

Policy brief on ways to address the unjust policing of the homeless in Cape Town

Background

Homelessness is widespread in Cape Town, with an estimated 14 000 people living on the streets of the city (Hopkins et al., 2020).

While stakeholders are trying to find solutions to help the homeless and reduce rates of homelessness, the issuing of criminalising homelessness is garnering more and more attention in public, legal, and academic discussions. Across Africa, poverty and homelessness tend to be criminalised through laws that are colonial relics (CDPS, 2023). This is true for South Africa where municipal by-laws are used to prohibit life-sustaining activities such as sleeping, washing oneself, urinating, or starting a fire in public (Ballard et al., 2021; Killander, 2019). These are activities that the homeless have no choice but to perform in public. The punishment for these contraventions includes receiving fines, being arrested, or having belongings confiscated and structures demolished, which set the homeless back financially and otherwise (Dellacroce et al., 2019; TIC, 2021). These punishments make living on the street even harder than it already is. The illegality of these behaviours means that the homeless are more likely to encounter law enforcement officers (Dellacroce et al., 2019; Paasche et al., 2014; TIC, 2021). While the revision of by-laws has been explored in detail (Ballard et al., 2021; Killander, 2019), the question remains as to what exactly interactions look like between the homeless and law enforcement, and how the homeless make sense of being policed.

How do the homeless experience being policed in Cape Town?

The homeless have a variety of experiences with law enforcement, which depends on the group of law enforcement, the location of the interactions, and on individual officers. Many homeless people find that the SAPS harass them less than private security, Metro Police, and even traffic law enforcement. This can partly be explained by the fact that the SAPS are not mandated to police petty offences. While policing the homeless happens across Cape Town and surrounding suburbs, some homeless people find that they are treated more harshly in very wealthy suburbs, such as near Camps Bay, compared to

the CBD. Some seek refuge in the mountains of Cape Town to be 'out of the way'. Even in the mountain, however, they experience being harshly policed.

The homeless have overall very negative experiences of being policed. These experiences are sometimes physically or verbally violent, including being kicked, slapped, pepper sprayed, and beaten, and being told they are 'animals', 'baboons', or 'stupid'. Being woken up by law enforcement in the early hours of the morning is common, and sometimes happens by having blankets pulled off while being yelled at. Sometimes law enforcement intentionally humiliates homeless people and chooses specific moments – such as right before rain is expected – to remove their structures. Homeless people also experience being stereotyped as criminals and drug addicts by officers as well as residents who issue instructions to officers. They experience the brunt of corruption in the form of officers arresting them for purchasing drugs while allowing drug dealers to continue dealing drugs. They are also distrusting of law enforcement, who sometimes claim to be collecting personal information when they are really writing up fines. Some homeless people have experienced law enforcement paying off other homeless people to conduct clean-up operations for them.

There are also positive experiences of law enforcement among the homeless. Law enforcement occasionally gives them warnings about raids to come or negotiates with them about property confiscation. Officers can also be caring in their approach, accompanying the homeless to shelters and requesting that they be accepted into the shelter on an emergency basis. There also seems to be evidence of kinder treatment of children who are living on the street. Some residents are more willing to negotiate with the homeless before calling law enforcement, and help them with food donations. This makes a big difference to their ability to survive on the street.

RECOMMENDATIONS

Legal recommendations

- First and foremost, we need to stop seeing homelessness as a safety and security problem to be addressed by the law and law enforcement. It is a problem that requires housing, health, psychological, social and economic intervention.
- There should be a sustained call to amend by-laws so that they do not discriminate against the life-sustaining activities of the homeless and the poor.

Non-legal recommendations

We should look beyond the law to other ways of improving the homeless people's enjoyment of their human rights, as there is evidence to suggest that changing the law alone cannot protect the homeless from human rights abuses and social exclusion.

- Stakeholders, including government, residents, law enforcement officers, and the homeless, should challenge one another on misconceptions about the homeless and the unhoused. As long as the homeless are reduced to the identity of criminals, drug-addicts¹, people who 'choose' to live on the streets and refuse help, society will find a way to exclude the homeless.
 - We need more research into the views and misconceptions held by citizens, law enforcement and government about the homeless.
- There is resistance towards creating exceptions in policy for homeless people because of stereotypes and misconceptions. Even the homeless do not see themselves above the law or rules of society and believe they should be held to similar standards (Dellacroce et al., 2019). However, their lives and living conditions are exceptional. We should therefore be more willing to accept policy and approaches to the homeless that are tailored to their circumstances.
- We need to rethink the effectiveness of government-supported shelters. The homeless in Cape Town dislike them because they find them expensive, restrictive, make them more vulnerable to physical or sexual violence, serve bad food, and expose them to getting lice. Campaigns like the 'Give dignity and 'Show You Care' (formerly 'Give Responsibly') which ask citizens to donate to shelters rather than directly to the homeless are therefore ill-informed and prevent the homeless from accessing immediate help.
 - We need more empirical research into the effectiveness of shelters, especially when compared to NGOs like Streetscapes that offer holistic support. The homeless report that this kind of support is more effective, because homelessness is not only about lacking shelter. It is also about lacking a community or network, job opportunities, psychological help, including drug addiction counselling, as well as physical health interventions. The homeless also need help with bureaucratic processes, such as obtaining an ID, so that they can access job opportunities.
- There is a feeling among the homeless that law enforcement simply did not understand them and that this could be fixed if they sat down together and chatted. They also sometimes feel that law enforcement is simply 'following orders', which speaks to the need to educate those that are issuing the orders about the harms of encouraging policing of the homeless.
 - We should introduce sensitivity training to law enforcement officers on how to better understand and engage with homeless people. Law enforcement is quick to resort to the use of force, and this needs urgent attention.
- There should be increased pressure placed on the Department of Social Development to implement and support evidenced-based interventions.
- Overall, we should listen more intently to the homeless about what works for them. Their voices should be heard as they are the ultimate judges of what interventions are effective or not.

References

- Ballard, C., Edwards, L., Burton, P., Gossar, A. M., & Sali, C. (2021). *Poverty is not a crime: decriminalising petty by-laws in South Africa*. [online] Available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjkrdSjjLX9AhWGSMAKHQilAscQFnoECA4QAO&url=https%3A%2F%2Fapcof.org%2Fwp-content%2Fuploads%2F030-study-on-decriminalising-poverty-in-south-africa-clare-ballard-patrick-burton-louise-edwards-abdirahman-maalim-gossar-and-chumile-sali.pdf&usq=AOvVaw0suwe7xdVuImTHND-aGdq0> [Accessed 27 February 2023]
- CDPS (Campaign to Decriminalise Poverty and Status). (2023). *The Cape declaration on decriminalising poverty and status. September*. [online] Available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiL9tGQtt38AhW8SEEAHQFGC2UQFnoECBEQAw&url=https%3A%2F%2Fwww.fiacat.org%2Fattachments%2Farticle%2F3098%2FCape%2520Declaration.pdf&usq=AOvVaw28IbxLLmQ6wqXQGgoG--e1> [Accessed 27 February 2023]
- Dellacroce, T., Huftalen, C., Lira, C., & Raden, E. (2019). *Evaluating the Impact of the Cape Town Street People Policy on Street people* [Worcester Polytechnic Institute]. [online] Available at <https://digital.wpi.edu/downloads/kw52jb56v>
- Hopkins, B. J., Reaper, J., Vos, S., & Brough, G. (2020). *The cost of homelessness: Cape Town*. [online] Available at <https://homeless.org.za/wp-content/uploads/2021/02/THE-COST-OF-HOMELESSNESS-CAPE-TOWN- Full-Report Web.pdf> [Accessed 27 February 2023]
- Killander, M. (2019). Criminalising homelessness and survival strategies through municipal by-laws: colonial legacy and constitutionality. *South African Journal on Human Rights*, 35(1), 70–93. <https://doi.org/10.1080/02587203.2019.1586129>
- Paasche, T. F., Yarwood, R., & Sidaway, J. D. (2014). Territorial tactics: the socio-spatial significance of private policing strategies in Cape Town. *Urban Studies*, 51(8), 1559–1575. <https://doi.org/10.1177/0042098013499084>
- Rankin, S. K. (2019). Punishing homelessness. *New Criminal Law Review*, 22(1), 99–135. <https://doi.org/10.1525/nclr.2019.22.1.99>
- TIC (The Inkathalo Conversations). (2021). *The Inkathalo Conversations: phase one comprehensive report*. [online] Available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjy yeuJmrX9AhXtTUEAHTbdBBsQFnoECBEQAO&url=https%3A%2F%2Fwww.groundup.org.za%2Fmedia%2Fuploads%2Fdocuments%2FInkathalo-2021-compressed.pdf&usq=AOvVaw0dtfk7DZI1N6yc9qZRxQXx> [Accessed 27 February 2023]