

Balancing Constitutional Protections and Parental Rights: Safeguarding Children's Best Interests in Custody Disputes



Bulelani Thukuse¹  & Paul S. Masumbe¹ 

¹ School of Law, Faculty of Law, Humanities and Social Sciences, Walter Sisulu University, South Africa.

ABSTRACT

The purpose of this study was to critically examine the legal and practical frameworks governing child custody and abuse cases in South Africa. It aimed to assess how constitutional protections, the roles of Family Advocates, social workers, law enforcement, and international norms intersect in custody disputes, particularly where abuse allegations arise. The study sought to identify gaps and challenges in the current system and to provide insights for strengthening legal processes so that children's rights are consistently safeguarded, while parents are supported to fulfil their responsibilities effectively and responsibly. Through a qualitative approach with an emphasis on desktop research, the study explored how South Africa's laws and support systems can better protect children in custody disputes while helping parents meet their responsibilities effectively. The findings reveal that, although South African law firmly protects children's rights in custody disputes, in practice these protections are often weakened by challenges such as false allegations, parental alienation, limited support for Family Advocates, and delays in the justice system, making it difficult to consistently uphold the best interests of the child. The study recommends that family courts should establish clearer legal standards and guidelines for balancing parental rights with the best interests of the child. This study will help create a legal framework that protects children's rights while guiding parents to fulfill their responsibilities responsibly.

Correspondence

Paul S. Masumbe

Email:

pmasumbe@wsu.ac.za

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INTRODUCTION

The Constitution stands as the highest law in the country, meaning that any actions or laws that go against it have no legal force and are considered invalid.¹ Custody disputes are among the most emotionally charged and legally complex cases in family law.² Central to these disputes is the difficult task of weighing parents' constitutional rights against the crucial need to safeguard the best interests of the child.³ Dailey states that parental rights are enshrined in many legal systems, reflecting a societal understanding of the importance of the connection between a child and their parents.⁴ However, Vincent asserted that as society's understanding of children's autonomy and well-being evolves, the traditional notion of parental

¹ The Constitution of the Republic of South Africa, 1996, section 2.

² Camilla Nelson and Catharine Lumby, *Broken: Children, Parents and the Family Courts* (Black Inc., 2021).

³ Nelson and Lumby, *Broken: Children, Parents and the Family Courts*.

⁴ Anne C. Dailey and Laura A. Rosenbury, "The New Parental Rights," *Duke Law Journal* 71 (2021): 75–165.

authority is increasingly being scrutinised in light of a child's individual rights.⁵ Legal systems around the world grapple with ensuring that custody decisions are made in a way that both respects the constitutional rights of parents and prioritises the child's overall well-being, including their physical health, emotional stability, and mental development.⁶

Protecting the best interests of children has become a fundamental principle in family law, frequently serving as the main guide in making custody decisions.⁷ This principle is embedded in several international human rights agreements, such as the United Nations Convention on the Rights of the Child (CRC),⁸ which highlights that a child's well-being must be a key priority in every decision affecting them. Still, there is an ongoing debate about the best way to understand and implement this principle in custody cases, especially since parental rights are also involved.⁹ Although parents usually have the constitutional right to decide how to raise their children, these rights need to be balanced with society's responsibility to make sure children grow up in supportive environments that promote their growth and well-being.¹⁰ In jurisdictions such as South Africa, the constitutional protections afforded to both parents and children are enshrined in the Bill of Rights, which complicates custody decisions.¹¹ Courts are often faced with the difficult task of interpreting and reconciling competing rights in order to make determinations that are both legally sound and morally justifiable.¹² The growing recognition of children's voices in custody proceedings also raises questions about the capacity of young individuals to express their preferences and how these should be factored into judicial decision-making.¹³ This study will attempt to explore these tensions and assess whether current legal practices strike the appropriate balance in serving both parental rights and the best interests of the child.

METHODOLOGY

This research adopted a qualitative approach to explore how children's constitutional rights are handled in custody disputes under South African law. The qualitative method was utilised to analyse legal and social issues in-depth through non-statistical means. However, the main method used was desktop research, which involved reviewing a range of secondary sources, such as legislation, court decisions, academic journals, legal texts, and official reports. The key legal instruments, including the Constitution of the Republic of South Africa, 1996, and relevant international agreements, were also examined to evaluate how they contribute to the protection of children's rights during custody cases.

DISCUSSION

Constitutional Rights of the Child in Custody Disputes

The Constitution of the Republic of South Africa, 1996,¹⁴ stands as the highest law in the country and forms the core legal foundation for dealing with custody disputes and claims of child abuse. Section 28 specifically protects children's rights,¹⁵ clearly stating that every child has the right to be shielded from abuse, neglect, maltreatment, or humiliation. These rights are not just ideals; they carry full legal weight

⁵ Amelia Vincent, "A Framework For Children's Right To Sexual And Reproductive Health Education," 2020.

⁶ B. S. Nkosi, "The Best Interests of Children of Primary Caregivers to Be Sentenced: A Comparative Study" (North-West University (South Africa), 2020); B S Nkosi, "The Best Interests of Children of Primary Caregivers to Be Sentenced: A Comparative Study" (North-West University (South Africa), 2020).

⁷ Nkosi, "The Best Interests of Children of Primary Caregivers to Be Sentenced: A Comparative Study," 2020.

⁸ Art. 3 of the United Nations Convention on the Rights of the Child (CRC).

⁹ Simon Tebogo Lobaka, "The Failure of the South African Family Law System in Custody Battles: A Father's Perspective," *South African Review of Sociology* 54, no. 2 (April 2, 2024): 177–99, <https://doi.org/10.1080/21528586.2024.2361775>.

¹⁰ Legal Expert, "Parental Rights and Responsibilities in South Africa," Legal Advice, January 24, 2024.

¹¹ Aphiwe Somi, "The Acquisition of and Subsequent Judicial Interference with Parental Responsibilities and Rights of Unmarried Parents in Terms of the *Children's Act* 38 OF 2005: Lessons from Case Law, Selected Analogous Divorce Law and English Law," 2023.

¹² Josimar Antônio de Alcântara Mendes and Thomas C. Ormerod, "Making Sense out of Uncertainty: Cognitive Strategies in the Child Custody Decision-Making Process," *Frontiers in Psychology* 15 (July 15, 2024), <https://doi.org/10.3389/fpsyg.2024.1387549>.

¹³ Bernadette J. Saunders, Gaye Lansdell, and John Frederick, "Understanding Children's Court Processes and Decisions: Perceptions of Children and Their Families," *Youth Justice* 20, no. 3 (December 28, 2020): 272–92, <https://doi.org/10.1177/1473225419890691>.

¹⁴ The Constitution of the Republic of South Africa, sec 2.

¹⁵ The Constitution of the Republic of South Africa, sec 28.

and must be treated as the top priority in all matters concerning children.¹⁶ According to Van der Walt and Oosthuizen,

“The ‘best interests of the child’ principle is firmly rooted in Section 28(2), which makes it clear that a child’s welfare must be the top priority in every decision affecting them.”¹⁷

They also argued that this principle functions as a constitutional benchmark for shaping how all laws and policies relating to children are understood and applied.¹⁸ Somi noted that in custody cases, especially where abuse is alleged, courts are required to carefully balance the rights of parents with the overarching duty to prioritise the child’s best interests.¹⁹

The Children’s Act 38 of 2005 gives effect to the constitutional rights of children and outlines the legal structure for what is now called “care” and contact in custody-related matters.²⁰ Section 7 of the Act²¹ lists several factors that must be taken into account when assessing what is in the child’s best interests. These include ensuring the child’s physical and emotional safety, as well as protection from harm. As a result, any allegations of abuse are treated as highly significant in custody cases.²² Sections 6(4)(a) and 9 of the Act²³ further reinforce the need to keep children protected from abuse and ensure that any court action considers the child’s safety. The Act²⁴ further offers mechanisms to enable the appointment of a family advocate to investigate abuse claims and advise the court. This further ensures that decisions are not made based on untested allegations but on thorough, expert assessments.

The mandate for involving family advocates and specialised social workers underscores a commitment to a multidisciplinary approach in custody disputes.²⁵ Scheepers further argued that:

“Their insights and evaluations are vital in painting a comprehensive picture of the child’s environment and ensuring that judicial decisions are informed not solely by legal arguments but also by professional assessments of the child’s day-to-day reality.”²⁶

Huntington posits that the Children’s Act anticipates the fluid nature of family dynamics by enabling periodic reviews of custody and contact arrangements.²⁷ He further stated that such built-in flexibility allows the judicial system to respond to evolving circumstances or the emergence of new evidence, thereby constantly realigning decisions with the best interests of a child.²⁸ The author determined that this dynamic framework not only protects vulnerable children from potential harm but also carefully balances parental rights, ensuring that both parties are afforded fair treatment in line with the constitutional safeguards.

¹⁶ Sherry Njeri Waweru, “The Import of Declaration of Sections 24 (3) & 25 of the Children’s Act as Unconstitutional on the Protection of the Right to Parental Responsibility,” 2021.

¹⁷ Johannes L. van der Walt and Izak J. Oosthuizen, “Three Perspectives on the Notion of ‘the Best Interests of the Child,’” *In Die Skriflig / In Luce Verbi* 58, no. 1 (May 6, 2024), <https://doi.org/10.4102/ids.v58i1.3054>.

¹⁸ van der Walt and Oosthuizen, “Three Perspectives on the Notion of ‘the Best Interests of the Child,’” 3054.

¹⁹ Somi, “The Acquisition of and Subsequent Judicial Interference with Parental Responsibilities and Rights of Unmarried Parents in Terms of the *Children’s Act* 38 OF 2005: Lessons from Case Law, Selected Analogous Divorce Law and English Law.”

²⁰ Tommie Forslund et al., “Attachment Goes to Court: Child Protection and Custody Issues,” *Attachment & Human Development* 24, no. 1 (January 2, 2022): 1–52, <https://doi.org/10.1080/14616734.2020.1840762>.

²¹ Section 7 of the Children’s Act outlines key factors for determining a child’s best interests, including: a. the child’s relationship with parents and caregivers; b. parents’ ability to meet the child’s needs; c. impact of changes in the child’s living environment; d. the child’s physical and emotional safety and protection from harm; e. the child’s age, maturity, and developmental stage; f. the child’s views and preferences, when appropriate; g. protection from abuse and family violence; h. the need for stability and continuity in care.

²² Joyanna Silberg and Stephanie Dallam, “Abusers Gaining Custody in Family Courts: A Case Series of over Turned Decisions,” *Journal of Child Custody* 16, no. 2 (April 3, 2019): 140–69, <https://doi.org/10.1080/15379418.2019.1613204>.

²³ The Children’s Act, secs 6(4)(a) and 9.

²⁴ The Children’s Act (n 23).

²⁵ Chiquekita Scheepers, “The Role of the Social Worker in the Interdisciplinary Team Providing Statutory Services to Children and Families in the Cape Metropole,” 2020.

²⁶ Scheepers, “The Role of the Social Worker in the Interdisciplinary Team Providing Statutory Services to Children and Families in the Cape Metropole,” 25.

²⁷ Clare Huntington, “The Institutions of Family Law,” *BUL Rev.* 102 (2022): 393.

²⁸ Huntington, “The Institutions of Family Law,” 27.

The Role of the Family Advocate and Social Workers

In custody disputes involving allegations of abuse, the Office of the Family Advocate plays a vital role. Appointed under the Mediation in Certain Divorce Matters Act,²⁹ the family advocate is responsible for investigating the child's circumstances and submitting a report with recommendations to assist the court in making an informed decision. This role has become even more vital in abuse cases, where objective, child-centered input is required.³⁰ Social workers are also mandated under the Children's Act to conduct investigations, especially when allegations of abuse are present.³¹ The author further argued that their reports can influence the court's decisions regarding care and contact.³² In *S v M*,³³ the case concerned a mother who was the primary caregiver of her children and had been convicted and sentenced to a term of imprisonment. The issue was whether the sentencing court adequately considered the best interests of her children. The Constitutional Court ruled that when sentencing a primary caregiver to imprisonment, courts must carefully consider the effect such a sentence would have on the children involved. The judgment reaffirmed the need to protect children's welfare in all legal proceedings and reinforced the principle that their best interests should take priority.

Abuse Allegations and Custody Judgements in South African Jurisprudence

South African courts have developed significant jurisprudence on custody and abuse allegations.³⁴ For instance, in *B v S*,³⁵ the facts of the case were that the mother alleged the father was abusive and sought to deny him custody rights. The issue was whether unsubstantiated allegations could justify the denial of custody. The Appellate Division held that custody could not be denied based on unproven accusations. The court emphasised that credible, substantive evidence was essential to curtail parental rights. The argument further rested on protecting both the interests of a child and ensuring fairness to parents. In contrast, in *F v F*,³⁶ the case involved a father seeking custody while the mother raised concerns about possible abuse. The issue was the threshold for restricting parental access based on abuse suspicions.³⁷ Furthermore, in *JG v CG*, the matter dealt with emotional abuse and psychological control by a parent.³⁸ The issue was whether emotional abuse constituted sufficient grounds to limit contact. The court held in favour of the mother, recognising coercive control as detrimental to the child's wellbeing. The decision in the above case marked a significant evolution in the interpretation of what constitutes abuse.

False Allegations and Parental Alienation

In custody disputes, it is common to encounter situations where a child has been influenced by one parent to become alienated from the other.³⁹ This kind of influence is often intended to bolster the programming parent's case during legal proceedings.⁴⁰ One of the more challenging aspects of custody disputes is the potential for false allegations, which are sometimes associated with parental alienation. Courts must

²⁹ Moreblessing Memory Ndonga, "Assessment in Child Protection Services: Challenges Faced by Social Workers" (Stellenbosch: Stellenbosch University, 2023).

³⁰ Mediation in Certain Divorce Matters Act 24 of 1987.

³¹ Ndonga, "Assessment in Child Protection Services: Challenges Faced by Social Workers," 29.

³² Ndonga, "Assessment in Child Protection Services: Challenges Faced by Social Workers," 31.

³³ *S v M* 2007 (2) SACR 539 (CC): the Regional Magistrate had passed sentence without giving sufficient independent and informed attention as required by s. 28 (2) read with s. 28 (1) (b) of the Constitution, to the impact on the children of sending M to prison. The Court held that in the light of all the circumstances of this case M, her children, the community and the victims who will be repaid from her earnings, stand to benefit more from her being placed under correctional supervision than from her being sent back to prison.

³⁴ Simon Tebogo Lobaka, "The Failure of the South African Family Law System in Custody Battles: A Father's Perspective," *South African Review of Sociology* 54, no. 2 (2024): 177–99.

³⁵ 1995 (3) SA 571 (A).

³⁶ 2006 (3) SA 42 (SCA).

³⁷ *F v F* 2006 (3) SA 42 (SCA): in this case, the Supreme Court of Appeal held that even unconfirmed suspicions should prompt a careful, proactive approach by the court to safeguard the child. In this case, the court balanced protective instincts with legal standards of proof, favouring preventive action.

³⁸ Mariachiara Feresin, "Parental Alienation (Syndrome) in Child Custody Cases: Survivors' Experiences and the Logic of Psychosocial and Legal Services in Italy," *Journal of Social Welfare and Family Law* 42, no. 1 (January 2, 2020): 56–67, <https://doi.org/10.1080/09649069.2019.1701924>.

³⁹ Feresin, "Parental Alienation (Syndrome) in Child Custody Cases: Survivors' Experiences and the Logic of Psychosocial and Legal Services in Italy."

⁴⁰ Feresin, "Parental Alienation (Syndrome) in Child Custody Cases: Survivors' Experiences and the Logic of Psychosocial and Legal Services in Italy."

navigate these situations with caution to prevent further emotional harm to the child or unfair treatment of either parent. In *Van den Berg v Le Roux*,⁴¹ the facts involved mutual accusations between parents in a highly contested custody case. The issue was determining the veracity of abuse claims amid parental alienation. The court acknowledged the difficulty in discerning facts and emphasised the need for comprehensive evaluations by psychologists and social workers. The decision reiterated the importance of an evidence-based approach and cautioned against speculative rulings.

The Role of the Police and Criminal Justice System

Claims of child abuse frequently led to criminal investigations. Under the Children's Act, certain professionals are legally required to report suspected abuse.⁴² In these situations, the South African Police Service (SAPS) must collaborate closely with the courts and social workers to protect the child while also upholding the accused's right to be presumed innocent.⁴³ Skinnis points out that police custody serves as a crucial entry point into the broader criminal justice system.⁴⁴ For example, in *S v M*,⁴⁵ the applicant, a single mother of three, had been convicted on multiple counts of credit card fraud and sentenced to four years in prison. Although her appeal was partially successful in the High Court, the custodial sentence remained. The case was then brought before the Constitutional Court, which had to consider how Section 28(2) of the Constitution, stating that a child's best interests are of paramount importance in all matters concerning them, should influence sentencing decisions, particularly for primary caregivers.⁴⁶

The Child's Best Interest Standard

The "best interests of the child" principle involves carefully balancing multiple rights, such as the child's right to safety, the parents' rights to care and contact, and the child's right to have a relationship with both parents. This balance becomes particularly sensitive in cases where abuse is alleged.⁴⁷ Section 10 of the Children's Act⁴⁸ guarantees a child's right to be heard in matters affecting them, including abuse allegations. However, how much weight their views carry depends on their age and level of maturity. Mahlobogwane observed that it's difficult for courts to determine a child's best interests, as there's no clear or simple way to define what those interests are.⁴⁹ In the case of *McCall v McCall*,⁵⁰ the parents were involved in a custody battle after their divorce. The father argued that he should have custody because he could offer a more stable home, while the mother countered by highlighting her emotional connection with the child and her role as the primary caregiver. The key legal question was how the court should interpret and apply the "best interest of the child" standard when deciding custody. The court stressed the need for clear guidelines to determine what would best serve the child's welfare. It highlighted that the child's best interests must always be the top priority in custody cases. The judgment outlined 13 specific factors that courts should consider when making custody decisions.⁵¹ The court acknowledged how vital

⁴¹ 2003 (3) SA 210 (W).

⁴² Johanna Kedibone Monyake, "An Exploration within the Criminal Justice System on the Treatment of Children as Victims of Sexual Offences in Polokwane Policing Cluster, Limpopo Province" (2021).

⁴³ Monyake, "An Exploration within the Criminal Justice System on the Treatment of Children as Victims of Sexual Offences in Polokwane Policing Cluster, Limpopo Province."

⁴⁴ Layla Skinnis, *Police Custody: Governance, Legitimacy and Reform in the Criminal Justice Process* (Willan, 2012).

⁴⁵ *S v M (Centre for Child Law as Amicus Curiae)* 2008 (3) SA 232 (CC).

⁴⁶ *S v M (Centre for Child Law as Amicus Curiae)* 2008 (3) SA 232 (CC): Sachs J emphasises that the sentencing court must consider the best interests of the child when sentencing primary caregivers. Accordingly, "I conclude that the Regional Court and the High Court did not give sufficient attention to the duties imposed by section 28(2), read with section 28(1)(b), of the Constitution." The Constitutional Court confirms that it has the power to substitute the sentence with one that is constitutionally compliant, see para 45-47; also see Constitution of the Republic of South Africa, 1996 s 28(2).

⁴⁷ Children's Act 38 of 2005 s 7; Constitution of the Republic of South Africa, 1996 s 28(2); see also *McCall v McCall* 1994 (3) SA 201 (C) for a list of factors considered when determining the child's best interests.

⁴⁸ The Children's Act, sec 10.

⁴⁹ Frans Mahlobogwane, "South African Courts and the 'best Interests of the Child' in Custody Disputes," *UNISA Press* 46, no. 1 (2005): 30-34.

⁵⁰ 1994 (3) SA 201 (C).

⁵¹ *McCall v McCall*, King J set out the guiding factors the court must consider in relation to the granting of an application as follows:

In determining the best interests of the child, the Court must decide which of the parents is better able to promote and ensure his physical, moral, emotional and spiritual welfare. This can be assessed by reference to certain factors or criteria which are set out hereunder, not in order of importance, and bearing in mind that there is a measure of unavoidable overlapping and that some of the listed criteria may differ only as to nuance. The criteria are the following:

emotional stability and consistency are in a child's life. It emphasized that custody arrangements should remain adaptable, with regular reviews to reflect any changes in the child's situation.

The Role of International Treaties in South African Child Custody and Abuse Cases

South Africa has signed several international treaties that influence matters of child custody and abuse, such as the United Nations Convention on the Rights of the Child (UNCRC) and the Hague Convention on the Civil Aspects of International Child Abduction.⁵² These instruments inform domestic legislation and judicial reasoning.⁵³ In applying the UNCRC, South African courts have firmly upheld the child's absolute right to protection from all types of abuse.⁵⁴ However, the application of these treaties faces practical challenges within South Africa. Resource limitations hinder the efficient operation of the family law system, delaying critical interventions by the family advocates and social workers.⁵⁵ For instance, in *DK v Office of the Family Advocate*,⁵⁶ "the applicant (mother), a psychiatrist, returned to South Africa from Sint Maarten with her three minor children without the consent of the father (a dentist). The father-initiated proceedings under the Hague Convention for the return of the children, claiming they were wrongfully removed."⁵⁷

Challenges in Implementing Child Custody and Abuse protection in South Africa

Despite the robust legal framework, several challenges persist. Ndonga states that resource constraints hinder the timely involvement of family advocates and social workers.⁵⁸ Courts are often overburdened, leading to delays that can exacerbate harm. Thomson explains that both domestic and international laws and policies widely recognize that a child's welfare or best interests should be the foremost consideration in any decision about their upbringing.⁵⁹ Addressing these issues requires better allocation of resources to enhance the efficiency of family law processes. Training initiatives for professionals and streamlined court procedures can significantly reduce delays, ensuring children's welfare remains the central focus.⁶⁰ The alignment of domestic practices with international standards, such as those set out by the UNCRC, would further promote fairness and consistency in cases involving custody and abuse.⁶¹

(a) the love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child; (b) the capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires; (c) the ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings; (d) the capacity and disposition of the parent to give the child the guidance which he requires; (e) the ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs generally speaking, the provision of economic security; (f) the ability of the parent to provide for the educational wellbeing and security of the child, both religious and secular; (g) the ability of the parent to provide for the child's emotional, psychological, cultural and environmental development; (h) the mental and physical health and moral fitness of the parent; (i) the stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the status quo; (j) the desirability or otherwise of keeping siblings together; (k) the child's preference, if the court is satisfied that in the particular circumstances the child's preference should be taken into consideration; (l) the desirability or otherwise of applying the doctrine of same sex matching; (m) any other factor which is relevant to the particular case with which the court is concerned.

⁵² Julia Sloth-Nielsen, "International Child Abduction in Africa," in *Research Handbook on International Child Abduction* (Edward Elgar Publishing, 2023), 218–31.

⁵³ Sloth-Nielsen, "International Child Abduction in Africa."

⁵⁴ Delecia Leigh Beyers, "The Protection of Child Witnesses in the South African Criminal Justice System" (University of the Western Cape, 2024).

⁵⁵ Nigel Lowe et al., *Bromley's Family Law* (Oxford University Press, 2021).

⁵⁶ *DK v Office of the Family Advocate* ZAGPPHC 2023/1129).

⁵⁷ The mother argued that the children were not habitually resident in Sint Maarten and that returning them would not serve their best interests. The court discusses the application of the Hague Convention, emphasising that it provides a mechanism for the quick return of a child to their habitual residence, unless exceptions apply. In this case, the court acknowledges that international treaties must be interpreted in light of the best interests of the child, aligning with Section 28(2) of the South African Constitution and the UNCRC. Judge SWANEPOEL J noted that while the Hague Convention generally requires return, South African courts retain discretion to consider broader welfare concerns, especially in cases involving allegations of abuse, para 7-8.

⁵⁸ Ndonga, "Assessment in Child Protection Services: Challenges Faced by Social Workers."

⁵⁹ Michael Thomson, "A Capabilities Approach to Best Interests Assessments," *Legal Studies* 41, no. 2 (June 11, 2021): 276–93, <https://doi.org/10.1017/lst.2020.47>.

⁶⁰ Joan S Meier and Vivek Sankaran, "Breaking down the Silos That Harm Children: A Call to Child Welfare, Domestic Violence and Family Court Professionals," *Va. J. Soc. Pol'y & L.* 28 (2021): 275.

⁶¹ Ndonga, "Assessment in Child Protection Services: Challenges Faced by Social Workers."

Discussion Summary

This study explored the complex relationship between constitutional protections, parental rights, and safeguarding children's best interests in custody disputes. It highlighted the legal and ethical challenges family courts face when trying to respect parents' autonomy while prioritizing the child's well-being. At the core of this issue is the "best interests of the child" principle, which guides custody decisions in many legal systems, including international agreements like the UN Convention on the Rights of the Child (CRC). The research also looked at the tensions that can emerge when this principle conflicts with parents' constitutional rights, as parents often have considerable authority in raising their children. The study also examined how countries like South Africa, which strongly protect both parental and children's rights under their Constitution, manage these conflicts in custody cases. Although the law requires balancing both interests, the study found that applying these principles consistently in practice remains a significant challenge.

RECOMMENDATIONS

Drawing on the findings of this study, the following recommendations aim to promote a fairer and more effective approach to resolving child custody disputes:

First, family courts should establish clearer legal standards and guidelines for balancing parental rights with the best interests of the child. This clarity would bring more consistency and transparency to custody rulings, helping to reduce confusion in cases where these interests conflict. Second, there should be a stronger focus on including the child's voice in custody proceedings, especially for older children. Courts ought to develop age-appropriate methods to hear and consider children's views, taking into account their emotional maturity and ability to understand the consequences of custody decisions. Third, ongoing training for judges, social workers, and other legal professionals involved in custody cases is essential. This training should cover the evolving landscape of children's rights and the psychological effects custody decisions can have, improving the capacity of these professionals to make well-informed, balanced decisions that prioritize the child's welfare while respecting parental rights. Finally, courts should encourage the use of mediation and alternative dispute resolution (ADR) methods. These approaches enable parents to work together in creating custody arrangements that truly serve the child's best interests, reducing conflict and fostering cooperative co-parenting rather than relying solely on court judgments.

CONCLUSION

Child custody disputes remain one of the most complex areas within family law, as courts must carefully balance parental rights with the paramount concern of protecting the child's best interests. This study emphasised the need to uphold children's rights alongside the constitutional protections granted to parents. However, it also revealed the ongoing difficulties in consistently maintaining this balance, especially given the growing recognition of children's autonomy and the intricate nature of family relationships. While many legal systems recognize the importance of children's welfare, there is still significant room to improve how these principles are applied in practice. By clarifying legal guidelines, better incorporating children's voices, and enhancing training for legal professionals, along with encouraging mediation, courts can foster a fairer and more supportive process for resolving custody disputes. Ultimately, the aim should be to ensure that decisions always place the child's well-being first, respect parental rights, and promote a legal environment grounded in justice and compassion.

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ABOUT AUTHORS

Bulelani Thukuse (LLB) (LLM Candidate) School of Law, Faculty of Law, Humanities & Social Sciences, Walter Sisulu University, South Africa. He also serves as a reviewer for the South African Journal of Agricultural Extension (SAJAE). His research interests cut across International Criminal Law, Human Rights Law, and Labour Law, particularly issues relating to minimum wages as well as selected aspects of Private Law.

Professor Paul S. Masumbe (LLD) is Associate Professor and Head of School of Law, Walter Sisulu University. He is external examiner for masters and doctoral degrees in law at various universities, reviewer and editorial board member of local and internal journals. His research interests include International Criminal Law, Human Rights Law, Labour Law with emphasis on dismissal, and selected areas of Private Law.