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SA Constitution denies children explicit right to express themselves – UCT study



Dr Sharna-Lee Clarke

Photo: Supplied

While South African law strongly advocates protecting children, a new study by the University of Cape Town (UCT) found that the Constitution does not explicitly give children the right to be heard in matters that affect them.

Judges have to “read this in” through other rights like dignity, equality and rights to representation, but it’s not the same as having a clear, express right. This gap makes it

harder for children's voices to carry proper weight in family law decisions, according to Dr Sharna-Lee Clarke's groundbreaking findings for her PhD in [Public Law](#).

Clarke's research looked at how South African courts understand and apply the principle of the "best interests of the child", particularly in cases of international parental abduction. The title of her thesis is *Advancing the best interests of the child in South African family-related legal disputes*.

"International parental abduction is when one parent takes a child to another country, or keeps them there, without the other parent's consent. It's not the same as abduction by a stranger, as it happens within families, but it can deeply disrupt a child's life and relationships," said Clarke.

"When courts make decisions about children without hearing from the children themselves, the outcomes can feel imposed rather than just. Ensuring that children's views are part of the process leads to fairer results, reduces conflict and fosters respect for the law and family life. On a broader level, valuing children's voices strengthens democracy itself by teaching children that they belong, that they matter, and that their autonomy will be respected as they grow into adulthood," she said.

Her research will help reshape "how we view children in law, not just as passive recipients of adult decisions, but as people with evolving capacities whose voices should carry weight".

"Ultimately, I want to see reform that makes children's participation an explicit right, so that they are authentically included in decisions that affect them," said Clarke.

She has always been passionate about children's rights and the rights of vulnerable groups.

"As a child, I often felt that my voice was quieted, and that shaped me deeply. Now, as a mother, I raise my own children to know that their voices matter in every aspect of their lives. Academically and personally, I wanted to explore how the law can move beyond treating children only as vulnerable beings who need protection, to recognising them as rights-holders with autonomy, preparing them for independent adult life," she explained.

Clarke says while South Africa commemorates Youth Day each year, recognising the role of children and youth as powerful voices for justice, "yet in our legal system today, children's voices are still too muted".

Her research shows that meaningful child participation is not just about protection, it is also about dignity, autonomy and preparing young people to thrive as independent adults in our society.

Clarke graduated for her PhD in Public Law at Sarah Baartman Hall on Tuesday, 9 September 2025.

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