



TIJ EXECUTIVE PROGRAM  
THE RULE OF LAW &  
DEVELOPMENT

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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?



Oxford Reference; Oxford Dictionary of Law (2016)

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



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

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

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

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.



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



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

# KEY DEFINITION

## Supremacy of law

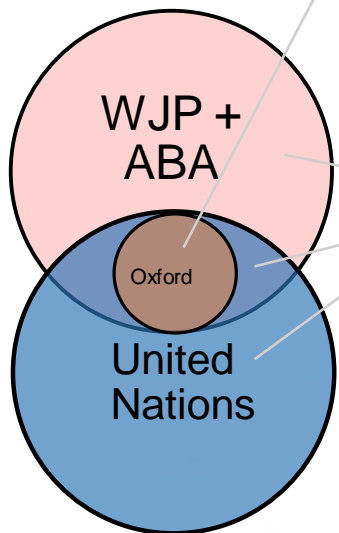
- Equality before the law
- All entities including the State and government are accountable to law.
- The government has no arbitrary power

## 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 administering 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

# THREE CONCEPTS OF ROL

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

**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 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.





social and economic justice

economic development

Preventing  
conflict, crime, and  
violence

**Rule of law**

accountability and  
checks on power

fair allocation of services

Reducing corruption

Protecting the environment and  
natural resources

# 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



## ► Measurement & Monitoring

Broader Participation ◀



# MEASUREMENT TOOLS

## RULE OF LAW INDEX (EXAMPLE)



Constraints on Government Powers



Absence of Corruption



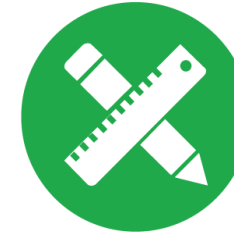
Open Government



Fundamental Rights



Order and Security



Regulatory Enforcement



Civil Justice



Criminal Justice











Informal Justice

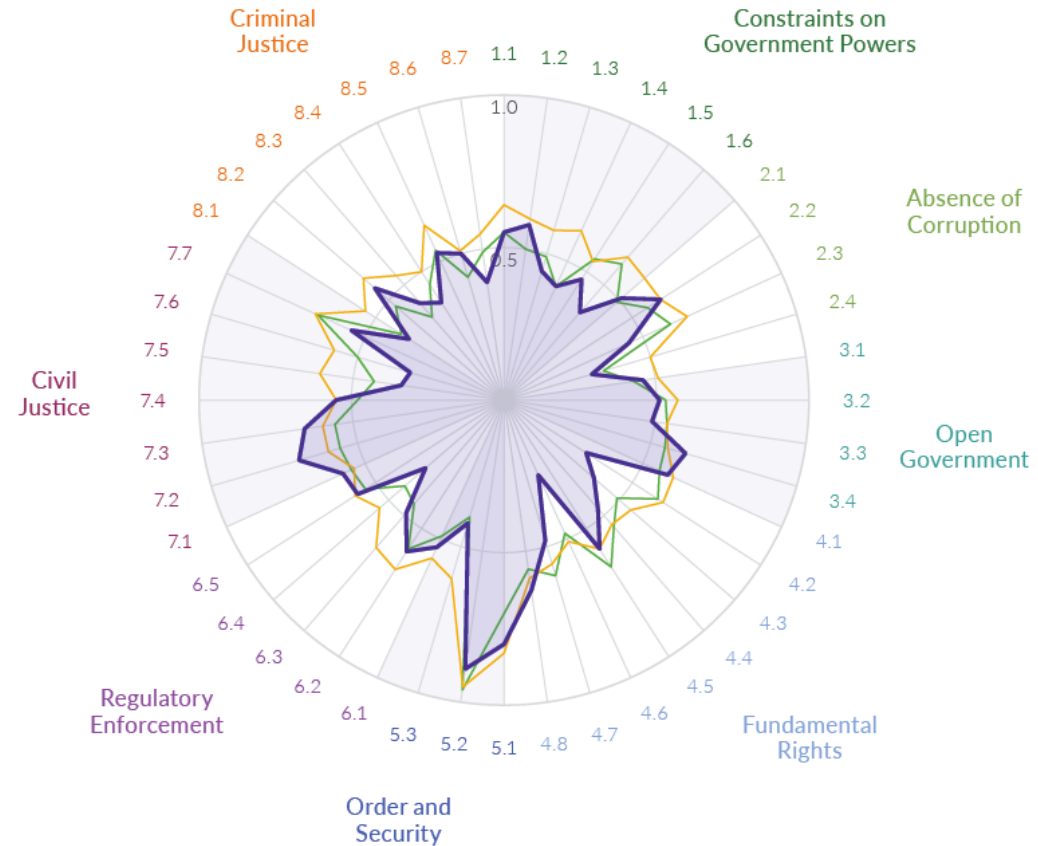


# Thailand

Region: East Asia & Pacific  
Income Group: Upper Middle Income

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

	Factor Trend	Factor Score	Regional Rank	Income Rank	Global Rank
 Constraints on Government Powers	—	0.47	13/15	24/37	82/113
 Absence of Corruption	▼	0.47	10/15	21/37	61/113
 Open Government	—	0.52	8/15	18/37	57/113
 Fundamental Rights	—	0.47	11/15	30/37	88/113
 Order & Security	—	0.70	13/15	19/37	64/113
 Regulatory Enforcement	—	0.50	9/15	17/37	56/113
 Civil Justice	▲	0.53	9/15	20/37	59/113
 Criminal Justice	—	0.45	11/15	19/37	59/113



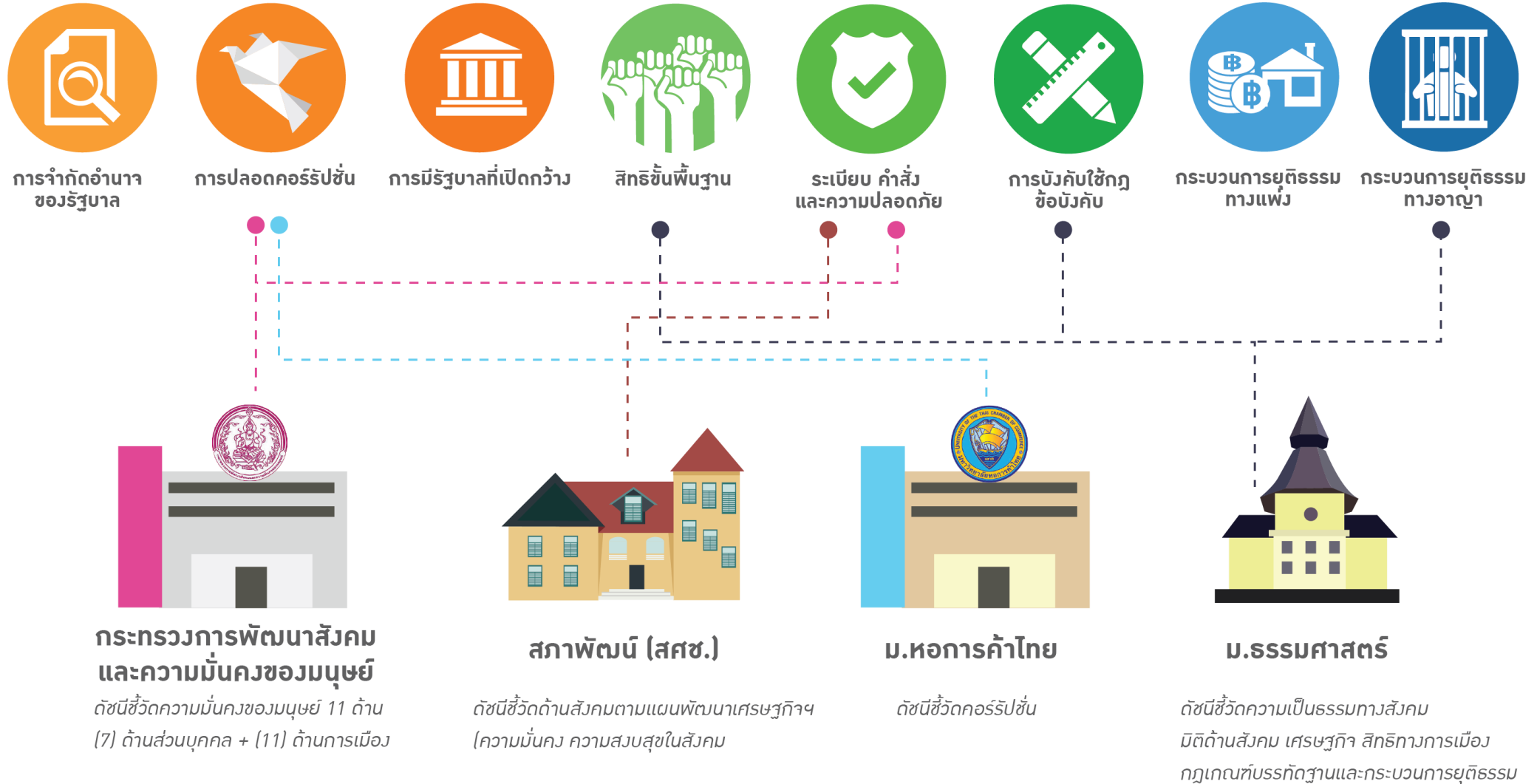
High Low Trending down Trending up

Thailand East Asia & Pacific Upper Middle Income

SOURCE: WJP Report, 2016



# OTHER INDEX/INDICATORS CONDUCTED BY DOMESTIC INSTITUTES



SOURCE: TIJ-TDRI Research Project, 2016

# “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



The Bangkok Dialogue on the Rule of Law

15 November 2013

22<sup>nd</sup> CCPCJ (UN Commission on Crime Prevention and Criminal Justice)

22-26 April 2013

Asia and Pacific Regional Preparatory Meeting for 13th Crime Congress

22-24 January 2014

8<sup>th</sup> Session of the Open Working Group on Sustainable Development Goals

8 February 2014

23<sup>rd</sup> CCPCJ (UN Commission on Crime Prevention and Criminal Justice)

12-16 May 2014

13<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice

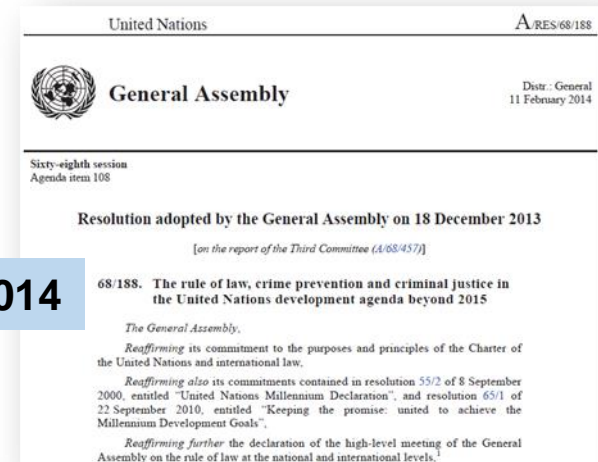
12-19 April 2015

AsianSIL Inter-Sessional Regional Conference 2015

4-5 June 2015

Resolution adopted by the General Assembly

25 September 2015





# 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

**16 PEACE AND JUSTICE STRONG INSTITUTIONS**



Peaceful and stable societies with strong public institutions are conducive to sustained human health.

- 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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#### Pre-session 1: 1 Dec 2016

Dr. Kittipong Kittayarak  
RoLD Program Introduction

Mr. Nicholas Booth (UNDP)  
Sustainable Development Goals (SDGs) and the Rule of Law

#### Pre-session 2: 8 Dec 2016

Dr. Surakiart Sathirathai  
The Rule of Law in International Framework: Regional Experience

#### Pre-session 3: 15 Dec 2016

Benjamin Smith (UNODC)  
Role of UNODC and SDG Goal 16  
UN Crime Congress  
Crime and Sustainable Development  
Deanna Davy (UNODC)  
UNODC study on human trafficking from Cambodia, Lao PDR and Myanmar to Thailand

Dr. Kittipong Kittayarak and Project Manager  
Preparation for TIJ Workshop for Emerging Leaders on the Rule of Law and Policy

**6-11 Jan 2017 : TIJ Workshop for Emerging Leaders on the Rule of Law and Policy**





# ROLD

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“ประเด็นความเชื่อมโยงระหว่าง  
หลักนิติธรรมและการพัฒนานี้  
มีลักษณะเป็นสหสาขาวิชา  
โดยต้องอาศัยมุมมองจาก  
หลากหลายสาขาวิชาชีพ ไม่ใช่  
แต่เพียงมุมมองด้านกฎหมาย”

คำกล่าวพิธีเปิด  
ดร.กิตติพงษ์ กิตยารักษ์  
ผู้อำนวยการสถาบันเพื่อการยุติธรรมแห่งประเทศไทย

การประชุมวิชาการฯ ว่าด้วยหลักนิติธรรมกับการพัฒนาที่ยั่งยืน “บทบาทการส่งเสริมหลักนิติธรรมอย่างบูรณาการเพื่อขับเคลื่อนการพัฒนายั่งยืน ค.ศ. 2030” | 11 Jan 2017



“ For every legal reform,  
the development question is;  
will the proposed legal reallocation  
generates development alongside  
the losers it leaves in its wake?”

Dr. David Kennedy  
Director of the Institute for Global Law and Policy  
Harvard Law School

TIJ PUBLIC FORUM ON THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT | 11 Jan 2017





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Opening Ceremony Presided by HRH Princess Bajrakitiyabha Mahidol, The UNODC Regional Goodwill Ambassador on the Rule of Law

**Session 1: 16 Feb 2017**

Topic: Orientation and Introduction to the Rule of Law and Its Pathway to Sustainable Development Rule of Law in International Context

**Session 2: 23 Feb 2017**

Rule of Law and Private Sector #1

**Session 3: 2 March 2017**

Rule of Law and Private Sector #2

**Session 4: 3-5 March 2017**

*RoLD Field Trip on Social Enterprise, Khao Yai*

**Session 5: 9 March 2017**

Rule of Law and Governance

**Session 6: 23 March 2017**

Rule of Law and Equality, Social Justice, and Environmental Protection

**Session 7: 31 March – 4 April 2017**

*RoLD Field Trip on Rule of Law and Criminal Justice Reform, Japan*



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**Session 8: 20 April 2017**

Rule of Law and Democracy #1

**Session 9: 27 April 2017**

Rule of Law and Democracy #2

**Session 10: 4 May 2017**

Rule of Law Promotion #1

**Session 11: 11 May 2017**

Rule of Law Promotion #2

**Session 12: 18 May 2017**

Group Discussion and Preparation for the RoLD Public Forum #1

**Session 13: 25 May 2017**

Group Discussion and Preparation for the RoLD Public Forum #2

**Session 14: 1 June 2017**

Group Discussion and Preparation for the RoLD Public Forum #3

**Session 15: June 2017**

The RoLD Public Forum Closing Ceremony & Presentation of the Certificate





# 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%)	• Public sector	28 (60%)	From public sector	
• Female	18 (38%)	• Private sector	9 (19%)	• Justice system	10
		• Social/Press	10 (21%)	• Policy/Regulator/ State Enterprise/ Academic	8





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**THANK YOU**

