

## **RESPONDING TO PRISON OVERCROWDING: ANOTHER ATTEMPT FROM THAILAND**

*Kittipong Kittayarak*

*Permanent Secretary for Justice, Ministry of Justice, Thailand*

### **I. INTRODUCTION**

Criminal justice systems around the world have been coping with increasingly difficult challenges amid rapid changes in varying political and socio-economic systems. Imbalanced development has weakened our social mechanisms, rendering us less effective in coping with economic hardships, which can contribute to the increased number of crimes. Rising crime rates result in greater numbers of offenders entering the criminal justice system and increased incarceration. Because many prison facilities are not equipped to handle the increased volume of inmates, prison overcrowding has become problematic. Failure to cope with these new challenges could bring serious consequence as the functioning of the criminal justice system, and the assertion of individual human rights of prisoners, are at stake. In order to avoid the serious issues of case backlog and overcrowding of the correctional facilities, it is imperative that the offender treatment systems are continuously improved and further developed.

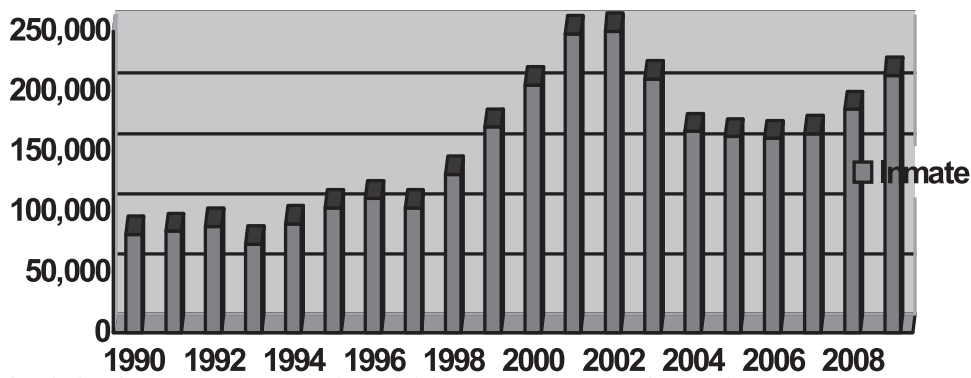
This paper will begin with the assessment of current trends and reasons on the incidence of prison overcrowding in Thailand. The discussion will then focus on non-custodial measures that Thailand has used to reduce overcrowding in inmate facilities, including alternatives to imprisonment, diversionary methods, restorative justice, and community-based treatment initiatives. Finally, I will share my views on the key challenges involved in reducing prison overcrowding, and make recommendations for how the Thai criminal justice system can continue its work in finding effective alternative methods to incarceration.

### **II. PRISON OVERCROWDING IN THAILAND: CURRENT TREND AND SITUATIONS**

Among the issues related to treatment of prisoners in Thailand, prison overcrowding is one of most problematic. During the years 1996-2002, correctional facilities in Thailand had to deal with unprecedentedly large number of inmates. Thai prisons housed 103,202 inmates in 1996, with that number increasing to 250,000 by the end of 2002. The current prison capacity, however, provides for approximately 110,000 spaces. This clearly indicates a prison overcrowding situation. The trend of increasing inmates shown by the below Figures is ominous because there is little relief on the capacity issue; prisoners increase, but the space to house them remains the same.

In Figure 1 the prison population for the period of nineteen years is shown. At present, the number of inmates in Thailand remains high - 253 inmates per 100,000 - compared to other countries in Asia and Pacific region, as shown in Table 1.

Figure 1. Prison Population in Thailand from 1990 to 2008



Source: Inmate Statistics Center, Policy Planning Division, Department of Corrections.

This rate of increase was quite unusual and cannot be accounted for under normal functioning conditions of the criminal justice system. The disproportionate increase of inmate population since 1998 could be attributed to Thailand’s penal policy, which severely criminalized offenses related to drug use, especially the substance amphetamine, to achieve deterrence effect among drug-related offenders.

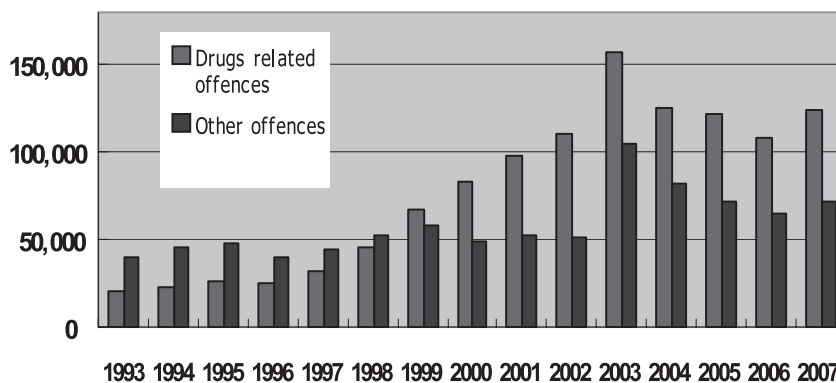
Table 1. Prison Population across Seven Countries in Asia and Pacific in 2007

Country	Total number	Total number (per 100,000 people)	Portion of Female Inmates(percent)	Portion of Child Inmates(percent)
Indonesia	128,876	56	4.7	0.4
Macao	797	174	22.1	6.1
Malaysia	50,305	192	28.7	2.2
Myanmar	65,063	126	15.0	1.6
Sri Lanka	25,537	121	1.4	0.04
Singapore	11,768	267	10.0	4.7
Thailand	165,316	253	15.1	3.9

Source: International Centre for Prison Studies, 2008

Figure 2 shows that the number of inmate convicted of drug-related offenses has almost doubled in 15 years, while the statistics for the other offenders remain mostly unchanged. This leads to a conclusion that the large number of drug-related offenders is the result of severe measures, while the contribution from the increase in the criminal activities themselves might be only secondary.

Figure 2. Number of inmates convicted of drug offense vs other offenses from 1993- 2007



Source: Inmate Statistics Center, Policy Planning Division, Department of Corrections.

### III. POSSIBLE EXPLANATIONS FOR PRISON OVERCROWDING

There are numerous factors that have contributed to the overcrowding of prisons in Thailand. These include the increase of drug offenders entering the system as a result of the Royal Thai Government's shift to a more prioritized crackdown on narcotics in the late 1990's; the large percentage of incarcerated inmates who are awaiting investigation or trial; and a historical reliance on imprisonment for even low-level offenders.

With respect to the increase in drug offenders in the system, there are two possible explanations. First, the rise could signify the enhanced effectiveness of the criminal justice system in bringing those who commit the crime to justice; the implication being that the drug problem in Thailand has been properly taken care of since 1997. A second explanation is that by over-criminalizing the possession or consumption of amphetamines, the demand for the now highly-punishable drug is even higher than before, leading to a rise in cost and therefore profit, thereby increasing the incentive for people to risk trading them. This graver theory signifies that severe punishment as deterrence measure has been far from achieving its policy objectives. The question then becomes, how does a criminal justice system deal with drug offenders in a way that does not exacerbate the prison overcrowding problem?

With regards to the high percentages of inmates on remand, it is clear from statistics that this group constitutes many of the total incarcerated individuals. Tables 2, 3 and 4 illustrate the inmate population profile according to their categories, types of offences and terms of imprisonment. The largest portion of Thailand's correctional resources is being used to provide custodial treatment for the convicted offenders, while the suspects awaiting trial or final judgment constitute the second largest group of the population. This results in a current rate of imprisonment prior to conviction at nearly 30%, which implies that the criminal process has not yet been able to provide a timely response to those awaiting trials and who must be assumed to be innocent. Table 5 provides regional comparative data on this category of inmates, portraying that Thailand is among the top on the list of countries having a large percentage of inmates on-remand. When viewed by types of offences, inmates who have been convicted of offences related to drug use constitute the largest group or almost 60%. It should also be noted that about half of the total population in prisons are currently those serving relatively short terms - less than 5 years.

**Table 2. Overall population of the Thai prison system according to major categories**  
(As of 1 September 2008)

Categories	Male	Female	Total	Percentage
1. Convicted	112,464	18,594	131,058	70.825
2. On-remand	44,744	7,538	52,282	28.25
2.1 pending appeals	22,354	3,541	25,895	13.99
2.2 awaiting trial	9,576	1,495	11,071	5.98
2.3 awaiting investigation	12,814	2,502	15,316	8.28
3. Child and youth under detention	401	3	404	0.22
4. Relegated persons	11	1	12	0.01
5. Detainee	1,128	185	1,313	0.71
<b>Total</b>	<b>158,748</b>	<b>26,321</b>	<b>185,069</b>	<b>100</b>

Source: Inmate Statistics Center, Policy Planning Division, Department of Corrections

**Table 3. Prisoners Statistics by Type of Offences**

Type of Offences	Male	Female	Total	Percentage
1. Offence against property	25,911	1,647	27,558	22.25
2. Offence against narcotics law	56,689	15,349	72,038	58.16
3. Offence against life	8,798	277	9,075	7.83
4. Bodily harm	3,552	83	3,635	2.93
5. Offence against social security	216	11	227	0.22
6. Others	5,031	496	5,527	4.46

Source: Corrections in Thailand 2008- an annual report published by the Department of Corrections, Thailand.

**Table 4. Prisoners Statistics by Sentence Terms**

Sentence Term	Male	Female	Total	Percentage
Less than 3 months	899	96	955	0.77
3- 6 months	2,889	382	3,271	2.53
6 months - 1 year	7,930	1,263	9,193	7.12
1 - 2 years	16,164	3,173	19,337	14.97
2 - 5 years	32,700	4,274	36,974	28.63
5 - 20 years	38,018	6,836	44,854	36.22
20 - 50 years	10,149	2,142	12,291	7.83
Life imprisonment	1,653	218	1,871	1.51
Death penalty	113	7	120	0.09

Source: Corrections in Thailand 2008- an annual report published by the Department of Corrections, Thailand.

**Table 5. Numbers of offenders awaiting trial in several countries in Asia in 2007.**

Country	Total Number of Inmates	Total Number of Inmates On-Remand	Percentage of Inmates on-remand
Indonesia	128,876	387	0.3
Iran	158,351	39,271	24.8
Macao	797	176	22.1
Malaysia	50,305	14,438	28.7
Myanmar	65,063	7,417	11.4
Mongolia	6,593	1,305	19.8
Hong Kong	10,440	1,409	13.5
Japan	81,255	9,751	12.0
Taiwan	60,346	7,181	11.9
Brunei	486	35	7.2
Laos	4,020	40	1.0
Singapore	11,768	812	6.9
Thailand	165,316	43,313	26.2

Source: International Centre for Prison Studies, 2008

Lack of coherent and effective penal policies has also been a key factor, hindering any systematic attempt to implement alternative approaches for parties of conflicting interests, and provide them access to justice. Social norms - as can be seen from the negative public attitude toward offenders, along with the strong inclination among Thais to rely on formal criminal process or legal action as means to solve their problems - also play significant roles in shaping the current situation of the Thai correctional system. Further at the root of the problem, the symptoms of which can be seen from the severe drug problems and high rate of crime, is the inability of the society to cope with the negative impact of globalization. Various societal institutions such as family, community, educational system and spiritual faith have been faced with new type of challenges and threats.

The entire criminal justice system has been placed under considerable pressure as a result of the lack of a coordinated effort to systematically deal with these challenges. The burden caused by the anomalously sharp rise in inmate number has been enormous, resulting in worsening living conditions for prisoners. Regardless of the peak increases in Thai inmate numbers from 1997-2006, the number of correctional staff remained nearly the same, making the current ratio of the corrections officers to inmates at 1:32. This is well-above the international standard of a 1:5 ratio. The current high ratio has led to a heavy workload for the staffs, affecting both their job morale and quality of work necessary to meet the treatment needs of inmates.

Issues such as limitations in space, unsafe hygienic conditions, and the overall deterioration of the prison environment for both inmates and staff, have arisen out of prison overcrowding. The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR, 1955) set expected norms for the treatment of prisoners with respect these issues, and prisons overcrowding directly threatens these minimum standards.

In order to respond to the serious issue of overcrowding, there has been a dual-approach by Thailand. Budgets have been increased and allocated to expand and/or build new prisons to help ease the overcrowding of existing ones. However, as these new facilities will soon be full, more alternative approaches which start early in the pre-prosecutorial stage and therefore prevent more offenders from entering the correctional system, have been introduced and proven to be successful. In the next section some of these key measures will be highlighted to illustrate Thailand's attempt to reduce the problems caused by prison overcrowding.

#### **IV. SELECTED NON-CUSTODIAL METHODS FOR REDUCING PRISON OVERCROWDING IN THAILAND**

The overhaul of the Thai criminal justice system which began in 1996, culminated in 2002 when the Ministry of Justice was reorganized and repositioned as the focal point for justice administration. This reorganization directly impacted the situation of overcrowded prison facilities by paving the way for the application of alternatives to inmate incarceration, including diversion, restorative justice, and community-based treatment. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985), the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules, 1990), and the Bangkok Declaration (2005) all helped to inform Thailand's approach to dealing with prison overcrowding.

One of key milestones in the development of incarceration alternatives was the cabinet resolution on July 10, 2001, which specified clear guidelines on how to reduce case backlog and overcrowding. The so-called 'July 10 Resolution' recommended several non-custodial and community-based treatment as desirable approaches, and thus served as a road map for tackling prison overcrowding in Thailand. Some of the key initiatives included the expansion of the scope of probation to include juvenile offenders as new target group, the initiation of drug diversion programs, the setting up of community mediation centers to settle certain kind of dispute within the communities, and the encouragement for the use of prosecutorial discretion not to prosecute subject to certain kind of conditions. This new policy has proved effective not only by introducing new approaches for diversion of cases from the formal criminal justice process, but also by providing alternatives to imprisonment that are more efficient at reintegrating the offenders successfully back into the society. As a result, the number of prisoners decreased from 250,000 in 2001 to 210,000 in 2003, which demonstrates approximately a 16 % reduction in the inmate population in two years.

##### **A. Alternatives to imprisonment: the Role of Probation**

Probation is a significant non-custodial measure to insure that prison remains a last resort of the system. In Thailand, probation measures for adult offenders were provided for by the Penal Code of 1956, but had not been actively implemented due to the lack of a specialized agency or probation officers to carry out the court order. In 1979 a law on probation was proposed and a specialized agency

was created, with probation officers appointed to carry out the court orders imposing the conditions for the supervision and rehabilitation of the offenders under suspended or deferred sentences. This law marked the beginning of the community-based treatment of offenders in Thailand, under the responsibility of the probation officers, volunteer probation officers, and the civil organizations based in the community. In 1992, the Department of Probation was established to handle all adult probations all over the country.

During its first two decades of operation, the Department of Probation focused its work on providing probation programs for offenders whose imprisonment terms were suspended. The programs mainly consisted of the supervision of the offenders, combined with other types of support such as education, counseling, rehabilitation, community services, and other social welfare. The overall objective of these activities was to assist the offenders in their effort to rehabilitate and successfully reintegrate into society, and to become productive members of society without relapsing into re-offending.

Prior to the launch of 'July 10 Resolution', although the Department of Probation did excellent work providing successful adult probation programs, it was unable to expand its scope of work to cover new, community-based alternative to incarceration. Lack of necessary legislation and overall criminal justice policy planning, lack of interagency cooperation and coordination among key actors, and inadequate funding were among the major reasons hampering the successful introduction of community-based treatment as alternative to the long-held practices based mostly on retributive, custodial measures.

Under the aforementioned 'July 10 Resolution', however, the Department of Probation, under the Ministry of Justice, became the key organization in the implementation of the new policy. The Department's scope of work expanded to include probation programs for all types of offenders, namely juvenile and adults. Additionally, its programs now cover all stages of the criminal process, including the pre-trial, trial, and post-conviction stages. With a specialized agency in charge of all the probationary involvement for suspects and offenders at all stages of the criminal process, the probation system in Thailand, while larger, is now more focused than in the past, enabling the Department to come up with innovative ideas to carry on its new assignments. The challenge, of course, is to do so while maintaining the quality of its traditional functions at the same time. The successes of the programs run by the Department of Probation - the probation of adults, youth, and parolees, as well as the community-based treatment - are vital in reducing the numbers of incarcerated inmates, and therefore the problem of prison overcrowding.

Figures 3 and 4 indicate the clear trend of explosive growth in responsibility by the probation officers in recent years, as seen from the change in total number of cases handled by probation officers during the past 30 years, and the number of offenders who entered the probation system in comparison with those put under the custody in prisons for the same period.

Figure 3. Number of cases handled by the Department of Probation in past 30 years. The number represents that coming from all types of work except that of the community justice.

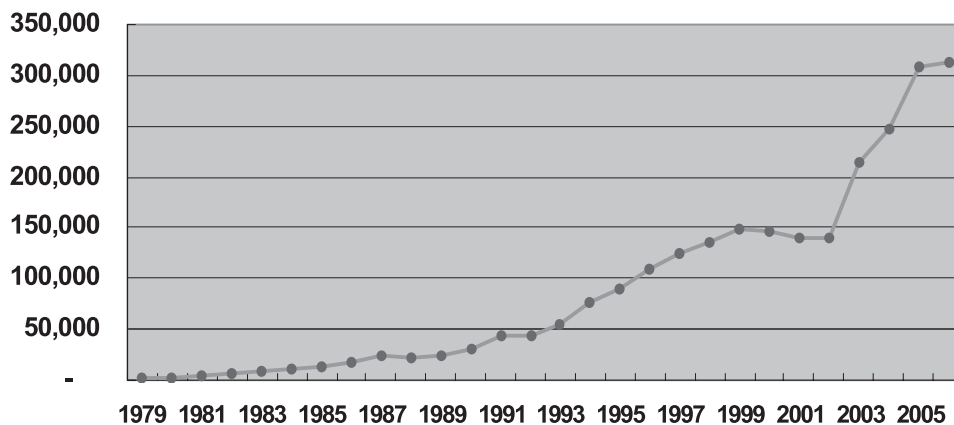
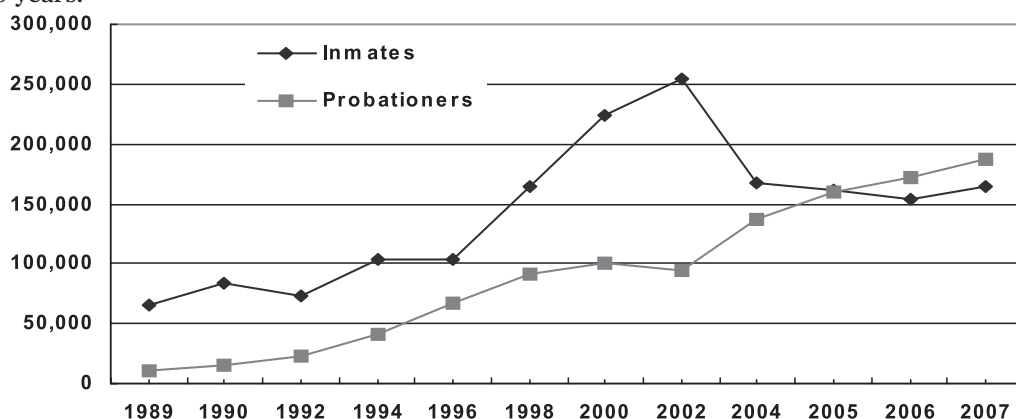


Figure 4. Number of offenders entering into the probation system vs. that placed under custody for the period of 30 years.



From its moderate inception in 1979, the probation system has now overseen more than 1.5 million offenders, with less than 20% recidivism after probation, indicating that most of the offenders who have been through treatment programs can successfully reintegrate into the society (see Table 6 for more detailed statistics).

Table 6. Numbers of offenders who re-offend under probation programs during 2004-2007.

Year	Total number of offenders under probation	Number of re-offenders under probation	Percentage of re-offenders under probation
2004	176,799	23,867	13.50
2005	126,974	10,590	8.34
2006	128,954	16,622	12.89
2007	137,178	20,988	15.30

Source: Annual Reports of the Department of Probation for the period of 2004-2007.

Here are some of the alternatives to incarceration measures that have been implemented by the Department of Probation.

### 1. Probation of Adult Offenders

The current adult probation system in Thailand consists of:

#### (a) Social Investigation

The social investigation in Thailand, in accordance with the Penal Code 1979 (B.E. 2522) Section 56, is conducted by probation officers in a pre-trial phase. Probation officers then have to prepare a pre-sentence report required by court before a sentence is imposed. The overall aim of social investigation is to gather facts related to the offender and offence, and to make recommendations for courts on appropriate sentences.

A report contains the offender's social background, circumstances of the offence, the risk the offender is likely to pose to the public and advice on suitable probation measures for individual offenders. The likelihood of individual reform is also taken into account. Another essential part of the social investigation is the Risk/Need Assessment to be included in the pre-sentence report.

During the social investigation, as a result of a needs assessment, probation officers may address the offender's needs and provide assistance where appropriate, such as helping them with bail matters, meal allowance, transportation assistance, etc. More importantly, at this stage probation officers may also work with victims of crime to give them voices, and provide them with support based firmly on restorative justice principles.

## (b) Supervision

The supervision of adult offenders is an offender rehabilitation process, in which probation officers apply many different techniques, including:

- i. The supervision of adult probationers with the use of counseling techniques as a rehabilitative tool;
- ii. The use of community-based rehabilitation programs that are appropriate to individual offenders; and
- iii. The provision of assistance.

Supervision is a procedure to oversee, treat, support, and give counseling to probationers within the community. Probationers will be given a helping hand to amend their habits, to reintegrate into the community as a law-abiding citizen, and to discourage them from re-offending or continuing their criminal lifestyle.

When courts impose a suspended sentence or a suspension of sentence with probation conditions, probation officers will make an arrangement with the offender to fulfill the court order. The arrangement is based largely on the outcome of risk and needs assessment of each offender. The conditions could be modified or reduced or the probation may be terminated early before the specified date. Probation officers will comment on this when reporting the progress of probation outcomes. Additionally, the probation and supervision plan will be reassessed every 3-6 months. The supervision also gives offenders the chance to compensate for the harm done by the crime they commit, and to be encouraged to stop re-offending.

## (c) Specific Rehabilitation Programs

Concerning treatment programs, the Department of Probation has initiated a wide range of rehabilitative interventions and activities. The strength of our rehabilitation is the way in which probation rehabilitative practices are integrated with local resources and boundlessly work in partnership with other government and non-government agencies. Various constructive programs have been implemented. Explicit examples include 'Buddhist Ordination', 'Dharma activities' (religious training), 'Ethical Camps', 'Anti Drink-Driving Campaign', etc.

In attempting to create innovative rehabilitation programs, the department encourage probation officers to work jointly with multi-agencies, volunteer probation officers (VPO), psychologists, social workers, social welfare officers, religious organizations (Buddhism, Islam, Church), etc. Moreover, the department also works closely with the 'Victims of Drunk Driving' Club whose members are seriously-injured or handicapped victims from drunk-drivers.

## (d) Basic Assistance

Probation officers are mandated to provide basic assistance for all offenders- the offender under social investigation, adult probationers, juvenile delinquents, parolees, ex-probationers, and ex-prisoners. Basic assistance will be provided in accordance with the result of needs assessment and generally includes vocational training, helping with higher education, job searches, job applications, and other assistance beneficial for rehabilitation. The objective, again, is for the offenders to be able to support themselves and successfully integrate back into the society.

## 2. Probation of Youth Offenders

The responsibility of the probation of juvenile delinquents in Thailand lies with two agencies: the Department of Juvenile Observation and Protection and the Department of Probation. The Department of Juvenile Observation and Protection deals with the social investigation of young offenders and oversees those in the delinquent detention centers. The Department of Probation



supervises young offenders imposed probation orders by the court and those juveniles released from detention centers nationwide for a specific period of time. Since 2004, the Department of Probation has begun the Juvenile Rehabilitation Program which incorporated a number of related projects aimed at strengthening the cooperation with the community networks and the networks of civil society organizations, empowering the family and the community, and capacity building for the probation officers in their works for the children. In order to provide a venue for counseling and for creative activities by the youth within the community, a number of community centers for juveniles have been established to serve as a forum for coordinating assistance and support, as well as for the introduction of useful youth programs and activities in the community.

### **3. Probation of Parolees**

After serving at least one of three of their sentence or at least ten years for life prisoners, most prisoners are eligible for parole. Before a decision is made, probation officers will propose a post-sentence investigation report to the Parole Board. A report consists of relevant information about the inmate and his/her behavior during the imprisonment, as well as details of supporters. Probation officers may also include in the report the views of the victim, the offender's neighbor, and the community leaders.

The purpose and practice of the supervision of parolees is similar to that of the supervision of adult probationers. Their differences lie, however, in the ways in which they are approached and their program requirements. This is due partly to the fact that the offenders have been in custodial institutes for some time, and adapting into the community and even their own family can be more challenging.

### **4. Aftercare Services**

Another specialized category of services is available for ex-probationers who have completed the probation term within one year. These offenders are considered the socially disadvantaged who have lost their potential to abide the rule of law. Aftercare services aim to improve reformative potential and self-sustainability.

For aftercare services, the Department of Probation has applied the use of the 'halfway house' to help offenders in need of accommodation. Halfway houses are there to help them adjust and prepare to reintegrate into their family and community. As temporary accommodation, there are a variety of routine activities and programs in the halfway houses for residents to take advantage of, including occupational training, spiritual counseling, and various skill development programs. In running the temporary residences, the Department of Probation attempts to integrate various sciences, local and traditional know-how's, cultures, and religions to frame their programs. Thus the halfway house can be considered a joint venture among the probation departments, religious institutes, and the community at large.

At present, there are several halfway houses operated by the Department which are located in provinces such as Nakhon Sawan, Amnat Charoen, Maha Sarakham, Kamphaeng Phet, and Phatthalung. These provide services for not only the offenders under the probation order, but also the drug addicts under the diversion initiative. Therefore, other than the aforementioned programs, additional activities include drug rehabilitation programs and supervised community service.

While new initiatives are considerably more diverse and target group-specific populations, implementing such treatment programs effectively at large scale require enormous resources far beyond the normal capacity of any government agency. Therefore, recruitment of volunteers and active participation by the community itself are of great importance as they provide sustainable resource for implementing the community-based correctional programs. It is also important to empower each community to develop its own mechanism of crime prevention by means of knowledge sharing. Some of the ongoing initiatives aimed at community empowerment in Thailand include a program that utilizes volunteer probation officers, a community justice network aimed to strengthen public participation in the criminal justice system, and the media-guided campaign against drunk

driving.

## B. Diversion

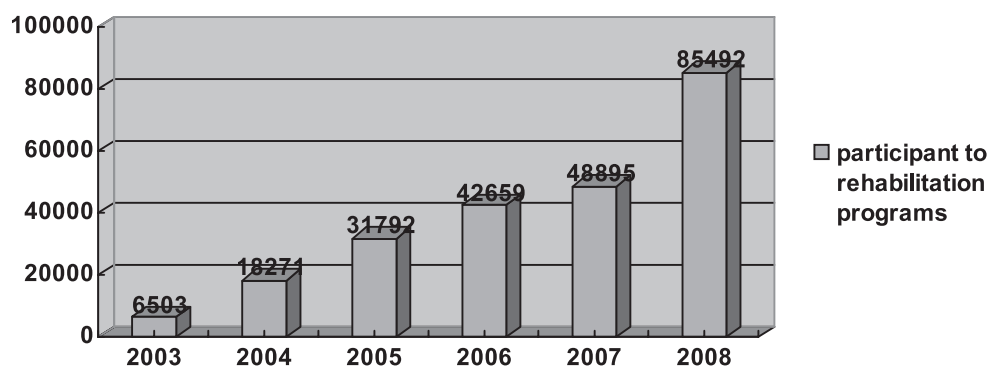
Diversion is both a natural process that takes place within the criminal justice system through the filtering of offences and offenders, and a deliberate method to process offenders in alternative ways. The practice of diversion begins with the police and prosecutors, often at their discretion, and therefore the practice must have rules and standards that both offer protection for the accused, the victim, and society, and provide for the most appropriate method of justice. Two well-utilized methods of diversion in Thailand include drug treatment for drug offenders and restorative justice interventions for offenders and victims.

### 1. The Compulsory Rehabilitation of Drug Addicts: A major scheme to reduce overcrowding in Thailand

In 2002, the Thai government adopted a new policy to tackle the narcotic drug problem which emphasized the enhancement of the preventive measures. Under the policy, the Drug Rehabilitation Act of 2002, small drug pushers and drug addicts who would have been previously prosecuted as criminal offenders were now to be regarded as patients who need rehabilitation treatment. This law was meant to provide a new legal framework for the integrated treatment of drug related offenders in Thailand. Under the revised scheme, all related government agencies have to work closely together to provide integrated responses to the treatment of drug offenders. These agencies include the Office of the Narcotic Control Board, the Royal Thai Police, the Department of Corrections, the Department of Juvenile Observation and Protection, the Court of Justice, the Royal Thai Army, the Royal Thai Navy, the Royal Thai Air Force, the Ministry of Public Health, the Ministry of Interior, the Bangkok Metropolitan Administration, and the Department of Probation serving as the focal point.

The Drug Rehabilitation Act of 2002 can be regarded as a revolutionary piece of Thai legislation. The 2002 Act makes clear that drug addicts are not ‘criminals’, but ‘patients’ who are in need of effective treatment, thus contributing to thousands of drug cases being diverted from courts, and shifting public view on drug dependents in Thailand. After taking-up the responsibility, Department of Probation did not hesitate to take a more holistic approach by introducing various drug rehabilitation programs to assist drug addicts rebuild a new life. The number of drug addicts who had been treated under the scheme from 2003 to present is shown in Figure 5.

Figure 5. Number of participants to compulsory rehabilitation programs from 2003- 2008



The 2002 Drug Rehabilitation Act stipulates that the person charged with “drug addiction”, “drug addiction and possession”, “drug addiction and possession for disposal”, or “drug addiction and disposal,” - if the amount of possession is less than the limitation of the law - is to be transferred to the court within 48 hours, and in the case of young persons, 24 hours. The court then will begin to divert the case from the traditional criminal justice system to designated facilities for drug assessment. The evaluation will be conducted by the regional Sub-committee of Narcotic Addict Rehabilitation, chaired by Chief Provincial Public Prosecutors, who will make a decision whether the person is a drug addict. Apart from this, the committee is given statutory power to supervise drug abusers/addicts during the

assessment and rehabilitation, refer the person to drug rehabilitation centers, consider the extension or reduction of rehabilitation period, and grant temporary release during detention. If the evaluation result shows that the person is a drug abuser/addict, s/he will be required to attend treatment programs for a specific period of time.

If s/he is assessed as being addicted, the prosecutor will suspend the prosecution and the person will be mandated to undergo one of the two compulsory systems: the “custodial” or “non-custodial” rehabilitation program.

#### a. Custodial Rehabilitation

For custodial rehabilitation participants, there are two types of arrangements: intensive and non-intensive treatment. *Intensive Custodial Rehabilitation Program* comprises three stages; rehabilitation process, re-entry process, and follow-up process. The Lat Lum Kaeo Community Treatment Center and the Royal Air Force are responsible for rehabilitation process through the Therapeutic Community (TC) and the Jirasa Program. After 4 months, participants then move on to re-entry process. Activities in this stage include community service, vocational training, and screening for drug abuse in urine sample arranged by Department of probation. This stage lasts for two months. Then, participants move on to follow-up process. Follow up process is under responsible of Ministry of Public Health, community representatives, and volunteer probation officers. This process lasts for 1 year. Participants who are deemed successful are then exempt from the criminal prosecution.

*Non-intensive Custodial Rehabilitation Program* differs from the intensive programme in terms of responsible agencies. Rehabilitation process of non-intensive program is operated by the Royal Thai Army, The Royal Thai Navy and the Department of Medical Services. This stage lasts for 4 months. The re-entry process and follow-up process is as same as those imposed for Intensive Program.

#### b. Non-Custodial Rehabilitation

In cases where no custody is required during the period of intensive treatment, participants who are diagnosed as addicts may be admitted as patients to hospitals or other rehabilitation centers for four to six months, where they can receive the appropriate treatment. In cases where participants are deemed not to addicts, but merely drug users, they will receive a treatment provided by the Department of Probation for six months. The remaining two-month probation period and the one-year monitoring period, are implemented in the same way as the rehabilitation under the custody scheme.

In addition to the implementation of the rehabilitation scheme, the Department of Probation has also come up with a number of initiatives to assist drug-related offenders in their effort to achieve successful reintegration. These include the following:

- **Basic Educational Support:** Drug addicts who undergo the rehabilitation program are also given the opportunity to receive basic education. The program, run by the Department of Probation in collaboration with the Ministry of Education, offers a special curricula equivalent to that of the regular elementary or primary schools to each participant depending on his/her need. It is hoped that by fulfilling the educational gap for these drug related offenders, they will be more prepared for future employment or motivated to pursue higher education of their choice upon the completion of the program.
- **Enhancement of Family Support:** This initiative involves educating family members of the drug addicts on how to support the rehabilitation effort and provides counseling service for family members as well as the participants to the rehabilitation program. The rationale for this initiative is that rehabilitation will have a greater chance of success if it involves all stakeholders, since the family members of each drug addict can play significant roles in their recovery. In order to ensure the smooth and happy reintegration of the offenders back into the

society, the support and understanding on the part of his or her family is deemed indispensable. It has been found the participants whose family members also took part in the initiative of rehabilitation had a higher rate of success.

- **Buddhist Teaching for Drug Addicts:** With the aim of applying relevant Buddhist principle and guidelines to help the drug addict in developing their mental strength to carry out the rehabilitation, this initiative has gained support from three Buddhist temples willing to provide a pilot program under the initiative.

While drug treatment programs for drug offenders attempt to divert individuals away from incarceration by taking into consideration their crime in the context of addiction, another form of diversion - restorative justice - aims to divert individuals away from incarceration by taking into consideration the context of justice for the victim.

## **2. Restorative Justice Interventions**

As a more specific form of diversion, restorative justice recognizes the role of victims and community in the process of justice, and has a definite place in modern criminal justice systems. Restorative justice emphasizes informal methods of dealing with crime, and often works hand-in-hand with the community-based treatment options.

In Thailand, there are several criminal justice agencies implementing restorative justice interventions. To begin with, the Department of Juvenile Observation and Protection has been implementing restorative justice conferences since 2003. It is implemented under the guise of 'Family and Community Group Conference' (FCGC), and conducted in the pre-trial stage as a channel of diversions. From the beginning of the program in June 2003 until February 2008, there have been 21,490 cases where FCGC was conducted, of which 18,128 cases were approved for non-prosecution by public prosecutors. Similarly, the Department of Probation has initiated a program on restorative justice known as 'Restore-Relationship Conferencing', which is conducted at the pre-sentence/social investigation stage. Due partly to the legislative limitation, the initiative does not place an emphasis on diversion. Rather, the outcome of restorative justice conferences proves beneficial for judges in giving appropriate sentences. This is particularly true when judges examine the extent to which offenders feel guilty about their crime and if any reparation can be made.

Restorative justice has begun to gain wider acceptance in Thailand. Recently, the Criminal Court has initiated a pilot project on criminal mediation based on restorative justice principles. Draft legislations on diversions of small criminal cases during the police and prosecutors stages have also been proposed for consideration of the parliament.

### **a. Restorative Justice in Response to Domestic Violence**

In recent years, domestic violence (DV) has been recognized as another serious issue that threatens the stability of the family in Thai society. Traditional views tend to regard violence in the home as a private matter, in which it is inappropriate for outsiders to interfere. The result is a problematic dynamic where victims - who are female in the majority of the cases - are reluctant to report the violence to authorities, and the incidences are repeated again and again in the home.

The Department of Probation in cooperation with the Royal Thai Police, the Rama Hospital, the Bangkok Metropolitan Administration, the Women Empowerment Association (an NGO which provides emergency shelters for female victims of violence) and the Friends of Women Foundation, has designed an integrated DV response system where the concept of restorative justice is used in conjunction with the law enforcement and rehabilitation programs, organized by the interdisciplinary professional organizations, to provide assistance to the victims of the violence and offenders in an effort to change their behaviors and end the cycle of violence.

The restorative justice concepts have proved effective in providing a suitable ground for resolving dispute within the family in a way that tries to maintain the relationships among the family members, if desired. In bringing the conflicted parties to engage in dialogue towards a mutual agreement, emphasis is made on responding to the needs of the victims as well as holding offenders accountable. By taking into account the needs and desires of victims, as well as the complexity of domestic violence, restorative justice techniques have provided a more effective alternative to the formal criminal justice process in response to DV.

When the violence occurs between married couples, regardless of their legal status, the partner who has been inflicted with the violence can exercise his or her right to bring a criminal case against the offender by first reporting it to the police. Under the restorative justice initiative, he or she can request that a mediation dialogue with the partner be arranged by the probation officer, the psychologist, or the social welfare worker. If the two sides can reach an agreement, the charge against the offender will be suspended on the condition that he or she participates in a rehabilitation program under the supervision of the probation officer for an agreed period. During that period, the participants will be able to receive various kinds of assistance from the Department of Probation, including legal aid counseling, occupational training, and accommodation support. If the participant has not repeated any incidences of violence, the charge will be completely dropped. Within the prescription period of the offense, if the attempt at rehabilitation proves unsuccessful, the victim can at any time request that the prosecution reinstate the charges against her partner.

#### **IV. KEY CHALLENGES AND RECOMMENDATIONS FOR REDUCING PRISON OVERCROWDING IN THAILAND**

In order to tackle the problem of prison overcrowding, it is important that well-focused criminal justice policies regarding alternatives to incarceration, non-custodial treatment, diversion, and successful reintegration of offenders are in place throughout the criminal justice process. It can be said that these alternative methods and community-based approaches have begun to take root in the Thai criminal justice system and greater society. Yet, for these alternative approaches to survive and attain maturity, a number of key challenges will have to be adequately dealt with. Here are some of the challenges that, in my opinion, could adversely affect the continuing effort to tackle the issue of prison overcrowding in Thailand.

##### **A. Key Challenges**

###### **1. Explosive growth in scope of work**

The increase is not only in the quantity of work, but also the variety of missions. New laws that have been in force in recent years have paved the way for the expanded scope of probation work from the traditional intensive probation based on investigation and supervision of the offenders, to the new frontier where probation work becomes an essential instrument for the diversion and crime prevention. An introduction of innovative techniques such as the electronic monitoring for treatment of offenders in the community, has also led to significant increase of work load for the probation officers. While vital in the fight to control the growth of incarcerated offenders, the expanded scope of work has considerable impact on the probation staff, many of whom are already under stress from being employed in a constantly under-staffed work environment. Figure 4 shows the number of cases that fall under the responsibility of the probation officers, while Figure 5 traces the number of probationers entering the system during the past 30 years. Here the explosive growth in responsibility of the probation staffs in recent years is clearly visible.

For prison officers, in normal circumstances, prison works has already been difficult especially in terms of security control and rehabilitation operations. Moreover, prison staff in Thailand normally have to perform double roles: as professional staff and also as guards. When the number of prison population rapidly increases coupled with expanded demands from the public, policy makers and new legislations, prison works are now even harder while the number of prison staff remains relatively unchanged. Upper policy-level constraints make it difficult for the public agency to employ additional

staff to tackle the additional missions. In order to effectively address the overwhelming problem of workload increase and its impact on the morale of staff, the government must take this issue seriously and devise a systematic way to provide support and funding to ensure that the quality of the probation program will not suffer.

## **2. Need for enhanced visibility**

Probation work - as the approach where most of the activities take place within the community at the microscopic level - tends to be less visible in the eyes of the general public as compared to institutional custody treatment. One serious implication for this relatively low visibility is the difficulty in trying to convince decision-makers who might find it difficult to see the tangible results of probation work, that their policy advocacy and funding support are vital. While the overcrowding of prisons is effectively shown with increasing figures of inmates, the linkage between decreasing the incarcerated population and strengthening the programs of probation is a more difficult relationship to portray.

The Department of Probation will therefore have to put forth a more strategic effort to make the outcome of the probation programs as clear and concrete as possible in order to gain understanding and appreciation from the policy-makers and general public. One successful example of raised visibility is the campaign regarding drunk driving. Through the use of the media, the campaign was successful in sending out clear messages to the public that the imposition of community services, such as working in hospital or providing care for victims of drunk-driving accidents, is more effective enforcement of the law, as it forced the offenders to face the impact of their actions and refrain from repeating them. The Court was also convinced to increase its use of community service orders as punishment, as opposed to fines alone. The success of this program should encourage similar tactics to increase visibility with respect to more types of offences.

## **3. Need for effective treatment programs**

With the ever-increasing complexity of issues related to crimes involving addiction, domestic violence, and other societal and familial problems, there is a constant need for law enforcement, probation staff, and court officials to acquire new knowledge and skills to enable them to understand and cope better with conducting supervision and providing assistance to such offenders. By effectively addressing such problems at a fundamental, rather than superficial, level, there can be a true impact on recidivism rates and therefore numbers of offenders in the system and overall inmate population.

In earlier days, when the Department of Probation was under direct control of the judiciary, the main responsibility of probation officers was to prepare the so-called social inquiry and offender supervision reports with more emphasis on the prevalent forms of punishment - imprisonment and fines - and less emphasis on turning the probation programs into effective alternatives. Now, the probation programs need to be able to fulfill more policy requirements while providing no less effective options for the treatment of offenders than the custodial approaches. The general public must be informed and convinced that the programs can deliver desirable results - the reform of the offenders' attitude and behaviors - when these programs are implemented in local communities. In order to achieve that, the programs need to be more responsive to as many types of target groups as possible, especially with respects to their types of offences. More cooperation and partnership with healthcare providers and social welfare agencies must be sought after in designing such programs.

## **4. Integration of enforcement agencies on treatment of offenders**

The reorganization of the Ministry of Justice in 2002 successfully brought all related government agencies charged with the treatment of offenders under one umbrella. Yet there is still an urgent need for the integration of these agencies to cascade down to real practice and work procedures within each agency and across the related agencies. The development of an integrated system of offender treatments is crucial to achieving more efficiency and reducing the duplication of work.

Every agencies in the criminal justice system will have to work closely with one another encies in order to develop a suitable framework for such integration, with well-defined scope of responsibility

and accountability. A unified strategic plan will be necessary for the smooth delivery of each key process along the value chain of the overall offender treatment process, including the pre-release preparation and after-release support. Additionally, the Department of Probation will need to continue its effort in promoting participation and partnership with other non-public sectors.

### **5. Maintaining the quality of public participation in probation work**

Success by the Department of Probation in promoting public participation in the criminal justice process of Thailand has inspired decision-makers at the top policy levels to apply this model of volunteering and community networking to other key criminal justice issues. A good example of this is the development of the community-based system of responses focusing on the alternative dispute resolution and access to legal assistance. So far, the volunteer probation officers initiative as well as the prototyped networking initiatives by the Department of Probation have led to great success in mobilizing public support for and understanding of the work on offender treatment. This ultimately results in a more effective implementation of treatment programs and after-release assistance programs within the community. Still, for the public participation and partnership models developed in such manner to be effectively applied to address other criminal justice issues, substantial funding and support will be necessary. Otherwise, it might lead to the undesirable consequence where the current efforts in the community-based treatment of offenders will be diluted as a result of insufficient resources.

### **6. Political challenges and consistency of penal policy**

New initiatives and treatment programs related to offenders take time to be accepted as worthwhile not only for the policy-makers and the general public, but for employees within the criminal justice system itself. Practitioners such as prison officers, law enforcement employees, probation officers, and court members must have a certain level of belief and buy-in for the programs to be implemented successfully. Programs such as diversion, restorative justice, and community treatment must first be shown to be effective in their objectives (of reducing incarceration rates, recidivism, etc.) before buy-in can be achieved. Having time for the process to play out is difficult when there is a lack of consistency regarding penal policy in the country. Because many of these initiatives are relatively new to criminal justice in Thailand, there has not yet been a consistent approach to reducing prison overcrowding through such initiatives. Changing agendas of political leaders, as well as changing of the leaders themselves, has contributed to this problem. A consistent and committed approach by the policy-makers would allow the programs to reach their full potential, thus providing tangible statistics to allow for evidence-based decisions regarding penal policy.

### **7. Judiciary's involvement in promoting community corrections sentence**

In many cases, despite all the work being done at the pre-prosecutorial stage by the Ministry of Justice, sentences ultimately lie in the hands of the judiciary. This can be a challenge not only because of the necessary buy-in discussed in the previous section, but because historically the judiciary tends to utilize the traditional methods of fines and imprisonment rather than the more alternative methods. As the 'sentencers' of the offenders, the judiciary play a vital role in the promotion and utilization of the alternative methods, and are a key group involved in tackling the rate of incarceration. By accepting and mandating various methods of diversion, treatment, mediation, etc. while remaining independent, the judiciary can go a long way towards promoting community corrections sentences.

## **B. Recommendations**

Based on a recognition that prison overcrowding is not merely as a result of increased crime, but as a result of the criminal justice policies made to deal with criminals, the solution then becomes about effective treatment that is not merely about keeping offenders under control through incarceration, but about providing them with the necessities and treatment for a successful reintegration into a crime-free life in society. Here are a few of my thoughts on how to enhance alternative to incarceration measures to better cope with the challenges mentioned above, and positively impact the problem of prison overcrowding in Thailand.

## **1. Earlier application of alternative measures**

Prison overcrowding is by and large the result of a breakdown of the system of applying alternative measures to appropriate offences and offenders from the stage of initial arrest through to the sentencing stage. Non-custodial measures must be more vigorously applied in the pre-prosecutorial stage of the criminal justice system for the system to work, and for prison to be the last resort. The mindset of prison as a last resort must be present in all sectors of the system from the beginning, so that the offender will be channeled as early and as appropriately as possible into alternative measures of community corrections.

## **2. More variety for non-custodial treatment**

While imprisonment may be justified for certain types of offenders under certain circumstances, it is not justified for all. In order for the system to better serve and respond specifically to the needs of the offenders, more options for the community-based and alternative treatment measures is highly desirable. Introduction of such measures at the pre-trial stage and during the period of suspended sentence, as well as in-house arrest could provide more variety for the non-custodial treatment in the community. Specific treatments that match the needs of certain group of offenders are also desirable. In addition to the offenders or suspects awaiting trials, as well as drug abusers, prisoners with short terms of imprisonment (i.e. those who have committed compoundable offences of less than two- years term) might well be a good candidate for such measures. Furthermore, the entire criminal punishment system needs to be reformed in order to allow for the introduction and implementation of the non-custodial measures in greater variety. The legal framework needs to be revised to allow for more alternatives to imprisonment in order to reduce the number of inmates incarcerated for the short-term.

## **3. Multilevel conditions**

At present, the conditions set forth for the offenders to observe during probation tend to be quite rigid and inflexible, rendering them less responsive to the different needs and circumstances of each offender. For instance, in case of offenders who have re-offended, the conditions may well be appropriately intensive, with a combination of limiting freedom of movement, restriction on access to any particular areas, compulsory rehabilitation, or even the increase of the probation period. On the other hand, for offenders of petty crimes, normal conditions might not necessary. One approach to allow for such multi-level conditions is to empower the probation officers to use their discretion in order to reach an agreement with each offender in a tailor-made fashion.

## **4. Need for ‘national penal policy’ and modernized legislations**

Reiterating the challenge of consistent policies, there is a demonstrated need for a ‘national penal policy’ which promotes community corrections and reserves prison spaces for only hardcore criminals. This will take the modernization and innovation of legislation, using best practices and evidence-based knowledge from around the globe, and applying it in a manner that is suitable to Thai law, customs, culture, and society. Currently, Thailand is exploring a number of innovative policies regarding intermediate sanctions, including intensive probation, home detention, weekend detention, periodic detention, and electronic monitoring for the community-based treatment of the offenders. Additional innovative approaches might include pre-sentencing probation, assistance program for victims of crimes, as well as the implement of restorative justice measures.

## **5. Improvement of transition operation and aftercare services**

Prison should not be a revolving door for inmates; the issue of overcrowding can not be addressed without looking at keeping offenders from re-offending after they leave prisons or other correctional programs. Community-based corrections and treatment programs are only as good as their re-offending rates, so it is crucial that transition operations for inmates and aftercare services for ex-probationers are improved to prevent recidivism.

In response to the need to systematically embrace more innovative approaches, some might look for the establishment of new agency to be responsible for the new demand. Still, in my opinion, it



might be more productive to consider assigning such new missions to the Department of Probation, considering that its staffs have had considerable real work experience and are equipped with the necessary fundamental knowledge and skills. Each probation officer, provided that they are properly trained, will have at least three significant qualifications, namely: 1) being knowledgeable with respect to laws and criminal justice system, 2) having good background knowledge on psychology and social welfare, and 3) having intensive working experience with all key stakeholders in the criminal justice process- whether they are the police, the public prosecutors, the offenders, the victims of crimes, or the members of local community. Therefore, we only need to build up more on the well-laid foundation which will be more cost effective and feasible.

At the heart of any quality treatment lies the ultimate goal of reintegration of the offenders into the society. Measures must be tested and monitored for their effectiveness in terms of providing assistance to the offenders so they can attain such goal. This involves taking into account the societal and familial dynamics surrounding the crime, and applying the support needed to reintegrate the offender back into the community. As the society becomes more and more complex with more compounded impact of the weakened social institutions, so are the nature and circumstances surrounding the offenders and their offences. The probation officers will require constant training and re-training to bring their knowledge and skills in keeping up with the latest development of the serious issues of the days. They are required to do more than just supervising the offenders according to the conditions set forth by the court orders. They must be able to work closely and productively with the offenders, the victims of crimes, and the local communities. Their role will not be limited to merely 'rules keepers' but extend to encompass that of the 'local community resources managers' in order to truly return the offenders back into the society.

## **6. Increased partnership**

My experience in working to promote public participation in the treatment of offenders has confirmed the fundamental belief that direct engagement of the community members, either through the form of volunteers or networking, is indispensable for the effective implementation of the alternative treatments for imprisonment. It is the most efficient way to make use of the resources within the local community as well as other forms of social capital to support the probation work and decrease in the rate of incarceration. In the context of Thailand's political system, direct participation from the local community also contributes to the on-going efforts with respect to decentralization of administration power from the central government, as mandated by the Constitution. As present, there are over 6,700 Tambon Administration Organizations - the smallest units of local governments - throughout Thailand with more independence in terms of policy planning and budget management. The success in promoting community involvement in the treatment of offenders should be expanded to include the form of partnership agreements with these local administrations, which will provide a more sustainable solution to the chronic problems of budget constraints and lack of support for the assistance program for the reintegration of the offenders into the society.

## **V. CONCLUSION**

Prisoners' rights are human rights, and as stipulated in the SMR (United Nations, 1955), prisoners have the right to adequate facilities. The problem of overcrowded prisons is one that many countries, including Thailand, are currently dealing with. One approach utilized has been capacity-based - solving the situation by building more prisons. The Ministry of Justice in Thailand recognizing that the issue of prison overcrowding is not just a symptom of increased crime, but of penal policies as well, has used a three-prong approach: prevent newcomers from entering prisons; reduce the current prison population by using early release (parole) measures for prisoners who are near the end of their sentence and have earned parole through good behavior; and reduce the recidivism rate. Initiatives created to underline these three strategies include alternatives to incarceration, such as enhanced probationary measures that include community treatment, diversion, and restorative justice.

Alternatives to incarceration programs have come a long way in Thailand since they were first introduced thirty years ago. They currently operate as well-accepted options for the diversion of

criminal cases from the historical method of fines and imprisonment. Additionally, there have been a number of new measures for specific group of offenders to better serve their needs, along with the needs of the victims and society at large. Public participation and community engagement have become the integral part of system where rehabilitation and reintegration are the ultimate goals. Some innovative measures such as restorative justice with emphasis and role for the victim have been sought after more and more. Finally, the working style where community networking and partnership are the absolute ingredients has become the norm. All these are the good signs for not only the sustainable development of the community corrections approach, but for the situation of prison overcrowding as well. The more offenders who are diverted to other forms of rehabilitation, the more the prisons remain last resorts for only the most dangerous criminals.

There is room for improvement, however, as many challenges remain with respect to the implementation of community corrections and alternative measures. Since the time of the inception, the present time is perhaps the most crucial for making real headway in Thailand's response to prison overcrowding. It is important that all concerned parties who shoulder the responsibilities of implementing alternative measures put great effort into initiating, implementing, monitoring and evaluating the outcome of such programs, while maintaining the quality of work despite the rising demands. Through a decade of hard work, pioneers involved in the process of reform, including the Department of Probation, have been successful at - among other things - establishing the system of probation for adult offenders as well as juvenile offenders in Thailand. There are more than 100,000 persons under supervision annually, and the success rate has been satisfactory. Offenders who are under the supervision of parole are not, by definition, adding to the prison population, and therefore this is a crucial piece in the work of decreasing the incarceration rate.

In the case of penal policy, there can be no shortcut to success. While the utilization of non-custodial measures to combat prison overcrowding can be viewed as a cheaper alternative to building more facilities, such measures in Thailand, similar to many countries, are facing a chronic lack of funding and inadequate allocation of personnel. Although initiatives such as diversion and restorative justice may in fact be a cheaper alternative, this does not mean that they can survive without adequate funding and support. To ensure that Thailand maintains a prison population that is consistent with the capacity of its facilities, it is necessary that non-custodial measures of treatment and rehabilitation continue to be given their due consideration and support, to enable them to succeed during this important period for continuing growth and maturity.