

Lesley D. Junlakan, Yossawan Boriboonthana,
and Assanee Sangkhanate

20.1 Introduction

Thailand is unique amongst its Southeast Asian neighbors in never having been colonized and in remaining to this day a constitutional monarchy. A fledgling democracy prone to political instability and with a long tradition of resorting to coup d'état to resolve political stalemate or tension, over the past several decades the nation has witnessed enormous social and economic change. All these and other factors have contributed to the character of the country's criminal justice system as it is today, including the existence of the right of prisoners to claim and benefit from royal pardons and fluctuations in successive governments' penal policy.

Working within the acknowledged limitations imposed by flaws in the recording and maintaining of statistics in Thailand, the chapter aims to highlight the country's current crime trends, punitive measures, and criminal justice reform. A particular focus is on the links—or discrepancies—between

penal policy and practice, with special attention being paid to the drug issue, including related legislation and the distinction that is now made between drug users as opposed to drug producers/traffickers. It is also demonstrated how the hard line approach to the latter has affected the caseload of core criminal justice agencies, in particular the Department of Corrections and the Department of Probation.

In drawing attention to and being objectively critical of several aspects of the Thai criminal justice system, including the weaknesses in databases and the policy/practice dichotomy referred to above, the authors hope to make a small contribution to instilling awareness of the constant need for improvements in the system in order to slowly bring it on a par with international norms and standards.

20.2 Current Crime Situation

The primary objectives of this section are to demonstrate the *types* of crime which Thailand has faced in recent years through the workload data of relevant criminal justice system agencies. This sets the foundation for later discussion of the reform of Thailand's criminal policy and the criminal justice system. At the outset it has to be stated that a holistic approach has not yet been applied to the management of crime-related data in Thailand. Therefore, currently the best approach that can be taken is to rely on individual agencies' data. As the authors are well aware that dealing with secondary data might have a negative

L.D. Junlakan
Consultant, Chiang Mai, Thailand
e-mail: green_jun@yahoo.co.uk

Y. Boriboonthana, Ph.D.
Department of Probation, Research and Development
Center, Ministry of Justice, Bangkok, Thailand
e-mail: yossawanb@hotmail.com

A. Sangkhanate, Ph.D. (✉)
Justice Research and Development Institute,
Office of Justice Affairs, Ministry of Justice,
Bangkok, Thailand
e-mail: assanee45@hotmail.com

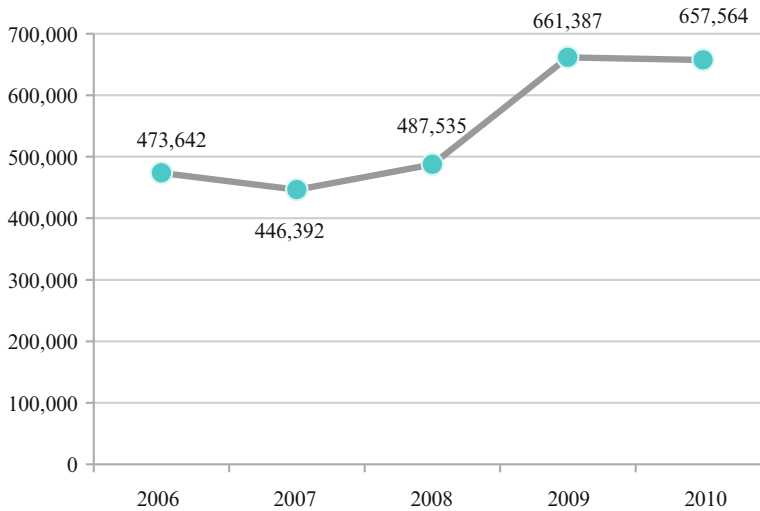


Fig. 20.1 Number of crimes reported to the police, 2006–2010. Source: Office of Justice Affairs (2011)

impact on the validity and reliability of this paper, a triangulation approach was used during the analysis in order to maintain a balance between data from different sources: namely, police records, prosecutors’ caseloads, and the judiciary’s statistics.

Although Thailand does not have a “uniform crime report”¹ as such issued by law enforcement agencies, the statistics presented by the Royal Thai Police can provide general data on crimes reported to the authority. Generally speaking, since 2006 the number of crimes reported to the police has gradually climbed (Fig. 20.1). In detail, 473,672 cases were received by the police in 2006, with the number slightly decreasing to 446,392 in 2007 before steadily rising to 487,535 and 661,387 in 2008 and 2009, respectively. The authors believe that the pronounced increase between 2008 and 2009 stems from the reintroduction of the “get tough” on drugs policy, initiated originally in 2002 (see also below). The

Table 20.1 Violent crimes reported to the police in 2010

Offense	Number of reported cases
Murder	3,658
Attempted murder	4,976
Manslaughter	265
Assault	16,805
Rape	4,468
Robbery	1,691

Source: Office of Justice Affairs (2011)

latest figures show another slight decline to 657,584 in 2010. Thus, the annual average number of crime reports over this 5-year period is 545,304. It is worth noting that these statistics do not include cases which victims decided not to report to police. (This issue is discussed further below.)

The most commonly reported violent crime is assault, followed by attempted murder and rape (Table 20.1). A fairly recent definition change in violent crime involves rape: in 2007, the Thai Criminal Code was amended to expand the definition to cover all types of rape, including marital rape; rape by/of either sex; and all types of sexual penetration.

In addition, Fig. 20.2 indicates the top five major offenses resulting in arrests between

¹The Uniform Crime Report (UCR) has been under the supervision of the Federal Bureau of Investigation since 1930. The report aims to produce reliable and uniform crime statistics from law enforcement agencies across the USA. See <http://www.fbi.gov/about-us/cjis/ucr/ucr>.

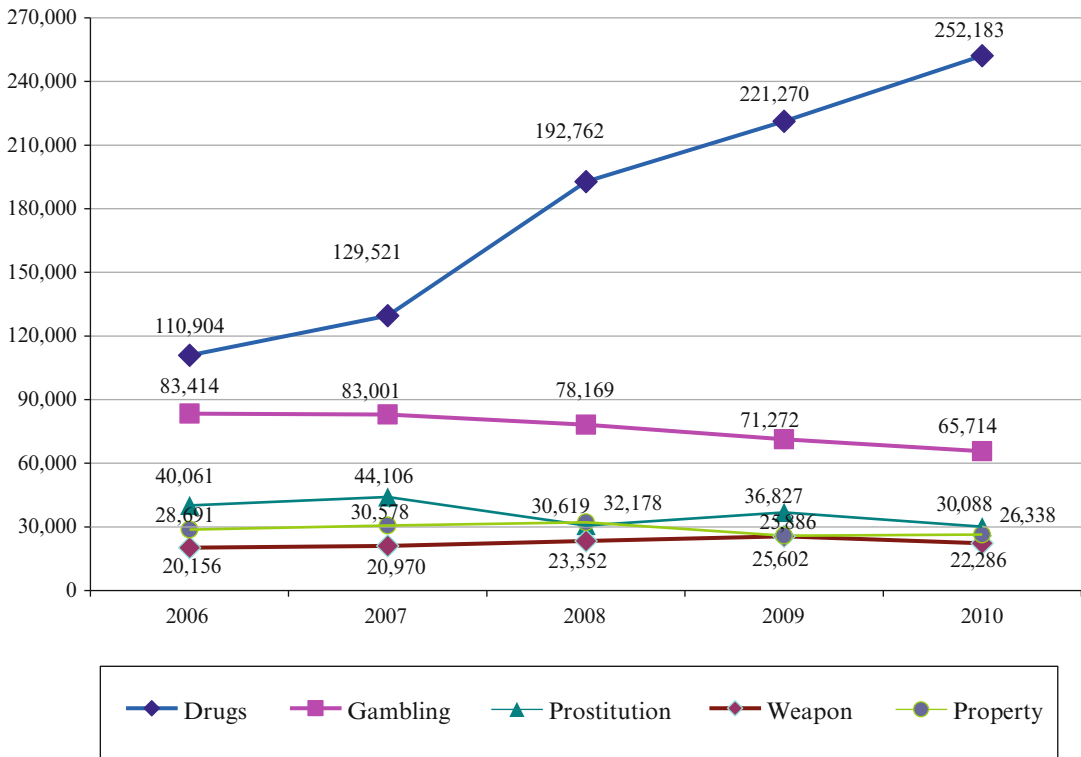


Fig. 20.2 Crimes reported to the police and resulting in arrests, 2006–2010. Source: Office of Justice Affairs (2011)

2006 and 2010. The numbers show that arrests on drug-related offenses rose sharply over the period while the numbers of other orthodox offenses, except property crime, decreased. Arrests in property crimes slightly increased in 2010. This was consistent with the recent victim survey which revealed that the majority of the respondents were victims of property crime (see the discussion on “dark figure” below). When specifically looking at the 2010 statistics, the number of drug arrests was as high as 252,183 cases, increasing from 2006 by almost 130%.

However, it would be wrong to assume that the increase in arrests on drug-related offenses was solely due to an increase in the abuse of *traditional* drugs (viz. heroin and cocaine): the criminalization of new substances, especially methamphetamine, together with recent governments’ strict policies on drug suppression are

also significant factors which led to this sharp rise.² Evidence shows that considerable resources have been allocated to ensure the success of such policies (Chokprajakchat et al. 2010). Relevant law enforcement agencies, in particular the Royal Thai Police and the Office of the Narcotics Control Board, have been urged to play a more proactive role in combating the supply of drugs whilst simultaneously reducing the demand. The present government of Yingluck Shinawatra has even made the drug problem a “*national agenda*,”

²The Nacotic Addict Rehabilitation Act in a way “decriminalized” the act of drug abuses and treated drug users as “patients” who needed treatment rather than “criminals” who deserved punishment. Therefore, the rise in drug cases presented here was mostly related to the production, distribution, export, and import of the illegal drugs or substances.

classifying it as one of the “Urgent Policies to be Implemented in the First Year.”³ Evidently, therefore, a crime control approach prevails when it comes to dealing with drugs in Thailand.

Gambling⁴ and prostitution,⁵ the second and third most common crimes resulting in arrests, respectively, should also be highlighted here. Although many countries have already decriminalized gambling and prostitution, Thailand continues to regard them as crimes in need of punishment, possibly due to the fact that Thailand is a predominantly Buddhist country.⁶ According

to Buddhism, there are six evil consequences for those who indulge in gambling. All forms of gambling, therefore, are prohibited not only on religious and moral grounds but also under the nation’s legislation and criminal policy. In recent years there have been attempts to decriminalize gambling on the basis of enhancing the national revenue through the operation of casinos. However, advocates for this still have not succeeded in convincing the policy makers of the desirability of doing so, despite the fact that most of Thailand’s neighbors, including Cambodia, now benefit financially from casinos.

A similar approach has been adopted to the criminalization of prostitution. Although recognized in theory as a victimless crime, prostitution can lead to both the violation and exploitation of the rights of those forced into the sex industry. Again, Buddhism condemns prostitution, believing that it potentially provokes infidelity which runs counter to religious doctrine. Therefore, as a result of the strict policy on this agenda (Samran 2010) together with pressure from the public and both domestic and international media, the number of arrests in prostitution cases has remained in the top five since 2006.

The process for the passage of these and other cases through the Thai criminal justice system is relatively similar to that in other jurisdictions. That is, after the inquiry process by the police and the amassing of evidence, the case proceeds to the Office of the Attorney General (OAG). In 2010, 3,143,686 cases were handled by the OAG.⁷ Cases which, in the opinion of the public prosecutor, are supported by sufficient evidence and are capable of being proved beyond reasonable doubt will be indicted in the Court of First Instance. Table 20.2 demonstrates that the five most common types of cases prosecuted by the OAG very largely reflect the five most common causes of arrest as presented in Fig. 20.1, the main difference between the two statistics being that prostitution, which ranks 3rd in police

³ According to the Policy Statement of the Council of Ministers delivered by Prime Minister Yingluck Shinawatra to the National Assembly, 23 August 2011: “1. Urgent Policies to be Implemented in the First Year. 1.2 Prevention of and define solutions to drug problems as a “national agenda” by adhering to the rule of law to crack down on and penalize producers, dealers, influential persons and wrong doers by strictly enforcing laws; adhere to the principle that a drug addict is a patient who shall receive treatment to enable him/her to return to be a productive member of society; have a systematic mechanism to monitor and provide assistance; seriously expedite the prevention of drug problems by seeking proactive cooperation with foreign countries in controlling and seizing narcotic drugs, chemicals and materials used in the production of narcotic drugs smuggled into the country in an integrated and effective manner; and, prevent vulnerable groups and the general public from getting involved with narcotic drugs by harnessing all sectors of society to fight against narcotic drugs.” See The Secretariat of the Cabinet. (2011). Government’s Policy. http://www.cabinet.thaigov.go.th/eng/bb_main31.htm.

⁴ The principle law against gambling in Thailand is Gambling Act 1935. It, however, does not provide the exact definition of “gambling” but rather specifies the activities which can lead to “gambling,” i.e., lottery, Bingo, and billiard. It should be noted that the activities themselves are not “illegal” but the “intention” of the parties involved can be deemed as illegal. Basically, the law prohibits the act of betting or wagering for money on such activities.

⁵ According to the Prevention and Suppression of Prostitution Act 1996, “prostitution” is defined as “sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not.”

⁶ A census in 2005 (<http://www.onab.go.th>) revealed that there were 46,902,100 Buddhists in Thailand (or approximately 73% of the total population—the authors).

⁷ This figure includes both new cases and pending cases carried over from previous years. See <http://www.stat.go.th/stat/53/p-cri-.htm> for further details.

Table 20.2 Number of cases prosecuted by the OAG in 2010, ranked in descending order

Offense	Number of cases in 2010
Drugs	134,469
Gambling	64,762
Immigration ^a	31,926
Theft	29,805
Weapon	16,223

Source: Office of the Attorney General (2012). <http://www.stat.ago.go.th/stat/53/crime%2011.htm>

^aThese were offenses against Immigration Act, 1979 and the majority involved illegal entrance to the country and the use of false documents. Section 58 of the Act indicates that “any alien who has no lawful document for entering the Kingdom under Section 12 (1); or has no Residence Certificate under this Act; and also has no identification in accordance with the Law on Alien registration, is considered to have entered into the Kingdom in violation to this Act”

records, is replaced by immigration cases in the OAG’s statistics. It is a moot point as to where these prostitution cases have “disappeared” and available statistics have not enabled the authors to draw a definitive conclusion. However, opting for an alternative source of data has helped to identify a possible explanation: the key legislation concerning prostitution. Although efforts have been made by the authorities to effectively deal with the issue of human trafficking in Thailand, the specific laws against prostitution, one of the core “businesses” of human trafficking, and their enforcement are ineffective (Samran 2010). For example, according to the Prevention and Suppression of Prostitution Act 1996 (Articles 5–7), the commission of many of the prohibited acts can be settled out of court by the payment of a fine. The law also provides room for police discretion, e.g., in determining the acts of “communication,” “self-introduction,” and “invitation,” between the prostitutes and their customers. This, therefore, could result in many prostitution cases being dropped by the police when offenders pay the fine, with the result that prostitution does not figure among the five most common types of cases in the OAG’s statistics.

Lastly, an examination of the judiciary’s statistics reveals that in 2010 there were 544,258

Table 20.3 Number of cases admitted to the Court of First Instance in 2010, ranked in descending order

Offense	Number of cases in 2010
Drugs	160,478
Traffic	106,679
Gambling	63,228
Immigration	34,231
Theft	31,739

Source: Office of the Judiciary (2012a)

cases admitted to the Court of First Instance (Office of the Judiciary 2012). Table 20.3 demonstrates that the five most common offenses in that year were, in descending order, as follows: drug-related offenses (160,478 cases); traffic offenses (106,679 cases); gambling (63,228 cases); violations of immigration laws (34,231 cases); and theft (31,739 cases) (Office of the Judiciary 2012a, b). These statistics confirm that drug cases have dominated the workload of key agencies in the criminal justice system in recent years. Gambling and theft remain in the top five, while the number of traffic and immigration cases surpassed those involving prostitution and weapons in the Court of First Instance (some prostitution and weapon cases were minor offenses and thus not pursued in Court—the authors). In addition, in 2010 the three most frequent sentences imposed

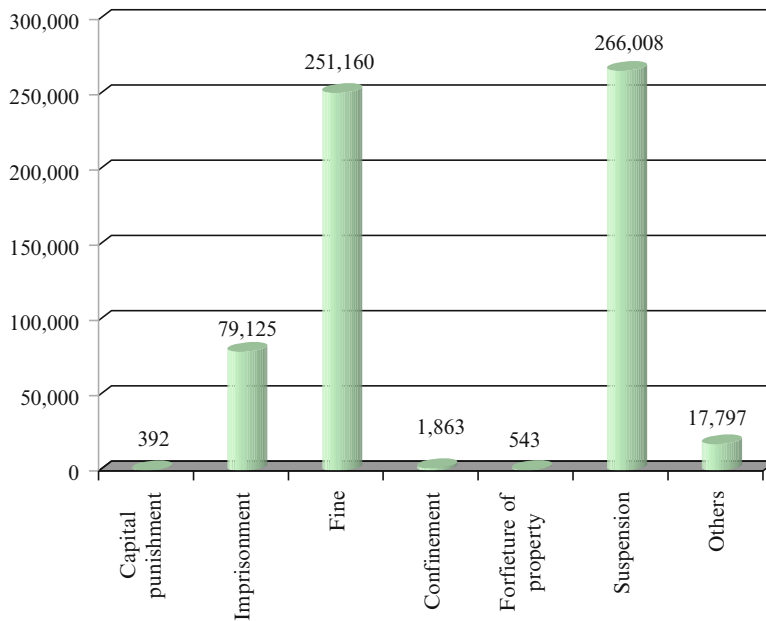


Fig. 20.3 Types of sentences handed down by the Court of First Instance, 2010. Chart adapted from the original in Office of the Judiciary 2012, p. 31. Source: Office of the Judiciary (2012b)

on convicted offenders by the Court of First Instance were, in descending order, suspension of punishment, fine, and imprisonment (Fig. 20.3).

To sum up, according to the data presented above, drug-related offenses represent a major crime problem in Thailand, dominating the workloads of the police, prosecutors, and the judiciary. However, as has been suggested by earlier scholars (Biderman and Reiss 1967; Pepper and Petrie 2003; Pepper et al. 2009; Skogan 1975), measuring crime is not an easy task and relying solely on official data can result in problems of validity and reliability. Skogan (1975) states that a civilian's decision to report an incident to the police is "probably the most important factor shaping official statistics on crime" (p. 20) whilst the police's discretion to record or write a formal report also affects the official data (p.22). What is left unreported is referred to in criminology as the "dark figure." According to Bidderman and Reiss, Jr. (1967), "the history of criminal statistics bears testimony to a search for a measure of 'criminality' present among a population, a search that led increasingly

to a concern about the 'dark figure' of crime—that is, about occurrences that by some criteria are called crime yet that are not registered in the statistics of whatever agency was the source of the data being used" (p. 1) and that "in exploring the dark figure of crime, the primary question is not how much of it becomes revealed but rather what will be the selective properties of any particular innovation for its illumination" (p. 1). These notions date back 35 years, yet the only "innovation" with which most jurisdictions are familiar is the crime victim survey as a supplement to the official data. The most recent attempts to measure crime are the development of *Crime Severity Index* and *Uniform Crime Reporting Survey* in Canada. However, these tools are still based on the combination of official crime surveys and victim reports.

In Thailand, as mentioned above, a systematic approach has not yet been adopted to the management of crime statistics, unlike in developed countries. Having said that, an attempt to identify unreported crimes was made by the Office of Justice Affairs, Ministry of Justice, in 2008, when

a ground-breaking crime victim survey was carried out to examine crimes occurring from 1 January to 31 December 2007 (Office of Justice Affairs 2009).⁸ In total, approximately 18.2 million households consisting of members 15 years old or above were selected as the sample, representing a total of 51,070,971 interviewees. (To put this in context, the total population of Thailand at the end of the survey year was estimated to be 66 million.) Of the total sample, 288,683 persons (0.6%) reported that they had been victims of crime during the period involved. Interestingly, the overwhelming majority of the victims (94.0%) were victims of property crimes (most commonly theft, breaking and entering, vehicle theft, and destruction of property in that order). As for the characteristics of the victims themselves, the report demonstrated that the majority were male (51.9%), married (74.8%), with a mean age of 43 and low education (primary level) (51.9%). Half of the crimes were committed by a single offender (51.0%), with offenders being generally unknown to their victims. Of all these cases, the vast majority of offenders were male (83.2%), assessed to be aged from 18 to 25 (30.7%), and acting independently. The most common response to the question concerning when the crime occurred was between 18.01 h and 06.00 h (36.5%) whilst the crime location was most commonly the victim's own residence.

One of the most interesting findings of this pilot project was that 65.2% of actual crimes, in particular sexual and property crimes, were not reported to the authorities due to either the victim's assumption that the police could not do anything to help (62.0%) and/or the victim's inability to provide any details of the offender (74.5%). The project not only uncovered unreported crimes but also pinpointed the public's low level of confidence in the Thai criminal justice system, a key issue which needs to be taken into account by policy-makers and relevant

authorities. Finally, but not the least, a significant issue to emerge from the data is that there are as many hidden, unreported crimes in Thailand as reported ones. However, to date no visible action has been taken or new policies introduced by the authorities to effectively respond to this issue.

20.3 Key Punitive Measures

This section discusses criminal policy through the examination of the criminal justice process and official facts and figures in recent years. In Thailand, no *official* policy as such is made public. Having said that, the government's discourses, together with statistics from relevant criminal justice system agencies, can be used as substitutes when exploring the country's approach to dealing with crimes and offenders.

20.3.1 The Justice Process

In order to have a clearer picture of the treatment of offenders, the Thai justice process should first be briefly introduced. The key legislation is the Criminal Procedure Code, which guarantees the right of the accused to counsel during the pretrial phase, preliminary hearing, and trial itself. Pursuant to the Constitution, the defendant is also guaranteed the right to a public trial and to be present at that trial. As in other jurisdictions, the law adopts the principle of presumption of innocence, whereby the defendant must not be treated as a criminal until found guilty by the Court. It is the burden of the public prosecutor to prove beyond a reasonable doubt that the defendant actually committed the crime before the Court can penalize him or her. However, unlike some countries there is no plea bargaining in Thailand, although research is currently underway as to the feasibility of introducing this. For offenses carrying imprisonment terms of five years or more, even if the defendant pleads guilty the Criminal Procedure Code requires that there should be proof beyond reasonable doubt that the defendant actually committed the offense. However, when the defendant pleads not guilty, or when the case

⁸This victim survey represented the state's effort to incorporate missing crimes which were not officially reported to the authority. This operation was not part of the International Crime Victim Survey (ICVS) format. More detail of the survey can be found at <http://www.thaicvs.org/>.

requires further hearings, the Court will set a date for the trial. Normally, the trial proceeds with the examination and cross-examination of witnesses, first by the prosecutor and then by the defense lawyer.

The Thai judiciary plays a passive, neutral role during the trial, with the Court basing its verdict on the facts that emerge during the examination and cross-examination processes carried out by the public prosecutor and the defense lawyer. Sentencing is the culmination of the trial process, with the Court delivering its verdict together with a proportionate sentence for a defendant who is found guilty. To arrive at this and to ensure uniformity in sentencing, the Court uses sentencing guidelines, although these are neither legally binding nor do they officially limit the discretion of the judge.

The Criminal Code and other criminal statutes specify the range of minimum and maximum penalties for a particular offense. The Criminal Code specifies five types of penalty, viz., *capital punishment; imprisonment; confinement; fine; and forfeiture of property to the state*. Section 39 of the Code also stipulates the following “safety measures”: protective custody; prohibition on entering specified locations; the execution of a bond upon receipt of a security for keeping the peace; confinement to an institution for treatment; and prohibition on engaging in specified occupations. As specified in the Criminal Code, in cases for which the maximum term of imprisonment is not more than three years and the accused has not previously served a prison term, except for negligence or petty offences, the Court can use its discretion to grant a suspension of the sentence and a suspension of the punishment for a fixed period of time. If the accused does not commit another offense during this period, they will be discharged.

When found guilty of an offense punishable by imprisonment, the convicted offender is detained in a state prison administered by the Department of Corrections. If the Court of First Instance imposes a sentence of capital punishment or life imprisonment, it must send all files relating to the judgement to the Court of Appeal for review, even if no appeal has been lodged

against such a judgement, as such sentences are not final unless confirmed by the Court of Appeal. Execution of sentence may be suspended if the defendants are insane; if it is feared that their life will be endangered by imprisonment; if they are pregnant; or if less than three years have elapsed since they gave birth. In cases where the defendant has been sentenced to capital punishment, this cannot be executed until the provisions of the Criminal Procedure Code governing pardon have been complied with. If a person sentenced to capital punishment becomes insane before being executed, the execution is suspended pending his or her recovery. Furthermore, the death sentence is not applicable to a person under eighteen and such a sentence on a pregnant woman will be commuted to life imprisonment after being suspended for the first three years after the child is born. In fact, very few executions take place in Thailand, the most recent having been carried out in 2009 when two convicted drug offenders and a murderer were executed. It should also be mentioned in passing that the execution method was “modernized” in 2003 when legislation was enacted to replace the firing squad by lethal injection.⁹ As of 20 March 2012, seventy-one prisoners, all male, were on death row in Thailand (Department of Corrections 2012, unpublished data).

Under the terms of the Criminal Procedure Code, if either party is dissatisfied with the judgement of the Court of First Instance, they can appeal to the Court of Appeal. Disagreements on legal issues can, without exception, be sent to the Court of Appeal and then, if necessary, to the Supreme Court. Factual disputes can also be appealed in both these Courts, subject to restrictions at both stages. In theory, the appeal has to be lodged within thirty days of the issuance of the Court of First Instance’s verdict or order.

One component which distinguishes the Thai criminal justice system from that of other juris-

⁹The prisoner is injected with three kinds of drugs: sodium thiopental, a barbiturate which renders the prisoner unconscious; pancuronium bromide, a muscle relaxant which paralyzes all muscles and stops breathing; and potassium chloride, to stop the heart and cause cardiac arrest.

dictions is the active use of the Royal Pardon. This can be granted to any eligible individual or group of individuals at the discretion of the monarch, as stated in the 2007 Constitution¹⁰ and in the Criminal Procedure Code.¹¹ The pardon may be in the form of an unconditional release, a commutation, or reduction of punishment. A Collective Royal Pardon is granted on certain auspicious national occasions: in recent years these have included the so-called Seventh Cycle Birthday Anniversary (i.e., 84th birthday) of His Majesty the King on 5 December 2011 and the 60th Anniversary of His Majesty's Accession to the Throne in 2006. On the other hand, an Individual Royal Pardon is granted as a matter of routine procedure: any convicted prisoner; a concerned person (parent, offspring, or spouse); or diplomatic representative (in the case of foreign prisoners) wishing to petition the monarch for a pardon may do so by submitting the petition through official channels, viz., the prison authority, the Ministry of Justice, and the Office of His Majesty's Principal Private Secretary, and for foreign nationals, the Ministry of Foreign Affairs or their country's diplomatic mission.

Overall, it is fair to state that Thailand's criminal justice process is relatively similar to that of other jurisdictions, especially the British court system, as most of the key founders of the modern Thai justice system were trained in England. In fact, many recent developments in the Thai system continue the shift towards Western methods and standards, for example, restorative justice; "the re-emergence of feminism" (Newburn 2003:235); and "the rise of victim support" (2003:241). The reform of criminal justice is discussed later in this chapter.

20.3.2 Imprisonment

Founded in 1915, the Department of Corrections (DOC) plays a significant role in keeping in

custody those sentenced by the Court. The two key thrusts of the correctional service as presented in the organization's vision are *custody* and *rehabilitation*. In order to attain the objective of secure custody, currently the DOC's principal strategy focuses on enhancing prison security for effective management of high-profile prisoners by equipping its main facilities with the necessary custodial technology as well as competent human resources. As for rehabilitation, the DOC has established a new paradigm of correctional works which emphasizes the importance of rehabilitation during incarceration, with the ultimate goal of returning inmates to the community as good, law-abiding citizens.

Rehabilitation programs for offenders in correctional facilities can be categorized into 3 groups: basic programs; supporting programs; and reentry programs. The first comprises the main activities for inmates, e.g., both mainstream and vocational educational training; artistic training; and religious and recreational activities, all of which aim to equip offenders with basic competencies in readiness for their return to society. The second group involves short-term programs which emphasize knowledge enhancement and skills training, e.g., anger management, abstinence from alcohol and tobacco, and empathy with victims' feelings. Lastly, the third block recognizes the necessity of preparing prisoners for reintegration and therefore focuses on such issues as family, employment, social reintegration, and necessary life skills, with the objective of reducing the risk of reoffending. Simultaneously, this enhances the general public's confidence that offenders will return to society as law-abiding citizens.

Figure 20.4 shows the Thai prison population over the past twelve years. In 2002 the prison population reached a historical peak, with 252,879 prisoners incarcerated nationwide. This was primarily due to the lead-up to what in 2003 officially became known as the "War on Drugs" policy of the then government, with most drug offenders of whatever nature being indiscriminately imprisoned. The subsequent decline (2004–2007) reflects three factors: the release of prisoners under Royal Pardons; the implementation

¹⁰Section 191.

¹¹Sections 259 to 267 of Division 7: Pardon, Commutation and Reduction of Punishment.

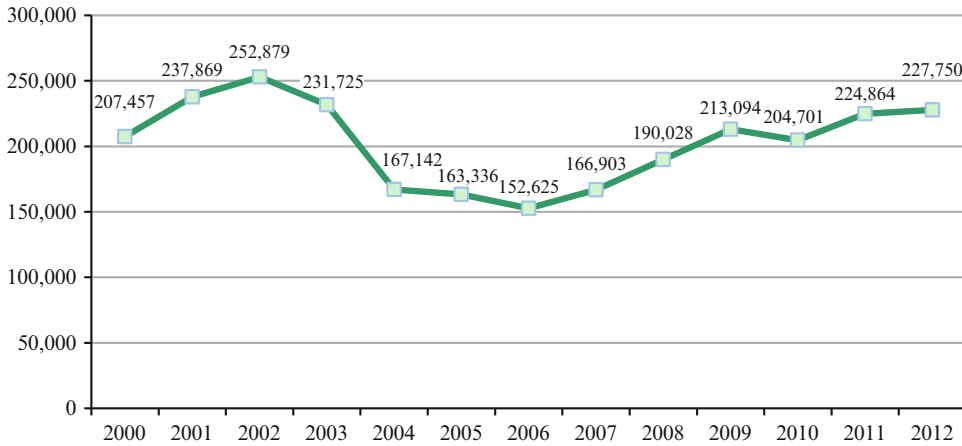


Fig. 20.4 Trends in prison population, 2000–2012 (as of 1 February 2012). Source: Department of Corrections (2012)

Table 20.4 Number of persons in custodial institutions (as of 1 February 2012)

	Male	Female	Total	%
1. Convicts	142,687	24,577	167,264	73.44
2. Remandees	49,185	8,752	57,937	25.44
2.1 Awaiting appeal	25,472	3,947	29,419	12.92
2.2 Awaiting trial	9,210	1,804	11,014	4.84
2.3 Awaiting investigation	14,503	3,001	17,504	7.69
3. Juveniles ordered by the Court	373	13	386	0.17
4. Relegated persons	7	0	7	0.00
5. Detainees	2,004	152	2,156	0.95
Total	194,256	33,494	227,750	100

Source: Department of Corrections (2012)

of the Narcotic Addict Rehabilitation Act 2002; and the use of alternatives to imprisonment to help overcome overcrowding. From 2008 the graph starts to rise again as a result of the reintroduction of more stringent policies together with a tendency to impose very long sentences on major drug offenders. Nevertheless, in 2010 a large number of prisoners were released under Royal Pardons, granted for qualified prisoners to celebrate the 60th Anniversary of HM King Bhumibhol’s Coronation: this somewhat alleviated overcrowding. However, the most recent statistics show a further increase in the prison population, mainly due to a renewed rise in the number of convicted drug offenders.

As of 1 February 2012, 227,750 individuals were being kept in custody across the country, with the breakdown of their legal status being

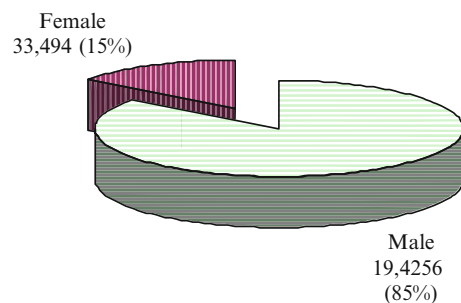


Fig. 20.5 Prison population classified by gender (as of 1 February 2012). Source: Department of Corrections (2012)

73.44% convicts; 25.44% remandees; and 1.12% others (Table 20.4). In line with other prison systems, the majority (85%) of the prison population is male (Fig. 20.5). The evidence, however, shows

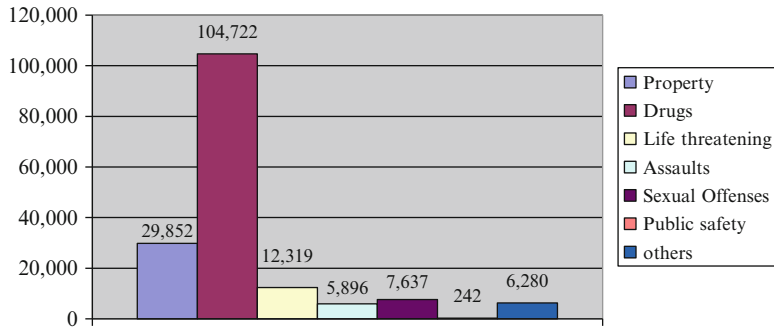


Fig. 20.6 Number of convicts in prisons, classified by offense (as of 31 January 2012). Source: Department of Corrections (2012). Note: “Life Threatening offenses” include murder, attempted murder, manslaughter, and negligence resulting in the death of others

that the growth in the number of female prisoners is on a par with, or even higher than, their male counterparts. In addition, recent international data comparing the incarceration rate of 218 countries ranked Thailand at 28th, with an incarceration rate of 328 per 100,000 population¹² (International Centre for Prison Studies 2012). In a specifically Asian context, Thailand came second after Iran.

When looking at types of offenses (Fig. 20.6), the majority of convicts (104,722 or 62.73%) were drug offenders, followed by those convicted of property crimes (29,852 or 17.88%) and life-threatening offenses (12,319 or 7.38%). It should be noted that currently incarcerated drug offenders consist mainly of producers and pushers: as a result of legal reform and diversion programs, most drug users are now diverted to drug rehabilitation centers (see discussion on probation below). In addition, in view of the discussion in the previous section on both crimes reported to the police and the crime victim survey, it is not surprising that the proportion of drug prisoners is much greater than other subgroups. Again, this confirms that the “get tough on drugs” pol-

icy has led to the imposition of the maximum sentence for those convicted of drug-related offenses.

20.3.3 Probation and Parole

In Thailand, probation is the main alternative sanction to imprisonment. The probation system for adult offenders was introduced into the country with the establishment of the Central Probation Office under the Probation Procedure Act 1979. Since then the Thai probation system/agency has gradually expanded and in 1992 the office was upgraded and renamed the Department of Probation (DOP).

The administration of probation work in Thailand is broadly on a par with other jurisdictions. Adult offenders on probation are those who have committed an offense punishable by a term of imprisonment of not more than 3 years, with the Court either suspending the determination of punishment or designating the punishment but suspending the implementation thereof. In addition, the Court may order probation officers to conduct a social investigation for its consideration on the suspension of a punishment. Table 20.5, showing presentence investigation cases from 2007 to 2010, reflects the small but notable decrease in this over the past few years.

In July 2002 a Cabinet resolution conferred on the DOP the responsibility for administering pre-trial, trial, and posttrial probation, thereby initiating

¹²Data available at http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb poprate. International Centre for Prison Studies noted that this figure was “based on an estimated national population of 68.4 million at the beginning of March 2011 (from United Nations figures).”

Table 20.5 Presentence investigation cases, 2007–2010

Year	Presentence investigation cases
2007	47,966
2008	46,516
2009	44,694
2010	44,895

Source: Department of Probation (2011)

Table 20.6 The number of probationers and parolees, 2003–2010

Year	Adult		Juvenile	
	probationers	Parolees	probationers	Total
2003	64,232	49,086	4,674	117,992
2004	70,428	35,095	12,890	118,413
2005	81,995	29,459	15,520	126,974
2006	86,937	23,547	18,470	128,954
2007	92,279	22,900	21,999	137,178
2008	102,880	19,873	23,278	146,031
2009	130,048	25,852	22,936	178,836
2010	125,949	22,721	23,733	172,403

Source: Department of Probation (2011)

a comprehensive mechanism for developing the probation system. Thus, by the end of October 2003, the responsibility of the DOP had been modified to cover probation sanctions against the accused and offenders at all stages of adjudication, including adult probation, parolees, and juvenile offenders on suspension of sentence or conditional release from a training center.

Table 20.6 represents the probation and parole population from 2003 to 2010. Overall statistics show that the probation population has been increasing constantly at an average rate of 5.8% per annum. The number of adult probationers doubled from 2003 to 2010, while the number of juvenile probationers showed an even more remarkable increase (fivefold) over the same seven-year period, from 4,674 in 2003 to 23,733 in 2010. On the other hand, the parole population in 2010, including prisoners released on sentence remission, decreased about 56% from 2003. When putting types of offense in perspective, most of the caseload in the probation and parole system was involved with traffic and drug cases. Statistics show that traffic-related offenses were at the top of the chart in 2007 (34.22% of all

Table 20.7 Successful completion of probation, 2006–2009

Year	Number of cases	Percent
2006	117,567	93.1
2007	112,237	93.2
2008	117,287	92.7
2009	128,339	91.9

Source: Department of Probation (2011)

Table 20.8 Revocation and reoffending rates of probation population, 2007–2009

Year	Revocation rate (%)	Reoffending rate (%)
2007	6.8	15.3
2008	7.2	10.7
2009	8.1	14.2

Source: Department of Probation (2011)

newly admitted cases), and again in both 2008 (30.76%) and 2010 (40.12%), with drug offenses in second place in both these years. However, drug cases¹³ topped the chart in 2009 (45.34% of all cases) and again in 2011 (38.41%).¹⁴

Compared with the number of cases successfully completed each year over the period 2006–2009 (Table 20.7), the rate is satisfactory, with a range of 91–93%, even though there has been a slight year-on-year percentage decline since 2007.

Over the period 2007–2009, the percentage of probationers who had their probation revoked due to a breach of conditions ranged from 6.8% (2007) to 8.1% (2009) (Table 20.8). Probationers and parolees who reoffended after completion of their sentence ranged from 10.7% to 15.3% over the same 3-year period.

Looking at the criminal justice system agencies’ data in both this section and the previous one, the authors wish to argue that they reflect an uncoordinated criminal policy driven by the political agendas of the ruling governments (as also suggested by scholars, e.g., Garland 2001; Newburn 2003; Simon 1997). An obvious exam-

¹³Drug cases under probation include “drug possession” and “drug production” offenses involving limited amounts of less serious types of drug as identified by the Narcotic Addict Rehabilitation Act, e.g., opium and marijuana.

¹⁴Unpublished data from the Department of Probation, 2012.

ple is the policy towards drug offenses: it seems that the government chose to “get tough” on one specific crime which would attract the attention of the public and the media (see Newburn 2003, 264–267). This has resulted in a case overload problem for criminal justice agencies, especially the two core agencies—the Department of Corrections and the Department of Probation—which are key administrative bodies responsible for implementing the Court’s sentences.

Although attempts have been made to deal with drug offences by diverting drug use offences from the justice system, drug-related offences are still in the majority, consuming vast resources from agencies across the system. Additionally, the statistics from the DOC suggest that imprisonment remains the most convenient and safest option to punish wrongdoers. The authors wish to emphasize that a holistic approach should be adopted in dealing with crimes, especially drug crimes. Currently, overreliance on imprisonment still exists, whilst the employment of alternative sanctions remains limited. Moreover, the efficiency of the criminal justice system in dealing with crimes appears to be suspect. These are some of the challenges facing the criminal justice system which are discussed in detail in the next section.

20.4 Criminal Justice Reform

When looking at the incarceration rate and punishments specified by Thai law, it is undeniable that the Thai criminal justice system relies excessively on the use of imprisonment, with a higher incarceration rate in comparison with that of other countries. Sanctions imposed on offenders primarily consist of payment of a fine and suspension of sentence/punishment with or without probation, traditionally the standard noncustodial measures applied in Thailand. Community service, which is a popular, mainstream noncustodial measure in many countries, is not widely applied in Thailand and is limited to some specific groups.¹⁵

¹⁵ In Thailand, community service is applied to those who are on probation and consent to do such service; those who request to do community service in lieu of fine; or drug users who are under compulsory drug treatment.

In addition, the criminal justice system has been criticized on many fronts over the past decade—including miscarriage of justice; rights violations of both the accused and victims; abuse of power; delay in the administration of justice; and prison overcrowding (Kittayarak 2001; Thailand Criminal Law Institute 1998;¹⁶ Ua-Amnoey 1999). These issues have been repeatedly raised by politicians, scholars, human right advocates, and other stakeholders whenever flagrant cases of injustice have occurred and have been sensationalized in the media. It has been argued that the inefficiency of the criminal justice system is partly caused by the lack of clear criminal policy and overemphasis on crime control. However, other scholars regard the root of the problem as being the “nonsystem” of criminal justice agencies (Kittayarak 2003).

During the 1990s, there was status disparity among the core criminal justice agencies. The Office of the Attorney General¹⁷ and the Courts of Justice¹⁸ at that time were independent, although as court administration remained one of the core responsibilities of the Ministry of Justice, the ministry was somewhat scathingly referred to as the “Ministry of Court.” On the other hand, the Royal Thai Police and the Department of Corrections were under the Ministry of the Interior and the Department of Probation was under the Ministry of Justice. Thus not only was the structure of the criminal justice system inappropriate and fragmented, but the agencies’ operations were also uncoordinated, focusing primarily on their own particular goals, with the policy and the objectives of their umbrella organization accorded lower priority.

The inefficiency of the criminal justice system gradually became the focus of both the public and successive governments. Therefore, when

¹⁶ Thailand Criminal Law Institute (1998). Seminar Report on Direction of Thai Criminal Justice in the Next Decade. Unpublished manuscript.

¹⁷ From 1991 to 2001, the Office of the Attorney General was an independent agency under the Prime Minister but was transferred to the Ministry of Justice in 2002.

¹⁸ The courts were independent but remained administratively under the Ministry of Justice from 1991 to 2000.

the 1997 Constitution was drafted, the reform of criminal justice and rights protection were two core issues to which the drafting committee paid particular attention. As a result, the so-called People's Charter contained many Sections focusing on due process and the reform of the criminal justice system. Subsequently, the 2007 Constitution maintained most of the ideology enshrined in its 1997 counterpart whilst putting further emphasis on criminal justice agencies' efficiency, including public participation in the administration of justice and the establishment of independent agencies to provide checks and balances.

However, midway between these two Constitutions, significant criminal justice reform took place in 2002 when the government decided to reorganize the Ministry of Justice and establish new departments to improve the system's efficiency. The reorganization of the Ministry was also a response to overall civil service reform based on citizen-centered principles and result-based implementation. This, along with other factors, led to changes in policies and the reorganization of criminal justice which are discussed later in this section.

20.4.1 Reform of Criminal Policy

In recent years—and in particular since the major criminal justice reform of 2002 referred to above—there have been changes and new directions in Thai criminal policy, not so much explicitly stated, but clearly reflected in related legislation and policy, including both the Criminal and Criminal Procedure Codes, the National Master Plan on Criminal Justice, and government policy as a whole. To illustrate this shift, policy and practices as applied over the past few years are outlined below.

20.4.1.1 Increased Emphasis on the Rights of Victims, the Accused, and Offenders

Due to the 1997 and 2007 Constitutions' emphasis on rights protection and conformity with international standards for promoting the rule of

law and human rights, Thai criminal policy now increasingly stresses the rights of victims, the accused, and offenders, especially the vulnerable, such as children and women. Acknowledging losses suffered by both crime victims and accused persons who themselves become victims of the miscarriage of justice, Thailand enacted the Compensation for Crime Victims and Accused Act 2001 to financially compensate them for their mental and/or physical suffering. Under this law, victims of serious crime, such as rape, murder, and assault, are entitled to receive compensation from the State to cover loss of earnings, medical expenses, death, and other losses if applicable. In the case of accused persons, the compensation applies to those who have been prosecuted, confined, and then had the case against them withdrawn due to their innocence, or when the Court's judgment is one of not guilty. The compensation covers their criminal defense expenses, loss of liberty during confinement, medical expenses, and death.

To protect the rights of children and juveniles, the Criminal Procedure Code and legislation relating to juvenile justice have been amended to guarantee the rights protection of juvenile witnesses and offenders. The amendments¹⁹ stipulate that the questioning of a child/juvenile by an inquiry official must be carried out separately from other offenders; in an appropriate place; and without discrimination or stigmatization. The legal adviser of the alleged child/juvenile offender is required to be continually present at the time of their being informed of the charge and during their interrogation. Additionally, in the case of an alleged serious offence, the inquiry official must interrogate the child/juvenile offender in the presence of a psychologist or a social worker; a person designated and requested by the child/juvenile; and a public prosecutor.

Likewise, on the issue of women offenders, Thailand has become a leader in the promotion of their enhanced treatment and protection of their rights. Under the royal patronage and leadership

¹⁹ Sections 133, 134, and 172 of the Criminal Procedure Code as amended in 1999.

of HRH Princess Bajrakitiyabha, in 2008 Thailand initiated the Enhancing Lives of Female Inmates (ELFI) project to promote appropriate treatment programs for women prisoners, from their entering the correctional system to the aftercare phase. The recommendations proposed by ELFI became internationally recognized and supported, leading to their ultimate adoption by the United Nations as the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, or “Bangkok Rules,” in December 2010. Consequently the United Nations Office on Drugs and Crime (UNODC) was given the task of disseminating the Rules as a supplement to the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules.

20.4.1.2 Application of a Wider Range of Alternative Measures

The problem of excessively large caseloads, found at every stage of the Thai criminal justice system, especially prison overcrowding, has driven criminal justice agencies to apply a range of alternative measures to divert cases from the system. This policy was in effect initiated by a Cabinet Resolution of 10 July 2001, providing guidelines on reducing caseload and overcrowding. These include the use of conflict resolution as an alternative measure and sentencing option, as well as the implementation of compulsory drug treatment to divert drug users from the system.

The implementation of this policy is also evident through the application of restorative justice practices, which are currently implemented at both the pretrial and trial stages in both adult and juvenile cases. When the amended Juvenile and Family Court and Procedure Act was promulgated in 2010, conferencing became extensively used with child/juvenile offenders as an alternative approach to divert cases from the juvenile justice system and rehabilitate young offenders. In such cases, if the victim(s) and responsible official agree, conferencing takes place and a rehabilitation plan, aiming simultaneously to reform the offender, make restoration to the victim(s), and promote public safety, is devised. Although the basic principle of restorative justice

aims to provide restoration for the victims and the community, this approach also benefits offenders by providing an opportunity for them to make reparation and be diverted from the justice system. Since its implementation in 2003, 20,000 children and juveniles have been diverted by non-prosecution orders.

Another alternative measure development is the compulsory drug treatment scheme, endorsed by the Narcotic Addict Rehabilitation Act 2002. This scheme was innovatory in that it made a distinction between drug users and drug producers, sellers, and exporters: the users became classified as “patients” and therefore sent to rehabilitation centers for drug treatment programs, depending on the nature of their case. If the treatment shows satisfactory results, they are then diverted from criminal procedures without a criminal record. Since its implementation in 2003, over 500,000 drug users have been diverted from the criminal justice system.

20.4.1.3 Promotion of Community Participation at Policy and Practice Levels

Lastly, the change in criminal policy can be observed through new schemes aiming to encourage community participation in criminal justice. In accordance with the National Master Plan for Justice Administration 2009–2012, a strategy is in place to promote justice system participation by all social sectors, including the community, the private sector, local administration, and the media. In fact, this policy had previously been put into practice, with the National Master Plan serving to promote its continuation and emphasize its importance. For example, the concept of voluntary assistance, such as acting as a volunteer probation officer, was established in 1986 but was subsequently extended to cover other areas, such as the scheme for volunteering in rights and liberties protection established in 2005. However, the most innovatory project for public involvement in the justice system is the Community Justice Scheme, introduced by the Department of Probation in 2003, under which opportunities are provided for members of the community to work in partnership with justice

officials. Volunteers establish centers in their own locality and they are then collaboratively involved in justice activities, such as crime prevention, offender rehabilitation, and conflict resolution. The primary aim of the Community Justice Scheme is not to lessen the burden of justice agencies or help justice officials perform their duties but to empower the community to make itself strong and just through its own members. After nearly a decade since its inauguration, the Community Justice Scheme has proved to be an appropriate channel for the Thai criminal justice system to respond to the needs of the public and improve confidence in its services. Indeed, it could be argued that as Thailand moves towards becoming a more mature democracy, greater public involvement in the criminal justice system is an inevitable step and this is the direction which all justice agencies should follow.

20.4.2 Reform of the Organization of Criminal Justice Agencies

As has already been mentioned, the 1997 and 2007 Constitutions, coupled with overall civil service reform, have had a major influence on Thai criminal justice reform. Section 230 of the 1997 Constitution paved the way for the establishment of new ministries, sub-ministries, or expanded departments through the promulgation of a specific law. Thus in 1998 the Royal Thai Police became an independent organization under the Prime Minister in order to improve its efficiency, whilst in 2000 the Courts of Justice became fully independent when its administrative work, judicial affairs, and legal affairs were separated from the Ministry of Justice and transferred to the newly founded Office of the Judiciary. There was also major reorganization of the Ministry of Justice itself, with the substantial changes including the transfer of departments from other ministries and the establishment of five new departments.²⁰ Since the establishment

of these is essential to improving the efficiency of the criminal justice system and promoting the coordination of criminal justice administration, each organization is briefly introduced below.

20.4.2.1 Office of Justice Affairs

The Office of Justice Affairs was founded to support the new approach to the justice system under the reform policies, with its core functions including being responsible for the administrative work of the National Commission for Justice Administration Development and studying and analyzing policies, strategic plans, and justice system management.

20.4.2.2 Department of Special Investigation

The Department of Special Investigation was established specifically for the surveillance, deterrence, and effective prevention of increasingly complex crimes perpetrated by organized criminal groups, especially those of a transnational nature, which jeopardize the nation's economy, social order, and stability, as well as for the eradication of illicit groups or activities that endanger international security.

20.4.2.3 Department of Rights and Liberties Protection

The mission of the Department of Rights and Liberties Protection is to promote and protect the people's rights and liberties as stipulated by law through the development of the promotion of justice and the enhancement of the public's awareness of their rights and liberties. In addition, it offers protection and primary assistance to witnesses, victims, and accused persons in criminal cases.

20.4.2.4 Central Institute of Forensic Science

The institute's main responsibilities are to receive complaints from the public affected by forensic science malpractices; to provide forensic science services, e.g., the identification of missing persons and the verification of evidence; to study and research forensic science issues with both governmental and nongovernmental sectors; and

²⁰ A sixth new department, the Office of the Public Sector Anti-Corruption Commission, was later established in 2008, in accordance with the 2007 Constitution.

to supervise forensic science personnel to ensure that they comply with codes of practice, standards, and ethics.

20.4.2.5 Department of Juvenile Observation and Protection

The Juvenile Observation and Protection Center was upgraded to the Department of Juvenile Observation and Protection with the expectation that it would serve as the core agency for protecting the rights and welfare of children in the juvenile justice system. Its main responsibilities are to promote the rehabilitation of child and juvenile delinquents; to facilitate restorative justice and other alternative measures for diversion; and to provide other assistance services for children by liaising with their families and community networks.

20.5 Challenges and Conclusion

In accordance with the core principles of the Constitution—including the protection of the people's rights and liberty, independence, and good governance—Thailand's criminal justice system is continually being reformed. This reform has clearly wrought changes in criminal justice administration and processes, which require the understanding and cooperation of those both inside and outside the system: criminal justice personnel need to understand the revised concepts and implement them accurately, whilst public support for the new policies is also needed. Since Thai society is accustomed to the conventional criminal justice system based on the punishment of offenders, the new policy and schemes focusing on rights protection, public involvement, and alternative approaches may not be readily understood (Ua-Amnoey 2002). To gain support and implement the reforms smoothly, communication with and education of the public as well as justice personnel are of critical importance.

Another concern regarding the changes in Thai criminal justice is the implementation of alternative approaches, especially alternatives to imprisonment. Even when new laws or approaches relating to alternative measures are promulgated

or launched in Thailand, it is all too likely that they will not be implemented immediately, either because no one agency assumes the responsibility for doing so or appropriate resources are not provided. Indeed, it would appear that changes in criminal justice have been occurring at a rate which prevents the system from responding in a timely and appropriate manner. For example, the Criminal Procedure Code was amended to enable the use of home detention and electronic monitoring in 2007 but neither of these measures have yet been implemented because, as referred to above, it is not clearly specified which agency should be responsible for these innovative approaches and no clear budgetary policy was provided. This problem of implementation is likely to continue if there is no single authority capable of making such decisions for the system as a whole and which simultaneously has the power to compel the government to provide sufficient resources.

Recent developments seem to indicate a start in addressing the above concerns but much remains to be done. In order to provide an effective response to these challenges as well as to strengthen the unity, effectiveness, and efficiency of the justice system, the National Commission for Justice Administration Development was established by the National Justice Administration Development Act 2006. The commission, chaired by the Prime Minister or the designated Deputy Prime Minister, consists of heads of relevant organizations including the judiciary, the Ministry of Justice, and the Ministry of the Interior. However, to date this commission has not made significant progress, due in part, it can be speculated, to the political upheavals and changes of the past six years which have necessarily resulted in changes of the chairperson.

Evidently, there still remains a long way to go in the development of the Thai criminal justice system, with more challenges to be faced. Political uncertainty and instability remain prevalent, with the associated policy changes in agencies. Although some criminal justice organizations are now independent, successive governments still have the potential to generate policy inconsistencies and inefficient resource allocation.

However, international trends and organizations are putting pressure on Thailand to adopt standards and safeguards concerning human rights and good governance, and this can only have a positive influence on the Thai criminal justice system, leading eventually to the development of more effective and fairer processes.

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