

ADDITIONAL COMMENTS OF THE LAW SOCIETY OF SOUTH AFRICA

AMENDMENT BILL, TO AMEND THE CHILDREN'S ACT, 2005 (ACT NO 38 OF

2005)

Amendment of section 21 of Act 38 of 2005

CLAUSE COMMENTED ON	PROPOSAL	MOTIVATION
10 (c) and (d)	It would perhaps be better to retain the wording "for a reasonable period".	In many of these cases maintenance has not been tendered for long periods of time and then is tendered for brief periods in an expedient manner as a method for obtaining rights. Reasonable period may also be interpreted against the mother's position in certain circumstances where she evades the payment of maintenance by the father to obstruct the implementation of this paragraph. However it is a fraught question.
10 (f)		This amendment may have a regressive effect. Does the insertion of this amendment

		<p>mean, for example, that where certain community practices, inter alia, religious practices, promote care to the father (without taking into account necessarily the best interests of a child) will be given a greater weight?</p> <p>This paragraph may be cause difficulties seen against the interpretation of a child's best interests principle.</p>
<p>Insertion of section 30A in Act 38 of 2005 (17)</p>		
<p>30A(1)</p>	<p>Should read "the parents must agree on the residence of a child, and in the absence of agreement a court may order with whom the child should reside</p>	<p>The option of court proceedings is still available.</p>
<p>Amendment of section 35 of Act 58 of 2005</p>		

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There are certain circumstances where contact may be refused in the interest of the child for example if a parent abuses substances, has drunk alcohol to excess when collecting the child or whilst the child is with such a parent, or does not behave in the best interests of the child by putting the child at risk for example. These circumstances should be catered for in this paragraph.

General

Given the socio-economic challenges and GBV issues in South Africa, criminalising baby boxes is not necessarily a solution.

It is an unfortunate reality, which should not be encouraged, but nonetheless exists that children are abandoned in this manner.