



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

SUMMARY REPORT

January 6-11, 2019 | Bangkok, Thailand

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**
BANGKOK, THAILAND
6-11 January, 2019

March 2019

Disclaimer:

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FOREWORD



The third installment of the TIJ-IGLP Workshop for Emerging Leaders on the Rule of Law and Policy concluded with resounding success. On behalf of the Thailand Institute of Justice (TIJ), I would like to thank the IGLP team and faculty for their continued collaboration in our shared pursuit of bettering rule of law education.

More importantly, I would like to congratulate the Class of 2019 TIJ Fellows for their tireless commitment and active participation throughout the duration of the Workshop. It is my hope that the new perspectives and experiences they shared can be employed in more ways than one in order to create a positive impact in their respective areas of work.

The objective of this Workshop is to bolster dialogue and create awareness that the rule of law is an integral component in the achievement of sustainable development. While it may appear to be an intangible concept, a deeper understanding of what it entails will reveal that it truly has practical applications across all sectors. As part of this endeavor, we would like to also thank the network of the IGLP Faculty, who devoted their time and effort in coaching and engaging with over 63 TIJ Fellows from 16 countries over the course of 6 days.

The annual publication of this workshop summary is intended to provide an avenue of reflection and to highlight the salient points of discussion that arose over the course of the Workshop, in order to contribute to the knowledge base of rule of law education. Rule of law reform remains an ongoing effort and we hope that our initiative to expand the network of changemakers can help us realize our dreams of making rule of law reform a reality.

Prof. Kittipong Kittayarak
Executive Director, Thailand Institute of Justice

ACKNOWLEDGMENTS

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 to this project.

This TIJ Workshop Summary Report was made possible thanks to our contributors Ms. Araya Arayawuth, Ms. Bunika Chuchan, Ms. Chertalay Suwanpanich, Ms. Isaraporn Burana-at, Ms. Pokrapee Chindain, Ms. Prarthana Jagannatha Rao, Mr. Sippakorn Chongchuanich and Mr. Sorakit Kittayarak. A special thank you also to the design and coordinating 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 2019 TIJ-IGLP Workshop for Emerging Leaders was the third installment of the specially designed rule of law-based curriculum as a result of the continued collaboration between the Thailand Institute of Justice (TIJ) and the Institute for Global Law and Policy (IGLP) at Harvard Law School. This year, the conference took place at the Arnoma Hotel from January 6 to 10, 2019. The Workshop itself is the centerpiece of TIJ's vision to become a pioneer 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 both the IGLP and TIJ.

The primary objective of the Workshop is to build a network of changemakers by encouraging policy practitioners, professionals from all fields and scholars to collaborate in an effort to better understand the interconnectedness between the rule of law and policy-making processes.

WORKSHOP OVERVIEW

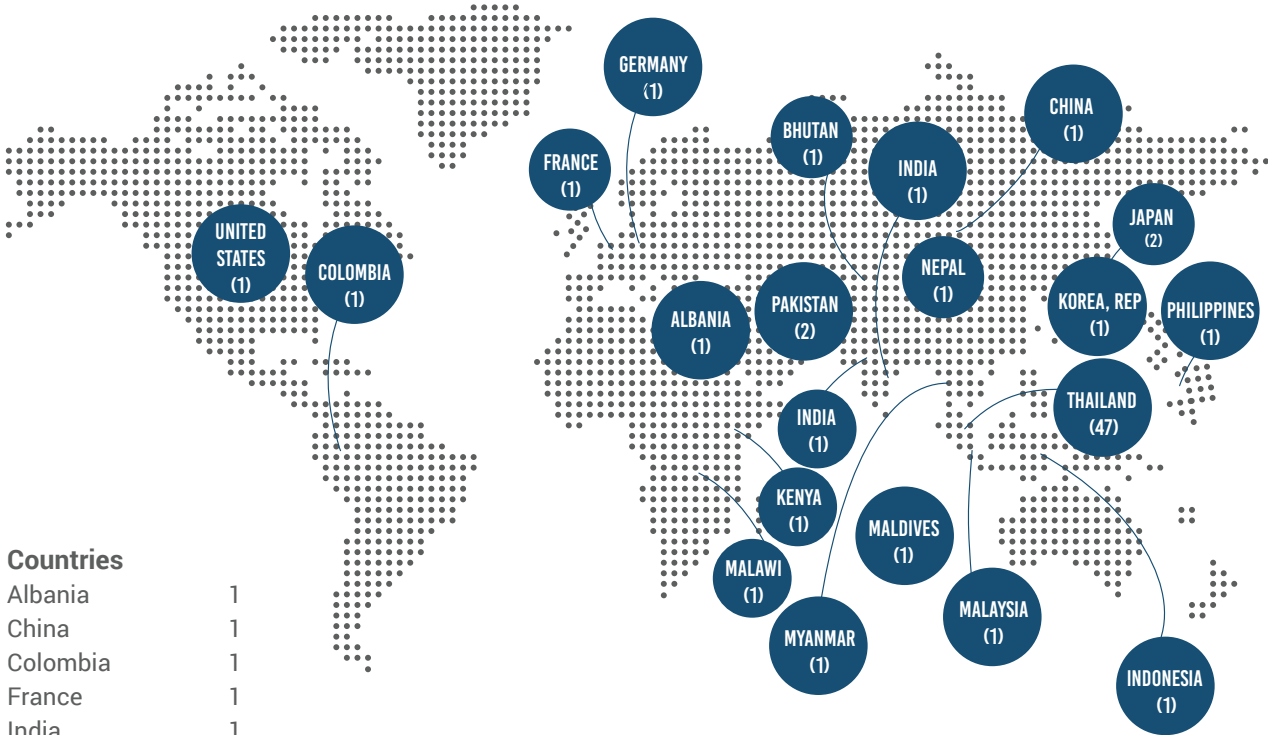
This year's Workshop's core curriculum consisted of Plenary Sessions, Special Lectures, a total of fifteen IGLP-TIJ Workshop Streams, Policy Skills Teams and an off-site field trip. The Problem Labs were a new component that was piloted in this year's Program with four main topics. The aim of this new exercise is to allow participants to further dissect various dimensions of contemporary issues in the region and propose solutions for these problems. A summary of each of these sessions is provided in this report.

THE PARTICIPANTS & WORKSHOP FACULTY

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 third cohort of TIJ fellows came from diverse backgrounds and nationalities.

ADMITTED PARTICIPANTS BREAKDOWN (TOTAL OF 63)

GENDER		NATIONALITY	
39 (62%) Male	24 (38%) Female	Thai 47 (75%)	International 16 (25%)



Countries	
Albania	1
China	1
Colombia	1
France	1
India	1
Japan	2
Kenya	1
Korea, Rep.	1
Malawi	1
Malaysia	1
Maldives	1
Myanmar	1
Nepal	1
Philippines	1
Thailand	47
United States	1

WORKSHOP FACULTY

E. Tendayi Achiume (Zambia), UCLA School of Law

Helena Alviar (Colombia), Universidad de los Andes

El Cid Butuyan (Philippines), University of Hawaii

Madelaine Chiam (Australia), La Trobe Law School

Robert Chu (United States), Sullivan & Cromwell LLP

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

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

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

Luis Eslava (Colombia and Australia), Kent Law School

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

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

Ermal Frasheri (United States), Harvard Kennedy School of Government

Christopher Gevers (South Africa), University of Kwa-Zulu Natal

Hisashi Harata (Japan), University of Tokyo

John Haskell (United States), University of Manchester

Ben Hurlbut (United States), Arizona State University

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

Matti Joutsen (Finland), Thailand Institute of Justice

Richard Joyce (Australia), Monash University

Ratna Kapur (India), Queen Mary University of London

David Kennedy (United States), Harvard Law School

Kittipong Kittayarak (Thailand), Thailand Institute of Justice

Outi Korhonen (Finland), University of Turku

Vidya Kumar (Canada), University of Leicester

Andrew Lang (United Kingdom), The University of Edinburgh

Andrea Leiter (Germany), Melbourne University/ Vienna University

Horatia Muir Watt (France), Sciences Po Law School

Vasuki Nesiah (United States), New York University

John Ohnesorge (United States), University of Wisconsin

Sundhya Pahuja (Australia), Melbourne Law School

Rose Parfitt (Australia), Kent Law School

Nikolas Rajkovic (Canada), Tilburg Law School

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

Mohammad Shahabuddin (Bangladesh), Birmingham Law School, University of Birmingham

Osama Siddique (Pakistan), Law and Policy Research Network

Cait Storr (Australia), Melbourne Law School

Arm Tungnirun (Thailand), Chulalongkorn University

Robert Wai (Canada), Osgoode Hall Law School

Lucie White (United States), Harvard Law School

Margaret Woo (United States), Northeastern University of Law

Mark Wu (United States), Harvard Law School

Mika Yokoyama (Japan), Kyoto University

PLENARY SESSIONS

I. TIJ OPENING PLENARY



Prof. Kittipong Kittayarak

Executive Director, Thailand Institute of Justice

Prof. Kittayarak opened the TIJ-IGLP Workshop by drawing from his experiences as a legal scholar, reformer and policy practitioner in Thailand to debunk the misconception that law is only a technical tool for lawyers. More often than not, many believe that lawyers are the only ones with enough expertise and power to amend law and shape the legal environment. However, he posits that without participation from non-traditional stakeholders, it is difficult to create momentum for change. In his view, prior reform efforts have spent too much time debating what the rule of law entails, rather than garnering the necessary political will to tackle pressing socio-economic challenges head on.

Without efficient rules and regulations, as well as a well-functioning and responsive bureaucratic system, the design, implementation and evaluation of policies will remain ineffective. In this respect, law is one of the key drivers of inclusive and just policies that seek to ensure equitable distribution of wealth and resources. If sustained development outcomes are sought, there is an imperative need for adequate law and rule of law in policy-making processes.

Arguably, before the adoption of the United Nations Sustainable Development Goals (SDGs) in 2015, it had been a difficult task to involve non-lawyers in the discussions about the importance of the rule of law. The inclusion of the priority to enhance the rule of law in all of its dimensions in one of the 169 overarching targets not only placed the rule of law at the heart of the development policy-making agenda, but also underscored its significance in the creation of sustainable, equitable, just and inclusive development outcomes. Although the rule of law is represented in just a single target, it actually serves as a fundamental building block for the 2030 Agenda for Sustainable Development.



Ultimately, Prof. Kittayarak noted that it is critical for lawyers to spend time in other people's shoes to recognize what it is like to use law as a tool for policy-making processes. On the other hand, it is essential for non-lawyers to understand that rule of law reform does not concern lawyers alone. It requires efforts from stakeholders across all sectors, since it is too important to be left in the hands of anyone or any group such as lawyers alone.



II. PLENARY LECTURE 1

INTRODUCTION TO THE RULE OF LAW AND THE SDGs

Mr. Nicholas Booth

Officer-in-Charge, Governance and Peace-building Team and Advisor on Conflict Prevention, Access to Justice and Human Rights at the United Nations Development Programme, Bangkok Regional Hub

Mr. Booth began by highlighting the significant moment when the United Nations General Assembly adopted the 2030 Agenda on Sustainable Development or the Sustainable Development Goals (SDGs), replacing the Millennium Development Goals (MDGs) as the new overarching framework for international development. More importantly, the inclusion of Goal 16 on Peace, Justice and Strong Institutions in the SDGs was timely. The inclusion of the promotion of the rule of law as one of the 169 ambitious targets is crucial. Arguably, the rule of law is one of the most essential elements, as it ties all of the 17 Goals together by creating an environment for the achievement of sustained, equitable and inclusive development.

Mr. Booth's approach in defining the the rule of law includes the following characteristics: supremacy of and equality before the law, fairness in the application of the law, separation of powers, legal certainty, principles of good governance, accountability of all individuals, as well as procedural and legal transparency.



Against this backdrop, he outlined four dimensions of the rule of law inherent in the 2030 Agenda. First, it promotes a human rights-based agenda in that all fundamental human rights—be it socio-economic, civic or political—are reflected in the Goals, underpinned by principle of equality and non-discrimination, especially underscored in the pledge of “leaving no one behind.” Second, it highlights the inextricable linkages between development, justice and peace. For instance, the rule of law serves to create social cohesion and prioritizes tolerance and equality in order to prevent extremism. Third, it is a measure to prevent and respond to transnational organized crime and corruption, as well as to deter illicit flows of people, goods and services. Lastly, it emphasizes the role of the private sector in the full realization of the SDGs, especially in Asia. The global Goals cannot be achieved unless governments protect human rights against business violations, while business proactively respects human rights and provide adequate remedies for breaches.

Mr. Booth further noted a few challenges and opportunities that the 2030 Agenda faces. Access to justice still remains an issue in many countries in the Asia - Pacific region, while too little data on the rule of law is being collected to create a comprehensive picture of the problem. On the other hand, innovation and technology provide the region with a set of tools to tackle issues such as accountability, transparency, engagement and participation. He also noted that strengthening partnerships across all sectors to create mutual trust and to foster a “culture of lawfulness” is one of the keys to fully realizing the SDGs by 2030.

III. PLENARY LECTURE 2 ASKING BETTER POLICY QUESTIONS



Osama Siddique
Law and Policy Research Network (LPRN)

Dr. Siddique began by briefly introducing the methodology used by the IGLP in its Workshops. This differs from the traditional approach, which 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 lens, which takes into account the underlying contexts of and the perspectives of parties involved in policy discourses.



The presentation continued by setting out questions that need to be asked 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, in order to assess whether the 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 policies in order to rid them of underlying biases. Secondly, Dr. Siddique demonstrated how policy making frameworks may be permeated with conflicting norms, standards and concerns of international players, as well as local political elites and grassroots communities, which serve to frame policy questions to their advantage and at the cost of others. Thirdly, it is critical to note that there is no “one-size-fits-all” in terms of solutions or the applicability of the same policy in 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 the voices of vulnerable groups, exacerbate structural inequalities, and maintain entrenched socio-economic and political norms.

In the current era of increasing globalization, policymaking faces a multitude of challenges. For instance, international benchmarks and standards (e.g. ease of doing business indexes, 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 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.

IV. TIJ SPECIAL LECTURE

LOCKED AWAY AND LEFT BEHIND: BUILDING AN INCLUSIVE SOCIETY THROUGH ENHANCING LIVES BEHIND BARS



Chontit Chuenurah

Chief of Program on the Implementation of the Bangkok Rules and Treatment of Offenders, TIJ

The TIJ Special Lecture centered on the issue of how to better reintegrate those who are imprisoned and the specific role of gender inequalities in shaping women’s pathways to prison. Currently, the global prison population stands at over 10.3 million people across 223 jurisdictions, and women account for approximately 7% of that number. Statistics from the World Prison Brief also reveal that since the year 2000, the number of female prisoners worldwide has increased by around 50%, compared to a 20% increase in the overall prison population.

Criminologists have explored how pre-existing gender inequalities have contributed to this phenomenon and have found that a common pattern holds worldwide: drug crimes account for the vast majority of women in prison. Thailand has the 6th largest prison population in the world and women in Thai prisons account for 13% of the prison population, with 80% of these women having been imprisoned for drug crimes. However, the majority of these women were merely involved in low-level drug offenses. The overuse of imprisonment for drug-related offenses of all kinds means that the war on drugs has inevitably become a war on women.



The pathways to prison for both men and women often stem from factors such as limited access to education, fewer opportunities for employment and limited access to justice. Other factors include difficulties in the home as a child and other traumatic experiences that push them towards deviant behavior. However, a specific pathway that often leads to prison in the case of women is a result of domestic violence. Broadly speaking, women who are often victims at the hands of their partners are also more likely to engage in violence and commit crimes. This phenomenon is also known as the “battered woman syndrome.”

Within the confines of prison, the hope of successful rehabilitation and reintegration into society remains bleak. Despite the UN Standards Minimum Rules on the Treatment of Prisoners (the Nelson Mandela Rules), which emphasize the need to help prisoners to reintegrate peacefully into society and outline a minimum standard for fundamental rights that prisoners are entitled to, the reality is that the majority of prisons still fall far short of such standards. Most prisons around the world are operating over their capacity and lack sufficient resources. Findings from the Institute of Criminology at the University of Cambridge have corroborated the fact that long-term imprisonment “changes people to the core.” Abhorrent conditions including the chronic loss of free choice, lack of privacy, living in constant fear of abuse, and emotional bluntness (to avoid exploitation by others), and the requirement of following externally imposed strict rules and routines, arguably strips away the dignity and self-worth of prisoners and can ultimately prove to be counter-productive to their lives upon release.

In this light, criminal justice reform should focus on finding alternative pathways to imprisonment. This is not to say that those who have committed serious crimes deserve options other than imprisonment, but more specifically, those who have committed less serious crimes may be better served if there are other options rather than imprisonment. This can include measures such as community service and electronic monitoring. The Nelson Mandela Rules also outline how the prison regime should minimize differences between prison life and life at liberty. Incarcerated people still deserve to be treated with dignity and should be allowed to live a balanced life with a strong focus on rehabilitation and reintegration. In reality, despite efforts to move in this direction, the recidivism rate remains still high and a further examination of the appropriate course of action continues to be warranted.

Reintegration of prisoners requires looking beyond the scope of basic international human rights standards and criminal justice reform. Multiple stakeholders must be involved, and reintegration policies should include factors such as the “justice reinvestment” approach, which focuses on strengthening the local communities and civil institutions from which these imprisoned individuals come, in order to try and solve the problem at the source. In Thailand, the social reintegration approach has stemmed from a successful public-private partnership model, in which the private sector has led a public awareness campaign and provided job opportunities for former inmates.

The Special Lecture concluded with an introduction to a project led by a group of participants from the public and private sector who were a part of the 2018 TIJ’s Rule of Law and Development (RoLD) Program and jointly developed a short video clip which captures a social experiment with hidden cameras that shows the lack of social acceptance and the pervasive stereotypes people hold against prisoners. It also shows a way to break through those barriers through open communication and empathy. This is strongly related to how an inclusive society can be built for those behind bars through the “human development concept” – meaning the focus should move beyond developing the potential of prisoners to increase their access to opportunities, to also encouraging communities to accept these former inmates.

The process of punishing those who have done wrong should not be limited to confining them to serve their sentence. It is essential to understand the needs of these prisoners, their pathways to prison, and provide them with appropriate and meaningful vocational and personal skill sets in order to successfully rehabilitate and reintegrate them. Prison alone should not be viewed as the panacea to correcting criminal behavior. Collaboration from the community can play an important role in reshaping people’s lives after release and contribute to creating a more inclusive society to ensure that those locked away are not left behind.

V. IGLP-TIJ SPECIAL LECTURE : RULE OF LAW-NAVIGATING A CHANGING GLOBAL LANDSCAPE



Prof. Surakiart Sathirathai

Former Deputy Prime Minister of Thailand, Former Minister of Foreign Affairs of Thailand, Former Minister of Finance of Thailand, Member of the Honorary Council at the Institute for Global Law and Policy at Harvard Law School

Prof. Surakiart’s Special Lecture centered on changes in the global landscape, touching on themes including economic and political changes, and concluding with the role of the law and the rule of law in light of these dynamics.

With regards to economic changes, the preeminent development has undoubtedly been Asia’s rise spurred by the liberalization of the Chinese and Indian economies, and recently compounded by

regional economic integration and movement towards an open economy in Southeast Asia. Prof. Surakiart then outlined the challenges and opportunities that ASEAN faces in its endeavor to become “future-ready,” given that its ten member states vastly vary in terms of the level of development. He highlighted that education is the key, particularly human development. Moreover, seamless cooperation between the member countries and open communication between the state, the private sector, civil society and all stakeholders will prove to be imperative for the sustainable advancement of partnerships within ASEAN. Given the rising anti-globalization sentiment, ASEAN must be ready to face these changes. However, Prof. Surakiart posited that ultimately, the spirit of globalism has not utterly diminished, something which is best embodied by forums such as the TIJ-IGLP Workshop.

Among others, further challenges that ASEAN will continue to face include convincing Myanmar to devise a sustainable roadmap for peace, reconciliation and development in the Rakhine State, resolving the dispute in the South China Sea, coordination for disaster relief, the promotion of human rights, and trust and confidence building among all member states. In the face of these challenges, ASEAN’s ability to work in unity will be imperative in securing its position as a powerhouse on the global scale.



Another salient change in the overall economic landscape is the rise of new development financing mechanisms. The founding of the New Development Bank (NDB) by the BRICS states, the Asian Infrastructure Investment Bank (AIIB) led by China, and the Chiang Mai Initiative (CMI) as an alternative to the IMF developed by the 10 ASEAN member states, China, Japan and South Korea all serve to challenge the status quo of the old Bretton Woods institutions, namely the World Bank and the International Monetary Fund (IMF). These new institutions are counterbalancing Western-perpetuated norms and standards, which have long permeated the international economic sphere. Simultaneously, the continuing appreciation of the Chinese yuan or renminbi (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.

Against this backdrop, ever-growing regional connectivity is also altering the economic landscape. The Silk Road Economic Belt (the One Belt and One Road Initiative), along with the cooperation of India and Japan on the Asian-African Growth Corridor (AAGC) project to counter China’s rising influence, is evidence of the dynamism at the global economic scale.

Prof. Surakiart also stressed how disruptive technology such as the rise of artificial intelligence (AI) and the “internet of things” has profoundly affected and will continue to shape all facets of life.

The latter portion of his lecture was dedicated to discussing the role of the rule of law in an ever-changing global landscape. To conclude his presentation, he offered the following questions to participants as food for thought:

- 1) Does the law (both domestic and international) serve to induce, slow down or obstruct changes? Or is the law entirely irrelevant in these contexts?
- 2) What is the role of the rule of law amidst these changes? Is it to provide a framework for policy making, is it a vehicle for policy implementation, or both?
- 3) Are people's voices heard in light of these changes?
- 4) Are these changes desirable? Do they strengthen individuals and society as a whole or make them more vulnerable?
- 5) Besides understanding and accepting the changes, what are the other roles that scholars, emerging leaders and global citizens alike should play in ushering in these changes?

VI. IGLP-TIJ SPECIAL LECTURE: THE UNITED NATIONS IN THE FIELD



Radhika Coomaraswamy

Former Chairperson of the Sri Lanka Human Rights Commission

This Special Lecture was a unique opportunity for participants to hear about firsthand experiences in the field from a United Nations officer. Ms. Coomaraswamy's approach veered away from focusing on policymaking and the law, and centered instead on human stories, which she drew from her personal diaries about the experiences left untold in the conventional United Nations reports.

Ms. Coomaraswamy began her lecture by telling about her experience on the ground in South Africa during the Apartheid era. She talked about how she went to South Africa with the UN because the rape figures were very high, and about her firsthand experience with racial tension within the country. Recalling her time in South Africa, she mentioned how, when she fell seriously ill during her visit, she was denied entry to the "whites only" hospital and was admitted only with the help of the local head representative of the UN. Ms. Coomaraswamy also mentioned the hope that spread among people that after the end of Apartheid, things would change for the better. People were full of idealism and hope. However, at present, many decades after Apartheid, rape statistics in South Africa remain at an all-time high.



Following her story from South Africa, Ms. Coomaraswamy went on to talk about child soldiers. She spoke about her personal encounters with them. A particular poignant story was that of a child soldier who was just thirteen years old when he was recruited while playing in the backyard of his house in Uganda. The child, along with many other children, was trained to raid villages, and to kill and rape people. In the process of rehabilitating these child soldiers, Ms. Coomaraswamy learned the heartbreaking truth that “Homecoming is not always joyful. It can be very stressful, especially when you know your child has killed other people, abducted, looted, and is now hated.” Despite many heartbreaking stories, she also recalled how many child soldiers were able to return to peaceful civilian life.

Ms. Coomaraswamy also recalled her experience in Kabul, Afghanistan when she and other UN officers met with U.S. generals to discuss the checklist provided by the ICRC which was necessary when conducting aerial bombardment. A general dismissed the checklist as being impractical when fighting a war. Ms. Coomaraswamy told the participants about how she went to an unregistered camp, which was in an abhorrent condition. She had asked herself what she could say to these people who were suffering, because the promise of merely reporting their condition seemed vacuous and hollow.

After mentioning that experience, Ms. Coomaraswamy touched on the treatment of the Rohingya people and the expulsion of the independent international fact-finding mission from Myanmar. She wrapped up her lecture by emphasizing that while the UN’s work is helpful in shedding light on human rights crises, with the advent of technology and social media nowadays, grave human rights violations can no longer remain hidden. Overall, this Special Lecture provided an eye-opening lens onto the untold and often neglected stories of human rights work.

POLICY SKILLS TEAM

The Policy Skills Teams are a unique component of the TIJ Workshop. They were designed as a peer-to-peer exercise to encourage brainstorming on innovative ways to approach pressing policy challenges that are unique to each participant. Each participant presents 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 process centers on drawing from the personal experiences of the participants and provide real-time feedback on their policy proposals. Drawing from these discussions, each participant is then tasked with developing an “elevator pitch” on a policy issue with which they are familiar.

For the 2019 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 International Forum on the Rule of Law and Sustainable Development: “Innovation and Technology for Justice”, which took place on January 11th, 2019. The cases presented by the nominated TIJ Fellows can be found in the Summary of the TIJ International Forum in this document.



STREAM SESSIONS

A total of 15 “streams,” or intensive mini-courses, were offered during the Workshop, allowing participants to convene around thematic areas of interest, review current scholarly developments and discuss policy implications. TIJ Fellows attended these sessions alongside IGLP Scholars from the 2019 IGLP Scholars Workshop, a concurrent Workshop to the TIJ Workshop that is a residential program that annually brings together an international cohort of young doctoral scholars, post-doctoral scholars and junior faculty for intensive collaboration, mentoring, and cross-training.

The 2019 Workshop Streams included:

I. SCIENCE AND TECHNOLOGY



Faculty: Ben Hurlbut (Arizona State University)
Sheila Jasanoff (Harvard Kennedy School of Government)

This session explored the relationship between science, technology and political governance in contemporary policy-making and the associated political dimensions of rationality and accepted forms of knowledge that normalize the choices made by the policy-makers and experts. Two cases about reproductive technology and genetically-engineered babies (CRISPR Babies) and commercial surrogacy, all of which are controversial and pose ethical dilemmas, were employed as the center of discussion to explore the extent to which they should be regulated.

A key theme that emerged from the discussion was that normativity and political orientation in each society indubitably shapes social imagination and our ability to identify what is at stake and what is the right question. For example, a common concern with regards to commercial surrogacy is that it disrupts the traditional concept of what constitutes a family unit and what it means to be a parent. Another criticism is the notion that the success of the first genetically-engineered babies might be the first step towards “designer babies,” for whom parents will actively select traits associated with intelligence and preferable characteristics. These two cases demonstrate how our de facto societal beliefs shape the types of questions we ask and, by various means, also determine what the answers to those questions are.

In this light, law and policy are mechanisms through which governments impose their moral stance and normativity upon society. In the first of the case studies, the French Government

denied citizenship to twin boys born from a surrogate mother in India despite the fact that there is a genetic relationship between their French father and the two children. In the U.S. case, in turn, a set of twins who were conceived via in-vitro fertilization treatment (IVF) and carried by an American surrogate were refused American citizenship, since the law mandates that children must have a biological connection to at least one parent in order to be granted citizenship. Later, the U.S. Government amended the law in response to the new understanding of reproductive biology. These two cases show how reproductive technology challenges the normative concept of reproduction and citizenship and can also undermine the state's authority to impose law and a set of norms on its citizens.

Science and technology are not value-free fields of study but rather, a response to and instruments of state power that, to some extent, determine the condition of lives and societies at large. However, decisions in the areas of science and technology are mostly made behind closed doors, allowing only experts with technical knowledge to take ownership in determining what is best for the general public. This arguably reflects the deficit in democratic governance and the lack of public accountability. Therefore, it would perhaps be prudent for the general public to become more engaged by questioning the role of experts, reframing issues and determining what key players, facts and evidence are relevant and how they should be incorporated in policy making.

II. LAW AND DEVELOPMENT



Faculty: Helena Alviar (Universidad de los Andes)
Ermal Frasheri (Harvard Kennedy School of Government)

In this stream, participants engaged in extensive discussions about the relationship between property law and development. The discussion started with a broad examination of “development,” where participants discussed how it is often informed by varying societal, economic, historical, and cultural contexts. Participants were asked to engage in a thought exercise using the following scenario: “If you were the ruler of whichever country you are from, how would you define development?” In this light, development in the eyes of the imaginary rulers encompassed factors such as legal justice, economic progress and using the law as a basis for human rights.

To shed light on the connection between development and law, a set of questions regarding development and property law were further examined. Participants were asked to engage in group discussion, to analyze linkages between development and property law in their own context in order to critique the existing solutions and identify what actors and other laws are involved. One example raised was the case of concentrated land ownership in Thailand, where 80 percent of

the land belongs to only 20 percent of the population. The group delved into the historical context of land ownership in Thailand, in which land ownership used to be communal until the concept of individual ownership arrived. The group also criticized the land tax which, according to them, functions only on paper, and remains flawed in its enforcement. Other groups discussed the cases of land ownership in the Maldives, European Union countries, the Philippines, and Brazil which led to the conclusions that clear and strong property rights do not necessarily lead to more development, and that there are multiplicities in the understanding of property rights as well.

The discussion then shifted towards case studies in which theories and other examples from different regions were analyzed, such as how the concept of property rights is based on the idea that the private market is separate, and whether it might be prudent to use new language and to reframe concepts when thinking and speaking about property, considering the technological changes that are happening.

The session also focused on showing that there are many legal regimes that coexist at any one specific point, by doing a distribution analysis of how economic development plans and the law distribute resources, to show that distribution is not only about rights. Participants were also encouraged to take note of the fact that the meaning of development changes over time and that development is a function of time and is a particular way of thinking.

In discussing the case of China's development project in Sri Lanka that was rife with corruption and dysfunctionality, participants were asked to consider the frame they used to make sense of the case; the laws they thought were at play, and the agents of the development project. Participants framed the case differently, with some seeing the case from a geopolitical perspective, others in terms of power relations, and still others as resulting from bilateral agreement.

The participants also discussed the importance of the rule of law in enhancing transparency, in ensuring transparency and accountability of the government, and examined whether there was any law in place that could have had prevented the case from happening. It was emphasized that it is important to frame the case through the lens of the rule of law so that the persons who were responsible for the case would face responsibility. In sum, this stream encouraged the participants to look beyond a myopic lens of looking solely at the value of land and property. Property is often seen as exclusively related to private law, but the discussions showed that property has to do with other types of laws as well, and that it is a consequence of economic development.

III. TRADE POLICY



Faculty: **Andrew Lang** (University of Edinburgh)
Mark Wu (Harvard Law School)

This stream explored the intricacies of trade policy between the United States and China. To begin with, participants were asked to identify where on the scale they would rank trade relations between the two superpowers. The paradigm was illustrated with a blank slate with four quadrants with one axis represented by unilateralism (absolute sovereignty) on one end and full cooperation on the other, and the other axis represented by low production barriers on one end and high production barriers on the other.

It was noted that prior to the 2016 Presidential elections in the United States, trade policy between the two countries probably stood closer to cooperation than to unilateralism while moving towards low production barriers, and the general consensus was that the trend would remain that way. When the participants were asked to identify where they personally thought the countries should stand, multiple positions arose. Some noted that high levels of cooperation with high production barriers would benefit a “club-based framework,” namely those within the same “club”. On one end, if a country were to position its policy more in the direction of unilateralism and high production barriers, it would be clear that they value their sovereignty above all else. On the opposite end, full cooperation and frictionless movement of goods would create a free and open rules-based economic system.

During the discussion, it was also observed that the proliferation of technology is making trade increasingly frictionless. However, the downside is that the countries of the Global South may be at a disadvantage, since there are lower levels of financial inclusion, and advanced technology is less readily available. Another viewpoint was raised that countries are instead moving towards unilateralism as a response to changing American trade policies under the new administration, but the effects of this on costs is still open to debate. Others were of the opinion that perhaps there will be trade diversion, in that while there may be trade conflict between the US and China, the rest of the world will continue to move towards cooperation.

Following this discussion, the conversation moved towards identifying the crux of the problem. Drawing from the readings by Mr. Dan Rodrik, the theory was posited that there is often a trade-off between increased cooperation and democratic control, which poses a constant dilemma for the world economy.

The case of China’s trade policies was further analyzed, looking in particular at the Chinese Government’s subsidy schemes. The question was posed as to whether subsidies are necessarily bad, because while they destroy established producers in the destination countries who cannot compete with cheap imports, they ultimately help local consumers. The standard theory holds that subsidies are conducive to the creation of oligopolies or monopolies but in the case of China, it was noted that Chinese subsidies have rarely created oligopolistic or monopolistic environments. The question then turned to the true objective of subsidies. If the intention is to redistribute wealth, arguably, China’s pro-subsidies policies may have served this purpose by enabling the rise of the middle class and allowing its industries to flourish.

In this light, the question of “fairness” is impossible to tackle, because many countries of the North with advanced economies may feel that the Chinese market isn’t truly open and aligned with the notion of free trade. On the contrary, China may view that its position isn’t any different than that of any other developing country. And for countries of the Global South, the primary concern is if they open up to total free trade, they won’t be able to develop successfully and may fall into the middle-income trap.

In the latter half of the stream session, the question of “fairness” was further discussed. For foreign enterprises seeking to establish a presence in the Chinese market, the balance of technology transfer is still subject to debate. From the Chinese perspective, Western investments and their

conditions can arguably be perceived as a remnant of Western imperialism that is encroaching upon China's sovereignty with conditions that hold China back. China is the only WTO member to be governed by the rule that it cannot ask for technology transfer from foreign companies, which could be viewed as unjust.

The discussion then turned to analyzing why the US has seemingly given up on the world order and the rules that have historically served it quite well. It was noted that the world is at a fundamental inflection point in the balance of power, where there is an imminent breakdown of the traditional power balance in that the US may soon move away from its position as the leader of the pack. It is unclear when a new order will emerge but given the constant state of flux, policymakers must remain alert and reactive to the changes.

IV. POVERTY AND SOCIAL INCLUSION



Faculty: Luis Eslava (Kent Law School)
Lucie White (Harvard Law School)

In this stream, the issue of poverty in a wide array of regions from Latin America to India and Thailand were discussed with an attempt to look beyond the definition of poverty beyond economic and financial terms. The power relations between a government and its subjects, the literacy rate, lack of infrastructure, and lack of access to job opportunities and welfare must also be considered when defining poverty. An interesting point was raised that the traditional avenues taken to alleviate poverty, such as increasing literacy, may no longer be the answer to ending poverty because in reality, there is a large subset of highly educated workers who are still unable to find employment due to the oversupply of skilled laborers.

The notion of “new poverty” was discussed, in particular in relation to the transformation of the legal order and to how states have been reshaped over the course of the past 30 years. The nature of the modern state we have today tells us the story of what kind of the poverty we have as well. However, political movements may alter the dynamics of poverty, because a political campaign may seek to offer social protection in order to win an election. This leads to fluctuation and instability with regards to the standard of living, depending on who is in power.

Under the “new poverty” framework, the rate of poverty is actually increasing although in contrast, the number of people facing extreme poverty has declined. There is also some skepticism about measuring “new poverty” as a benchmark. The new framework is closely linked to inequality, as illustrated by the Gini index describing global wealth inequality. The case of Jamaica's economic challenges and the IMF's structural adjustment policies was discussed, wherein the negative impact from those policies disproportionately affected the poorest and most vulnerable.

Focusing solely on economic growth and overlooking the exploitation of citizens in other ways further exacerbates inequality. In Ferguson, Missouri, walking on the roads where there are no footpaths can lead to an unreasonably large fine. This is a form of extracting revenue from the poorest residents in underdeveloped urban areas. These funds were obtained in order to pay back the state's bondholders, a policy that was seriously criticized.

The discussion highlighted how poverty is a more serious and aggressive issue, depending on the respective social context of each nation. One particular country might prohibit people from making a living by selling food on the streets but another might allow them to do so. This is a reflection of the interconnectedness between poverty and the social and legal structure of a state. On the issue of social inclusion, attention was drawn to how to generate avenues for social inclusion. For example, young persons who have been involved in or are at risk of becoming involved in petty crimes may be more effectively dealt with in the community rather than by putting them in prison which is often costly and is a harsh punishment that has lasting effects on the individual. The example was cited of Cali, Colombia, where a program has been developed to provide social support through the construction of recreational centers as a safe haven for teens, in order to divert them from committing crimes.

V. COMPARATIVE LEGAL POLICY IN ASIA



Faculty: Hisashi Harata (University of Tokyo)
Margaret Woo (Northeastern University School of Law)

This stream examined how the recent rise in nationalism and the race for market dominance have led to movements towards the liberalization of laws around the world, including in Asia. Current debates have highlighted the binary roles of law: it is essential to create markets, while curbing unintended consequences and states' actions. In light of this, antitrust or anti-competition law illustrates a spectrum of market structures with pure or perfect competition at one end, and cartels or monopolies at the other. This spectrum is characterized by the interplay between diffusion and concentration of power, rational and irrational actors, as well as efficient and inefficient markets.

At the outset, different contexts of monopolistic behavior were delineated in order to identify which types are deemed acceptable and even necessary. Arguably, monopolies ensure consistent delivery of goods and services that have a very high up-front cost (e.g. electric and water utilities). It is expensive to build new electric plants and dams, and therefore it makes economic sense to allow monopolies to control or set prices. From this, it is essential that states have absolute monopoly over strategic sectors of their national core pillars such as oil, gas and telecommunications.

However, it should be noted that there is an element of corruption that could possibly seep into government control under its aim of promoting cheap and accessible goods and services for all, an element which could lead to the unintended consequence of costly products and inefficient markets.

Against this backdrop, a case study of Japan's extraterritorial application of its Anti-Monopoly Act was presented, one that involved the Japan Fair Trade Commission's investigation of the so-called "vitamins cartel" in 2001. Japan's enforcement of competition law in a purely offshore context shed light on Japan's outward-focused economy and its integration in global supply chains. Some participants argued that this overly expansive application of its domestic law infringes on other states' sovereignty. On the contrary, others noted how Japan's actions underscored the true purpose of anti-monopoly law in that it serves to protect the efficiency of the domestic market and consumers, which in turn, arguably also benefits global markets and consumers abroad. In this respect, Japan is seen as the 'guardian' of the global market. Governments of emerging economies, in turn, are seen to be reluctant to follow Japan's example in applying anti-monopoly legislation extraterritorially, since they wish to attract foreign direct investments (FDIs), as well as to encourage future financial flow and economic growth. Faculty conveners highlighted situations in which similar states' actions would be justified in protecting its national markets or even the global market that is to support important political, social and economic policies as well as development agendas.

On the other hand, after three decades of economic liberalization and reform, particularly after China's accession to the World Trade Organization (WTO), a sound anti-monopoly legal regime has never been of such great importance to domestic consumers, private entrepreneurs and foreign investors as it is today. From this, faculty conveners asked participants to closely examine the real functions and roles of Chinese anti-monopoly law in two different cases. In both the infant formula case (2013) and the liquor case (2013), China's Price Supervision and Anti-Monopoly Bureau of the National Development and Reform Commission (NDRC) applied its antitrust law to reduce competition in order to reinforce state-owned enterprises' monopolistic behavior within the milk and white liquor sectors.

VI. HUMAN RIGHTS AND SOCIAL JUSTICE



Faculty: E. Tendayi Achiume (University of California, Los Angeles Law School)
Ratna Kapur (Queen Mary University of London)
Vasuki Nesiah (New York University)

This session focused on inspecting preconceived assumptions and politics behind the existing narratives about human rights and social justice. The session began by discussing one of the assigned readings, the poem "The Lovers of the Poor" by Ms. Gwendolyn Brooks, in order to

see how certain assumptions about the poor and the vulnerable were constructed. Participants discussed the lack of agency of the poor and how people needed to be aware of their status quo and the narratives they took part in reproducing.

Participants then discussed the article “Human Rights and Root Causes” by Prof. Susan Marks that criticizes certain conventions within the human rights area of work that could hinder justice. Questions were raised about the technical constraints that contribute to human rights policy-making. It was highlighted that technical terms can limit our frame of thinking, and the way in which problems are framed hinders our ability to push beyond what the institutional and technical ground allows.

Being part and parcel of the technical constraints, the language of human rights was deconstructed and critiqued in a number of ways. The session focused on the way in which the subject of human rights and social justice is constructed, the constitutional framework of international politics, and how language has influenced the framing of our thoughts. It was also noted that the traditional human rights vernacular may obscure the hierarchy of the subjects through its “universal language”, which results in people’s agency being taken away. It was emphasized that practitioners and scholars need to constantly interrogate and dissect the narratives that are constructed in order to unpack and get rid of unnecessary assumptions.

To further discuss the readings assigned, participants were divided into groups to discuss three topics: peace-building, transitional justice, and sex workers and human trafficking. The discussion on transitional justice focused on the context of the Truth and Reconciliation Commission of South Africa. Another group focusing on sex workers had a rich discussion on the pre-created narratives, and on how media representations create narratives about sex workers and take away their agency as a result. The third group discussed the issue of peace-building. They began by asking a question: “are we asking the right question?” in order to reflect on the existing narratives and explore the language that is well-established and underlies power relations and politics.

VII. GLOBAL REGULATION, FINANCE AND TAX



Faculty: Robert Chu (Sullivan & Cromwell, LLP)
Dennis Davis (High Court of Cape Town)

This stream focused on the impact of the concentration of power in the hands of large corporations and the extent to which they should be regulated. At the outset, the participants were invited to discuss the trend of the last few decades that has seen more and more industries being dominated by a handful of companies while factors such as wages, inflation and growth have struggled to catch up. The “Amazon effect,” which refers to the ongoing disruption of the retail market by the e-commerce powerhouse, Amazon Inc., was highlighted to explore how firms like Amazon have

reshaped the economy. However, it was also noted that despite the rise of a select few superstar corporations, it would be hasty to blame them for exacerbating inequality. Closer scrutiny must be paid to the relationship between the facts.

The discussion then moved on to the role of antitrust law. The case of American Express (Ohio v. American Express) was utilized to illustrate the shortcomings in recent years of using antitrust law. In this case, the US Supreme Court ruled that American Express is legally allowed to use “gag orders” to forbid merchants who contract with American Express from advising customers to use other credit cards with cheaper fees, although these restrictions are clearly anti-competitive and hurt consumers by raising prices, since merchants pass those fees on to consumers to maximize their gains. This in turn, also hurts the poor the most, even though they generally do not have credit cards. A dissenting opinion to the Supreme Court decision raised the issue that antitrust laws are intended to negotiate a middle ground between laissez faire ideals on one hand and centralized state control of all economic policies on the other, and that this particular majority opinion has thrown everything off course. Some have interpreted this as the Supreme Court’s contribution to further empowering a select few corporations that could yield further societal inequality. Participants were invited to present their viewpoint on this matter.

Following this discussion, the question was raised as to whether these criticisms are too unfair towards big corporations. Although their domination may be correlated with growing inequality, this does not necessarily equate a direct causal link. Nonetheless, it was noted that this causal connection can be drawn from the theory that when there are few economic actors in any given field, there is room for antitrust behavior and as such, these firms should be closely monitored.

Another case, concerning rent hikes in Beijing, was analyzed in detail. From a consumer welfare perspective, it was noted that the Chinese Government has tried to regulate the housing market, which was at risk of becoming a “bubble”, and prevent re-selling by getting rid of badly constructed housing in order to eliminate safety risks. This in turn, has reduced the housing supply in the rental market, which is causing real estate agencies that formerly made money from selling apartments to turn to the renting out of apartments instead so as to ensure that they have a constant stream of income and profitability. As a result, these agencies are also moving away from serving merely as an intermediary between landlords and renters, to becoming the principal landlord themselves so that they can control the supply of housing. Naturally, controlling the supply means that they are empowered to control the level of rents. Simultaneously, on the demand side, there is an ever-growing demand for better housing, driven for example by the desire to live closer to the city, and as such, also this has adversely impacted rental costs. From these facts, the participants were then asked to discuss what role regulation should play in this scenario.

The role of the regulator was also explored by looking at the case of Walmart and how its tendency to acquire companies operating in the same space as their core business has impacted consumers. The de facto assumption is that mergers like these would be anti-competitive and Walmart’s size and large market share might cause prices to go up. However, in the case of Walmart, their prices have continued to remain lower than that of their competitors, and arguably this has been in the interest of the general public. Yet, it is important to note that smaller homegrown businesses have been eliminated in the process, and so it is imperative to strike a balance and weigh all the consequences.

The latter half of the stream focused on one of the readings, which was a review of a book about the financial crisis in Greece by Mr. Yanis Varoufakis, an economist and former Greek Minister of Finance. In sum, throughout the duration of the crisis, different actors such as EU member states

(particularly Germany), the International Monetary Fund (IMF) and the European Central Bank (ECB) tried to impose austerity measures in order to restructure the Greek economy. Mr. Varoufakis makes the argument that if Greece had to play by those rules, it would have been doomed. Mr. Varoufakis' memoir serves to shed light on how the EU has become the epicenter of political clashes between contending visions of socioeconomic change, and its weak unitary identity, despite its attempt to portray itself as a singular polity, is yet another illustration of the complicated forces at play in the realm of global regulation.

The session concluded by posing some broad questions for participants to consider, including whether the nation-state has a role in dictating how much global regulation is needed or whether international instruments and institutions such as the World Trade Organization (WTO) should lead in efforts to curb the concentration of power in the hands of a select few players.

VIII. UNIVERSAL PRINCIPLES AND LOCAL CUSTOMS: CHILD ABDUCTION IN EAST ASIAN FAMILY LAW



Faculty: Günter Frankenburg (Goethe-Universität, Frankfurt am Main)
Mika Yokoyama (Kyoto University)

This stream focused on the problems created by child abduction in broken marriages. The discussion employed both the historical and the comparative perspective and aimed to deconstruct the traditional paradigm framing court rulings as well as the countering influences between universal legal doctrines and local customs in selected Asian family law cases. The second half of the stream also delved into an analysis of the Convention on the Rights of the Child and the Hague Convention on the Civil Aspects of International Child Abduction.

The discussion commenced by trying to understand the logic behind abduction in custody cases. This was carried out by analyzing the decisions of the Japanese Supreme Court. Simultaneously, historical cases were used as a parallel, such as “the Caucasian Chalk Circle” and “the Judgment of King Solomon.” It was deduced that the main motive for abduction is a parent’s strong desire to take care of his or her children.

The logic in King Solomon’s case stems from blood ties, and this is the dominant norm that has been adopted in the law of many countries. Gender norms were also discussed, regarding the biases towards the father in many family-related cases. Another important point of note was the notion that children are merely the property of their parents.

With regards to the Convention on the Rights of the Child, it was highlighted that one of the purposes of the instrument is to prevent parents from taking their children away if the child is already living in peace and is well taken care of. The main purpose is to maintain the child's best interest.

In sum, this stream stresses how a universal principle such as childcare is still subject to many variables, and its manifestation will often be grounded in the particular local customs and traditions of each respective society. However, regardless of how the law is applied, the most important thing is that this should always be in the best interests of the child. This means all parties involved, particularly the judge when applying the law, must consider economic, parental, educational, societal, and developmental implications of the how custody is arranged.

IX. DRIVING SAFELY ON CHINA'S ONE-BELT-ONE-ROAD



Faculty: John Ohnesorge (University of Wisconsin)

The Silk Road Economic Belt or the Twenty-first Century Maritime Silk Road, which is also known as the One-Belt-One-Road Initiative (OBOR), consists of a gigantic network of infrastructure projects driven by Chinese investments. It includes railways, roads, oil and natural gas pipelines, telecommunications infrastructure, electricity projects, ports and other coastal infrastructure projects. The ultimate goal is to connect remote parts of Asia and several other surrounding areas of economic importance together. This project is designed to promote regional and global economic cooperation. However, it has been highly criticized on the grounds of allegedly being a debt trap, its alleged hidden intention and its alleged lack of transparency.

From the Chinese perspective, OBOR will enable the Chinese state to find new routes for economic growth and economic security by expanding Chinese goods to external markets with the undertone of altering the existing international economic paradigm, which has been traditionally dominated by the United States, by allowing China to play a more important role. OBOR can also be applied to achieve diplomatic and strategic objectives for the Asia-Pacific region as it is reported that certain ports under the OBOR project are designed to be dual-purpose ports -- for both military and economic purposes. In essence, OBOR is more than a transportation route; it is a symbol of power relations.

The Asian Infrastructure Investment Bank (AIIB), a new China-led development bank dedicated to lending for infrastructure projects in Asia, will allow China to play a more active role in global governance and development. With a registered capital of \$100 billion, over 31% of which comes from China, it is clear that China is establishing itself as an alternative to the US-dominated Bretton Woods financial institutions such as the IMF and the World Bank. The AIIB promises to fill this role by offering loans with fewer strings attached than the traditional institutions.

The discussion then touched on how other countries are responding to OBOR. From the perspectives of developing countries, China’s presence enables them to decrease their financing costs for useful projects, especially for those countries which have limited ability to access funds from the traditional domestic and international financial institutions. Advocates of OBOR have also claimed that it will bolster local employment even though in reality, this has generally not been the case, as evidenced in Laos where Chinese migrant workers have now overwhelmed the local area, occupying a wide range of jobs while local workers are limited to accessing only low-skilled jobs. Additionally, it was noted that in certain areas, China might choose to export their low-skilled workers and as such, local workers will actually be adversely affected. Therefore, OBOR has been criticized for mainly serving the interests of Chinese contractors and not the interests of the actual recipient countries.

Sri Lanka was also used as a case study, specifically in respect of a debt trap resulting from OBOR. In this case, Sri Lanka had to hand over an entire port to China on a 99-year lease because the Government was unable to repay loans used to fund its construction. Furthermore, it was clear that there was little need for the small island nation to build a port of that scale anyway, and despite handing over the port, Sri Lanka has become even more indebted to Beijing due to high-interest rates on existing loans totaling nearly \$13 billion. In the case of Malaysia, former prime minister Najib Razak signed a \$22 billion deal for Beijing-backed projects, a deal that was subsequently terminated by Prime Minister Mahathir Bin Mohamad upon revelations that the loans were for projects that were deemed unnecessary and too costly.

In sum, it was highlighted that recipient countries should carefully scrutinize the need for infrastructure and whether a mega-sized project is truly imperative for their own development. If it is needed, then they must also be prudent about the financial conditions, particularly factors such as the interest rate they will be charged. Should they find that the deal is not economical, recipient countries should reject OBOR-related deals.



X. CRIMINAL JUSTICE



Faculty: El Cid Butuyan (University of Hawaii)
Osama Siddique (Law and Research Policy Network)

This session explored ways to develop an analytical framework to examine reform projects through multiple lenses: historical, sociological, institutional, legal, geographical and knowledge/data focused. The group evaluated reform not only as a technocratic domain but equally as a political phenomenon and strategy. Informed by select international literature, a collaborative learning method was adopted to emphasize vital experiential insights from the diverse faculty members as well as from the seasoned participants.

The session began with a discussion on the typology of the rule of law. While recognizing its importance, there was acknowledgement that the plurality and contextual specificity that is central to capturing the diversity of the rule of law isn't always taken into consideration. Sometimes, the typology used can be prescriptive and simplified, leading to typecasting and profiling. However, finding the right balance is tricky because too much exclusivity is also problematic.

From there, the discussion moved on to issues of formality and informality. The group deliberated on the importance of deconstructing notions of what constitutes 'formal' in the current system and critically analyzing what lies beneath it. Similarly, when looking at informal systems, it is important to distinguish between informal mechanisms that are recognized by the formal systems and those that work completely outside the purview of the law, the aim of which is to act in parallel with, or as a substitute for, state law. These complexities give rise to issues of legal pluralism, in which traditional laws and state laws apply to different aspects of our lives. Instead of creating a situation where they are at war with one another, it is useful to re-think how these systems interact with each other. It is possible to have overlap and harmony between the two. To better understand this dynamic, the importance of power asymmetries in any given context must be noted. Only then will the groups which are excluded from the protection of the rule of law be recognized, and this will help in identifying vulnerable populations which need help (e.g., prisoners, victims of domestic violence, displaced people etc.) and in creating targeted interventions.

From here, the discussion moved on to the importance of the judicial system in strengthening or weakening the rule of law. It is essential that the justice system be seen as a chain. But there was recognition that courts are an underappreciated and underemphasized aspect of this chain. Very often, courts are overburdened and understaffed, thereby creating barriers to the effective functioning of the rule of law. Case-flow management systems were identified as one possible way of overcoming the backlog in courts. However, it is important to take into account the context of the system before implementing a case-flow management system. Such a system needs to have strong policy to support it so that lawyers don't misuse it to manipulate aspects of the cases. For example, in India, since policy dictates that judges are to be evaluated on the basis of the

number of cases closed, judges only take on easy cases, and the difficult ones get left behind. Such examples give rise to questions of monitoring and evaluation.

Furthermore, in multilingual societies, also language plays an important role in courts. In many post-colonial countries, while the languages spoken might be local, proceedings and regulations are in English, thereby creating a disconnect in the functioning of the system. This sometimes leads to alienation of certain groups in the room, cementing and legitimizing economic and social realities.

This led to questions of accountability in the justice sector. To begin this discussion, some important aspects of accountability in the justice sector were highlighted, including access, speed, consistency, ease of use, independence, integrity, capacity, professionalism and ethics. If the above aspects are problematic, then the question that needs to be asked is if there is a way to make the system more accountable without compromising independence.

When considering the institutional system of the rule of law, much accountability is based on citizen participation (the redressal of grievances, for example). This highlights the possibility that also individual citizens are responsible for the maintenance of transparency and accountability. A contending view was raised that if citizens are involved in the judiciary, could that be a death knell for the rule of law?

The session ended with a few questions for the participants to consider, including:
Whether a case-flow management system is a useful way to better implement the rule of law;
Whether open prisons contribute to more effective rehabilitation of prisoners;
Whether technology can be used to reduce the burden (manpower, financial) on actors in the criminal justice chain; and
What role can parole and probation play in redistributing the burden of the justice system.

XI. CORPORATIONS IN A GLOBAL SOCIETY



Faculty: Dan Danielsen (Northeastern University School of Law)
Sundhya Pahuja (Melbourne Law School)

This stream examines how corporations have emerged in the transnational community as a form of governance institution which produces transnational rules and practices, effectively regulating and organizing the social world. Drawing from the historical approach, the stream opened by revisiting the structural development of corporations over the years. The established form of multinational corporations has tended to involve the placement of the parent company in the “developed” Global North, with subsidiaries placed in other strategic locations in an effort to transnationalize the parent company. This established form has now morphed into a new structure, that of the value chain,

in which the parent company's ownership and control of its subsidiaries has been supplanted with a multiplicity of disaggregated and independent firms, which although they are not vertically integrated, they remain contractually connected to the lead firm. This development has created more room for more players to join in the global supply chain.

The stream then moved on to a case study of the 2013 Rana Plaza disaster in Bangladesh, in order to elucidate the social responsibilities of domestic actors, state, and overall those involved and/or leading the global supply chains. The exponential growth of the ready-made garment industry in Bangladesh stemmed from the state-led push for industrialization and the expansion of global value chains which provide national market more space to enter into the global economy with exports, exacerbating competition among domestic manufacturers. Millions of workers, domestic entrepreneurs, the State, and transnational corporations actively participated in the ready-made garment industry, often at the expense of the workers' wellbeing, and even lives. This was illustrated by the collapse of the Rana Plaza building, which was brought about by deliberate negligence of the building and by the forced operation of the subpar facilities. In view of the extensive involvement of different actors from both the domestic and the international level in the Rana Plaza incident, the participants were asked to identify the potential legal leverages among rules and jurisdiction from the point of view of domestic and international law. In addition to the existing legal mechanism, transnational firms have proven to be the enablers of change and accountability as they established their legally binding contractual mechanism to provide reparations, and used coercive mechanisms and business power to impose obligations on their supply chain to meet the standards.



Participants were also invited to investigate the architecture of responsibility in the supply chain, which boils down to the state and corporations. The conceptualization of the “good corporations - bad state” nexus and the tale of “bad state hindering good corporations” share the “development-equals-growth” and “consumption-leads-to-development” line of thinking, theorizing the nature of human well-being and how to achieve it. Such an assumption de-politicizes and de-historicizes the subject.

Another framework which requires reconsideration is the idea of foreign investment as the catalyst of development. Participants were invited to revisit corporate complicity in colonialism, and how their presence placed obstacles in the way of the anti-colonial movement, which demanded national control over property and international regulation of corporate behavior.

In sum, this stream revealed the governing power of the corporations, particularly their ability to influence the domestic economy and establish sets of rules which allow corporate social responsibilities, in the form of legal and policy obligations, to cascade from the top to the ends of the supply chain. The stream also unpacked the colonial roots of corporations and the consequences of uncritically engaging with the established doctrine of development, the driving force behind industrialization and the expansion of global supply chains.

XII. THE POLITICAL ECONOMY OF PRIVATE LAW



Faculty: Horatio Muir Watt (Sciences Po Law School)
Robert Wai (Osgoode Hall Law School)

This stream aimed to provide a descriptive cartography of legal tools in and outside of private law that contribute to global economic governance. The discussion began by assessing how the importance of private law is often overshadowed by public law, particularly in the realm of political economy. It was noted that the intricacies of private law should not be neglected, as it provides a fundamental infrastructure for both the domestic and global economy. Private law itself is rooted in many historical and international traditions. There is a general idea of the functions that private law serves and it is imperative to ask what role private law can play in a transnational setting. Will it offer a different model of governance for transnational economic relations?

The discussion then centered on the “new” model of the economy, using the “Song Mao” case (the Cambodian blood sugar scandal) as a basis for the analysis. Participants were asked to consider the following three questions:

1. What role did private law play in economic facilitation?
2. What role did private law play in the contestation in the economic value chain?
3. How does private law govern transactions? Can it function effectively without centralization? How does that even work?

In this case, increased demand for sugar production in Cambodia led to grave human rights abuses, and the case shed light on the collateral damages that can be inflicted as a result of changing trends in the political economy, including environmental harm, displacement of populations, forced labor, destruction of cultural forms of life and land grabbing.

Participants made several key observations regarding this case. It was noted that in terms of understanding how the law plays a role in this case, global companies utilized Cambodian law as a tool to their own advantage in securing benefits in the production chain. Private contract law was used to the advantage of British profit-seeking companies in order to secure production although the execution of contracts was carried out by local companies. In the eyes of the foreign companies, their business-centric agenda may have overshadowed human rights concerns because all actions were carried out in pursuit of a signed contract, all of which is in the purview of private law. It was also highlighted that cases such as these are commonplace in emerging markets because foreign companies often find loopholes in the local law to use to their own benefit. The role that private law plays here is to determine whether instances such as these are of local or global concern. Another moral dilemma that arises is whether it is sufficient to act in compliance with local laws, even though this may result in detrimental consequences.

It was also observed that in addition to private law, also public law, public international law and trade law are inextricably linked to such cases. Building onto the initial discussion, a few participants also noted that while the issues from the Cambodian case are in the purview of domestic courts, there is a transnational dimension to the problem. With regards to solutions, there should be guidelines beyond the realm of law as well, and tools such as corporate social responsibility (CSR) guidelines should be employed.

An interesting point was raised by a group of participants who remarked that in cases such as the Song Mao case, the reality is that the foreign firms as well as consumers perhaps should have been more prudent and conducted more due diligence about the goods they were purchasing. It was also noted that while there are various non-governmental organizations (NGOs) that may operate in different countries and can perhaps bring cases of exploitation in another country to their domestic courts, this is only one way of dealing with the issue. Ultimately, cases such as these belong in the jurisdiction of the courts where the exploitation occurred.

The Song Mao case sheds light on the interplay between the local and global dynamics of private law. While the exploitation occurred locally, it was being played out in a court on the other side of the globe. This is a prime example of the complicated state of international trade and gives rise to questions concerning the minimum level of coordination that is needed by companies that do business internationally. It is useful to consider whether there should be a mandatory level of due diligence needed when doing business abroad.

The second half of the stream focused on theoretical readings for an exploration of a fundamental question in private law, that of the extent to which the state should govern private life. One of the readings by Robert Hale, who was part of the legal realist movement, posited that the law indubitably permeates all facets of society, and focuses on the distributive consequences of the law in economic transactions. Another reading by Otto von Gierke highlights two distinct approaches to private law: one an autonomy-oriented approach which focuses on the individual and what he/she should or should not be entitled to, and the other a social or relational approach, which focuses on how consequences stem from the rights of a private actor.

The participants then moved towards a discussion of the Lehman Brothers case, particularly of how the financial crisis triggered a call for increased regulation (such as the Occupy Movement) and drew attention to the role of private law in the global power game. Participants were then invited to discuss the following questions:

- 1) Is private law more or less relevant in the new global economy? Will it be relevant to future market transformations in the economy?
- 2) How can private law, understood as a set of complex tools, navigate the distinction between formal and formal? What are the non-state norms at work and could non-formal norms be brought in through techniques of private law?
- 3) How would private law perform better than it did in the financial market? What varieties of private law can one see being brought to bear today?

A concluding thought worth highlighting was the notion that the global financial market is built on regulatory arbitrage, making its volatility systemic. The virtues of private law lie in how it is very concrete in some of its technical aspects and as such, can provide a model for regulating financial markets.

XIII. LAW AND INEQUALITY: DEBT & LABOR



Faculty: Karen Engle (University of Texas at Austin)
Kerry Rittich (University of Toronto, Faculty of Law)

This stream explored legal reform strategies geared towards inducing economic growth and social welfare, particularly 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. Case studies were utilized to explore how issues of labor, law and inequality intersect to impact the allocation of various benefits and burdens, and therefore access to rights and justice.

The session began with a video that showcased the exploitation of workers in the fishing industry in Thailand and Indonesia. Participants were then asked to give initial observations on the basis of the video. During the discussion, the participants pointed out that the underlying narrative of the problem was poverty and inequality. Some said that the workers were being trafficked for their cheap labor. Others highlighted that corporations were complicit in this agenda and governments lacked the capacity and political will to correct the human rights violations seen in the video. This also supports the neo-liberal agenda that exacerbates class differences, demands a market for cheap goods and frames poor people as disposable. This specifically exploits vulnerable populations such as migrants.

The 'clouded supply chain' became a point of debate, where it becomes easy to offload risk and blame because of national and international laws and contracts between the various actors in the chain. Within the chain, profits are also mal-distributed and there are no comprehensive monitoring and evaluation mechanisms to ensure ethical labor.

As a result of these gaps, laborers, consumers, trade unions, the families of the laborers and the local fishing economy are some of the players that are harmed the most. Governments, private corporations, shareholders, and upper-class consumers end up being the beneficiaries.

The next part of the session was spent identifying the laws relevant to the case study. Some of the answers put forth by the participants were:

- Human rights laws
- Migration laws
- Citizenship laws
- Fisheries laws
- Investment laws

- International trade laws
- Contract laws
- Labeling laws
- Criminal laws
- Victim assistance laws
- Law of the seas
- International labor laws
- Immigration laws
- Environmental laws
- Family laws
- Anti-corruption laws
- Organized crime laws
- Administrative laws
- Property laws
- Tax laws
- Freedom of information laws
- Child labor laws

The discussion moved towards identifying strategies to address the issues. Investigative journalism was spotlighted as a powerful tool that can exert pressure on stakeholders to improve labor conditions in the supply chain, through what can be called the “naming and shaming game.” The requirement that employers pay their workers using bank transfers was also suggested as a possible solution. Additionally, amending the law to correct the loopholes can be an effective measure. Creating migrant workers’ assistance centers and complaints mechanisms can help laborers voice their grievances. Similarly, unionism and collective bargaining can be a strategy to lend more power to the workers and give them a pressure tactic against employers. Criminal prosecution could also be a way to deter employers from using unfair labor practices and exploitation.

Taking all of the above into consideration, the conundrum that arises is the definition of exploitation. What standard should exploitation be measured against? How can free and forced labor be distinguished? What are the appropriate measures to safeguard workers who don’t have contracts and cannot use legal precedent to prove exploitation? It is important to acknowledge that forced labor is normalized in today’s world, where it is deeply integrated into global production. This brings with it the need to question the migration regime and how it has contributed to unfavorable conditions for migrant workers. Visas are attached to employers so people are trapped and at the mercy of the employers. The regime is in itself flawed. So if the context is reframed in the sense that certain groups of laborers are not slaves, but ordinary people who are operating under constrained choice, is it still coercion? And if so, is that the right way to think about it? And does it change the response?

One further solution could be in amending corporate law to give workers a piece of the profits, thereby redistributing it from just the shareholders. A useful way to think about this subject is by using distributional analysis. This involves thinking in a relational sense and asking where the costs and benefits are falling; who is winning and who is losing.

XIV. PROPERTY, INFORMALITY AND BLOCKCHAIN TECHNOLOGY



Faculty: Jorge Esquirol (Florida International University College of Law)
Outi Korhonen (University of Turku)

In this stream, participants were invited to consider the impact of new technology on property rights. The session began with a focus on property rights and formality. In the context of this workshop, property refers to ownership and utilization of land while ownership and rights usually involve the legal recognition of these rights. The official recognition of rights can manifest itself in many forms such as deeds and a statement of ownership, among others. Formal recognition is paramount to establishing legal ownership, as it confers the rights to use and benefit from the land owned by the holder of the rights. The necessity of formality points to the systematization and institutionalization of rights, which is reflected in the procedural and administrative processes involved in the attainment of land ownership.

However, in practice, not all utilization of land and property is formalized. For instance, in Thailand, informal businesses, such as street vendors and food stalls, use the pavements, sidewalks and other public property to sell their goods, despite not having any formalized rights to use the land. In this context, the dilemma was defined as the lack of the “right” to own properties. As previously mentioned, property rights require recognition and formalization. The heart of the problem lies in defining the scope and relationship involved in holding and using the property. Certain utilization of rights may also involve abstract rights and privileges. One example given was the Bangkok Mass Transit System (BTS) Sky Train service. BTS’s rights are based upon concession agreements with the Thai government; it has no ownership of the land and properties that it uses, but merely holds the rights to utilize the land and provide services. This notion of rights over non-tangible elements is also reflected in other areas, such as intellectual property (IP), which can include ownership of rights over intangible ideas, and in hostile possession and squatting.

Informalization, therefore, can be considered an asset within certain contexts, as it offers alternative approaches to possession and utilization of property. Informal approaches may provide loopholes, protection and a form of recourse to enhance the marketability and financial prospects that may not be available conventionally.

As rights and privileges over properties are dependent on the economic situation of a given area, informalization may give the opportunity for the market to become self-sufficient. As informal rights becomes more widespread, the relationship between rights and property has also evolved. Conventionally, the relationship between rights and ownership of property

is based upon the formalization and procedures. However, informalization alters the landscape, as it does not require any formal procedure. Furthermore, the focus shifts from the conventional understanding of property as a physical possession to abstract property and commodification of rights. One example was given to illustrate the contrast between formalization and informalization: the formalization of land ownership in the national parks in Thailand. In this case, formalization threatens the rights of indigenous people in the area. As the rights over land in the national parks were formalized, indigenous communities that traditionally live there have no forms of recourse because formalization simply failed to recognize the informal relationship between people and land rights.

The session then shifted its focus to blockchain technology, which refers to a de-centralized database, with data, information and technical components stored in a 'block'. These blocks are stored in encrypted chain sequences that are shared by all users. As these sequences require authentication from all users, blockchain has proven to be particularly difficult to tamper with. Blockchain is a major component in cryptocurrency; cryptocurrency is a form of virtual currency that can be used to conduct transactions. The value of cryptocurrency fluctuates, based upon public perception and trust in the value itself. In contrast, conventional currency or Fiat money is based on a nation's gold reserve, which is fixed and regulated to prevent sudden inflation. There are many kinds of cryptocurrency, such as BitCoin, Ethereum, and XRP. The increased presence of technology within the legal sphere can lead to both formalization and informalization of rights.

The discussion then centered on the relationship between technology and property rights. Terra0, a platform for automated resilience systems for ecosystems and land management, was cited as an example of technological innovation that directly impacts land rights. The platform is based upon blockchain technology and cryptocurrency transactions, specifically on the Ethereum network. A case study on land property from Terra0 was utilized to illustrate the disruption of human-controlled capital and the formalized property system. This development presented an opportunity to observe the nexus between technology and property rights. The presence of technologies such as blockchain, cryptocurrency and the internet, creates changes on all levels. Conventional perspectives of property law as a formal process towards ownership of property and entitlement of rights may not be suitable for the fast-paced developments occurring worldwide. The traditional narrow paradigms are being overturned by informal rights, relationships, and benefits. While democratic processes often result in lengthy legislative processes and implementation, informalization may offer more flexibility in the management of property rights.



XV. MAPPING THE GEOGRAPHIES OF POWER



Faculty: Nikolas M. Rajkovic (Tilburg University)

This stream explored the nature of governance in contemporary socio-political and cultural milieu with an emphasis on the role of law in governance as a site 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 whose responsibility is to make binding decisions in a given geopolitical system by establishing laws. Presumably, public international law began with 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 flows 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 asked 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 (MNCs) have their own geopolitical spheres as stipulated in bilateral investment treaties (BITs) and intellectual property (IP) laws. It was highlighted that traditional cartography does not present us with a single universal reflection of what governance and government look 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- and intra-state relations.

In the second half of the session, participants were asked to examine three distinct objects, containers, orange jumpsuits, and cookie data, in order to highlight the relationship between the object and law, as well as understand how we conceptualize boundaries. The class concluded that objects serve to standardize and objectify certain universal notions ascribed to them. On the same note, it was demonstrated that “mapping” often dictates the way we perceive authority and power, because in doing so, these concepts are presented to us as objects. There is no one single reflection of what authority and power look like.

PROBLEM LABS

The Problem Labs are a new addition to the TIJ Workshop, designed to have participants analyze timely emerging issues in the region and construct innovative solutions. Each problem lab session had two conveners, one from the IGLP and the other a special expert invited by the TIJ who has extensive experience in dealing with the specific issue at hand. As part of the session, participants were divided into smaller groups to discuss their proposed solutions, after which they presented their ideas to the full group. The mixture of ideas from academics and practitioners shed light on a variety of ideas and reflections, evincing that an integrated point of view is helpful when analyzing a problem and dissecting solutions and alternatives.

PROBLEM LAB I: CYBER SECURITY AND EMERGING CRIMES



Co-conveners: **Alexandru Caciuloiu**
(Cybercrime and Cryptocurrency Programme Coordinator, UNODC)
Luis Eslava
(Kent Law School)

This session explored the relationship between crimes and technology in Southeast Asia, specifically regarding the growing presence of technology as a factor constituting more severe and borderless criminal activities. On the other hand, technology offers tools that can be utilized to prevent and respond to these emerging crimes.

TOPIC 1: ILLICIT DRUG TRADE IN SOUTHEAST ASIA

The first topic of discussion centered on the illicit drug trade in Southeast Asia. Technological advances and economic expansion have generally led to a higher standard of living for citizens in the region. Increased connectivity and integration have pushed ASEAN's Secretariat to create guiding documents to serve as a master plan on ASEAN connectivity, not only to foster economic growth, but also to minimize the potential for increased transnational criminal activities that usually comes hand in hand with development. However, due to differences among member states, there are disparities in security and standards that prevent uniform and effective regional application, specifically in border security and narcotics suppression. The United Nations Office on Drugs and Crime (UNODC) has stated that the drug trade in the region has generated over USD 100 billion in revenue. Technology and cyber space are tools that have been increasingly utilized to enhance trade. Simultaneously, this provides new opportunities for crimes such as human trafficking, wildlife smuggling, and narcotics-related violations to foster, especially on the DarkNet.



The region saw significant increase in heroin and methamphetamine trafficking from 2009 to 2017. The Golden Triangle remains the hub for the production of synthetic drugs, particularly methamphetamine, which saw a significant rise, based upon the amount of drugs confiscated in 2016. Also crystal meth has become an issue, with some of the region's production reaching as far as Japan and Korea. The increased presence of the drug prompted the Chinese government to intensify

its narcotics suppression operations in the country. Consequently, many manufacturers moved their production base to other countries such as Myanmar, Laos, Vietnam, and Thailand. This is evidenced by the increase in seizures of narcotics in Thailand and Myanmar, with less seizures in China, over the past few years.

The introduction of synthetic compounds and drugs, such as fentanyl and NPS, further complicates the matter as these substances have the same effects, but are more potent than their conventional counterparts. Furthermore, many of the constituting compounds are not illegal, making the problems of criminalization and suppression even more difficult. Synthetic drugs do not require the cultivation of drugs. Instead manufacturers can hire scientists or people with knowledge to produce the required substances. Currently, there have not been many seizures of synthetic drugs in the region, with the exception of in China.

TOPIC 2: CYBER-CRIME

Cyber-crimes are borderless crimes conducted via the internet and other online platforms. The use of the internet has mushroomed in tandem with the growing sophistication of the technology. Technological advances can undoubtedly lead to positive economic results and a heightened standard of living. However, misuse of technology for illegal purposes can also cause serious harm. One major problem in the face of the growing misuse of technology is that the justice system can often be cumbersome and is unable to cope with the fast-paced developments in the technological world, especially due to the borderless nature of the crimes and the platforms. In cases involving technology, the investigative process can possibly take months or even years to conclude.

The Cyber Risk in Asia

Cyber-attacks happen on a regular basis. It is very hard to quantify the crime because of its intangible nature, unlike crimes related to wildlife or narcotics trafficking. One of the reasons is that while devices are connected, states lack the ability to effectively and efficiently monitor all internet activity. Conservative estimates obtained from consultations with government officials in the relevant jurisdictions revealed that the most common type of cyber-crime is the use of malware, and that cybercriminals can earn up to 2 million dollars. Cybercrimes come in many different forms, the most common types of which include malware, ransomware, distributed denial of services (DDoS) attacks, and phishing and spear phishing.

The “Dark Web” and Cryptocurrency

The Dark Web is a part of the internet that is not usually accessible through normal means. The Dark Web is the host for DarkNet, the part of the internet that is unregulated. The Dark Web and DarkNet are platforms for many illegal activities, often used to trade contraband and to facilitate a multitude of criminal transactions. Tor is the most common access point to the Dark Web.

DarkNet markets rely and thrive upon the secrecy of the operations. On these platforms, most users use encryption to mask their identities. Cryptocurrency is usually the preferred payment method, due to its discreet and untraceable features. While the government can now trace cryptocurrency transactions, it still cannot reliably identify suspects online because of heavy encryption.

As part of the Problem Lab, participants were also encouraged to discuss the following questions:

- 1) How are the problems of cyber security and illicit drugs understood in the region?
- 2) How does the UN understand or “frame” the problem of cyber security and illicit drugs and does its institutional status shape the way it conceptualizes the problem and the solutions it proposes?
- 3) What are the limitations to current solutions to cyber security and the illicit drug trade?

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

Some of the solutions discussed included utilizing UNODC programs to provide capacity-building and training. Providing international frameworks to tackle crime while working closely with regional and local agencies will be vital. It was also noted that capacity-building for government and the general public is necessary.

At the regional level, there is an imperative to establish a strong legal framework regarding drug policy in the Mekong region. However, despite the aggressive war on drugs, it was noted that there might currently be an over-emphasis on preventing and responding to drug consumption rather than the supply side. It is better to focus on the “big fish” in order to eradicate the problem. The general idea is to use a more human-centered approach in waging the war on drugs.

PROBLEM LAB II: DIGITAL TECHNOLOGY FOR NEW OPPORTUNITIES



Co-conveners: Ben Hurlbut
(Arizona State University)
Piyabutr Bunaramrueng
(Faculty of Law, Chulalongkorn University)
Panachit Kittipanya-ngam
(Chief Executive Officer, AccRevo)

This Problem Lab explored the regulatory framework for digital technology in Thailand. From the private sector’s perspective, without suitable and timely regulation and an investment-friendly environment, technological innovations cannot flourish. In Thailand, current laws do not truly encourage technological developments. For instance, private companies cannot raise funds for digital technology by offering stock options to investors and as a result, Thai investors choose to go to Singapore to register their companies or use other loopholes in the law to achieve what they want. From the public sector’s perspective, two main reasons were cited as an explanation for the state’s reluctance to enable more investment in digital technology, the first being security concerns, and the second being the prohibitive culture. As the government prioritizes issues involving national security, it was suggested that there may be a tendency to ignore other issues deemed as less pressing. As a result of uncertainty in the regulatory arena, people are also reluctant to innovate as there are many unknowns and they are unsure of whether their actions are legal under existing laws or not, creating a prohibitive environment for growth.

Different vantage points on how to address this issue were discussed. From the public sector’s perspective, the government is keen to enact new laws on technology-related start-ups, but lacks the necessary knowledge and expertise. There are also concerns about different socio-cultural contexts, in that Thailand should not simply adopt laws mirrored from other countries. Suggested solutions discussed included inviting experts from private companies from other countries to aid in the process, differentiating between sophisticated investors and the public, allowing sophisticated investors more opportunities to make investments that the public cannot, and differentiating between different types of stock option issuers.

From the private sector’s perspective, the pressing issue at hand is how to strike the right balance between technological developments and state regulations allowing them to constructively and sustainably develop in tandem. Additionally, it is important to note the digital divide that still exists between communities in urban areas and those in rural areas.

Further questions were raised for discussion, including whether it is a matter of the law protecting investors or the law protecting the public, or of the employment or deployment of new technologies, or is the problem one of harmonization in order encourage more foreign investment in Thailand or in order to allow in Thailand what can be done commercially in other countries.



The Problem Lab also further dissected the problem by identifying obstacles in the development of digital technology and which stakeholders should be involved in solving these problems. Points raised include how regulators do not understand what the society and the private sector want, resulting in the law’s inability to catch up with technology. While the Government wants to create a value-based economy (“Thailand 4.0”) through the promotion of technology-centric startups, the

lack of sufficient regulation will hinder this initiative. Without domestically developed technologies, Thailand will continue to bear heavy expenses from importing technologies from abroad.

Other problems discussed included how the bureaucratic process does not support bringing suitable international experts to Thailand, since it is essential to involve those who created the technology, and how the Government’s viewpoint that new technologies may be a threat to national security acts as an obstacle to development.

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

It was suggested that the Government should consider collaborating more with private companies. The discussion then moved on to what sets digital technology disruption apart. It was concluded that the associated impact of digital transformation which will leave large amounts of concentrated data in the hands of private companies will continue to transform the areas of commerce, politics and public policy.

PROBLEM LABS III: ACCESS TO JUSTICE



Co-conveners: Matti Joutsen
(Former Director of the European Institute for Crime Prevention and Control and Special Advisor to the TIJ)
Dennis Davis
(High Court of Cape Town)

In this Problem Lab, the discussion on access to justice centered on the rights of migrant workers. The United Nations Sustainable Development Goals (SDGs), particularly, Goal 16: peace, justice, and strong institutions, were established as an overarching framework for discussion.

The initial discussion question was simply: Is there access to justice? The question was then extended further to whether different individuals have the capacity to access justice. How does geography play a role in access to justice – specifically, is there an urban-rural divide? Are computers able to overcome the geographical divide, if for example the elderly do not know how to use the internet or a computer? Are there other hindrances to accessing justice, such as the need to spend a lot of time, money, and effort to gain access to legal proceedings?

In the deliberation of various aspects that could hinder access to justice, the case study of migrant workers in Southeast Asia and their experiences in access to justice was examined. Against the backdrop of a booming construction industry in the region, migrant workers become an imperative piece of the puzzle in the supply chain but must work at low wages with few rights. Questions were posed about the role of the state in the broader context of access to justice for these migrant

workers who play an essential part in driving economic prosperity. Should the private sector be held accountable? And if so, how? Moreover, if unionization is not a possibility, then what other ways of protecting the rights of workers are available?

The participants noted that even though the issue about migrant workers might not seem to be a common issue in the region, if it is framed differently, it could be a regional issue that garners attention as well. For instance, apart from being an issue for the destination countries, for countries that are the source countries of the laborers, there is also the threat of a “brain drain.” In addition, some participants mentioned the gender aspect of the issue, noting that when talking about women and children migrants, there is a need to include non-binary and trans persons as well. Some also noted that, besides the formal mechanism, domestic systems can also be a solution used to provide access to justice.

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

As part of the Problem Lab exercise, participants were divided into groups, and asked to develop realistic solutions to improve access to justice for migrant workers within the framework of a case from the Southeast Asian region or an individual country of their choice. Each group came up with various solutions, reflecting the complexities and complications in dealing with access to justice for migrant workers. One group proposed a bilateral or multilateral mechanism between governments. Another group mentioned the complexity of the case of Bangladesh women migrant workers who are trafficked and forced to work in brothels in India. When they are able to return to Bangladesh, they face discrimination from their community and want to return to India again. The case prompted participants to propose a rehabilitation program in the home country, and also reflected the complexity of the migrant issue. A third group highlighted a barrier to justice for migrant workers, which is language. Since migrants cannot access justice if there is a lack of interpreters, the group proposed to use technology to ease the language barrier by using, for instance, online interpreters.

A fourth group tried to dig deeper into the underlying assumptions people often have about migrant workers. The group questioned existing narratives about migrant workers, stating that the narrative about how to “help them” should instead be replaced with the narrative of how to empower their agency. Some groups brought into discussion their direct experience with migrant workers, emphasizing that there is a lack of trust in the authorities, which forces migrant workers to resort to informal systems of justice.

To conclude, participants came up with an abundance of ideas about access to justice for migrant workers by utilizing their combined academic and practitioner expertise, unpacking concepts, rethinking narratives, and considering the lived experience and conditions of migrant workers.



PROBLEM LAB IV: FINANCIAL INCLUSION AND INEQUALITY



Co-conveners: Punnamas Vichitkulwongsa
(Former CEO of Ascend Money, Thailand)
Kerry Rittich
(University of Toronto Faculty of Law)

This session explored the different models used to foster financial inclusion with the aim of reducing inequality by drawing from many successful cases in Asia. The objective was to analyze these models and apply these preexisting frameworks to simulate financial inclusion in other settings. It was highlighted that, when discussing financial inclusion, it is important to distinguish between income, which is the amount of money you earn, and wealth, which is what you are able to accumulate. Financial inclusion encompasses a myriad of factors, such as access to financial services at fair a price, and access to capital. The inability to access financial institutions, which was described as being “unbanked”, or having a savings account but leaving it dormant, which is the state of being “underbanked”, should also be taken into consideration when measuring financial inclusion.

At the outset, the discussion revolved around why financial inclusion is important. The main reason highlighted was how financial inclusion spurs social harmony since historical revolutions in the world mostly stem from class warfare. At present, in the OECD countries, the income of the top 10% has grown at a much faster rate than the income of the remaining 90%. Simultaneously, in emerging countries, the income gap has widened dramatically and the wealth gap (aggregate wealth) is increasing at an even faster rate.

Thailand is a prime example of inequality as it has the largest wealth gap in the world, with the top 1% of the population controlling a staggering 67% of the total wealth. It is highly unlikely that this trend will stall, and the 1% will continue to create tremendous amounts of business value through major technological advances, internet distribution, AI and globalization. While there are advantages to this prosperity, the growing inequality will be magnified and is likely to cause serious public policy problems.

After spotlighting the case of Thailand, the discussion steered towards addressing the source of the problem and it was posited that the main issue is capitalism without social responsibility. Businesses are driven by the sole motive of maximizing profits, increasing company value and building wealth. However, a devil’s advocate position was also considered and the question was posed about whether this inequality is acceptable so long as no one is living below the poverty line. The answer to this question is twofold, because while extreme poverty rates have indeed declined, the problems associated with wealth disparity are likely to create serious societal problems should this wealth gap continue to grow.



Other reasons for the lack of financial inclusion were also discussed. These include factors such as the state's failure to provide an adequate social safety net (healthcare, welfare, education), and its inability to implement necessary market reform, the flaws of a democratic system of governance and also lack of financial access for the masses. When considering the World Bank financial inclusion index, it was noted that the general trend indicates that there is a correlation between

increased financial inclusion and reduction in poverty rates, yet it was noted that correlation does not mean that there is direct causation between the two.

The discussion then moved towards Thomas Piketty's theory of how inequality will always persist if the capital rate of return is greater than the growth rate of the total world output. As such, the way forward would be to devise ways to provide enough people with enough capital, because the traditional ways of encouraging people to access financial institutions will not be the ultimate panacea.

Several case studies were discussed, starting with China and how it has driven financial inclusion on a massive scale through the rapid expansion of mobile internet access and coverage, which has opened up the potential for financial technology to thrive. The greatest example is Alipay, which is owned by Alibaba, and has been able to offer the Chinese public access to mobile payments. As of 2013, Alipay was processing around 800 million accounts with a total coverage of more than 60% of the Chinese population. Under the Alipay umbrella, money market funds such as Yu'e Bao, which has now become the biggest money market fund in the world, have become readily available for people and have enabled over 300 million persons in China to accumulate and manage their wealth. Ant Fortune, yet another subsidiary of Alibaba, is another platform for people to access asset management companies. This has been tremendously beneficial in fostering financial inclusion. The pitfalls of such growth were also highlighted, in that if Alipay ever faces any trouble, the entire country's financial system is at risk and as such, regulators may need to be more prudent.

Turning towards India, the Pradhan Mantri Jan Dhan Yojana Program undertaken by the Indian Government to open bank accounts for citizens between the ages of 16 and 65 is another notable case of a state's efforts to increase financial inclusion. However, the reality is that to date, more than half of the accounts have remained dormant, which has proven to be very costly for the banks. Nevertheless, the government has continued its efforts to bolster the essential infrastructure for financial services, for example by creating a centralized system for banks and customers, known as "e-KYC", which is a paperless process for banks to verify customers by checking their history online. Other initiatives include the UPI system, which enables real-time interbank transfers at little to no cost, and DigiLocker, which is a platform for people to store their information online to limit the need for re-submission.

Within Southeast Asia, TrueMoney, a Thai-owned financial technology company under the True Corporation umbrella, has played a crucial role in equipping those who would otherwise be excluded from access to capital, such as the "aunts and uncles" in neighborhood stores, with a digital portal which in turn also urges consumers to make the shift towards digital payments. This initiative has been expanded to neighboring countries such as Cambodia, and within the first two years of operation, over USD 2 billion was processed per year, which is equivalent to about 15% of Cambodia's GDP.

In the latter half of the Problem Lab, participants were divided into groups and encouraged to pose questions about the role of financial technology in financial inclusion. A sampling of some of the questions discussed include:

GROUP 1

- How can regulators work to alleviate some of the new risks generated by financial technology platforms, including privacy incursions and data breaches?
- How can regulators work to alleviate some of the risks with respect to the over-leveraging of capital?
- What is the appropriate role for antitrust policy with respect to financial technology, and how can we ensure that SMEs aren't crushed by large enterprises?
- From an intellectual property standpoint, if large firms accumulate intellectual property, will they maintain their competitive edge by ensuring that the technology remains unavailable to smaller competitors?

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

The key solutions discussed highlighted the importance of the role of the government as regulators since allowing for a total free market inevitably fosters inequality. But the important question is the extent to which the government fills that role. It can either take the full involvement approach and use a heavy hand, or it can choose a hands-off approach by merely providing the essential compliance framework. It has been shown that the full involvement approach by the government is unsustainable, and that the better approach is for the government to lay out a master plan and establish a framework that should hold regardless of who is in power, as well as to involve the public sector in executing particular aspects without allowing certain firms to dominate.



GROUP 2

- Should financial technology solutions be considered at all as the answer to reducing inequality and poverty?
- Do certain groups of people benefit from financial technology more than others? Or does financial technology exacerbate inequality?
- Can financial technology be made sensitive to local needs?

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

In response to the aforementioned questions, the benefits of financial technology in tackling the informal sector were discussed. For instance, if there is a government scheme to pay farmers and these farmers have no access to financial technology, the payment will have to go through the hands of local leaders first, which makes it susceptible to corruption. Therefore, with financial technology allowing access to banking services for the masses, the money can go directly into the farmers' accounts.

GROUP 3

- Is financial inclusion a necessary but insufficient condition for achieving equality?
- Is financial inclusion a tool used by the wealthy to alleviate some inequality for the poor but does not truly address true structural inequalities?
- What are the regulatory conditions that are conducive to financial inclusion? Should the private sector or the government lead this effort? What are the risks to the poor if there was to be an oligopolistic model of financial inclusion?
- With regards to financial technology and credit ratings, does financial technology help those who already have access to resources climb up the financial ladder? How does credit rating work and what impact does it have?

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

On the issue of credit rating, it was posited that credit rating habituates people into using them for entrepreneurial purposes. An example from Thailand was cited, of a mobile application that helps people manage their debt to help tackle the problem of financial illiteracy. It was noted that having access to credit but failure to manage the credit properly exacerbates the issue of financial inclusion and puts the poor in deeper debt. Financial technology can be used to boost financial literacy particularly in the extreme consumerism backdrop that plagues Thailand. An interesting solution was also proposed and coined as “gamification” – which is the concept that people react to gratification and so turning difficult things into games can actually yield great results.

GROUP 4

- What types of inequalities does financial technology address?
- Are there models of financial inclusion that are not predicated on capitalism? Are there alternatives? Are there models of financial distribution with a re-distributive element?
- What is the role of the private sector?
- Who/what institutions are accountable if the system fails?

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

On this note, the group highlighted the need for heavy regulation because if financial inclusion leads to non-profitable loans, the possibility of failure becomes imminent and as such, financial inclusion will cause more harm than good.

In conclusion, this Problem Lab highlighted the need for companies to assume social responsibility. This mentality must not only be ingrained at the corporate level, but must also trickle down to the individual level as well.

PROBLEM LAB V: ANTI-CORRUPTION



Co-conveners: Bandid Nijathaworn

(Past Council Member and Secretary, Thailand's Private Sector Collection Action Coalition against Corruption (CAC))

El Cid Butuyan

(University of Hawaii)

The discussion commenced by highlighting the cost of corruption. Over USD 1 trillion in bribes are paid around the world annually, and it affects all the countries in the world, whether developed or developing. According to Transparency International (TI), over two-thirds of the 180 countries have Corruption Perception Index (CPI) scores lower than 50, with an average of 43 on a scale of 0 (highly corrupt) to 100 (very clean). Unfortunately, the majority of countries are making little or no progress in ending corruption.

However, countries in the Asia Pacific region can learn from four successful cases, namely Singapore, Hong Kong, Taiwan and the Republic of Korea, in tackling deep-rooted corruption effectively. Dr. Nijathaworn has found that these countries exhibit five similar characteristics. First, strong rule of law is essential in creating a signal of deterrence, especially in "catching the big fish." Second, open and competitive markets engender economic efficiency, thereby rendering a level playing field and little or no barriers to access for any of the players. Third, it is crucial to foster accountability and transparency in the public sector. Fourth, it is necessary for the private sector to have corporate responsibility, good corporate governance and strong business ethics. Lastly, active citizen and civil society act as "watchdogs" to root out corruption.

From this, it was highlighted that improvements in Thailand have been sporadic and slow despite a continuous effort and increased awareness of the public about the problem of corruption. One of the key obstacles is in the public sector. It lacks strong checks and balances mechanisms, and transparency in the public policy process from design and implementation to monitoring and evaluation.

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

In the latter half of the session, participants were asked to brainstorm the merits of the following solutions to tackle the deep-rooted issue of corruption in Thailand:

- 1) Addressing the demand side of corruption by transforming the mindset of youth through the implementation of an integrity curriculum in primary through tertiary schools.
- 2) Empowering civil society organizations to increase public awareness of the damages of and the means to fight against corruption.
- 3) Creating an online-based evaluation system for public services to track their efficacy.
- 4) Understanding the socio-cultural, political and economic factors that engender corruption in Thailand in order to design a more targeted approach.

PROBLEM LAB VI: WOMEN'S EMPOWERMENT



Co-conveners: Sita Sumrit

(Assistant Director and Head of Poverty Eradication and Gender Division,
ASEAN Secretariat)

Ratna Kapur

(Queen Mary University of London)

This problem lab explored issues related to gender equality and women's empowerment in the ASEAN region. The existing and future gender architecture in ASEAN was discussed, given the diversities and heterogeneities of history, culture, ethnicity, religion, faith and development progress among the ten countries in the region. The group divided into smaller teams and reflected on the current status of gender equality in the ASEAN region through various declarations, action agendas and joint statements in topics related to women's economic empowerment, violence against women, women, peace and conflict, and gender budgeting, to name a few. The session closed with brief presentations by the teams, evaluating and critiquing the assigned documents and suggesting areas for improvement.

The following prompts were provided to help the groups understand how gender is contextualized in the given texts:

- How is the problem set up / the narrative presented?
- Who benefits from setting up the problem in this way / through this framing?
- Who is harmed / disadvantaged / excluded from such a framing?
In particular how are women / how is gender helped / harmed / excluded / enabled?
- In what ways?
- What relations (structural / normative / material) are set up through this framing of the problem?
- Is there a better way to understand the problem / frame the problem in relation to gender? What is it?

At the outset, ASEAN was described as an "imagined community", with the goal of creating a people-centered approach to inclusive community building. The gender mainstreaming strategies in the three pillars of this community, namely the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC) proves that gender equality is in the mandate of the region. Furthermore, the ASEAN Socio-Cultural Community Vision 2025, which aims to create a map for developing an inclusive, sustainable, resilient, and dynamic community, reiterates ASEAN's commitment to promoting the empowerment of women and girls through regional cooperation.



However, women's political participation remains low and their participation in decision-making processes remains limited. While women make up half of the graduates in this region, only 30 women for every 100 men are in leadership positions at work. Additionally, the unpaid care work done by women is not counted in the GDP and the gender wage gap is still 19%. Violence against women remains a prevalent issue in the region. If ASEAN is dedicated to achieving its vision of equality, it needs to take greater steps to include women in its agenda. Studies show that closing the gender gap and including women's participation will add \$12 trillion to the annual global output by 2025.

This Problem Lab assigned readings to participants and the analyses conducted can be summarized as follows:

GROUP 1: THE JOINT STATEMENT ON PROMOTING WOMEN, PEACE AND SECURITY IN ASEAN

This document benefits the status quo by presenting the ASEAN government as good international citizens. It identifies root causes of conflict and emphasizes the importance of including women and building women's capacity and participation in post-conflict initiatives. Its framing can benefit civil society and grassroots organizations because it gives them the authority to exert pressure on their governments. However, there is no acknowledgement of the role of the government in state-sponsored violence. Furthermore, there is an element in the framing that makes women seem passive and on the outside. The normative framing is that men are the powerful/main actors in the area.

Reframing the language used and making it more intersectional is one way to overcome the problem. Instead of sentences like "we will build the capacity of women to participate in peacebuilding", changing it to "we recognize the different roles of women as peacebuilders and the contribution of women as participants in peacebuilding" identifies the existing contributions of women, taking into consideration the heterogeneous, contextual nature of women's roles.

GROUP 2: THE ASEAN DECLARATION OF INNOVATION

This text outlines how to prioritize entrepreneurs in science, technology and innovation. It makes no mention of issues related to education and women. The framing of the text will automatically benefit companies, research institutions and government agencies but those not included will be harmed. And since the groups mentioned are usually male-dominated, women will be adversely affected.

The document needs to adopt a more precautionary approach because while technology is beneficial, if used incorrectly, it can also harm certain disadvantaged groups. Additionally, there might be distributional conflicts in terms of government budget and who gets it. This might take away investment from disadvantaged groups. Sometimes, innovation might also not address the everyday needs of the common people.

GROUP 3: THE DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN AND ELIMINATION OF VIOLENCE AGAINST CHILDREN IN ASEAN

One problematic issue with the declaration is that it puts women and children together. Since women are considered on the same level as children in terms of protections, it shows cultural ways of thinking about women's roles. Putting these groups together might make it easy for the state, but we need to problematize it.

The narrative is also focused on state-led solutions, and therefore lacks contextual specificity. In ASEAN, culture is the cornerstone but this declaration doesn't address culture. There is also a lack of acknowledgment of the different positionalities of women and no mention of transgender women. The language of the declaration doesn't take into account the specific situations of women when dealing with issues of violence. It also doesn't acknowledge the different types of violence women face because of their positions in society. Furthermore, the declaration doesn't address the actual root causes of violence. It directly moves on to the consequences. There also needs to

GROUP 4: THE ACTION AGENDA ON MAINSTREAMING WOMEN'S ECONOMIC EMPOWERMENT IN ASEAN



be an increased emphasis on children. The lens of intersectionality should be used along with gender mainstreaming and gender budgeting to solve some of these problematic framings. The word "mainstream" sets the tone for the agenda. It wants to bring a certain type of agenda for women. This can lead to women being assigned areas such as science and technology, making it a paternalistic approach. Additionally, subjects such as sex workers are

excluded. There is an implicit construction of a subject and who is included and excluded. The framing of the action plan excludes certain minorities. Women are framed as a homogenous group, which is problematic. The agenda doesn't capture nuance. Diversity and inclusion should be used as terms to define women and different types of women.

Moreover, this reads more like a declaration than an action agenda. Instead of using competition as the driving force for women's economic empowerment, the strategy can be to promote collaboration and working together to move forward the ASEAN agenda.

POLICY RECOMMENDATIONS / PROPOSED SOLUTIONS:

Five broad approaches were raised as the way forward in solving the issues raised in relation to women's empowerment within ASEAN:

1. Understanding intersectionality
2. Including advocacy and awareness-raising
3. Going beyond the social norms
4. Rethinking resources
5. Innovative partnership

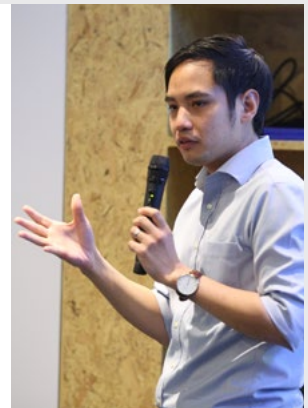
TIJ FIELD TRIP

The Total Access Communication Public Company Limited, or dtac, was established as a limited company in August 1989 to provide wireless telecommunications services in Thailand. dtac Accelerate is an initiative the company founded in 2012 with the vision of supporting and fostering an enabling environment for the Thai startup ecosystem to flourish. With the aim to seek the most promising startup businesses and elevate them beyond their potential, dtac Accelerate is regarded as a pioneer among accelerators for technology start-ups in Thailand. It has the mission of scouting for the brightest ideas to create the next Unicorn—or a start-up with valuation over USD 1 billion (THB 33 billion)—of Southeast Asia. For the past six years, dtac Accelerate has nurtured 46 teams from 6 different batches, with a total valuation of over USD 16 million (THB 5.23 billion). Approximately 72 percent of the start-ups from dtac Accelerate have secured vital follow-up funding from regional and global players, putting Thailand in the top three countries in this space in Southeast Asia. This success rate has helped draw top-notch tech entrepreneurs and world-class experts from overseas to exclusively participate in the camp as mentors. The dtac Accelerate program is used as the role model for other accelerators in seven countries under the Telenor operations.

Participants from the TIJ-IGLP workshop received the opportunity to learn more about dtac Accelerate's work. Selected successful cases from the program were discussed as follows:

Ricult – a social enterprise that seeks to improve farmers' productivity through the utilization of machine learning and satellite imagery to create alternative credit scores for Thai farmers who are unable to access formal financial services. It has been named the best social enterprise in Southeast Asia and Oceania in the Global Social Venture Competition and the "Most Innovative Agribusiness" by the UN. Ricult also won the Fintech Disrupt Challenge organized by the Bill Gates Foundation.

Aukrit Unahalekhaka, <https://www.ricult.com>



Ooca – an online platform that helps connect people with psychiatrists and psychologists through video calls. This application not only allows individuals to receive necessary professional assistance to alleviate mental issues, but also avoids much of the stigma that comes with it.

Kanpassorn Suriyasangpetch, <https://www.ooca.co>

Health at Home – a start-up aiming at providing personalized 'home care services to your doorstep' for the elderly and patients with chronic/critical diseases

Dr. Kanapon Phumratrapin, <https://healthathome.in.th>





The TIJ would like to extend our sincerest thanks to Mr. Sompoat Chansomboon (Managing Director, dtac Accelerate), Mrs. Alexandra Reich (Chief Executive Officer, Total Access Communications or DTAC) and their teams for hosting the TIJ fellows during this site visit.



TIJ INTERNATIONAL FORUM

TIJ INTERNATIONAL FORUM ON THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT “INNOVATION AND TECHNOLOGY FOR JUSTICE”



PROGRAM

Innovation and Technology for Justice

Friday, January 11, 2019 at Arnoma Grand Hotel

Bangkok, Thailand

8.00 - 9.00	Registration
9.00 - 9.30	Welcoming and Opening Remarks <ul style="list-style-type: none">• “Innovation and Technology for Justice: Strengthening the Rule of Law” By Prof. Kittipong Kittayarak Executive Director, Thailand Institute of Justice
9.30 - 10.30	Keynote Addresses (30 minutes each) <ul style="list-style-type: none">• “Balancing Technology-driven Economy and Justice Reforms” By the Honorable Chief Justice Cheep Jullamon President of the Supreme Court of Thailand• “Law and Technology” By Prof. Sheila Jansanoff Pforzheimer Professor of Science and Technology, Kennedy School of Government at Harvard University
10.30 - 10.45	Coffee Break
10.45 - 12.15	Panel I: “Regional Experiences” Selected TIJ Emerging Leaders
12.15 - 13.30	Lunch
13.30 - 14.45	Panel II: “Improving Equality and Justice through Innovation and Technology” Helena Alviar, Vasuki Nesiah, Kerry Rittich, Sita Sumrit, Punnamas Vitchitkulwongsa and Lucie White (Moderated by Prof. David Kennedy)
14.45 - 16.00	Panel III: “Using Technology to Respond to Criminal Challenges in a Borderless World” Ben Hurlbut, Osama Siddique, Dennis Davis, Panachit Kittipanya-ngam and Andrea Leiter Bockley (Moderated by Prof. David Kennedy)
16.00 - 16.15	Rapporteur’s Summary By Matti Joutsen Special Advisor, Thailand Institute of Justice
16.15 - 16.30	Closing Remarks By Prof. Kittipong Kittayarak Executive Director, Thailand Institute of Justice

WELCOMING AND OPENING REMARKS

INNOVATION AND TECHNOLOGY FOR JUSTICE: STRENGTHENING THE RULE OF LAW



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

Prof. Kittayarak noted that the rule of law is complex in that it has multifarious dimensions. In a nutshell, the rule of law is comparable to the ethics of the law. It helps engender trust within society by ensuring that core institutions are fair, just, transparent and accountable. At the global level, the rule of law has been recognized as one of the key drivers behind growth and development. The adoption of the 2030 Agenda for Sustainable Development at the United Nations General Assembly was momentous, especially the inclusion of Goal 16, which seeks to promote the rule of law across all levels. Arguably, the rule of law serves as a fundamental building block in the realization of the 17 Global Goals, along with its 169 ambitious targets.

However, merely acknowledging the rule of law as one of the 10 Targets in Goal 16 does not guarantee that the rule of law will be fully realized in action. There must be 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.

One of the lessons Prof. Kittayarak has learned from over 30 years of experience as a reformer is that lack of awareness of those outside the legal field about the importance of the rule of law continues to hinder progress in the justice system and rule of law reforms. To him, it is crucial to engage all players from across sectors—be it the public and private sector, academia and civil society organizations—to work in a concerted manner to advance reform and development agendas.

Against this backdrop, he noted how innovation and technological advances have changed the ways we communicate, live, work and think. It is crucial that society appropriately harnesses the power from this fast-paced transformation because while its benefits include increasing cross-border economic activities and employment opportunities, it is also a breeding ground for cybercrime, as well as illicit financial activity and trafficking in drugs and weapons, which could hamper progress in development. Nonetheless, this presents key players with an avenue for collaboration, whereby lawmakers, policymakers, development practitioners and ordinary citizens can collectively work to find means to tackle emerging issues, in tandem with enhancing justice and the rule of law, in order to respond to our ever-changing world. It is his hope that this approach will generate development outcomes that would not leave those who are most vulnerable and marginalized behind.

KEYNOTE ADDRESS

BALANCING TECHNOLOGY-DRIVEN ECONOMY AND RULE OF LAW REFORM



By the Honorable Chief Justice Cheep Jullamon
President, The Supreme Court of Thailand

The Honorable Chief Justice Jullamon noted that in the past decade, we have seen how technology has played a significant role in transforming modes of economic activities and communication. A study by the Electronic Transactions Development Agency (ETDA) in 2017 found that the majority of Thai people spend around six and a half hours per day on the internet, an increase from around four and a half hours per day in 2013.

As a result of this transformation, various technological tools have been developed to meet our demands. For instance, due to its secure, transparent, difficult to fabricate, and verifiable nature, blockchain has been integrated into other innovations such as “smart contracts,” whereby computer codes automatically bind contractors. Apart from this, blockchain has been used across the board, including UN agency’s work on refugee identification to receive food aid, the British justice system’s documentation of evidence in criminal cases, as well as the Republic of Korea’s verification mechanism for its voting system. For Thailand, there is an initiative to use blockchain to detect and follow criminal behavior in industries such as those related to migrant workers and the fishing/seafood industries.

Nevertheless, the Honorable Chief Justice Jullamon acknowledged that on many occasions, technology is used as an instrument by criminal groups to commit offenses such as cybercrimes, money laundering to support terrorism, transnational organized crimes, as well as forgery and identity theft. The UN Office on Drugs and Crime (UNODC) has estimated that cybercrime costs approximately USD 600 billion annually.

In light of this, transforming the justice system in the digital age entails creating mechanisms within the justice system that are responsive to the changing demands of citizens. Fortunately, Thailand has recognized the legal status of electronic information eighteen years ago by enacting the Electronic Transaction Act B.E. 2544 (2001), thereby making all electronic activities, whether entirely or partially electronic, legally binding. This includes electronic signature, electronic payment, and financial transactions through online/mobile applications. In 2018, the endorsement of the Royal Decree on the Digital Asset Businesses B.E. 2561 and the amendment to the Revenue Code marked further stepping stones for the Thai justice system.

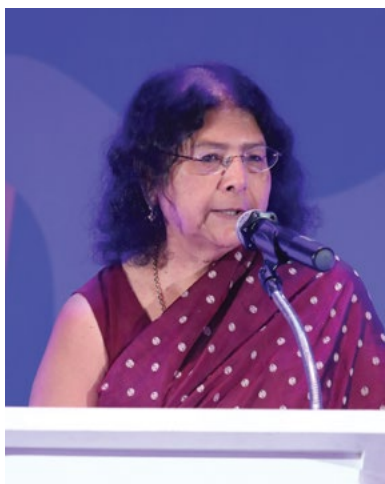
The Honorable Chief Justice Jullamon highlighted how the Court of Justice of Thailand currently employs technological tools to improve its system to increase access to justice, as well as lower expenses associated with the experience. For example, it has implemented the following:

- 1) an E-filing system in which litigants/parties involved can file pleadings in commercial cases through an electronic channel without having to travel to court
- 2) electronic monitoring equipment in inspecting or restricting the location of a person during his/her temporary release
- 3) an E-justice Conference Center to provide witness-examination service, interpretation and sign language assistance via video calls nationwide; and
- 4) an E-notice system to notify parties of the hearing date of petitions.

Ultimately, it is essential for those in the justice system to understand and find an equilibrium between regulating, controlling and protecting individuals in society. He concluded that because criminals work as a network, we need to use our network of partnerships to tackle issues that are brought by technological advances. Since criminals work by using technology, we need to use technology to combat technology-driven criminal activities.

KEYNOTE ADDRESS

LAW AND TECHNOLOGY



By Prof. Sheila Jasanoff

*Pforzheimer Professor of Science and Technology Studies
at the Harvard Kennedy School of Government*

Prof. Sheila Jasanoff started the session by posing a thematic question: why people in our technological world ought to think as hard about law as they think about developments in the technological sector. The traditional notion that creativity spurs technological progress and that then the law must catch up is too simplistic. In reality, the law must develop in parallel to innovation.

The conventional wisdom is that technology and law do not exist in the same paradigm. While technology has a number of adjectives and verbs associated with it, such as “innovation” and “disruption”, and is seen as a tool to “create winners” and “make possible new worlds,” in contrast the law is thought about as an institution that lags behind technology as it “conserves”, “follows rules”, “maintains order”, “compensates losers” and “decides how the world ought to be.” As such, the characteristics of law are understood as antithetical to the way technology operates and as such, technology must render the existing order of law obsolete.

Prof. Jasanoff presented a different perspective, suggesting that law and technology in fact go hand-in-hand with one another. The law does not lag behind technology, but rather it co-produces sociotechnical order in that technological innovation tests and refines pre-existing social norms such as the law. Moreover, it is the law’s objective to define and protect human values in the context of change. For instance, intellectual property law is a prime example of the relationship between law and technology. The United States Constitution enshrines the imperative of protecting intellectual property, particularly serving as the foundation for patent law by empowering Congress to promote innovation by securing exclusive rights to authors and inventors.

Prof. Jasanoff highlighted different landmark cases that showed the interconnection between law and technology, including the “Harvard Mouse,” a genetically engineered test subject for cancer drugs for which Harvard University sought to obtain a patent. Although a patent was granted in the United States (but has since expired) the patent request was initially rejected in Canada as the Supreme Court ruled that a life, despite being subject to human intervention, couldn’t be converted into property. Another landmark case concerned the patentability of human genes. Myriad Genetics, an American molecular diagnostic company, tried to patent a genetic testing method it had developed for the isolation of breast cancer genes “BRCA1” and “BRCA2.” This

attempt generated a public uproar and the American Civil Liberties Union took up the case, which led to the Supreme Court ruling that Myriad Genetic's diagnostic claims for gene isolation were not patentable, since genes are found in nature. This decision could be viewed as disruptive to existing laws because it upsets the settled beliefs of intellectual property law.

Prof. Jasanoff also discussed how technological change does not happen on a blank slate, and instead occurs against the background of law, principles, beliefs, and values that people want to preserve in society. For example, in the American legal system, privacy can be traced back to the Fourth Amendment of the US Constitution. Although the word "privacy" does not appear in the US Constitution, it can be deduced from diction and other provisions as the right to be secure from unreasonable search and seizures. This forms the basis for warrants, and obtaining a warrant requires probable cause. In one landmark case, the question was posed of whether or not a person using a telephone booth is entitled to privacy. The government's position was that people could be legally wiretapped in phone booths because it is not within the purview of what constitutes one's private space. However, the Supreme Court held in a unanimous decision that a search warrant is required to get into a telephone booth since the telephone booth fosters a sense in people that they are in a private space. Essentially, the court used the expectations of citizens as a benchmark.

Prof. Jasanoff argued that there were three modes of managing global diversity. One is through coexistence: following the principle of "live and let live", managing borders to protect "contamination", and where legal problems arise, following the principles of the conflict of laws. The second mode is through cosmopolitanism: according hospitality to others, accommodating differences without adopting universality, and following the principle of mutual respect. The third mode is constitutionalism: adopting common norms, accommodating differences within a shared normative framework, and following principles of common humanity.

In closing, Prof. Jasanoff pointed out that the law has the primary responsibility of defining and protecting human values and while it is not impermeable to change, it does adapt over time to changes occurring in society. This is particularly true in the case of genome editing, whereby the substantive law that protects human dignity is still evolving. Prof. Jasanoff also posited that a way to bridge the gap between technology and the law is that lawyers and non-lawyers should carefully scrutinize the values that should be upheld by the law in the light of technological progress.

PANEL I: RULE OF LAW: REGIONAL EXPERIENCES

The panel on “Rule of Law: Regional Experiences” featured presentations from TIJ Fellows who were selected among the participants from 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.

I. PETTY DRUG SELLING AND YOUTH AT RISK IN URBAN CONTEXTS



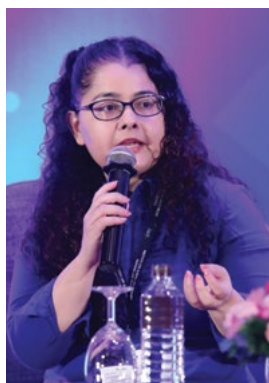
Catalina Gil Pinzon

Consultant, Open Society Foundations (Bogotá, Colombia)

Colombia is the largest cocaine producer and exporter in the world. Apart from this, its internal drug market has been on the rise due to an increase in the sale of drugs and psychoactive substances (e.g. LSD and ecstasy) in small quantities at the local level. Ms. Gil pointed out that vulnerable young people are most at risk, because they are often recruited to sell small quantities of drugs in open public spaces such as parks and squares. Youth are easily exploited due to their social, political and economic exclusion, including their limited access to public services, stigmatization by the government, high unemployment rate, and the few channels open to them to meaningfully participate in society. Coupled with this, the growth of illicit markets and internal displacement as a result of armed conflicts have served to normalize violence, gangs and ill-gotten gains.

Currently, this problem has been framed as solely as a threat to the country’s security, and the social and economic dimensions are overlooked. Therefore, Ms. Gil argued that it is crucial for us to clearly understand the complexities of the phenomenon and how to tackle it. First, it is essential to collect, produce and disseminate data on the root causes of the problem to better reflect it in a more holistic manner. Second, young people should be placed at the center of the analysis of the problem and engaged throughout the policy-making process. This allows their voices to be incorporated as part of the solutions, thereby creating a sense of inclusion and ownership. Third, it is important to learn from effective local projects/initiatives that seek to provide young people with alternative opportunities, as well as extract their key success factors and good practices. Fourth, it is critical to promote ongoing multi-stakeholders dialogues to understand the nuances and complexities of the problems at hand. Ultimately, Ms. Gil highlighted the need to change the narratives about drug issues by linking the agenda with peace-building, human rights and development lenses.

II. VICTIM SUPPORT PROGRAM



Harleen Kaur

Partner, VIN Partnership (Kuala Lumpur, Malaysia)

Ms. Kaur noted that the current criminal justice system in Malaysia heavily focuses on the accused, especially ensuring the provision of legal knowledge and representation, as well as the effective delivery of access to justice. On the other hand, the lack of legal support for victims remain a concern since their voices are often left unheard within the criminal justice system. Currently, victims have very limited access to similar types of assistance mentioned earlier. There are no support mechanisms or individuals who can provide guidance on where victims can retrieve information about court procedures (e.g. remand, charge, and bail), trial dates and court timelines. In addition, the concept of bail is still foreign to laypersons.

Ms. Kaur illustrated how the current framework needs to take into account factors along the criminal justice system that may intimidate victims such as the formal setting/atmosphere of the courtroom, limited opportunities to interact with the Deputy Public Prosecutor(s), along with negative experiences with the police. Against this backdrop, victims may also be suffering from psychological/emotional trauma, which requires special attention and immediate assistance from professionals. This not only entails assistance in filing official documents to apply for governmental aid, receiving referrals to counselling services and medical examination, but also promotes replacement of in person testimony with on camera instead.

More often than not, victims are urged to “settle” the matter by accepting monetary compensation due to intimidation and/or threats, while the criminal court does not have the rights to order the accused to pay additional compensation. Deputy Public Prosecutors may not be sufficiently prepared to handle their caseload and/or cannot delegate enough attention to one specific case, because they are bogged down with many other cases. Becoming a victim also stigmatizes the individual, thereby creating a loss of his/her reputation in the community and burdens families with shame.

Ms. Kaur proposed that all victims should be entitled to access to justice, fair treatment, restitution, compensation and assistance. To her, lawyers must contribute to society. Thus, she called for a mandatory 14-week legal aid program for fresh law graduates to enroll in before any of them should be allowed to practice. This demands lawyers to provide victim support such as assistance with explaining about the details of criminal justice procedures and filling out official documents, along with referral services for those who need additional care (e.g. shelters and medical support).

III. SUSTAINABLE AQUACULTURE



Jellie Molino

Legal Counsel, Taal Take Aquaculture Alliance, Inc. (Manila, Philippines)

Ms. Molino discussed the promotion of a sustainable aquaculture in Taal Lake, which is the third largest freshwater lake in the Philippines. Taal Lake is a protected area where economic activities are limited in order to preserve natural resources. It also acts as an economic driver since the Philippines ranks among the top countries in the world in aquaculture production. This situation calls for the need to find the appropriate equilibrium between economic development and environmental protection.

Due to intensive aquaculture and human activities (i.e. cage farming and tourism), deterioration of the water quality and fish kills have become more common incidents in Taal Lake. This prompted a representative from Congress to file a case before the Supreme Court of the Philippines for the removal of fish cages. The Court not only recognized the importance of protecting the lake, but also the need and rights of the community to have a decent source of income. The memorandum of agreement for sustainable use of Taal Lake resulted after successive rounds of negotiation, and led to the issuance of a consent decree with a writ of continuing mandamus. This serves as an order for the Court to oversee protected areas, and ensure that all of the stipulations in the agreement will be implemented by the relevant public authorities.

Ms. Molino demonstrated how this led to the redistribution of fish cage allocations in different villages, adoption of best practices of sustainable aquaculture, as well as creation of corporate social responsibility (CSR) programs to regularly clean up Taal Lake. However, ongoing opposition against such practices still remain such as heavy streams of tourists and politicians who are selling illegal permits to businesses. Ms. Molino suggested that it is fundamental to promote responsible co-management of natural resources and build larger network of allies through a multi-stakeholder approach, which is in line with the SDG 17 on partnership. To her, the right to a balanced and healthful ecology should be viewed as intergenerational.

IV. CAN AI DECISION-MAKING BECOME ACCOUNTABLE?



Arthit Suriyawongkul

Product Owner of Artificial Intelligence Platform, Wiselight

Mr. Suriyawongkul noted that in the world of digital technology, big data is changing the way information is collected, organized, processed and stored. The government is gradually embracing big data, especially in the efficient delivery of public services such as healthcare, education and security. The advantages of utilizing big data in shaping public policy, in order to facilitate for better allocation of resources and create more opportunities. However, he is concerned that data processing may create

“invisible discrimination” at different levels. At the same time, the development of technology-led decision-making is market-driven with the focus on cost/profit and not on public interests and privacy. The essential question is: how to ensure that the society will benefit from technological advancement, while simultaneously being protected from its harms.

In order to extract the correct dataset to inform policy-making decisions, Mr. Suriyawongkul highlighted that data protection is key in harnessing the power of big data and sensitive data should be barred from being processed. As such, data should be audited and screened out before entering the system. Principles of ethical artificial intelligence and automated decision making should be developed by incorporating concerns of every stakeholder. In line with this, he suggested the need to explore possible regulatory options via technological measures, market mechanisms and legal frameworks. Essentially, he called for an approach that emphasizes “data minimization” instead of a “dataholic” one; that is, if you cannot answer why you need a specific dataset, then maybe you do not need it at all.

V. ANTI-CORRUPTION ECOSYSTEM



Torplus Yomnak

*Co-founder, HAND Social Enterprise and Lecturer
at Faculty of Economics, Chulalongkorn University (Bangkok, Thailand)*

Mr. Yomnak pointed out that various anti-corruption measures initiated by the government have not been effective in alleviating the situation in Thailand. This problem is mostly due to three factors: 1) policy designers do not have a holistic understanding of how different people perceive corruption; 2) both public and private anti-corruption organizations do not collaborate to create synergies and momentum for change; and 3) an effective platform for citizens to actively participate in the fight against corruption is nonexistent.

Under his leadership, HAND Social Enterprise has assisted various multi-stakeholder anti-corruption efforts in Thailand. For instance, the digital Citizen Feedback tool has been installed in government agencies to allow citizens to review the quality and efficiency of their services. Comments and/or concerns are recorded online and analyzed by third-party entities to ensure for transparency, accountability and anonymity. In addition, Active Youth has integrated anti-corruption curricula into primary and secondary education to foster a culture of lawfulness. HAND also supports the collaboration of 11 mutual funds to create a Corporate Governance Mutual Fund, a new type of social impact fund, which aims to enhance good governance in the private sector and educate investors.

Mr. Yomnak highlighted how these efforts are complemented by a series of field research in different provinces of Thailand to create a more holistic picture of the root causes and perceptions of corruption. Coupled with this, researchers also use behavioral and experimental economics approaches to analyze how individuals from different backgrounds react to various modes of offline and online platforms to fight against corruption. This would allow policymakers and technologists to develop appropriate platforms to attract individuals from distinct target groups to bring about tangible changes in the society.

PANEL II: IMPROVING EQUALITY AND JUSTICE THROUGH INNOVATION AND TECHNOLOGY



Moderator: Prof. David Kennedy

Speakers: (From left) Helena Alviar, Vasuki Nesiah, Kerry Rittich, Sita Sumrit, Punnamas Vitchitkulwongsa, Lucie White

This panel examined the emerging role of technology in addressing structural inequalities by supporting socio-economic inclusivity for marginalized people. Panelists also discussed the risks and policy challenges that have accompanied the rise of innovation for social changes. Helena Alviar started the discussion by exploring the role of mobile applications for conditional cash transfer (CCT) schemes. CCT is a form of financial aid for impoverished families, which in this case, is promoted as a women's empowerment program wherein cash is provided to mothers when certain conditions have been met, including but not limited to proving that their children have been going to school and have been vaccinated. One of the main criticisms of the program is that it is time consuming for mothers to go through the process of providing the documentation. Through technology, an application was created for mothers that can be downloaded electronically and has in turn, saved them time and enabled these women to be able to pursue productive work beyond their traditional caregiving roles.

Vasuki Nesiah then continued the discussion by highlighting the two predominant myths that have been perpetuated in the discourse about technology and its role as the purveyor of social justice, particularly in the field of human rights. The two myths stand on extreme ends of the spectrum, one being that technology is the root cause of social injustice, the other being that technology is the panacea that can address social injustice. The pessimistic camp tends to view technology in the dystopian context with machines rendering human labor obsolete, which in turn causes a crisis due to the disappearance of work. It also sees technology as problematic in that it has redefined productivity and enables excessive consumerism. On the other end, the optimistic camp extols technology as the epitome of modernity and progressive modes of inclusion that allows wide ranges of actors to collaborate and invent solutions to social problems. Social media is perhaps most salient example of this phenomenon.

The panelists then discussed the connection between the technological revolution and the interests of societies at large and the idea that the regulatory framework around these technological

innovations must be closely scrutinized. Kerry Rittich posited that the current technological revolution mirrors the previous industrial revolution in many ways. The most obvious common thread being that it is disrupting the preexisting societal equilibrium and balance of power between social actors, leading to the concentration of power and economic gains in the hands of the state party. Moving towards the future, the presence and influence of technology is indisputable as the prospect of jobless growth and the end of full-time employment is nearing, emphasizing the necessity of innovation for job allocation, job-recombination, and information-sharing. As such, at the regulatory and policy level, the challenge is to find new ways of enabling collective action among workers because the technological revolution is recalibrating the balance of power and the fundamental task of law and policy is to closely monitor this process. It was also noted that technology can also disrupt women's power relations within the family unit and the job market by enhancing financial access and employment opportunities, creating conditions for internal allocation of work to happen, although the cultural norms that determine who will work will impose certain constraints onto women.

In this light, Sita Sumrit stressed that it should not be the operating assumption that technology and innovation are intrinsically good for gender justice and women's empowerment as it needs conceptualization and design intervention in order to be beneficial to justice. Often times, the narrative around technology and women's empowerment is centered around a relatively urban agenda with a focus on the middle class and as such, analysis of how technology can contribute to eradicating gender inequality must be carefully considered depending on the context. Within the ASEAN region, women's economic empowerment, digital inclusion and legal inclusion are all leading priorities in the action agenda. However, she cautioned that it can be a divisive agenda given the diversity within the region and technological changes will have differing impacts on various cultural frameworks. Sumrit stressed that increased representation of women in the digital sector will also be vital in order to achieve equality. Later on in the discussion, it was also noted that the focus of promoting women's empowerment through the singular approach of expanding a woman's role beyond household caregiver and care-provider should perhaps be subject to reconsideration as this paradigm may actually limit the opportunities of enhancing women's capacity in other productive areas beyond chores at home.

Punnamas Vitchitkulwongsa then led the discussion on financial inclusion through the lens of his own extensive experience as former CEO of "Ascend Money," a mobile application that provides access to e-payment services to underbanked people across Southeast Asia. The panelists then noted that one of the potential pitfalls of financial inclusion is that it can exacerbate debt creation.

In the context of healthcare and technology, Lucie White pointed out that healthcare has been overwhelmed with an influx of technology from quick-fix, high profit, venture capitalists who espouse online diagnosis and interactive healthcare on smartphones. The issue that arises is whether if these supposed quick-fix technological interventions can actually solve the problem. For instance, although a mobile application can help a doctor diagnose a patient in a remote area, if the patient does not have access to the necessary medication and treatment, the diagnosis means very little. It was noted that although technology is put in place to distribute and enhance public access to healthcare, it deflects attention from the root cause of the problem which is the lack of basic infrastructure – in that there are no doctors and no medications in these periphery communities in the first place. So although it may be perceived that technology enables equitable access in underprivileged communities, it actually is not conducive to resolving the issue of inequality at all.

PANEL III: USING TECHNOLOGY TO RESPOND TO CRIMINAL CHALLENGES IN A BORDERLESS WORLD



Moderator: Prof. David Kennedy

Speakers: (From left) Ben Hurlbut, Osama Siddique, Dennis Davis, Panachit Kittipanya-ngam, Andrea Leiter Bockley

This panel discussion focused on how technology has created both opportunities and vulnerabilities across different societies specifically in terms of criminal challenges. The speakers provided different approaches of looking at the issue, from both global and comparative dimensions.

Ben Hurlbut started the session by laying theoretical ground on how science and technology are situated in all sorts of dimensions from social life to policy, law, and politics. He highlighted the complexity between law and technology in that the two are interdependent and shape one another and also influence our social interactions. Hurlbut noted that when technology is created and becomes globalized, its ability to spread across the world has profound effects on defining social orders. Consequently, in terms of the rule of law, it is worth asking questions about whether who gets to determine what laws are appropriate for the technology that is created globally but is being implemented domestically in countries with different sets of laws.

The conversation then continued with Osama Siddique who took on the issue by focusing on social media and its nexus to democracy. Siddique posed a few questions with regards to democracy and the internet: what kind of political contestations are taking place on social media and what kind of impact does it have? Who holds the power to the internet and how do you regulate the social media? He noted that while social media as a means to foster discourse has had an empowering effect it has also at times, disrupted complex policy questions because social trends demand for issues to be resolved quickly and simply. As such, nuanced issues that require time and close scrutiny have often been overlooked. Siddique also mentioned how the line between freedom of speech and hate speech can be blurred at times and is typically dependent on where authorities want the line to be drawn.

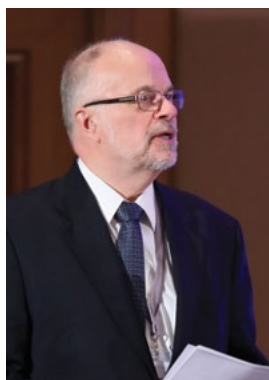
Dennis Davis emphasized once again on the symbiotic relationship between technology and the law. He illustrated the case of illicit income and financial flows in Africa citing a statistic that over the past 50 years, Africa has been estimated to have lost approximately one trillion dollars due to illicit flows. He stated that the illicit financial flows have actually been supported and exacerbated by technological tools which has enabled money to be expediently and anonymously moved. This poses the important question of what technologies should be made available to curb these illicit financial practices.

Following this topic, a case study on Thailand was raised by Panachit Kittipanya-ngam of financial fraud that occurred in Thailand but the VPN used belonged to a foreign country; as a result, the judicial process consisting of inexperienced prosecutors and obsolete laws was unable to attain an equitable outcome and ended up wasting a lot of effort, time and money. Kittipanya-ngam posed the question of whether there should be universal governing law across countries so that crimes committed by using technology can be processed in a more timely matter in order to create an enabling and secure environment for businesses.

The last speaker, Andrea Leiter Bockley, touched on the potential uses of blockchain. Bockley highlighted how blockchain can be used to decentralize and provide peer-to-peer network mechanism. However, it was noted that blockchain has proven to be a challenge for governments since its system can run internationally with anonymity, making regulation difficult. Bockley noted that the most interesting questions about blockchain are its potential applications as alternative forms of governance.

In his closing remarks, David Kennedy noted that the phenomena of technology reshuffling the balance of power has been fascinating. The panel concluded with the idea that the technological world and legal world are not as dissimilar as often imagined. Changes that our society are confronting globally are common across these two domains and intersect in many interesting ways and goes beyond the simple notion that technology moves and the law follows.

RAPPORTEUR'S SUMMARY



By Matti Joutsen
Special Advisor, Thailand Institute of Justice

Joutsen summarized the proceedings of the Public Forum by noting that it had explored areas that pose new challenges, particularly at the intersections of innovation, technology, the rule of law and sustainable development. He identified four interconnected keywords that had been repeated time and again throughout the discussions: change, balance, regulation and mindset.

Joutsen noted that technology has led to changes in the ways we think, communicate, work and live. At the same time, law has been trying to keep abreast of and adapt to these rapid transformations. This gives rise to the need to rethink how we understand technology and its multifaceted impacts, and how, as well as when, we can appropriately respond to changes with legal measures. We need to recognize that different local cultural contexts react to changes in different ways.

The rule of law is a pivotal factor in creating and fine-tuning the balance between the role of technology and sustainable development, and ensuring that no one is left behind. This rests upon the promotion of a fairness lens and raises the question of the balance of power between the winners and the losers. We should take into account shifts that may have taken place between those who are in power and those who are left without power in the society—be it at the local, national or global level.

This in turn leads to the question of regulation. When regulating, one of the first things that needs to be done is to identify and frame the problem, including its root causes. Part of this is identifying who are the most marginalized and vulnerable, and who therefore are easily left unheard in the design and implementation of development policies. We need to learn how to listen to those who are disenfranchised, and to acknowledge how policy prescriptions affect them differently. Coupled with this, it is critical for all stakeholders to work together collectively in order to find means to tackle emerging technological issues, such as blockchain.

Regulating in a time of change often requires constant adjustment of one's mindset. The approaches and perceptions that we have learned at one time, may need to be changed. All the stakeholders – officials, legislators, those in the private sector, those representing civil society – must return as it were to the school bench to learn new things; we need life-long learning. We may even have to rethink change itself, its nature, and its impact.

Joutsen concluded his summary by noting that technology and change are global, and yet have a cultural context. Technology offers the promise of enormous benefits, and yet problems arise. There often appear to be more challenges than answers. Nonetheless, this Public Forum has shown that we can learn from one another's insights and experiences.

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

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ABOUT 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.

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ABOUT TIJ

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

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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