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## QUESTIONABLE CORRECTION: INDEPENDENT OVERSIGHT OF CHILD AND YOUTH CARE CENTRES IN SOUTH AFRICA

Zita Hansungule

### EXECUTIVE SUMMARY

There have been various reports pointing to a lack of independent oversight and monitoring of child and youth care centres (CYCCs) in South Africa. This Policy Brief draws on evidence from two examples in order to highlight a number of concerns. These concerns include the findings that, in both cases, the children concerned were found to be living in alarming conditions and had received no education or developmental input, and that staff were not interested in caring for the children. Various other violations of the South African legislative framework also came to light. In view of the foregoing, it is clear that there are a number of deficiencies in the current oversight model. There is thus a considerable need for a truly independent oversight mechanism so as to comply with the mandates formulated in terms of both international and local law. In this Policy Brief, the recommendations made include suggestions as to how such a framework might be implemented going forward. Moreover, the Policy Brief presents a summary of the more detailed findings set out in the related Research Paper with the same title. To find this research and other information, visit [www.apcof.org.za](http://www.apcof.org.za).

## 1. INTRODUCTION

When judicial officers rule that a child has committed an offence and that the appropriate sanction is to sentence them to a CYCC, they do so in the belief that the CYCC is the appropriate avenue for rehabilitation, reintegration, and the provision of essential services such as education. The courts, in short, make such orders on the grounds that the CYCC to which the child is referred constitutes an environment conducive to their development and will have a positive impact on them. However, as detailed in the related Research Paper, the reality may be very different. One of the primary reasons for this is that processes relating to regular and independent oversight of CYCCs are not always carried out. The aforementioned examples thus point to the need for independent and regular oversight or monitoring of CYCCs so as to ensure that the conditions and services provided by them meet the standards laid down by the Constitution of the Republic of South Africa, 1996 (the Constitution), legislation and international law.

## 2. EVIDENCE OF CONCERNS

A quality-assurance process was carried out in both cases, and, while it is recognised that the findings may not necessarily be applicable to all CYCCs in the country, the concerns arising across the two do themselves emphasise the need for independent oversight mechanisms. Among the significant concerns at one of the two CYCCs were the following:

- The facility itself was in poor condition; for instance, the ablution facilities were not functioning properly, the geyser in the boys' section was broken, and some of the showers also did not function properly;
- Some child and youth care workers did not clearly understand their roles and responsibilities. Furthermore, child-care programmes and disciplinary action were inconsistent and many children were left unsupervised;
- Some of the children in the CYCC had been sentenced for sexual offences and consequently had to undergo specialised programmes. However, the services officially rendered at the CYCC did not include any of these programmes; and
- The CYCC did not provide formal education for the children. It also did not provide adult education and training as well as vocational training for the children.

At the other CYCC, the following were of significant concern:

- There were no operational policies in place, and this had an impact on the operations of the CYCC as well as on its ability to meet service-delivery requirements;
- Programmes, including those related to therapeutic, recreational, developmental, spiritual and residential needs, were provided only in part or sporadically, and, as a result, the children did not derive the maximum benefit from their time at the centre;
- The child and youth care workers were derelict in the performance of their duties, which was partly ascribed to a lack of formal training;
- Integrated service delivery was not provided by all the different role players, and this had a negative impact on the development of the children concerned at the centre;
- Social workers were not consistent in keeping proper records relating to their interventions in respect of individual case files as required in terms of the norms and standards for CYCCs as well as in terms of generic intervention processes;
- Supervision, which was compulsory and critical in ensuring compliance and effective services, was either non-existent or inconsistent, both in respect of social workers and child and youth care staff; and
- Some personnel showed no interest in working with children and were not adequately equipped to be employed in a CYCC where specialised skills and expertise were required.

### 3. IMPLICATIONS AND RECOMMENDATIONS

CYCCs are regulated by the Children's Act 38 of 2005. However, the monitoring function provided for by the Act does not sufficiently allow for oversight of CYCCs that take in children in conflict with the law. The Act provides for monitoring through quality-assurance processes, but these fall short in certain respects. Among other things, there is a lack of diversity of the role players that make up the quality-assurance process teams, and the frequency of the process is also insufficient. The case studies discussed in the Research Paper paint a picture of quality-assurance processes that are carried out sporadically and as a result of court intervention. They further show CYCCs falling far short of the requirements, both in respect of physical conditions as well as services offered to children. The CYCCs discussed were not environments conducive to rehabilitation and possible reintegration of children in conflict with the law. It could be argued that, had regular oversight and implementation of recommendations arising from such oversight occurred, the CYCCs concerned might have been in better condition and more suitable for catering for the needs of the children placed in their care.

A national preventive mechanism should be established that has the power to regularly examine the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. In addition to the power to examine the treatment of detained persons, the mechanism must:

- Be able to make recommendations to the relevant authority with the aim of improving the treatment and conditions of persons deprived of their liberty; and
- Be granted:
  - access to all information concerning the number of persons deprived of their liberty in places of detention as well as the number and location of such places of detention;
  - access to all information concerning the treatment of those persons deprived of their liberty and the conditions of detention;
  - access to places of detention;
  - the opportunity to have private interviews with persons deprived of their liberty and other persons with relevant information; and
  - the liberty to choose the places they want to visit and the people to be interviewed.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which was adopted by the United Nations General Assembly in 2002, obligates state parties to establish systems involving regular visits by independent oversight bodies. There are, moreover, various possible avenues by which South Africa can use OPCAT to ensure a better independent oversight mechanism for monitoring and evaluating CYCCs. The Research Paper discusses one such option, namely the establishment of a children's rights unit within the South African Human Rights Commission (SAHRC). The SAHRC is an independent institution established by the Constitution and regulated by national legislation. It has been created to ensure the promotion of, and respect for, human rights and has the power to investigate, report and make recommendations regarding the observance of human rights. A children's rights unit would, inter alia, play the role of an independent oversight body that investigates the conditions and services in CYCCs that take in children in conflict with the law (and other CYCCs and detention facilities that children are found in). The unit would also have the requisite independence and, it is hoped, necessary expertise to ensure that the functioning of such CYCCs is in line with the Constitution, and with the standards laid down in terms of international law.

## ABOUT THE AUTHOR

### Zita Hansungule

Zita Hansungule is the senior project coordinator of the Centre's Research, Monitoring and Evaluation Project. She began working full-time at the Centre for Child Law in 2012 as the assistant project coordinator. She obtained her LLB degree in 2011 from the University of Pretoria. In 2016, she clerked at the Constitutional Court and obtained her LLM degree, also from the University of Pretoria. She returned to the Centre in 2017.

Zita Mulambo Hansungule  
Senior Project Coordinator  
Research, Monitoring & Evaluation  
Centre for Child Law, University of Pretoria

Email: [zita.hansungule@up.ac.za](mailto:zita.hansungule@up.ac.za)  
Tel: +27 12 420 4502

### The Centre for Child Law

The Centre for Child Law is an impact litigation and advocacy organisation based at the University of Pretoria. The Centre's vision is to establish and promote child law and uphold the rights of children in South Africa, within an international and regional context, particularly insofar as these interests pertain to their legal position.

The Centre aims to, amongst other things, reform aspects of the child justice system through strategic litigation, advocacy and collaboration in order to ensure compliance with the Constitution, the Child Justice Act and International and Regional Law. One of the ways the Centre aims to do this is by promoting oversight mechanisms for child offenders in child and youth care centres through advocacy and collaboration.



## ABOUT APCOF

The African Policing Civilian Oversight Forum  
Building 23B, Unit 16  
The Waverley Business Park  
Wycroft Road, Mowbray 7925  
South Africa

Tel: +27 21 447 2415  
Fax: +27 21 447 1691  
Email: [info@apcof.org.za](mailto:info@apcof.org.za)  
Web: [www.apcof.org.za](http://www.apcof.org.za)  
Twitter: @APCOF  
Facebook: African Policing Civilian Oversight Forum

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