuals and states will at times use it to legitimize violence and to facilitate the exercise of violent power. The discussion explored this relationship by considering different forms of violence—spectacular, structural, slow, and revolutionary – and the role of human rights both in attending to and in normalizing that violence. Several case studies were considered around issues such as the environment, trafficking, and religion.

The session began with a discussion of the human rights movement, the fight against impunity and how they have become synonymous with each other. Supporting human rights implies agreeing with criminal accountability. The mainstream perspective holds that increased criminal prosecution of those who violate human rights will naturally reinforce human rights and promote goals that safeguard human rights. However, this notion is arguably an over-simplification of a complex issue.

The Universal Declaration of Human Rights (UNDH), which is the foundation of modern human rights law, does not sufficiently address the contextual nature of human rights around the world. For example, in the UNDH, colonialism is nowhere mentioned as a form of violence. It is important to think about how these instruments in some ways or another help sustain the colonial legacy. The International Criminal Court (ICC) has been accused of its narrow focus on prosecuting crimes in Africa and simultaneously ignoring crimes by Western countries, such as the invasion of Iraq by the United States. This raises some fundamental questions about the actors who define the scope and interests in the name of human rights protection as well as the authorities involved.

Therefore, it is important to take into consideration that there are some problems in the marriage between human rights and criminal law. The way international law functions now has a pattern to it, consistently including and excluding in a certain way. Alternatives such as the Truth and Reconciliation Commission sometimes create similar problems. This current narrative seems prescriptive and neat because it excludes more than it explains.

Thus, one of the big questions that need to be asked is: Who is the subject of the human rights apparatus? The language in human rights laws indicates a "universal subject". But there is perhaps a need to take that definition and ask who and what lends legitimacy to a subject. There is a hierarchy attached to the human subject, with certain civilizations being considered barbaric and some being 'civilized'. Assimilation becomes one of the ways to make those barbaric societies more refined.

One of the case studies that was discussed in order to illuminate issues surrounding certain human rights protection effort concerned the Truth and Reconciliation Commission in South Africa that was established after the end of Apartheid as a form of restorative justice, allowing victims of violence to come forward while allowing perpetrators to give their testimony and request amnesty. AZAPO, a political party in South Africa, tried to challenge the constitutionality of a law that prevented perpetrators of any unlawful actions or violence with a political objective committed prior to December 6, 1993 from being held either criminally or civilly liable. Ultimately, the court decided that decisions to grant amnesty were constitutional. This outcome illustrates that human rights can be a zero sum game, with peace and impunity on one side and truth and prosecution on the other.

The primary takeaway from this stream is that if the way in which human rights as a field is currently structured does not yield outcomes that are ideal, alternative methods must be considered in order to remedy its shortcomings.

VII. INTERNATIONAL LAW

Faculty: Antony Anghie (United States) National University of Singapore
B.S. Chimni (India) Jawaharlal Nehru University



This stream discussed issues in international law ranging from the Third World Approaches to International Law (TWAIL) and the history of international law while drawing from multiple case studies. The discussion started with the introduction of the concept of TWAIL, which is a school of thought that has emerged in the last decades as an alternative to the conventional international law approaches. This stemmed from the fact that the current model of international law is inherently Western-centric. In essence, TWAIL represents the movement of the un-aligned countries, specifically formerly colonized nations in Asia and Africa, in the push towards leverage in dealing with the First World.

History, especially involving the dynamic between capitalism, colonialism, and imperialism, is essential to the debate and the lecture. It was highlighted that the modern model of international law and international relations is arguably rooted in the history of colonialism and imperialism. For example, traces of colonialism can still be found in the modern notion of interventionism did not end with decolonization. In this regard, imperialism could be viewed as a systematic structural bias against the formerly colonized world.

The relationship between imperialism and capitalism is also very important; without capitalism, imperialism and colonialism would not have the same connotations they do today. This is because capitalism, due to its nature, is a continually expanding process that brings about more resources, increased production and capital. This nature greatly enhances the symbiotic relationship between capitalism, imperialism and colonialism that leads to the creation of the distinctions based upon economic capacities and cultural outlooks.

An issue that was raised during the discussion was how Asia has generally enjoyed the benefits of international law. However, there have been claims from the Western perspective that Asia has not contributed as much as it can in the international law arena. For instance, only nine Asian countries have signed and ratified the Refugee Convention, despite the fact that Asia has millions of refugees. This was also highlighted by the fact that Asia has no official human rights legal institutions. For example, ASEAN has only the ASEAN Human Rights Charter, which creates no legal obligations upon the states. Similarly, the Asian-African Legal Consultative Organization adopted only a non-binding text on the rights of the refugees.

Arguments can be made, however, that the approaches that the Third World takes are simply different from ones utilized by the First World. This can be the result of many factors. For instance, China's stance on international law relations has not changed much since Chairman Mao Zedong's era. In this regard, China still holds on to its own ideas of efficiency and approaches; in a way, China offers an alternative model towards the achievement of international recognition – simply by being comfortable with its own unique approach in its involvement in international politics without the burden of Western-centric values and rhetoric. This, however, owes much to its history and influence.

The criticism of the lack of involvement of the Third World in the realm of international law was also analyzed from another perspective. It was suggested that it is perhaps not that the Third World does not engage enough with the process of international legal mechanism, but rather, it is the First World, which has a biased perspective and its own prejudices against the Third World's approaches towards international law.

VIII. LAW AND DEVELOPMENT

Faculty: **Helena Alviar (Colombia)** Universidad de los Andes & Northeastern University School of Law
John Ohnesorge (United States) University of Wisconsin
Hani Sayed (Syria) The American University in Cairo



This stream investigated legal reform strategies that are 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 of development reform, and recent shifts in development theory and state practice. Particular emphasis was given to alternate legal arrangements, which may open alternate trajectories for development with different patterns of inequality or social justice.

Discussion commenced with framing the concept of law and development as a field that consists of three blocks: law, economic and institutional practices. The discussion focused on the critical role of national and international policies and emphasized the fact that, in order to design and implement new operations, the interconnectedness of the three blocks must be considered, since the lack of coherence can shift the power towards international development finance institutions. Therefore, a balance between the three blocks must be maintained.

The most important turning point for the concept of law and development in recent time was in the decades after the Second World War, specifically from 1960s onwards. This period coincided with the Cold War, and the founding of new nations in the wake of decolonization. The emergence of a slew of independent nations was accompanied by a myriad of problems. These new countries had to struggle to form their own identities, such as their form of government, legal system, and political ideology. During the period when ideologies and international politics are essential, the ideological extremism that was manifested during the Cold War naturally influenced many of these fledgling nations.

The Vietnam War, which was a watershed chapter during the Cold War, is a case study that was analysed during the discussion, as it aptly reflects how the imbalance caused by disregard of the law can upset progress in development. In the United States, the Vietnam War diminished the trust that people had in the American government due to the newfound American interventionist stance. Despite the claim that respect for freedom and democracy was the grounds for American involvement and was legally justified, the law could not have accounted for the volatile political climate and the people's growing hostility towards the Vietnam War.

Another topic of focus was the rise of international institutions, and of the International Monetary Funds and the World Bank in particular. These international finance institutions were created with the purpose of lending money to developing nations to expedite their development trajectory. However, loans often entail stringent regulations. As such, a point was raised that these institutions may perhaps actually yield adverse effects, as their compliance measures may be counter-productive to development.

In short, law and development have a symbiotic relationship and sustainable development must take into account legal perspectives, political commitment and social involvement and activism. Without the right balance, progress in development may be hindered.

IX. LAW AND INEQUALITY: LABOR, MIGRATION AND DEBT

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



This stream investigated legal reform strategies geared towards inducing economic growth and social welfare. It focused on 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 as they impact labor and the working environment. A key issue was understanding what law does and its relevance in developing a critical approach to political economy and urban sociology. Usually, labor, debt and development are often thought of in silos, independent of one another. But they need to be thought of as interconnected, different dimensions of the same social phenomena, to gain a deeper understanding of how they interact with each other.

The discussion started with seeking to understand liberal theory's view of informal and formal spaces. There is a long-standing view that informality is a problem that needs to be solved. The formalization of informal spaces as an anti-poverty tool has been a huge part of urbanization. At the same time, taking into account that an enormous part of the world is regulated informally, there is increasing recognition of the importance of the role of non-state actors. It is usually suggested that informal spaces operate outside the purview of the law and that there is a clear distinction between formal and informal work. However, it is imperative to challenge this view. By defining who is 'inside', laws automatically decide who is an 'outsider', and the incentives and disincentives of being on the outside. Therefore, informal work becomes a product of laws, not the product of the absence of laws. Moreover, formal work is slowly becoming more precarious, a situation called 'informalization of work'.

Laws are usually called in to solve social problems, but the critical move is in understanding that law has an internal relationship with the very social phenomena, inscribing and reflecting moral codes in a society.

There are four competing perspectives on informality:

1. Informality as crisis – it is a problem that needs to be solved. It is a characteristic of underdevelopment that can be solved by 'growth'. Informality renders spaces – brought in by practices from developing countries – ungovernable.
2. Informality as heroism – an informal economy is a reflection of the spontaneous and creative entrepreneurial proclivities of the poor, which the state tries to restrict.
3. Informality as an outcome of globalization and neoliberalism – informality is an outcome of structural (economic) transformations in 'First World' cities and economies.
4. Informality as a mode of governance – seeing informality as one of the tools the state uses by deciding who has access to which resources and how it responds to different actors doing similar activities.

Urban transportation was a case study selected for discussion. Platform firms such as "Uber" and "Grab" are disrupting the logic through which conventional firms operate. What is being disrupted is urban transportation market structures, labor markets, transportation market governance and urban politics. If markets are viewed as a spectrum with formality being on one end and informality on the other, Uber essentially operates at every point in the spectrum. Examples of purely informal services are Gypsy Cabs and Dollar Vans. In the middle of the spectrum are taxis, limousines and shuttles. Formal services are mass transit systems such as buses and trains. Uber started in the middle with the need for limousines (Uber Black) to take people around at night in San Francisco. It then partnered with taxis (Uber Taxis). The shift was when Uber turned towards informality with UberX and UberPool. Now Uber is subsidized by public transit authorities in small municipalities to complement urban mass transit systems, therefore venturing into formality. What makes the case more interesting is that the algorithms Uber uses are protected by intellectual property laws and its drivers are not employees but independent contractors. This keeps the firm's costs and liabilities low but has led to an increase in precariousness for the drivers who are now demanding that they be classified as employees. Nonetheless, Uber's interaction with the law is very complex and can create multiple layers of conflict, especially as it has continued to expand its business globally.

X. LAW, RELIGION, GENDER AND THE STATE IN SOUTHEAST ASIA

Faculty: Vanja Hamzic (Bosnia and Herzegovina) SOAS, University of London
Lucas Lixinski (Brazil) University of New South Wales
Jothie Rajah (Singapore) American Bar Foundation



This stream examined past and present legal traditions in Southeast Asia, focusing on their diversity and the reality of legal pluralism in the region. It considered ideas about law, legal history and the protection of cultural heritage through case studies from Cambodia, Indonesia, Myanmar, Singapore and Thailand. By canvassing these complex social, political and legal systems, the stream explored the intersection between the law and cultural heritage, religion, gender and sexuality.

A central tenet in the discussion was to understand how the law and the state interact within the diversity, plurality and legal traditions of Southeast Asia. The triad of law, religion and the state can be inspected from the interactions of text, practice and the ruler. The law-religion dichotomy brings to the forefront how hard it is to know what is purely religious and what comes under the purview of religious law in religious legal texts. The history of the formation of states in Southeast Asia was also analyzed to understand how influences from various dynasties, the Mongol Empire, and European, American and Japanese colonization played a role in the integration of various systems of knowledge and the formation of the modern state.

Similarly, when analyzing gender, we need to think about its categorization (at the local/national/ universal level) and the role of law. It was proposed that gender is a socially constructed concept, but its conceptualization can vary from community to community in different geographical areas. The idea of gender ingrained in people of distinctive legal traditions and social roles may be in conflict with that which is accepted in the public spheres. Therefore the role of law and the state, as well as social norms can significantly influence the development of the gender identity of individuals and their respective rights and freedoms.

In the broader context, identity becomes a way of serving (or challenging) a straightforward narrative of the polity and its mission. Heritage become a way of manipulating what collective identities are possible, through its selection processes, and cultural heritage acts as the marker and maker of identity (majoritarian and minoritarian). This is especially important in multicultural/changing societies such as those in Southeast Asia. Until recently, only Westernized ideas of exceptional culture were used to attribute the worth of a site as a heritage. According to UNESCO, the domains of heritage are, World Heritage (natural and cultural), Underwater Heritage, Intangible Heritage, Movable Heritage, Heritage in Wartime or emerging themes (archives, languages and cultural landscapes at the intersection of nature and human activity). However, the politics and economics of naming World Heritage Sites must not be ignored. Using the example of Angkor Wat, the community around it does not benefit financially from people visiting the site. Foreign operators get most of the financial benefit, followed by the Cambodian government and then only 8% goes to the preservation of Angkor Wat. The actors who end up winning are majoritarian national projects, and UNESCO with its box-ticking goal. This highlights the importance of heritage and its relationship with the law in making and un-making societies.

XI. POVERTY AND SOCIAL INCLUSION

Faculty: Vasuki Nesiah (United States) New York University
Yishai Blank (Israel) Harvard Law School



This stream analyzed the New International Economic Order (NIEO) through a socio-legal lens exploring its historical significance and posing the following question to participants; did the NIEO have an impact in the developing world and the rule of law as it relates to poverty and social inclusion? Although the perspectives of the participants varied, a general consensus was reached in that the NIEO, while not necessarily achieving its mandate, created a benchmark in history for developing countries to progress and examine their industrialization and global value. The first session examined poverty through an international lens, beginning with the NIEO creation and aftermath. There were specific topics discussed within the NIEO overview such as national independence, political economies of international trade, anti-colonial independence,

the hierarchies of international institutions, the hegemony of liberal internationalist building blocks in post-colonial futures, sovereignty and development in markets and trade. Although most of these issues were the mandate to be addressed by the NEIO, the achievement of the NEIO was essentially recognition on a global scale of inequality and post-colonial realities faced by countries with poverty.

The historical restraints on a nation making changes to domestic legislation without influence from the outside world, including the capacity to engage globally after colonialism and the reigning international architecture of inequality, was presented as a constant in the structure of international law. The faculty highlighted the importance of the anti-colonialism fight as not to restore previously good states, but to aspire for futures of true sovereignty. Individual nations and their natural resources were used as an example of how colonialism and international status can control and maintain the underdeveloped state of many nations. The NIEO sought to restore to nations the power to control their own natural resources, industries, and markets, and this agenda still holds true for many nations. The NIEO agenda was then dissected during discussion – its benefits, and any issues as a political, economic, and legal project, and its ‘failure’ on a global scale.

Narrowing the focus from an international lens, the distribution of wealth and services in cities and the term ‘global city’ were examined. The historical progression of cities and globalization show the constantly changing nature of cities, reaching out to and including rural areas. Contrasting theories of globalization, such as the theory of modernization (which states that every nation and city will go through an inevitable process of modernization), and world system theory (which states that the nation cannot change without the world unit changing, as economic and political situations are completely relational), were both presented as relevant theoretical concepts in dealing with questions of poverty, social inclusion, expanding cities, international ramifications, and the interconnectedness of law and social impacts.

Global cities can be viewed through a variety of different lens. The city can be perceived as the problem, or the city can be perceived as the solution. The city may be perceived as the problem by environmentalists; for example, cities produce pollution and unaffordable housing markets which exclude individuals and create slums resulting in internal segregation. However, cities may also be viewed as the solution, the only agent capable of addressing problems as large as social exclusion, religious tensions, and environmental problems. The case study of slums in India highlighted differing perspectives on cities and imbalances, as well as growing internal segregation. Using the perspective of the slum dweller, urban planner, or policy maker, may produce different legal, political, and economic responses. Action at every level is necessary in order to address poverty, including local legislation and international legislation.

An analysis of different perspectives and the intersections of law with issues of poverty and social inclusion, raises questions of how to proceed in the future with a rule of law that is fair and equal for all states, and that determines the balance of treatment for each nation to ‘level the playing field’ in the global community. Developing policies, ideally, that allow individuals to manage the fluctuation in the economy would assist in addressing issues of law, policy, and social inclusion, while examining case studies of current global cities and the issues that they face.

XII. PRIVATE LAW AND GLOBAL POLITICAL ECONOMY

Faculty: Jorge Esquirol (United States) Florida International University
Horatia Muir Watt (France) Sciences Po Law School
Robert Wai (Canada) Osgoode Hall Law School



This stream focused upon the notion of plurality especially in the political and legal spheres. A notable case that emerged from the discussion was the difference between the United States and Cuba. Cuba, due to its political and legal regime, put many restrictions in place on its people, particularly on travel and education. This severely restricted people's freedom of movement. The United States, on the other hand, had no such blatant restrictions on its citizens. Yet from another perspective, given the financial burden that is linked to the American education system, education becomes prohibitively expensive, and more often than not, leaves people in perpetual debt. These domestic social, political and legal nuances across these two contexts illustrates that there are multiple ways that can lead to the restriction of freedom. In this case, Cuba utilized coercive and direct measures based upon legal and political imperatives, while the United States employed non-coercive, non-restrictive approaches through social and economic means.

This notion of plurality encompasses many subjects; plural legal orders, plural public orders, and plural legal regimes, to name only a few. The different processes and factors involved in the navigation of these systems are manifested in the plurality of the law – and private law is no exception. The fragmentation of private law results in varying legal outcomes due to its far-reaching and complex nature.

The discussion then moved towards to a dissection of the case studies. Various questions were posed regarding the nature and relationship between concepts such as the legal systems, the presence and importance of international entities, and the differing notions and perspectives on the involvement of the private sector and the civil society. The legal regimes involved in landownership and the right to distribute products were also discussed. One group of participants asserted that the law is both a maker of value for certain products while simultaneously devalues others. This group also pointed out that, despite the value-making nature of the law, it cannot be utilized as the ultimate arbiter of all things. This sentiment was reflected in the concepts of litigation and arbitration, where negotiation and politicking are utilized beyond the norms provided by the law.

An observation was also made regarding the presence of the law as an instrument of the state and the economy. One could argue that interests are the sole driver of progress, as the political, economic and legal agenda are designed to ensure the functioning of the society and is based, in a way, on losses and gains. This notion pointed to the instrumentality of the law and state. The presence of actors, specifically the government, international entities, and the local community, was also discussed as the discussion then centered on the impact of globalization, specifically through the scope of corporate social responsibility regimes.

As a final note, it was stated that pluralism and pluralities within differing contexts, whether in supply chains, legal mechanisms, historical factors, or various economies are always centered on benefits. However, the role of law should be to determine ways and means that can be utilized to help the aggrieved and disadvantaged.

XIII. SCIENCE, TECHNOLOGY AND EXPERTISE IN POLICY

Faculty: Julia Dehm (Australia) La Trobe Law School

Sheila Jasanoff (United States) Harvard Kennedy School of Government



This stream explored the connections between science, technology, and society (STS), and their impact on public policy discourse and the rule of law. STS is dependent on which frameworks governments choose to create legislation. Different frameworks produce different policy outcomes, which affects the rule of law according to the avenue pursued, including which groups of experts the government and international communities endorse. There are several foundational presumptions in STS and the rule of law, in that they are accountable and stable, they have clearly defined duties and rights, and that knowledge and norms are co-produced.

The discussion centered on the notion that authority and how we want the world to be determine what frameworks, experiments and technologies are pursued, and dictate what we chose to study. The values that lead social scientists to the facts that they discover, can be explained by asking three questions: who is responsible, who is the authority, and what are the rights and duties. Determining responsibility for creating reliable knowledge, and for unexpected consequences of such knowledge or technology, is paramount in policy making.

Using international climate change law as a case study presents analogies of STS in accordance with the rule of law, as a challenge to science in global policy. For example, if each global issue goes through the same process of answering simple questions and forming policies based off on those perspectives, it is clear how different perspectives create different frameworks for different policies to be implemented and different experts to be chosen. Such questions may include the following: To determine the framework, what is the problem and what do we know? To determine alternatives, are there alternative ways of framing the problem? To determine methodology, who are the experts and what made them authoritative? Who else's knowledge could have been drawn upon? By expanding our horizons, it may be easier to understand whose perspectives were included and excluded. How does this framework authorize legal relations? How does this framework make climate change governable, and is this mode of governance successful or unsuccessful? Following such a process helps us to understand different government objectives and outcomes in terms of law and policy, scientific initiatives, and what expertise is endorsed and supported by governments, resulting in the dissemination of 'reliable' knowledge to the public and the creation of public policy.

The global issue of climate change often misses social and political perspectives, as well as the perspectives of other stakeholders, in the overall climate change framework. Current international climate change frameworks are based on the climate change market where countries sell off their unused allotted carbon credit emissions quota, to countries who will go over their quota of carbon emissions, pursuant to internationally agreed upon standards. This has developed a market for carbon emissions because climate change has been viewed as a human problem, with the entire earth and every person together regarded as equal and the same. A common way of thinking about climate change is to focus on the sole issue of lowering carbon emissions, and this framing led to policy decisions, which led to responses and markets, and resulted in how the problem is being handled currently.

This policy stream shed light on how climate justice and climate change are a product of specific industrialized economies in specific countries that have created this problem, often at the expense of poorer countries. It has now become a responsibility that every country is a part of, facing real consequences due to the industries and gas emissions of certain countries. Operating from a different framework, less industrialized countries may begin asking for compensation from other industrialized countries, as new frames open new spaces for new policies. Another framework may include corporate accountability, targeting companies that caused global warming, as two thirds of emissions come from a mere 90 companies. In acknowledging the interconnectedness of STS and the rule of law and by analyzing current climate change policies and perspectives, it is perhaps useful to step back and brainstorm new innovative perspectives and ideas that may help create future policies.

XIV. THE CIRCULATION OF LAW IN EAST ASIA

Faculty: Hisashi Harata (Japan) University of Tokyo
Mika Yokoyama (Japan) Kyoto University
Yun-Ru Chen (Taiwan) National Taiwan University



This policy stream was an inclusive summary of the multilateral circulation of law from western countries to Asian countries, and utilized relevant issues in the form of case studies to show the complexities of post-colonial law reform in East Asia and the unbalanced history and nature of accepted international law practices.

The two main concepts of the policy stream, the circulation of law in East Asia, consisted of the foundation and history of law circulation, and family law reform. The first session explored the concept of the circulation of law by its conventional understanding (Western to non-Western countries), discussed in the form of imposed law transformation, and led to the circulation of law among Asian countries. How such legal reforms are promoted globally and how they are influenced by global colonization was analyzed by presenting the history of Japan and its legal system, tracing the historical roots of current East Asian laws.

The second concept of family law reform highlighted aspects of imposed family law circulation from Western countries to Asian countries. This discussion resulted in the articulation of the fact that each country faces individual obstacles and issues with family law reform, including international pressures on specific issues.

Each country in East Asia was presented as having challenges in adopting new legal reforms due to societal changes, different economic changes, seeking to overcome the past through cultural independence, and embracing new cultural shifts. Three case studies were chosen to highlight these complexities, each with ties to East Asia's historical past of colonialism and law circulation. The three cases were: the constitutionality of children born in and out of wedlock and the distinction and question of inheritance in Japan; the legal prohibition of remarriage and the waiting period for women in Japan; and the Taiwanese authorization of same-sex marriage. Each case raised questions among participants, including gender equality in the roles occupied in society and the home, labor legislation, parental leave for both sexes, Western laws and how they fit culturally in Asia, religion, colonization (and the indirect colonization of Thailand), the disconnect between culture and law, and ethnic minorities and their rights.

The explanation of a new concept of law reform using the three case studies and the circulation of Western laws in East Asia, including the understanding of family and labor law as interconnected, were related to the rule of law in East Asia post-colonization by the West. One main issue raised was the influence that international law has over Asian countries, and how international laws and 'global trends' are consistently based on Western laws and never other Asian countries and their legislation. This becomes a challenge because Asian cultures, societal norms, and history are not taken into account on the international or global scale in terms of globally accepted practices, law reform challenges, and post-colonization reform.

XV. TRADE POLICY: CONTEMPORARY ISSUES

Faculty: Chantal Thomas (United States) Cornell University

Mark Wu (United States) Harvard Law School



This stream explored the choices embedded in the current bilateral, multilateral and regional trade regimes. It aimed to demonstrate different economic strategies that parties to trade agreements utilize in order to achieve equitable development outcomes.

The discussion began with the observation that the legal frameworks in multilateral and regional trade are more developed and robust than those in other global interactions. However, rules and regulations still need to catch up to the distributional effects resulting from globalization. For example, rapid technological innovation, an increase in the availability of data and access to infrastructures may create new winners and losers in the international arena. Therefore, it

is crucial that law plays a significant role in mitigating and narrowing gaps caused by inequality.

A few key points were then highlighted for participants to consider when assessing whether current and future trade policies are harmful or beneficial to development. For instance, in implementing a reduction in barriers to international trade, underlying micro-economics market imperfections (e.g. inefficient dissemination of information, ineffective allocation of goods and services, inherent structural inequalities, and uneven absorption of labor groups) that may affect the final distribution of income and equitable development outcomes should be examined.

Furthermore, the main advantages and disadvantages of free trade agreements (FTAs), or contracts which seek to regulate tariffs, quotas taxes and duties that countries impose on their imports and exports were analyzed. On one hand, FTAs are designed to increase economic growth, create motivation for local industries to become true global competitors and provide them with access to new expertise and technologies, reallocate government spending from subsidies to other productive areas, as well as attract foreign direct investment. On the other hand, FTAs could lead to domestic concerns such as job outsourcing, intellectual property thefts, crowding out effects in domestic industries, poor working conditions, degradation of limited natural resources, destruction of native cultures and reduction in tax revenues.

During the concluding discussion session, the participants engaged in an exercise to advise the Government of Thailand on the benefits and costs of joining the Regional Comprehensive Partnership (RCEP) and the Trans-Pacific Partnership (TPP). Despite their promised economic benefits, participants noted that the RCEP and TPP could further widen the economic gap between wealthier and less-developed member countries and even lead to a regional health crisis by strengthening rules for pharmaceutical companies that restrict the ability of people to access generic drugs.





TIJ FIELD TRIP

As part of the Workshop, TIJ Fellows also visited the PTT Metro Forest, the first urban forest in Bangkok commissioned by the PTT Reforestation Institute. The PTT Public Company Limited is a leading Thai state-owned enterprise in the oil and gas industry and the only company in Thailand listed among Fortune Global 500 companies. Along with the goal of achieving high international performance standards, PTT also places strong emphasis on creating shared value (CSV) between the business and the communities through the implementation of environmental protection and sustainability projects. The PTT Metro Forest is one of its various initiatives.

With the aim of creating a balance between economic and environmental sustainability to benefit the society at large, the PTT Metro Forest is a green space for afforestation that takes a unique approach to landscape in Bangkok, with an emphasis on the ecological processes rather than aesthetics, and seeks to display the lasting symbiotic relationship between natural wilderness and the city. In order to cultivate environmental awareness and educate visitors about local forest ecology, the PTT Metro Forest reclaimed two hectares (4.94 acres) of abandoned land located at the eastern fringes of Bangkok, and replaced it with an outdoor exhibition space of approximately 60,000 trees of 279 unique lowland tropical tree species.

The TIJ would like to extend our sincerest thanks to Mr. Tevin Vongvanich (President and Chief Executive Officer, PTT) and his team for hosting the TIJ fellows during this site visit.

TIJ PUBLIC FORUM

“CONVERGING PERSPECTIVES FROM GLOBAL TO REGIONAL ON THE RULE OF LAW”

The January 2018 TIJ International Forum was the fourth instalment of a continuing series of open discussions about regional approaches to and issues in mainstreaming the rule of law, the efficacy of these attempts and cases that embody the rule of law in action. The goal of these discussions is to use the concept of the rule of law as a lens to better understand complex socio-economic issues in order to establish a systematic framework to inform policy development.

Alongside leading academics and experts, five of the TIJ Fellows from the Workshop were selected to present their policy proposals in Panel II: “Rule of Law: Regional Policy Initiatives”. The summary of their findings can be found below.



PROGRAM OF EVENTS

Friday, January 12, 2018 at Dusit Thani Hotel

- 8.00 - 9.00 Registration
- 9.00 - 9.30 Welcoming and Opening Remarks
- **“Rule of Law and Sustainable Development”**
by Prof. Kittipong Kittayarak, Executive Director,
Thailand Institute of Justice
- 9.30 - 10.30 Keynote Addresses (30 minutes each)
- **“Rule of Law: Policy Perspectives”**
by Prof. David Kennedy, Manley O. Hudson Professor of Law
and Faculty Director of the Institute for Global Law and Policy (IGLP)
at Harvard Law School
 - **“Rule of Law: Civic Perspectives”**
by Prof. Valerie Hans Professor of Law at Cornell Law School
- 10.30 - 10.45 Coffee Break
- 10.45 - 12.15 **Panel I: “The Rule of Law in Global Context”**
Dr. Jothie Rajah, Prof. Osama Siddique, Prof. Günter Frankenberg,
and Prof. Sundya Pahuja
- 12.15 - 13.30 Lunch
- 13.30 - 15.00 **Panel II: “Rule of Law: Regional Policy Initiatives”**
Selected TIJ Emerging Leaders
- 15.00 - 16.00 **Panel III: “The Role of Law in Global Inequality”**
Assoc. Prof. Vasuki Nesiah, Dr. Luis Eslava, Prof. Jorge Esquirol,
and Prof. John Ohnesorge
- 16.00 - 16.15 **Rapporteur’s Summary** by Dr. Matti Joutsen
Special Advisor, Thailand Institute of Justice
- 16.15 - 16.30 **Closing Remarks** by Prof. Kittipong Kittayarak
Executive Director, Thailand Institute of Justice

TIJ INTERNATIONAL FORUM ON THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT: CONVERGING PERSPECTIVES, FROM GLOBAL TO REGIONAL



WELCOMING AND OPENING REMARKS “RULE OF LAW AND SUSTAINABLE DEVELOPMENT”

by Prof. Kittipong Kittayarak
Executive Director, Thailand Institute of Justice

Prof. Kittipong noted that the concept of the rule of law has slowly gained currency around the world—from a brief reference in the preamble of the UN Charter and in the 1948 Universal Declaration of Human Rights, to repeated references in international and national policy documents. The adoption of the 2030 Agenda for Sustainable Development in September 2015 highlighted a momentous step in redefining the global development framework, especially in the incorporation of the rule of law into one of the SDGs.

However, merely acknowledging the rule of law as one of the 10 Targets in Goal 16—on Peace, Justice and Strong Institutions—among 169 other ambitious targets does not guarantee that the rule of law will be fully realized in actions. They need a clear recognition and true understanding of the importance of the rule of law in achieving development that will eventually crystalize into a firm belief that the rule of law is indispensable to inclusive, equitable and sustained growth, and ultimately the betterment of society.

For him, the rule of law matters because in its absence or if it is seriously weakened, whatever reform efforts we undertake will fall short of its promise to serve as the enabling factor for the development of our societies. Therefore, the respect for the rule of law assures that the means of governance that are employed, including the exercise of governmental power, the utilization of limited natural resources, and the promotion of economic development, are carried out in an efficient and transparent manner, and ultimately in the interests of the people. It also reinforces the imperative need for respect for human rights, and adherence to the principle of non-discrimination, and ensures that there is due process when state agencies apply executive power. In essence, the rule of law is an enabling factor for effective legal and operational infrastructures to function smoothly while simultaneously protecting the rights and interests of all people. Therefore, to promote the rule of law, a country must also promote a “culture of lawfulness” to perpetuate the paradigm that all members of society are held accountable by the law, regardless of where they stand.

In essence, Prof. Kittipong highlighted that the rule of law, access to development, and an inclusive society are interrelated and mutually reinforcing in our work on building a safer society and in achieving sustainable development. Therefore, efforts to promote the SDGs should be well integrated and coherent across policies and sectors. In light of this, the TIJ has been reaching out more widely to partners beyond justice officials and legal professionals, in order to create new agents for change from both the public and private sectors in support of research and policy-making under the rule of law and the culture of lawfulness.

TIJ INTERNATIONAL FORUM ON THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT: CONVERGING PERSPECTIVES, FROM GLOBAL TO REGIONAL

KEYNOTE ADDRESSES

The keynote addresses provided insights into fundamental concepts such as the importance of the rule of law in realizing the global objectives enshrined in the United Nations 2030 Agenda for Sustainable Development, the rule of law from a policy standpoint, and the linkages between the rule of law and civic engagement.

“RULE OF LAW: POLICY PERSPECTIVES”

by Prof. David Kennedy, Manley O. Hudson
Professor of Law and Faculty Director of the Institute for
Global Law and Policy (IGLP) at Harvard Law School



Prof. Kennedy’s address focused on the law’s potential as a strategic ally to policymakers in its capacity to empower constituencies in shaping the terrain in which policies can be made. The creation and enforcement of laws should be seen as primary policy tool across all fields whether it be industrial, labor, social, environmental, or criminal justice.

The legitimacy of policy and the law are often entangled. For many constituents, a policy built on the rule of law is more legitimate, authoritative and easier to accept, even when this policy may be adverse to their own interests. On the other hand, when policies that transform private entitlements into public authority or public power into private enrichment are paraded under the facade of the rule of law, the legitimacy of the rule of law can be undermined.

In this way, the law provides a foundation for accountability. Law and development policy, particularly sustainable development policy, are natural partners because distribution lies at the center of development policy, and the law, in essence, is an instrument of distribution that allocates wealth, security and even justice among people. Moreover, the law is a foundation for economic activity. It does not only regulate these activities but creates, sustains and limits them. Naturally, the law can do these things in a myriad of ways. It can allocate powers and liability differently, consequently leaving different groups of “winners and losers” in its wake. Therefore, from an economic standpoint, the law must allow nations to ensure that leading and lagging sectors in the economy are linked productively as the economy opens and that growth does not heighten inequality and increase the burden of social adjustments and support that are necessary.

Prof. Kennedy also highlighted how legal rules underlie global trade and affect the distributional gains from trade. He utilized the example of how many nations want to develop high-tech clusters to compete with Silicon Valley. But in reality, the global rules that protect Silicon Valley are unlikely to be conducive to the emergence of new competitors and thus, new market entries that seek to compete with Silicon Valley will need to find a unique approach. In essence, there is not a uniform set of global or national legal rules that can manage the opening of economies and sustainable development. Put simply, there is no “one size fits all” rule of law solution.

When undertaking rule of law reform, one should not ask what objectively constitutes “good” laws but rather, focus on what one is trying to accomplish and which groups of people will benefit from these goals. And with that approach, one should seek to identify policy measures that can be used to ensure that the law is effective and fair. These questions must be answered using a bottom-up approach by engaging citizens in making these choices for themselves.

Prof. Kennedy’s outlined four key skills that policy makers should have:

- 1) The ability to identify relevant laws – for example, the key to labor policy may lie not only in labor law but perhaps in adjacent fields such as social security law, health law, immigration law and banking and finance laws, all of which affect the bargaining powers between labor and businesses.
- 2) The ability to identify “points of choice” – since it is easy to underestimate the flexibility of legal arrangements, historical and comparative analysis is useful in identifying how economic and social activities have been legalized in the past as new policy decisions are undertaken.
- 3) The ability to place the law in its social context – understanding how the law is used, ignored or modified by socio-economic forces.
- 4) The ability to remain sensitive to the laws’ potential “dark side” – legal arrangements may often be part of the problem as well as of the solution due to the entrenchment of positions and/or path dependence. Therefore a robust capacity to adjust, replace and even eliminate legal rules and institutions that later become obstacles are a critical process in the rule of law reform.

Prof. Kennedy concluded his address by underscoring how the rule of law is the best promise for those who have been left behind in the development process. The rule of law is foundational to sustainable development and must be rooted on the ground and built upwards towards policy makers and leaders. More importantly, flexibility and a willingness to remain open to experimentation and course correction is a very important condition in building the rule of law. This is because strengthening the rule of law is not simply a manner of implementing a recipe, but requires the engagement and empowerment of nations and its citizens to chart their own course.

KEYNOTE ADDRESSES



“RULE OF LAW: CIVIC PERSPECTIVES”

by Prof. Valerie Hans,
Professor of Law at Cornell Law School

Prof. Hans address emphasized the importance of the rule of law (RoL) from the perspective of the bottom-up approach. Mainstream perspectives of defining the RoL are always top-down but it is important to focus on how public participation in the legal system directly affects the understanding and appreciation of the public for the RoL. Representatives of civil society can be incorporated into the administration of the law for example as jurors, lay judges and as part of mixed tribunals, as lay magistrates and in the form of lay courts.

Prof. Hans observed that by looking at different kinds of lay participation in mixed courts in Thailand, one interesting aspect is that individuals aren't chosen at random but must take a test and then be trained to participate. Hence, they cannot really be considered 'lay'. Japan also uses mixed courts with six lay individuals, but these individuals are chosen at random and don't receive any formal training. In Taiwan, a tribunal is being considered where both professional judges and lay people will work together to deliver verdicts.

A key point that was underscored in the address was that there are many educational and legitimizing benefits of including civil society and encouraging public participation in court. It not only helps teach citizens about the legal system but also helps legitimize the outcomes and hence the institutions. In South Korea, 63% of jurors had more positive feelings about the system and the courts and judges after participation. In Taipei, a mock jury option was available for volunteers where they were given details of cases coming up and had to go through the same proceedings as a real jury. In Japan, lay judges are active participants, questioning witnesses directly. They also participate in regular press conferences. 94% of lay judges reported they had a good experience in the system. In the United States, 63% were more favorable about the jury system after serving.

Similarly, there are transparency and fact-finding benefits. Direct participation by citizens opens up the legal decision-making process to public view and judgments are able to reflect the public's diversity of perspectives, experiences and knowledge. Additionally, if you have lay people, you need to adjust the way cases and facts are presented to make the procedure more accessible and understandable to the people. The inclusion of the public also leads to swifter resolution of trials.

Prof. Hans concluded her address by highlighting that all this does not mean that there are no problems with lay participation in the legal system. Educational campaigns, a transparent selection process, and the use of different techniques to enhance the understanding of complex evidence can help reduce the issues faced. Therefore, public participation in legal decision-making contributes significantly to legitimizing the RoL.

THE CASE OF FERNANDO FARRÉ IN ARGENTINA

For most of Argentina's history, judges have resolved civil and criminal cases. But many people recognized that courts and judges in Argentina suffer from a crisis of legitimacy. To tackle this, a number of provinces have introduced jury systems, giving opportunities to groups of people to independently deliberate and pass judgment.

Fernando Farré, a famous business leader, was repeatedly violent towards his wife. However, the courts failed to respond appropriately. The wife had a restraining order against him but that was soon lifted. They finally separated and during the divorce proceedings, they were at home, separating their belongings when he stabbed her and killed her. There was a trial and because of the legal changes, he was going to be judged by a jury. Witnesses heard the killing, but didn't see it. He claimed not guilty, pleading insanity.

Many Argentines wondered if a group of citizens unqualified and unaware of the rules could deliver justice or if a rich man would again walk free. After several hours of deliberation, the jury reached a verdict. Ordinary citizens gathered in the streets to witness the verdict and the jury announced the defendant guilty on all charges. There was celebration in the court and on the streets.

In this case, the justice system, with the help of ordinary citizens, worked. This very new system passed the litmus test.

“RULE OF LAW: REGIONAL POLICY INITIATIVES”

The panel on “Rule of Law: Regional Policy Initiatives” featured presentations from TIJ Fellows who were selected from among the participants in the TIJ-IGLP Workshop on the Rule of Law and Policy. To mark the conclusion of the weeklong TIJ-IGLP Workshop, this session provided an opportunity for selected emerging leaders to present rule of law-based solutions for public policy issues in different regional contexts drawn from their own experiences, as well as an opportunity to take stock of lessons learned. The cases presented are provided below.



1. “GREEN ECONOMY OF THAILAND”

Dr. Chutathip Maneepong

Project Consultant

Thailand Environment Institute (Bangkok, Thailand)

Dr. Chutathip examined negative social and environmental impacts associated with the current national economic model, or ‘Thailand 4.0’, which aims to transform the economy into an innovation-driven one. Under this scheme, the Government has implemented the Eastern Economic Corridor (EEC) Development Plan to drive the country’s investment in physical and social infrastructures (e.g. ports, airports, dual-track railways, motorways, high-speed trains, universities and hospitals) in three eastern provinces, Chachoengsao, Chonburi and Rayong. She noted that the enforcement of environmental regulations will become more difficult because special economic zones (SEZs) operate in a relatively autonomous manner.

Dr. Chutathip recommended that the Government should set up and strictly monitor pollution-controlled areas through a multi-stakeholder approach in order to ensure inclusive and sustainable development outcomes. She highlighted possible avenues for Government and private sector collaboration such as collectively providing readable data in advance of development projects to engender transparency and accountability, as well as to foster trust within the local communities. The Government should also undertake careful investigation of stakeholder concerns using evidence-based information, by conducting strategic environmental assessments, environmental impact assessments, and regulatory impact assessments in order to understand the costs and benefits associated with the EEC at local levels prior to the delivery of projects. In line with this, special economic zones should shift from focusing on short-term economic gains, and implementing lower and more cost-effective standards to becoming champions of sustainable business. Therefore, it is important to develop sustainable long-term plans, as well as adhere to international standards and regulations in order to help Thailand fully realize the Sustainable Development Goals (SDGs).

“RULE OF LAW: REGIONAL POLICY INITIATIVES”



2. “REGIONAL INEQUALITY”

Mireille Tushiminina

Executive Director,
Center of Human Rights and Democracy for Africa
(Buea, Cameroon)

Ms. Tushiminina began her presentation by providing the background to the policy recommendations to alleviate regional inequalities in Cameroon. She noted that the country has been under the rule of President Paul Biya for 37 consecutive years. Constant amendments of the Constitution not only weakened the rule of law, but also concentrated power in his hands. Currently, Southern Cameroonians feel excluded and marginalized from decision-making processes even though this region contributes substantially to the state funds through gas and oil reserves. Feelings of anxiety and agitation in the region can be attributed to the following factors: 1) failure of law to provide a just, inclusive and equitable society; 2) mass unemployment and large-scale structural poverty; 3) inability to access legal and justice services; and 4) loss of confidence in government institutions.

Ms. Tushiminina examined possible solutions to resolve regional issues. She suggested that Cameroonians need to engage in ongoing constructive dialogues from the bottom up about the future of their country, especially in regards to finding a more inclusive approach in solving problems. Reform efforts should not only guarantee fundamental human rights and freedoms, but should also foster respect for diversity. Ms. Tushiminina also recommended that reforms aimed to limit institutional power in the legislative, executive and judicial branches should promote the rule of law, accountability, transparency and public service ethics.



“RULE OF LAW: REGIONAL POLICY INITIATIVES”

3. “ALTERNATE DISPUTE RESOLUTION”

Tariq Abbas Qureshi

Deputy Director General, Intelligence Bureau
(Lahore, Pakistan)



In Pakistan, there were traditionally no forums for resolving minor civil disputes (such as those arising from tenancy, financial transactions, and property), and these usually ended up at local police stations. Tariq noted that police officers legally have no power to resolve civil matters, yet these issues have consumed most of their time and provided them with enormous opportunities for corrupt practices and abuse. Often times, violations of human rights are practiced in order to resolve such disputes.

To alleviate this problem, Mr. Qureshi and his team formed alternate dispute resolution bodies known as Masalihiti Committee (with members drawn from local civil society organizations) for each police station in Gujranwala Division of Punjab. This proposal faced a few external and internal challenges such as uncooperative politicians and lawyers, as well as limited financial and human resources. Since no legal frameworks for such interventions existed before the creation of the Committee, the police mainly relied on an ad-hoc partnership with community members. While local communities offered support for the Committee, the Asian Development Bank (ADB) assisted in capacity and case management trainings.

As a result, the Committee settled more than 2,000 disputes within only nine months after its establishment, thereby allowing more time for police officers to concentrate on pressing criminal matters. The provincial government and High Court acknowledged the efficacy of the initiative and attempted to replicate it in other districts. Mr. Qureshi concluded that the cooperation of relevant stakeholders and political will are key in ensuring the sustainability and effectiveness of alternate dispute resolution bodies.

4. “WOMEN POLITICAL PARTICIPATION IN PALESTINE: A CASE OF LOCAL GOVERNMENT”

Abeer Mashni

Monitoring, Evaluation and Reporting Officer,
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Although women have always had a role in the Palestinian struggle, Ms. Mashni noted that their political participation and representation in key decision-making positions still remains low. Women’s participation in political life is crucial because it helps to realize democracy in society, improves development outcomes, and embodies complete citizenship rights for women.

Along with the Basic Law of Palestine, several national legal instruments emphasize women’s rights to political participation and access to decision-making positions. For instance, Article 4 of the Law on Public Legislative Elections of 2005 calls for the representation of women in electoral lists, while Article 17 of the Palestinian Law on Local Council Elections ensures that women hold 20% of the seats in local bodies. Despite such legislative efforts, there are only three women ministers out of 24 seats in the current Palestinian cabinet, and around 13% of national parliamentarians are women in the last elections for the Palestinian Legislative Council (PLC). In addition, women occupy only 40% of public positions, most of them in the medium level, and not the top positions.

Drawing from this, it is apparent that Palestinian women are underrepresented in the political sphere, especially in municipalities and local councils where women have important roles in serving their communities and responding best to the needs of vulnerable and marginalized groups. Obstacles that serve to exacerbate the problem include the Israeli occupation, entrenched patriarchal norms, internal political tension, the PLC’s inability to prioritize gender-related amendments and legislative plans, as well as limited follow-up capacity of the Ministry of Women’s Affairs.

In order to increase women’s representation in key decision-making positions, Ms. Mashni proposed a long-term three-pronged approach. First, legal measures and actions are necessary to create an environment conducive to women’s active participation in the political field. This entails increasing the female representation quotas in the Law on Political Parties and Law on Local Elections to 30%, as well as facilitating participation of female university students in student unions. Second, it is crucial to raise society’s awareness and correct the cultural/social legacy that neglected women’s important roles in the public sphere. This calls for the development of effective media strategies to counter deep-rooted cultural and gender norms, as well as the modification of school curricula to appropriately reflect the significance of women’s participation in the political field. Third, capacity and skill building programs for women in local councils are essential to strengthen their potential in political leadership and participation.

“RULE OF LAW: REGIONAL POLICY INITIATIVES”



5. “EDUCATION IN THAILAND”

Dr. Supara Chaopricha, M.D.
Chief of Staff to the Minister of Education
(Bangkok, Thailand)

Despite Thailand’s high level of public investment in education (around 5% of its GDP), Dr. Supara noted that students still lag behind at the national and international levels as indicated by the Ordinary National Educational Test (O-NET) and the Program for International Student Assessment (PISA) scores. Even after the educational reform in 1999, a large number of graduates still lack necessary skills and advanced knowledge in the labor market. Education has become even more centralized because reform agendas have heavily focused on management structure. In the view of Dr. Supara, a fundamental issue that needs to be urgently addressed in Thailand is the quality of teachers.

Despite Thailand’s high level of public investment in education (around 5% of its GDP), Dr. Supara noted that students still lag behind at the national and international levels as indicated by the Ordinary National Educational Test (O-NET) and the Program for International Student Assessment (PISA) scores. Even after the educational reform in 1999, a large number of graduates still lack necessary skills and advanced knowledge in the labor market. Education has become even more centralized because reform agendas have heavily focused on management structure. In the view of Dr. Supara, a fundamental issue that needs to be urgently addressed in Thailand is the quality of teachers.

Dr. Supara highlighted that it is crucial for qualified teachers to possess the necessary knowledge and professionalism in terms of learning content and teaching techniques. Currently, the country lacks a sufficient number of teachers with in-depth knowledge in various subject areas, particularly science, mathematics, technology and English. This is largely due to the Thailand Teachers Council’s strict requirements imposed on graduates from fields other than education, which has created more qualification barriers. In order to advance in their career, teachers need to spend part of their time in the conduct of research and in work on projects unrelated to teaching. As such, teachers tend to focus more on other tasks.

In order to resolve this issue, Dr. Supara recommended that there should be more opportunities open and available to graduates from fields other than education. She suggested that their academic standing should be evaluated in terms of their teaching proficiency and classroom responsibilities. The Ministry of Education should also allow teachers to register in training programs based on their areas of interests, in order to enhance their in-depth knowledge. Teachers, especially those who work in rural areas, should be appropriately compensated in order to increase the teacher retention rate, and create incentives for them to continue to work in distant locations.

TIJ INTERNATIONAL FORUM ON THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT: CONVERGING PERSPECTIVES, FROM GLOBAL TO REGIONAL



RAPPORTEUR'S SUMMARY

by **Dr. Matti Joutsen**
Special Advisor, Thailand Institute of Justice

Dr. Joutsen's summary underscored the complexity of the definitions, ramifications and manifestations of the concept of the rule of law. The concept has evolved and expanded to encompass both those who are ruled by law and those who are in power, thereby generating a multitude of perspectives on the rule of law and its vital roles. The rule of law is no longer only a legal issue, but also a political, economic, social and cultural one.

Drawing from this, it is crucial for stakeholders not only to understand its various dimensions, but also to acknowledge that there is no universal recipe for the rule of law, no one best practice, and no one-size-fits-all. Every nation will—and should—make different choices in applying the rule of law in regards to their respective contexts. Therefore, it is not surprising that the rule of law has divergent interpretations, impacts and manifestations in different countries.

Despite disparate understandings of the rule of law, the adoption of the 2030 Agenda for Sustainable Development has demonstrated the consensus among member states on the importance of the rule of law, enshrined in Goal 16 of the SDGs, for the creation of inclusive, equitable and sustainable societies. Arguably, the rule of law rests at the very heart of the Global Goals, and acts as a fundamental building block for the realization of other interrelated goals and targets.

Dr. Joutsen shed light on how the rule of law serves to support development, or more accurately, how the absence of the rule of law adversely impedes development. Simply put, it is crucial to strengthen the rule of law to foster a "culture of lawfulness."

In order to effectively implement the rule of law, participation by all stakeholders—be it the government, the private sector, civil societies, academia, media, or local communities—is essential.

It is no longer a question of law concerning only the legal sector. The rule of law has become a question of policies that concern everyone across all sectors of the society. On this basis,

Dr. Joutsen highlighted the need to create more transparent and accountable decision-making processes, whereby every actor has an appropriate role in the formulation and implementation of development policies to monitor and evaluate the achievement of the Global Goals.

TIJ-IGLP WORKSHOP FOR EMERGING LEADERS
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ABOUT THE IGLP

The Institute for Global Law and Policy (IGLP) at Harvard Law School is a collaborative faculty effort designed 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. We aim 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. Professor David Kennedy serves as Institute Director.

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 Programme Network (UN-PNJ).

The vision of the TIJ is to be a promoter of change in order to enhance the justice system and foster 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. Building on Thailand's engagement in the UN Commission on Crime Prevention and Criminal Justice and the UN Crime Congresses, TIJ serves as a bridge that transports global ideas to local practices, focusing on cross-cutting issues including the interconnection 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 the vulnerable groups in contact with the justice system while encouraging coordination among domestic justice constituencies and strengthening regional cooperation, particularly within the ASEAN region. One of the core beliefs of TIJ is the need to invest in human resources and practical knowledge based on the rule of law perspective, since TIJ recognizes that the rule of law and an effective and fair criminal justice system are integral components necessary for inclusive economic growth, the protection of human rights, and sustainable development.

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