

# Hands-on

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Centre for Child Law

## Facilitating the registration of Child and Youth Care Centres in South Africa

When children have been abandoned, neglected, abused, orphaned or found to be in need of care and protection, Children's Courts are tasked with ensuring their safety and well-being. In considering placement options, Children's Courts may place children in Child and Youth Care Centres or CYCCs (formerly known as Children's Homes), although this is generally considered to be a measure of last resort when family members are unable to care for the child. A recent audit of CYCCs in South Africa<sup>1</sup> found that there are at least 421 CYCCs caring for approximately 14 000 children. Of these, 306 (73%) are registered with the Department of Social Development (DSD), meaning that 115 CYCCs are operating without Departmental oversight<sup>2</sup>. Furthermore, it was noted that the majority of registered CYCCs remain registered under the old Child Care Act. With effect from April 2015, these CYCCs will not be eligible to admit children - in terms of the new Children's Act 38 of 2005 - unless they have re-registered with the DSD. This learning brief explores some of the registration challenges currently being faced by CYCCs and provides recommendations for facilitating the process.

### **Why is registration important?**

When children are in unregistered CYCCs, they are essentially left in limbo. Registration ensures that the children in CYCCs are 'visible' or 'known' to the

DSD and the broader Child Protection System. This allows children to access other welfare services such as adoption, foster care and family or community reunification, if appropriate. It also prevents children from being illegally adopted or from being trafficked. Registration thus ensures that children are placed in CYCCs that have received the DSD's seal of approval and, as a result, are provided with appropriate care programmes and facilities.

### **What does the registration process look like?**

The registration process is set out in the following sections of the Children's Act 38 of 2005:

- Section 191: gives a description of what a CYCC is in terms of the Act and what programmes CYCCs should be offering;
- Section 199: sets out the application process or renewal of registration process;
- Section 200: sets out the process of consideration of applications within the DSD and the factors taken into account;
- Section 201: provides guidelines for when conditional registration might be considered.
- In addition, the Children's Act also outlines regulations that must be taken into account by CYCCs (as well as forms that must be submitted) during the registration or re-registration processes.

An application for registration or renewal of registration (completed on the necessary forms) must be lodged with the Provincial Head of Social

<sup>1</sup> Conducted by the Department of Social Development and the United Nations Children's Fund (UNICEF), 2012: The audit is not yet available for public review.

<sup>2</sup> The figure of 115 does not include many facilities in the Northern Cape, Limpopo and Kwa-Zulu Natal that are known to exist but are not registered. This means that the number of unregistered CYCCs in the country is likely to be much higher.

Development in the Province where the CYCC is situated. The application must be accompanied by a certified copy of the CYCC's constitution and a certificate from the Municipality in which the CYCC is located, certifying that the premises of the CYCC complies with all the structural, safety, health and other requirements of the Municipality.

When the Provincial Head of Social Development is considering applications for registration, the following factors are taken into account:

- Does the CYCC comply with the prescribed norms and standards as set out in the Children's Act?
- Does the CYCC comply with the structural, safety, health and other requirements of the Municipality?
- Is the applicant (owner/manager/director) a fit and proper person to operate the CYCC?
- Does the applicant have the necessary skills, funds and resources available?
- Does each person employed by the CYCC have the prescribed skills?
- A report by a designated social worker is also considered.

The Provincial Head of Social Development must consider - and either grant or refuse - the application, within six months of receiving the application. If registration is refused, an appeal of the decision may be made with the MEC of Social Development. If the decision of the MEC is not satisfactory, the High Court can be approached to review the decision of the MEC.

Conditional registration may be granted on certain conditions set by the Provincial Head of Social Development, but such registration is for a period of one year only.

### ***What obstacles have CYCCs been experiencing with the registration process?***

At first glance the above processes seem to be straight forward and easy to follow. In practice, however, CYCCs are finding it confusing, time-consuming and expensive. Three organisations, Centre for Child Law, Kid's Haven and Epworth Children's Village recently undertook a project to try and understand the registration challenges

being faced by CYCCs<sup>3</sup>. Through this project, seven unregistered CYCCs were taken under the wings of these organisations and guided – in as far as this was possible - through the registration requirements with the aim of bringing these CYCCs to a point where they are able to lodge registration applications. The seven CYCCs were all initiated by members of the public who saw a need for this type of facility. They operate in poor urban areas and all take in children (boys and girls) between the ages of 6 to 18. The number of children accommodated vary between 15 and 60 children. The children are placed in these CYCCs by Social Workers from the DSD, other statutory agencies or through community placements by police, community outreach and community members.

During this project, the following key obstacles to registration were noted:

- A lack of proper and complete communication between the DSD and CYCCs on registration requirements. This leaves CYCCs in constant uncertainty on what the way forward is;
- Registration requires CYCCs to, amongst other things, undergo various health and safety inspections to obtain local authority compliance certificates, submit audited financial statements, daily menus and programmes, obtain certificates from the various departments for staff clearance, ensure workers are qualified and have their properties appropriately zoned. These requirements at a glance all seem necessary to ensure the safety and proper care of children in the CYCCs, but compliance with these requirements is costly. CYCCs with limited financial resources are left in a catch-22 situation as they have to spend money to meet these requirements and at the same time attend to the children in their care;
- Even though the Children's Act seems to clearly set out the registration requirements, local authorities including Municipalities have their own requirements that must be complied with. These requirements often differ between Municipalities;
- Social workers tasked with assessing compliance with registration requirements also have different interpretations of these requirements, sometimes resulting in a further shift in goal posts;

<sup>3</sup> The Centre for Child Law is a Law Clinic that promotes the best interest of children through litigation, advocacy, education and research. Kid's Haven and Epworth Children's Village are both experienced CYCCs.

- A further issue is the length of time it takes for the DSD to process registration of CYCCs. There have been reports that CYCCs have not received feedback after three years of submitting their applications; despite the fact that the Act requires that feedback needs to be given six months after the submission of an application.

### *The way forward*

In order for registration to occur as envisioned by the Children's Act, there needs to be a clear strategy to ensure the prioritisation of registration. We make the following recommendations:

- CYCCs have become disillusioned as a result of the obstacles faced. Once the DSD and concerned stakeholders make an effort to address the dissatisfaction, there will be more cooperative willingness to go through the process. CYCCs need to be informed of the importance of registration as well as the benefits of registration for not only the CYCCs but also for children;
- Cooperation and communication between

government entities at all levels are important for registration, especially between Municipalities and the DSD;

- A proper understanding and communication of the requirements for registration is needed from all stakeholders in the registration process;
- Conditional registration needs to be utilised more by the DSD, especially in cases where CYCCs are offering appropriate services to children but are not in a position to meet all the registration requirements in the specified period.

In addition to the above, other broader solutions to effect systemic policy and implementation changes may also need to be considered, such as reviewing the stringent registration requirements to allow for CYCCs to register while still ensuring the safety and appropriate care of children. Also of extreme importance is the fact that the Children's Act states that the Minister of Social Development must produce a national strategy that sets out a comprehensive plan aimed at ensuring an appropriate spread of CYCCs throughout the country, this has not as yet been done.

**This learning brief tells of the hands-on experience of:**



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