

A Socio-Legal Approach to the Abandonment of Infants in Cape Town.

By

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LTHSUS002

SUBMITTED TO THE UNIVERSITY OF CAPE TOWN

In partial fulfilment of the requirements for the Degree of:

***Master of Laws***

Specialising in Criminology, Law and Society

Department of Public Law

**University of Cape Town**



Supervisor:

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2022-2024

Word Count: 20915

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Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Masters of Law in Course work and Dissertation majoring in Criminology in approved courses and a minor dissertation. The other part of the requirements for this qualification was the completion of a programme of courses. I hereby declare that I have read and understood the regulations governing the submission of Masters of Law in Coursework and Dissertation majoring in Criminology dissertation, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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## DECLARATION

**I, the undersigned, Sunette Luther, hereby declare that:**

1. The research reported in this dissertation, except where otherwise indicated, is my original work.
2. This dissertation has not been submitted for any degree or examination at any other university.
3. This dissertation does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers. Where other written sources have been quoted, then:
  - a) their words have been re-written, but the general information attributed to them has been referenced;
  - b) where their exact words have been relied on, their writing has been clearly indicated as a quotation and referenced.

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S. Luther

## ACKNOWLEDGEMENTS

First and foremost, all glory and honour to Jesus Christ, my Lord and Saviour for His grace and faithfulness.

*Consider the lilies of the field, how they grow. If that is how God clothes the grass of the field how much more will He clothe you? – Matthew 6:28*

I would like to express my gratitude to the following people who have been instrumental in the successful completion of this minor dissertation. First, I would like to thank my supervisor Associate Professor Kelley Moulton for her dedicated guidance and words of encouragement during the course of writing this minor dissertation. I consider myself extremely privileged to have worked with Prof. Moulton. I have gained so much from her experience and insights. Second, I am indebted to every social worker who took time out of their busy schedules and heavy caseloads to sit down for an interview with me. Last, but certainly not least, I would also like to thank my husband FC and my parents for their unconditional love and support.

With much gratitude,

*Sunette*

## **DEDICATION**

This minor dissertation is dedicated to baby Ithemba (a nickname to protect his identity which means Hope in isiXhosa), a baby at a children's home for abandoned infants where I conducted an interview. His gummy smile has motivated me throughout the writing of this minor dissertation. It reminded me of why this topic is important to me and why I started in the first place.

## **ABSTRACT**

This dissertation considers the impact of the law in its current form on service providers for abandoned infants in Cape Town. It looks at what works, what does not, and possible solutions. The topic is examined through qualitative empirical research in Cape Town with social workers who work with abandoned infants. A thematic content analysis of the data collected from six interviews shows that the system is failing infants abandoned in Cape Town. The social workers suggested that possible solutions include safe haven laws, baby savers, education, and publicity.

***“There can be no keener revelation of a society’s soul than the way in which it treats its children” – Nelson Mandela.***

## Chapter 1 Introduction

### Preface

#### **The abandonment of infants in South Africa.**

In South Africa, exposing an infant is a crime. A person charged with exposing an infant can be convicted of murder or culpable homicide if all of the elements of the crime are proved beyond reasonable doubt. Culpable homicide is the negligent causing of another person's death or attempted murder. Exposing an infant is defined as "the unlawful and intentional exposure and abandonment of an infant in such a place or in such circumstances that its death from exposure is likely to result."<sup>1</sup> The elements of the crime of exposing an infant are unlawfulness, intention, exposure and abandonment of an infant in such a place or in such circumstances that death from exposure is likely to result.

Moreover, suppose a person disposes of the body of any child with the intent to conceal the fact of its birth. In that case, such person shall be guilty of an offence called concealment of birth, regardless of whether the child died before, during, or after birth. Upon conviction, such a person is liable to a fine or imprisonment.<sup>2</sup> However, regardless of what the law says, infants are unsafely abandoned in open fields, dustbins, and pit latrines daily, which often leads to the death of the infants.

South African activists are advocating for the decriminalisation of the safe abandonment of infants by including Safe Haven Laws into South African Law, which allow a mother in crisis to safely relinquish her infant to a designated location where

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<sup>1</sup> Snyman, CR. *Criminal Law* 6th ed (2014) 444.

<sup>2</sup> *Ibid.* 444.

the infant will be protected and cared for until the social workers involved can find a permanent home for the infant. These activists argue that by proactively legislating for baby savers, parents in desperate situations will have the option to safely abandon an infant in a baby saver rather than unsafely in an open field, dustbin or pit latrine. A baby saver, also called a baby box, baby hatch, or Moses basket, is a safe space where a parent who wants to give up an infant can do so safely. That is to say, without exposing the infant to circumstances where death is likely to result. In the Bible, Moses was a product of infant abandonment, hence the name Moses basket. The pharaoh of Egypt ordered the drowning of all newborn Hebrew boys at birth. Moses' mother, Yocheved, gave birth to Moses and made the decision to hide him, but when he became too big to hide, she placed him in a caulked wicker basket in the reeds alongside the Nile River, with the hope that he would be found and adopted.

### **The statistics.**

The National Adoption Coalition of South Africa estimates that 3500 infants are abandoned in South Africa each year, and two out of every three unsafely abandoned infants die. The births of most abandoned infants are unregistered, and as a result, the cases of abandonment often go unreported.<sup>3</sup> In other words, it is unworkable for the South African Police (the SAPS) and social workers to investigate the abandonment of an infant when they do not have any information about the baby's birth as a starting point. For example, in cases where the mothers are underaged or where the mother's family are unaware of the pregnancy, there is little to no information

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<sup>3</sup> Blackie, D. *Fact Sheet on Child Abandonment Research in South Africa* National Adoption Coalition 20 May 2014.

for the SAPS or social workers to work with. As a consequence, there are no official statistics on the rate of the abandonment of infants in South Africa.

Due to this absence of statistics, media reports are heavily relied upon to estimate the scope of the problem. According to news reports, in 2020, out of 83 infants abandoned unsafely, only 34 were found alive. From March 2020 to July 2021, it was reported that 125 infants were found unsafely abandoned, and 71 of these infants were found dead.<sup>4</sup> In 2021, 106 babies were abandoned, of which 65 were found dead. In April 2022, 10 infants were abandoned, and 9 of them were found dead. One of these infants was thrown out of the window of a moving car, and another was abandoned in a sanitary bin.

South African citizenship is not automatically awarded to children born in South Africa. In view of the fact that the nationality of an abandoned infant is unknown, a notice of birth, also known as a handwritten birth certificate, is issued by the hospital or the Department of Home Affairs instead of a birth certificate. A notice of birth is not an identity document because it does not embody a name, identity number or country of origin. As a consequence, the child's rights cannot be enforced. For example, such a child cannot access medical care, go to school or be adopted through the social welfare system.<sup>5</sup>

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<sup>4</sup> Vorster, RW. *The truth behind SA's shocking child abandonment statistics* 21 October 2020 The Daily Maverick <https://www.dailymaverick.co.za/opinionista/2020-10-21-the-truth-behind-sas-shocking-child-abandonment-statistics/> [accessed 12/06/2023].

<sup>5</sup> Davids, B. *The SA Human Rights Commission (SAHRC) is to review why children born in South Africa to foreign parents are not automatically awarded citizenship by the Department of Home Affairs* 10 April 2017 SAHRC <https://www.sahrc.org.za/index.php/sahrc-media/news/item/607-children-born-in-sa-do-not-automatically-qualify-for-citizenship> [Accessed 18/10/2023].

I will now be unpacking my research question by setting out and defining the main components thereof.

### **My research question unpacked.**

This research paper intends to answer the question: what is the law's effect in its current form on service providers for abandoned infants in Cape Town?

The effect of the law in its current form is highlighted by looking at the positive or negative outcomes of the law in its current form on service providers for abandoned infants. I explore these ideas through interviews with service providers who are social workers who work with abandoned infants in Cape Town.

This dissertation distinguishes between *safe* and *unsafe* abandonment. Unsafe abandonment in the context of this dissertation includes infants abandoned in open fields, dustbins, pit latrines and sanitary bins. In contrast, safe abandonment is the anonymous act by a parent or guardian of abandoning or relinquishing a baby by leaving them at a safe haven or by placing them in a baby box. Leaving the baby at a safe haven involves the personal handover of an infant to hospital staff, police officers, firemen or women or child protection organisations (CPOs). Alternatively, when someone places a baby inside the baby box, an alarm notifies first responders of the baby left inside the baby box. The child is then collected by a social worker or CPO, taken to the hospital for a checkup, and placed in temporary safe care.

In countries with safe haven laws, acts of safe abandonment are considered legal, provided that the baby shows no signs of abuse. This minor dissertation uses safe abandonment or safe relinquishment interchangeably.

In South Africa, news reports tell of abandoned infants anywhere from birth to children as old as 5 and 9. However, this dissertation focusses on the abandonment of infants of 0–12 months because they are most abandoned, not only in Cape Town but in South Africa. The words *infant* and *baby* are used interchangeably in this minor dissertation.

Although the unsafe abandonment of infants is an issue faced by all nine provinces of South Africa, this research paper focusses on the abandonment of infants in Cape Town.

### **Situation of my research.**

Anecdotal evidence shows that babies are being unsafely abandoned daily in a country that has multiple baby savers. The question arises as to why parents are not utilising these baby savers. It is important to note that a mother abandoning a baby in a baby saver is at risk of criminal prosecution.

The economic crisis in South Africa informs my research. The unemployment rate is 32.9%, of which males and females between the ages of 25-34 are the most unemployed compared to other age groups.<sup>6</sup> These young adults do not have the financial means to pay for child care, which indirectly contributes to unemployment resulting from the need to stay at home and look after minor children or abandonment to remain employed.<sup>7</sup> Moreover, a post-pandemic crisis where the abandonment of

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<sup>6</sup> Maluleke, R. *Quarterly Labour Force Survey Quater2:2023* Stats SA: Department of Statistics South Africa <https://www.statssa.gov.za/publications/P0211/Presentation%20QLFS%20Q2%202023.pdf> [accessed 18/10/2023].

<sup>7</sup> Bain, EW. *Some statistics surrounding baby abandonment and why it happens Northcliff* 26 October 2022 Melville Times <https://northcliffmelvilletimes.co.za/367966/statistics-surrounding-baby-abandonment/> [accessed 18/10/2023].

infants has drastically increased informs this research.<sup>8</sup> Over and above that, there is a move for safe haven laws and a newly assented to the Children's Amendment Act 17 of 2022.

### **Structure of the dissertation.**

Chapter 1 is an introduction to the topic of abandonment of infants in the South African context. I also unpack my research question in Chapter 1 and define critical terms. In Chapter 2, I look at the literature on the topic of the abandonment of infants and safe haven laws domestically and internationally. Chapter 3 outlines the research methodology employed in conducting the research for this minor dissertation. Chapter 4, outlines the results of the data collected from six semi-structured interviews with social workers. I conducted a thematic content analysis to identify the main themes in the data collected from the interviews. Chapter 4 also contains my research findings, and Chapter 5 discusses the possible solutions and potential further research.

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<sup>8</sup> Lindeque, M. *Abandonment or Adoption: Pandemic forces mothers to make life-changing decisions* 24 March 2021 EWN <https://ewn.co.za/2021/03/24/abandonment-or-adoption-pandemic-forces-mothers-to-make-life-changing-decisions> [accessed 18/10/2023].

## **Chapter 2: Literature Review**

### **Introduction**

This chapter examines the existing domestic and international legal framework relating to the abandonment of infants and discusses how the South African courts implement it. It then goes on to consider the literature on the abandonment of infants and safe haven laws internationally. It concludes by looking at socioeconomic influences that may lead to the abandonment of infants.

### **The existing legal framework.**

Any legislation or conduct inconsistent with the Constitution of the Republic of South Africa, 1996 (the Constitution), is invalid. That is to say, the Constitution is the yardstick against which we must measure all legislation and conduct to ensure that it is in line with the Constitution. Section 28(2) of the Constitution provides that the best interest of a child is of paramount importance in every matter concerning that child. Section 28 provides for the fundamental rights of a child, such as the right to a name, nationality, care, the right to appropriate alternative care when removed from a family environment, basic nutrition, shelter, and protection from maltreatment, neglect, abuse, or degradation. Section 10 of the Constitution provides that “everyone has inherent dignity and the right to have their dignity respected and protected.” Section 11 of the Constitution provides that “everyone has the right to life.”

The Children’s Act 38 of 2005 (the Children’s Act) gives effect to the rights of a child as contained in the Constitution. Section 9 of the Children’s Act reiterates that the best interest of a child is the most important consideration in all matters concerning

the child's care, protection, and well-being. Burman<sup>9</sup> argues that section 9 deceives us into believing that children's best interests are protected. In practice, abandoned infants are defenceless.

Section 305(3) of the Children's Act provides that "anyone may be charged with the abandonment of a child." It is worth noting that section 305(3) does not distinguish between safe and unsafe abandonment. It criminalises both.

The rights mentioned above are integral to the conversation about decriminalising safe abandonment and enacting safe haven laws in South Africa. An abandoned infant issued with a notice of birth does not have a name or nationality, which in turn precludes the infant from exercising his or her Constitutional rights. This practice of not issuing a notice of birth is a serious violation of an abandoned infant's fundamental human rights.

On the 22<sup>nd</sup> of December 2022, the President assented to the Children's Amendment Act 17 of 2022. The Children's Amendment Act amends, substitutes and inserts specific definitions. It extends the jurisdiction of the Children's Court and provides for further and alternative care of abandoned or orphaned children. One of the definitions substituted by the Children's Amendment Act is the definition of an abandoned child means<sup>10</sup> "a child who (a) has **[obviously]** been deserted by **[the]** a parent, guardian or care-giver; **[or]** (b) **[has,]** for no apparent reason, had no contact with the parent, guardian or care-giver for a period of at least three months; or (c) has, if applicable, no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities.<sup>11</sup> These

<sup>9</sup> Burman, S. "The best interests of the South African child" 2003 *IJLPF* (17) 28-40.

<sup>10</sup> [ ] words omitted from existing enactments. \_\_\_\_\_ insertions in existing enactments.

<sup>11</sup> Children's Amendment Act, 2022 (Published in Government Gazette 47828 of 5 January 2023).

amendments acknowledge abandonment, which is a step in the right direction. However, the Children's Amendment Act does not mention safe abandonment or safe haven laws, which is problematic in light of the number of infants abandoned in South Africa daily.

### **Criminal Law.**

The exposure of an infant and the concealment of the birth of an infant is a crime in South Africa. Snyman<sup>12</sup> defines the crime of exposing an infant as the unlawful and intentional exposure of and abandonment of an infant in such a place or in such circumstances that death from exposure is likely to result.<sup>13</sup>

Section 258(d) of the Criminal Procedure Act 51 of 1977 (the Criminal Procedure Act) provides that "if the evidence on a charge of murder or attempted murder does not prove the offence of murder or, as the case may be, attempted murder, but in a case relating to a child, the offence of exposing an infant, whether under a statute or at common law, or the offence of disposing of the body of a child, in contravention of section 113<sup>14</sup> of the General Law Amendment Act 46 of 1935 (the General Law Amendment Act) with intent to conceal the fact of its birth the accused may be found guilty of the offence so proved."

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<sup>12</sup> Snyman, C. *Criminal Law* 6th ed (2014) LexisNexis: Cape Town.

<sup>13</sup> Snyman, CR. *Criminal Law* 6th ed (2014) 444.

<sup>14</sup> Section 113 of the General Law Amendment Act provides that (1) "any person who, without a lawful burial order, disposes of the body of any newly born child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years." (2) "a person may be convicted under subsection (1) although it has not been proved that the child in question died before its body was disposed of." "(3) The institution of a prosecution under this section must be authorised in writing by the Director of Public Prosecutions having jurisdiction.

Section 259(c) of the Criminal Procedure Act provides that “if the evidence on a charge of culpable homicide does not prove the offence of culpable homicide, but in the case relating to a child, the offence of exposing an infant, whether under a statute or at common law, or the offence of disposing of the body of a child, in contravention of section 113 of the General Law Amendment Act 46 of 1935 with intent to conceal the fact of its birth the accused may be found guilty of the offence so proved.”

s 239(1) of the Criminal Procedure Act provides that “at criminal proceedings at which an accused is charged with the killing of a newly-born child, such child shall be deemed to have been born alive if the child is proved to have breathed, whether or not the child had an independent circulation, and it shall not be necessary to prove that such child was, at the time of its death, entirely separated from the body of its mother.”

These sections of the Criminal Procedure Act do not distinguish safe and unsafe abandonment. The Criminal Procedure Act criminalises abandonment but does not make provision for a safe alternative option for parents who find themselves in challenging circumstances that cause them to consider abandonment. As a consequence, a mother who places her baby in a baby saver is a criminal in the eyes of the law, even though the circumstances are not likely to result in the death of the baby.

I now turn to case law that sheds some light on how South African courts are applying the law in matters involving children and the crime of exposing an infant.

### **Case law.**

In *S v M* 2008 3 232 (CC) Sachs J emphasised that a child's best interests are paramount, but that it does not mean that a child's best interests are absolute. The

operation of the standard of the best interests of a child must take into account other rights, for example, all rights contained in the Bill of Rights.<sup>15</sup> In other words, the fact that the child's best interests are paramount does not necessitate ignoring other competing constitutional rights or prohibiting any limitation of the child's best interest.<sup>16</sup>

In *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T) the court emphasized that s 28 of the Constitution is not a freestanding right and that the best interests of a child must be upheld in every matter by everyone.<sup>17</sup> When the judgment is read as a whole, Mbenenge J placed a constitutional duty on everyone to aim for the highest standard in treating children and not to steer clear of the responsibility. In my view, *everyone* can be understood to mean one and all, from the Government, the legislature and service providers to the abandoning parents and the community as a whole.

Although these cases do not directly relate to the abandonment of infants, they are important as they show how courts should go about upholding the standard of the best interests of the child. It emphasises the constitutional duty to act in accordance with section 9 of the Children's Act.

In *S v Adams* (1903) 20 SC 556, Christina Adams abandoned her baby boy on the day of his birth, she was charged with and found guilty of the common-law crime of *crimen expositionis infantis*.<sup>18</sup> The court argued that infanticide was a specific crime, defined as the unlawful and intentional causing of the death of a child younger than 12 months and that English law requires courts to treat it accordingly. *S v Adams* was the

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<sup>15</sup> *S v M* 2008 3 232 (CC) [26].

<sup>16</sup> *Ibid.* [112].

<sup>17</sup> *Centre for Child Law v MEC for Education, Gauteng* 2008 1 SA 223 (T) [77].

<sup>18</sup> Snyman, CR. *Criminal Law* 6th ed (2014) 445.

last decided case where an accused was charged with the crime *crimen expositionis infantis*. Subsequently, perpetrators were charged with concealment of birth under Cape Ordinance 10 of 1845.

In a more recent case, *S v Molefe* 2012 (2) SACR 574 (GNP), the accused pleaded guilty to the crime of concealment of birth in terms of s 113 of the General Law Amendment Act and was convicted accordingly. On appeal, the court set aside the conviction and held that the facts of the matter do not sustain a conviction. First, because the facts did not meet all the elements of the crime. Specifically, the element of the disposal of the infant's body, as the body of the infant was in a bucket at the house of the accused. Second, because there was no evidence that the child had been viable, in other words, the child could be born alive after 28 weeks gestation, that is the period between developing in the mother's womb between conception and birth.<sup>19</sup>

Empathy in the adjudication by courts is evident in *R v Arends* 1913 CPD 194; *R v Verrooi* 1913 CPD 864; *R v Moses* 1919 CPD 81 and *R v Williams* 1920 EDL 80.<sup>20</sup> The courts have taken into account the circumstances of the women who abandoned infants, and their true intentions were determined before the courts made a decision.<sup>21</sup> The courts took into account the financial situations of the women, their age, the presence of abuse and whether the child was found alive or not. The courts held that if a child is found alive, concealment of birth is not a competent verdict.<sup>22</sup> Moreover, the accused's actions are decisive in rendering such a verdict. If the accused discloses

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<sup>19</sup> *S v Manngo* 1980(3) SA 1041 V.

<sup>20</sup> Rosenberg, W. "Mechanisms adopted in curbing unsafe infant abandonment: A comparison between Namibia and South Africa" 2021 *AHRLJ* (21) 949.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

the fact that she gave birth to a child and divulges the location of the child, this negates a charge of concealment because she is not, in fact, concealing such birth.<sup>23</sup>

The courts held that depending on the circumstances of the case, concealment of birth can serve as an alternative charge to murder and that the crime of concealment of birth, as contained in section 305(3) of the Children's Act, covers abandonment of an infant by anyone, not just a mother.<sup>24</sup>

Radyn usefully summarises the legal framework related to the concealment of birth and specifies when it finds application. He argues that within the context of feticide<sup>25</sup> and infanticide<sup>26</sup>, that do not always result in a just legal closure, one is increasingly aware of the condemnation of the seemingly insensitive judgments by South African courts when adjudicating upon matters related to the ruthless and heartless killing of innocent children and newly born infants. Radyn also argues that there is a duty on the judiciary to take a hands-on approach to the issue of unsafe abandonment.<sup>27</sup>

### **International law.**

The United Nations Convention on the Rights of the Child (the UNCRC) is a human rights treaty that sets out children's rights. South Africa signed the UNCRC in 1993 and ratified the UNCRC on the 16<sup>th</sup> of June 1995. The UNCRC reaffirms that children are vulnerable and require the need for legal and other protection before and after birth. Moreover, the UNCRC emphasises the importance of respect for the cultural

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.* 949-950.

<sup>25</sup> The act of unlawfully and intentionally causing the death of a foetus, or causing a miscarriage.

<sup>26</sup> The act of unlawfully and intentionally causing the death of an infant between 0-12 months.

<sup>27</sup> Radyn, L. "Determining the crime for concealment of birth" 2019 *DR* (19).

values of the child's community, a child's need for special care and protection, primary care and protective responsibilities of the family and the importance of international cooperation in securing children's rights. The recognition that every child has basic fundamental rights includes the right to life, survival and development, as well as protection from violence, abuse and neglect.<sup>28</sup> The official position of the United Nations is that baby hatches contravene critical parts of the UNCRC, such as the state's duty to respect the child's right to maintain personal relations with his or her parents.<sup>29</sup> As a signatory to the UNCRC, it is South Africa's official position.

A question that begs for answers is whether maintaining familial relationships is more important than protecting an infant against violence, abuse, or neglect, especially when most mothers abandon their children with the specific aim of protecting them against such violence, abuse or neglect.

On the 25<sup>th</sup> of June 2022, the Commonwealth countries, including South Africa, signed the Kigali Declaration on Care and Protection Reform. The Kigali Declaration encourages the development agencies to prioritise quality care arrangements at a community level over the institutionalisation of children in a childcare facility that is not their home. Furthermore, the Kigali Declaration urges development agencies to support projects that take a holistic and inclusive approach to developing child protection systems and family strengthening. The move towards deinstitutionalisation of children seeks to uphold the rights of children, and the belief that childcare facilities

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<sup>28</sup> Parliament of South Africa

[https://www.parliament.gov.za/storage/app/media/Pages/2019/november/19-11-2019\\_30\\_Year\\_Commemoration\\_of\\_the\\_United\\_Nations\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child/docs/FAST\\_FACTS\\_UNCRC\\_draft\\_2\\_19\\_November\\_2019final.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2019/november/19-11-2019_30_Year_Commemoration_of_the_United_Nations_Convention_on_the_Rights_of_the_Child/docs/FAST_FACTS_UNCRC_draft_2_19_November_2019final.pdf) [accessed 29/05/2023].

<sup>29</sup> Ramesh, R. *Spread of 'baby boxes' in Europe alarms United Nations* 10 June 2012 The Guardian <https://www.theguardian.com/world/2012/jun/10/unitednations-europe-news> [accessed 2/06/2023].

are inherently damaging, unnecessary and self-serving is the basis of this move. A global perspective of institutional care, informed by the idea that poverty, disabilities, abuse and neglect are the leading causes of children placed in institutional care, is the foundation of the Kigali Convention.

Moreover, 80% of the 80 million children in institutions globally have at least one living parent with whom the child could rather live. The position of the Kigali Declaration is that international aid, donations, orphanage volunteering, mission trips and tourist visits wrongfully promote the institutional care of children. In turn, these initiatives lead to unnecessary family-child separation and it undermines care reform efforts. On paper, the signing of the Kigali Convention represents a commitment from the South African Government to move away from long-term institutional care for vulnerable children.<sup>30</sup> However, in practice, it is an unattainable goal because, according to the University of Cape Town's Children Count, there are 2.9 million orphans in South Africa. 531 000 (2.6%) are maternal orphans, 1 763 000 (8.6%) are paternal orphans, and 620 000 (3%) are maternal and paternal orphans. The parents of 17 582 000 orphans (85%) are alive.<sup>31</sup> The reality of these statistics is that many children in South Africa desperately need care and protection. We do not have the luxury of being picky about the type of care our children need. They simply need care and protection, and there are not enough families in South Africa for all these children needing a home.

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<sup>30</sup> Vorster, RW. *Deinstitutionalisation of Children: Christmas Miracle or 'no room at the inn'?* 21 December 2022 <https://www.dailymaverick.co.za/article/2022-12-21-deinstitutionalisation-of-children-christmas-miracle-or-no-room-at-the-inn/> [accessed 29/05/2023].

<sup>31</sup> Hall, K. *Orphaning* July 2023 <http://childrencount.uct.ac.za/indicator.php?domain=1&indicator=4> [accessed 21/10/23].

## **A move for safe haven laws in South Africa.**

In 2019, Namibia passed safe haven law. In the rest of Africa the abandonment of infants is illegal.<sup>32</sup> Rosenberg<sup>33</sup> looks at Namibia's approach to the unsafe abandonment of infants. Moreover, Rosenberg highlights the failure to legislate in South Africa and the resulting infringement of Constitutionally entrenched rights.<sup>34</sup> Rosenberg makes some crucial points about the South African legal framework. First, Rosenberg is of the view that it is purely reactive when it comes to the abandonment of infants. In other words, if the SAPS or social workers cannot locate the mother or person who abandoned the infant, they cannot be prosecuted for the concealment of birth and abandonment. The current laws are consequently ineffective.<sup>35</sup> Second, Rosenberg argues that the failure to provide a safe alternative for the relinquishment of an infant is a contravention of an infant's fundamental human rights, such as human dignity, life, the right to knowledge of origins, freedom, and security of the person, freedom of association, family, and prenatal care, as provided for in section 28 of the Constitution. Third, Rosenberg asserts that the crime of concealment of birth is not adequate in curbing the unsafe abandonment of infants. According to Rosenberg, South African law in its current form does not act as a deterrent to desperate, confused mothers, because the law is unenforceable when a mother abandons an infant and the SAPS or social workers cannot locate her.<sup>36</sup> Lastly, Rosenberg concludes that an

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<sup>32</sup> Kuria, G. *Namibia baby abandonment law: 'I wanted someone to take better care of my son'* 12 February 2023 BBC News <https://www.bbc.com/news/world-africa-64451313> [accessed 2/06/203].

<sup>33</sup> Rosenberg, W. "Mechanisms adopted in curbing unsafe infant abandonment: A comparison between Namibia and South Africa" 2021 *AHRLJ* (21) 938-939.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* 952.

<sup>36</sup> *Ibid.* 951.

obligation rests on the South African legislature to implement safe haven laws to protect unsafely abandoned infants urgently.<sup>37</sup>

Rosenberg advocates for the amendment of the Children's Act 38 of 2005 to recognise baby savers as a safe alternative. Provided that baby savers are used in the manner proposed by Rosenberg. She is of the view that baby savers should be a last resort to assist mothers in circumstances where counselling is unsuccessful or unobtainable. Rosenberg argues that a change in the law will encourage the opening of more baby savers in areas with high rates of infant abandonment. It will also allow the founders of baby savers to advertise them, publicly reaching more mothers in need.<sup>38</sup>

On the 30<sup>th</sup> of March 2022, Rosenberg met virtually with the Portfolio Committee on Social Development. In the meeting, Rosenberg made the following suggestions for the wording of potential safe haven laws in South Africa. First, with regards to the definition of *abandoned* in section 1 of the Children's Act, she proposes to include "*an infant who has obviously been deserted by a parent, guardian or caregiver and has not been safely relinquished in a Baby Saver or in terms of the relevant Baby Safe Haven Laws.*" Second, she suggests adding that "*the consent of a parent or guardian of a child is not required for adoption if a parent or guardian (g) has safely relinquished an infant in a baby saver or to a designated safe haven*

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<sup>37</sup> Rosenberg, W. "Mechanisms adopted in curbing unsafe infant abandonment: A comparison between Namibia and South Africa" 2021 *AHRLJ* (21) 938.

<sup>38</sup> Rosenberg, W. 2021 *South African women needing to abandon their babies don't have safe options: this must change* The Conversation <https://theconversation.com/south-african-women-needing-to-abandon-their-babies-dont-have-safe-options-this-must-change-163992#:~:text=There%20are%20a%20number%20of,inequality%20and%20diminishing%20family%20support>. [accessed 6/4/2022].

*provider and has failed to reclaim the infant or child as provided in terms of the prescribed reclaim process” to section 236 of the Children’s Act. In terms of section 305(3) of the Children’s Act, Rosenberg puts forward the following wording , “a parent, guardian, other person who has parental responsibilities and rights in respect of a child, caregiver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, is guilty of an offence if that parent or caregiver or other person who (c) *abandons an infant other than through safe relinquishment in a baby saver or other than to a designated safe haven provider provided for in section 316(1) or (d) relinquishes an infant in a baby saver or to a designated safe haven provider but such infant shows signs of abuse in terms of section 316(1)(c).* Moreover, (4) a person who is legally liable to maintain a child is guilty of an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance *unless the relinquishing person, has relinquished an infant in a baby saver or in terms of the provisions of baby safe haven laws, then he or she will not be guilty of an offence in terms of this subsection.*”<sup>39</sup>*

In November 2021, the CEO of Door of Hope<sup>40</sup>, Nadene Grabham, did a TEDXCapeTown talk. In this TED talk,<sup>41</sup> she describes the current environment relating to the abandonment of infants in South Africa. According to Grabham, Door of Hope has received 400 babies through their baby saver since 1999. Grabham argues

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<sup>39</sup> Dr W, Rosenberg. Power Point presentation to the Parliamentary Portfolio Committee 30 March 2022.

<sup>40</sup> Door of Hope is a non-profit organisation (NPO), that has a baby saver and is a home for abandoned babies.

<sup>41</sup> Grabham, N. *Baby Savers: A Door to Saving Lives* November 2021

[https://www.ted.com/talks/nadene\\_grabham\\_baby\\_savers\\_a\\_door\\_to\\_saving\\_lives?language=en](https://www.ted.com/talks/nadene_grabham_baby_savers_a_door_to_saving_lives?language=en) [accessed 23/10/2023].

that because baby savers are not legal in South Africa and parents or caregivers abandoning an infant can be held criminally liable, they are underutilised due to fear of being identified and criminally prosecuted. Grabham argues that safe haven laws will give parents in desperate situations an alternative option which ensures that the fear of criminal prosecution will not stand in the way of safely abandoning an infant in a baby saver.

## **An overview of child abandonment internationally.**

### **The United States of America**

Safe haven legislation has been enacted in all 50 states. The laws differ when it comes to anonymity. Most states allow for either a mother or a father to safely abandon a baby to a safe haven. Some states expressly guarantee the anonymity of the parent(s) and in other states the parent(s) cannot be forced to provide identifying information. In some states inquiries about non-identifying information for example medical history is allowed. If a child is abused or neglected the parent loses the privilege of anonymity and immunity against criminal liability.<sup>42</sup> With regards to the age of the baby being abandoned, most states in the USA limit safe abandonment to infants 72 hours old or younger, while other states accept infants up to 1 month of age.<sup>43</sup>

The National Safe Haven Alliance and the Centres for Disease Control and Prevention (CDC) report shows the abandonment of 4,000 babies since the first safe haven law took effect in the United States of America<sup>44</sup> (the USA) in 1999.<sup>45</sup> Since

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<sup>42</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefull and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 128-129.

<sup>43</sup> Galvan, A. *After SCOTUS hearing, a new look at baby 'safe haven' laws* 2021 APNEWS.

<sup>44</sup> Every state in the USA had adopted safe haven laws by 2008.

<sup>45</sup> Galvan, A. *After SCOTUS hearing, a new look at baby 'safe haven' laws* 2021 APNEWS.

safe haven laws were adopted nationwide, the overall infant homicide rate has dropped by 13%, and according to the study, the number of babies killed during the first day of their lives dropped by nearly 67%.

## Canada

In Canada, a parent can drop a baby off at a hospital, but doing so is not anonymous, and the parent will be subject to investigation in view of the fact that the abandonment of an infant is illegal. There are three baby savers called *angel cradles* in Canada. Two in Edmonton at a hospital and at the Strathmore Fire Department (*called Hope's Cradle*), and one in Vancouver. Based on the success of these three angel cradles, there is a move for decriminalising safe abandonment and spreading the initiative across Canada.<sup>46</sup>

## Europe

Some countries in Europe such as France, Italy, Luxembourg and Germany allow anonymous births, where the mother gives birth without disclosing her identity and puts the baby up for adoption.<sup>47</sup> On the other hand, anonymous births are not allowed in the United Kingdom, but mothers are allowed to leave the baby at the hospital provided that she identifies herself and signs adoption papers.<sup>48</sup>

Over and above anonymous birth laws, Germany also has confidential birth laws, in terms of these laws the name of the pregnant woman is only revealed to her

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<sup>46</sup> Osborne, T. *Strathmore's Hope's Cradle success could lead to country wide expansion* 23 June 2022 StrathmoreNow <https://strathmorenow.com/articles/strathmores-hopes-cradle-success-could-lead-to-country-wide-expansion> [accessed 2/06/2023].

<sup>47</sup> Ramesh, R. *Spread of 'baby boxes' in Europe alarms United Nations* 10 June 2012 The Guardian <https://www.theguardian.com/world/2012/jun/10/unitednations-europe-news> [accessed 2/06/2023].

<sup>48</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefule and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 128.

counselor and will not be disclosed to anyone. When the child turns 16, birth documentation can be accessed through the family court.<sup>49</sup>

There are several baby savers located across Europe in Germany, Austria, Switzerland, Poland, Czech Republic and Latvia.<sup>50</sup> In Austria, mothers are permitted to leave an envelope in the baby box with important information about the baby and even contact details in it.<sup>51</sup>

In 2011, the United Nations voiced its concern after baby boxes began to spread across Europe by warning that these initiatives contravene key parts of the UNCRC, such as a child's right to be known and cared for by his or her parents as well as the state's duty to respect a child's right to maintain personal relations with his or her parents.<sup>52</sup>

## Asia

There are baby savers located in South Korea and Pakistan. A baby saver, called Stork's Cradle in Southern Japan at the Catholic-run Jikei Hospital has received 161 babies.<sup>53</sup> The Jikei Hospital in Kumamoto is the only place in Japan where parents

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<sup>49</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefule and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 137.

<sup>50</sup> Ramesh, R. *Spread of 'baby boxes' in Europe alarms United Nations* 10 June 2012 The Guardian <https://www.theguardian.com/world/2012/jun/10/unitednations-europe-news> [accessed 2/06/2023].

<sup>51</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefule and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 131.

<sup>52</sup> Ramesh, R. *Spread of 'baby boxes' in Europe alarms United Nations* 10 June 2012 The Guardian <https://www.theguardian.com/world/2012/jun/10/unitednations-europe-news> [accessed 2/06/2023].

<sup>53</sup> Yamaguchi, M. *Japan hospital's drop box will take unwanted infants* 11 May 2007 The Seattle Times <https://www.seattletimes.com/nation-world/japan-hospitals-drop-box-will-take-unwanted-infants/> [accessed 29/05/2023].

can safely abandon their infants. The hospital offers a 24/7 pregnancy support hotline and runs a confidential birth programme, in terms of which women are allowed to give birth without publicly disclosing their identity. Baby savers are faced with scepticism in Japan as the Japanese society believes that whoever gave birth to the child must raise the child. Consequently, abandoned children are shown as having no family in the government registry and are heavily stigmatised. In 2017, the city of Kumamoto asked the Japanese Government to consider passing a law which allows for confidential births, but there has been little to no discussion on the issue.<sup>54</sup>

Similarly, China has 25 baby hatches across its ten provinces. In Mandarin, the Chinese people refer to baby hatches as *baby safety islands*. In 2011, a baby saver opened in Shijazhaung; by 2014, the baby saver had received 181 babies. In 2015, the first baby hatch opened in Beijing.<sup>55</sup>

In Asia, baby hatches are controversial and criticised for encouraging parents to abandon their children. The critics argue that the law aims to prevent abandonment, and that the baby hatches, in turn, encourage abandonment by providing care for the baby after the mother has acted in contravention of the law.<sup>56</sup>

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<sup>54</sup> Shimum, N. *Jikei Hospital grapples with how to protect women seeking confidential births* 21 December 2021 The Japan Times <https://www.japantimes.co.jp/news/2021/12/21/national/protect-women-give-birth-secretly/> [accessed 2/06/2023].

<sup>55</sup> Kaiman, J. *Chinese city suspends baby hatch after it is overwhelmed by unwanted children* 17 March 2014 The Guardian <https://www.theguardian.com/world/2014/mar/17/china-baby-hatch-suspended-parents-abandon-infants#:~:text=A%20baby%20hatch%20-%20or%20%22baby,the%20parent%20to%20remain%20anonymous.> [accessed 2/06/2023].

<sup>56</sup> Kaiman, J. *Chinese city suspends baby hatch after it is overwhelmed by unwanted children* 17 March 2014 The Guardian <https://www.theguardian.com/world/2014/mar/17/china-baby-hatch-suspended-parents-abandon-infants#:~:text=A%20baby%20hatch%20-%20or%20%22baby,the%20parent%20to%20remain%20anonymous.> [accessed 2/06/2023].

## Australia

The abandonment of an infant is a crime in Australia. A parent that abandons an infant can face up to 7 years imprisonment. As a consequence, baby boxes are illegal. In April 2023, a newborn baby was discovered in someone's backyard in Sydney, which resulted in renewed calls for safe haven laws in Australia. Sadly, according to news reports at least ten babies are abandoned in Australia every year.<sup>57</sup>

### The effectiveness of safe haven laws.

Sanger<sup>58</sup> argues that if safe haven laws aspire to prevent or reduce infant abandonment in the USA, then it does not work as parents have continued to abandon their infants in spite of safe haven laws.<sup>59</sup> Sanger provides four reasons why infant abandonment has not decreased despite the legalisation of safe abandonment. The first reason is inadequate publicity. Sanger highlights that safe haven laws are resource-free and do not provide for publicity or funding. As a result, pregnant women are still unaware of safe haven laws, and unsafe abandonment continues. The second reason is the practical difficulties that go hand in hand with safe abandonment. That is to say, getting the baby to a safe haven is a challenge, especially where the mother concealed the pregnancy. For example, taking public transport with a newborn baby just after giving birth to abandon the baby anonymously will hardly go unnoticed. The third reason is the provisions of safe haven laws. In some states, no blame does not mean no arrest but rather arrest with an affirmative defence. Moreover, anonymity is

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<sup>57</sup> Aubusson, L. *Why doesn't Australia have baby boxes and safe haven laws?* 26 April 2023 Kidspot <https://www.kidspot.com.au/news/why-doesnt-australia-have-baby-boxes-and-safe-haven-laws/news-story/1bbe559ece443eeda7ccb894e49ce1f> [accessed 2/06/2023].

<sup>58</sup> Sanger, C. "Infant safe haven laws: Legislating in the culture of life" 2006 *Colum. L. Rev.* (106) 753-829.

<sup>59</sup> *Ibid.* 788.

not guaranteed. People talk, or the media publishes details that are supposedly nonidentifying. For example, in Texas, the baby's date of birth, weight and location of safe relinquishment is published in the local newspaper.<sup>60</sup> The fourth reason why mothers abandon their babies inspite of safe haven laws is the incentives offered to promote safe abandonment are detached from the target population, that is, abandoning mothers who face difficult circumstances or mothers who have concealed their pregnancy.

Supporters of safe haven laws argue that if one infant is saved, the legislation is successful. If success is measured accordingly, safe haven laws have succeeded. Safe haven law supporters also claim that if it were not for safe haven laws, the infants would have turned up dead. However, Sanger does not find this argument persuasive because it cannot be verified as safe haven laws allow for the anonymous abandonment of infants, so there is no way to know whether the infant would have turned up dead.<sup>61</sup>

Sanger shares the view of a group of child welfare experts who have compared safe relinquishment to adoption and have found that safe relinquishment works to the disadvantage of all of the parties involved.<sup>62</sup> The child goes through life without knowledge of his or her origins, the abandoning mother does not receive counselling, and the father does not know of the child's existence or of the safe relinquishment of the child. These experts that support safe haven laws argue that, on the one hand, safe relinquishment is terrible for those who choose it. On the other hand, safe abandonment is too good because by allowing abandoning mothers to escape criminal

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<sup>60</sup> *Ibid.* 795-796.

<sup>61</sup> *Ibid.* 789.

<sup>62</sup> *Ibid.* 791-792.

liability, safe haven laws encourage immorality and irresponsibility.<sup>63</sup> Sanger argues that safe haven laws attempt to regulate a complex psychological phenomenon without paying much attention to relevant behavioural research. As a result, they do not work well and receive increased funding in mitigation when the USA should rather reconsider them.<sup>64</sup>

Sanger believes that safe haven laws play a captivating role in the culture of life. Pope John Paul II described the culture of life as the unconditional respect for the right to life of every innocent person from conception to natural death.<sup>65</sup> According to Sanger, it is a robust political program organised around the immorality and inherent criminality of abortion. Consequently, Sanger is of the view that safe haven laws are not about saving the lives of infants but rather reinforcing the anti-abortion sentiment by connecting infanticide with abortion.<sup>66</sup> While the explicit purpose of safe haven laws is to save infants from unsafe abandonment, the rhetorical effect goes beyond saving the lives of infants as understood within the culture of life, that is, saving an unborn infant's life.<sup>67</sup> Sanger holds that safe haven laws are persistent, and their subtle achievement is less criminological than cultural in the sense that it reiterates and supports the view that abortion is murder.<sup>68</sup> Sanger admits that it might be an unintended consequence of safe haven laws, and it is an unexpected gift to those who are against abortion. However, in practice, respectable goals like preventing

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<sup>63</sup> *Ibid.* 791-792.

<sup>64</sup> *Ibid.* 791-792.

<sup>65</sup> Parness, JA. "Lost paternity in the culture of motherhood: A different view of safe haven laws" 2007 *Val. U. L. Rev.* (81) 82.

<sup>66</sup> Sanger, C. "Infant safe haven laws: Legislating in the culture of life" 2006 *Colum. L. Rev.* (106) 809.

<sup>67</sup> *Ibid.* 829.

<sup>68</sup> *Ibid.* 829.

neonaticide further the anti-abortion movement's larger cause, which is to protect the unborn by every means possible.<sup>69</sup>

Safe haven law supporters argue that they prevent abortion and that the need for safe haven laws results from abortion. They also argue that abortion produces infanticide and that abortion is infanticide. Sanger's opinion is that the primary difference between safe relinquishment and abortion is timing and that the primary difference is not in kind.<sup>70</sup>

Parness<sup>71</sup> argues that safe haven laws are tied to the culture of motherhood, which supports the view that a biological mother knows what is best for her child. The unconditional respect for the biological mother's right to act alone and make decisions in which her young child is involved, is promoted by the culture of motherhood.<sup>72</sup> The employment of the culture of motherhood is overlooked by Sanger<sup>73</sup> even though it is unmistakably promoted by much more than the culture of life. Parness argues that safe haven laws promote unconditional respect for a mother's decision-making regarding her newborn with a total disregard for the child's best interests and a firm social policy that favours *both* parents of a child born from consensual sex.<sup>74</sup>

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.* 809.

<sup>71</sup> Parness, JA. "Lost paternity in the culture of motherhood: A different view of safe haven laws" 2007 *Val. U. L. Rev.* (81) 81-89.

<sup>72</sup> *Ibid.* 82.

<sup>73</sup> Sanger, C. "Infant safe haven laws: Legislating in the culture of life" 2006 *Colum. L. Rev.* (106) 753-829.

<sup>74</sup> *Ibid.* 97.

Hammond *et al*<sup>75</sup> examined safe haven laws in America with the aim of determining whether safe haven laws fit the criteria of a crime control theatre. Hammond *et al* defined a crime control theatre as a term that describes public policies appearing to control crime but does not have that effect. Crime control theatres are socially construed solutions to socially construed crime problems.<sup>76</sup>

Laws are classified as crime control theatres if the law is a reactionary response to perceived criminal threats and widely supported as a way to address the crime. Such laws are attractive because they appeal to the fictitious narrative of preventing crime and saving victims. However, they are very likely to be ineffective due to the complexity of the crime. Such laws can have harmful effects when policy makers make untrue claims of success and stunt public discourse. For example, if policy makers draw attention to more preventable crimes and away from more frequent crimes.<sup>77</sup>

Hammond *et al* applied these criteria to safe haven laws and found that safe haven are a crime control theatre in America. According to Hammond *et al* safe haven laws are highly publicised, lack moral ambiguity, are legitimised by rare cases of law enforcement, and appeal to the public sense of responsibility in preventing crime. Furthermore, Hammond *et al* found that the goal of saving infant lives is unattainable and that the effectiveness of safe haven laws is questionable. Hammond *et al* suggest that safe haven laws are counterproductive.<sup>78</sup>

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<sup>75</sup> Hammond, M. Miller, MK. and Griffin, T. "Safe haven laws as a crime control theatre" 2010 *Child Abuse & Neglect* (34) 545-552.

<sup>76</sup> *Ibid.* 545.

<sup>77</sup> *Ibid.* 545-546.

<sup>78</sup> *Ibid.* 546-547.

In summary, the research by Hammond et al has shown that safe haven laws are a socially construed solution to a socially construed problem of child abandonment. Hammond *et al* recommend closely monitoring the reasons why parents abandon their newborn babies and refocusing adoption policies and the attention that is on safe haven laws onto more frequent causes of harm to infants.<sup>79</sup>

As mentioned above, European jurisdictions, such as France and Italy, provide for a mother to give birth anonymously with the aim of preventing unsafe abandonment.<sup>80</sup> Troiano<sup>81</sup> looks at the Italian legislation that provides for anonymous births and defends the idea that, regardless of whether anonymous birth is effective in preventing harmful conduct by a mother, such as unsafe abandonment, the mother's freedom, by itself, cannot justify sacrificing the child's interest in knowing his or her family and origins. Troiano argues that the only reasonable justification is to protect the mother and child's health and save their lives and in turn foster lives.<sup>82</sup> Moreover, an abandoning mother's freedom and right to remain anonymous must guarantee that her decision is informed and responsible.<sup>83</sup> The guarantee includes informing the mother that the legal system can revoke her anonymity and that law enforcement will preserve her information for sufficient time.<sup>84</sup> Troiano is of the view that the regulation

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<sup>79</sup> *Ibid.* 545.

<sup>80</sup> Ramesh, R. *Spread of 'baby boxes' in Europe alarms United Nations* 10 June 2012 The Guardian <https://www.theguardian.com/world/2012/jun/10/unitednations-europe-news> [accessed 2/06/2023].

<sup>81</sup> Troiano, S. "Understanding and redefining the rationale of state policies allowing anonymous birth: A difficult balance between competing interests" 2013 *Int'l J. Jurisprudence Fam.* (4) 177-204.

<sup>82</sup> *Ibid.* 201.

<sup>83</sup> *Ibid.* 186-187.

<sup>84</sup> *Ibid.* 194.

of anonymous births should not mean prohibiting it.<sup>85</sup> Accordingly, the fundamental interests at stake of all of the parties involved must be balanced.<sup>86</sup>

In 2001, Austria enacted stringent legislation on anonymous births that limits it to circumstances where serious and otherwise unavoidable danger to the mother or baby's psychological or physical health necessitates an anonymous birth. Troiano approves of Austria's legislation, as anonymous births are the exception to the rule.<sup>87</sup> The British Journal of Obstetrics and Gynaecology published a study in March 2013 that shows a significant decrease in the abandonment of infants in Austria after the enactment of the aforementioned anonymous birth legislation.<sup>88</sup> Troiano argues that Italy must follow Austria's example. Italy must provide for and implement a mechanism that restricts a mother's right to anonymous birth as well as a procedure concerning the mother's decision-making.<sup>89</sup>

Hadžimanović<sup>90</sup> disagrees with confidential birth laws, not because she denies the needs of a child seeking their identity, but because the culture and "legislative solution chain" stands in the way of the child's independence and because the decision of whether or not to disclose the birth documentation lies with the mother or state.<sup>91</sup>

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<sup>85</sup> *Ibid.* 200.

<sup>86</sup> *Ibid.* 117-118.

<sup>87</sup> *Ibid.* 188.

<sup>88</sup> *Ibid.* 193.

<sup>89</sup> *Ibid.* 197-198.

<sup>90</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefule and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 119-144.

<sup>91</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefule and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 137.

Safe haven laws are criticised by Sanger,<sup>92</sup> Parness,<sup>93</sup> Hammond *et al*<sup>94</sup>, Troiano<sup>95</sup> and Hadžimanović<sup>96</sup> for various reasons ranging from they don't work, they disregard the best interests of children as well as their right to know their family origins, they are ineffective and they simply create a legislative solution chain. Despite this criticism, Rosenberg<sup>97</sup> maintains that the failure to legislate contravenes the fundamental rights of South African children. She believes the only way to curb unsafe abandonment is to enact safe haven laws. Grabham<sup>98</sup> agrees, she is of the view that safe haven laws will give South African parents a safe alternative option. In other words, instead of criminalising all forms of abandonment and criminalising parents in dire need of assistance, proactively legislate to help them. However, the challenges faced by international safe haven laws as well as the criticism of scholars must be taken into account when drafting safe haven laws for South Africa. This will ensure that the safe haven laws balance the rights of all of the parties involved and that enough resources and support is provided to enable the parents to make a decision that is in the best interests of the child.

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<sup>92</sup> Sanger, C. "Infant safe haven laws: Legislating in the culture of life" 2006 *Colum. L. Rev.* (106) 753-829.

<sup>93</sup> Parness, JA. "Lost paternity in the culture of motherhood: A different view of safe haven laws" 2007 *Val. U. L. Rev.* (81) 81-89.

<sup>94</sup> Hammond, M. Miller, MK. and Griffin, T. "Safe haven laws as a crime control theatre" 2010 *Child Abuse & Neglect* (34) 545-552.

<sup>95</sup> Troiano, S. "Understanding and redefining the rationale of state policies allowing anonymous birth: A difficult balance between competing interests" 2013 *Int'l J. Jurisprudence Fam.* (4) 177-204.

<sup>96</sup> Hadžimanović, N. "Confidential and Anonymous Birth in National Laws: Usefull and Compatible with the UN Convention on the Rights of the Child?" 2018 *Comparazione e diritto civile* (1) 119-144.

<sup>97</sup> Rosenberg, W. "Mechanisms adopted in curbing unsafe infant abandonment: A comparison between Namibia and South Africa" 2021 *AHRLJ* (21) 938-939.

<sup>98</sup> Grabham, N. *Baby Savers: A Door to Saving Lives* November 2021

[https://www.ted.com/talks/nadene\\_grabham\\_baby\\_savers\\_a\\_door\\_to\\_saving\\_lives?language=en](https://www.ted.com/talks/nadene_grabham_baby_savers_a_door_to_saving_lives?language=en)  
[accessed 23/10/2023].

## **Socio-economic influences.**

When looking at the literature on the socioeconomic influences that lead to the abandonment of a newborn baby, there are many influencing factors.

Bradley<sup>99</sup> argues that abandoning mothers feel that they have no support system that would allow them to meet the responsibilities of being a parent. Their perceived aloneness and lack of social support lead to abandonment. This research by Bradley<sup>100</sup> shows that age, unwanted pregnancy, rape, unemployment and lack of financial resources also influence a mother's decision to abandon her baby.

Bradley makes the following suggestions for intervention. First, education of the youth on family planning and providing community resources such as counselling, family planning, health care and social services that will address the influencing factors that lead to the abandonment of infants. Second, the enactment of safe haven laws as they have shown promising results in the prevention of infant abandonment. Third, a comprehensive prevention program with increased care for newborns that provides medical care and links the child to a CPO. Prevention programs must also provide a ready-made support packet to the mother, which includes a way in which the mother can anonymously provide information about the baby.<sup>101</sup>

In South Africa, teenage pregnancies, poverty, gender-based violence, rape, restrictive legislation, government practices and policies relating to non-South Africans, deportation, abortion and adoption are resulting in the increased abandonment of infants. Another eminent influencing factor is HIV.

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<sup>99</sup> Bradley, D. "Perspectives on newborn abandonment" 2003 *PEC* (19) 108.

<sup>100</sup> *Ibid.* 109.

<sup>101</sup> *Ibid.* 110.

Bailey *et al*<sup>102</sup> argues that since the collapse of the Soviet Union there has been a socio economic upheaval and worsened public health in the Commonwealth of the Independent States. It has had a direct impact on the welfare of children in Russia and Ukraine. In 2005 the Ministry of Health and Social Development of the Russian Federation reported that the abandonment of infants is a social consequence of the HIV epidemic in Russia and Ukrain.<sup>103</sup>

In Russia, 20% of HIV-positive mothers abandon their infants. In 2004, research by Zabina *et al*<sup>104</sup> showed that the most important factor influencing mothers' decision to abandon in Russia, was unintended pregnancy. Other influencing factors included lack of support from a partner or family, drug abuse, fear of congenital disabilities or disability, negative attitudes of medical professionals and diminishing socio-economic status. HIV is closely linked to all of these reasons. As a consequence, the suggested interventions include the improvement of contraceptive information and the provision thereof, education of medical personnel and women on HIV prevention and treatment, increased social support, and improved fostering and adoption programs, especially for HIV-affected families.<sup>105</sup>

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<sup>102</sup> Bailey, H. Semenenko, I. Pilipenko, T. Malyuta, R. Thorne, C & Ukraine European Collaborative Study Group "Factors associated with abandonment of infants born to HIV positive women: results from a Ukrainian birth cohort" 2010 *AIDS Care* 22(12) 1439-1448.

<sup>103</sup> Bailey, H. Semenenko, I. Pilipenko, T. Malyuta, R. Thorne, C & Ukraine European Collaborative Study Group "Factors associated with abandonment of infants born to HIV positive women: results from a Ukrainian birth cohort" 2010 *AIDS Care* 22(12) 1440.

<sup>104</sup> Zabina, H. Kissin, D. Pervysheve, E. Mytil, A. Dudchenko, O. Jamieson, D. & Hills, S. "Abandonment of infants by HIV-positive women in Russia and prevention measures" 2009 *RHM* (17) 162-170.

<sup>105</sup> *Ibid.* 162-163.

## **The Department of Social Development.**

As mentioned above, the National Adoption Coalition of South Africa estimates that 3500 infants are abandoned in South Africa each year, and 2 out of every 3 infants abandoned unsafely die. When confronted with this figure and asked about the measures, if any, the Department of Social Development (DSD) is taking to address the abandonment, the DSD's position is that the figure of 3500 is unknown to them.<sup>106</sup> Interestingly, the DSD is a custodian of the Children's Act. As a consequence, the DSD has a responsibility to keep official statistical data and records of abused, deliberately neglected or exploited children in the national child protection register. The DSD fails to maintain this responsibility by not collecting data and keeping a record of abandoned infants.

The DSD favours family reunification and asserts that the abandonment of infants is addressed by strengthening community structure, working in the preservation and strengthening of families through early intervention programmes, offering psychosocial support and counselling. Moreover, it provides parents with options such as adoption.<sup>107</sup>

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<sup>106</sup> Vorster, RW. *The truth behind SA's shocking child abandonment statistics* 21 October 2020 The Daily Maverick <https://www.dailymaverick.co.za/opinionista/2020-10-21-the-truth-behind-sas-shocking-child-abandonment-statistics/> [accessed 12/06/2023].

<sup>107</sup> *Ibid.*

## **Chapter 3: Research Methodology**

### **Introduction**

As seen from the Literature Review in Chapter 2, while some research has been conducted on the topic of abandonment of infants in South Africa, most of these studies are non-empirical desktop studies or comparative legal studies. This dissertation is different in that it neither compares South Africa to other countries nor summarises the law on abandonment. Instead, it takes a socio-legal approach to the topic of abandonment, taking into account the law in its current form and examining the effect of the law in its current form on service providers for abandoned babies. By doing so, the dissertation aims to provide valuable insight into what safe haven laws might look like in South Africa. This research is a valuable addition to existing research as it documents the views and needs of social workers working with abandoned infants daily. It draws on these views and needs to discuss the development of potential safe haven laws in South Africa.

This chapter discusses the research methodology and ethical considerations of this research paper. This chapter also explains the research format, the process of collecting and analysing the data, the limitations and challenges experienced while conducting the research. The chapter concludes with a short reflection on my personal experience of conducting the research.

### **Research methodology.**

In this study, I conducted qualitative empirical research in Cape Town with social workers who work with abandoned infants. The data collected from six semi-structured interviews was interpreted by means of a thematic content analysis.

Hammarberg *et al*<sup>108</sup> holds that when you have questions about experience, meaning and perspective qualitative research provides answers from the participant's standpoint.<sup>109</sup> Answers from the standpoint of social workers in Cape Town is what I was after. At the outset of this research I knew that I will cross paths with social workers that are remarkably passionate about the topic. I anticipated that they will have strong opinions about the abandonment of infants and as a consequence I decided to conduct semi-structured interviews. My aim was to strike a balance between asking questions about specific aspects of the topic, but also allowing them some space give their opinions. I appreciated the fact that if I asked broader questions my interviews would take considerably longer and I would have a much larger amount of data to work through. In my view, more specific questions resulted better quality data albeit less.

### **The participants.**

Six social workers were interviewed (between them, they have more than 150 years of experience working as social workers in South Africa). Amongst the social workers were the founder of a baby box, the general manager and founder of a baby home, a few social workers employed at the baby homes and a social worker who had previously worked for the DSD.

I researched baby savers and baby homes in Cape Town. I recruited prospective interviewees via email. I attached an information sheet to the email in which I explained that I am a student at UCT writing a minor dissertation on the

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<sup>108</sup> Hammarberg, K. Kirkman, M. De Lacey, S. "Qualitative research methods: when to use them and how to judge them" 2016 *Human Reproduction* (31) 498-501.

<sup>109</sup> *Ibid.* 499.

abandonment of infants in Cape Town. I explained the aim of my research as well as the purpose of the proposed interview.

### **Data analysis.**

The interviews were audio recorded. I stored the recordings, interview notes, transcripts and thematic content analysis on my password-protected Google Drive.

The recordings were transcribed and thematically analysed with broad themes. I then organised the data collected from the interviews into smaller sub-categories (for example the SAPS, hospital staff, the law, the system, etc.). Accordingly, the presentation of the results are structured around these categories in chapter 4.

### **Ethical considerations.**

I obtained ethical clearance for the study from the Faculty of Law: Research Ethics Committee (Ethics Reference Number: L0005NS-2022). The Certificate of Approval for Ethical Clearance is attached and marked "A".

The topic of abandonment of infants is a very sensitive issue, especially because it is a crime in South Africa. As a consequence, conducting interviews with social workers on this topic raises a number of ethical considerations.

The social workers vulnerably shared their thoughts, opinions and personal experiences relating to the law on the abandonment of infants in South Africa in its current form. Although the questions in the interview schedule were limited to the law itself, it was unavoidable that the social workers would recall cases of abandoned infants who were seriously harmed or killed. That is to say in reflecting critically on the law in its current form, the social workers recalled traumatic experiences.

Because of these risks, I discussed the consent with the social workers at the start of each interview to ensure their consent was well-informed and documented. I took the opportunity to emphasise that an anonymous identity will be assigned to each participant to ensure confidentiality. I also made sure that each participant was aware that they could withdraw at any time during the interview without any consequences.

I took extra caution with any information about an infant or abandoning parent(s) unwittingly divulged by the participants. I did not ask for any names of children or parents. Where the participants mentioned names, I excluded them from the transcription and left them out of the thematic content analysis and results. This dissertation focuses on the practical operation of the law, so the names of the abandoned infants or parent(s) were not significant.

An important ethical consideration is the fact that the law views the parent(s) as criminals and the participants care for their infants. My approach was to steer clear of questions that might put me or the interviewee in a position where a conflict arises between the legal duty to maintain confidentiality and the moral duty to report illegal activity.<sup>110</sup>

I also considered the possibility that the interviews may cause distress to the participants, fortunately it did not realise. In the unlikely event that an interviewee showed distress, my plan was to end the interview immediately and seek professional help for the interviewee, for example counselling.

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<sup>110</sup> Finch, E. "Issues of Confidentiality in Research into Criminal Activity: the Legal and Ethical Dilemma" 2015 *MJLS* (5) 42.

To look after my own mental health, I debriefed with my supervisor and therapist after the interviews.

## **Limitations**

This study is limited to the perspective of only six private social workers. The study aimed for a wider sample. Over and above the ethical clearance I obtained from the Faculty of Law: Research Ethics Committee, I also obtained ethical clearance from the DSD to conduct interviews with their social workers, but none were available for an interview due to heavy caseloads. Their perspective as *public* social workers working for the DSD would have been valuable, and it is a limitation that this study does not represent this view.

Another perspective that would have been valuable is the perspective of parents who have abandoned their infants. However, it would have been challenging to find participants, and the risks outweighed the benefits, given that they are considered criminals in the eyes of the law.

Abandoned children themselves (including adults abandoned as children) did not participate in this research. The risk of interviewing a child who had been abandoned and potentially questioning them about their abandonment was not justifiable as it would confront them with the trauma of being abandoned, and it would pose a risk to their safety. Although the voices of abandoned children are critical to the discussion of the abandonment of infants, but silent, this fell outside the scope of the present research.

Despite the limitations, this research is still valuable as it shows the challenges faced by private social workers who provide services daily for abandoned infants in

Cape Town. The social workers interviewed were able to give helpful and insightful views on what works and what does not.

## **Reflection**

I wrote my undergraduate research paper on minors and social media. I did a non-empirical, comparative desktop study in which I compared South Africa with Australia. Needless to say, when Prof. Moulton suggested that I conduct interviews with service providers for abandoned infants, I was pretty hesitant because I am an introvert and I had little experience with empirical research. Looking back, I am thankful that she nudged me in that direction.

Although, conducting the interviews was far outside my comfort zone, I became more and more comfortable after each interview. I did some of the interviews virtually and some of the interviews in person. From the outset, I was sure that I would find the online interviews easier, but I enjoyed the in-person interviews more. In person interviews made my research feel tangible. I could see the babies that this dissertation is about, and I got to spend time with social workers who are just as passionate (maybe even more so) about the topic as I am.

I anticipated that the interviews would take 15-30 minutes at most because I had four simple questions. However, the social workers became comfortable with me, and told more detailed stories; as a result, the interviews deepened. Some social workers were more talkative than others, and I had to learn to think on my feet and probe them a bit more to answer the questions without prompting or shaping their answers. The extra detail from the social workers made the transcription and thematic content analysis process a bit more complicated but yielded rich data. I wish I could include every single story in this minor dissertation because the social workers and

their teams truly are a group of unsung heroes in our society. Nothing is ever too much to ask. If an abandoned baby is in need, they will avail themselves no matter what time of day.

## Chapter 4 Results

### Introduction

This dissertation looks at the law in its current form. I asked the social workers who work with it to specifically reflect on what works, what does not work and what possible solutions exist to improve service provision in this area. In the interviews with the social workers, nine main themes arose, namely challenges dealing with 'the system', 'the SAPS', 'hospital staff', 'the law', 'culture', 'safe haven laws', 'baby savers', 'education', 'publicity'. A thematic discussion of the social workers' responses follows.

### What works: "**Nothing.**"

I asked social workers what about the law in its current form works. In response, most social workers answered with their body language and facial expressions without saying a word. After reacting to the question, all of the social workers responded with words like "*nothing*" or "*it does not work*". One social worker responded with, "*I feel like a sailor, but it is actually \*\*\*\*\* disgusting.*" [SW2]. Not one social worker mentioned a positive aspect of the law in its current form. One interviewee emphasised that the system does not work. She said that: "*it is kind of hard to determine what is working well, because nothing is working well. Every single case will break your heart.*" [SW3]. The social workers felt that the broken system fails to care for and protect abandoned babies in South Africa. [SW6] emphasised that: "*Many babies are in need of help. Every case is an absolute bubble popping, soul crunching moment.*" In reality the system is broken, and babies are in need of safe havens. The parents are giving up their children because they do not have a choice.

Throughout the interviews, the system was referred to as *broken* multiple times. Based on the interviewees' responses, the system is referred to as *broken* for a few reasons. First, children get stuck in the system as a result of lengthy procedures that drastically reduce their chances of getting adopted as a result of their age. Second, abandoned infants get stuck in the system because they are regarded as foreign and are not automatically awarded South African citizenship. When found, a social worker or an ambulance takes the abandoned infant to a hospital where the hospital or alternatively the Department of Home Affairs issues a notice of birth, also called a handwritten birth certificate, for the infant, which precludes them from being fostered and adopted in South Africa.

[SW5] stressed that: "*We are building the next generation here, but we are actually not doing well at all. So if we can avoid, at any cost, the child being stuck in an already broken system, then I am all for safe haven laws.*"

### **What does not work: "*There are many changes to be made.*"**

The social workers answered the question of what *does not* work about the law much easier than the question of what does work. Their answers were much longer, and it seemed as if they had been waiting for someone to ask them this question. Two key themes emerged from the social workers' responses, namely 'the system' and 'the SAPS'.

#### **'The system' "*the system just doesn't work for me.*"**

The social workers made it very clear that the system does not work. The system in this context is understood to mean the welfare, foster care and adoption system.

One social worker made the point that even if a mother asks for help and says that she cannot take care of the baby, the system responds judgmentally, asking how she can even consider abandoning her child or putting her child up for adoption. Social workers emphasised that even if the child ends up in the system, the child gets stuck in the system because the system does not work properly.

The social workers agreed that many changes must be made to how the system functions. There was consensus among them that the DSD hampers their ability to facilitate the care and protection of abandoned infants. The social workers feel that the DSD wants to control the system, but the DSD controls a system that simply does not work and is failing the children that end up in it.

The interviewees highlighted that a significant issue faced by them is abandoned babies who do not have birth certificates. Children with a notice of birth, also known as a handwritten birth certificate, cannot go into foster care because, as explained above<sup>111</sup>, it is not an identity document. These children get stuck in the welfare system.

One social worker explained that most of the children in our system are seen as foreign by our government and are not automatically assigned South African citizenship. Consequently, social workers cannot facilitate placing them in foster care or assist in their adoption. *“At least we have an agreement with France who will adopt our children with written birth certificates.”* [SW2].

The government is viewed in a very negative light by the social workers. They feel that the government makes policy decisions without any input from them. Social workers must simply do what the policy tells them. [SW2] emphasised that the input

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<sup>111</sup> See *“Why the abandonment of infants in South Africa matters.”* above.

of social workers is invaluable *“because we have grassroot level experience of what really needs to change and what needs to be done to improve the system in South Africa.”*

[SW2] suggested that I read up about the Kigali Convention. She explained that it plans on closing all children’s homes by 2025. *“They have this pie in the sky idea to recruit, screen, train, and support foster parents for all of the children in the system, because a child must grow up in a home with a family, but our foster care system is already falling apart.”* [SW2] agrees that all children should grow up in a family *“in the ideal world of unicorns and rainbows”* but the Kigali Convention is not going to prevent mothers from unsafely abandoning their babies. [SW2] fears that the DSD are going to run out of families. [SW2] also says that the DSD do not want to facilitate adoption because they believe that white families are robbing black children of their culture and their heritage. Yet many South African families do not want to adopt HIV-positive or special needs children.

Most of the social workers alluded to the fact that a vicious cycle exists where abandoned babies get stuck in the system, and then that same abandoned baby becomes a young mother and goes on to abandon her children. [SW5] emphasised that there is no stability or permanency for abandoned babies even though family reunification is the law. In other words, due to limited resources, the social workers cannot prioritise family reunification, and as a result, children get stuck in the system.

She explained that: *“Then one day when you are five and nobody wants you, now you want to reach out for adoption. You know we have wasted a life.”* [SW5].

All of the social workers told stories of abandoned babies that are either in their care or cases in which they were involved, where the baby is getting older, and nothing

is happening to find a family for the child. The consensus amongst the social workers was that it is a broken system with unnecessary, time-consuming procedures. For example, when someone finds an abandoned baby, a social worker brings a court application to place the baby in temporary safe care. This process takes three months. The court will then order that the social worker placed the baby in temporary safe care for anything from 6-12 months. During this time, the social workers try to facilitate family reunification. If it is not possible, the social worker can approach the court for a foster care order. The social workers emphasised that upon finalisation of the court processes, the baby is a toddler with a drastically smaller chance of getting adopted.

When a baby is issued a notice of birth, these processes are even more complicated: *"I think that we need a lot more pink elastic than red tape."* [SW6]. That is to say, less time-consuming court processes and increased care and protection of abandoned babies.

Under the theme of 'the system' a sub-theme emerged, namely 'adoption'

### **'Adoption'**

The social workers highlighted a few issues about adoption. Firstly, the social workers highlighted that in South Africa, girls under the age of 18 cannot place their baby up for adoption without parental consent, but they can access abortion without it. The social workers question why such a distinction is made between adoption and abortion by the law. This distinction becomes life-threatening not only to the girl who concealed her pregnancy and sought a potentially unsafe abortion due to a lack of funds or guidance from her parents but also to the baby when the girl concealed her pregnancy, does not want to have an abortion and opts for unsafe abandonment.

Secondly, the social workers highlighted that foreign nationals cannot put their children up for adoption in South Africa. Because of this, they get deported with their babies, which mean that foreign nationals would rather abandon their baby in South Africa because they cannot care for them. The foster care and adoption system will show them away. Nurses and hospital staff judge and abuse mothers who decide to give up their baby for adoption. A social worker explained that: *“They are told that they will be punished and that they will go to hell for giving her child away.”* [SW2]. Because of this, the mothers are advised not to mention to the nurses or hospital staff that she is going to put the baby up for adoption. When the doctor discharges the mother, the social workers simply wait outside the hospital. However, one social worker explained that the nurses and hospital staff force the mother to breastfeed in the hospital, even though they do not want that. In her experience, it is very tough on the mothers. *“It just adds to the trauma of the mother and baby.”* [SW2].

In light of the judgment faced by mothers who choose to place their baby up for adoption [SW3], they felt strongly about the fact that there is a reason behind the mother’s decision, and no one else is entitled to know that reason if the mother is not comfortable with sharing it. She is appalled that adoption is a reason for nurses to judge and mistreat a mother.

The social workers' responses on adoption suggest that a more accessible and straightforward adoption process can be a temporary solution. It could be put in place whilst safe haven laws are drafted and promulgated. It will buy the legislature time for the lengthy processes of law reform.

### **'The SAPS'**

The social workers had mixed responses about the SAPS. On the one hand, some social workers had terrible experiences with the SAPS. In their experience, when a parent abandons a baby, the SAPS do not want to open a case. According to the social workers, the SAPS' is reluctant to open a case because the cases remain unsolved and, in turn, reflect negatively on the SAPS. There is little to no evidence when a parent unsafely abandons an infant. There may be eyewitnesses, but finding, interviewing, and recording their statements is a timely process. The SAPS view it as a waste of time when the case has no prospects of success. [SW2] recalled a case where a mother abandoned a baby in Cape Town in a public toilet. The SAPS found the mother, and arrested her. She was imprisoned for four months. Upon release, the SAPS furnished the mother with a letter stating that she can get her baby back from the social worker caring for the baby. Upon receiving the letter [SW1] did not give her baby back. Instead, she supported the mother by providing her with the appropriate resources and only released the baby back into her care once she could see that the mother would not abandon the baby again. This goes to show that, in practice, there is a need for legislation and policy to regulate the abandonment of infants. A failure to legislate forces mothers to take matters into their own hands in order to care for and protect unsafely abandoned infants.

According to the social workers, on the rare occasion that the SAPS get involved, they take a criminal justice approach, focussing on prosecuting the mothers. The social workers emphasised that they could benefit from the SAPS's support in their investigations into the abandonment of an infant. At the moment when a parent abandons a baby, the social workers go out and canvas the area in an effort to piece together the puzzle. It is clear that there is a lack of cooperation from the SAPS. As

explained above, their uncooperative attitude is based on unsolved open cases reflecting negatively on them.

On the other hand, some social workers had good relationships and positive experiences with the SAPS. These social workers told stories of receiving calls from the SAPS when they received an abandoned baby at the police station or when the SAPS picked up an abandoned baby. The SAPS members have also personally dropped the baby off at a CPO. Other social workers told stories of being escorted into dangerous areas by the SAPS to go and help abandoned babies, as well as being saved from life-threatening situations by the SAPS. One social worker was, in her own words, "*almost murdered*" and saved by the SAPS.

Two social workers mentioned that their experience with the SAPS differed from area to area. They had positive experiences in some areas and negative experiences in others.

The social worker's relationship with the SAPS seems to depend on a few factors. First, the commitment of a specific SAPS officer to the issue of unsafe abandonment. Second, the area where the parent abandoned the baby. That is to say, the commitment of the SAPS station in the area to the issue of unsafe abandonment. Third, an established working relationship between the social worker and the SAPS.

### **'Hospital staff'**

As with SAPS, some of the responses from the social workers regarding nurses were positive, and others were negative. On the one hand, some nurses get attached to the babies and go as far as naming the infants. On the other hand, there are judgmental nurses who verbally and physically abuse the mothers who are considering safe abandonment or putting their baby up for adoption.

Social workers said that if a mother says that she wants to put her baby up for adoption, she is frequently judged and insulted. One social worker explained that: *“Hospital staff will tell the mothers that they will be punished and that they will go to hell for giving their child away.”* The hospital staff tell the mothers to keep their babies. Their attitude is that the mother wanted to have sex therefore, she must face the consequences of her actions. Another social worker explained that: *“They say to the mother: You opened your legs, you deal with it, you are not giving your baby up for adoption.”* [SW1]. The mothers face difficult choices: some of them live on the streets with no means to care for these babies, and other mothers cannot take their babies home to their families. In these cases, mothers unsafely abandon their babies in fields, dustbins or pit latrines because wherever the mothers turn for help, they are faced with judgment. These mothers are forced to make extremely difficult decisions, and on top of that: *“they are very scared and very fearful of nurses and doctors”* [SW3].

Some of the social workers recalled situations where the nurses or hospital staff verbally abused and sometimes even physically abused. One social worker told a story where she body-blocked a nurse who entered a hospital room to give an unwelcomed opinion. The mother and social worker were having a private conversation in which they discussed placing the baby up for adoption. The social worker had to physically stand in front of the nurse to prevent her from entering. She said to the nurse: *“please respect the boundary, please do not intervene, this is a private matter.”* The social worker described a similar situation on the steps outside of a court. She explained that there is always a reason and context for the decision being made by the mother. If the mother is making the decision towards abandonment or adoption or that the child needs to go into temporary or foster care for an interim period, she has made that decision for a reason. She also felt strongly about the fact that the mother does not

owe an explanation to the hospital staff. [SW3] emphasised that: *“Every single person deserves compassion and kindness and services and resources and support.”*

The social workers suggested that nurses are not entitled to bring their judgment into a mother’s decision to place her baby up for adoption and should serve everyone as best they can.

Another integral part of the conversation surrounding the topic of unsafe abandonment is abortion. Some social workers told stories where a baby was born after a failed backstreet abortion and then unsafely abandoned in an open field by the mother.

One social worker explained that backstreet abortions are an issue: *“The mothers are drinking whatever concoction they are being sold.”* [SW6]. They think that they are terminating their pregnancy, but they are just basically initiating contractions, the baby is born alive, and the mothers are unsafely abandoning what they think is a body, and it is not.

### **‘The law’**

The law was the subject of harsh criticism by the social workers. One of the main problems highlighted by the social workers was that the law does not distinguish between safe and unsafe abandonment. If an abandoned baby is found dead, the law classifies it as murder. If an abandoned baby is found alive, it is classified as neglect or concealment of birth.

The social workers suggested that if a baby is found abandoned, it must be classified as a safe or unsafe abandonment. The law must only criminalise unsafe abandonment. In doing so, there will be statistics that will reflect extent and trends of unsafe abandonment. If we can demonstrate what a severe problem unsafe

abandonment is in South Africa, it may create impetus to find possible solutions to the problem.

One social worker emphasised that the legal system does not address the problem. Imprisoning the abandoning parent does not identify or address the cause of the problem. The social worker reiterated that she has never seen a scenario where the criminalising actually accomplishes anything. *“I am not a fan of criminally prosecuting the mother, it isn’t treating the problem. It isn’t addressing the fundamental need.”* [SW3].

In terms of our law, there is a period of three months where the social worker places the child in temporary safe care. One social worker suggested that we should not wait three months to see if the parent *actually* abandoned the child. In some cases, the social workers can see from the outset that the parent abandoned the baby, especially when the baby is found in a field or dustbin. The social worker emphasised that the situation in which the baby is found speaks for itself.

The general consensus amongst the social workers was that the law limits them with numerous *“processes and procedures and protocols.”* [SW5]. The social workers all felt that the law in its current form does not work and that the law fails abandoned babies every day. *“They never get justice.”* [SW6]. The law must address the fundamental need for care and protection of abandoned infants.

From the responses of the social workers, it is clear that they feel that the law stands between them and the needs of unsafely abandoned babies instead of empowering them to look after their best interests and fundamental needs.

## **'Culture'**

Culture is a very sensitive theme that emerged from the interview data collected from the interviews. Social workers who participated in the interviews felt that culture provides valuable insight into the thinking of South African parents, families and caregivers. They argue that cultural factors sometimes prevent parents from getting the help and links to needed resources.

[SW1] noted that some South African cultures believe that by safely abandoning their baby or by putting their baby up for adoption, they are cutting the baby off from its ancestors. The social worker said that in her experience, a mother would rather abandon the baby unsafely than to knowingly place a baby in a baby saver or put the baby up for adoption.

The approach taken to adoption is different from culture to culture. [SW5] summarised the cultural differences as follows. *"In our white communities, adoption is done very quiet, there is usually a family member that is going to adopt the child. In Indian communities it is very much the same, the families would rather raise the baby. In our coloured communities the grandmother would rather care for the grandchildren that each earn a foster care grant because that is the household income. In our black communities it is taboo because the ancestors won't recognise the child."*

South Africa is rich in culture. It is important to keep cultural differences in mind when finding solutions to the problem of unsafe abandonment in South Africa.

**'Substance abuse':** ***"If there is substance abuse it just worsens everything."***

The social workers suggested that substance abuse aggravates the circumstances surrounding the abandonment of newborns. In some cases, the mothers are drinking and using drugs while they are pregnant, despite knowing that they are pregnant.

When the babies are born with foetal alcohol syndrome or with health issues resulting from substance abuse, the parents abandon them. One social worker was involved in a case where the mother gave birth and left her baby in the hospital's parking lot. She explained: "*She tested positive for drugs and the baby was sick.*" [SW6].

[SW2] said that: "*I am tired of fighting, but you cannot be tired of fighting, who is going to fight?*" "*We are the voice for the voiceless, if we do not do it, who is going to do it?*"

One social worker told a story of an abandoned infant with health issues resulting from the mother's substance abuse, specifically drugs. The baby had eczema and allergic reactions to many foods. Two of the other social workers mentioned cases where mothers abandoned babies with foetal alcohol syndrome in a sanitary bin and an open field, respectively. [SW2] explained that: "*I firmly believe that the child's trauma starts in the womb.*"

From these accounts by the social workers, it is clear that substance abuse and unsafe abandonment are inextricably linked. Substance abuse issues must be part of the conversation when discussing solutions for unsafe abandonment.

## **Possible solutions.**

When asked about possible solutions, the social workers listed 'safe haven laws', 'education', 'publicity' and 'resources' as key themes.

**'Safe haven laws': "Safe haven laws would make a difference."**

The social workers agreed that the solution to unsafe abandonment in South Africa is safe haven laws. They agreed that safe haven laws create options for mothers who have no other choice than to abandon their babies safely. Safe haven laws would

mean that mothers can leave their babies somewhere safe and not in the middle of nowhere with a high risk of dying. One social worker also explained that safe haven laws could hold mothers accountable for dumping their babies in unsafe circumstances.

Whilst all of the social workers agreed that safe haven laws are the solution, they also suggested that they may be hard to implement. Implementing safe haven laws and educating South Africans on the provisions will involve much work.

One of the social workers mentioned that in one of the latest cases that made the news, a social worker was involved in naming and shaming the mother and sending away the mother who asked for help. *“Go and sort your mess out kind of thing.”* [SW1]. The social worker was quite disappointed in her colleague. She pointed out that together with safe haven laws, we must educate and train every single nurse, police officer and firefighter on duty for most of the hours of the day, right in the middle of nowhere. First, they must know what is allowed and what is not in terms of the safe haven laws. Second, they must know that their personal views on safe relinquishment do not matter. The training must include teaching them to say: *“I understand, do not worry, hand me your baby, your baby will be safe, we have a social worker on call to hand your baby to.”* [SW1]. She agreed that safe haven laws are the solution, but she is worried about how long it would take.

The social workers stressed the importance of educating potential safe haven providers who will potentially be involved with hand-to-hand safe relinquishment. *“It comes down to educating the people that are the ones standing behind the counter or the one that is going to open that box.”* [SW5]. As seen from the themes above, potential safe haven providers must know what to say and what not to say. This can

be done by educating them and training them accordingly. The education and training must include information on the influencing factors and, most importantly, that their personal views are irrelevant. One of the social workers emphasised that the success of safe haven laws stands or falls at its safe havens, as they can be the cause of unsafe abandonments if abandoning parents are faced with judgment or abuse.

Another social worker pointed out that you only need one or two women to go in, ask to relinquish their baby and get turned away before the word gets out that abandonment does not work. The people receiving the babies must deal with mothers sensitively and understand that their personal views on giving up a child are irrelevant. They need to know that if they do not receive the baby with open arms, the mother is likely to turn around and abandon the baby unsafely.

One social worker reminded me that even though they have safe haven laws in the USA, there are still baby boxes because women are still too scared to hand their babies over to another person for fear of being identified and judged. Despite the fact that they have safe haven laws, baby boxes, ample resources and support, unsafe abandonment still happens. The social worker suggested that safe haven laws be implemented in stages to ensure that safe haven providers are properly educated and trained on the matter to protect safe haven laws from the distrust that will result if safe haven providers mistreat one or two mothers and the word gets out that safe haven laws do not work.

Safe haven laws are still part of the solution, even where babies are still unsafely abandoned because of the shame and stigma involved. Providing a safe alternative is a step in the right direction, and education will minimise the stigma involved. The social workers suggested that the education of safe haven providers

happen at the university level or through offering courses at their places of employment.

Another social worker also suggested that the legalisation happens in stages. First, the legalisation of safe abandonment at hospitals, clinics and baby boxes. Second, the legalisation of safe abandonment at police stations and fire stations. She emphasised the importance of establishing the working relationship between social workers and the safe haven providers receiving the babies i.e. nurses, firemen and women, SAPS officers. This will also allow social workers to assist in educating them on the topic.

### **Specific provisions of the proposed safe haven laws.**

When looking at the constraints on safe haven laws, the social workers focussed on the time frames for safe abandonment, who may abandon an infant, where and to whom may a baby be abandoned. They also emphasised the importance of resources available to the abandoning parents and education.

#### ***When?***

The social workers agreed that as long as there are no signs of abuse or neglect, the law should allow a baby to be safely abandoned from 0-12 months. One social worker expressed concern that a window of abandonment that is too small will result in unsafe abandonment of children who fall outside that window, even if by just a few days.

#### ***Where?***

The social workers suggested that safe haven laws provide for safe relinquishment at hospitals, clinics, police stations and fire stations as safe havens. Over and above that, they also proposed retaining current baby savers and opening more baby savers.

Baby savers have saved the lives of numerous infants. One social emphasised that if baby savers are decriminalised, they will save even more lives. Another social worker told me about a baby box just down the road from the children's home where I conducted the interview. She said that they have only received three babies through the box because they are not allowed to advertise it. The social worker highlighted the importance of advertising the baby boxes and educating the community about the baby savers.

The social workers told stories about mothers who left notes in the baby saver with their babies, and other left a blanket or a teddy bear. It is evident from the stories told by the social workers that baby savers make a difference and that they are a great resource for parents who do not have the means or support to look after their baby. *Rather than let them come to us through a baby saver and know that they're safe."* [SW6].

### ***By whom?***

With regards to who may abandon a baby, some social workers have had mothers and fathers bringing in children. One social worker said that she once had a dad crying at the wall of the baby box. Another social worker has received several babies through the pimps of sex workers. However, the consensus amongst the social workers was that only parents or guardians should be allowed to relinquish a baby safely. One social worker suggested that safe haven laws should not remove the need to investigate the circumstances surrounding the abandonment. The investigation will enable the social worker to connect the abandoning parent with the appropriate resources. She suggested a clause where every baby saver is linked to a counselling centre or to a CPO, where the focus is providing parents the appropriate resources

and support. Using a baby saver should be a last resort, a safety net, before the child is abandoned in a drain, bin or in a field exposed to the elements and left to die.

**‘Education’: “*Educate, educate, educate.*”**

The social workers expressed the importance of educating abandoning parents, social workers, potential safe havens and the community as a whole.

A few social workers suggested placing leaflets in the baby savers. The leaflet must explain the procedure to be followed by the abandoning parent if the parent changes his or her mind. The leaflets should also direct the abandoning parent, guardian or caregiver to useful resources. Another social worker suggested printing the leaflets in the three languages of the Western Cape, namely isiXhosa, Afrikaans and English. Some social workers explained that their baby savers already have leaflets in them.

One social worker believes that social worker graduates are ill-equipped for practice. She suggested that all social work students must have a compulsory law module. She highlighted that the education of social work students at a university level does not include education on the law that applies to social work. As a consequence, social workers’ understanding of the law and legal system is limited. This forces social workers to learn the law as they go along.

One social worker expressed concern about the substandard education of communities about planned parenthood. She argues that safe haven laws are a possible solution for the unsafe abandonment of infants in South Africa. However, she also said that in her experience, unplanned pregnancies lead to unsafe abandonments. She stressed that we must educate the youth on family planning and

all that goes together with it. She argues that planned babies are less likely to be abandoned.

Another social worker suggested that a lot more can be done to raise awareness in our communities when it comes to the safe abandonment of infants. The communities must know where the baby savers are and what resources are available to them if they need support. Even more so in light of potential safe haven laws. She summed up: "*I think if we can just educate, educate, educate. It needs to become part of everyday conversations.*" [SW5].

### **'Publicity'**

The social workers underlined the importance of balance when advertising baby savers. One social worker said that she receives more phone calls and more babies are placed in her baby saver every time there are news reports of an abandoned infant. Another social worker said that it is as if people forget that the baby box is there. She explained that the founders of baby savers cannot advertise them because they are unlawful in South Africa: "*Babies are abandoned unsafely just down the road from baby savers*" [SW2].

The number of babies received through baby savers increased drastically after news reports of abandoned infants: "*It is as if people forget that the box is there until reminded by the news*" [SW2]. The fact that safe abandonments increase after news reports show that publicity of the baby savers is a possible solution. She explained that: "*You want people to understand how it works.*" [SW2].

A social worker highlighted that advertising could result in an influx of babies through the baby saver whom the parent would not have abandoned otherwise. The founders must strike a balance between providing for safe abandonment and providing

resources and support to enable parents to keep their babies. Another social worker said that parents should know that baby boxes exist where they can safely abandon their babies. *“However, there should be a balance between creating awareness and encouraging the abandonment of infants, and I do not feel comfortable encouraging it.”* [SW4].

### **‘Resources for parents’**

Social workers suggested that the tide of abandonments may be stemmed by resources like counselling, organisational support and access to baby care packages. One social worker mentioned that she has seen numerous cases of infant abandonment, where the sole reason for abandonment is that the mother does not have clothes, nappies or toiletries for the baby. These mothers opted to keep their babies when provided with appropriate resources.

This dissertation addressed the challenges faced by social workers stemming from the law in its current form. It is clear from the interviews that social workers who provide services for abandoned infants face many challenges resulting from the system that simply doesn’t work. The system is a product of the law in its current form and results in abandoned infants getting stuck in the system, which is *“the worst thing that can happen”* [SW5]. From being unsafely abandoned, hopefully being found alive, receiving medical treatment, being placed in temporary safe care for 90-days with subsequent court proceedings and half-hearted investigations by the SAPS in between, the abandoned baby is stuck in the system, with a diminishing chance of getting adopted with every month that goes by.

All of the social workers suggested that education must happen alongside the legalisation of safe relinquishment.

Receiving babies is not what the average policeman or fireman signed up for. For a parent to decide to abandon their baby is hard enough, but to be faced with judgment when abandoning your baby is not ideal. This goes back to education, as the person receiving the baby not only needs to be educated by trained to know what to say, what not to say, who to call and what to say when the parent or someone related to the baby comes back. "*They need to know their personal views are irrelevant*" [SW1]. Ultimately, a good working relationship between social workers and the SAPS or nursing staff is in the best interests of abandoned babies.

This study shows the need for the law to address the problem of unsafe abandonment in South Africa. Moreover, this study shows that education, publicity and resources must happen alongside law reform. Evidently, the six social workers who participated in this research live for their work. They are available 24 hours a day, seven days a week, 365 days a year. They do not let the law in its current form stand in their way when it comes to looking after abandoned infants. They fearlessly protect and provide for these babies.

## **Chapter 5 Discussion and Recommendations**

### **How can the challenges faced by social workers be dealt with?**

The consensus amongst the six social workers is that safe haven laws are the solution to the problem of unsafe abandonment in South Africa. However, every social worker had conditions attached to legalising safe abandonment, which I think are important as their conditions stem from their experience working with abandoned infants in what seems to be a broken and hopelessly failing system.

#### **Law reform.**

The starting point of fixing the broken system is law reform. The law must be reformed to legalise the safe relinquishment of infants. Law reform is no simple task, and it is even more complicated when the law deals with minors.

The proposed law reform must be in line with the Constitution. As a consequence, central to any law reform concerning minors, specifically safe haven laws, are the best interests of the child that are of paramount importance. There can be no grey areas regarding the rights and responsibilities concerning the baby. That is to say, there can be no time when the baby is not cared for.

Almost as important as the Constitution are cultural dynamics. The legislature must consider cultural norms and beliefs in the process of law reform. If not, it will result in a law that some communities disregard as it does not align with their cultural beliefs. Be that as it may, we cannot have a situation where parents unsafely abandon babies under the façade of “culture”.

From a strictly legal perspective, law reform to create the legalisation of safe abandonment should be a process in which various experts are involved. The input of

social workers should be taken into account as they have invaluable practical experience in relation to the topic of abandonment.

### **Who may abandon an infant?**

This study suggests that the legislature draft and promulgate safe haven laws that legalise safe abandonment nationally. The legislature must also draft and promulgate provincial by-laws specific to the trends of unsafe abandonment observed in the areas where the safe haven laws will operate. For example, in areas where pimps do most of the abandoning of the sex worker's babies, by-laws must be put in place to prohibit pimps from doing so.

Potential law reform must tread carefully with regard to who may safely abandon an infant, especially with regards to mothers safely abandoning an infant, which in turn has an impact on the father of the baby's rights and responsibilities towards the child. This is an important part of the conversation surrounding the topic of safe abandonment. The law will have to decide whether the consent or knowledge of the father is required and vice versa. The general consensus amongst the social workers was that they feel that parents may abandon a baby, but they did not express a view on whether the consent of the other parent is required.

This is where the mandatory investigation into the abandonment comes in. Social workers must investigate both safe and unsafe abandonments because perhaps upon investigation, the social worker finds the other parent or a potential guardian who is willing and able to take care of the baby if provided with the appropriate resources and support. In a perfect world, perhaps the abandoning parent is located through investigation, and it may be that such a parent will also opt to keep the baby in circumstances where social workers and organisations offer support and

resources. It is also possible that the parent or potential guardian is unwilling to take care of the baby, which is why safe haven laws are the proposed solution. A mandatory investigation will also help build a file for the abandoned baby with information about his or her origin. It will be a resource that the baby, when old enough, will be able to look at and see and know his or her origin, which is an important human right.

### **Where may a baby be safely relinquished, and to whom?**

The legalisation of safe relinquishment must happen in stages. Start with baby boxes, and then safe havens such as nurses at hospitals and clinics and then later include police officers at police stations and firemen and women at the fire department. Consequently, education can also happen alongside the stages of legalisation. Education of everyone involved at every stage will prevent mothers from being mistreated due to a lack of education. Rumours of mistreatment will negate any progress made to reduce the stigma attached to abandonment. If a safe haven provider mistreats a mother, she will lose trust in safe haven laws, and when word gets out to other mothers, they will avoid being mistreated by resorting to unsafe abandonment.

### **Thereafter?**

There is a need for post-abandonment procedures. It is extremely important that safe haven laws anticipate future events. The focus must not only be on providing for the safe abandonment of infants but the legislation must also provide for the future of the babies. For example, safe haven laws must provide for birth certificates to be issued to unsafely and safely abandoned infants. Hand written birth certificates severely limit the adoption possibilities of the babies.

## **Education, publicity and resources.**

The law reform must happen alongside national and provincial information campaigns and education. Education has three branches. The education of social work students at a university level is firstly important. Secondly, the education of potential safe haven providers such as hospital staff, police officers, firemen and women as to what to say and what not to say. Thirdly, the education of the community, not only on the options available to them, such as baby boxes or safe relinquishment to safe havens, but also on family planning and the importance thereof. Education of the community must include education and information campaigns on safe abortions and substance abuse. Perhaps if the causes of unsafe abandonment are addressed and treated, fewer babies will be abandoned safely or unsafely. However, issues such as unsafe abandonment, unsafe abortions and substance abuse cannot be viewed through rose-tinted glasses. The solution is not as simple as running information campaigns and educating communities. Social workers and community organisations must provide resources to the community, but resources are not free. Within the proposed solutions as set out above, the South African Government must commit to bettering the lives of mothers and, in turn, abandoned infants in South Africa.

Social workers must strike a balance with the publicity of safe haven laws, baby savers and safe havens. The community must be aware of the available options, but the abandonment of infants should not be encouraged. Social workers must promote safe relinquishment as a last resort. This can be done by providing appropriate resources and establishing organisations to support single or new parents. Social workers can also provide baby care packages to mothers in hospitals or clinics when giving birth.

Safe haven laws must provide for the compulsory placement of a leaflet in the baby savers in the primary languages of the province where the baby saver is. The leaflet must set out the procedure that the social worker will follow after the parent places the baby in the baby saver, as well as contact details of the CPO if the abandoning parent has second thoughts, the appropriate resources available to the abandoning parent as well as a way in which the parent can communicate information to the CPO in an anonymous manner.

### **Accountability**

Safe haven laws must hold parents accountable who unsafely abandon their babies in a dustbin, field or pit latrines. The law must provide for criminal liability of parents who unsafely abandon their babies. The SAPS must be reminded of their duty to investigate such matters, and criminal prosecution must be the norm for unsafe abandonments.

As I am typing these recommendations, I am overwhelmed with the thought that the solutions are “*unicorns and rainbows*” as [SW2] would call it. However, the evidence from this study shows parents are abandoning their babies in Cape Town and that social workers are providing services to these unsafely abandoned babies. These practitioners have proposed solutions; they just need the government and the legislature to come to the table.

### **Potential future research topics.**

This minor dissertation focused on the challenges faced by social workers who predominantly work with the abandonment of infants in Cape Town. It provides a modest snapshot of current practice. It would be interesting to conduct similar research in the other eight provinces of South Africa. It is evident that there are differences from

area to area in Cape Town, so it is very likely that there will be differences from province to province. Such differences could potentially inform provincial by-laws on safe abandonment.

Parents who have abandoned their infants or parents who considered abandoning their infants are also a critical voice in this debate. I am of the opinion that such research is essential to drafting safe haven laws in South Africa.

This minor dissertation briefly touched on the Kigali Convention, but I suggest that research is conducted on how safe haven laws would work alongside the Kigali Convention.

## **Conclusion**

In conclusion, safe haven laws are the suggested solution for the increasing number of unsafely abandoned infants in South Africa. However, law reform cannot merely be a copy and paste of the safe haven laws of international jurisdictions. The legislature must consider the criticism safe haven laws and anonymous birth laws face internationally. The South African legislature must not only take into account the criticism but also the input of social workers who are on the ground dealing with the abandonment of infants daily. This will result in custom-made South African safe haven laws for the circumstances in which such legislation will operate. Over and above that, all of the role players must make a meaningful attempt to address the socio-economic factors that lead to the abandonment of infants in South Africa, especially teenage pregnancies. They can do this by educating the youth on family planning. Education can take various forms, such as information campaigns at schools and on social media or leaflets at clinics and hospitals.

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#### ***Dissertations and theses.***

1. Blackie, D. *Sad, mad and bad: Exploring child abandonment in South Africa* (Master's Dissertation) University of Witwatersrand, 2014.
2. Rosenberg, W. *The legal regulation of infant abandonment in South Africa* (Doctoral Dissertation) University of Johannesburg, 2020.

#### ***Legislation.***

1. The Children's Act 38 of 2005.

2. The Criminal Procedure Act 51 of 1977.
3. The Criminal Procedure Amendment Act 39 of 1989.
4. The Children's Amendment Act 17 of 2022.

***International instruments.***

1. African Declaration on the Rights and Welfare of the Child, 1990.
2. The United Nations Convention of the Rights of the Child, 1989.

**Abbreviations used:**

1. *Colum. L. Rev.* – Columbia Law Review.
2. *Cumb. L. Review* – Cumberland Law Review.
3. *DR* – De Rebus.
4. *IJLPF* – International Journal of Law, Policy and the Family.
5. *MJLS* – Mountbatten Journal of Legal Studies.
6. *ND L Rev* – North Dakota Law Review.
7. *PEC* – Pediatric Emergency Care.
8. *RHM* – Reproductive Health Matters.
9. *Val. U. L. Rev.* - Valparaiso University Law Review.

## Annexure A: REC Certificate

**Faculty of Law: Research Ethics Committee**

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 Room 6.29 ▪ Kramer Building ▪ Middle Campus  
 Tel: +27 021 650 3080 Fax: +27 021 650 5660  
 E-mail: [lamize.viljoen@uct.ac.za](mailto:lamize.viljoen@uct.ac.za) Internet: [www.law.uct.ac.za](http://www.law.uct.ac.za)

**Certificate of Approval for Ethical Clearance**

PRINCIPAL INVESTIGATOR/SUPERVISOR: KELLEY MOULT	<b>ETHICS REFERENCE NUMBER: L0005NS-2022</b>
STUDENT: SUNETTE LUTHER – [LTHSUS022]	ORIGINAL APPROVAL DATE: 01-NOVEMBER-2022
FACULTY: LAW	APPROVAL EXPIRY DATE: 31-OCTOBER-2023
DEPARTMENT: PUBLIC LAW	
PROJECT TITLE: A Socio-Legal Approach to the Abandonment of Infants in South Africa	
PURPOSE OF RESEARCH: The aim of the research project is to provide a socio-legal perspective on the abandonment of infants in South Africa, specifically how the law in its current form impacts service providers with baby savers where infants can be safely relinquished.	
<b>CONDITIONS OF APPROVAL</b>	
This Certificate of Approval is valid for the above term provided there is no change in the protocol.	
<b>Modifications</b> To make any changes to the approved research procedures in your study, please submit a formal "Request for a Modification" to the REC Administrative Office. You must receive ethics approval before proceeding with your modified protocol.	
<b>Renewals</b> Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You are responsible for submitting this by at least 2 months prior to the expiry date of clearance date issued.	
<b>Project Closures</b> When you have completed all data collection activities and will have no further contact with participants, please formally notify the REC: Law as well as your supervisor where applicable.	
<b>Certification</b>	
This certifies that the University of Cape Town Law Faculty's Research Ethics Committee has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Cape Town Research Regulations Involving Human Participants.	
 PP <hr/> <b>Dr Helena Stoop</b> <b>LAW REC: LEAD REVIEWER</b>	

**Annexure B: Interview schedule.**

1. What in the law, in its current form, works well?
2. What are the main problems with the law in its current form?
3. What key provisions would you like to see improved?
4. Do you think safe haven laws would improve the situation in South Africa? If so, what might safe haven law look like?