Ubuntu: child justice in South Africa

Rob Allen describes recent developments towards reforming the youth justice system in South Africa.

The *Child Justice Bill* currently making its way through the South African parliament represents a bold reform that could see many young offenders diverted from police and prison detention into community based activities such as restorative justice. Yet concerns about the availability of community programmes and relentless demands for a tougher approach are putting at risk some of its key provisions. Unlike recent and proposed reforms in the UK, the objects of the bill are rooted in international law — the *UN Convention on the Rights of the Child* and the *African Charter on Rights and Welfare of Children*.

Indeed the South African Constitution itself makes the child's best interests of paramount importance and enshrines a right of a child not to be detained except as a last resort and for the shortest time. They should also be treated in a manner that takes account of their age. Central too to the Bill is the Africa concept of *ubuntu* – a Zulu term for humanness which incorporates a world view based on the maxim that 'a person is a person through other persons'. It is this sense of community responsibility or social cohesion which the Bill seeks to promote by fostering a child's sense of worth, holding them to account when they harm others, and supporting reconciliation and reintegration.

It is this sense of community responsibility or social cohesion which the Bill seeks to promote by fostering a child's sense of worth, holding them to account when they harm others, and supporting reconciliations and reintegration.

Currently practice in South Africa is far removed from meeting these objectives. Children can be detained for days on end in the highly unsuitable setting of police stations where violence from officers and other detainees is rife. Hundreds of children are held on remand in prison often for many months, at high risk of sexual abuse and Aids.

The Bill aims to reduce detention by instituting a speedy process of assessment, preliminary inquiry and diversion. It also requires minor cases to be released from police custody at the earliest opportunity. Whether released at this stage or not, within two days of arrest a probation officer will be expected to produce a report, estimating the age of the child, assessing the prospects for diversion or referral to the civil children's court and making recommendations about release and placement. Longer periods of assessment are allowed to set up a diversion programme in suitable cases or to investigate more complex cases. But the aim is to bring youngsters quickly before a preliminary inquiry, which will divert before plea and trial as many of them as possible. To be eligible, children must acknowledge responsibility and sufficient evidence must be available to prosecute the case. The Inquiry, effectively a first court appearance, comprising prosecutor, magistrate, probation officer, the child and their family, decides whether diversion is possible and if not whether to release the child pending appearance in court.

The Bill currently proposes three levels of diversion involving activities of varying length and intensity. The lowest level might include an oral or written apology, supervision, education or training for up to three months, and symbolic or actual restitution. The top level for fourteen year olds and above facing a prison sentence could include up to 250 hours community service to be completed over a year, with a residential element. All options will be subject to minimum standards. While the top-level measures might appear heavy for use at the pre court stage, if the Bill is to succeed in reducing pretrial detention, the options will need to be credible with prosecutors and magistrates alike. The Inquiry can also approve the holding of a family group conference, to come up with a plan of action for the child and their family. Diversion is already operated in some parts of the country. About three quarters of children currently diverted are channelled into programmes run by NICRO, the National Institute for Crime Prevention and the Integration of Offenders.

The Youth Empowerment Scheme (YES) offers six group work sessions to first time offenders and their parents which look at what has gone wrong and how to put things right. A more intensive residential programme, *The Journey*, is available for more serious offenders. Monitoring has shown that fewer than 10% of youngsters re-offended within a year of completion. The opportunity for diversion does not end if the case continues into court.

Child justice courts will be able to divert cases at any point up to sentencing and the wide range of alternatives to prison include all of the options available at the diversion stage, (something which should encourage agencies to finalise cases at the

earliest possible stage). The Bill envisages One Stop Shop Child Justice Centres which will bring together courts and services to provide speedy interventions. Custody time limits will also be introduced for children awaiting trial; other than in the gravest cases, children must be released from detention if their trial is not committed within six months.The Bill sets out the purposes of sentencing as being to encourage the child to understand the harm they have caused, promote an individualised and proportionate response, promote reintegration and ensure that any services forming part of the sentence assist in that process of reintegration. The bill does not talk about punishment.

Pre-sentence reports will be mandatory and where the court imposes a sentence other than that recommended, the reasons must be recorded. Family group conferences are also encouraged before sentence so that the court can where appropriate confirm the recommendations as a court order. For more serious and persistent offenders, the Bill provides correctional supervision, sentences with a residential requirement and for those aged 14 and over, imprisonment.

In many cases these sentences are subject to automatic appeal and review, and suspension is a possibility too. Understandably parliamentary scrutiny of the bill has raised questions about implementation; the success of the Bill will depend on sufficient probation staff to assess the children within the tight deadlines and enough good quality community options for the 55000 youngsters who could be diverted each year.

As in the UK, the operation of youth justice is a matter for a number of government departments, some organised at national level, others on a provincial or local basis. An impressive costing exercise has been undertaken and the necessary resources promised. Plans are underway for monitoring the new system. But capacity concerns remain.

More troubling have been growing concerns about whether the policy approach is sufficiently robust. Although the Bill has benefited from exhaustive consultation since its origins in the mid '90s, (not least with young people), very high crime rates make protecting the rights of offenders of any age a questionable priority to politicians, press and public.

At a relatively late stage, the parliamentary committee have sought to make 16 and 17 year olds subject to the mandatory minimum sentencing provisions, which are part of the law for adult offenders. Such measures were firmly and purposely left out of the *Crime Justice Bill* at the outset as they are at odds with the vision of the new law.

More positively, assessment by a probation officer for every child, preliminary inquiry and diversion, and restorative justice all remain strong central features. These will hopefully be the defining characteristics of South Africa's new youth justice system.

■

***Rob Allen** is Director of Rethinking Crime and Punishment and a member ofthe Youth Justice Board. He has undertaken consultancy work with the South African Department of Justice on monitoring the child justice system.*