



For attention: Hon NS Tolashe, MP

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Dear Hon Tolashe

The Helen Suzman Foundation is an NGO that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the [Draft Childrens Amendment Bill, 2025](#).

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za

Yours Sincerely

Naseema Fakir
Executive Director

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1. Introduction

- 1.1. Few issues so poignantly reflect the intersection between social vulnerability and legislative policy as the treatment of abandoned and relinquished infants.
- 1.2. The Draft Children's Amendment Bill ("**the Bill**") seeks to amend the Children's Act by, among other things, expanding the definition of an "abandoned child" to include "a child relinquished or placed in a baby box." One of the stated objectives of the Bill is to "further provide for the care of abandoned or orphaned children."
- 1.3. If enacted in its current form, the Bill would effectively criminalise the safe relinquishment of infants, regardless of the circumstances under which such a decision is made.
- 1.4. The Helen Suzman Foundation ("**HSF**") submits that the Bill falls short of advancing the best interests of the child, a foundational principle of South Africa's child protection framework, by:
 - 1.4.1. failing to define the term "baby box," creating uncertainty in both legal interpretation and enforcement;
 - 1.4.2. conflating safe relinquishment with criminal abandonment, thereby deterring desperate parents and families from leaving infants in secure environments;
 - 1.4.3. overlooking the severe underfunding and under-resourcing of the social services sector, which already limits the State's capacity to provide care for abandoned children; and
 - 1.4.4. risking the denial of essential medical or social services to children most in need of protection, contrary to section 28(1)(b) of the Constitution.¹
- 1.5. As such, while the Bill's objective of attempting to expand the framework of care for abandoned or orphaned children is laudable, its current drafting may inadvertently exacerbate the problem it seeks to solve by driving infant abandonment further underground and endangering children's lives.

¹ Section 28(1)(b) states that "Every child has the right to family care or parental care, or to appropriate alternative care services when removed from the family environment."

1.6. To align the Bill with constitutional imperatives and practical realities, HSF recommends that:

1.6.1. the Bill include a clear definition of “baby box” to provide legal certainty and guidance;

1.6.2. the use of baby boxes for the safe relinquishment of infants not be criminalised;

1.6.3. explicit safeguards be included to ensure that no child is denied medical or social care as a result of the circumstances of their abandonment; and

1.6.4. all provisions be interpreted and implemented in accordance with section 28 of the Constitution, which places the best interests of the child at the centre of all decisions affecting them.

1.7. HSF ultimately submits that while the prevention of child abandonment is an important legislative goal, it must not come at the expense of children's constitutional rights or their immediate safety. The law should aim to protect, not punish, the most vulnerable, including the mother and families.

2. Expansion of Definition

2.1. The Bill extends the definition of an “abandoned child” to include “a child relinquished or placed in a baby box.” One of the stated objects of the Bill is to prohibit all forms of child abandonment, including the use of baby boxes. However, the Bill fails to define what constitutes a “baby box.”

2.2. HSF submits that this omission must be rectified through the inclusion of a clear definition in the Bill. Without it, both enforcement authorities and caregivers may face uncertainty as to what conduct is prohibited, creating legal ambiguity and risking unintended harm to children.

3. Criminalisation and the Best Interests of the Child

3.1. While HSF recognises that infant abandonment is already a criminal offence under the Children's Act, the proposed inclusion of “a child relinquished or placed in a baby box” within this definition risks undermining the *best interests of the child* principle enshrined in section 28(2) of the Constitution.

- 3.2. The principle of best interests of the child is further codified in the Convention on the Rights of the Child and the African Children's Charter on the Rights and Welfare of the Child ("**ACRWC**"), to which South Africa is a state party.²
- 3.3. The purpose of criminalisation is to regulate behaviour within a moral and legal framework that reflects societal values. However, to criminalise the use of baby boxes penalises a decision often taken by desperate mothers and families seeking the safest possible alternative for the infants.
- 3.4. In many documented cases, the absence of safe relinquishment options has led to infants being dumped in drains, canals, or refuse bins — with tragic consequences.³
- 3.5. A prohibition of all forms of child abandonment, without distinction, will not deter abandonment; it will instead drive it underground, increasing the likelihood of unsafe practices.

4. Constitutional and Practical Concerns

- 4.1. The inclusion of baby boxes within the definition of child abandonment is inconsistent with the constitutional imperative that a child's best interests are of paramount importance in every matter concerning the child.
- 4.2. HSF notes the Department of Social Development's ("**DSD**") view that section 150 of the Children's Act adequately protects such children by referring them to social services.
- 4.3. However, this presumes the existence of a functional, well-resourced social services network — which, in reality, is severely underfunded and overburdened.
- 4.4. A recent media report spoke to these systemic failings by highlighting the lack of medical care provided to a toddler allegedly due to an instruction from the DSD prohibiting treatment of babies relinquished in baby boxes.⁴ Such actions are not only contrary to the purpose of the Children's Act but also constitute a direct violation of section 28(1)(b) of the Constitution, which guarantees every child the right to basic nutrition, shelter, healthcare, and social services.

² Article 3 and Article 4(1) respectively.

³ <https://iol.co.za/weekend-argus/news/2025-10-03-child-protection-advocates-warn-of-rising-baby-abandonment-due-to-legislative-changes/>.

⁴ <https://www.ewn.co.za/2025/09/22/gauteng-dsd-abandoned-toddler-allegedly-denied-help-by-ekurhuleni-child-welfare-centre-receiving-palliative-care>.

- 4.5. The prohibition of baby boxes must not be interpreted or implemented in a manner that results in the denial of essential care to children most in need of protection. The moral and legal responsibility of the State extends to all children within its borders, regardless of the circumstances of their birth or abandonment.
- 4.6. Additionally, South Africa has an obligation under the ACRWC to ensure that the principle of non-discrimination is upheld in regard to birth.⁵
- 4.7. HSF accordingly proposes that the Bill be amended to make explicit that no child may be denied medical treatment or social services due to the circumstances of their abandonment. The Bill should affirm that:
 - 4.7.1. abandoned children must not be punished for the actions of their parent(s) or guardian(s);
 - 4.7.2. all such children must be treated in accordance with section 28 of the Constitution; and
 - 4.7.3. welfare and healthcare institutions must not deny treatment to abandoned children out of fear of sanctions from the Department.

5. Conclusion

- 5.1. The Bill's stated intention—to protect children from harm and prevent abandonment—is both necessary and commendable.
- 5.2. However, by extending the definition of an "abandoned child" to include those "relinquished or placed in a baby box," the Bill risks undermining the very rights it seeks to safeguard.
- 5.3. As such, the Bill in its current form risks placing vulnerable children at greater peril by deterring safe relinquishment, criminalising acts taken in the best interests of infants, and enabling the denial of essential medical or social care.
- 5.4. HSF therefore submits that, if the Bill remains government policy, it must be amended to:
 - 5.4.1. include a clear and practical definition of "baby box";

⁵ Article 3.

- 5.4.2. ensure that no child is denied medical treatment or social services due to the circumstances of their abandonment; and
 - 5.4.3. reaffirm, through explicit language, that all children must be treated in accordance with section 28 of the Constitution, irrespective of their parents' actions.
- 5.10 These amendments would ensure that the Bill's implementation is consistent with South Africa's constitutional framework and its international obligations to protect children's rights.
- 5.11 Above all, the law must not punish acts of desperation but rather provide pathways to safety and care—ensuring that every child, without exception, receives the protection and dignity guaranteed to them by the Constitution.