

Measuring and Analyzing the Rule of Law: A Practical Guide

Key Take-Aways

- This is a practical guide to measuring rule of law and using V-Dem indices to track developments globally, regionally, as well as comparing countries over time.
- Rule of law's traditional legal-procedural understanding emphasizes three overarching notions: *legality, procedure, and institutional requisites*.
- Core substantive attributes of rule of law anchored in international treaties include protection of civil rights: property rights, freedom of thought, religion, movement, freedom from forced labor, and non-discrimination.
- The V-Dem Regional Comparison online tool is an easy and quick way to assess changes in Rule of Law – both its core legal-procedural and its more substantive attributes – across countries and time, for policy and programming purposes.

This policy brief is a practical guide to measuring rule of law and using V-Dem indices to track developments globally, regionally, as well as comparing countries over time.

It first, reasons on the concept of rule of law in international treaties, and the academic literature, with a delineation of both its narrow legal-procedural core and the broader substantive elements.

Second, it offers a systematic operationalization of the rule of law with measures of both narrower and broader aspects, using easily accessible V-Dem data and online tools. This should make it straightforward for policy-practitioners to use.

Finally, the brief illustrates the usefulness of the V-Dem rule of law measures by outlining global and some regional trends along with an illustration of how to compare countries over time, identifying which aspects of rule of law are currently being undermined in different parts of the world.

The data are directly available for online graphing by country or region using V-Dem's tools. Thus, policy-practitioners can track the developments of the rule of law, as well as of its specific aspects, in almost any country in the world depending on need, using this policy brief as a practical guide.

1. Rule of Law in International Treaties

The concept of 'The Rule of Law' is central in academic and policy thinking of modern societies (Tamanaha 2004). The international community committed to the rule of law in various treaties. For example, the rule of law is enshrined in the Preamble to the United Nations (UN) Universal Declaration of Human Rights (1948); the European

Union (EU) is founded on the values of respect for the rule of law and for the rights and freedoms of all persons (Treaty on European Union, Art. 2); pledges to uphold the rule of law are found in the Constitutive Act of the African Union (AU) (2001); and the Association of Southeast Asian Nations (ASEAN) Charter (2008) emphasizes the importance of strengthening the rule of law and protecting human rights and freedoms.

The rule of law is currently at the top of the agendas of many international organizations. Among others, for the UN, the rule of law is the foundation of and precondition for peaceful societies (UN 2024a), and a fundamental element of the Sustainable Development Goal (SDG) 16 on Peace, Justice, and Strong Institutions (UN 2024b). The concept is a core value and a high policy priority for the EU (EC 2024a) as well as for Africa's strategic policy framework Agenda 2063 (AU 2015).

Albeit the centrality and importance of the concept, there are some variations of its definition (Trebilcock & Daniels 2009). Conceptualizations incorporate partly different, but also overlapping, elements (Møller & Skaaning 2012).

The definitions can be broadly divided into two categories: more narrow definitions focusing on legal-procedural institutional aspects; and substantive delineations broadening the scope to substantive attributes such as human rights protections (Tommasoli 2012).

This diversity complicates policy making. A comprehensive conceptual approach and systematic operationalization with accessible measures, would enhance comparisons of existing interventions, and in turn the design of future evidence-based rule of law strategies and programs.

2. A Comprehensive Rule of Law

2.1. Legal-Procedural Attributes

The rule of law is typically conceptualized as *governing by law*: Exercise of political power where public officials govern within and according to the constraints of the law. It is meant to guarantee the protection of citizens from arbitrary decision-making by state officials and prevent deviations from constitutional and institutional provisions and rules (Waldron 2008), including keeping also leaders and elites within the bounds of the law.

The governing through law tradition places central emphasis on three overarching notions: *legality*, *procedure*, and *institutional requisites*. **Legality** refers to that laws should be general, public, prospective, clear, predictable, and reliable in their administration (Waldron 2008; Sarsfield 2020; Fuller 1969). **Procedure** refers to the adherence to impartiality and fairness in the application of the law, including access to justice for both men and women. These legal and procedural requisites are often considered together and suggest that the existence of general rules is important, but that to guarantee a just outcome, they should be accompanied by impartial administration of the laws, due process, legal reasoning and argumentation (Nardulli et al. 2013; Waldron 2008).

Institutional requisites include the *independence of the judiciary* (Chavez 2008), the presence of *checks and balances* (Møller & Skaaning 2012), the *separation of powers* (Maravall & Przeworski 2003) and *absence of corruption* in the judiciary, the executive, and the public sector/government agencies (Mijatović, 2021). The rationale is that authorities should be constrained to ensure that legality and procedures are upheld.

2.2. Substantive Attributes

Substantive concepts of the rule of law mainly relate to the enforcement of some **fundamental human rights** (Belton 2005; Bingham 2010). A typical reason cited to argue for their inclusion is that Nazi Germany or apartheid South Africa would have fulfilled most of the legal-procedural attributes while seriously violating fundamental human rights (Belton 2005).

Some go beyond the human rights approach to argue that also democratic consent should be a basic principle of the rule of law (Habermas 1996; Tamanaha 2004; Møller & Skaaning 2012). However, that opens up for a paradoxical and unfortunate consequence: The people's sovereignty expressed through democratic processes can legitimately do away with even the core legal-procedural attributes of rule of law, in the name of

rule of law. The vast majority of the literature therefore dismisses this reasoning.

Many international organizations adopt substantive definitions and focus on civil human rights, although some also refer to democratic procedures. The UN defines the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, *and which are consistent with international human rights norms and standards*” (UN 2024a, italics added).

The Organization for Security and Co-operation in Europe (OSCE), in the 1990 Copenhagen document, states that “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice *based on the recognition and full acceptance of the supreme value of the human personality* and guaranteed by institutions providing a framework for its fullest expression” (OSCE 1990, italics added).

For the Organization for Economic Co-operation and Development (OECD), “the rule of law is composed of the following separate fundamental elements, which must advance together: [1] The existence of basic rules and values that people share and by which they agree to be bound (constitutionalism). [2] The law must govern the government. [3] An independent and impartial judiciary interprets the law. [4] Those who administer the law act consistently, *without unfair discrimination*. [5] The law is transparent and accessible to all, especially the vulnerable in most need of its protection. [6] Application of the law is efficient and timely. [7] *The law protects rights, especially human rights*. [8] The law can be changed by an established process that is itself transparent, accountable and democratic” (Council of Europe 2011, italics added).

The EU states that in a society governed by the rule of law, “all public powers always act within the constraints set out by law, *in accordance with the values of democracy and fundamental rights*, and under the control of independent and impartial courts” (EC 2024b, italics added).

The above definitions as well as the academic discussion on the topic, present a somewhat more consistent and universally accepted framework for the legal-procedural attributes defining rule of law, than for the substantive requisites. A useful approach is to follow Stein's (2019) suggestion to draw on milestone human rights treaties like the 1948 Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil

and Political Rights (ICCPR) when settling on the substantive dimension.

Rights specified in these treaties relating to the substantive attributes of the rule of law, include equality of all persons and protections against discrimination (Article 7 of UDHR and 26 of ICCPR), freedom of movement that includes both domestic movement and rights to move outside the country (Article 13 of UDHR and 12 of ICCPR), the right to property (Article 17 of UDHR), freedom of thought and religion (Article 18 of UDHR and ICCPR), freedom from forced labor (Article 8 of ICCPR).

3. Operationalization

3.1. Legal-Procedural Attributes

The legal-procedural rule of law concept's three attributes are fairly comprehensively measured by the **V-Dem Rule of Law Index** (v2x_rule) by the indicators in the index together:

Legality is measured by:

- executive respects constitution (v2exrescon)
- compliance with high court (v2juhccomp)
- compliance with judiciary (v2jucomp), and
- transparent laws with predictable enforcement (v2cltrmslw).

Procedural criteria are measured by:

- rigorous and impartial public administration (v2clrspect)
- access to justice for men (v2clacjstm), and
- access to justice for women (v2clacjstw).

Institutional requisites are captured by:

- high court independence (v2juhcind)
- lower court independence (v2juncind)
- judicial accountability (v2juacct)
- executive bribery and corrupt exchanges (v2exbribe)
- executive embezzlement and theft (v2exembez)
- judicial corruption decision (v2juccorrdc)
- public sector corrupt exchanges (v2excrptps), and
- public sector theft (v2exthftps)

3.2. Substantive Attributes

Out of the fundamental rights provided by the UDHR and ICCPR, the following are included in the substantive conceptualization of the rule of law: securement of property rights and civil rights of freedom of thought, religion, movement, freedom from forced labor, and equality/non-discrimination. The V-Dem dataset captures these rights in the following two indices:

Private Civil Liberties Index (v2x_clpriv) measuring to what extent these – freedom of movement, freedom of religion, freedom from

forced labor, and property rights – exist. The index is based on the indicators:

- property rights for men/women (v2clprptym, v2clprptyw)
- freedom from forced labor for men/women (v2clslavem v2clslavew)
- freedom of religion (v2clrelig)
- religious organization repression (v2csrlgprep)
- freedom of foreign movement (v2clfmov), and
- freedom of domestic movement for men/women (v2cldmovm, v2cldmovw)

The V-Dem Equal Protection Index

(v2xeg_eqprotec) measures how equal the protection of rights and freedoms across social groups is within each country, regardless of the level of protection. It is formed by three indicators:

- social class equality in respect for civil liberties (v2clacjust)
- social group equality in respect for civil liberties (v2clsocgrp), and
- percent of population with weaker civil liberties (v2clslnpct)

4. Illustrating Global Patterns

How does respect for the rule of law look like in the world today? In which parts of the world is the rule of law being undermined, and which aspects of it need more attention and effort from the international community to protect it? Here we illustrate the usefulness of the operationalization above, and of the V-Dem data and online graphing tools, by outlining global and regional trends of the state of the rule of law and its changes in different parts of the world.

Key Policy Implications:

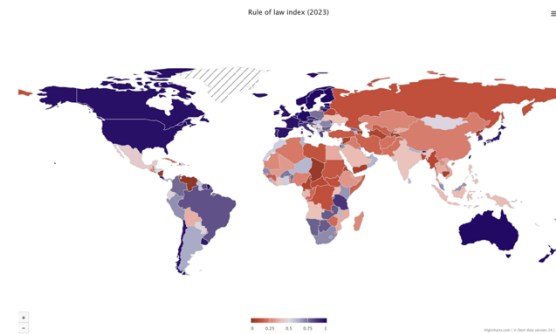
- **The pattern overall is very clear: Rule of law's legal-procedural core deteriorates most obviously in countries where governments undermine or even derail democracy.**
- **The opposite is true for countries where governments improve on democracy: rule of law is then also strengthened.**
- **It is highly unlikely for a country to achieve high levels of legal-procedural rule of law without respect for human rights.**

4.1. State of Legal-Procedural Rule of Law

How does the rule of law look like in 2023 in terms of its legal-procedural core? Figure 1 shows the distribution of scores around the world for the Rule of Law Index in 2023.

Countries shaded in red record lower scores, while those in blue have higher values. Lower levels of the rule of law in 2023 are predominant in the former

FIGURE 1. RULE OF LAW INDEX, 2023



Source: V-Dem Data v14.

USSR, Africa, and Asia. China, India, Nigeria, and Russia, are four of the most populous countries where the rule of law is clearly not present to any substantial degree.

Australia and New Zealand, South and North America, and most of Europe are the regions where the provision of legal-procedural rule of law is acceptable to very good.

Zooming in into how the legal-procedural rule of law develops in specific countries in the world, Figure 2 displays the change over the last 20 years, between 2003 and 2023, using V-Dem's regional comparison online tool that is easily accessible to all.

The graph simply compares the level of legal-procedural rule of law in 2003 with that in 2023. The graphing tool can also be used for countries in one (or several) specific region(s) only.

Countries on or very close to the line remain at the same or close to the same levels in the two selected years and are marked grey.

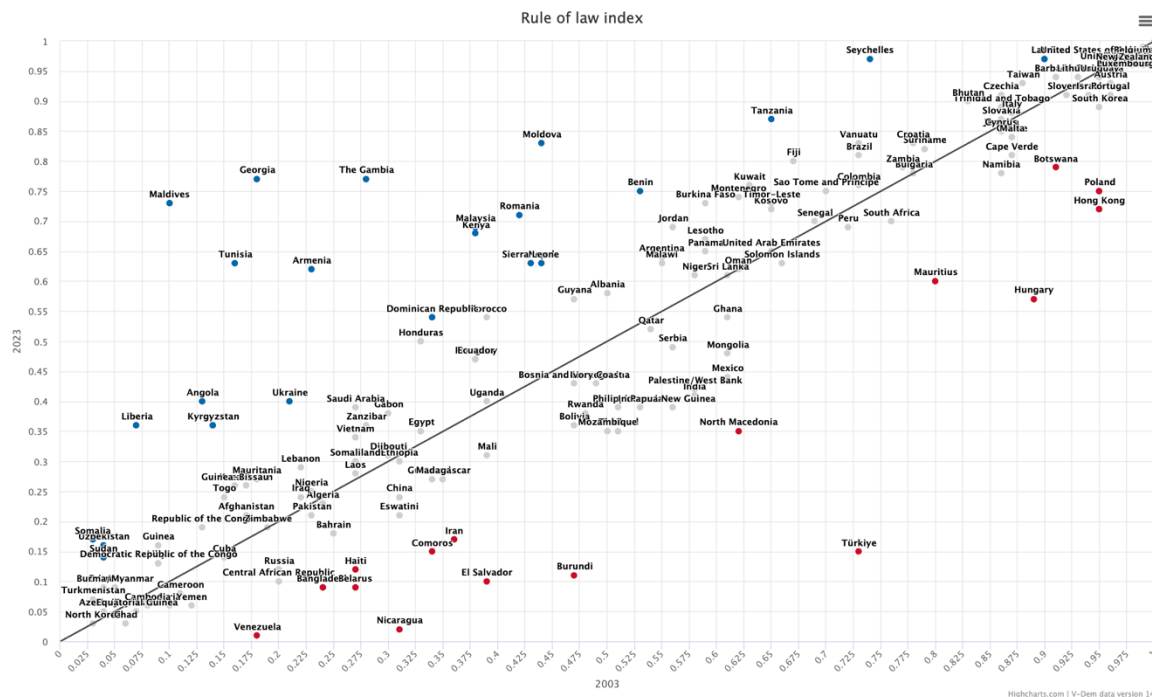
Some countries cluster in the upper-right corner making country names hard to read. That is unfortunate but difficult to solve in this type of online tool.

Countries above the line have experienced positive changes; substantial and statistically significant positive changes are indicated by blue dots.

Starting at very low levels of legal-procedural rule of law in 2003 but registering significant improvements over the past 20 years, are countries like Kyrgyzstan, Liberia, and Ukraine. Maldives and Georgia started at very low levels but improved to relatively high levels.

Starting at mediocre levels but improving to relatively high levels are, for example, Benin, Moldova, Romania, and The Gambia. Seychelles were at high levels already in 2003 but has improved further.

FIGURE 2. RULE OF LAW INDEX, 2003 vs. 2023



Source: V-Dem Data v14. Changes are marked blue/red if they are significant (confidence intervals do not overlap) and substantive (greater than 0.05 for indices and 0.5 for indicators).

Countries deteriorating in the rule of law over the past 20 years are below the line; substantial and statistically significant deteriorations are marked in red.

Among those starting at already low levels and becoming further worse, are Haiti, Nicaragua, and Venezuela.

The largest declines (countries furthest from the line) are observed in Burundi, El Salvador, Hungary, North Macedonia, and Türkiye.

Among the ones starting out with among the best rule of law but deteriorating significantly since 2003 are Botswana, Hong Kong, Poland, and again, Hungary.

The pattern overall is very clear:

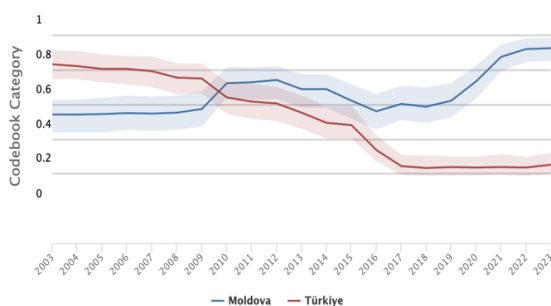
Rule of law's legal-procedural core deteriorate most obviously in countries where governments undermine or even derail democracy.

The opposite is true for countries where governments improve on democracy: rule of law is then also strengthened.

The pattern transpires three regions in the world – Europe, Africa, and the Americas. They are declining the most in the world, regarding the rule of law, followed by the MENA and Asia.

The V-Dem online “Variable Graphing” tool can then be used to quickly depict the development of the Rule of Law index over time in individual countries, as exemplified in Figure 3.

FIGURE 3. RULE OF LAW INDEX, Moldova and Türkiye, 2003-2023



Source: V-Dem Data v14.

In Moldova (blue line), the procedural-legal rule of law index has recently reached high levels, whereas in Türkiye (red line), it is close to the bottom, since around 2017.

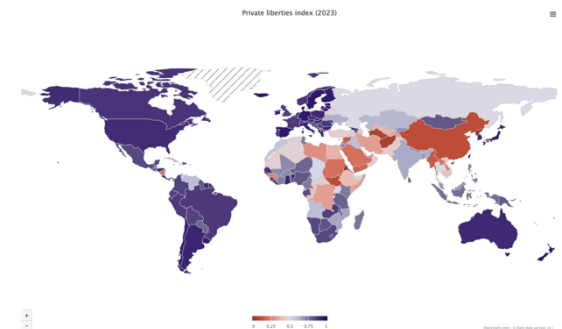
4.2. Substantive Attributes of Rule of Law

Moving on to look at the substantive attributes of the rule of law, we are focusing on whether they follow a similar pattern as the legal-procedural rule of law core, or not.

4.2.1. Respect for Private Civil Liberties

Figure 4 shows the state of the Private Civil Liberties Index in 2023. Comparing the pattern to Figure 1, it illustrates that respect for human rights in the area of civil liberties differs from the legal-procedural rule of law measure in some respects.

FIGURE 4. PRIVATE CIVIL LIBERTIES INDEX, 2023



Source: V-Dem Data v14.

While the high levels for most of Europe remain, Eastern Europe and most notably Russia, as well as India and some parts of Africa, score much higher on the Civil Liberties Index than on the Rule of Law Index.

Critically, this comparison illustrates an important sequel. Almost none of the countries shows the opposite pattern.

It suggests that it is *highly unlikely for a country to achieve high levels of legal-procedural rule of law without respect for human rights*. This should be directly relevant to strategies for strengthening of rule of law in programming.

Figure 5 compares the 2003 and the 2023 levels of the Private Civil Liberties Index. Similar to Figure 2, this figure is created using V-Dem’s regional comparison online graphing tool.

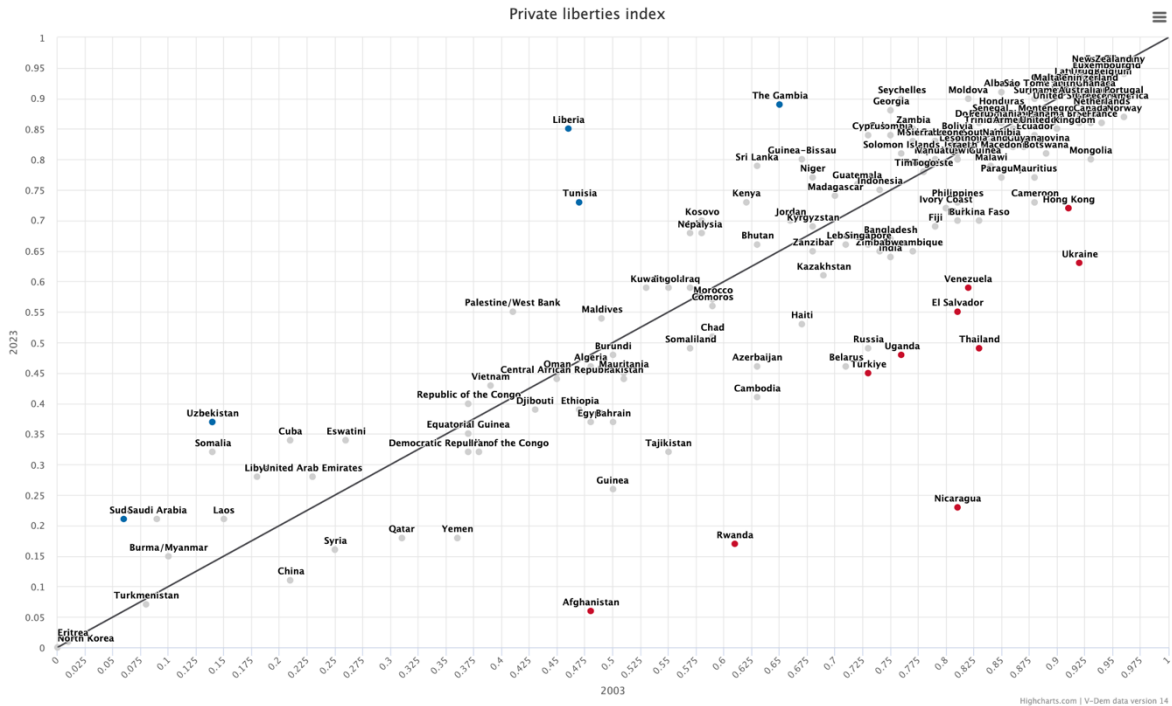
Countries on or very close to the line remain at the same levels between 2003 and 2023 and are marked in grey.

Countries that are above the line and are marked in blue had significant positive developments over the last 20 years, while countries that are below the line and are marked in red – negative.

Among the worst offenders of private civil liberties that achieved some improvements are Sudan and Uzbekistan, while Liberia and The Gambia made much greater gains to relatively high levels.

Those that had mediocre levels of respect for private civil liberties but where the situation has become dire during the last 20 years are Afghanistan, Nicaragua, and Rwanda.

FIGURE 5. PRIVATE CIVIL LIBERTIES INDEX, 2003 vs. 2023



Source: V-Dem Data v14. Changes are marked blue/red if they are significant (confidence intervals do not overlap) and substantive (greater than 0.05 for indices and 0.5 for indicators)

In countries like El Salvador, Thailand, Türkiye, and Uganda the situation has also deteriorated significantly but not to the same extent.

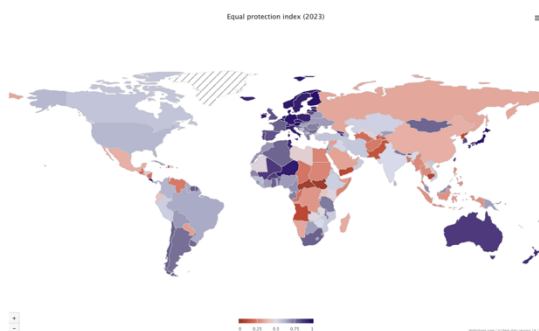
The majority of countries in Figure 5 remain in the upper right corner, illustrating that many countries protected many private civil liberties already in 2003, so further improvements were hardly possible, due to the ceiling effect.

4.2.2 Equal Protection of Rights and Freedoms

Figure 6 shows the state of the societal equality in terms of protection of civil liberties in 2023.

As with the private civil liberties, there are some differences between the global pattern for the Equal Protection Index in Figure 6 and the pattern for the Rule of Law Index in Figure 1.

FIGURE 6. EQUAL PROTECTION INDEX, 2023



Source: V-Dem Data v14.

The Americas, particularly the US and Canada, provide significantly lower levels of substantive rule of law in terms of equality of civil liberties than legal-procedural aspects.

The Maghrib and Sahel regions, by contrast, perform better on providing equality of civil rights' protection, compared to the legal-procedural rule of law. Yet, this equality is of a particular kind. Very little rule of law is provided, but equally little for most people.

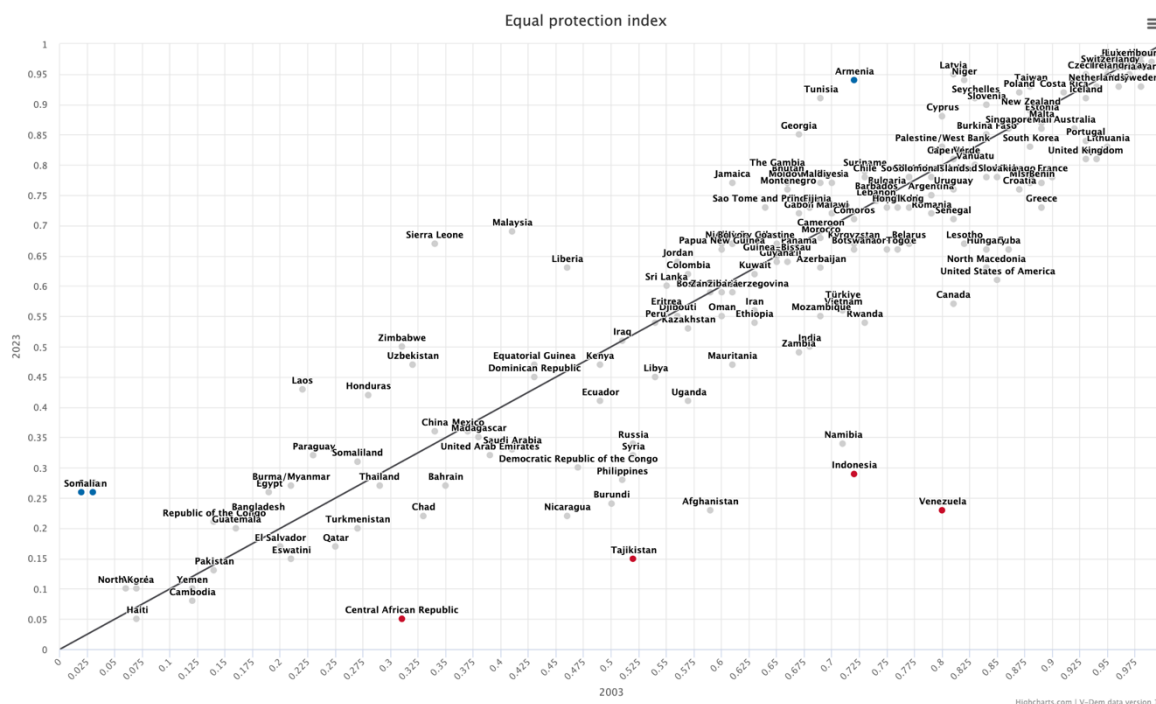
Figure 7 compares the state of the Equal Protection Index across all countries in the world in 2003 with the level in 2023, using V-Dem's regional comparison online graphing tool.

The vast majority of countries are marked in grey, which is indicating that the differences in levels on the Equal Protection Index in 2003 and 2023, are not statistically significant.

A relatively high number of countries are marked grey even if the dots are somewhat distant from the diagonal line. This means that the estimation of this index is less precise than of the others. There is simply more uncertainty and "noise" in this measure, which signifies that it is somewhat difficult to discern and get accurate data on societal equality within countries.

What we can say is that albeit starting from varying levels ranging from low to medium-high, Central

FIGURE 7. EQUAL PROTECTION INDEX, 2003 vs. 2023



Source: V-Dem Data v14. Changes are marked blue/red if they are significant (confidence intervals do not overlap) and substantive (greater than 0.05 for indices and 0.5 for indicators).

African Republic, Indonesia, Tajikistan, and Venezuela have deteriorated substantially and significantly in terms of societal equality of civil liberties during the last 20 years and are all now at low to very low levels.

Armenia improved from already relatively high levels to very high, while Somalia and Sudan were close to zero in 2003 and improved to low levels in 2023.

4.3. Practical Guide

The traditional legal-procedural understanding of rule of law has a strong foundation in both the international community and in the academic literature. Its three core aspects of legality, procedural impartiality, and institutional requisites can be relatively comprehensively measured by the V-Dem Rule of Law Index.

A core of attributes of a broader substantive understanding of rule of law, also finds support in the scholarly and policy-practitioners' community and has backing in international conventions such as the UNHR and the ICCPR.

The two key aspects of private civil liberties, and the principle of non-discrimination (or societal equality in provision of civil liberties) are adequately measured by the V-Dem indices: the Private Civil Liberties Index, and the Equal Protection Index.

The empirical illustrations provided in this brief seek to demonstrate that policy-practitioners can easily access these indices and conduct empirical analyses using the V-Dem online graphing tools. By doing so, one can draw valuable conclusions with implications for development of policies and strategies for programming. This brief seeks to serve as an illustrative guide for such endeavors.

Thus, it is the hope that policy-practitioners can track the developments of the rule of law themselves, including the state and the development of its specific aspects, in almost any country in the world using this policy brief as a practical guide.

The brief seeks to illustrate the usefulness of the V-Dem rule of law measures by outlining global and country trends between 2003 and 2023.

Differences between the patterns across the three indices showcase that looking at the legal-procedural rule of law only – without taking into consideration substantive aspects of human rights protections – does not give the full picture regarding states' extent of rule of law.

We hope that these illustrations also help the international community and those working with promotion and protection of the rule of law navigate the different aspects of the concept, and direct policy priorities and efforts as well as design better rule of law programs and interventions.

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ABOUT V-DEM INSTITUTE

Varieties of Democracy (V-Dem) is a unique approach to conceptualization and measurement of democracy. The headquarters – the V-Dem Institute – is based at the University of Gothenburg with 14 staff. The project includes a worldwide team with 5 Principal Investigators, 22 Project Managers, 33 Regional Managers, 134 Country Coordinators, Research Assistants, and more than 4,000 Country Experts. The V-Dem project is one of the largest ever social science research-oriented data collection programs.



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