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Opinionista: The women we refuse to see — why the child "abandonment" debate is missing the point

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A case currently before the Pretoria High Court will, in the first week of May, ask whether South African law should allow for forms of safe child relinquishment. At the centre of the matter is section 305 of the Children's Act, which criminalises "child abandonment" in sweeping terms, regardless of whether a child is left in circumstances that ensure their safety or survival.

But to focus only on the legal question before the court is to miss the more urgent issue. This is not only a case about children. It is a case about the women we have chosen not to see.

While we agree, unequivocally, that a child's best interests are of paramount importance, as envisaged in section 28(2) of the Constitution, we also believe that giving meaningful effect to this principle requires more than abstract or blind commitment; it demands that we confront the lived realities in which both children and their mothers exist.

A transformative constitutional approach calls on us not to treat their rights as competing, but as interdependent. It is therefore imperative that we begin to have honest, nuanced conversations about how the law can balance and give effect to both sets of rights, ensuring that in protecting children, we do not further marginalise the very women whose circumstances shape the choices now before the court.

A law that leaves no room for reality

Under current law, a woman who leaves her child outside formal, state-approved processes risks criminal prosecution and up to 10 years' imprisonment. There is no exception. No recognition of context. No distinction between harm and survival.

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In practice, this means that poor Black women are disproportionately criminalised for what the law calls “abandonment”.

Now, if we consider a different starting point: A young woman in rural South Africa, poor, scared, and out of options. She has struggled to access contraception. The local clinic does not provide abortion services, or the staff refuse to assist her. Adoption is confusing, slow, and inaccessible. She may have to conceal her pregnancy out of fear of violence, stigma or expulsion from her home, as children place a strain on household resources and state social support contributes very little to relieving this pressure. By the time the child is born, she has nowhere to turn.

In that moment, the law offers her a simple choice: parent, or be a criminal.

What it does not offer is a safe, lawful way to say: I cannot do this, but I want my child to have the opportunity at a better life.

As more women are pushed into this position, in a country where nearly 60% of pregnancies are unintended, this is no longer a hypothetical scenario. It is a structural reality. And when the law ignores that reality, it does not prevent harm. It helps produce it.

The women question we keep avoiding

Public debate on this issue tends to focus on children in isolation: their vulnerability, their safety, their rights.

These concerns are valid. But they are incomplete.

Behind every instance of what the law calls “abandonment” is a woman navigating structural constraints that shape, and often determine her choices. South Africa continues to record high levels of unmet need for contraception, particularly among young women. Access to safe abortion, while legally protected, remains uneven in practice, with many facilities unable or unwilling to provide services. Comprehensive sexuality education is inconsistently implemented, and Adoption access is plagued with discouragement and bureaucratic delays. The result is clear: high rates of unplanned and unwanted pregnancies, disproportionately affecting young, poor and Black women.

These cannot then be seen as individual failures or the problems of ‘promiscuous’ women. They are systemic state-sanctioned failures.

Our legal framework, however, treats these realities as irrelevant. It collapses all forms of relinquishment into a single narrative of wrongdoing, punishing outcomes without interrogating causes.

In doing so, it renders women visible only as offenders. Responsibility is located almost entirely with them, as though it begins and ends there.

Fathers, by contrast, remain largely absent from both the narrative and the consequences despite overwhelming evidence that men frequently disengage from parental responsibilities without sanction.

This is not accidental. This selective accountability reflects deeply entrenched gender norms that locate care and blame squarely with women. If accountability were to be meaningfully pursued, it must be applied to both parents. But any honest response must also confront the unequal social conditions in which parenting, and its failures, are experienced. Any honest legal and policy response must therefore grapple not only with substantive equality, but with the unequal social conditions in which parenting, and its failures, are experienced.

The power of language

There is another problem we rarely talk about: the words we use.

An essential part of the invisibility imposed on the women behind this matter has been produced by the language we use.

“Child abandonment” is not neutral. It carries assumptions of neglect, indifference and moral failure. It casts women as inherently suspect, as people who must be controlled and punished.

But this framing obscures a critical truth.

In many cases, the decision not to parent is not an act of indifference. ***The decision not to parent is itself a reproductive choice***.

Reframing this issue as one of “relinquishment” matters. It shifts the conversation away from moral judgment and towards constitutional analysis. It recognises that a woman’s decision not to parent can fall within her right to make decisions concerning reproduction, a right protected by the Constitution.

This right is closely tied to dignity, privacy, and bodily and psychological integrity. It protects the ability to make deeply personal decisions without undue state interference. To criminalise all forms of relinquishment, without exception, is to deny that this choice exists at all and to deny the lived realities of women that make this important choice.

Reproductive rights do not end at birth

Our constitutional framework recognises that reproductive autonomy includes the right to decide whether and when to have children. But in practice, our legal and social systems treat this right as if it ends at birth.

For many women, the decision not to parent arises after birth, shaped by circumstances that may have changed, intensified or become untenable.

If we accept that reproductive choice includes the right not to continue a pregnancy, it is difficult to justify a system that offers no realistic, lawful alternative for a woman who cannot parent after birth, short of navigating inaccessible or impractical alternatives.

Adoption is often presented as the obvious solution in these cases. In reality, though, it is slow, bureaucratic, and difficult to access, especially in moments of crisis. It is neither immediate nor a private or protected option.

Social support offers little relief. The child support grant, while essential, is not enough to meet the basic costs of raising a child. It cannot resolve the structural conditions many women face.

When the system fails to provide accessible alternatives, the law's insistence on formal processes becomes less a pathway and more a barrier.

A system that sets women up to fail

The reality is that many women never meaningfully had a choice to begin with. Contraceptive services are inconsistent, with frequent stockouts and limited options. Abortion, while legal, is often inaccessible in practice due to a lack of facilities, stigma, and provider refusal. Adoption systems are under-resourced, poorly communicated, and difficult to navigate.

These failures do not exist in isolation. They compound one another.

When contraception fails, and abortion is inaccessible, and adoption is not a viable option, the result is predictable: women are left with pregnancies they cannot avoid, and children they may not be able to care for.

And when those children are born, the law offers no safe, lawful way out.

This is not a neutral system. It is one that produces a crisis and then punishes women for how they respond to it.

A gendered burden, a systemic failure

The burden of pregnancy, childbirth and early childcare falls overwhelmingly on women. In South Africa, that burden is intensified by inequality, violence and economic exclusion. Yet when the system fails, when services are inaccessible, when support is inadequate. it is women who are held accountable.

Criminalisation then does not step in to support them. It steps in to punish.

This is not simply a legal outcome. It is a gendered one. It reinforces cycles of poverty and exclusion while doing little to address the underlying causes of relinquishment.

And critically, it does not protect children.

A system that forces women into secrecy and fear does not reduce harm. It increases it.

Towards a more honest conversation

If we are serious about protecting children, we must also be serious about understanding the conditions in which they are born.

This is not a question of choosing between children's rights and women's rights. The two are deeply connected.

When women have access to safe, lawful options, children are more likely to be protected. When women are pushed into desperation, the risks increase.

The current law does not strike this balance. It punishes without protecting. It condemns without understanding.

Re-centring the issue

The question is not whether children deserve protection. They unquestionably do.

The question is whether our legal system can protect them in a way that is honest about reality. A system that ignores women, criminalises survival, and refuses to confront structural inequality cannot meaningfully serve the best interests of the child.

If we are serious about building a transformative constitutional order, the answer cannot lie in punishment alone. It must lie in recognition, support, and the creation of lawful, humane pathways that preserve both life and dignity.

This case thus presents an opportunity to do more than clarify the law. It offers a chance to reframe the conversation.

To recognise that reproductive rights do not end at birth.

To confront the systemic failures that shape women's choices.

And to finally make space for the women at the centre of this issue, not as criminals, but as rights-bearing individuals navigating constrained and often impossible realities.

Until we do, we will continue to treat the consequences of inequality as crimes and call it justice.

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