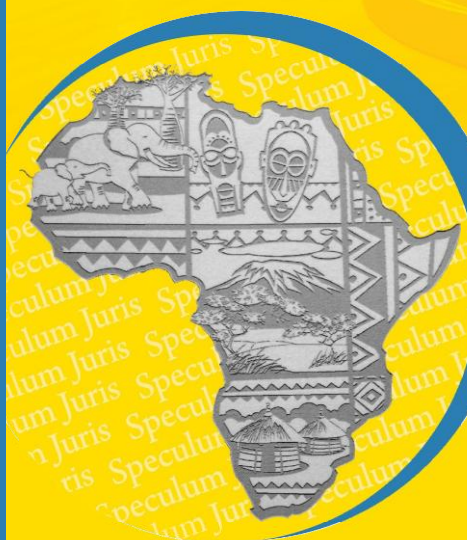




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Parole, Rehabilitation, and the Future of Child Justice in South Africa

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Abstract

This article critically examines the constitutional, statutory, philosophical, psychological, and policy dimensions surrounding the absence of a parole mechanism for child offenders in South Africa. Although the country's juvenile justice framework emphasises rehabilitation, reintegration, and the best interests of the child, it provides no structured mechanism for conditional early release for children sentenced to compulsory residence in Child and Youth Care Centres (CYCCs). This omission raises complex questions about equality, dignity, and the proportionality of legislative differentiation under the Constitution.

Rather than advocating the wholesale extension of the adult parole system, the article uses parole as a reference point to question the absence of a child-specific mechanism based on rehabilitative progress. It argues that children's developmental capacities, emotional vulnerabilities, and responses to trauma require a system informed by psychological assessments, trauma-informed care, and multidisciplinary evaluations. The article examines whether the current framework complies with sections 9, 28, and 36 of the Constitution, South Africa's international obligations under the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child, and the Beijing Rules, and considers comparative

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models adopted in Sweden, Norway, and Finland. Grounded in the principles of Ubuntu and transformative constitutionalism, it concludes that a structured, rights-based parole mechanism incorporating regular rehabilitative and psychological assessments, therapeutic support, and community participation would strengthen the fairness, responsiveness, and effectiveness of South Africa's juvenile justice system.

Keywords: child justice; parole reform; restorative justice; Ubuntu; transformative constitutionalism; juvenile offenders; rights-based approach; rehabilitation; reintegration; dignity and accountability; justice and reconciliation

1 INTRODUCTION

The South African child justice system is underpinned by a progressive legal framework that prioritises the rehabilitation and reintegration of child offenders, guided by the constitutional imperative that the best interests of the child are of paramount importance.¹ This principle, enshrined in section 28(2) of the Constitution of the Republic of South Africa, 1996, is further reinforced by the Child Justice Act 75 of 2008² and the Children's Act 38 of 2005,³ both of which seek to ensure that children in conflict with the law are treated in ways that promote their dignity, development, and reintegration into society. This article adopts an interdisciplinary methodology, integrating legal analysis with psychological, philosophical, and comparative perspectives. By drawing on constitutional jurisprudence, developmental psychology, and restorative justice principles, the article presents a holistic framework for evaluating the absence of, and developing reform options to create, a child-specific parole or early-release mechanism within South Africa's child justice system.

Despite the rehabilitative and reintegrative objectives articulated in section 28(2) of the Constitution, the Child Justice Act 75 of 2008 and the Children's Act 38 of 2005, a significant lacuna persists in the absence of a parole or early-release mechanism for children sentenced to compulsory residence in Child and Youth Care Centres (CYCCs). Compulsory residence in a Child and Youth Care Centre (CYCC) is imposed as a custodial sentence of last resort under the Child Justice Act 75 of 2008, primarily in cases involving serious offences where non-custodial options are deemed inappropriate. CYCCs are intended to function as rehabilitative, therapeutic and development-oriented environments, rather than punitive institutions akin to adult correctional centres.

Unlike adult offenders, whose sentences are administered under the Correctional Services Act 111 of 1998 and who may be considered for early release through parole based on rehabilitative progress and risk assessment,⁴ children sentenced to compulsory residence in CYCCs must serve the full term imposed by the court. This occurs despite the care-oriented objectives of CYCCs and irrespective of individual rehabilitative progress or changed circumstances.⁵ This legislative design — rooted in a protective and rehabilitative rationale — partly explains the absence of

1 Constitution of the Republic of South Africa, 1996, s 28(2).

2 Child Justice Act 75 of 2008, Preamble and ss 3, 69, and 76(2)-(3). The Act establishes a child-specific criminal justice system that prioritises rehabilitation, restorative justice, and reintegration, in line with constitutional and international obligations.

3 Children's Act 38 of 2005, s 191(2)(j), which governs the programmes offered at Child and Youth Care Centres (CYCCs) and supports the developmental needs of children in conflict with the law.

4 Correctional Services Act 111 of 1998, ss 73–79. These sections provide for parole eligibility and procedures for adult offenders, including placement under correctional supervision, day parole, and parole, which are not extended to children sentenced to CYCCs.

5 Wakefield and Gallinetti *Sentencing of Children to Child and Youth Care Centres* 2011 Child Justice Alliance Workshop Report 8-10 https://childjustice.org.za/publications/Sentencing_of_Children.pdf (accessed 30-09-2025). This report highlights the absence of a parole mechanism for children sentenced to CYCCs and the constitutional concerns it raises.

a parole regime for child offenders. However, it simultaneously raises pressing constitutional questions concerning proportionality, dignity (section 10), and equality (section 9), particularly where continued detention is no longer necessary to achieve the stated rehabilitative objectives.⁶

The issue is not merely one of procedural fairness but implicates broader normative concerns about the nature and purpose of juvenile justice in a constitutional democracy. It invites scrutiny of whether the current legislative framework adequately reflects South Africa's international obligations under instruments such as the United Nations Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child, and the Beijing Rules,⁷ all of which advocate for detention as a measure of last resort and for the shortest appropriate period.

This article undertakes a comprehensive analysis of the constitutional, statutory, and philosophical dimensions of parole for child offenders. We must engage with the competing perspectives on whether the exclusion of child offenders from parole eligibility constitutes unfair discrimination or a justifiable limitation in pursuit of rehabilitative goals. The article further considers comparative jurisprudence from jurisdictions such as Sweden, Norway, and Finland,⁸ where parole systems for juveniles have been successfully implemented in alignment with restorative justice principles.

Ultimately, this article proposes a coherent and constitutionally sound framework for reform that reconciles the imperatives of rehabilitation, public safety, and legal equality while remaining faithful to the values of Ubuntu and the transformative ethos of South African constitutionalism.

2 SCHOLARLY PERSPECTIVES ON REHABILITATION, SENTENCE ADMINISTRATION AND CHILD JUSTICE

The scholarly discourse on juvenile justice in South Africa has consistently emphasised the rehabilitative promise of the system and the constitutional imperative to treat children differently from adults. Central to this discourse is the recognition that children, by virtue of their developmental stage, possess diminished culpability and heightened capacity for reform.⁹ This understanding has shaped both domestic legislation and judicial interpretation, particularly in the context of sentencing and detention.¹⁰ The Child Justice Act 75 of 2008, for instance, reflects this approach by codifying the principle that detention must be a measure of last resort and for the shortest appropriate period.¹¹ Moreover, developmental psychology supports the view that children's cognitive and emotional maturity continues to evolve, thereby justifying a differentiated legal response.¹² Judicial decisions and academic commentary alike

6 Muntingh and Ballard "Are the Rights of Children Paramount in Prison Legislation?" 2013 *SACJ* 3. The authors critique the Correctional Services Act for failing to align with the constitutional imperative of the best interests of the child, particularly regarding parole and sentence administration.

7 African Charter on the Rights and Welfare of the Child, 1990, Art 17; Convention on the Rights of the Child, 1989, Art 40.

8 Lappi-Seppälä "Juvenile Justice without a Juvenile Court: A Note on Scandinavian Exceptionalism" in *Juvenile Justice in Global Perspective* 2015 NYU Press.

9 Skelton and Badenhorst *The Criminal Capacity of Children in South Africa: International Developments and Considerations for a Review* (2011) Child Justice Alliance <https://dullahomarinstitute.org.za/childrens-rights/archives/Publications/Other%20publications/The%20criminal%20capacity%20of%20children%20in%20South%20Africa%20-%20International%20developments%20and%20considerations%20for%20a%20review.pdf> 5–6 (accessed 30-09-2025).

10 Gurahoo *Sentencing Juveniles According to the Child Justice Act: A Critical Evaluation* (LLM thesis, UKZN, 2016) 12–14.

11 Momoti *Application of Prescribed Minimum Sentencing Legislation on Juvenile Offenders in South Africa* (LLM thesis, UWC, 2005) 36–38.

12 Kehrhaan *Delictual Accountability and Criminal Capacity of a Child: Why the Age Difference?* (LLM mini-dissertation, UP, 2017) 48–50.

have reinforced the notion that the best interests of the child must be paramount in all matters affecting them, including criminal justice processes.¹³

Sloth-Nielsen and Gallinetti have been instrumental in framing the child justice system within the philosophical lens of Ubuntu, a concept that foregrounds dignity, community, and reconciliation.¹⁴ Their work underscores the importance of restorative justice mechanisms that seek not only to hold children accountable but also to reintegrate them into society through familial and communal support structures.¹⁵ They argue that the Child Justice Act 75 of 2008 embodies these values by promoting diversion, therapeutic interventions, and participatory justice processes.¹⁶ However, they also caution that the absence of a parole mechanism may undermine these objectives by failing to provide a structured pathway for early reintegration based on rehabilitative progress.¹⁷

Gueorguieva, writing from an international law perspective, calls for a differentiated approach to parole for child offenders.¹⁸ She argues that the blanket exclusion of children from parole eligibility constitutes a failure to recognise the evolving capacities of the child and the need for individualised justice.¹⁹ Her analysis draws on the Convention on the Rights of the Child (CRC), particularly Articles 37 and 40, which advocate for detention as a measure of last resort and for the shortest appropriate period.²⁰ Gueorguieva's critique is grounded in the principle of proportionality and the need for procedural safeguards that reflect the unique vulnerabilities of children in conflict with the law.²¹

Comparative studies from Nordic jurisdictions offer useful points of reference for reform, not because of socio-economic or institutional equivalence with South Africa, but because these jurisdictions have developed child-specific early-release mechanisms that prioritise rehabilitation, individualised assessment and compliance with international juvenile justice norms, while openly acknowledging contextual distinctions. In Norway, the juvenile justice system is characterised by its emphasis on restorative practices, community-based supervision, and therapeutic programming.²² Bauer's analysis of Norway's use of restorative justice highlights the role of parole in facilitating reintegration and reducing recidivism.²³ Similarly, Sweden's juvenile parole system incorporates multidisciplinary support, including social services, probation officers, and family involvement.²⁴ These systems are not only compliant with international standards but also demonstrate the practical benefits of early release mechanisms

13 Cooper "Juvenile Justice in South Africa" in *Race, Class and Restorative Justice in South Africa* (2008) <https://www.academia.edu/12933081> (accessed 14-08-2025).

14 Sloth-Nielsen and Gallinetti "'Just Say Sorry?' Ubuntu, Africanisation and the Child Justice System in the Child Justice Act 75 of 2008" 2011 *PELJ* 63–92.

15 *Ibid* 65–66.

16 *Ibid* 70–74.

17 *Ibid* 88–89.

18 Gueorguieva "Call for a Difference in Treatment Between Child and Adult Offenders in the South African Parole System: An International Law Perspective" 2020 *PSLR* 61.

19 *Ibid* 63–65.

20 Convention on the Rights of the Child, 1989, art 37(b) and Art 40 <https://ihl-databases.icrc.org/en/ihl-treaties/crc-1989/article-37> (accessed 14-08-2025).

21 UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice CRC/C/GC/10, paras 10–12 https://commission.europa.eu/system/files/2022-12/childrensrightsinyouvenilejustice_crc.c.gc_10_25april2007_en.pdf (accessed 14-08-2025).

22 Bauer "Rehabilitative Promise: Why Norway Uses Restorative Justice in Juvenile Law" 2019 *Mich St Intl L Rev Blog* <https://www.msuir.org/msuir-legalforum-blogs/2019/1/24/rehabilitative-promise-why-norway-uses-restorative-justice-in-juvenile-law> (accessed 14-08-2025).

23 *Ibid*.

24 Hollander and Tärnfalk "Juvenile Crime and the Justice System in Sweden" in *LawExplores* 2017 <https://lawexplores.com/juvenile-crime-and-the-justice-system-in-sweden> (accessed 14-08-2025).

tailored to the needs of young offenders.²⁵

The literature converges on several key themes. First, there is broad consensus that children should not be subjected to punitive measures that mirror adult incarceration.²⁶ Second, scholars agree that rehabilitation must be the cornerstone of juvenile justice, and that this requires mechanisms for ongoing assessment and conditional release.²⁷ Third, there is increasing scholarly concern that South Africa's current legislative framework, while progressive in many respects, lacks the flexibility and responsiveness needed to accommodate the diverse trajectories of child offenders.²⁸

In sum, the literature supports a child-sensitive, rights-based approach to parole that is grounded in constitutional values,²⁹ informed by international obligations,³⁰ and enriched by comparative insights.³¹ The absence of such a mechanism in South Africa represents not only a legal gap³² but a missed opportunity to realise the transformative potential of the juvenile justice system.³³

3 CONSTITUTIONAL AND STATUTORY FRAMEWORK

The constitutional architecture of South Africa places children at the centre of a rights-based legal order, recognising their unique vulnerabilities and developmental needs.³⁴ Section 28 of the Constitution of the Republic of South Africa, 1996, explicitly provides that every child has the right “not to be detained except as a measure of last resort and for the shortest appropriate period of time”.³⁵ This provision is not merely aspirational; it imposes a binding obligation on all organs of state, including the judiciary, to ensure that any deprivation of liberty is strictly necessary and proportionate.³⁶ The jurisprudence of the Constitutional Court has consistently affirmed that the best interests of the child must be a primary consideration in all matters affecting them, including sentencing and detention.³⁷

25 Lappi-Seppälä “Youth Justice and Youth Sanctions in Four Nordic States” in *Juvenile Justice in Europe* (2018) 24–45.

26 Murhula and Singh “A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature” 2023 *AJCS* 1–20.

27 Gurahoo LLM thesis 12–15.

28 Mabaso *The Responsiveness of the South African Juvenile Justice System in Protecting Stateless Children Against Sexual Violence* (MPhil thesis, University of Pretoria, 2024) 45–48; Songca “Children Seeking Justice: Safeguarding the Rights of Child Offenders in South African Criminal Courts” 2019 *DJLJ* 316–334; Fambasayi and Moyo “The Best Interests of the Child Offender in the Context of Detention as a Measure of Last Resort: A Comparative Analysis of Legal Developments in South Africa, Kenya and Zimbabwe” 2020 *PELJ* 1–30.

29 Songca 2019 *DJLJ* 316–334.

30 Gueorguieva 2020 *PSLR* 61–65.

31 Lappi-Seppälä *Juv Jus in Eur* 24–45.

32 Gueorguieva 2020 *PSLR* 66–68.

33 Cooper “Juvenile Justice in South Africa” in *The Handbook of Juvenile Delinquency and Juvenile Justice* (2015) Wiley 65–75.

34 Friedman, Pantazis and Skelton “Children’s Rights” in Woolman and Bishop (eds) *Constitutional Law of South Africa* (2 ed, RS 1, 2007) ch 47.

35 Constitution of the Republic of South Africa, 1996, s 28(1)(g).

36 Centre for Child Law Access to Justice for Children in South Africa (2023) <https://centreforchildlaw.co.za> 6 (accessed 14-08-2025).

37 Couzens “The Best Interests of the Child and the Constitutional Court” 2019 *CCR* 363–386.

In tandem, section 9 of the Constitution guarantees the right to equality and prohibits unfair discrimination on various grounds, including age.³⁸ The principle of substantive equality requires that the law not only treat individuals equally but also respond to their differing circumstances in ways that promote fairness and justice.³⁹ In the context of juvenile justice, this means recognising that children are not simply “smaller adults” but individuals with distinct psychological, emotional, and social needs.⁴⁰ The failure to provide a parole mechanism for child offenders — while such a mechanism exists for adults — raises serious concerns about age-based discrimination and the rationality of legislative differentiation.⁴¹

The statutory framework reinforces these constitutional imperatives. The Children’s Act 38 of 2005 reiterates the primacy of the child’s best interests and introduces participatory rights, allowing children to express their views in proceedings affecting them.⁴² Section 10 of the Act provides that “every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way”.⁴³ These participatory guarantees underscore the importance of recognising children as rights-bearing subjects capable of engaging meaningfully in decisions that affect their development, rehabilitation and future prospects.⁴⁴

The Child Justice Act 75 of 2008 represents a deliberate departure from the adult criminal justice system. Children are no longer sentenced to imprisonment, but to compulsory residence in Child and Youth Care Centres (CYCCs), a sanction designed to prioritise care, rehabilitation and reintegration rather than punishment.⁴⁵ The Act’s preamble and guiding principles emphasise dignity, accountability, reintegration and the promotion of restorative justice. At the same time, section 2(b) expressly seeks to “promote the spirit of Ubuntu in the child justice system” through family and community involvement.⁴⁶ Section 2(b) of the Act explicitly seeks to “promote the spirit of Ubuntu in the child justice system,” which includes fostering a child’s sense of worth and involving families and communities in the rehabilitation process.⁴⁷ It is precisely this child-specific, rehabilitative orientation that explains the absence of a traditional parole regime for children. Parole, as understood in the adult correctional context, entails the continuation of a sentence beyond incarceration and is often accompanied by stigma and heightened surveillance. Transposing such a model into the child justice system would be inconsistent with its protective and developmental objectives.

However, the absence of an adult-style parole system does not negate the need for a structured mechanism to review the continued necessity of compulsory residence. A child-specific early-release or sentence-review mechanism — distinct from adult parole — would give practical effect to children’s participatory rights by enabling them to engage in age-appropriate evaluations of their rehabilitative progress, evolving capacities and readiness for reintegration. Where rehabilitative and reintegrative goals have been attained, or where they can more appropriately be achieved in a less restrictive environment, continued compulsory residence becomes increasingly difficult to justify. The current legislative framework, therefore, reveals

38 Constitution of the Republic of South Africa, 1996, s 9(3).

39 Albertyn and Goldblatt “Equality” in Woolman and Bishop (eds) *Constitutional Law of South Africa* (2, RS 5, 2013) ch 35 314–317.

40 Deane and Brijmohanlall “The Constitutional Court’s Approach to Equality” 2010 *TSAR* 4–6.

41 Gueorguieva 2020 *PSLR* 61–63.

42 Children’s Act 38 of 2005, Preamble and s 6(2)(d).

43 *Ibid* s 10.

44 Gueorguieva 2020 *PSLR* 61–63.

45 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

46 Child Justice Act 75 of 2008, Preamble.

47 *Ibid* s 2(b).

a disjuncture between the rehabilitative ethos of child justice legislation and its practical implementation in terms of sentence duration.⁴⁸

It may be contended that the absence of any structured mechanism for reviewing the continued necessity of compulsory residence raises serious constitutional and statutory concerns,⁴⁹ not because children are treated differently from adults, but because of how sentences imposed on children are served over time.^{50 51} In the adult criminal justice system, parole functions as a sentence-administration tool that allows reassessment of continued detention in light of the punishment already imposed, risk management, and prospects for reintegration.⁵²⁵³

By contrast, the objectives of compulsory residence for children are fundamentally rehabilitative, developmental and reintegrative.⁵⁴ Yet, once imposed, such sentences are typically served in full, without a formal process for reassessing whether continued detention remains necessary or proportionate in light of a child's rehabilitative progress or evolving capacity.⁵⁵ Where compulsory residence continues beyond the point at which its rehabilitative objectives have been substantially achieved, detention risks exceeding what is constitutionally justifiable under the principle that deprivation of liberty must be a measure of last resort and for the shortest appropriate period.⁵⁶ The concern, therefore, is not the absence of parity with adult parole, but the absence of a child-specific mechanism of sentence review or early release capable of ensuring that compulsory residence remains aligned with the child-centred purposes of the Child Justice Act.⁵⁷

It may be argued that the existing legislative framework governing compulsory residence is constitutionally defensible on the basis that Child and Youth Care Centres (CYCCs) are expressly designed to fulfil rehabilitative and developmental objectives, and that the structured programmes offered within these facilities are intended to promote accountability, personal growth and reintegration.⁵⁸ On this view, the absence of a release mechanism before the expiry of the court-imposed term does not reflect arbitrariness or unfairness, but rather a rational legislative choice aimed at ensuring that children are afforded sufficient time to engage meaningfully with rehabilitative interventions.⁵⁹

48 Gueorguieva 2020 *PSLR* 61–63.

49 Constitution of the Republic of South Africa, 1996, s 7(2) and s 28(1)(g), read with s 36(1).

50 Sloth-Nielsen and Gallinetti “Child Justice Reform in South Africa: Interrogating Policy and Practice” 2012 *SACQ* 3–15.

51 Fambasayi and Moyo 2020 *PELJ* 1–30.

52 Muntingh *Guide to Sentencing and Correctional Practice* (2019, CSPRI) 112–118; *S v Makwanyane* 1995 3 SA 391 (CC) paras 129–131

53 Child Justice Act 75 of 2008, Preamble and s 2(b).

54 Skelton “Restorative Justice as a Framework for Juvenile Justice Reform” 2008 *Br J Criminol* 496–513; Child Justice Act 75 of 2008 preamble, ss 2, 3 and 69.

55 Fambasayi and Moyo 2020 *PELJ* 1–30.

56 Centre for Child Law v Minister of Justice and Constitutional Development 2009 6 SA 632 (CC) paras 28–30; United Nations Convention on the Rights of the Child (1989) Art 37(b).

57 Gallinetti “Children Accused of Crime: Assessing the Impact of the Child Justice Act” 2015 *SALJ* 132 331–348; Mabaso MPhil thesis 45–48.

58 Skelton 2008 *Br J Criminol* 496–513; Sloth-Nielsen and Gallinetti 2012 *SACQ* 3–15; Gallinetti 2015 *SALJ* 331–348; Child Justice Act 75 of 2008 preamble, ss 2, 3 and 69; Children's Act 38 of 2005 ss 1, 7 and 10.

59 Liebenberg and Pillay “Developmental Psychology and Child Justice: Implications for Sentencing and Rehabilitation” 2014 *SAJP* 321–334; Skelton “The Right of Children in Conflict with the Law to be Treated as Children” 2014 *SAJHR* 1–18; Van Bueren *The International Law on the Rights of the Child* (1998) 170–173.

Given that compulsory residence is conceived as a care-oriented, therapeutic measure rather than a punitive sanction, it may be contended that children should complete these programmes in full to maximise their rehabilitative benefit.

This position, however, reveals an internal tension within the child justice framework itself. While the Child Justice Act aspires to a rehabilitative and individualised model of intervention, the rigid enforcement of compulsory residence sentences risks undermining those very objectives. Rehabilitation is neither linear nor uniform, and children's developmental trajectories, responsiveness to intervention, and readiness for reintegration vary significantly. A system that presumes that rehabilitative goals can only be achieved through the full term of a predetermined period of compulsory residence fails to accommodate the evolving capacities of children and the possibility that rehabilitative or reintegrative objectives may be attained earlier or more effectively outside an institutional setting.⁶⁰

The absence of any mechanism for structured sentence review or early release thus creates the risk of continued detention that is no longer necessary to achieve the purposes for which compulsory residence was imposed. Such continued deprivation of liberty may become disproportionate, particularly where institutionalisation itself begins to impede a child's social development, family reintegration or educational progression. Furthermore, the lack of a formal review process undermines children's participatory rights by excluding them from meaningful engagement in decisions about their progress and future placement. It may result in outcomes that are inconsistent with the best-interests principle.

Properly understood, therefore, the constitutional and statutory framework does not point toward the extension of adult-style parole to children, but toward the need for a distinct, child-specific mechanism of sentence review and early release.⁶¹ Such a mechanism would preserve the rehabilitative rationale of compulsory residence while introducing necessary flexibility and responsiveness into sentence administration. It would allow for periodic, multidisciplinary assessments of rehabilitative progress and reintegration readiness, ensure that deprivation of liberty remains a measure of last resort and for the shortest appropriate period, and align the practical administration of child sentences with the transformative and child-centred ethos of South Africa's child justice system.⁶²

4 INTERNATIONAL AND COMPARATIVE LAW

South Africa's juvenile justice framework does not exist in isolation; it is shaped by a constellation of international legal instruments and comparative practices that inform its constitutional and statutory obligations.⁶³ As a signatory to the United Nations Convention on the Rights of the Child (CRC), South Africa is bound by provisions requiring that the detention of children be used only as a measure of last resort and for the shortest appropriate period (Article 37(b)).⁶⁴

60 *Centre for Child Law v Minister of Justice and Constitutional Development* 2009 6 SA 632 (CC) paras 28–30; *S v M* 2008 3 SA 232 (CC) paras 15–17, 42; Sloth-Nielsen "The Juvenile Justice System After Ten Years: Reform, Reality and Remaining Challenges" 2013 *SACQ* 17–24.

61 Skelton and Muntingh "Child Justice in South Africa: From Welfare to Rights" 2015 *Acta Crim* 1–18; Batagol "Participatory Justice for Young People" 2011 *Youth Justice* 95–110; Children's Act 38 of 2005 s 10.

62 United Nations Convention on the Rights of the Child (1989) art 37(b); African Charter on the Rights and Welfare of the Child (1990) art 17(2); *Centre for Child Law v Minister of Justice and Constitutional Development* 2009 (6) SA 632 (CC); Fambasayi and Moyo 2020 *PELJ* 1–30; United Nations Office on Drugs and Crime *Handbook on Restorative Justice Programmes* (2013) 45–48; Mabaso MPhil thesis 45–48.

63 Skelton "Child Justice in South Africa: Application of International Instruments in the Constitutional Court" 2018 *Intl J Child Rts* 391–422 <https://www.academia.edu/95464149> (accessed 14-08-2025).

64 Wakefield "The CRC in South Africa 15 Years On: Does the New Child Justice Act 75 of 2008 Comply with International Children's Rights Instruments?" 2011 *NLQ* 167–182 <https://uwcscholar.uwc.ac.za/items/652b0b4f-08f7-4762-822e-902d1cecl6d8> (accessed 14-08-2025).

The CRC further mandates that children deprived of liberty must be treated with humanity and respect for their inherent dignity, and that any justice system must aim at the child's reintegration and assumption of a constructive role in society (Article 40(1)).⁶⁵

These principles are echoed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which advocate for proportionality in sentencing, the prioritisation of non-custodial measures, and the continuous assessment of the child's progress.⁶⁶ The African Charter on the Rights and Welfare of the Child, to which South Africa is also a party, reinforces these standards by requiring that children in conflict with the law be treated in a manner consistent with their dignity and worth, and that rehabilitation and reintegration be the primary goals of any intervention.⁶⁷ This Charter has been interpreted as a regional complement to the CRC, embedding African values of community and restorative justice into the juvenile justice framework.⁶⁸

In Sweden, the child justice system integrates parole with therapeutic programming, community supervision, and family involvement.⁶⁹ The Swedish model is grounded in the CRC and operationalised through a network of social services and probation officers who monitor the child's progress and readiness for reintegration.⁷⁰

Similarly, Norway has adopted a restorative justice approach, with parole as a key component of its juvenile justice system.⁷¹ Norwegian law emphasises the child's capacity for rehabilitation and employs multidisciplinary teams to support reintegration.⁷² Facilities are designed to resemble normal living environments, and psychological assessments, educational progress, and community readiness inform parole decisions.⁷³ These systems demonstrate that parole can be both rehabilitative and protective, offering a structured pathway for early release without compromising public safety.⁷⁴

Drawing on comparative models from Norway and Sweden — selected not for direct transplantation but for their principled commitment to child-centred juvenile justice and structured sentence review mechanisms grounded in international norms — one could argue that South Africa's failure to introduce any child-specific early-release or review mechanism risks undermining its obligations under international child-rights instruments and the rehabilitative objectives of its domestic legislation, notwithstanding significant contextual differences between

65 Dullah Omar Institute "Article 40: The Dynamics of Youth Justice and the Convention on the Rights of the Child in South Africa" 2007 Article 40 Vol 9 <https://dullahomarinstitute.org.za/childrens-rights/archives/Publications/Article%2040/Volume%209%20Number%202%20-%20July%202007.pdf> (accessed 14-08-2025).

66 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985, Rules 5.1 and 17 <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (accessed 14-08-2025).

67 African Charter on the Rights and Welfare of the Child, 1990, Art 17 https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf (accessed 14-08-2025).

68 Sloth-Nielsen, Fokala and Odongo (eds) *The African Charter on the Rights and Welfare of the Child: A Commentary* 2024 Pretoria University Law Press, ch 18.

69 Hollander and Tärnfalk 2017 *LawExplores*.

70 *Ibid*.

71 Bauer 2019 *Mich St Intl L Rev Blog*.

72 Grami "Juvenile Justice and the Restorative Approach in Norway" 2021 Institute of European Studies <https://iipcccl.org/wp-content/uploads/2021/06/034.pdf> (accessed 14-08-2025).

73 Akkoyun "The Norwegian Model of Correlation Rehabilitation – Bridging the Gap between Incarceration and Society" 2024 in *Correctional Facilities - Policies, Practices, and Challenges* IntechOpen <https://www.intechopen.com/chapters/1178111> (accessed 14-08-2025).

74 Winterdyk, Antonopoulos and Corrado "Reflections on Norway's Juvenile Justice Model: A Comparative Context" 2016 *CPCS* 105–121 <https://link.springer.com/article/10.1057/cpcs.2016.3> (accessed 14-08-2025).

these jurisdictions.⁷⁵ This undermines the rehabilitative goals of its domestic legislation.⁷⁶

However, we must heed caution against overreliance on non-binding instruments and foreign models that may not be directly translatable to the South African context.⁷⁷ In this respect, the Child Justice Act already provides a comprehensive framework for rehabilitation through CYCCs, and the conditions and programmes offered therein are sufficient to meet international standards.⁷⁸ Furthermore, it could be asserted that the introduction of parole may undermine the integrity of rehabilitative programmes by allowing premature release before therapeutic goals are achieved.⁷⁹

This divergence in interpretation underscores the complexity of aligning domestic law with international norms.⁸⁰ While the CRC is binding, instruments such as the Beijing Rules and the African Charter, though persuasive, are not directly enforceable in South African courts unless incorporated into domestic legislation.⁸¹ Nonetheless, section 39(1)(b) of the Constitution requires that courts consider international law when interpreting the Bill of Rights, and the Constitutional Court has repeatedly affirmed the relevance of international standards in shaping constitutional jurisprudence.⁸²

Recent scholarship underscores the importance of integrating psychological insights into juvenile parole systems. Developmental psychology reveals that adolescents differ significantly from adults in cognitive, emotional, and moral capacities, which affects their culpability and rehabilitation potential.⁸³ Studies by Goldstein and Cauffman advocate for justice systems that reflect adolescent brain science, emphasising positive reinforcement and individualised interventions.⁸⁴ Trauma-informed care is also critical, as up to 90% of justice-involved youth have experienced adverse childhood experiences (ACEs), including abuse and neglect. Structured interventions such as SPARCS (Structured Psychotherapy for Adolescents Responding to Chronic Stress) and dialectical behaviour therapy have demonstrated efficacy in reducing aggression and improving emotional regulation.⁸⁵ Psychologists play a central role in parole decision-making by conducting assessments of emotional maturity, behavioural progress, and reintegration readiness. These evaluations are essential for tailoring parole conditions to the developmental needs of child offenders.⁸⁶ Therapeutic jurisprudence offers a framework for embedding psychological care into legal processes, promoting healing and rehabilitation. In South Africa, this aligns with the philosophy of Ubuntu, which emphasises dignity, compassion,

75 Skelton 2018 *Intl J Child Rts* 391–422; Wakefield and Gallinetti 2011 Workshop Report 8–10.

76 Child Justice Act 75 of 2008, Preamble and ss 2, 26–29.

77 Tladi “Interpretation and International Law in South African Courts: The Supreme Court of Appeal and the Al Bashir Saga” 2016 *AHRLJ* 310–338 <https://www.saflii.org/za/journals/AHRLJ/2016/17.pdf> (accessed 14-08-2025).

78 Child Justice Act 75 of 2008, Preamble and ss 2, 26–29.

79 Lötter “Reform of Parole Policy in South Africa – Fact or Fiction?” 2025 *Mail & Guardian Thought Leader* <https://mg.co.za/thought-leader/2025-06-03-reform-of-parole-policy-in-south-africa-fact-or-fiction/> (accessed 14-08-2025).

80 Skelton 2018 *Intl J Child Rts* 391–422.

81 Tladi 2016 *AHRLJ* 310–338.

82 Constitution of the Republic of South Africa, 1996, s 39(1)(b).

83 Steinberg “Adolescent Development and Juvenile Justice” 2019 *ARCP* 47–73 <https://doi.org/10.1146/annurev.clinpsy.032408.153603> (accessed 14-08-2025).

84 Hill *et al.* “Trauma-Informed Care for Justice-Involved Youth: A narrative review and synthesis” 2023 *Juvenile and Family Court Journal* 21–33 <https://doi.org/10.1111/jfcj.12236> (accessed 11-08-2026).

85 Rhoden *et al.* “A Systematic Review of Psychological Trauma Interventions for Juvenile Offenders” *Research on Social Work Practice* (accessed 11-08-2026).

86 Grisso *Evaluating Juveniles’ Adjudicative Competence: A Guide for Clinical Practice* 2025 <https://www.apa.org/pubs/books/4317046> (accessed 14-08-2025).

and community reintegration.⁸⁷

In light of this, the comparative models from Sweden and Norway offer more than aspirational benchmarks — they provide practical evidence of how parole can be integrated into a juvenile justice system in a manner that respects both the rights of the child and the interests of society.⁸⁸ These systems demonstrate that parole need not be antithetical to rehabilitation; rather, it can serve as a mechanism to reinforce accountability, promote dignity, and facilitate reintegration.⁸⁹

South Africa's current framework, while progressive in many respects, lacks the procedural flexibility and responsiveness required to accommodate the evolving capacities of child offenders.⁹⁰ The absence of a parole mechanism represents a missed opportunity to align domestic practice with international obligations⁹¹ and to realise the full potential of a restorative, child-centred justice system.⁹²

5 PHILOSOPHICAL AND PSYCHOLOGICAL DIMENSIONS OF CHILD (“JUVENILE”) PAROLE

The philosophical underpinnings of South Africa's juvenile justice system are deeply rooted in the concept of Ubuntu, a foundational African value that emphasises human dignity, interconnectedness, and communal responsibility.⁹³ Ubuntu is not merely a cultural ethos; it has been judicially recognised and codified within the Child Justice Act 75 of 2008, particularly in section 2(b), which seeks to promote the spirit of Ubuntu through fostering children's sense of dignity and worth, supporting reconciliation, and involving families and communities in the rehabilitation process.⁹⁴ This integration of Ubuntu into the statutory framework reflects a deliberate legislative choice to align juvenile justice with restorative principles and Africanised conceptions of justice.⁹⁵

In the context of juvenile justice, Ubuntu demands a justice system that is restorative rather than retributive, one that seeks to heal rather than punish.⁹⁶ It calls for the reintegration of the child offender into society, not as a passive recipient of mercy, but as an active participant in a process of accountability, growth, and transformation.⁹⁷ This philosophical orientation aligns closely with the constitutional values of dignity, equality, and freedom,⁹⁸ and provides a normative

87 Wexler “Therapeutic Jurisprudence and the Juvenile Court” 2008 *PPPL* 25–36 <https://doi.org/10.1037/1076-8971.14.1.25> (accessed 14-08-2025).

88 Bauer 2019 *Mich St Intl L Rev Blog*.

89 Akkoyun 2024 *Correctional Facilities – Policies, Practices, and Challenges*.

90 Cassim “Formulating New Juvenile Justice Legislation in South Africa” 2000 *SACJ* 1–15 <https://www.jstor.org/stable/pdf/23250260.pdf> (accessed 14-08-2025).

91 Winterdyk, Antonopoulos and Corrado 2016 *CPCS* 105–121.

92 Skelton and Batley “Restorative Justice: A Contemporary South African Review” 2008 *Acta Crim* 21 <https://repository.up.ac.za/bitstreams/0fd44d25-7899-4ea4-9fc1-82d929a6e7c0/download> (accessed 14-08-2025).

93 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

94 Child Justice Act 75 of 2008, s 2(b).

95 Khunou “Judging Ubuntu and Africanisation of the Child Justice Act” 2013 *Pambazuka News* <https://www.pambazuka.org/judging-ubuntu-and-africanisation-child-justice-act> (accessed 14-08-2025).

96 Himonga, Taylor and Pope “Reflections on Judicial Views of Ubuntu” 2013 *PELJ* 370–372 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812013000500009 (accessed 14-08-2025).

97 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

98 Kamga “Cultural Values as a Source of Law: Emerging Trends of Ubuntu Jurisprudence in South Africa” 2018 *AHRLJ* 421–423 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962018000200010 (accessed 14-08-2025).

framework for interpreting the rights of children in conflict with the law.⁹⁹

One could argue that the absence of a parole mechanism for child offenders undermines the values of Ubuntu.¹⁰⁰ They contend that parole serves as a practical embodiment of restorative justice by incentivising good behaviour, recognising rehabilitative progress, and facilitating reintegration into the community.¹⁰¹ Parole, in this view, is not merely a procedural device but a moral and developmental tool that affirms the child's capacity for change and the community's role in supporting that change.¹⁰² It allows for the child's voice to be heard, their progress to be acknowledged, and their dignity to be restored through a structured and supervised return to society.

Drawing on jurisprudence such as *S v M*¹⁰³ and *Centre for Child Law v Minister for Justice and Constitutional Development*,¹⁰⁴ the Constitutional Court has repeatedly underscored the need to treat children in a manner that recognises their evolving capacities, inherent dignity, and prospects for reintegration. These cases affirm that childhood is not merely a mitigating factor but a distinct legal category that demands a different approach to justice — one consistent with the principles of Ubuntu and the transformative ethos of the Constitution.

In contrast, it could be argued that the existing framework — particularly the rehabilitative programmes offered within Child and Youth Care Centres (CYCCs) — already reflects the values of Ubuntu.¹⁰⁵ In this respect, the position would be that CYCCs are designed to provide therapeutic care, educational support, and community engagement, and that the structured nature of these programmes ensures that children receive the necessary interventions without the risks associated with premature release.¹⁰⁶ From this perspective, the introduction of parole may disrupt the continuity of rehabilitation, undermine programme integrity, and create administrative burdens that detract from the core objectives of the Child Justice Act.¹⁰⁷

This philosophical tension reveals a deeper question about the nature of rehabilitation and the role of the community in the justice process. While CYCCs may offer structured programmes, the absence of a parole mechanism limits the child's agency and the community's involvement in the reintegration process.¹⁰⁸ Ubuntu calls for a justice system that is participatory, relational, and responsive to the lived realities of children.¹⁰⁹

99 Himonga, Taylor and Pope 2013 *PELJ* 370–372.

100 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

101 Himonga, Taylor and Pope 2013 *PELJ* 370–372.

102 Metz “Ubuntu as a Moral Theory and Human Rights in South Africa” 2011 *AHRLJ* 532–534 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962011000200011 (accessed 14-08-2025).

103 *S v M* 2008 3 SA 232 (CC) para 18.

104 *Centre for Child Law v Minister for Justice and Constitutional Development* 2009 2 SACR 477 (CC) para 29.

105 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

106 Phaswana and Erlank “Rendering Services in Child and Youth Care Centres: Experiences and Challenges of Social Workers” 2023 *SWMW* 153–170 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S0037-80542023000200004 (accessed 14-08-2025).

107 Van Breda “Developing the Notion of Ubuntu as African Theory for Social Work Practice” 2019 *SWMW* 440–456 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S0037-80542019000400007 (accessed 14-08-2025).

108 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

109 Himonga, Taylor and Pope 2013 *PELJ* 370–372.

It demands that the law recognise not only the child's wrongdoing but also their potential for redemption and the community's responsibility to nurture that potential.¹¹⁰

In this light, parole can be seen as a mechanism that operationalises Ubuntu by bridging institutional rehabilitation and societal reintegration.¹¹¹ It allows the child's progress to be evaluated holistically, involving caregivers, social workers, and community members in the decision-making process.¹¹² It affirms the child's dignity by acknowledging their growth and readiness to re-enter society, and it reinforces communal bonds by placing the child within a supportive network of accountability and care.¹¹³

Ultimately, the philosophical and cultural dimensions of juvenile justice in South Africa support the introduction of a parole mechanism that is consistent with the values of Ubuntu.¹¹⁴ Such a mechanism would not only enhance the rehabilitative goals of the Child Justice Act¹¹⁵ but also deepen the moral and communal foundations of the justice system. It would affirm the child's humanity, recognise their capacity for change, and honour the community's role in fostering that change – thereby realising the full promise of Ubuntu in the administration of juvenile justice.¹¹⁶

6 PSYCHOLOGICAL DIMENSIONS OF CHILD (“JUVENILE”) PAROLE: DEVELOPMENT, TRAUMA, AND THERAPEUTIC JUSTICE

This section explores the psychological and developmental foundations of juvenile parole, emphasising the need for a trauma-informed and therapeutic approach to rehabilitation. Children possess evolving cognitive, emotional, and moral capacities that distinguish them from adults, and these developmental differences must inform parole decisions. Research in developmental psychology shows that adolescents are more susceptible to peer pressure, less capable of long-term planning, and more amenable to rehabilitation.¹¹⁷ These insights support the argument that parole mechanisms should be tailored to reflect the unique psychological profiles of child offenders.

Trauma plays a significant role in shaping the behaviour and rehabilitation potential of children in conflict with the law. Many child offenders have experienced adverse childhood experiences (ACEs), including abuse, neglect, and exposure to violence. A trauma-informed parole system recognises these experiences and incorporates therapeutic interventions aimed at healing and emotional regulation.¹¹⁸ Psychologists play a critical role in assessing the psychological readiness of children for parole, using validated tools to evaluate behavioural progress, emotional maturity, and reintegration potential.¹¹⁹

110 Ntlapo and White “Ubuntu Justice and the South African Truth and Reconciliation Commission: An African Missiological Response” 2022 *STJ* 234–236 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S2413-94672022000100013 (accessed 14-08-2025).

111 *Ibid.*

112 Van Breda 2019 *SWMW* 440–456.

113 Himonga, Taylor and Pope 2013 *PELJ* 370–372.

114 Ntlapo and White 2022 *STJ* 234–236.

115 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

116 Himonga, Taylor and Pope 2013 *PELJ* 370–372.

117 Hill *et al.* “Trauma-Informed Care for Justice-Involved Youth: A narrative review and synthesis.” *Juvenile and Family Court Journal* 21–33. <https://doi.org/10.1111/jfcj.12236> (accessed 11-08-2026).

118 Ford *et al.* “Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions” 2007 *National Center for Mental Health and Juvenile Justice* <https://www.ojp.gov/ncjrs/virtual-library/abstracts/trauma-among-youth-juvenile-justice-system-critical-issues-and-new> (accessed 14-08-2025).

119 Kruh and Grisso *Evaluating Juveniles' Competence to Stand Trial* (2009) Oxford University Press, New York.

Therapeutic jurisprudence offers a framework for integrating psychological care into legal processes, promoting the mental well-being of child offenders. In the context of parole, this means designing conditions that support rehabilitation through counselling, mentorship, and community engagement.¹²⁰ Such an approach aligns with restorative justice principles and the African philosophy of Ubuntu, which emphasises compassion, interconnectedness, and human dignity.¹²¹

Ultimately, the inclusion of psychological expertise in parole decisions enhances the fairness, responsiveness, and effectiveness of the juvenile justice system. It ensures that children are not only held accountable but are also given meaningful opportunities for growth, healing, and reintegration into society.

7 CRITICAL ANALYSIS

The question of whether the exclusion of child offenders from parole eligibility constitutes unfair discrimination must be examined through the lens of constitutional jurisprudence, particularly the equality test developed in *Harksen v Lane NO*.¹²² This test requires a two-stage inquiry: first, whether the differentiation amounts to discrimination, and second, whether such discrimination is unfair. In the context of parole, the differential treatment between adult and child offenders — where adults may be considered for early release under the Correctional Services Act, while children sentenced to Child and Youth Care Centres (CYCCs) are excluded from such consideration — raises significant concerns under this framework.¹²³ The exclusion of children from parole eligibility, despite the rehabilitative ethos of the juvenile justice system, may undermine constitutional principles of equality and dignity.¹²⁴

It could be argued that the distinction is rational and justifiable, grounded in the unique rehabilitative structure of Child and Youth Care Centres (CYCCs) and the legislative intent to ensure that children complete their therapeutic programmes in full.¹²⁵ In this respect, the argument would be that the absence of parole does not constitute unfair discrimination but rather reflects a legitimate governmental purpose aimed at protecting the child's welfare and ensuring public safety.¹²⁶ Moreover, it could be asserted that CYCCs are not punitive institutions but rehabilitative environments, and that the comparison with adult correctional facilities is therefore misplaced.¹²⁷ However, this position is not without its weaknesses.

In opposition to this stance, it could be argued that the lack of a parole mechanism for children constitutes a failure to recognise their evolving capacities and individual circumstances.¹²⁸ It denies them the opportunity to demonstrate rehabilitative progress and to be assessed for early reintegration on the basis of merit.¹²⁹

120 Wexler *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* 1990 Carolina Academic Press.

121 Sloth-Nielsen and Gallinetti "Just Say Sorry? Ubuntu, Africanisation and the Child Justice System in the Child Justice Act 75 of 2008" 2011 *PELJ* 63–90 <http://dx.doi.org/10.4314/pelj.v14i4.3> (accessed 11-08-2026).

122 *Harksen v Lane NO* [1997] ZACC 12; 1998 (1) SA 300 (CC).

123 Correctional Services Act 111 of 1998, ch VII, ss 73–79.

124 Mujuzi "Unpacking the Law and Practice Relating to Parole in South Africa" 2011 *PELJ* 205–207 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812011000500005 (accessed 14-08-2025).

125 Phaswana and Erlank 2023 *SWMW* 153–170.

126 Correctional Services Amendment Act 25 of 2008, amending ss 1 and 2 of the Correctional Services Act 111 of 1998 https://www1.saflii.org/za/legis/num_act/csaa2008314.pdf.

127 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

128 Mujuzi 2011 *PELJ* 205–207.

129 Phaswana and Erlank 2023 *SWMW* 153–170.

This blanket exclusion would then amount to unfair age-based discrimination and undermine the constitutional principle that detention must be a measure of last resort and for the shortest appropriate period.¹³⁰

The absence of a system for individualised assessment and progress monitoring within Child and Youth Care Centres (CYCCs) exacerbates this concern.¹³¹ While the Child Justice Act provides for post-sentence reports and periodic reviews, these mechanisms are not equivalent to a formal parole process that includes structured evaluation, community supervision, and conditional release.¹³² Without such a system, children may be detained for longer than necessary, contrary to the constitutional mandate in section 28(1)(g).¹³³ This not only infringes on their right to liberty but also undermines the rehabilitative goals of the juvenile justice system.¹³⁴

Furthermore, the differential treatment fails to satisfy the requirements of proportionality under section 36 of the Constitution, which permits the limitation of rights only where such limitation is reasonable and justifiable in an open and democratic society.¹³⁵ The denial of parole to child offenders does not appear to be the least restrictive means of achieving the purpose of rehabilitation.¹³⁶ On the contrary, a parole system could enhance rehabilitation by incentivising good behaviour, facilitating reintegration, and allowing for tailored interventions based on the child's progress.¹³⁷

From a policy perspective, the exclusion of any mechanism for early release or sentence review for children raises serious concerns about systemic rigidity and the lack of responsiveness to individual needs.¹³⁸ The compulsory residence framework operates largely on a one-size-fits-all assumption that rehabilitation is achieved uniformly over a fixed period, notwithstanding well-established evidence that children differ markedly in maturity, vulnerability, responsiveness to intervention, and rehabilitative potential.¹³⁹ A more flexible system that includes parole would allow for a case-by-case assessment, ensuring that detention is truly necessary and proportionate in each instance.¹⁴⁰

For example, one child sentenced to compulsory residence for three years may achieve significant rehabilitative progress within the first year, demonstrating emotional regulation, accountability, educational engagement, and readiness for reintegration into a supportive family environment. Another child, sentenced for a similar offence, may require longer-term therapeutic intervention owing to trauma, substance dependency, or the absence of stable community support.

130 Skelton "Too Much of a Good Thing? Best Interests of the Child in South African Jurisprudence" 2019 *DJLJ* 557–560 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602019000200007 (accessed 14-08-2025).

131 Mujuzi 2011 *PELJ* 205–207.

132 Terblanche "The Child Justice Act: Procedural Sentencing Issues" 2013 *PELJ* 1–25 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812013000100011 (accessed 14-08-2025).

133 *Mandla Trust Mpofu v Minister for Justice and Constitutional Development* 2013 (2) SACR 407 (CC).

134 *S v SN* unreported, case no. 141114/14 (WCC), discussed in Du Toit and Hansungule "Sentencing Child Offenders After They Turn 18" 2015 *SACQ* 54 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1991-38772015000400007 (accessed 14-08-2025).

135 Courtis "Rationality, Reasonableness, Proportionality: Testing the Use of Standards of Scrutiny in the Constitutional Review of Legislation" 2011 *CCR* 4 <https://www.saflii.org/za/journals/CCR/2011/2.pdf> (accessed 14-08-2025).

136 Mujuzi 2011 *PELJ* 205–207.

137 Terblanche 2013 *PELJ* 1–25.

138 Mujuzi 2011 *PELJ* 205–207.

139 Terblanche 2013 *PELJ* 1–25.

140 Songca 2019 *DJLJ* 316–334.

A rigid system that requires both children to serve the full term of compulsory residence fails to respond meaningfully to these divergent rehabilitative trajectories.

In some instances, prolonged institutionalisation may itself become counterproductive, disrupting education, weakening family bonds, or exposing children to negative peer influences within residential settings. Conversely, where rehabilitative and reintegrative goals could be more effectively achieved through structured community-based interventions, continued compulsory residence risks becoming disproportionate to its stated purpose. A more flexible, child-specific system of sentence review and early release would allow for regular, multidisciplinary assessments on a case-by-case basis, ensuring that deprivation of liberty remains necessary, proportionate, and oriented toward the child's best interests, rather than merely reflective of the passage of time.

Importantly, the introduction of parole need not compromise public safety. International models from Sweden, Norway, and Finland demonstrate that parole can be implemented in a manner that balances the rights of the child with the interests of the community.¹⁴¹ These systems employ multidisciplinary teams, community supervision, and therapeutic support to ensure that children are adequately prepared for reintegration and that risks are managed effectively.¹⁴²

In sum, the critical analysis reveals that the current exclusion of child offenders from parole eligibility is constitutionally problematic, statutorily inconsistent, and philosophically misaligned with the principles of restorative justice and Ubuntu.¹⁴³ It fails to recognise the child's capacity for change, denies them procedural fairness, and perpetuates institutional inertia that is at odds with the transformative vision of South African constitutionalism.¹⁴⁴ A parole system, properly designed and implemented, could address these gaps without undermining the integrity of rehabilitative programmes or compromising public safety.¹⁴⁵ It would affirm the child's dignity, promote accountability, and realise the full potential of a rights-based juvenile justice system.¹⁴⁶

8 RECOMMENDATIONS AND CONCLUSION

In light of the constitutional, statutory, philosophical, and international considerations discussed above, it is evident that South Africa's juvenile justice system would benefit from the introduction of a structured parole mechanism for child offenders.¹⁴⁷ Such a reform would not only address the current legislative gap but also enhance the system's alignment with the principles of rehabilitation, dignity, and the best interests of the child.¹⁴⁸

A parole mechanism for children should be designed to reflect the unique developmental and psychosocial needs of juvenile offenders.¹⁴⁹ It must be grounded in the constitutional imperative that detention is a measure of last resort and should be for the shortest appropriate period.¹⁵⁰ To this end, the parole system should incorporate regular progress assessments conducted by

141 Van der Merwe "A New Role for Crime Victims? An Evaluation of Restorative Justice Procedures in the Child Justice Act 2008" 2013 *DJLJ* 46 <https://scielo.org.za/pdf/dejure/v46n4/11.pdf> (accessed 14-08-2025).

142 Pote, Dykes and Carelse "Social Support Networks for Youths Aging out of Residential Care to Promote Positive Transition Outcomes – A Scoping Review" 2022 *SWMW* 58 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S0037-80542022000100008 (accessed on 14-08-2025).

143 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

144 Himonga, Taylor and Pope 2013 *PELJ* 370–372.

145 Mujuzi 2011 *PELJ* 205–207.

146 Songca 2019 *DJLJ* 316–334.

147 Mujuzi 2011 *PELJ* 205–207.

148 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92; Skelton 2019 *DJLJ* 557–560.

149 Mujuzi 2011 *PELJ* 205–207.

150 *Mandla Trust Mpofu v Minister for Justice and Constitutional Development* 2013 (2) SACR 407 (CC).

multidisciplinary teams, including social workers, psychologists, educators, and probation officers.¹⁵¹ These assessments should evaluate the child's rehabilitative progress, emotional maturity, and readiness for reintegration, ensuring that decisions are made on a case-by-case basis.¹⁵²

Community involvement must be a cornerstone of the parole process. Drawing on the principles of Ubuntu and restorative justice, the system should facilitate the participation of families, caregivers, and community members in the reintegration process.¹⁵³ This could include supervised community service, mentorship programmes, and restorative dialogues that allow the child to acknowledge harm and rebuild trust.¹⁵⁴ Such involvement not only supports the child's reintegration but also strengthens communal bonds and promotes collective responsibility for rehabilitation.¹⁵⁵

Therapeutic support should be embedded throughout the parole process. Children released on parole must have access to ongoing counselling, educational opportunities, and vocational training to support their development and reduce the risk of recidivism.¹⁵⁶ The parole system should be flexible enough to accommodate the child's evolving needs, with provisions for review and adjustment based on progress and challenges encountered during reintegration.¹⁵⁷

To operationalise this framework, legislative amendments to the Child Justice Act 75 of 2008 are necessary.¹⁵⁸ These amendments should define the criteria for parole eligibility, establish procedural safeguards, and delineate the roles of various stakeholders in the parole process.¹⁵⁹ The legislation should also provide for judicial oversight to ensure that parole decisions are consistent with constitutional values and subject to review where necessary.¹⁶⁰

In crafting these reforms, South Africa should draw on international best practices, particularly from jurisdictions such as Sweden, Norway, and Finland, where juvenile parole systems have been successfully implemented.¹⁶¹ These models demonstrate that parole can be both rehabilitative and protective, offering structured pathways for early release without compromising public safety.¹⁶² South Africa's rich jurisprudence and commitment to children's rights provide a strong foundation for adapting these models to the local context.¹⁶³

To meaningfully improve parole outcomes for child offenders, psychological support must be embedded throughout the implementation process. This begins with the inclusion of trained child psychologists on multidisciplinary parole boards, where their expertise in developmental and

151 Terblanche 2013 *PELJ* 1–25.

152 Sloth-Nielsen "Children's Rights Jurisprudence in South Africa – A 20-year Retrospective" 2019 *DJLJ* 52 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602019000200004 (accessed on 14-08-2025).

153 Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92.

154 Hargovan "Violence, Victimisation and Parole: Reconciling Restorative Justice and Victim Participation" 2015 *SACQ* 54 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1991-38772015000400006 (accessed 14-08-2025).

155 Ntlapo and White 2022 *STJ* 234–236.

156 Marshall "Breaking the Cycle: Examining the Socio-economic and Psychological Factors in Recidivism Patterns in South Africa" 2025 *LDD* 29 https://scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072025000100001 (accessed 30-09-2025).

157 Mujuzi 2011 *PELJ* 205–207.

158 Terblanche 2013 *PELJ* 1–25.

159 Songca 2019 *DJLJ* 316–334.

160 Skelton 2019 *DJLJ* 557–560.

161 Lappi-Seppälä *Juv Jus Glob Persp.* 273–294.

162 Mujuzi 2011 *PELJ* 205–207.

163 Sloth-Nielsen 2019 *DJLJ* 52.

clinical assessment can guide decisions about readiness for reintegration. These professionals should conduct trauma-informed evaluations that consider the child's emotional maturity, behavioural progress, and capacity for accountability.¹⁶⁴ Beyond assessment, parole systems must offer sustained therapeutic interventions. Trauma counselling should be made available both during detention and post-release, addressing the adverse childhood experiences that often underlie offending behaviour.¹⁶⁵ Reintegration plans should include structured support such as psychoeducation, emotional regulation training, and mentorship programmes tailored to the child's psychological profile.¹⁶⁶ Finally, psychological metrics must be used to monitor the success of reintegration. These may include indicators of emotional stability, social functioning, and resilience, tracked through regular follow-ups and community-based supervision.¹⁶⁷ Embedding these elements ensures that parole is not merely a procedural mechanism, but a rehabilitative pathway grounded in the child's developmental needs and constitutional rights.

Finally, the implementation of a parole system must be accompanied by institutional capacity-building. CYCCs must be adequately resourced to conduct assessments, provide therapeutic services, and support reintegration.¹⁶⁸ Training programmes for judicial officers, social workers, and parole boards should be developed to ensure that all actors understand the principles and procedures of the new system.¹⁶⁹ Monitoring and evaluation mechanisms should be established to track outcomes, identify challenges, and inform continuous improvement.¹⁷⁰

In sum, the introduction of a parole mechanism for child offenders represents a necessary and achievable reform. It would enhance the responsiveness, fairness, and effectiveness of the juvenile justice system, affirm the dignity and potential of every child, and bring South Africa closer to fulfilling its constitutional and international obligations.¹⁷¹

164 Scott and Steinberg "Adolescent Development and the Regulation of Youth Crime" 2008 *Future Child* 15 <https://doi.org/10.1353/foc.0.0011> (accessed 14-08-2025).

165 Ford *et al.* *National Center for Mental Health and Juvenile Justice*.

166 Heilbrun *et al.* "Psychology and juvenile justice: Human development, law, science, and practice." In Heilbrun, DeMatteo, and Goldstein (eds.) *APA Handbook of Psychology and Juvenile Justice* 3–20. American Psychological Association. <https://doi.org/10.1037/14643-001> (accessed 11-08-2026).

167 Grisso "Progress and Perils in the Juvenile Justice and Mental Health Movement" 2008 *JAACAP* 7 <https://pubmed.ncbi.nlm.nih.gov/17592160/> (accessed 11-08-2026).

168 Terblanche "The Child Justice Act: A Detailed Consideration of Section 68 as a Point of Departure with Respect to the Sentencing of Young Offenders" 2012 *PELJ* https://scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812012000500014.

169 Mujuzi 2011 *PELJ* 205–207.

170 Du Toit and Hansungule 2015 *SACQ* 54.

171 Mujuzi 2011 *PELJ* 205–207; Sloth-Nielsen and Gallinetti 2011 *PELJ* 63–92; Skelton 2019 *DJLJ* 557–560.