



Briefing Paper 555

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Safe Relinquishment: Finding Solutions to SA's Child-Abandonment and Late-Term Abortion Crisis

*"Too many women are forced to abort by poverty, by their menfolk, by their parents...
A choice is only possible if there are genuine alternatives."*

Germaine Greer¹

1. Introduction

High levels of crisis pregnancies in South Africa and limited options lead large numbers of desperate girls and women to abandon their babies in unsafe circumstances, or to seek late-term abortions, which often result in the mother's death, over and above that of the baby. The availability of 'baby savers' as a safe relinquishment option would do much to prevent these deaths; yet all forms of child abandonment, including safe relinquishment, remain a criminal offence in South Africa.²

Becoming pregnant is a life-changing event, but this news is not always welcome and some find themselves experiencing a crisis pregnancy. There are three options when faced with an unplanned pregnancy – abortion, adoption, and parenting. However, for some pregnant women and girls these are not viable options and, in the absence of alternatives, they chose abandonment. These infants are usually abandoned in unsafe circumstances where they are unlikely to be found. However, there is – or should be – an alternative to abandonment in the form of *safe relinquishment*. Dictionaries define relinquishment as "letting something go or giving something up.... A forsaking, or giving over a right".³ Safe relinquishment allows for the handing over of the care of the infant, which almost always saves the life of the baby.

2. South African Legislation⁴

Termination of pregnancy occurs when a woman decides to end her pregnancy by medical means before the full term. The Choice on Termination of Pregnancy Act 92 of 1996 "promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy according to her individual beliefs".⁵ The woman must be under 13 weeks pregnant to end the pregnancy without giving reasons. If she is between 13 and 20 weeks pregnant, the pregnancy may be terminated only under specific conditions. If she is more than 20 weeks pregnant, it will be done only if her or the foetus' life is in danger or there are likely to be serious birth defects.⁶

There is a strong emphasis on the reproductive rights of female persons. Any female person of any age can request an abortion without the consultation and consent of any other party, including the parents of a minor. South Africa's legislation on abortion is among the most permissive in the world. This approach was motivated by the high mortality rate among women due to botched 'back street' abortions.

3. Termination of Pregnancy

Abortion Clinics such as the Dr Mercy Clinic advertise abortions pills for safe pregnancy ter-

mination, as opposed to a surgical procedure. “But anyone who needs to end a pregnancy should know that, if they’re 20 or fewer weeks along, they have another option: the abortion pill, aka medication abortion which is done by using safe and pain-free Abortion Pills and Womb Cleaning Medication.”⁷ Abortion pills such as these are also available over the counter at Pharmacies such as DisChem.⁸ The abortion pill uses a combination of two drugs to abort pregnancies up to 70 days (10 weeks).⁹

However, the termination process is not always that uncomplicated. “When these women use abortion pills, apart from the woman having a greater likelihood of developing severe adverse reactions to the abortion pills, the pills would also induce labour and the woman may then present to a healthcare facility in premature labour — labour before the pregnancy has reached term, nine months or 40 weeks — or may deliver a premature baby outside a healthcare facility and the woman may then feel she has no choice but to ‘dump’ the baby.”¹⁰ Furthermore, “about 10% of bodies received by the Johannesburg mortuary are unidentified, but of them only 7% to 8% are adults. Of the unidentified infants, most are foetuses. They are abandoned — discarded around the city... The foetuses come in as viable foetuses — more than 26 weeks, and non-viable — those which would not survive outside the womb.”¹¹

Foetal otologist Roxanne Thornton, who specialises in perinatal forensic identification criteria and developmental biology, works to discern whether or not “the foetus had a natural anatomical reason for death or if it was homicide or accidental”.¹² She continues “that these children should have a voice, as a lot are dumped just around the corner from a shelter or abortion clinic”.¹³ A child is only regarded as ‘alive’ after it is born and has taken a breath. There is no foeticide law in South Africa, as was seen in the tragic case of Tshegofatso Pule’s baby, who was almost full-term when her mother was murdered at the instigation of her father. The expected baby girl had already been named by her mother, but for her there will be no justice.¹⁴

The Medical Research Council’s research found that “abortions were the leading external cause of death in 2009 for children aged 0 to 4, where a cause of death was known”.¹⁵ Dr Louise Gilbert, clinical director at Marie Stopes SA, a private ‘safe’

abortion services clinic, said though abortion is legal in SA and free of charge at a state health facility, access to ‘safe’ and legal abortion remains “problematic” with limited numbers of state health facilities providing the service.¹⁶ Marie Stopes clinic estimates that South Africa has 250 000 abortions annually, while approximately 53-58% are illegal. Approximately 5 000 mothers die every two years from illegal abortions.¹⁷

4. Late-Term Abortion

Late-term abortion is not an exact medical term but is generally understood to refer to abortions that take place after 22 weeks of pregnancy. Such abortions are associated with higher risk of complications and even death of the mother.¹⁸ For many years, abortion-rights advocates have asserted that abortions after 20 weeks are performed because of maternal health complications or lethal foetal anomalies discovered late in pregnancy. However, survey studies of late-term abortion patients have confirmed that most late-term abortions are performed because of a delay in pregnancy diagnosis and for reasons similar to those given by first-trimester abortion patients: financial stressors, relationship problems, education concerns or parenting challenges. The stressful circumstances of unprepared pregnancy, single-motherhood, financial pressure, social stigma and relationship discord are primary concerns that must be addressed for these women.¹⁹

“The characteristic similarities and delay commonalities observed across first trimester and late-term abortion groups suggest that women who seek abortion share similar characteristics across gestational ages. However, these circumstances are not fundamentally alleviated or ameliorated by late-term abortion. Indeed, late-term abortion places these women at greater risk of surgical complications, subsequent preterm birth, and mental health problems, while simultaneously ending the life of an unborn child”.²⁰ Moreover, “when abortions occur in the third trimester, most often something has gone terribly wrong in the pregnant person’s life or pregnancy”.²¹

5. The Incidence of Abandonment

Family Law expert Dr Whitney Rosenberg points out that in South Africa it is against the law to abandon a child — specifically an infant — in

such a way that the baby is likely to die. She continues that “quantifying the number of infants who die as a result of abandonment proves challenging; according to a National Child Homicide Study it is difficult to distinguish between the different causes of death during infancy. This study found that, in 2009, more than half the 454 under-five victims of child homicide in the country were killed in the first month of life. Abandonment accounted for 84.9% of these deaths”.²² Her research well illustrates that “South African laws punish the crime of abandonment, but fail to provide a safe alternative that will prevent the act. Laws that encourage prevention will save the lives of infants”.²³ Women and girls experiencing crisis pregnancy, and who subsequently abandon their infants or seek out late-term abortions, have run out of options and resort to desperate measures which compromise the life of both the mother and the child.

In 2010 Child Welfare South Africa estimated that more than 3 500 babies were abandoned in South Africa. Furthermore, of the 200 babies to be found monthly in Johannesburg and Soweto, only 60 were found alive. These babies are left for dead in unsafe places such as drains, sewers, open fields, rubbish dumps, toilets and dustbins. The 2016 Medical Research Council study on child homicide found that “a child born in South Africa is at the highest risk of being killed during its first six days of life.”²⁴

Although not considered legal, the first Baby Saver in South Africa was established in July 1999 by *Door of Hope Children’s Mission* at a church in Berea, Johannesburg, and was referred to as the ‘*Hole in the Wall*’. Some organizations offering this alternative operate under major pressure from other welfare organizations to shut their doors as it is speculated that the provision of Baby Savers might encourage mothers to abandon their infants. However, incomplete Department of Social Development (DSD) statistics show that at least 1 000 children survive abandonment every year. Moreover, there were 1 800 unnatural ‘stillbirths’ over a three-year period in Gauteng. In 2015 in Gauteng alone, for every child surviving abandonment, two died. Furthermore, Baby Savers SA noted that, of 252 media stories about abandonment during the COVID-19 lockdown, 151 babies were found dead.

Robyn Wolfson Vorster emphasizes that, “if we want to save lives, the final stage is to introduce a foeticide law to prosecute third parties responsible for the death of viable foetuses for reasons not covered by the Choice on Termination of Pregnancy Act. This would allow the South African Police Services (SAPS) to police the late-term illegal abortion practitioners responsible for the deaths of thousands of viable foetuses”.²⁵

At the end of 2021 *The Door of Hope* reported that they had 58 babies in their care. Although the centre caters for mothers who choose to give up their babies, some of the infants at *The Door of Hope* have been abandoned. The foundation, which was founded in 1999, has taken in 1 790 babies. Just over 800 of them have been adopted, while 334 were reunited with their families.²⁶ Their experience, among others, suggests that the availability of Baby Savers has the potential to save the lives of thousands of babies a year.²⁷

6. Prevention of Unsafe Abandonment

The Department of Social Development has adopted *First 1 000 Days* (that is, from the time of conception to the age of two years), as a priority area for social policy as this is “a time of tremendous potential and enormous vulnerability. How well or how poorly mothers and children are nourished and cared for during this time has a profound impact on a child’s ability to grow, learn and thrive. This is because the first 1 000 days are when a child’s brain begins to grow and develop and when the foundations for their lifelong health are built”.²⁸ The successful implementation of this policy, which could include the introduction of the Child Support Grant during pregnancy, could do much to alleviate desperate poverty and prevent unsafe abandonment.

Gender-based violence has reached epidemic proportions in South Africa. There is a need to focus on the many ways that the integrity of women’s bodies is threatened by sexual assault and rape, by pregnancy itself, and especially life-threatening pregnancies, and by an outrageous and often racialized lack of medical care for the pregnant and postpartum poor.²⁹ Over 83 000 children gave birth in South Africa during the years 2020/2021, more than 5 500 of whom were aged 10–14.³⁰

Child care activist and researcher Dee Black, from the National Adoption Coalition of South

Africa (NACSA), highlights the following issues of concern:

- Illegal immigrants are unable to legally place their children in the formal child protection system in South Africa, and face deportation should they try.
- Relinquishing parental rights so that a child can be adopted, can only be done with a legal guardian's consent from the age of 18 years, making this option inaccessible to teenage mothers; however, a child of any age can request an abortion in South Africa, sending mixed messages about the choice of adoption.
- Child abandonment is a criminal offence, and a person who abandons a child after birth may be charged and prosecuted. Charges could include crimes such as concealment of birth and attempted murder.
- Baby savers are illegal; however, these are being opened up more frequently, given the increase in abandonment.
- Many abandoned children don't even make it into the formal child protection system, as they are absorbed into communities through 'informal adoption', raising concerns around issues such as child trafficking.³¹

Alarming, child protection specialists have also argued that the law does very little to facilitate the adoption of abandoned children who find themselves on the Registry of Adoptable Children & Parents (RACAP). This is proving to be a significant setback as the number of orphaned and abandoned infants is on the rise and the rate of adoption is declining. The primary issue here is that the law doesn't do enough to de-stigmatise cross-racial adoptions, with many adoptive parents experiencing discrimination from the courts and the Department of Social Development and society in general.³²

7. The Legal Regulation of Infant Abandonment

Section 305 of the Children's Act states that abandonment of a child warrants a fine or ten years' imprisonment (twenty years if done more than once). Section 113 of the General Law Amendment Act 46 of 1935 provides for the crime of concealment of birth of a newly born child. The mother may also be charged with murder or attempted murder. This approach is arguably not a deterrent, and such a retributive approach may even encourage unsafe abandon-

ment. As already noted, Baby Savers remain illegal in South Africa, but the high incidence of unsafe abandonment has resulted in the increasing establishment of Baby Savers; the most fundamental of rights is the right to life and Baby Savers save lives.

Baby Savers offer both anonymous and confidential abandonment of an infant. "The Baby Saver is easy to access and easy to use – simply open the door, place the baby into the Saver and close the door – which then automatically locks. The trigger-plate will send an alarm which will result in responders attending the Saver and sending the baby via ambulance to the local hospital."³³ There, the needs and physical condition of the infant are assessed and addressed. A designated Child Protection Organisation is contacted, which will then take statutory responsibility for the baby and find temporary safe care for it, while assessing the best permanent placement option. The anonymity of the mother is assured. However, the baby will not be available for adoption immediately, so there is a window of opportunity should the mother or other member of the family wish to take responsibility for the baby. Given the circumstances, there would be a social work investigation to assess whether such a family preservation approach would be in the best interests of the child. A confidential abandonment would be one where the identity of the mother is known and the mother or other family member provides details, making it possible to contact the family of the child at some time in the future.

8. Conclusion

Child protection activists are advocating for an amendment to the Children's Act 38 of 2005 to allow for Baby Savers to be included and recognised as a safe alternative if used in the manner proposed. Importantly, Baby Savers should act as a last resort to assist desperate mothers in crisis pregnancy where other interventions were unsuccessful or unobtainable. Changing the law will encourage more Baby Savers to be opened in areas where infant abandonment is at its worst. It will also allow these savers to be publicly advertised, and thus to reach more mothers in need.³⁴ Child abandonment should not be the choice of last resort when there are viable alternative options.³⁵

Pope Francis has said, "all life has inestimable value, even the weakest and most vulnerable,

the sick, the old, the unborn, and the poor, are masterpieces of God's creation, made in his own image, destined to live forever, and deserving of the utmost reverence and

respect".³⁶ Safe relinquishment is the handing over of a baby to the care and nurture of someone else. It is life affirming. It is in the best interests of the child.

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¹ *Sex and Destiny*, Germaine Greer, 1984.

² On 23rd August 2022 the CPLO hosted a Webinar on 'Safe relinquishment: Finding solutions to South Africa's child abandonment and late-term abortion crisis'. The speakers were Ms Robyn Wolfson Vorster, child protection activist and writer for the 'Voiceless' and Dr Whitney Rosenberg, Senior Lecturer, Law of Persons and Family, University of Johannesburg. This Briefing Paper owes much to their respective presentations.

³ <https://legal-dictionary.thefreedictionary.com/Relinquishment> <https://legal-dictionary.thefreedictionary.com/Relinquishment>

⁴ It should be noted that at all times the Catholic Church has a principled objection to abortion from the moment of conception.

⁵ https://www.gov.za/sites/default/files/gcis_document/201409/act92of1996.pdf

⁶ <https://www.gov.za/services/birth/terminate-pregnancy>

⁷ <https://drmercyclinics.wixsite.com/drmercy>

⁸ <https://www.dischem.co.za/articles/post/sexual-health>

⁹ <https://blueridgepc.org/abortion-information/>

¹⁰ <https://www.timeslive.co.za/news/south-africa/2022-08-11-why-women-still-go-for-backstreet-abortions-dump-babi>

¹¹ <https://www.timeslive.co.za/news/south-africa/2022-08-11-why-women-still-go-for-backstreet-abortions-dump-babies>

¹² <https://www.timeslive.co.za/news/south-africa/2022-08-11-why-women-still-go-for-backstreet-abortions-dump-babies/>

¹³ <https://www.timeslive.co.za/news/south-africa/2022-08-11-why-women-still-go-for-backstreet-abortions-dump-babies/>

¹⁴ Presentation by Robyn Wolfson Vorster at the CPLO Webinar.

¹⁵ <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002003>

¹⁶ <https://www.timeslive.co.za/news/south-africa/2022-08-11-why-women-still-go-for-backstreet-abortions-dump-babies/>

¹⁷ Presentation by Robyn Wolfson Vorster at the CPLO Webinar.

¹⁸ <https://blueridgepc.org/late-term-abortion>

¹⁹ https://www.researchgate.net/publication/329107970_The_Illegality_of_Baby_Safes_as_a_Hindrance_to_Women_who_want_to_Relinquish_their_Parental_Rights

²⁰ <https://www.drhern.com/third-trimester-abortion/>

²¹ <https://www.washingtonpost.com/health/2022/06/21/abortion-procedures/>

²² <https://www.timeslive.co.za/ideas/2021-07-21-opinion-south-african-women-needing-to-abandon-their-babies-dont> .

²³ <https://www.timeslive.co.za/ideas/2021-07-21-opinion-south-african-women-needing-to-abandon-their-babies-do>

- ²⁴ https://www.researchgate.net/publication/329107970_The_Illegality_of_Baby_Safes_as_a_Hindrance_to_Women_who_want_to_Reli
- ²⁵ <https://www.dailymaverick.co.za/opinionista/2019-06-13-is-child-abandonment-really-murder>
- ²⁶ <https://www.timeslive.co.za/news/south-africa/2021-12-16-why-i-left-my-newborn-baby-for-dead-young-mother-los>
- ²⁷ <https://lozierinstitute.org/the-reality-of-late-term-abortion-procedures/>
https://www.researchgate.net/publication/329107970_The_Illegality_of_Baby_Safes_as_a_Hindrance_to_Women_who_want_to_Reli
- ²⁸ <https://thousanddays.org/why-1000-days/>
- ²⁹ <https://www.ncronline.org/news/opinion/church-teaching-dignity-women-changed-my-mind-about-criminalizing-abortion>
- ³⁰ Marumo Segkobela at the SACBC Parliamentary Liaison Office Webinar on Child Pregnancy.
- ³¹ <https://www.lawforall.co.za/family-relationships/child-abandonment-south-africa/>
- ³² <https://www.lawforall.co.za/family-relationships/child-abandonment-south-africa/>
- ³³ <https://babysaver.co.za/>
- ³⁴ <https://www.timeslive.co.za/ideas/2021-07-21-opinion-south-african-women-needing-to-abandon-their-babies-dont>
- ³⁵ <https://www.lawforall.co.za/family-relationships/child-abandonment-south-africa/>
- ³⁶ https://www.catholicnewsagency.com/news/252282/catholic-college-viterbo-university-pro-choice-club?utm_campaign=CNA

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