Dr. Kittipong Kittayarak
Executive Director of Thailand Institute of Justice

February 16, 2017
Thailand Institute of Justice
1. What is the rule of law?

2. Why does the rule of law matter for the development framework?

3. New Opportunities

4. RoLD: TIJ Executive Program
WHAT IS THE RULE OF LAW?

1. The supremacy of law:

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

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

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

The laws are consistent with international human rights norms and standards.

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

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

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

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

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

- Equality before the law
- All entities including the State and government are accountable to law.
- The government has no arbitrary power

Protection of Human Rights and freedom

- The laws are in consistent with international human rights norms and standards.
- The laws protect human rights and freedoms of all individuals.

Due process

- The laws are clear, publicized, and just.
- The process of enacting, enforcing, and administrating laws is equal, public, fair, and accessible.

- Justice is delivered timely by ethical, competent, and independent representatives and neutrals; court.
- the principle of the separation of powers, participation in decision-making, legal certainty, and procedural and legal transparency
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<thead>
<tr>
<th></th>
<th>Minimalist</th>
<th>Midrange</th>
<th>Maximalist</th>
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<tbody>
<tr>
<td>Rule by law</td>
<td>Liberal democratic rule of law</td>
<td>Social democratic rule of law</td>
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<td>Power executed by positive law:</td>
<td>Rule by law plus:</td>
<td>Democratic rule of law plus:</td>
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<tr>
<td>• Maintaining order and regulating political and civic transactions</td>
<td>• Law is public, prospective, certain</td>
<td>• Social universal rights institutionalized in a welfare state</td>
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<td></td>
<td>• Equality before the law</td>
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<td>• Guarantee of human and basic rights</td>
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<td>• Lawmaking by democratically legitimized bodies</td>
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<td>• Power is controlled by checks and balances</td>
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<td>• Independent of the judiciary</td>
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Source: Adopted and modified from Møller and Skaaning (2010)
Why does the rule of law matter to the development framework?
Why does the rule of law matter to the development framework?
LESSONS LEARNT FROM MDGs

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

Reducing corruption

Protecting the environment and natural resources

fair allocation of services

accountability and checks on power

economic development

social and economic justice

Rule of law
Why rule of law reform has failed?

• Too narrow in scope
• Insufficient political will
• Inadequate stakeholder participation
• Inability to accommodate the diverse perspectives

then, let’s turn it to our new opportunities...
New Opportunities
NEW OPPORTUNITIES

Broader Participation

Measurement & Monitoring
Constraints on Government Powers
Absence of Corruption
Open Government
Fundamental Rights
Order and Security
Regulatory Enforcement
Civil Justice
Criminal Justice
Informal Justice

MEASUREMENT TOOLS
RULE OF LAW INDEX (EXAMPLE)
Thailand

Overall Score: 0.51
Regional Rank: 10/15
Income Rank: 21/37
Global Rank: 64/113

Constraints on Government Powers: 0.47
Absence of Corruption: 0.47
Open Government: 0.52
Fundamental Rights: 0.47
Order & Security: 0.70
Regulatory Enforcement: 0.50
Civil Justice: 0.53
Criminal Justice: 0.45

Source: WJP Report, 2016
OTHER INDEX/INDICATORS CONDUCTED BY DOMESTIC INSTITUTES

- ม.พ.ดร.วัชรินทร์
- สถาบันวิจัยที่มีความมั่นคง 11 ด้าน
"การจัดการที่มั่นคง" + 11 ด้านการเมือง

“Justice Indicators and Criminal Justice Reform”

- Purpose of justice indicators
- Developing Justice Indicators
- Sources and data methods
- Maximizing the Benefits of Justice Indicators
“Conceptual and Strategic Frameworks in developing Rule of Law Index/Indicators for Thailand”

- Enhancing a true understanding of the fundamental mechanism of the “Rule of Law” through a systematic approach
- Establish initial knowledge and basic data for the development of strategy in conducting the Rule of Law Index/Indicators
- Providing data in relations to the index of the “Rule of Law” and assist in its implementation in Thai society
International standards

Thailand’s context

Public Participation
NEW OPPORTUNITIES

- Measurement & Monitoring

Broader Participation
THAILAND’S CONTRIBUTION

- 22nd CCPCJ (UN Commission on Crime Prevention and Criminal Justice) 22-26 April 2013
- The Bangkok Dialogue on the Rule of Law 15 November 2013
- Asia and Pacific Regional Preparatory Meeting for 13th Crime Congress 22-24 January 2014
- 8th Session of the Open Working Group on Sustainable Development Goals 8 February 2014
- 23rd CCPCJ (UN Commission on Crime Prevention and Criminal Justice) 12-16 May 2014
- AsianSIL Inter-Sessional Regional Conference 2015 4-5 June 2015
- Resolution adopted by the General Assembly 25 September 2015

THAILAND

SPRING 2015

CONTRIBUTION
RULE of LAW in a GLOBAL AGENDA

• As one of SDGs Goals
  16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

• As an enabling factor for achieving other SDGs
Rule of Law Functions in Development

- Enabling economic development
- Facilitating social and economic justice
- Preventing, mitigating, and deterring conflict, crime, and violence
- Strengthening accountability and checks on power
- Reducing corruption
- Enhancing the fair allocation of services
- Protecting environment and natural resources
Relevance of Rule of Law to All Sectors

• All matters of business, whether public or private, will benefit from security and prosperity.

• Global paradigm shift in recognizing the rule of law as the cornerstone of inclusive and sustainable development.

• A user-based approach must be taken that actively involves all corners of society.

...AND HOW DO WE MOVE FROM HERE?
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<th>Pre-session 1: 1 Dec 2016</th>
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<tr>
<td>Dr. Kittipong Kittayarak</td>
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<td>RoLD Program Introduction</td>
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<tr>
<td>Dr. Surakiart Sathirathai</td>
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<td>The Rule of Law in International Framework: Regional Experience</td>
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<tr>
<td>Benjamin Smith (UNODC)</td>
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<td>Role of UNODC and SDG Goal 16</td>
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<td>UN Crime Congress</td>
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<td>Crime and Sustainable Development</td>
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<td>Deanna Davy (UNODC)</td>
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<td>UNODC study on human trafficking from Cambodia, Lao PDR and Myanmar to Thailand</td>
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<p>| 6-11 Jan 2017 : TIJ Workshop for Emerging Leaders on the Rule of Law and Policy |</p>
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<tr>
<th>Session</th>
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<th>Topic</th>
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<tbody>
<tr>
<td>1</td>
<td>16 Feb 2017</td>
<td>Opening Ceremony Presided by HRH Princess Bajrakitiyabha Mahidol, The UNODC Regional Goodwill Ambassador on the Rule of Law</td>
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<td>2</td>
<td>23 Feb 2017</td>
<td>Topic: Orientation and Introduction to the Rule of Law and Its Pathway to Sustainable Development Rule of Law in International Context</td>
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<td>2 March 2017</td>
<td>Rule of Law and Private Sector #1</td>
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<td>3-5 March 2017</td>
<td>RoLD Field Trip on Social Enterprise, Khao Yai</td>
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<td>9 March 2017</td>
<td>Rule of Law and Governance</td>
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<td>6</td>
<td>23 March 2017</td>
<td>Rule of Law and Equality, Social Justice, and Environmental Protection</td>
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<td>7</td>
<td>31 March – 4 April 2017</td>
<td>RoLD Field Trip on Rule of Law and Criminal Justice Reform, Japan</td>
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<td>8</td>
<td>20 April 2017</td>
<td>Rule of Law and Democracy #1</td>
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<td>Rule of Law Promotion #1</td>
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<td>12</td>
<td>18 May 2017</td>
<td>Group Discussion and Preparation for the RoLD Public Forum #1</td>
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<td>Group Discussion and Preparation for the RoLD Public Forum #3</td>
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<td>15</td>
<td>June 2017</td>
<td>The RoLD Public Forum Closing Ceremony &amp; Presentation of the Certificate</td>
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Strengthening the rule of law together

Setting the right tone and scope
Political will
Participation of everyone
Taking into account the diversity
BECAUSE YOU ALL ARE...

SUPERHEROES!
Our SUPERHEROES team in combination
Total 47 (100%)

• Male 29 (62%)
• Female 18 (38%)

• Public sector 28 (60%)
• Private sector 9 (19%)
• Social/Press 10 (21%)

From public sector
• Justice system 10
• Policy/Regulator/State Enterprise/Academic 8
THANK YOU