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Unhoused individuals' experiences of being policed in Cape Town

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Abstract

The present study departed from a conversation in the South African literature on the discriminatory application of by-laws to criminalise vagrancy-related behaviour and displace the unhoused. A comparative lack of interest has been given to how exactly the unhoused experience being policed, and whether this can be explained by by-law enforcement. To address this, focus groups were conducted with 28 formerly unhoused individuals who have lived on the streets of Cape Town and are now housed by community-based organisation, Streetscapes. Participants were asked about experiences of being policed, and their understandings of officers' behaviour. Their responses indicate a range of experiences, from brutal, humiliating and unjust encounters that were indicative of a lack of respect for the unhoused on the part of law enforcement, to kind and fair, rooted in empathy for their situation.

The varied nature of the incidents goes beyond the enforcement of by-laws and reflects the views and choices of officers (and the residents and politicians from whom they sometimes receive instructions). The implications of these findings are therefore that policing unhoused people needs to be understood both within and outside of a legal framework. This should nuance the debate on how best to help the unhoused enjoy their rights, as an exclusive focus on reviewing discriminatory legislation may ignore factors such as personal bias and a willingness to use violence by law enforcement, and a lack of broader governmental, institutional and public support. Paying greater attention to this could ultimately shape interventions and thus more effectively address the homelessness problem in Cape Town (and perhaps elsewhere).

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List of abbreviations

CBD	Central business district
CDPS	Campaign to Decriminalise Poverty and Status
CID	City Improvement District
NGO	Non-governmental organisation
SA	South Africa
SAPS	South African Police Service
SFCH	San Francisco Coalition on Homelessness
TIC	The Inkathalo Conversations
UCT	University of Cape Town
UNDESA	United Nations Department of Economic and Social Affairs

A note on terminology

The term ‘unhoused’ is used throughout this paper instead of ‘homeless’ for a few reasons: Welsh and Abdel-Samad (2018) note the fact that unhoused people usually identify where they are living as their home even though the housed population may not qualify these structures as such. This in part accounts for the destruction of unhoused people’s homes by city officials: if the officials do not view them as homes, then their destruction is not a violation in the way that destroying a ‘real’ home is (Speer, 2017; Welsh & Abdel-Samad, 2018). As stated by Welsh and Abdel-Samad (2018: 49), the term ‘homeless’ is often used as ‘a disparaging descriptor to denote deviance and marginality [so it] can be used to justify punitive, marginalizing responses to homelessness’.

It is therefore more sensitive to use the term ‘unhoused’. However, participants and scholars cited in this paper use the term ‘homeless’. It is kept as is in these cases. The word ‘homelessness’ is also used in this paper as it does not carry the same connotation as ‘homeless’.

‘Law Enforcement’ is capitalised in this paper where it refers specifically to the subsidiary group of the Metropolitan Police who are involved in by-law enforcement in Cape Town. Where the term is not capitalised, it refers generally to agents who enforce the law, whether they represent public, private or hybrid institutions.

1. Introduction

1.1 Criminalisation and policing of the unhoused

The unhoused live in developing and developed countries alike, which shows that homelessness is not a problem pertaining only to poverty. There is a growing awareness that a desire to displace the unhoused by criminalising behaviours associated with living on the streets – also known as vagrancy-related or petty offences – is unjust (Campaign to Decriminalise Poverty and Status [CDPS], 2023). It is unjust because this prohibits the unhoused from engaging in life-sustaining activities which they have no choice but to perform in public, such as washing oneself or sleeping. In Cape Town, South Africa (SA), the criminalisation of vagrancy-related behaviour is primarily achieved through the enforcement of municipal by-laws (Ballard et al., 2021; Killander, 2019). While much of the discourse in SA focuses on the need to amend the law so that the unhoused are not unfairly discriminated against (Ballard et al., 2021; Killander, 2019), comparatively little attention has been given to the various ways in which interactions between law enforcement and the unhoused unfold.

By comparison, international literature has extensively examined how the unhoused are policed and how they make sense of why this happens (Grainger, 2021; Herring et al., 2020; Kyprianides et al., 2021; Robinson, 2019; San Francisco Coalition on Homelessness [SFCH], 2017; Stuart, 2015; Westbrook & Robinson, 2021). This study aims to bridge this gap by providing insight into the nature of and perceived intentions behind the policing of the unhoused as told by the unhoused. To answer the question of how unhoused people experience being policed in Cape Town, four focus groups, for a total of 28 adult participants, were conducted with clients from Streetscapes, a community-based organisation that provides

holistic support to people who were or are unhoused.[1] Streetscapes is a flagship programme of Khulisa Social Solutions, a non-profit organisation that provides support to marginalised communities in various parts of SA.[2] The Social Solutions Manager of Khulisa and founder of Streetscapes, Jesse Laitinen, generously invited us to engage Streetscapes' clients on their experiences of being policed in the City of Cape Town.

The findings of this study show that by-laws indeed give rise to policing of the unhoused, which entailed excessive fining, arresting, and property confiscation and destruction. However, participants also gave detailed accounts of the violence, humiliation, and deceit that they had been subjected to by law enforcement. Furthermore, they witnessed corrupt policing behaviour that negatively impacted on their ability to survive on the streets. They nuanced these comments by recounting officers and residents who treated them with kindness and respect, stating that these experiences improved their quality of life on the streets. This current study therefore argues that factors outside of the purview of the law – such as officers' beliefs as to whether the unhoused are deserving of humane treatment or not – impacted the nature and perceived intentions behind the policing of the unhoused. The current study concludes that these factors should be considered in addition to amending the law to help the unhoused better enjoy their rights.

1.2 Summary of chapters

Chapter 2 explores the background of the phenomenon of homelessness, the challenge of defining homelessness, the complex causes of homelessness, and difficulties faced by the

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[1] Holistic support includes a spot in a shared home when there is space. There are currently three Streetscapes homes in Cape Town. Other forms of support entail job provision, drug rehabilitation, setting up bank accounts, and obtaining identity documents. Visit https://khulisa.org.za/streetscapes/ for more information.

[2] Visit http://khulisa.org.za/ for more information.

unhoused. Background on homelessness is important to understand to fully appreciate criticisms of the criminalisation of homelessness. The chapter concludes by discussing how homelessness is being addressed in Cape Town.

Chapter 3 examines how the criminalisation of homelessness manifests internationally, followed by how it manifests in Cape Town. For by-laws in Cape Town, a brief description of the relevant by-laws, their history, and how they tend to be implemented is included. It then addresses the policing of the unhoused overseas, what this looks like in Cape Town, including a description of the various the agents who perform policing. It introduces the contribution of the present study to the broader discussion.

Chapter 4 outlines the methods used to collect data for this study. It addresses ethical concerns, sample choice and recruitment of participants, data collection and management, and methodological limitations of the study.

Chapter 5 is the findings section, which gives voice to the unhoused on the topic of being policed. The participants indicated that various policing institutions are involved in policing them all over Cape Town, and described how this sometimes arose directly from the enforcement of by-laws. They also described both negative experiences of law enforcement characterised by violence, humiliation and corruption, as well as positive experiences of kind and fair treatment. Finally, they expressed various opinions about who issues the instructions to police the unhoused and why this happens, as well as what should be done instead to address homelessness.

Chapter 6 connects the sections of Chapter 5 to make the overarching argument of this dissertation: while the law influences how the unhoused experience being policed, it is not the only factor to consider. Some findings indicate that personal views and choices of law

enforcement officers and residents impacted the participants' experiences of them, and that these factors fall outside of the purview of the law. It also offers a conclusion and suggests some recommendations that could help to shape interventions and thus more effectively address the homelessness problem in Cape Town (and perhaps elsewhere).

2. Understanding homelessness

2.1 Overview

To address homelessness in its entirety would be impossible given the scope of this project. However, homelessness as a phenomenon is located in a matrix of social, economic, political and health issues. It is crucial to understand this to properly appreciate the injustice of criminalising vagrancy-related behaviour and why nuanced interventions are required to address the problem.

2.2 Defining homelessness

Having a home contributes to our sense of identity, belonging, and security. The ramifications of not having a home are therefore far reaching and damaging, which is unfortunately the reality for unhoused people. It is difficult to gauge exactly how many people are experiencing homelessness, partly because it is not easy to conduct a census on people who do not have a fixed address and who often live in hidden spaces (Hopkins et al., 2020; The Inkathalo Conversations [TIC], 2021; Kok et al., 2010). Another reason is the lack of consensus of the definition of homelessness (Makiwane et al., 2010; Olufemi, 2000, 2002; Sanchez, 2010; Tipple & Speak, 2005).

Some countries define homelessness in terms of the lifestyle of the person, others in terms of their location (e.g. people who sleep under bridges or in public parks), permanence of occupation, state-aid entitlement, housing quality, or as a combination of these factors (Tipple & Speak, 2005). How each society defines homelessness depends on its social, political, geographical and economic history and climate (Tipple & Speak, 2005). In Ghana, for example, the word ‘homelessness’ does not have a translation into indigenous languages

because the concept feels culturally foreign (Tipple & Speak, 2005). According to Tipple and Speak (2005):

> […] a home in Ghana includes sales kiosks, abandoned warehouses, offices or shops. In addition, […] the [Ghana Statistical Service] defines homelessness not only in shelter terms but also as "people not belonging to a household". This means that only the most destitute, without any form of shelter or roof, and without kin or friends […], are considered as officially homeless.

Thus, the definition of homelessness in Ghana relies on the tangible lack of shelter *and* the intangible lack of belonging, whereas in other countries the former may suffice. Sleeping in a kiosk or on a friend's couch may very well be considered homelessness in other countries. The United Nations Department of Economic and Social Affairs (UNDESA) (2017) defines homelessness as being either primary, in the sense of rooflessness, or secondary. Primary homelessness refers to persons 'living in streets or without a shelter that would fall within the scope of living quarters', whereas secondary homelessness refers to:

> Persons with no place of usual residence who move frequently between various times of accommodation (including dwellings, shelters or other living quarters) [or] [p]ersons usually resident in long-term (also called "transitional") shelters or similar arrangements for the homeless (UNDESA, 2017: 38).

The description of secondary homelessness emphasises the lack of permanence of one's housing situation as a defining characteristic. The description of primary homelessness relies on a consensus of what 'living quarters' means, which may vary from culture to culture and country to country. In SA, many people live in shack dwellings which may be considered permanent living quarters by their inhabitants, but may not be considered adequate permanent housing by many developed countries' standards (Cross et al., 2010). According to Olufemi (1997: 10), one can define the unhoused in SA as:

> […] those who lack real homes; live in bad housing; sleep on pavements; lack basic needs (with no access to safe water, sanitation) and lack personal needs (self-determination, creativity, dignity, expression and voice).

While these definitions add to the present study's conceptualisation of homelessness, one study uses a definition that is adopted in this project: Cross et al. (2010: 7) use a definition of homelessness that emphasises living 'on the street'. These individuals, sometimes referred to as those experiencing 'absolute homelessness' (Tipple & Speak, 2005: 339), account for an estimated 100 000 to 200 000 people in SA (Cross et al., 2010).[3] This excludes shack dwellers, who an estimated further 8 million people (Olufemi, 2000). While the unhoused and shack dwellers both lack access to adequate housing, shack dwellers have some form of fixed and sheltered housing; they tend to have a better social network from which they can draw support (Tipple & Speak, 2005); more regular employment opportunities; and are usually more trusting of government aid (Cross et al., 2010). Furthermore, shack dwellers often do not identify themselves as unhoused (Olufemi & Reeves, 2004). Shack dwellers are therefore excluded from the present study because their circumstances greatly differ from people experiencing absolute homelessness (Cross et al., 2010). While what is defined as homelessness in the current study may not be defined as such elsewhere, the definition adopted in the current study most closely resonates with its participants' experiences.

2.3 Causes of homelessness

In SA, homelessness is usually framed as a problem of poverty or housing (Kok et al., 2010). Activist organisations like Ndifuna Ukwazi,[4] a law centre based in Cape Town, relate

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[3] However, the authors noted the extensive methodological challenges faced by the researching organisation who collected data for this study.

[4] For more information, visit Ndifuna Ukwazi's website at https://nu.org.za/.

this to the legacy of apartheid and advocate for access to ‘well-located land and affordable housing for poor and working-class families, communities and social movements’ to combat ‘the reproduction of spatial apartheid in Cape Town’ (Ndifuna Ukwazi, 2021). Apartheid meant that prime land was awarded to white South Africans while people of colour were forced to inhabit a small proportion of subpar land in the peripheries of central Cape Town (Maharaj, 2019). Homelessness and race certainly intersect in Cape Town: a recent study suggests that the majority (61 percent) of unhoused people in Cape Town are coloured, 25 percent are black, 13 percent white and 1 percent ‘other’ (Hopkins et al., 2020). Given that roughly 40 percent of Cape Town’s population is coloured (Stats SA, 2016), coloured people are disproportionately affected by homelessness (Hopkins et al., 2020).

This is not to say that the Western Cape government have not taken on a project of housing allocation as a way of rectifying some wrongs of apartheid, but they report extensive challenges in doing so (Shandu & Clark, 2021: 2). The province reports a backlog of 600 000 homes and more than half of these are attributed to the City of Cape Town (Minister Tertuis Simmers, 2020). According to Shandu and Clark (2021: 2):

> The City [of Cape Town] itself acknowledges that the current housing backlog is insurmountable at its current rate of delivery. In the City’s Draft Human Settlements Strategy, the City projects that it needs to create approximately 50 000 affordable homes every year for the next decade in order to address the backlog. However, the public and private sector combined develop less than 20 000 new homes on average per year, with the provision of serviced sites at 5 500 on average per year. In the 2018/2019 financial year, the City provided and upgraded only 5 692 homes. The overwhelming scale of the need means that the City itself believes it will take more than 70 years before it can eradicate the housing backlog.

Considering the consequences of apartheid and the challenges faced by local government when it comes to building affordable housing to keep up with population growth and rates of urbanisation, it is unsurprising that Cape Town is dealing with pervasive

homelessness. Furthermore, shelters for the unhoused are not filling this gap: one study suggests that there are an estimated 14 000 people living on the streets of Cape Town, yet only about 2100 beds in shelters in the city (Hopkins et al., 2020). This means that there are roughly six and a half times more people living on the streets than shelter beds available in the city. Newer research indicates that homelessness in SA has more complex causal factors than a lack of access to affordable housing: other factors include unemployment, domestic violence and otherwise dysfunctional home environments, substance use disorders, adverse childhood experiences (Makiwane et al., 2010), migration in search of employment (Kok et al., 2010), and mental and physical health challenges (Makiwane et al., 2010; Seager & Tamasane, 2010).

The fact that homelessness still exists in developed regions, such as North America (Baron, & Kennedy, 1998; SFCH, 2017; Herring et al., 2020; Westbrook & Robinson, 2021), Australia (Walsh, 2003) and England (Kyprianides et al., 2022) shows that it is not a problem caused solely by poverty and lack of housing. The complexity of the causes of homelessness partly accounts for a lack of understanding of how to effectively deal with it in SA (Richter et al., 2012). It is therefore reductive to frame homelessness as a problem rooted only in poverty and lack of housing. It is also unreasonable to locate sole responsibility in the individual for their state of homelessness when structural shortcomings, such as a lack of affordable housing, play a role in creating and perpetuating homelessness.

2.4 Challenges faced by the unhoused

Unhoused people suffer greatly because of their lack of shelter. They are exposed to property threat, harassment, disease (particularly from exposure to the elements), and social isolation (Olufemi, 2000; Rankin, 2019). Some may suffer from mental health problems

(Olufemi, 2000; Rankin, 2019) and/or physical disability (National Alliance to End Homelessness, 2021). A study by Seager et al. (2010) suggests that homelessness and health have a bi-directional relationship. Ill-health, including sexually transmitted infections, HIV and AIDS, and tuberculosis can cause and worsen homelessness, while the reverse is also true. Recent research shows that unhoused people have been made even more vulnerable by the COVID-19 pandemic (UN-Habitat, 2020). They often have pre-existing health conditions, so contracting COVID-19 puts them at greater risk of succumbing to the disease, and their living conditions make it difficult to practise social distancing and regular hand washing (UN-Habitat, 2020).

Homelessness received a great deal of public attention during the COVID-19 lockdown in SA when the unhoused were collected from around Cape Town in buses and taken to a makeshift camp set up 30km from the city centre in Strandfontein. They reportedly lived in unsafe conditions and felt inhumanely treated (Kiewit, 2020). The then-mayor, Dan Plato, responded to criticism saying that the camp was set up in line with the COVID-19 National Disaster regulations which stipulated that during lockdown, a person may be placed in a temporary shelter if this was necessary for the preservation of life (Tembo, 2020). Although the City had benevolent intentions behind setting up the camp, it placed the unhoused in danger because of overcrowding in tents, a lack of sanitising of surfaces, and insufficient support to those suffering from drug withdrawal symptoms (IOL, 2020).

Another common issue that unhoused people struggle with is substance abuse, which should influence intervention strategies (Dellacroce et al., 2019; National Alliance to End Homelessness, 2021; Olufemi, 2000; Rankin, 2019; Seager & Tamasane, 2010). Unhoused people in Cape Town report using alcohol and other drugs in the wintertime as a way of

keeping warm, while others described it as a way of coping with trauma that they experienced both before and while living on the street (TIC, 2021). The study further pointed out that the strict policing of illegal drugs among the unhoused, which results in arrest and other punishment, may hinder their ability to escape homelessness. Not being allowed into certain shelters in Cape Town because of a ban on substances is one reason people do not make use of these services (Dellacroce et al., 2019; TIC, 2021).

Issues with shelters is also cited as a reason that the unhoused in Cape Town do not make use of them: many unhoused members of the LGBTQ+ community feel unsafe in shelters in Cape Town because of their queer identities (Dellacroce et al., 2019). Shelters sometimes require entrance fees that people living on the streets cannot afford, impose strict curfews and schedules, sometimes make individuals more vulnerable to rape or domestic violence (Dellacroce et al., 2019), and are unwelcoming of couples (TIC, 2021). One report points to corruption in the shelter system, as the unhoused recount instances of having their food eaten by shelter staff (TIC, 2021). This is not to mention the fact that shelters offer only a temporary solution, so staying there is marked by a sense of insecurity (TIC, 2021). Women, who are disproportionality underrepresented in the unhoused population in SA (Kok et al., 2010; Makiwane et al., 2010) report experiencing physical and sexual violence in shelters (and on the street) (Dellacroce et al., 2019; Olufemi, 2000).

The unhoused are also subject to stigma and myths about them (Rankin, 2019; TIC, 2021). Notably, there is the conflation of criminality and homelessness despite evidence to suggest that this is often unfounded, except where this pertains to drug- (TIC, 2021) or vagrancy-related offences (Rankin, 2019). There is also the myth that people choose to live on the streets, implying that they ‘enjoy’ being there (Rankin, 2019). This is a fallacy because

they would almost always prefer to live with a roof over their heads then be exposed to the elements and violence in the streets, but end up on the street because of a lack of effective intervention (Rankin, 2019).

Finally, people who have experienced homelessness in Cape Town report feeling like a second-class citizen, being seen as an animal, and being reduced to the identity of a drug addict (TIC, 2021). The unhoused also report being ‘dismissed, disrespected, sent from one facility to another, or made to wait for long periods’ based on their status when they try to access criminal justice services (TIC, 2021: 179). Thus, aside from the difficulties the unhoused face as a direct result of their status, such as exposure to the elements and violence, their life stories are also misunderstood and unappreciated. These misconceptions are important to note to understand why certain policies, laws, and interpersonal dynamics between the housed and the unhoused exist and how they further contribute to their exclusion from society.

2.5 How homelessness is being addressed in Cape Town

Local government recognises that there is a homelessness problem in the city. According to Dellacroce et al. (2019), two main documents inform the City’s policy on combatting homelessness: the Street People Policy (Policy Number 12398B) and Cape Town’s Social Development Strategy, both published in 2013. The Street People Policy (‘the Policy’ henceforth) outlines the City’s understanding of and plans to address the phenomenon, clarifies the roles and responsibilities of stakeholders, and establishes and supports the Local Network of Care, which comprises of relevant stakeholders who are supposed to meet regularly, help the City to prevent homelessness from happening, and assist the unhoused in reintegrating them into their communities of origin (City of Cape Town, 2013, s 7.6). The City

of Cape Town's Social Development Strategy focuses generally on alleviating poverty, unemployment and 'social ills' (City of Cape Town, 2013a).

As noted by Dellacroce et al. (2019), the Social Development Strategy is not enforceable, and although the Street People Policy states it will be reviewed and updated every two years, it has remained untouched since its inception.[5] The lack of changes made to the Policy has led to two important reports that address its pertinence as well as more general issues around the homelessness problem in Cape Town (Dellacroce et al., 2019; TIC, 2021). These reports conclude that the Policy needs to be revised to more effectively address homelessness (Dellacroce et al., 2019; TIC, 2021). Among the issues raised is a reported lack of cohesion among NGOs, and a lack of cohesion between the City and NGOs who feel like their voices are eclipsed by larger, city-endorsed ones (Dellacroce et al., 2019). Furthermore, the report found a resistance among residents to award exemptions to the unhoused in law and policy despite the recognition that they are a vulnerable group and should be treated as such (Dellacroce et al., 2019).

Stakeholders also disagree about whether rehabilitation for substance use should come before, after, or coincide with reintegration into society in terms of intervention mechanisms (Dellacroce et al., 2019). Criticisms of the City's 'Give Dignity'[6] and 'Show You Care' (formerly 'Give Responsibly')[7] campaigns were also raised (TIC, 2021). These campaigns appeal to citizens to donate to City-approved shelters and NGOs instead of giving directly to people on the street (TIC, 2021). However, a lack of service delivery by shelters makes this an ineffective form of support and these campaigns resulted in the unhoused missing out on

[5] This holds true at the time of the writing of this dissertation.
[6] https://www.capetown.gov.za/Campaigns/give dignity
[7] www.giveresponsibly.co.za

direct aid from the community (TIC, 2021). Overall, the reports point to a complex social phenomenon that the City is struggling to address effectively (Dellacroce et al., 2019; TIC, 2021).

One misplaced method of dealing with homelessness that has garnered increased attention from government, activist organisations, and people affected by homelessness in Cape Town is unhoused people's frequent (Ballard et al., 2021; Killander, 2019) and often brutal interactions with law enforcement (Dellacroce et al., 2019; TIC, 2021). This site of interaction between agents of the law and the unhoused is the focus of this dissertation. Although the current Mayor of Cape Town, Geordin Hill-Lewis, recently spoke out against criminalising homelessness where housing, health, and economic interventions are more appropriate (Hirsch, 2022), the next chapter shows how criminalising the unhoused has a long and complex history.

3. Literature review

3.1 Criminalisation of the unhoused from an international perspective

Criminalisation of the unhoused for vagrancy-related offences has garnered international attention in, among others, the United States (Herring et al., 2020; Rankin, 2019; Robinson, 2019; SFCH, 2017; Westbrook & Robinson, 2021), Canada (Sylvestre, 2010), England (Cooper, 2017), Australia (Walsh, 2003), and on the African continent at large (African Commission on Human and Peoples' Rights, 2017). In Africa and in former colonies in other places, the laws that allow for criminalising vagrancy tend to be relics of colonialism (CDPS, 2023). These often-termed 'vagrancy' laws criminalise 'loitering, begging, sleeping and eating in public, or being idle and disorderly' among other activities (CDPS, 2023: s 2). They have been criticised for protecting 'boundaries of wealth, privilege, power, and status' rather than ensuring safety and security and, in doing so, infringe upon fundamental human rights to freedom of expression, association and public participation of the marginalised groups that they target, including the unhoused (CDPS, 2023).

Criminalising these behaviours has led to gross miscarriages of justice, perpetuates cycles of poverty, and contributes to rising global incarceration rates (CDPS, 2023). The attention that this topic has been receiving led to the publishing of the *Principles on the Decriminalisation of Petty Offences in Africa* in 2017, as well as a recent landmark ruling by the African Court on Human and People's Rights that many African Union members' vagrancy laws are incompatible with the rights to non-discrimination, equality, dignity, liberty, free trial, freedom of movement, and the protection of the family (African Court on

Human and Peoples' Rights, 2020, s 155). The discriminatory nature of vagrancy-related laws is therefore widely accepted in the literature and legislation.

3.2 Criminalisation of the unhoused in Cape Town, South Africa

3.2.1 By-laws

Criminalising homelessness in SA follows global trends, in that unhoused South Africans are frequently in contact with the law for engaging in behaviour commonly associated with living on the streets (Ballard et al., 2021; Killander, 2019; TIC, 2021). Criminalisation is achieved through the enforcement of by-laws (Ballard et al., 2021), which are local laws designed to ensure the effective administration of the municipality (The Constitution of the Republic of South Africa, 1996, s 156). Despite the language of these by-laws being 'ostensibly neutral', they disproportionately impact people living in impoverished circumstances in SA because of the behaviours they are forced to engage in for survival (Stone, 2022). Ballard et al. describe these activities as life-sustaining, or the 'bare necessities of life in public' (2021: 3). The specific behaviours that are criminalised are well-explored in the literature, as are the consequences for performing them and the unconstitutionality of this.[8]

Perhaps two of the most relevant by-laws to unhoused persons' experiences of being policed in Cape Town are the 2007 *By-law Relating to Streets, Public Places and the Prevention of Noise Nuisances* (henceforth 'Public Places By-law') and the *Integrated Waste Management By-law* of 2009 (Dellacroce et al., 2019). The former prohibits, among others, the following behaviours in public: washing oneself; urinating or defecating except in a public toilet; starting a fire; sleeping or camping overnight in an erected shelter (s 2); collecting or

[8] See among others Killander (2019), Ballard et al. (2021), TIC (2021), Dellacroce et al. (2019), and *Gelderbloem and others v City of Cape Town* (WCHC) unreported case no 8078/21 (31 March 2021).

attempting to collect money in a public place (s 3); depositing, unpacking, or leaving goods or articles lying around (s 7); and drying washed clothes or bedding (s 14) (Public Places By-law, 2007). Sanctions can be a fine and/or imprisonment for a period not exceeding six months (Public Places By-law, 2007, s 23).[9] The *Integrated Waste Management By-law* (2009) deals with the issue of littering (Dellacroce et al., 2019). The definition of littering tends to be applied to the makeshift shelters that the unhoused set up and serves as justification for their removal (Dellacroce et al., 2019).

The *Public Parks By-law* (2010) can also be employed to criminalise homelessness, as it prohibits lying or sitting down in a flower bed, on grass, and lying or sitting on a bench or at a seating place in a public park in a way that prevents others from using it (Public Parks By-law, 2010, s 11). Another by-law that is used to target unhoused persons is the *Informal Trading By-law* of 2009, which prohibits informal trading[10] from being conducted in a public park or garden that is under the control of the City, or on a sidewalk (Informal Trading By-law, 2009, s 11). It is also prohibited to conduct informal trading that physically obstructs the visibility of a display window of a business, or do so on a public road next to a building that is used for residential purposes if the resident objects to the trading (Informal Trading By-law, 2009, s 11). Staying overnight in a place or erecting a shelter in a place where trading happens and conducting informal trading in a way that 'creates a nuisance' are also restricted (Informal Trading By-law, 2009, s 12). Goods related to the trading may be confiscated and impounded

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[9] It should be noted that the by-law was amended in 2021 to stipulate that a person may only be found guilty of an offence if it can be 'proven that the person refused an offer of alternative shelter by the City' (Amended Public Places By-Law of 2021, s 22A).

[10] 'Informal trading' is defined by the City as 'the trading in goods and services in the informal sector' (s 2.14) including, but not limited to, trading on the street, in pedestrian malls, at markets, at transport interchanges or in public open spaces (Informal Trading By-Law, 2009: s 3).

for up to 30 days after the impoundment fee has been paid if the City is not confident that the offender will not re-offend (Informal Trading By-law, 2009, s 18).

The *Unlawful Occupation By-law* of 2021 dedicates a section to the identification and 'monitoring [of] land prone to unlawful occupation' (Unlawful Occupation By-law, 2021, s 7), where unlawful occupation is defined as the 'occupation of land without the express or tacit consent of the owner of the land and without any other right to settle on or occupy that land' (s 1). Some of the offences are punishable with a fine and/or imprisonment for up to two years (s 11), and the offender may have their belongings impounded (Unlawful Occupation By-law, s 12). To summarise, examining specific behaviours prohibited by by-laws is necessary in this paper to show what has historically been the focus of the literature on how the law negatively impacts the enjoyment of the unhoused of their human rights.

3.2.2 History and covert uses of by-laws

By-laws in SA have a colonial history rooted in the need to control the movement of labourers (Williams, 2016). In the Western Cape, for example, wine farmers restricted subjugated populations from exercising freedom of movement to coerce them into working in vineyards (Williams, 2016). Killander (2019) argues that these laws formed the basis for apartheid pass laws. Today, however, by-laws as they pertain to the unhoused and other marginalised groups are used more to displace poverty than to direct people towards sites of labour (Berg, 2010; Paasche et al., 2014). Poverty in Cape Town can be highly visible (TIC, 2021),[11] which is problematic for a city that heavily relies on tourism. Tourism accounted for

[11] 'Visibility' here refers to the sight of unhoused people begging at traffic lights or sleeping on pavements, under bridges, or in tents along the side of the road in business and residential areas. These are well-known images in urban South African cities.

R15 billion ($1.1 billion) of the city's revenue in 2015 (Grant Thornton, 2015).[12] Many of these tourists come from developed countries (WESGRO, 2016). The desire to displace unhoused people can therefore somewhat be explained by the City's interest in being a tourist destination that meets developed countries' standards (Berg, 2010). Furthermore, there is an often-undeserved conflation of crime and homelessness – except where it pertains to drug- and vagrancy-related offences – which incites among residents and business owners a 'not-in-my-backyard' mentality (TIC, 2021). This makes them quicker to call upon law enforcement to displace the unhoused (TIC, 2021).

Another important factor in the City's approach to homelessness is that municipalities raise on average 64 percent of their revenue and do so in part from fines for contraventions of these laws (Stone, 2022). However, the unhoused are often unable to pay these fines (Ballard et al., 2021; TIC, 2021), so more significant is the revenue that municipalities receive from ratepayers (Stone, 2022). Stone (2022) elaborates as follows:

> […] keeping ratepayers happy and having a semblance of law and order helps keep property rates up, secure foreign direct investment, and attract tourists, all of which contribute to a vibrant local economy. It's essential to financing services in the metro and maintaining the political power of those in charge.

Faced with criticisms about the role that by-laws play in criminalising the unhoused, representatives from the City have responded that the City feels caught between a rock and a hard place when it comes to addressing ratepayers' complaints about the unhoused and the demands of the unhoused and activists for the City to put in place measures that better protect unhoused people's rights (TIC, 2021). Given the history of by-laws, their discriminating

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[12] A figure from 2015 was chosen because it better illustrates this point than figures from years during dire water shortages that reached their peak in the Western Cape mid-2017 to mid-2018. Soon after this period the COVID-19 pandemic started, which also affected tourism.

effects, and compelling arguments for their unconstitutionality, activists and scholars rightly call on reviewing by-laws as the best way to help the unhoused better enjoy their human rights (Ballard et al., 2021; Killander, 2019). The existence of by-laws and the purpose they serve is therefore complex, and indicates a variety of stakeholders including local government, residents, business owners, and even tourists. Overall, this detailed review of by-laws is necessary to describe the point of departure of the literature review of this paper: the focus has historically been on revising the law to avoid human rights violations as they pertain to the unhoused. While the purpose of the present study is not to disagree with this recommendation, a closer look at how the unhoused are policed may reveal other important and perhaps overlooked aspects of the discussion. This is explored below.

3.3 Policing the unhoused from an international perspective

Policing practices are a key component to understand how the unhoused experience being policed and to what degree the law plays a part in these interactions. The literature on how the unhoused are policed in developed countries indicates that the phenomenon is far from one-dimensional. A study conducted by Sylvestre (2010) in Montreal, Canada, showed that the law was not the most important tool to regulate spaces and criminalise life-sustaining behaviour. Following the enactment of anti-vagrancy legislation in the United States, several Canadian cities passed similar kinds of legislation (Sylvestre, 2010). At first, Montreal did not pass new legislation to justify the exclusion of the unhoused from certain parts of the city (Sylvestre, 2010). Instead, to displace and punish the unhoused the police relied on existing vague legislation; ‘regulatory modifications to the status of some public places’; exclusion by architectural design; and political and private support of these methods (Sylvestre, 2010: 804).

For example, the local police adopted a policy that outlines a list of antisocial behaviour which was independent of bylaws or provincial statutes and was publicly endorsed by the City of Montreal (Sylvestre, 2010).

The city had also since the 1990s been using concrete barriers and signage to transform public spaces into parks – places where an unhoused person might feel safe sleeping in at night – so that the police could enforce curfews (Sylvestre, 2010). Additionally, the unhoused in Montreal often own dogs, so the authorities modified the by-law pertaining to animals to make the presence of a dog in a park a public nuisance (Sylvestre, 2010). An example of exclusion by architectural design was the suggestion by the then-mayor to divide public benches into three with metal armrests so that one could not lie down on them (Sylvestre, 2010). Sylvestre (2010) also found that police officers had double standards when it came to perceiving behaviour as antisocial or not, as the same interpretation of rowdy, unsightly, or uncivilised behaviour was not applied to the housed and unhoused populations (Sylvestre, 2010). Sylvester (2010: 803) concluded that the 'occupation of public spaces by the homeless [is] neither directly dictated by the law nor rel[ies] only on the law as a source of legitimacy and authority', and that this was determined rather by the endorsement of the police of political and private desires to exclude the unhoused.

A trend of campaigns that emerges from the United States are informed by 'coercive care' (Herring et al., 2020; Robinson, 2019; Westbrook & Robinson, 2021) or 'tough love' (Robinson, 2019; Westbrook & Robinson, 2021) approaches to policing the unhoused, which are given legal power through vagrancy-related laws. The terms *coercive care* and *tough love* refer to operations of fining, arresting, confiscating property, and issuing 'move along' instructions with the hope that making the lives of the unhoused harder will encourage them to

get off the streets (Herring et al., 2020; Robinson, 2019; SFCH, 2017; Westbrook & Robinson, 2021). Scholars are critical of these campaigns, arguing that regardless of whether the intentions behind the campaigns are well-meaning, making life harder for the unhoused, serves only to perpetuate homelessness (Herring et al., 2020; Robinson, 2019; SFCH, 2017; Westbrook & Robinson, 2021).

This can be explained by many factors, including the fact that being ‘moved along’ forces the unhoused away from their established communities of unhoused people in well-lit city centres to parts of town where they feel less safe, and are at greater risk of sexual assault in the case of women (Herring et al., 2020; SFCH, 2017). Valuables are often confiscated or destroyed following searches by law enforcement (SFCH, 2017). These valuables may be pivotal to unhoused people’s survival, such as identity documents or prescription medication (SFCH, 2017; Westbrook & Robinson, 2021). Fining the unhoused for vagrancy-related offences also sets them back, as they often cannot pay the fines, which can lead to a suspended driver’s license, ruined credit ratings, and disqualification from housing and job opportunities (SFCH, 2017). People living in the streets also report that the fear and anxiety of possible contact with law enforcement is detrimental to their mental health (Westbrook & Robinson, 2021). These tactics have been described as ‘punitive’ policing even where they are informed by benevolent intentions (Rankin, 2019; SFCH, 2017; Westbrook & Robinson, 2021).

Writing about policing the unhoused in the United States, Stuart (2015) challenges what he describes as a decades-long narrative of an exclusively punitive policing of the unhoused. Although not contradicting the importance of such findings, he notes that certain studies ‘complicate this narrative’ as they indicate that several American cities employ ‘more accommodative, rehabilitative, and reintegrative methods of poverty governance’ (Stuart,

2015: 944). Los Angeles is one such city (Stuart, 2015). Over the course of the 1990s, the Los Angeles Police Department established partnerships with local service providers of the unhoused, and implemented diversion programmes so that the unhoused who were arrested could avoid incarceration and fines by participating in rehabilitation programmes (Stuart, 2015).

In London, more complex dynamics between the unhoused and police were also observed: the Metropolitan police did engage in punitive policing, but the presence of charity workers encouraged a far more supportive, caring approach than the police's typical style of policing (Kyprianides et al., 2021). The conclusion was that the power of law enforcement is not absolute and can be negotiated based on who is present during the interaction (Kyprianides et al., 2021). Although research on procedural justice as it applies to a marginalised group like the unhoused is limited, Kyprianides et al. (2021) found that fair treatment by the police was seen as important because it was 'pleasant' but was not seen as essential to ensuring compliance with police orders. This was because the prohibited activities were perceived as critical to survival on the streets (Kyprianides et al., 2021). The same authors also found that the fact that the unhoused encountered law enforcement daily meant that they had developed tactics both to survive and to contest the power of law enforcement, such as giving out false identities, hiding begging cups around officers, and planning their movement based on the officers' shifts and jurisdiction (Kyprianides et al., 2021). This showed that the unhoused should not be perceived as powerless (Kyprianides et al., 2021), and do not necessarily perceive themselves as powerless (Stuart, 2015).

How the unhoused make sense of why they are policed is also of interest. In one study, participants felt that they were heavily policed because society marginalises them and that the

impetus does not originate from the police (Kyprianides et al., 2021). Furthermore, they viewed their sense of alienation as a group one, in which the unhoused constituted one group and the police the 'other' (Kyprianides et al., 2021). This is indicative of an intergroup versus interpersonal understanding of being policed (Kyprianides et al., 2021). However, there is also evidence to suggest that factors such as gender, being a mother, or coming from a 'regular' life course – no history of addiction, criminal activity, and only having spent a short time on the streets – can improve treatment by law enforcement (Stuart, 2015: 947), which adds further layers to an understanding of how and why the unhoused are policed.

Grainger (2021) provides a comprehensive theoretical framework for understanding policing the unhoused along the following three axes: *forms of power*, whether this is 'hard' power involving force and coercion, or 'soft' power involving bargaining, influence or tolerance; the *function* of the governance, whether that be to promote the independence and upliftment of the unhoused, or whether it is to solidify 'capitalist institutions'; and the *legitimacy* of the governance, whether that pertains to legitimately exercising power over the unhoused to protect them from 'life-threatening trauma' or whether it involves the displacement of the unhoused, which perpetuates social inequalities (Grainger, 2021: 3). Using these axes to locate the nature of governance of the unhoused, Grainger identified four types of governing techniques which are:

> […] punitive, coercive care, voluntary care, and disciplinary governance. Scholars have conceptualized *punitiveness* as an illegitimate act of hard power that promotes urban revitalization through forceful exclusion and seclusion of homeless people, *coercive care* as a legitimate act of hard power that coaxes the homeless to accept rehabilitative services, *voluntary care* as a legitimate act of soft power that enables the homeless to survive a traumatic life experience, and *discipline* as an illegitimate act of soft power that reproduces institutional inequities by motivating voluntary obedience [emphasis in original] (Grainger, 2021: 3).

It is therefore evident that a diversity of findings exists in international literature to classify and describe the intentions behind and nature of policing the unhoused, many of which do so from the perspective of the unhoused themselves. The question remains how the unhoused in a South African city – such as Cape Town – experience being policed and why they believe this happens. This is explored below.

3.4 Policing the unhoused in Cape Town, South Africa

3.4.1 Plural policing landscape

Another reason to expect that there may be more diversity in how the unhoused are policed is that South Africa's policing landscape is pluralised, like many African countries (Bagayoko et al., 2016; Baker, 2012; Baker & Scheye, 2007) and elsewhere (Brodeur, 2010). A divide is usually drawn between 'state' (Baker, 2012; Baker & Scheye, 2007) or 'public' (Brodeur, 2010) police and 'non-state' (Baker & Scheye, 2007), 'substate' (Baker, 2012) or 'private' policing (Brodeur, 2010). However, the boundaries between the two groups – public and private – are often blurred because the groups frequently work in tandem or perform the same tasks (Baker, 2012). Bagayoko et al. (2016) describe this phenomenon as 'hybrid' policing. State police in Cape Town include the national South African Police Service (SAPS), which deals with crime investigation (TIC, 2021), and the Metropolitan Police Services ('Metro' Police), whose mandate is 'crime prevention, by-law and traffic enforcement' and training related to 'Law Enforcement Auxiliary, Peace Officer, [and] Traffic Warden' positions (City of Cape Town).[13] Metro Police have among others, a Tactical

[13] 'Law Enforcement' is capitalised in this paper where it refers specifically to the subsidiary group of the Metro Police who are involved in by-law enforcement. Where the term is not capitalised, it refers generally to agents who enforce the law, whether they represent public, private or hybrid institutions.

Response Unit, Gang and Drug Task Team, Camera Response Unit, Video Unit, and a Closed Circuit Television Camera (CCTV) Unit (City of Cape Town). The Metro Police also state that their role includes executing warrants in support of the SAPS, focusing on detecting petty offences, and curbing anti-social behaviour (City of Cape Town), but they are not supposed to conduct crime investigations (TIC, 2021).

Although private security guards in SA do not have the same power as the SAPS, they may own a licensed firearm and use that weapon or other measures, such as pepper spray, in self-defence (Baker, 2002). Like the rest of the public, they also have the right to exercise citizen arrests (Baker, 2002). One study of the plurality of policing in Grahamstown, South Africa, found that the SAPS 'welcome[d] partnership' with private security firms, and that the same was true of security firms vis-à-vis the SAPS because it 'enhanced [their] legitimacy' (Baker, 2002: 42-3). Paasche et al. (2014) describe similar findings regarding the partnership between City Improvement Districts (CIDs) and public police. CIDs are cited as one of the main enforcers of by-laws affecting the unhoused in existing literature (Ballard et al., 2021; Berg, 2010; Paasche et al., 2014) and they are an excellent example of hybrid policing that blurs the boundary between private and public (Berg, 2010). According to Berg (2010: 290-1), CIDs:

> [...]. Security is the main service offered by CIDs in South Africa and many have hired private security companies to patrol CID spaces, thereby "topping up" policing and security provision in their designated spaces. […] CIDs were initially adopted to supplement ailing municipal services and resources so as to reverse urban decline in major city centres, including Johannesburg and Cape Town. Cape Town in particular has vested much time and energy into creating an image of itself as a world-class city.

The benefit for the SAPS of CIDs is that CIDs tend to displace and therefore concentrate crime into certain areas, resulting in a useful division of labour (Paasche et al.,

2014). The partnership allows CIDs to rely on the SAPS for immediate backup where necessary (Paasche et al., 2014). Most well-off neighbourhoods in Cape Town (and in other major cities in South Africa) have their own CID that answers to the specific needs of their community (Berg, 2010). They have risen to prominence in the last two decades (Berg, 2010). The street people who have frequent contact with CIDs officers are aware of boundaries separating private and public space and they learn to navigate these spaces in a way that agrees with CID officers: they are 'tolerated' in these spaces so long as they do not cause any disturbances when drunk, are unarmed, and do not bother the paying customers (Paasche et al., 2014). This is particularly true for suburbs in the central business district (CBD) and nearby areas (such as Woodstock and Sea Point) (Paasche et al., 2014). Other commonly mentioned suburbs that the unhoused frequent and may encounter law enforcement include Green Point, Oranjezicht, and Vredehoek (TIC, 2021).

Another body of law enforcement mentioned in the literature is groups that monitor the mountains in Cape Town and surrounds (Berg, 2010; TIC, 2021). One study refers to the 'Mountain Men' from Mountain Security Services (Berg, 2010: 294) who observe the city from high vantage points and liaise with officers on the ground, while another study references the private or contracted security firms that government agency South African National Parks (SANParks) employs (TIC, 2021). The diversity of groups who enforce the law in SA and the dynamics between these groups are important parts of the literature to consider to better inform the present study's conceptualisation of 'law enforcement'.

3.4.2 Experiences of the unhoused of law enforcement in Cape Town

While several scholars and activists have addressed the use of by-laws to justify policing the unhoused (Ballard et al., 2021; Killander, 2019), and others have described the

phenomenon from the perspective of those performing the policing (Berg, 2010; Paasche et al., 2014), there is less literature that gives voice to the unhoused themselves on the topic of how they experience being policed in Cape Town, and how this may or may not relate to by-laws. Two exceptions exist, namely The Inkathalo Conversations: Phase One Comprehensive Report (TIC, 2021) and a paper by Dellacroce et al. (2019) which evaluates the impact of the Street People Policy on the unhoused. However, these two reports did not expressly set out to address the criminalisation of the unhoused and therefore their experience of being policed. They instead sought to review more generally the policy that addresses the homelessness problem, and in doing so found that the way in which the unhoused experience being policed is in need of attention (Dellacroce et al., 2019; TIC, 2021). Furthermore, TIC remains unpublished since its inception in 2021 for unclear reasons.[14]

Among the findings that speak to the policing of the unhoused in Cape Town, Dellacroce et al. (2019) found that law enforcement did not always follow the prescribed protocol of having a social worker present during an interaction spurred by the illegal behaviour of an unhoused person. The social worker is supposed to be present to offer information about available services, and if this help is denied by the unhoused person, law enforcement may intervene by issuing a warning for a fine, then removing belongings or arresting the person if they do not comply (Dellacroce et al., 2019). In the same study, it was observed that there are significantly fewer social workers in Cape Town than unhoused people, which may account for a lack of adherence to protocol (Dellacroce et al., 2019).

The unhoused in Cape Town are accustomed to having their identity documents and personal belongings confiscated or being issued with fines without warning, having their

[14] The group was contacted to no avail with regards to why the report remains unpublished.

structures taken down, and early-morning 'raids' or 'clean-ups' (TIC, 2021: 175). They are also targeted for drug-related offences, and many expressed that they felt reduced to stereotypes of criminals, drug addicts, or threats to society by law enforcement (TIC, 2021). According to some of the unhoused interviewed for the TIC (2021), this treatment did not necessarily originate from the personal dislike of law enforcement for the unhoused, but rather from the orders given to them by ratepayers and the City.[15]

A few findings stand out when comparing studies from other countries and Cape Town. Firstly, the unhoused report receiving brutal treatment from law enforcement (Dellacroce et al., 2019; TIC, 2021). This included being slapped in the face, threatened with being sprayed with water if they did not move off the street, tear-gassed (Dellacroce et al., 2019), kicked while sleeping, and sprayed in the eyes with pepper spray (TIC, 2021). There are also accounts of corrupt policing practices, including the removal of name badges to protect their identity and make it harder to punish them for malpractice or human rights violations, and forcing the unhoused to give a portion of their earnings from informal economic sources to law enforcement to avoid harassment (TIC, 2021). CID officers, Law Enforcement Officers, and officers working for private security companies were all implicated in corrupt behaviour (TIC, 2021). There are also accounts of law enforcement targeting the unhoused for purchasing drugs rather and not dealers for selling them (TIC, 2021). The findings from these two studies speak to what happens during and the frequency with which

[15] There is also evidence of business owners who invite the presence of the unhoused in the doorways of their businesses because they protect the property (TIC, 2021). Another resident living in Sea Point fed 200 unhoused people per day for several weeks from his Mini Cooper during COVID-19 (TIC, 2021). Residents complained to law enforcement by accusing their neighbour of drug peddling. He was harassed by an officer who apparently felt that the residents were unfairly accusing the man, and his Mini Cooper was later set alight by residents who opposed his venture (TIC, 2021). This shows that some residents and business owners are more understanding than others.

the unhoused are policed. They also speak to the oftentimes violent nature of these interactions. However, these studies did not expressly set out to explore this, so further research is required.

3.5 Contribution of the present study

What this review demonstrates is that a large body of literature in South Africa has focused on by-laws as the area in need of revision to help the unhoused better enjoy their rights. The literature has examined the discriminatory application of these laws, the colonial history from which they stem, and the use of the laws today to displace poverty in residential, business and tourist areas. While the present study agrees that the decriminalisation of vagrancy-related offences is key, a closer inspection of the literature on policing the unhoused internationally suggests that other factors may be worth considering if the unhoused are to enjoy their rights and, ultimately, if homelessness is to be eliminated. These factors pertain to the nature of policing the unhoused and the underlying misconceptions about and dislike for the unhoused. Grainger (2021) offers a comprehensive axis to help understand the different ways the unhoused may be policed, while Kyprianides et al. (2021) offer nuanced perspectives of the interpersonal dynamics between the unhoused and the police. Sylvester (2010) provides insight into mechanisms not related to the law that were used in Montreal to achieve exclusion of the unhoused from public spaces.

Although the contributions of two studies on homelessness in Cape Town – by TIC (2021) and Dellacroce et al. (2019) – are valuable, they did not set out to address how the unhoused experience being policed and how they made sense of this. Rather, these findings came up as an area in need of further attention, which the present study wishes to expand on. This study therefore wishes to address this gap in the literature by offering insight into how

the unhoused experience and make sense of the experiences they have of law enforcement. It examines this topic in relation to a group of individuals who experienced homelessness in Cape Town, SA. It hopes to examine factors that may have impacted participants' experiences that may fall both within and outside of the purview of the law, as the latter could provide insight into interpersonal dynamics between the unhoused and law enforcement, and between residents who call upon the services of law enforcement and the unhoused.

4. Methodology

The participants who took part in this study are clients of Streetscapes, an organisation that provides holistic support to people experiencing homelessness in Cape Town. Streetscapes approached the University of Cape Town (UCT) Knowledge Co-Op[16] to find a student researcher interested in producing evidence-based recommendations for the organisation. The study took the form of four focus groups that took place at three different group homes belonging to Streetscapes. The participants were Streetscapes clients who have been given housing in these communal homes by the organisation. Open-ended questions were posed to groups of participants to encourage them to speak about their experiences of being policed when they were living on the streets. A pilot study was conducted with three social workers from Streetscapes to gauge how the questions would be understood by participants and what kind of data they would produce. The questions changed very little after the pilot study.

4.1 Ethics

Unhoused people are considered very vulnerable research participants because their exposed living conditions mean they are more likely to have suffered psychological trauma, physical injuries, and possibly chronic mental and physical health problems (Olufemi, 2000; Rankin, 2019). They tend to live economically precarious lives, which is certainly the case for unhoused people in SA (Makiwane et al., 2010). The ethics of my research was therefore carefully considered to avoid coerced participation.

[16] For more information visit http://www.knowledgeco-op.uct.ac.za/.

4.1.1 Ethics Research Committee and consent form

Ethics approval was granted by the Ethics Research Committee on 15 August 2022 and expires on 14 August 2023 (see Appendix B).[17] After ethics approval had been obtained, I was put in touch with social workers who regularly visit the clients at their homes. I asked the social workers to emphasise to clients that participation was voluntary and that their decision to participate (or not) would not affect the assistance they are receiving or will receive from Streetscapes. This was reiterated verbally on the days the focus groups took place and in the consent forms.

I carefully created an accessible consent form that features pictures and is written in three languages: English, Afrikaans, and isiXhosa (see Appendix C) and makes use of basic language, colour, and imagery. Participants simply had to circle responses to agree or disagree with the following requests after having considered several points: 'Do you agree to taking part in the focus group?' 'Do you agree to letting me use your story in my project?' 'Do agree to having our discussion recorded?' 'Do you agree to my keeping your stories after this project has finished?' 'Do you agree to keep your peers' words private?' There was an option to note the participant's name or signature at the end of the form. We spent a long time going through the consent forms orally as a group on the day of the discussions. After going through it as a group, I left participants to review it and fill it in, responding to questions where there were any. Participants with low levels of literacy asked me to sit next to them and go through it, and some asked me to sign for them. My isiXhosa translator was present for the duration of the focus groups to answer questions people wished to ask or have answered in isiXhosa.[18]

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[17] The ethics reference number for this project is L0003NS-2022 (see also Appendix B)

[18] Her name is Ms Mondekazi Ntshele, and she is a Master of Law student at UCT. She is bilingual in English and isiXhosa.

She also signed a form to agree to keep the contents of the discussions and the identities of the participants confidential.

4.1.2 Avoiding coercion to participate and other considerations

The only incentives to participate were the promise of pizza (which was eaten during the discussions) and the desire to contribute to research that may help people who still live on the streets. Financial incentives offered to socio-economically disadvantaged research participants is an important ethical consideration, because participants are more likely to forgo concerns they have about their well-being to obtain the reward (Viens, 2001). Following the direction of Jesse Laiten, the founder of Streetscapes, and my supervisors, we agreed to offer pizza to participants instead of a financial incentive. The pizza was enjoyed at the beginning of each focus group while the consent forms were discussed and signed. It was also made clear to participants that their participation would not incur any advantages in terms of services received from Streetscapes. Two participants decided at the consent-form phase that they did not want to participate, so they were excused from the discussion. They were still offered pizza to thank them for showing up. This group ended up consisting of only five participants. At the consent-form phase, it was also explained to participants that their peer-support specialists would be present at all times should they wish to talk to someone during the discussion.

In a less vulnerable group, informed consent might have sufficed in terms of ethical considerations. However, for such a vulnerable population there were additional practical and ethical considerations. For example, Streetscapes has clients who are currently housed and some who are awaiting housing (but receiving other services from the programme). The decision was made to include only currently housed individuals, because individuals awaiting

housing might have felt that their participation would increase their chances of or fast-track the allocation of housing. This would have also affected the data they provided as they might have thought that speaking about law enforcement in a particular way would garner favour from members of the Streetscapes staff. The sample who are housed by Streetscapes and who took part in the study are therefore a less vulnerable group than Streetscapes' clients currently experiencing homelessness. This in turn means that they were better positioned to decide whether participation was a good idea for them or not.

Another important mitigating factor was the fact that Jesse approached UCT to conduct this project. Jesse is intimately involved in Streetscapes clients' lives, so she understands their struggles and desires. She would not have approached an institution to do this project if she had thought that it would do the community more harm than good. She explicitly stated the need of the organisation for evidence-based reasons to advocate for her clients. Furthermore, the way that the Knowledge Co-Op supervised my collaboration with Streetscapes was protective of the organisation and the clients,[19] as I was not allowed to meet with Streetscapes until I was sure that I wanted to work with them.

Another ethical concern was that my research encouraged participants to talk about experiences with law enforcement that might have been traumatic for them. I mitigated this by requesting that peer-support specialists be present during the focus groups. No one made use of this counselling, and all those who began the discussions stayed until the end. This strategy

[19] The UCT Knowledge Co-Op carefully controlled the relationship between me and Streetscapes. They insisted that I was certain that I would pursue the research before putting me in touch with Streetscapes in case I changed my mind and pulled out. The three parties (the Knowledge Co-Op, me and my supervisors, and Jesse from Streetscapes) signed a Memorandum of Understanding which outlined each party's expectations and a timeline for the project (see Appendix A). One such expectation was that I would produce a policy brief for Streetscapes based on my findings in exchange for their collaboration. The Knowledge Co-Op awarded me a once-off grant to cover the costs of my research.

proved beneficial to me too. During one discussion the peer-support specialist who had been listening in on the conversation gently reminded a participant to talk about law enforcement after she began talking off topic. This improved the quality of my data.

The participants were informed that they could stop participating at any point to get up and leave. However, everyone who participated stayed for the whole discussion. This research took place during the COVID-19 pandemic (between August and October 2022). The virus may have posed a health risk to my participants and to me. Because wearing a mask was no longer obligatory in SA at the time, my participants were free to choose whether they were more comfortable wearing one during the discussion or not. No one chose to wear a mask in the end. The rooms that the focus groups took place in were large and had open windows allowing in fresh air.

4.2 Sample

4.2.1 Recruitment and justification for sample choice

Jesse Laitinen, the founder of Streetscapes, recruited the help of contracted Strategic Relationship Manager, Shelley Segal, and several social workers – who regularly visit the houses to see the clients – to spread the word about my study to potential participants. I visited the homes once each in the last week of August and the first week of September 2022 before the focus groups took place. The purpose of these preliminary visits was to introduce myself to the social workers, drop off posters advertising the project, see the space in which the focus groups would take place, and answer potential participants' questions. This took place twice during the clients' weekly community meetings with the social workers, and once when the clients were unfortunately not there. After I left, the social worker at each home gauged who was interested in participating and drafted a list of names. I requested that one group consist

only of women so that they would feel more comfortable talking about gender-related issues, and this became the first focus group. I collaborated with social workers, peer-support specialists and Shelley on organising days and times for the discussions to take place.

One could argue that Streetscapes' clients are a biased sample because membership to the programme relies on the individual's participation; in other words, the sample is not representative of the wider unhoused population because there might be a set of personality or situational traits that contributed to a person seeking help from Streetscapes. However, the safety, practical, and ethical concerns of approaching unhoused people on the streets to interview them made this an unviable option. Furthermore, the interest of this project was unhoused persons' experiences with law enforcement, which made it irrelevant as to whether they are *currently* living on the streets – it is only relevant that they *have* lived on the streets. It is also not the primary goal of this project to draw findings that are generalisable to the broader population of unhoused people.

4.2.2 Participant demographics

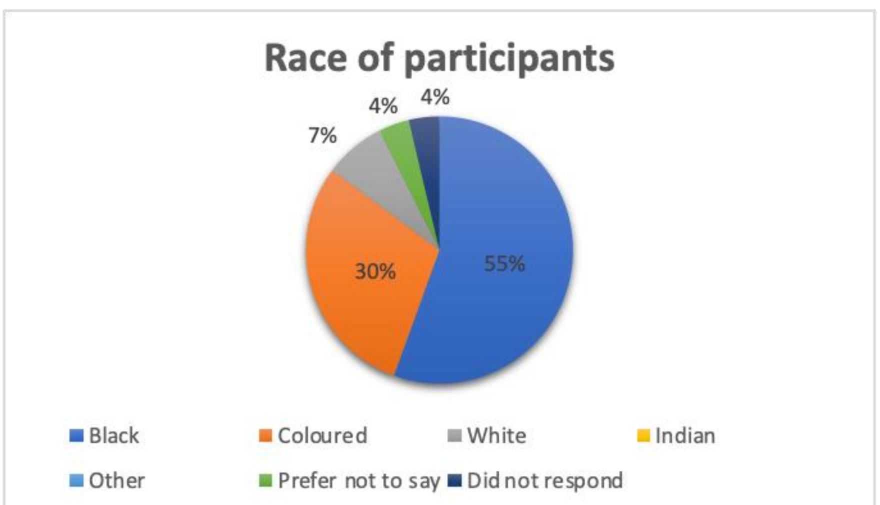
Twenty-eight adult participants took part in the focus groups. Seven participants took part in the first focus group, eight in the second group, seven in the third group, and six in the fourth group. The first group consisted exclusively of women (as per my request) while the other three groups were a mix of men and women. Participants were not asked for their names in order to protect their identities, but they were asked demographic questions relating to their age, race, and time they spent living on the street. Participants were not obliged to respond to the demographic questions, and some did not. A large range of periods was observed in terms of the longest consecutive time spent on the streets (see Table 1).

Table 1: Descriptive statistic of longest consecutive time spent on streets in years

Average	12.9
Minimum	1.5
Maximum	30.0

The most common age interval was 35 to 49 years old, and naturally, a greater number of women were represented in the sample than was expected based on the literature (Hopkins et al., 2020) because I asked for a women-only focus group. The racial demographic of participants is not necessarily what was expected, as a predominantly coloured sample was anticipated (Hopkins et al., 2020) (see Figure 1). However, the discrepancy is not significant because the sample is quite small. Furthermore, three participants did not disclose their race which otherwise may have indicated a larger proportion of coloured individuals. Nonetheless, it is not significant that the demographics of the participants indicated a larger number of black participants than was expected (Hopkins et al., 2020) because what is most relevant is that most participants were not white: the disproportionate representation of people of colour in the unhoused population can be explained by the legacy of apartheid and lack of affordable housing in Cape Town (Ndifuna Ukwazi, 2021). Finally, to reiterate an earlier point about the gender and racial discrepancies between the broader Cape Town and Streetscapes population, the goal of this project was not to generalise the findings.

Figure 1: Race of participants



4.2.3 Multilingualism and collaboration with a translator

I anticipated that my participants would speak languages other than English, including Afrikaans and isiXhosa. This was the case, and thus this research project can be described as 'cross-language' (Squires, 2009). My native language is English. I was comfortable enough in my Afrikaans abilities to introduce myself in Afrikaans and encourage the participants to express themselves in Afrikaans while explaining to them that I may respond in English and not Afrikaans. However, I was not confident in my isiXhosa abilities, so the presence of a translator during discussions was required. The word 'translator' is used in this paper in the same way it was used by de Vos and Nokele (2021) to refer to the person who helped translate consent forms (what is typically referred to as a 'translator') and the same person who translated from isiXhosa into English during the focus group discussions (what is typically referred to as an 'interpreter'). Employing the help of a translator elicits many methodological considerations: before data collection, one consideration is the credentials of the translator (de Vos & Nokele, 2021; Squires, 2008). It is recommended where possible to use a professional, certified translator, and where this is not possible someone who is a 'sociolinguistically

competent, bilingual native speaker' (Squires, 2008: 268). It is also important to consider whether the translator can exercise neutrality vis-à-vis the participants – that is, that they will not relate to the participants with prejudice (Squires, 2008).

During data collection, it is important that the translator exercises interpreter objectivity in that they should provide accurate translations and not versions of translations that they think the researcher wants to hear (Squires, 2008). It should be noted that simultaneous translation (translating 'in real time') (Squires, 2008) was not asked of the translator. Even though this seems like the ideal method of translation because it essentially entails word-for-word translation, it increases the complexity of the translating task (Squires, 2008). A student completing her Master's in Criminal Justice Social Work who has extensive experience in conducting qualitative data collection was recommended for the role of translator by one of my supervisors. However, she proved to be too busy to assist me and so a fellow UCT student, Ms Mondekazi Ntshele, who is completing her Master of Law in Constitutional and Administrative Law, agreed to assist. She is bilingual and proficient in both English and isiXhosa. She has also been my isiXhosa teacher for many months, so I am aware of her linguistic abilities and the fact that she is a kind, non-judgemental person who is well-equipped to engage thoughtfully with participants. This choice was also made partly based on convenience versus the employment of a professional translator.

In line with the question of language is the relative hegemony of English vis-à-vis Afrikaans and African languages in SA (Rudwick, 2021). English can make native Afrikaans speakers and native speakers of (South) African languages feel inferior or isolated from certain spaces because of a long and complex history of language politics in this country (Rudwick, 2021). Furthermore, language and accents are also inextricably linked to race and

class in SA (Rudwick, 2021). I present as an educated, white woman who is a native English speaker to my participants. I present as educated in the eyes of my participants by virtue of engaging with them over this study and the reason for which I am doing it (I am completing a Master's degree at UCT), and a native English speaker by virtue of my accent. My identity and language undoubtedly informed the dynamic between me and my participants, almost all of whom were people of colour and many of whom speak languages other than English. This is an important ethical consideration and methodological limitation.

4.3 Data collection and management

4.3.1 Overview

The data collection took place in 2022 in three group homes in Cape Town allocated to Streetscapes' clients by the organisation. Housing allocation takes place on a first-come-first-serve basis because there is not enough space for everyone. These are the clients' residences, so I hoped it would be a comfortable, familiar space in which to conduct the discussions. Based on recommendations made by Streetscapes founder, two focus groups took place in one of the homes in Woodstock on 31 August and 17 October respectively, one focus group in the house in Kuilsriver on 5 September, and one in the house in Observatory on 7 September. Although the social workers at Streetscapes were extremely accommodating of me and my project, it was also clear to me that they are very busy. Organising the focus groups – in particular, the fourth and final one – was not always a simple task, as it had to coincide with a time that a peer-support specialist or social worker was available on-site, my translator was available, and the participants had time off work that they do for Streetscapes.[20] Hence the

[20] The clients work on the vegetable gardens at the Streetscapes headquarters in the city centre.

fourth focus group only took place on 17 October – more than five weeks after the third focus group. Furthermore, we sometimes started the discussions late because of transport issues or disorganisation on the part of clients, who would come from work at the Streetscapes headquarters in the city centre back to the homes where the discussions took place. Not all the clients have cell phones, so it was difficult to get in contact with them regarding the reason that they were running late.

4.3.2 Data collection method

The data collection method used in this study was focus groups. Focus groups are a great data collection method for understanding group perceptions and experiences (Morgan, 1996). They rely on group interactions to produce data and are therefore a great way of understanding group consensus or diversity (Morgan, 1996). Focus groups allowed me to gain input from 28 participants on my topic, which would have been nearly impossible with an individual or group interview format given the scope of a Master's-level project. It can therefore be thought of as a 'quick fix' to achieve large volumes of data (Morgan, 1996). Conducting four focus groups also allowed me to draw conclusions based on group consensus versus having to analyse individual/group interviews and then search for commonalities (Morgan, 1996). The use of four separate focus groups also helped to triangulate findings.

After the fourth focus group I was satisfied that I had achieved data saturation. The final focus group contained only six participants because one participant withdrew at the consent form phase. This means there was slightly less data to analyse from this group compared to the others. Otherwise, the number of participants per group (7-8) worked well in terms of being small enough for me to control the discussion, but large enough to accommodate a diversity of voices. The shortest discussion was around 47 minutes long, and

the longest was around one hour and 45 minutes. The other two discussions were 53 and 63 minutes long respectively. The hope was that all the discussions would be at least one hour long, but participants felt they had nothing left to add after a certain point.

4.3.3 Focus group questions

The discussion of the groups was prompted by what would be described by Patton (2002) as an interview guide:

> An interview guide lists the questions or issues that are to be explored in the course of an interview. An interview guide is prepared to ensure that the same basic lines of inquiry are pursued with each person interviewed. The interview guide provides topics or subject areas within which the interviewer is free to explore, probe, and ask questions that will elucidate and illuminate that particular subject. Thus, the interviewer remains free to build a conversation within a particular conversation (Patton, 2002: 343).

While the same guide was used for the first two focus groups, it became clear by the end of the second one that a question needed to be added asking participants about their experiences of Strandfontein during COVID-19 because participants were very eager to speak about it. This was added to the list of questions that were posed to the next two groups. Each question was open-ended, except the first question (‘Did you have experiences of law enforcement when you lived on the streets?’). This is in line with the aim of qualitative research, which seeks to limit the ‘imposition of predetermined responses’ through using closed questions (Patton, 2002: 353). A truly open-ended question evokes a salient response from the participant that *they* feel best describes their thoughts, feelings, and opinions (Patton, 2002). The focus of this research was on the experiences of the unhoused of law enforcement as told by them, so the use of open-ended questions that get to the heart of their understanding of their experiences was indispensable. These types of questions tend to begin with ‘how’ or ‘what’ and avoid eliciting dichotomous responses of ‘yes’ or ‘no’ (Patton, 2002).

The first question (the only one eliciting a dichotomous response) aimed to establish whether participants had in fact encountered law enforcement when they lived on the streets, after which questions about the events leading up to, nature and consequences of the interactions were asked. The open-ended questions were as follows: 'What kinds of things happened when law enforcement came up to you?' 'How did this make you feel?' 'What reasons did they give for coming up to you?' 'How did these experiences affect you?' 'How do you think the law enforcement sees what they're doing?' 'Where does this happen the most in Cape Town?' 'Which group of law enforcement do you think bothered you the most?'

4.3.4 Data management and analysis

The discussions were recorded using my laptop's built-in recording application and plug-in microphone. My cell phone recorded at the same time as a back-up measure, and I used Otter.ai[21] so that the discussions were automatically transcribed. The sound quality was better in the laptop recordings, so these files were imported into Otter.ai and transcribed automatically, after which the two transcriptions were compared and revised in consultation with the audio. All transcriptions are kept in a password-secured online folder in my university OneDrive account. Participants were given anonymous identifiers in the transcriptions to ensure confidentiality.[22] Data was analysed using a thematic analysis approach and coded in NVivo. Thematic analysis can be defined as a 'method for systematically identifying, organizing, and offering insight into patterns of meaning (themes) across a data set' (Braun & Clarke, 2012). This was an appropriate method of data analysis

[21] https://otter.ai/

[22] They are numbered according to which participant they were in which focus group. For example, 'P1.2' signifies participant two from focus group one. This is sometimes used to refer to individuals in the findings chapter of this paper.

because the interest of this study was the experiences that were common to participants (that presented themselves as 'patterns' in the data) as well as those that may not be common (the absence of a pattern).

4.4 Methodological limitations

I was limited by certain weaknesses associated with focus groups as a data collection method. These included the fact that group dynamics sometimes result in conformity and polarisation where this would not necessarily be the case for another research method, like individual interviews (Morgan, 1996). Another weakness of focus groups is they can lead to the projection and relative silencing of certain voices (Morgan, 1996), which at times seemed the case during the discussions. A concerted effort was made to encourage quieter people to speak more, and chattier people to give the quieter ones a chance to speak. However, the challenge remained that one does not know if a participant's silence indicates a lack of commentary, or if they could not speak up because they were overpowered by stronger voices (Morgan, 1996). At one point a peer-support specialist assisted me in this regard when a participant who had been speaking for a long time began talking off topic. In addition, the UCT Law Faculty Research Ethics Committee advised me to try and achieve discussions that were at least one and half hours in length. However, only one discussion was this long as participants grew tired or felt like they had nothing left to add.

Another limitation concerned multilingualism in Cape Town. Although I introduced myself in Afrikaans and explained to participants that they could speak to me in Afrikaans and that I would reply in English, participants may have felt less comfortable expressing themselves in this language because they could tell that I was not completely comfortable conversing in it. My isiXhosa translator gave a summarised version of participants' words to

me, so it is possible that I missed out on meaningful word choices and phrases because I relied on someone else's interpretation of the participants' words. In fact, after the first group I had the impression that participants said a lot more than she had translated and asked her from then onwards to translate in greater detail for me.

The translator understood and did adjust her translating style going forward, but also explained to me that she felt that the participants were repeating themselves. She said that this is a linguistic idiosyncrasy of isiXhosa speakers, hence her summarised translations. Even if this is the case, it may have been noteworthy in and of itself that participants repeated certain things, which I did not pick up on during the discussion and therefore could not probe into any further. On the other hand, she is perhaps culturally closer to the participants than I am and was right to summarise the way she did. Having a translator present may have also prevented the natural back-and-forth exchange of normal conversation, because the need to pass through the translator disjoints this. More generally speaking, my identity as an educated, white, English-speaking South African woman may have impacted the participants' comfort and therefore the data they provided.

Finally, my findings are not generalisable to the broader population of unhoused people in SA as I worked with persons who were unhoused in Cape Town. This was not the intention of the study, however. I was also limited by the fact that my sample was conveniently chosen. I was also limited by the role of the gatekeepers, in particular the social workers, who organised who would participate in the research. The role of the various social workers in the organisation may have attracted or deterred certain participants based on their relationship to or knowledge of them. For example, clients in one house may have a good relationship with their social worker and be more willing to participate because they wanted to

please him or her. Another consideration is that perhaps social workers knew which clients have the strongest opinions about law enforcement, and they may have encouraged those people to participate so that the organisation can reach certain advocacy goals. Finally, the total number of participants (28) was relatively small, which limits the depth of the findings. None of these limitations were fatal, as many of my findings corroborated those from a similar, larger-scale study (TIC, 2021), which shows that the sample size may have been large enough.

5. Findings

5.1 Overview

This project aimed to understand the nature of and perceived intentions behind the policing of the unhoused according to the unhoused. Almost all of the 28 participants who participated in this project had interacted with law enforcement during their time on the street. Participants implicated a range of policing institutions as well as suburbs in Cape Town where this happens. By-law enforcement was indeed a cause of great harm, and some participants mentioned specific by-laws that law enforcement enforced. However, the elaborations of these exchanges also revealed that, in addition to experiences directly arising from the enforcement of by-laws, some policing practices had nothing to do with by-laws. Participants also had various views about the politics behind the policing of the unhoused, and clear ideas of how homelessness should be dealt with. They were very complimentary of the holistic support they had received from Streetscapes.

Participants are numbered using 'P' for participant followed by the focus group they belong to and the first time they spoke during the discussion. For example, a participant from the second focus group who was the first to speak would be numbered 'P2.1'.

5.2 The enforcers of the law across Cape Town

The first step towards understanding the policing of the unhoused in Cape Town is to sketch a landscape of the 'who' and 'where', and to determine whether these factors influenced the nature of policing.

5.2.1 The enforcers

Participants implicated a range of groups of law enforcement who police the unhoused. These groups straddle categories of private security, public policing, and hybrid forms of policing, such as private security officers acting on behalf of CIDs. The participants named private security firms Byers Security, Phangela Group and Professional Protection Alternatives (PPA), as well as neighbourhood watch groups, such as Devil's Peak Vredehoek Neighbourhood Watch (DPVwatch); and groups who police the mountains.[23] In terms of state police, participants mentioned both the SAPS and Metro police, including the traffic law enforcement subdivision. The fact that traffic law enforcement was involved was a source of incredulity to P3.2 (focus group 3, participant 2) because the reasons for the interactions had nothing to do with traffic law.

Although it was explained to participants that the terms 'police' and 'law enforcement' could be used interchangeably to refer to all types of law enforcement (i.e. public, private, and hybrid), the participants generally used 'law enforcement' to talk about Metro police, private, and hybrid forms of security, and 'police' to talk about the SAPS.[24] In other words, they distinguished between the SAPS and other types of law enforcement. This sometimes happened because participants were less certain about distinctions within the groups who were not the SAPS, but more certain when they were speaking about the SAPS. This is understandable given the blurry boundaries that separate policing institutions and the work they perform in SA (Baker, 2002). Although participants described scenarios in which it was

[23] It was unclear who exactly these groups are, but previously literature indicates that it could be the 'Mountain Men' who work for Mountain Security Services (Berg, 2010) or contracted security officers working for SANParks (TIC, 2021).

[24] Sometimes participants made clear that they were referring to Law Enforcement – capitalised here where it refers to law enforcement of the Municipality of Cape Town.

evident that the SAPS was collaborating with smaller-scale law enforcement groups, they generally viewed the SAPS as less involved in policing them than other groups. One exchange went as follows:

> TRANSLATOR
>
> What about the police officers?
>
> P1.3
>
> The police officers never disturb us – only for crime. When there's something [that] happens. They come to our places and they ask [pretending to be officer pointing to photos], "Who's this? Who's this?" "Who's this?" If they know the people […] they […] say, "You and you, […] come out."
>
> ME
>
> So that's [the] SAPS?
>
> P1.3
>
> Yes. […] I'm not gonna lie about the police. […] But law enforcement… yoooh!

Among the groups seen as distinct from the SAPS ('law enforcement'), no one group was singled out as being the 'worst' in terms of how they treat the unhoused although participants were not always certain with which entity these individuals were affiliated. The distinction between the SAPS and all other groups of law enforcement seemed to stem from the view that the latter group performed work following the instructions of smaller-scale players such as the City of Cape Town and its residents, versus instructions from higher-level government issued to the national SAPS. The comparative lack of involvement of the SAPS in policing the unhoused is also expected based on their mandate, which is to conduct crime investigation and not petty crime enforcement (TIC, 2021), whereas the mandate of Metro Police focuses on policing petty crime (City of Cape Town). Overall, participants implicated a range of groups, including Metro Police, private security acting on behalf of CIDS, and

officers working for private security companies, as expected based on the literature (TIC, 2021). Knowing who exactly performed the policing could be the focus of a future research project, as this may be important to understand dynamics between officers and the unhoused.

5.2.2 Dynamics between different groups of law enforcers

Participants expressed different opinions about the relationship SAPS had with other law enforcement groups. Participant 3.3 stated that private security and state security do not ‘get along’. However, other participants pointed to a partnership between the two groups. Participant 4.4 said, ‘When [the SAPS] pick you up, law enforcement is also there. And then you end up with the SAPS. […] Because most of the time on the ground it's law enforcement’. When questioned about who he meant by ‘law enforcement’, P4.4 first said ‘City Police’ and another participant volunteered ‘Metro Police’ to which P4.4 did not object. But later, P4.4 implied he thought it had been officers from private security company, Phangela. He was uncertain because he found the uniforms similar. If it was Metro police, this would corroborate the Metro Police’s mandate of collaborating with SAPS but focusing their efforts on by-law enforcement (City of Cape Town), and if it were officers from Phangela or Cape Town CID,[25] it would corroborate literature on the partnership SAPS has with private security companies (Baker, 2002; Paasche et al., 2014).

A participant from another focus group (P3.1) explained that the fact that private security does not have detention facilities means that they rely on the SAPS to use their facilities and thus reinforce their legitimacy. Participant 3.5 stated that complaints lodged with the SAPS by the unhoused about law enforcement are rarely followed up on and other

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[25] More commonly known as CCID.

participants in the group murmured in agreement. Participant 3.5 implied that this happens because the SAPS and law enforcement are 'one in the same'. Thus, some participants spoke to a collaborative nature between the SAPs and other law enforcement groups which corroborates findings from previous literature (Baker, 2002; Paasche et al., 2014), while others pointed to tensions among the groups. This also shows that participants felt that there are similarities in the way they are treated despite the law enforcement groups being different.

5.2.3 Distribution of interactions across Cape Town

Participants indicated that encounters with law enforcement happen all over Cape Town. They mentioned suburbs in central Cape Town as well surrounding areas, such as Zeekoevlei and Stellenbosch. In terms of the centrally located suburbs, Sea Point (specifically near the tennis courts) and Camps Bay were mentioned. Participant 4.4 said that law enforcement's approach is worse in these areas compared to the CBD: in Camps Bay the unhoused are told that they do not belong, whereas in the CBD law enforcement conduct searches and issue 'move along' instructions, but the approach tends to be less harsh. Participant 4.4 was perhaps implying that Camps Bay is relatively wealthier and so the unhoused are less tolerated in this space than the CBD. Participants even mentioned specific streets and markers in the CBD, such as Bree Street and the taxi rank and bridge near the Castle of Good Hope.

As found previously (Berg, 2010; TIC, 2021), participants from three groups mentioned that they stayed in the mountain because they felt safe there. Participant 1.3 said they stay in the mountain as a way of being respectful to the community because there they are 'out of the way' there. However, it also came up that they frequently encounter law enforcement in the mountain. Law enforcement told them to put out fires that they use to

prepare food, and they experienced search and seizure operations in the mountain. Participants also mentioned being policed in Vredehoek and Walmer Estate, suburbs located on the mountain slopes in Cape Town. Someone said that he had had all his belongings confiscated in Wynberg. Participant 3.3 said that the law enforcement in Woodstock is ‘nice’, but at another point spoke of having his mattress, blanket and other belongings confiscated while it was raining in June in the same suburb. It is therefore clear that the unhoused experience being policed all over Cape Town, although the severity of the approach may vary according to the suburb in which the interaction took place (e.g. CBD vs Camps Bay) and based on who is on duty (one participant had both positive and negative experiences of being policed in Woodstock, although it is unclear why this was the case).

5.3 Interactions arising directly from by-law enforcement

As indicated in the existing literature (Ballard et al., 2021; Killander, 2019), participants were targeted for petty offences prohibited by by-laws in an unjust and often harmful way. Participants were told to move, received fines or were arrested for sleeping on the street or in public parks, for engaging in informal trading, or for cooking using an open flame. Participant 1.4 specifically mentioned the *Public Places By-law* of 2007, and P3.3 mentioned the *Integrated Waste Management By-law* of 2009 and *Informal Trading By-law* of 2009. This shows a consciousness on the part of participants about which laws are used to justify policing them, and corroborates previous findings that these by-laws lend themselves to an over-criminalisation of the unhoused.

5.3.1 Fines and arrests

Perplexed and frustrated, P3.6 said the following about fining and arresting the unhoused for petty offences:

> Tell me, how many people are you going to arrest? How many people are you going to give […] fines [to]? You're going to fine them for being homeless! […] Where do you think those people are getting jobs? Opportunities? Are going to get that money [to pay for fines]? I think this whole thing is creating more crime than solving the problem. Because homeless people; they got stigma already. They are stigmatised... Those talks, like, "You had a choice." "You did this to yourself." They don't know […] what happened to your life – what made you […] become […] homeless […]. There's trauma there. There's psychological issues.

Participant 3.3 echoed this opinion about the viciousness of the cycle of fine giving:

> […] [t]here is no place to stay, we only had blankets. We had to start over, and you are facing the same situation over and over. You are given […] fines... 300 fines! Out of the blue for violating the public space. "You need to go to court." Which we didn't care [about] because we knew we're not working.

Both these participants speak to the fact that paying fines was inconceivable to them because they were not earning any money. Receiving fines several times a month – even several times a week – came up in all groups, and participants reported fines ranging from R200 to R800 in value. One woman (P2.1) received an R800 fine for informal trading relating to the selling of bracelets, and another (P3.3) said an officer threatened him with a fine of R500 for flicking a cigarette butt onto the ground.[26] In two focus groups, participants spoke about being arrested for petty offences, such as urinating in the road. Participant 4.4 explained how he had been arrested for drug possession and how his criminal record prevented him later from registering as a social auxiliary worker.[27] Overall, participants were very clear that they found the system of fining and arresting the unhoused for petty offences to be unfair, impractical and detrimental to their mental health, as being harassed and threatened with financial punishment is a stressful experience.

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[26] It is unclear as to whether this fine was actually issued or if there was simply the threat of a fine.
[27] The participant claimed to have only been in possession of drug paraphernalia, however.

5.3.2 Demolitions, raids, and possession confiscation

In all groups, participants spoke of having tents, blankets, and mattresses confiscated during clean-up operations. Participant 2.1 said:

> […] [officers] are starting to take your tent […] … the blanket everything, your house must be must be taken to throw it away I don't know where they put it – the tent – I don't know. The clothes […]. They are taking the ID, [medication]… everything.

This confiscation of possessions has important consequences for unhoused people. Participants said that it was difficult to look for work without their ID. Participant 4.1 mentioned asking law enforcement if he could keep a document certifying his ability to work on boats, but they refused.

The participants did say that law enforcement has become more conscious of allowing participants to keep their belongings than before, as their main goal is to take down their tents and structures rather than to confiscate personal items. However, this does not matter if the unhoused are not present during the operations, in which case law enforcement will remove everything, as described by P3.2 as follows:

> [T]hey will throw everything [away], doesn't matter if your personal things are in [the tent]. I mean, like, your ID, stuff like that and you [have to keep] it in the same place, because where [else] you gonna put it?

Participants expressed a deep sense of frustration and pain at having to continually rebuild their lives after having acquired a new blanket, tent, mattress or other personal belongings. The confiscation of property and excessive arresting and fining with severely negative consequences for the lives of the unhoused has been noted in connection with by-laws in the SA literature (Killander, 2019; TIC, 2021) and in other countries (Herring et al., 2020; Robinson, 2019; SFCH, 2017; Westbrook & Robinson, 2021). It is therefore clear that

some of the interactions that participants had with law enforcement arose directly from the officers' mandate to enforce by-laws, and that these occurrences were devastating to the unhoused because they had everything owned taken away from them, including identity documents, which are necessary to obtain work or government aid. The next section of findings elaborates on interactions that cannot be explained by this mandate.

5.4 Negative experiences of being policed unrelated to the enforcement of by-laws

Although by-laws clearly featured in participants' stories, another key theme that came up was brutal treatment by law enforcement. The accounts of brutality would certainly be classified as illegitimate acts of hard power as per Graigner's (2021) model of policing the unhoused. These actions appeared unrelated to the enforcement of by-laws and wholly related to a willingness to use violence. Participants also spoke of humiliating and dehumanising experiences that cannot be explained by law enforcement's duty to enforce by-laws. Furthermore, participants witnessed corrupt policing practices, and practices they felt were unjust or in conflict with their conceptualisation of the law. These too cannot be explained by a mandate to enforce by-laws, and although they do not speak to a model of policing directly related to the unhoused, the participants felt that they impacted their ability to survive on the streets and made them critical of policing institutions.

5.4.1 Violence and the threat of violence

Physical violence and the threat of violence were defining characteristics of interactions with law enforcement across all focus groups. Being kicked, slapped, and beaten up were all cited, and many participants mentioned that this was used as a way for law

enforcement to wake people up while sleeping, sometimes in conjunction with pulling blankets off them. Participant 4.4 said that 'the more you explain [yourself], the more you get a beating'. Participant 4.1 echoed this:

> [Law enforcement says to us,] "You smoke drugs here. Why aren't you going back to your home?" [They] didn't give you time to explain them what is your situation, why you are on the street, why you been living like this [sic]. They never care about it. All what they do [sic] ... they beat you up, that's all.

He also commented on anticipating sore ribs the next day after being kicked in the chest by law enforcement officials wearing boots, implying that he was lying down when this happened. Participants in two different focus groups mentioned having been pepper sprayed by law enforcement. Participant 4.4 said that this happens if you try and 'talk back' to law enforcement, while P2.6 stated that it happened because two law enforcement officers were drunk when they approached him to tell him to move. They pepper sprayed him when he asked them if he could brush his teeth before moving.

Participant 3.1 said that he was shocked that law enforcement had used pit bulls when they searched him and other unhoused individuals, describing them as a 'dangerous' breed of dog. He would have been a young adult during apartheid and described the way in which law enforcement behaved as with the 'spirit of apartheid', which can be understood as definitively violent. Another older participant (P3.3) stated that law enforcement speaks to them in Afrikaans – reminiscent of Afrikaans-speaking apartheid police – even though the officers are black. Two focus groups alluded to the killing of 38-year-old Dumisani Joxo in 2022 by 22-year-old Luvolwethu Kati, a City of Cape Town Law Enforcement officer (Damons, 2022).[28]

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[28] According to witnesses, Joxo had been boiling water over an unprotected flame outside in Rondebosch to prepare his meals for the day when either Kati or his colleague kicked the pot over (Damons, 2022). An argument ensued, and Kati shot Joxo in the mouth (Damons, 2022).

Violence was therefore a defining characteristic of interactions that participants had experienced with law enforcement.

5.4.2 Humiliation, dehumanisation, and profiling

Another theme that emerged was the perceived intention on the part of law enforcement to humiliate. Participant 2.4 told the story of being caught drinking on the streets and being put in the back of a law enforcement van. In the van were bottles of wine, and the officials told the participant to drink them. At first, he was happy to do so, but after he began drinking the officers drove and braked suddenly so that he splashed wine onto himself. This went on for some time until they let him go, totally inebriated. When asked why he thought they had done this, P2.3 cut in to say 'to humiliate you'. Participant 2.1 described how difficult the COVID-19 lockdown measures were for the unhoused and that if law enforcement caught you wandering in the road and you could not show them evidence of a structure or place you were sleeping, they would force you to do push-ups in the road.

Participant 3.3 described walking in the opposite direction to an officer on the pavement. He knew there was not enough space for them to walk past each other and that one person would have to step into the road to allow the other to pass. He described feeling indignant that the officer was walking so proudly with his chest out. The participant decided to remain on the pavement. When they passed each other 'shoulder to shoulder', the officer shouted at him, demanding to know why he did not move when he could see that the officer was walking towards him. The participant described suddenly 'seeing stars': the officer had hit him in the face. He fell down and began apologising profusely to the 'boss' for fear of further reprisal. He felt incredibly angry, but knew that law enforcement officers 'always win, whether they're right or wrong' because they are 'bigger'. He fantasised about having hit the

officer back and running away, stating that a moment like that is one you never forget – a moment when someone ‘misuse[s] the[ir] power’.

Participants felt particularly angry about the timing and way in which they were woken up. Participants lamented that the issue was not the fact that they were woken up so frequently by law enforcement, but the abrasive way in which law enforcement did this. In all of the focus groups they mentioned that searches, demolition or ‘wake-up’ operations would typically happen in the early hours of the morning, between one and six o’clock. According to P3.1, being woken up:

> […] come[s] only during the night. And it comes unexpectedly. When it comes, you must know you're going to be naked […]. “Take off your trouser! Take off your clothes! Take off everything!” Even though ladies are there... “Yoh, take off! And don't look at my face. Don't look at my face!” […] You're going to be kicked in your head, they gonna *stomp* you like a snake.

This practice corroborates previous findings (TIC, 2021), and the feeling among participants was that these operations were not only conducted to prevent people from sleeping in public spaces, but purposeful in their timing because of how much of a disturbance it is to be woken up in the early morning. Later P3.1 said, ‘If the law […] work[s], why [doesn’t] it work during the day?’.

Similar comments about the timing of demolishing structures were made, which one participant said tends to happen right before rain is expected. Another said that wintertime is law enforcement’s ‘favourite time’ to exercise demolition and confiscation of property.

In the focus group consisting only of women, the women described the embarrassment of being woken up or forced out of their structures even when they were naked. One woman (P1.4) stated that law enforcement sometimes takes pictures of the scene despite the nudity of the women. Another woman (P1.2) described once taking off all her clothes in protest to

embarrass the law enforcement official: 'I took off all my clothes. I said, "What do you want from us? Take everything. Take!"' While this story is not an example of intentional humiliation by the police, the women's humiliation at police interference is palpable. A sense of humiliation was also expressed by P3.1 when he recounted experiences of officers helping themselves to the food he had cooked for himself. The participant implied that officers take what they want from the unhoused, and that this entitlement felt degrading.

Another very common theme was the degrading language the participants used either to describe how they felt law enforcement saw them, or the language law enforcement actually used to talk about them. Many participants said they thought law enforcement perceived them as 'stupid'. In all the groups, participants commented on being made to feel less than human. Participant 3.3 said, '[Law enforcement officers] forget that we are also human. We're human beings. We were born the same way that [that] person was born.' Another (P3.1) questioned why officials who can easily dehumanise people are in a line of work in which they interact so much with people:

> […] how do you treat th[is] person [like that]? Is that the same way as you want to be treated? Those are the basic of human […] relation [sic]. […] This police and this securities, they've got no human relations [sic]. Then how can they work with humans? Then they must work somewhere with machines […].

Several participants stated that law enforcement saw them as 'animals'. One participant (P1.3) who had spent time living in the mountains around Cape Town said that law enforcement called them 'baboons' and P3.3 said they get spoken to like they are 'dogs'. Participant 3.3 encapsulated this as follows:

> Law Enforcement treat people who stay outside like they're *dom* [stupid] people. You see they forgot we went to school also, even though we never finished school. They forgot that we came from families. We're not animals. So... because they have

> this power in their position, they think they can *stomp* [step on us] … they can stumble on top of us. They forget that... also we are human.

Participant 4.2 said that if you appear clever and knowledgeable about the law, then law enforcement will treat you better. From a different group, P3.3 expressed a similar idea when he mentioned that speaking ‘proper’ English was a protective factor. Later, however, the same participant said that acting ‘smart’ could also increase your chances of getting a beating. In two focus groups, participants mentioned feeling stereotyped as drug addicts, and how this status meant that law enforcement did not think that they owed them any respect. Similar comments were made in two focus groups about law enforcement assuming the unhoused were involved in criminal activity, like breaking into cars. Participant 3.3 said, ‘Homeless people are being treated like criminals. […] In their mind, we are criminals. We will always be criminals.’

Another participant (P3.2) used the word ‘abusive’ to describe law enforcement and many participants pointed to a general attitude of disrespect. Participant 4.4 said that in the eyes of law enforcement, the unhoused are always ‘in the wrong’. In a different group, P1.3 said that whenever something is ‘going wrong in the country’, the unhoused are blamed for it. They also mentioned that their complaints were not taken seriously by the SAPS when they went to report offences that had been committed against them. As soon the SAPS heard that they sleep on the streets, they were turned away, implying that they are discriminated against based on their unhoused status. Finally, P4.4 recounts meeting with law enforcement on behalf of Streetscapes to discuss an issue related to people living on the streets. He came across an officer whom he recognised from when he was on the streets, but the officer did not recognise him. He noted that now that now he was off the street, the officer treated him with greater respect. This points to a potentially discriminatory attitude of the officer based on this

participant's status as unhoused. Overall, participants reported being treated with a total lack of respect and being actively humiliated by law enforcement. This cannot be explained by enforcing by-laws, and speaks rather to the views of the unhoused of individual officers of the unhoused as people who are underserving of humane and respectful treatment.

5.4.3 Corruption

Participants in one group had an extensive discussion about the unfair policing practices applied to drug dealers or 'merchants'. They described scenes of officials watching them go over to dealers to purchase drugs, and then being arrested immediately afterwards while the dealers were not. Participant 3.2 suggested that the officers were bribed to turn a blind eye. He said that he knows a particular drug dealer who always leaves his drugs in the same place for his buyers to pick up, and that law enforcement is aware of this. Thus, according to him, the only logical explanation for why the dealer is not apprehended is bribery. He even accused law enforcement of collusion with drug dealers.

Another participant (P4.1) believes that CID officials are bribed by criminals to do nothing when they observe car break-ins. In a different focus group, preferential treatment of foreign unhoused people bothered South African participants. They believed this happened because foreign nationals have no choice but to bribe law enforcement to ensure their survival. Participant 2.5 stated that he was simply not willing or able to bribe officers. Participant 3.3 said: 'Remember, even when it comes to violence, they [law enforcement] are very smart […]. They will never beat you where there's [a] witness.' He also said that law enforcement colleagues protect one another if they commit acts of violence by refusing to divulge evidence in court that will implicate one another. This may implicate a system of corrupt practices in

which officers protect one another and their interests at the expense of the unhoused. These corrupt practices certainly fall outside of the realm of by-law enforcement.

5.4.4 Deceitful tactics and using the unhoused to work against the unhoused

Participants told stories of feeling deceived by law enforcement. One woman (P1.3) explained that upon request she had given her personal details to an official who claimed he was collecting information for a census on unhoused people. After giving her his details, she realised he had taken them to give her a fine of R300. Others in the same group discussed whether they gave their real names, something that came up in one study as a mechanism for the unhoused to reclaim a sense of their power by using deceit to defend themselves (Kyprianides et al., 2021). One participant (P1.4) said she never gave her real name because law enforcement is always trying to 'dirty' their names. In response, P1.3 said that she always gave her real name because receiving a fine was meaningless to her as she knew she could not pay it. Participant 1.1 noted improved treatment by law enforcement because of recent court proceedings about the unfair criminalisation of the unhoused.[29] However, she felt that this change was only for appearances, and that law enforcement had developed more deceitful tactics such as planting litter in and around their structures to justify by-law enforcement. In two groups, participants mentioned that law enforcement turns their name tags around so you cannot see their name, or removes them entirely, which constitutes a concerning attempt at evading accountability.

Participants were disdainful of how law enforcement gets groups of unhoused people to help them with their demolition and clean-up operations. They surmised that law enforcement get unhoused people to do this against their 'own people' either by promising

[29] She was probably referring to *Gelderbloem and others v City of Cape Town* 2021.

them money, allowing them to keep the belongings they collect during the operations, or as a way of evading the law. They also mentioned that law enforcement confiscates things and asks other unhoused people to resell them. Once again, these are not behaviours that can be explained by a mandate of enforcing by-laws, as it is not written in the law that officers may trick people into giving them personal details nor set people up for contravening by-laws.

5.4.5 Behaviour in conflict with perceived conceptualisation of The Law

In one focus group, there was a lengthy discussion about how law enforcement officers do not embody law and order. Participant 3.1 felt that their use of force and lack of explanation of the laws they are enforcing was contradictory to how the law should unfold:

> Why is it so many police […] are so much in enforcement, whereas they don't know about this “enforcement”? […] They don't know how to use [the law]. They say “law enforcement” but they perform “people” enforcement. They don't use the law. There's no law... because they push people – then that's “people enforcement”, because they don't come to you and say, “The law says...”

Participant 3.1 who went so far as to say they felt that law enforcement is waging a ‘war’ against unhoused people. He was also incredulous as to why the unhoused are so frequently harassed at night. Another participant (P3.3) said that law enforcement should be more strategic about dealing with unhoused people who are being difficult or unreceptive, instead of resorting to violence:

> So, if you're dealing with homeless person now, maybe he's having an attitude, you must know how... you must know a way how to come in. […]to [get] what you want in the right manner without using that force. But them, yoh – law enforcement. How [can you] use force on a homeless person?

Participant 3.2 played with the syllables of the phrase ‘law enforcement’ to express a similar idea: ‘Law en*force*ment... […] [as if a superior was speaking directly to officers] ‘Guys, forget those two, three [syllables], just focus more on the *force*.’ That is what I think.’

As mentioned earlier, the legitimacy of Metro Law Enforcement was challenged when compared to the SAPS. The following quote exemplifies this:

> That's why I'm saying here in Cape Town, it's confusion of Law Enforcement and the police. For example, Law Enforcement, does [it] have prison? Do they have [a] police station or Law Enforcement police station? What do they call it? "Law Enforcement police station"? It doesn't exist. […] They've got no way to arrest the person too. Because the police, […] they take you and put you in the van. […] [T]hey say, "There is a prison there! That's the jail!" [Laughs]. But the Law Enforcement, they don't have anything. That's why they are thugs (P3.1).

Describing officers as 'thugs' is clearly contradictory to the role that they are supposed to play as agents of law and order. Another participant (P3.2) who had previously worked in the private security sector and whose brother worked in the SAPS reflected on his insider-outsider perspective. He felt like he could never go back to working in the private security industry because he knows that they plan operations to target spots frequented by the unhoused. He described the behaviour of his brother, who confiscated alcohol and money for his personal use, and evaded the law when pulled over for drinking and driving by flashing his badge to the traffic officer. The participant concluded that people who are supposed to embody the law sometimes act like they are above it.

Thus, to summarise this sub-section, it is clear that participants had violent, humiliating, and dehumanising experiences of law enforcement that cannot be explained by a mandate of enforcing by-laws. This violence and disrespect are in total contradiction to a 'coercive care' (Herring et al., 2020; Robinson, 2019; Westbrook & Robinson, 2021) or 'tough love' (Robinson, 2019; Westbrook & Robinson, 2021) approach to policing the unhoused. The same came be concluded about the corruption and deceitful tactics that participants reported witnessing.

5.5 Evidence of a caring approach

Although the negative accounts of experiences with law enforcement – including violence, humiliation, corruption and deception – were numerous, the narrative was complicated by accounts of kind treatment by officers. Some of this treatment may be classified as 'coercive care' in cases where officers encouraged participants to go to shelters, 'voluntary care', where officers accompanied the unhoused to shelters and insisted that they be seen to, and 'discipline' where negotiations were made to get the unhoused to adjust their behaviour (Grainger, 2021).

5.5.1 The role of the SAPS

Some participants had experienced better treatment from SAPS than from members of other law enforcement groups, while others described receiving bad treatment from both. Participant 2.4 that the SAPS would sometimes let her sleep in the police station. Another (P.13) said that SAPS do not disturb them unless they require intelligence for an investigation into a crime. One participant spoke about receiving caring treatment from the SAPS when he was a child living on the streets. The SAPS took an interest in the reason he was on the street and were concerned that he was a child without a home. This continued until SAPS found out that he had been lying about his parents being dead. The idea that different social identities receive different treatment from law enforcement has been explored in literature from abroad (Stuart, 2015). The same participant summarised his positive encounters with law enforcement as follows:

> When they come, and they told me about shelters. They told me about many things. […] [T]hey told me what I can do but then I didn't do it. I keep on smoking drugs and they told me what is gonna happen with me if I'm going to keep on going into the wrong places. […] [T]hey allowed me to take my blankets and go, you see.

This participant implies that it was his fault that his life unfolded the way it did, because he had received advice from the police as a child and did not follow it. These examples show that the unhoused have had a range of experiences of the SAPS, including positive ones.

5.5.2 Receiving advice and assistance

In all focus groups, participants mentioned receiving advice from law enforcement, specifically about going to shelters. Participant 3.1 told the following story:

> The Cape Town police will come to you. They've got cameras. They can look at you [for] many days, you don't know. […] They call you to their room – there is a room in Sea Point there. They say, "Man, just come with us." They buy lots of food [for you] to eat with them. […] In that room, there is a control room. They show you [the video of you]. "Long time you're wearing that clothes. […] We see you always here. […] What's going on? Do you need a place to stay?" You say, "Ja, eish, eish." […] Then they take you to Haven Night Shelter. That time, Haven Night Shelter was R7. They say "This person is an emergency, let this person stay here."

This shows evidence a caring approach on the part of law enforcement. However, many recounted the encouragement to seek shelter with a sense of frustration – and even sarcasm – because of a lack of understanding of law enforcement about the reasons the unhoused do not use shelter facilities. Participant 1.3 said, 'That's all they know when they come to us – the shelter', implying that not only was the advice unhelpful, but it was also the only form of caring advice they received from law enforcement. In terms of why they did not make use of shelters, they mentioned that are often full or unaffordable and only provide temporary relief from being on the street, which can be anxiety-inducing. Participant 3.1 mentioned that he avoids shelters because he has picked up lice before from staying in one.

Another participant's (P1.2) frustration arose from encounters with law enforcement in which shelter was used as a bargaining chip – if the participants agreed to go to the shelter,

law enforcement would look into finding them permanent jobs. The participant said two years would pass of seeing the same officer over and over, and when questioned about their promise, they would respond, 'We're still working on that'. Nonetheless, participants were acknowledging of the softer side of some officers and the kind treatment they had received at times. Participant 3.3 said, 'I want to say something. You know, law enforcement […]. Not all of them are bad.' Furthermore, it is certainly not law enforcement's fault that shelter facilities are not adequate.

5.5.3 Negotiations, warnings and improved adherence to protocol

One male participant (P3.3) commented on how law enforcement will sometimes send female officers in to discuss things with the unhoused women. He felt that their gender made them better suited to negotiate without having to resort to the use of force, and that this in turn allowed the unhoused to convince the officers to let them save their belongings from confiscation. He went so far as to say that the officers and the women became 'friends'. He also said that a proportion of officers (both male and female) are kind and tend to warn the unhoused of planned demolitions and raids to give them time to hide their belongings. In another group, P2.7 commented that treatment by law enforcement has improved since they no longer go straight into demolishing structures:

> Ja, they're better than they used to be because they don't [break] the people's houses now. They come with their papers and they're taking the people's identity numbers and the names and area where they're from. So, we dunno what's gonna happen, but I saw them doing that in the back with the people here. They don't break down the houses anymore.

These accounts of kind, considerate and non-violent approaches to the unhoused show that they do not perceive law enforcement as uniformly violent and unfair. This complicates

the narrative and shows that officers make individual choices about how to perceive and approach the unhoused. Once again, this is independent of a mandate of enforcing by-laws.

5.6 Perceived politics around who initiates the policing of the unhoused and why

When asked why they thought law enforcement was so involved in their lives on the streets, participants had a variety of responses that signalled a complex web of stakeholders, including the local and national government, residents' desires and approaches to the unhoused, and the officers as a group entity.

5.6.1 The City, The Government, The Residents, and The Officers

Many participants felt that it was the City's fault that they were policed, as they viewed the City as the one who issues the instructions. Participant 3.3 said that law enforcement and the City are 'one thing', even calling the City 'two-faced':

> City of Cape Town tells law enforcement what to do and then when the homeless people report about what the law enforcement is doing and then the City of Cape Town are like […] shouting [at] law enforcement but they are the one who told the law enforcement to do that!

This participant goes on to implicate residents:

> […] the people who are behind that, the mistreatment of people who are staying outside, is [sic] those people in these suburbs. Because they have the power. They've got money. […] They have the resources. They can make calls.

He thus finds the City and residents to be more at fault than law enforcement. His comments show how he absolves law enforcement of responsibility to some degree. Another participant (P1.5) felt that law enforcement simply misunderstood the unhoused and that this

could be fixed with open communication: 'I wish we could have a meeting with the law enforcement, because they don't know the way we feel about them.' Some participants felt the real problem was the residents who called upon the services of law enforcement. Others said that said that the residents are kind to them, and one participant said the residents even bring them food. Participant 1.3 specifically compared the kindness of the residents of suburbs on the mountain to the mountain 'rangers' who harass the unhoused. She said the residents were her 'buddies', and the only time they had an issue was if she and her friends were drunk and being loud in the street, in which case the residents would ask them to keep it down. These examples illustrate the complicated, changing relationships between unhoused people and the residents they encounter.

Participant 3.1 implied that law enforcement simply has nothing better to do than harass the unhoused because the wealthier parts of Cape Town do not have that much crime. The same participant stated that law enforcement wants them to disappear because international tourists may find the sight of the unhoused unpleasant, as would be expected from the literature (Berg, 2010):

> They [law enforcement officers] say, "This people [sic] are touring and then they can't see you sleeping here in the streets. You must *fok* [fuck] off here in the street because there is decent people [sic] from Germany; they're going to pass here."

He also addresses the issue of gentrification and how the City wants to displace the unhoused to other cities in the Western Cape to allow more foreigners to buy property in Cape Town. Some of these views place the unhoused squarely in one category, and law enforcement in an opposing group category, which reflects a finding of Kyprianides et al. (2021) pertaining to the unhoused in London.

Participant 3.1 pointed to corruption in the Department of Social Development, calling it the ‘biggest mafia’. One participant (3.3) implied that the system of fining and criminalising the unhoused is used as a way for government to account for irregular spending of its budget, saying that government claims to need money to fix ‘the damage […] caused by homeless people’. Participants expressed a feeling that the Department of Social Development and government at large have failed them for not providing housing, job opportunities and other meaningful interventions. They were incredulous as to why law enforcement was so involved in unhoused people’s lives, calling for psycho-social intervention instead. They were also confident in their belief that they should be able to engage in the same activities as the housed population, like drinking alcohol, and felt that it is not fair that they are punished for doing it in public when they have no other choice:

> I have friends that are still on the streets. So, I go and visit them […].Where must they drink. Where? Because they are staying there. They are sleeping on the road and drinking there in their structures. The law enforcement will come and […] take the alcohol away […]. Where must they enjoy themselves? Because it's their home; it's where they belong (P1.3).

Participants were dumbfounded that law enforcement and the government would deal with them the way they did considering how difficult their lives were on the street. Participant 3.6 summarised this by saying that not only are the experiences with law enforcement traumatic, and not only do most of them have trauma from their lives before they began living on the street, but their trauma is compounded by life on the street. These views show a diversity of opinions about who initiates policing of the unhoused, the dynamics between the implicated groups, and why the unhoused believe they are policed. They also show that many participants feel that it is unfair that they are policed for the behaviours that they engage in, and that homelessness is not being adequately addressed by government structures.

5.6.2 Effective intervention provided by NGO, Streetscapes

Without prompt, all groups expressed deep gratitude towards Streetscapes for the help it has provided them. Participants felt that this form of assistance was long-term and meaningful compared to the fleeting and not-so-well-tailored assistance they received from shelters. They pointed out that the way in which they are policed does not to help them off the streets, especially when compared to Streetscapes' interventions which have greatly improved their lives. They described Streetscapes as a 'home' versus a place of shelter, and a place where participants feel they belong. One participant (P2.6) said that Streetscapes focuses on equipping them with life skills so that they can one day look after themselves. He eloquently expressed the type of assistance that unhoused people are looking for, saying the unhoused are a creative people willing to do artisanal work, and who are simply searching for a 'passion'. He also criticised how giving people temporary housing does not help people to achieve independence, as would be the case with job provision.

A participant from a different group (P3.3) criticised the funding that law enforcement receives, suggesting it would be better spent on building homes for the unhoused. He comments that all that the unhoused want is a roof over their heads and a job, no matter the pay. He says that these two things give an unhoused person confidence: 'He can walk among the people, he can go to ATM, he can go to a shop, without asking […] someone [for] something. Confidence: it's enough.' This is testament to the assertion that policing the unhoused is not the best way to reduce homelessness. The participants' comments about Streetscapes also show that non-governmental intervention can be more effective than government aid.

5.7 Summary of findings

Findings were certainly not uniform in nature. Participants implicated a variety of groups who enforce the law upon them, differentiating between the SAPS and all other law enforcers, including Metro Police, CID officers and private security officers. Participants indicated that they were policed all over Cape Town and surrounds, and mentioned that some of this policing arose directly from the enforcement of by-laws. By-law enforcement entailed excessive fining, arresting, property confiscation and destruction. Participants also gave detailed accounts of the violence, humiliation, and deceit that they had been subjected to by law enforcement. Furthermore, they witnessed corrupt policing behaviour that negatively impacted on their ability to survive on the streets. They nuanced these comments by recounting officers and residents who treated them with kindness and respect, stating that these experiences improved their quality of life on the streets. Finally, they had many diverse and insightful perspectives about who gives instructions to police them, why they think this happens, and what interventions they believe are more appropriate than policing to address homelessness.

6. Discussion, conclusion and recommendations

6.1 Discussion

This current study built on previous research that suggested that how the unhoused are policed in Cape Town is an area in need of attention (Dellacroce et al., 2019; TIC, 2021). These findings indicate that many groups including Metro Police, private security firms, and hybrid law enforcement structures, are involved in policing the unhoused. This happens all over Cape Town and surrounds. Some of the findings corroborate the literature's call for a revision of by-laws, as they form the legal justification for policing the unhoused for vagrancy-related behaviour (Ballard et al., 2021; CDPS, 2023; Killander, 2019). Participants in all focus groups expressed confusion, frustration, or anger over the fact that they had had such frequent and often violent interactions with law enforcement when they were living on the street because of how difficult their lives had been to begin with. They felt that government aid and psycho-social support should be the first port of call. Thus, this study joins the critique of the use of by-laws to criminalise vagrancy-related behaviour and reiterates that they pose a barrier to unhoused people's enjoyment of their rights. However, other findings in this study point to factors outside the purview of the law – like the beliefs of law enforcement officers and residents about the kind of treatment that the unhoused deserve – that need attention if an understanding of how the unhoused are policed is to be reached.

The unhoused in this study reported not only being subjected to the letter of the law, but also being victim to uncalled-for physical violence and the threat of violence, experiences of being intentionally humiliated and spoken to as though they were less than human, and being witness to and victim of corrupt and unjust policing practices that negatively impacted their ability to survive on the streets. While these kinds of interactions have been noted in

previous literature on policing the unhoused in Cape Town (Dellacroce et al., 2019; TIC, 2021), the present study adds another overarching interpretation of this, namely that these interactions cannot be explained by a mandate of enforcing by-laws. Being beaten and kicked while lying down, being forced to drink wine and having it splashed on you, and being slapped for not making room on a pavement for an officer walking past are incidents that have nothing to do with by-law enforcement. Similarly, it has nothing to do with by-laws when officers reportedly accept bribes from drug dealers to instead focus their attention on the unhoused. Participants also reported that operations in the early hours of the morning were not only conducted to prevent people from sleeping in public spaces, but purposeful in their timing because of how much of a disturbance it is to be woken up at this time. These actions point to a mentality that the unhoused are underserving of just and humane treatment.

Thus, if the treatment of the unhoused by law enforcement is to be improved, by-laws cannot be the only area that receives attention. One study conducted in Montreal showed how the law was not a necessary tool to achieve exclusion of the unhoused from public spaces (Sylvestre, 2010). Things like architectural design and regulatory modifications of spaces were mechanisms used by local authorities and enforced by police to displace the unhoused (Sylvestre, 2010). The public and government supported these campaigns, which gave impetus to how they played out (Sylvestre, 2010). This study provides an important reading of the way in which the unhoused may be excluded from society in Cape Town even if by-laws are reviewed. In other words, if there is an underlying public and political desire to displace the unhoused, the City of Cape Town may find other means to do so that are outside of the purview of the law. This will perpetuate the problem of homelessness and do nothing to improve unhoused people's enjoyment of their rights.

Accounts of kind treatment by individual officers and groups of officers – such as being engaged in negotiations with the unhoused about their lifestyle, having shelters suggested to them and being accompanied to the shelter, and being warned of raids and demolitions to come – corroborate these findings, as they show that the unhoused are not uniformly confronted with violence, disrespect, or are disregarded by law enforcement. The variation in treatment shows that individual officers and groups demonstrate agency in how they enforce the law and how they interact with the unhoused. Two participants provided accounts in the present study that indicate that certain identities, like being a woman or a child, may improve the dynamic between law enforcement and the unhoused, something that is noted by Stuart (2015). Similarly, accounts of the behaviour of residents were varied. Some participants pointed to kind treatment and symbiotic living, while others saw the residents as the root of the problem because they call upon the services of law enforcement. This has been touched on in previous literature (TIC, 2021) and confirms the assertion that residents form part of the ecosystem of the policing of the unhoused and play an influential role in whether this policing happens in the first place and, where it does happen, whether it is humane or not.

Some aspects of the policing of the unhoused in Cape Town can fall into many categories ranging from punitive, coercively caring, and disciplinary in nature (Grainger, 2021). Grainger (2021: 3) defines punitive policing of the unhoused as ‘act[s] of hard power that promote [...] urban revitalization through forceful exclusion and seclusion of homeless people’, which is similar to other studies conceptualisation of coercive care’ (Herring et al., 2020; Robinson, 2019; Westbrook & Robinson, 2021) or ‘tough love’ (Robinson, 2019; Westbrook & Robinson, 2021). Other findings of this study show that for some of the unhoused in Cape Town, law enforcement employs a policing style falls totally outside of

categories of ‘punitive’, ‘tough love’, or ‘coercive care’ policing, as the interactions are characterised by violence and intentional humiliation. The same can be said for the corrupt and unjust policing incidents that participants described that negatively impacted their ability to survive on the street.

Participants expressed varying opinions about the intentions behind and explanation of the nature in which they were policed. Law enforcement’s disdain for them and willingness to use violence were mentioned, but local and national government and residents were also involved. While this broader context has been expressed in earlier work (Dellacroce et al., 2019; TIC, 2021), it stresses that more complex interests than a simple dislike for the unhoused on the part of law enforcement are at play when it comes to policing the unhoused. Residents and government have their own agendas and misconceptions about homelessness and are in a position of power to do what they like where it pertains to the unhoused.

6.2 Conclusion

The current study joins the critique of the use of law to criminalise the unhoused as an inappropriate and ineffective method of addressing homelessness. Too often in SA the law and the police are called upon by residents and politicians to fix problems that have nothing to do with safety and security. The policing of the unhoused is no exception, as evidence suggests that homelessness requires multidisciplinary interventions: it does not suffice to give someone permanent housing, as many people who end on the street also require mental and physical healthcare, job opportunities, and perhaps other forms of assistance. Chapter 2 of the current study reflects the complex causes of homelessness and the challenges the unhoused face, hence the complexity of solutions to the problem. Furthermore, the current study echoes

other literature that found that applying the law and law enforcement to the homelessness problem does little to reduce rates of homelessness.

The core question of this research was how the unhoused experience and perceive being policed in Cape Town. The findings suggest that factors outside of the law must also be considered. An over-emphasis on the law ignores the nuanced interpersonal dynamics that exist between law enforcement and the unhoused. Sometimes participants blamed individual officers for having a personal dislike for the unhoused and a concerning willingness to use violence against them, while other times they did not blame law enforcement for treating them unfairly and rather criticised players like the City of Cape Town and its residents who call upon the services of law enforcement. A simple conclusion such as 'all law enforcement officers treat the unhoused badly', or 'all the unhoused blame the government for the fact that they are policed with force' therefore cannot be drawn.

A consideration of how residents, law enforcement officers, and politicians view the unhoused is important because the law is not the only tool to exclude the unhoused socially and physically. If residents and business owners want to displace the unhoused from public spaces, and if there is political will that supports this and can order law enforcement officers to perform policing function, a review of by-laws may have limited benefit in SA as new mechanisms will arise to displace the unhoused. It is for example possible that decriminalisation of vagrancy-related behaviour will be replaced by a greater reliance on drug-offence enforcement among the unhoused. Ultimately, what influences the use of the law against the unhoused are underlying beliefs that the unhoused are less-than and that the law can effectively reduce homelessness. The 'Give Dignity' and 'Show You Care' campaigns conducted by the City are excellent examples of a lack of understanding of how the unhoused

need to be helped, why they ended up on the streets, and the role that residents and shelters should play in their lives. These misconceptions and negative beliefs need to be challenged at an individual and community level.

6.3 Recommendations

The main recommendation of this study is to frame the review of by-laws as only one of several steps needed to improve the enjoyment of the rights of the unhoused. The City, residents, and business owners must challenge themselves and one another on misconceptions about homelessness and the unhoused, including a conflation between being unhoused and being criminal, and thinking that the shelter system is effective. There is great resistance towards creating exemptions for the unhoused in law and policy, despite their being signalled as a vulnerable group (Dellacroce et al., 2019). This must be interrogated at community and institutional level. It is also fundamental that homelessness be seen not as a problem to be solved by law enforcement as it is not an issue of safety and security. If this is acknowledged, then it logically follows that it is unacceptable that there are not more efforts to provide shelter and work, as well as health and psychological interventions, to the unhoused. The City of Cape Town's Street People Policy notes that social workers are supposed to be the first port of call when an unhoused person is approached on the street, but there is a lack of capacity. As pointed out by Dellacroce et al. (2019), SA therefore needs more social workers who are trained in how to approach the unhoused.

Of course, like any other citizens, the unhoused may engage in non-vagrancy-related criminal activity, and law enforcement should be trained to treat the unhoused with the same respect that they would apply to the housed population when it comes to crime prevention and investigation in these instances. The SAPS should also be taught to treat the unhoused the

same as housed citizens when the unhoused make complaints of crimes committed against them. This study also raised many questions that should lead to further research on the topic: the participants were not always sure who was enforcing the law upon them, so work that could clarify this would benefit the literature. More empirical work is needed to assess the effectiveness of the shelter system and the conditions in the shelters, as well as the effectiveness of alternative NGO programmes such as Streetscapes. Furthermore, research on the ways in which the unhoused are excluded from public spaces that are unrelated to the law would be useful to show examine whether the law is the only factor that prevents the unhoused from enjoying their human rights. Research into how stereotypes and misconceptions held by officers, residents and politicians of the unhoused would also greatly benefit the literature.

Finally, in line with the goal of this dissertation which was to give voice to the unhoused themselves, participants were very vocal about who needs to be doing more to better help them. They criticised the shelter system as being an unsatisfactory temporary solution, and suggested job provision as a better way of equipping the unhoused with life skills and money that they may use to uplift themselves. By comparison, they were extremely complimentary of Streetscapes, a holistic source of (non-governmental) aid. Government and residents should therefore look to support organisations like Streetscapes that provide more than just shelter to the unhoused. As explored in the background section of this paper, homelessness is not caused nor characterised by a simple lack of housing. Most of the unhoused require other forms of support.

The unhoused expressed this in this study – they know what kind of intervention they need, and they should be listened to in this regard. Thus, putting the issue of law enforcement

aside for a moment, there is evidence that the system as a whole is faulty and that the unhoused are an authority on the best ways to improve how they receive assistance. Ultimately, residents, the local government, NGOs, and, of course, the unhoused themselves all want the same thing: to eliminate homelessness. This should encourage collaboration and open communication among all stakeholders.

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Appendices

Appendix A: MoU with Streetscapes and Knowledge Co-Op

MEMORANDUM OF AGREEMENT (#590)

Made and entered into by and between

Khulisa Social Solutions,
A registered Non-Profit Organisation, 057-406-NPO
Herein represented by Jesse Laitinen in her capacity as Strategic Partnerships Manager, and she being duly authorized thereto

(hereinafter referred to as "the Organisation")

And

THE UNIVERSITY OF CAPE TOWN THROUGH THE UCT KNOWLEDGE CO-OP
A university established in terms of the Higher Education Act, 1997, and the statute of the University of Cape Town, as published and gazetted on 24 January 2020 in Government Gazette No 41, 42967 herein represented by Jessica Senekal, in her capacity as Contracts Manager and she being duly authorized thereto, having its principal place of business at Bremner Building, Lower Campus, Lovers' Walk, Rondebosch, 7700, South Africa

(herein after referred to as "**UCT**")

(Hereinafter collectively referred to as the "Parties" and individually as the "Party")

PREAMBLE

Whereas UCT Knowledge Co-op is a unit within UCT which works in partnership with communities to address development challenges. The unit aims to make it easier for community partners to access UCT's skills, resources and professional expertise and works by matching community groups with academic partners in a collaboration that meets the needs for research or practical support identified by the community group;

And Whereas the Organisation is a non-profit that aims to enhance social services to homeless children, youth and families, with an orientation towards crime reduction has identified the challenge of documenting experiences of homeless persons with law enforcement in Cape Town;

And Whereas the Parties wish to establish an arrangement to govern the relationship between them on the basis of the terms and conditions contained hereinbelow.

1. **Definitions**

   In this Agreement, unless clearly inconsistent with or otherwise indicated by the context, the definitions set out hereinbelow shall apply:

   1.1. "Agreement" means this memorandum of agreement between the Parties captured in this document, together with any annexures, which are incorporated herein by reference.

   1.2. "Commencement Date" means 26 April 2022 notwithstanding the date of last signature hereto, provided that ethics approval has been obtained where required;

   1.3. "Intellectual Property" means intellectual capital relating to the Project in the form of any and all technical or commercial information, including, but not limited to the following: specifications and formulae; data, systems and processes; production methods; trade secrets; undisclosed inventions, financial and marketing information; as well as registered or unregistered intellectual property in the form of patents, trade marks, designs, know-how and copyright in any works, including literary works or computer software programs;

   1.4. "Project" means the research to be undertaken towards the case study entitled: "What are homeless people's experiences of being policed in Cape Town?" as set out in more detail in the brief description attached hereto as Annexure "A";

   1.5. "Knowledge Co-op Representative" means Barbara Schmid;

   1.6. "UCT Academic Supervisors" means Prof Kelley Moult, Associate Professor in the Department of Public Law, UCT and Dr Anine Kriegler, Post-Doctoral Fellow and Research Associate, Centre for Criminology, UCT.

2. Purpose

With the support of the Organisation, Ms Jo Ackermann who is enrolled for the degree of MPhil in Criminology, Law and Society (hereinafter, "the Student"), shall conduct research towards the Project under the academic supervision of the UCT Academic Supervisor. The Student is undertaking the Project primarily as a learning experience and is not able to offer advice as an expert on the matter to be researched.

3. Duration

3.1. The Project will commence on the Commencement Date (see clause 1.2 above) and shall endure until 31 May 2023.

3.2. The Parties may extend this Agreement if required by mutual agreement in writing.

4. Nature of the Partnership

4.1. The use of the term "partner" in this Agreement is not intended in a way that implies the creation of a legal partnership, joint venture or any other kind of legal entity between UCT and the Organisation in order to implement the proposed Project. It is rather used to express a partnership in which both Parties have equal status.

4.2. The Parties are entering into this Agreement on the basis that they are equal partners who bring different and yet complementary strengths to the tasks of the Project.

4.3. The Parties commit themselves to the common goal of achieving the objectives of the Project to the standard acceptable in the academic field. Their relationship in implementing this Project will be underpinned by principles of transparency and trust.

5. Roles and Responsibilities of the Parties for the Project

5.1. Student tasks:

- Share the draft research proposal with the Organisation for comment.
- Conduct field work and write a dissertation.
- Intermediate reporting (2-monthly).
- Share findings with the Organisation via a copy of the dissertation, a presentation to study participants and a policy brief.

5.2. The Organisation tasks:

- Introduce the Student to stakeholders.
- Advise on the selection of participants for the Project.
- Provide access to secondary data including publications, existing programme implementation documents and reports, as needed.
- Provide feedback and comment at times during the research process.

5.3. Knowledge Co-op tasks:

- The Knowledge Co-op Representative will introduce the UCT Academic Supervisor(s), the Student and the Organisation to each other and mediate the process towards completion of the Project.
- Disseminate outputs from the Project.

6. Finances

Unless expressly otherwise agreed upon in writing, there shall be no consideration payable by either Party for the performance of work by the other Party under the Project and each Party shall be responsible for procuring its own funding and paying its own costs incurred in respect of the Project.

7. Confidentiality and disclosure of information

7.1. Neither Party nor their respective employees, consultants or agents shall disclose, use or make public, any information or material acquired or produced in connection with or by the performance of this Agreement, other than in the performance of their respective obligations under this Agreement, or as required by law, without the prior written approval of the other Party, which may not be unreasonably withheld.

7.2. The Parties intend that the provisions of this clause shall be binding on them and shall survive the termination or expiration of this Agreement.

7.3. The Parties agree that any person interviewed during the course of the Project will be advised of the nature and consequences of the Project and will thereafter complete and sign an informed consent form before any interviews commence.

8. Intellectual Property and Publication

8.1. Each Party shall retain all rights to existing Intellectual Property owned by it at the commencement of the Project arising under this Agreement. The rights to any Intellectual Property created by the Student during the course of the Project period shall be vested in UCT.

8.2. The Parties agree that the products of this process stipulated above (Clause 5.1) will be made available to the public on the UCT Knowledge Co-op website under a Creative Commons licence.

8.3. The Student is to be first author on any publications coming out of or making use of the data unless by prior agreement from all parties involved.

9. **Dispute Resolution**

Any dispute, arising from, or in connection with this Agreement shall first be resolved by the Parties through the process of negotiation or mediation and if the dispute cannot be resolved, then the dispute shall be referred to the Arbitration Foundation of South Africa for resolution.

10. **Service of Required Legal Notices**

Any notice or communication associated with the performance of this Agreement required to be given under this Agreement shall be deemed made if given by registered or certified mail, postage prepaid, and addressed either to the stipulated legal address given below or to such other address as may hereafter be specified in writing by the Parties:

If to UCT:
Attention: The Director
Research Contracts & Innovation
University of Cape Town, Allan Cormack House
2 Rhodes Ave, cnr Main Road
Mowbray, 7700

If to the Organisation:
Attention: Strategic Partnerships Manager
3rd Floor, 'Norlen House',
17 Buitenkant Street
Cape Town, 8001

11. **Covid 19 and necessary adjustments**

The Parties acknowledge that performance of the Project under this Agreement may be affected by the Covid-19 pandemic. Performance of the Project may be delayed and/or only partially performed as a result of this ongoing health crisis. Such disruptions in performance may relate to governmental or regulatory actions or directives, internal rules and policies, as well as other factors arising from the pandemic including but not limited to reduction in or re-deployment of available personnel, closure of facilities, or shortage of resources. The Parties will keep each other reasonably apprised of such circumstances and agree that failure to perform or reasonable delays in performance as a result of such circumstances will not be deemed a breach of the Agreement. To the extent applicable, the Parties will work together in good faith to alter the requirements and schedule of the Agreement in a reasonable and equitable manner.

12. General

12.1 No alteration, variation, addition or agreed cancellation of this Agreement shall be of any force or effect unless reduced to writing as an addendum to this Agreement and signed by the Parties or their duly authorized signatories.

12.2 No indulgence, leniency or extension of time which any Party ('the grantor') may grant or show to the other shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

12.3 If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall remain in full force and effect without the invalid or unenforceable provisions.

THUS DONE AND SIGNED AT Cape Town ON THIS 3 DAY OF June 2022,

for and on behalf of **the Organisation**:

Name: Jesse Laitinen Signature: M Laitinen

Read and acknowledged:

Student Ms Jo Ackermann	13 June 2022	[signature]
Academic supervisor A/Prof Kelley Moult	9 June 2022	[signature]
	Date	Signature

THUS DONE AND SIGNED AT Cape Town ON THIS 19th DAY OF May 2022,

for and on behalf of **University of Cape Town**:

Name: Jessica Senekal Signature: JC Senekal

Annexure "A"

Title of the study/research question

What are homeless persons' experiences of being policed in Cape Town? A collaborative study with Streetscapes.

Background

It is disputed whether law enforcement activities have a positive impact on problems of urban homelessness and on the lives of homeless people. I am interested in the day-to-day experiences that Streetscapes' clients had with law enforcement when they were living on the street. I use 'law enforcement' to refer to any kind of private or public body responsible for enforcing by-laws and laws in the Municipality of Cape Town. This includes SAPS, Metro Police, and CIDs. I am interested in:

- **Who did the policing**? Policing practices may vary between different agencies. The literature (and the Streetscapes manager) indicate that SAPS are less involved in the practice than local forms of law enforcement, especially CIDs. If the clients are not sure, as per our discussion, this is not a problem. I am also interested in **where** this happened in Cape Town, as this might tell us something about differences between the territories that CIDs govern.
- What do Streetscapes' **clients perceive to be the intentions of law enforcement** in policing them? There are questions about why and in whose interests people experiencing homelessness are policed. Are law enforcement trying to help homeless people, protect citizens or commercial interests, or keep their area looking clean and respectable? Are they 'following orders', did the clients feel they had a personal dislike for them, or is there another explanation? What were the clients doing when they were approached by law enforcement? I expect to hear about 'contraventions' of by-laws in this regard, which would support a growing body of literature on the injustice of the criminalisation of vagrancy-related behaviour.
- **What is the atmosphere of the interactions**? The literature indicates that law enforcement gets to know people living on the street on a first-name basis because of the frequency of interaction. Does this mean the interactions feel familiar; an inconvenience more than a scary experience of being reprimanded by the law? How are the clients spoken to by law enforcement?
- **What happens during the interactions?** There are many different ways in which law enforcement can respond to an incident, which could affect homeless people in different ways. Do they culminate in an arrest or fine, or simply in 'moving the clients along' in a way that displaces them momentarily? In other words, did the clients move back to the spots they were told to move from after law enforcement left? There is evidence in the literature that this is sometimes the case. Additionally, I want to know if their person or belongings were searched by law enforcement. What was their experience of this? Was it invasive? Did they feel it was gratuitous? Were their belongings confiscated and why did law enforcement say they were doing this? What kinds of belongings were confiscated? If something like your ID was taken away from you, it would have serious implications for your daily life.
- **What were the repercussions of these interactions?** Did they change how the clients navigated the streets? Did they 'encourage' them to seek formal sheltering, or did they make the process of seeking help even harder?

Methods

Main participants (Streetscapes' clients)

I propose 4 focus groups of 6-8 people, likely held in July (or as soon as UCT ethical clearance is granted). This means a total of 24-32 client participants. I am hoping that the participants will be as representative as possible of the homeless population in Cape Town. In other words, they accurately reflect the demographics of the broader population in terms of age, race, gender etc. Kelley has suggested that one focus group consists of women exclusively so that they feel comfortable talking about gender-related issues.

The focus groups will be conducted at Streetscapes' homes for their clients in Woodstock and in Kuilsriver. The focus group questions will be semi-structured - I will follow a plan of questions (as outlined below) but probe further when interesting things come up. To encourage participation and thank them for their time, the discussions will take place after or during a meal of pizza (or any other type of meal as per Streetscapes' recommendations and within our budget). Each focus group will take up to 1 hour. With the permission of the participants, the sessions will be recorded for transcription and analysis.

Peer-support specialists

I would like to get any number of the peer-support specialists involved. I am hoping that the peer-support specialists will be present during (but not participating in) the focus groups. This will be beneficial to both me and the clients: for the clients, it is important that there is a distress protocol if any difficult feelings or thoughts come up during the discussion. The peer-support specialists could be someone that the clients turn to if they are feeling overwhelmed or want to pull out of the study. They might not feel comfortable telling me directly. The presence of the peer-support specialists will put me at ease in case I lose control of the conversation or if I myself start feeling overwhelmed. If, for example, the participants become distracted, I think that being asked to focus by the peer-support specialists is more appropriate than if being asked by me. If necessary, they may also be able to help with translation.

Questions for the focus groups

- Did you personally encounter police or security officers when you were living on the street?
- Why did the officers say they were approaching you?
    - Do you know who they worked for?
- What did they say and do during the interaction?
- How did you feel during the interaction?
- How did the interaction end?
- Where in Cape Town did this happen?
- Why do you think they acted the way they did?
- How did this affect the rest of your day?
- Did these kinds of interactions change the way you lived on the streets?

Appendix B: Certificate of approval for ethics clearance

Faculty of Law: Research Ethics Committee

Private Bag X3 ▪ Rondebosch ▪ 7701 ▪ South Africa
Room 6.29 ▪ Kramer Building ▪ Middle Campus
Tel: +27 021 650 3080 Fax: +27 021 650 5660
E-mail: lamize.viljoen@uct.ac.za Internet: www.law.uct.ac.za

Certificate of Approval for Ethical Clearance

PRINCIPAL INVESTIGATOR/SUPERVISOR: ANINE KRIEGLER STUDENT: JO ACKERMAN **– [ACKJOX001]** FACULTY: LAW DEPARTMENT: PUBLIC LAW	**ETHICS REFERENCE NUMBER: L0003NS-2022** ORIGINAL APPROVAL DATE: 15-AUGUST-2022 APPROVAL EXPIRY DATE: 14-AUGUST-2023

PROJECT TITLE: 'Unhoused persons' experiences of being policed in Cape Town'

PURPOSE OF RESEARCH: The objective of this research is towards Masters by coursework and dissertation.

CONDITIONS OF APPROVAL

This Certificate of Approval is valid for the above term provided there is no change in the protocol.

Modifications
To make any changes to the approved research procedures in your study, please submit a formal "Request for a Modification" to the REC Administrative Office. You must receive ethics approval before proceeding with your modified protocol.

Renewals
Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You are responsible for submitting this by at least 2 months prior to the expiry date of clearance date issued.

Project Closures
When you have completed all data collection activities and will have no further contact with participants, please formally notify the REC: Law as well as your supervisor where applicable.

Certification

This certifies that the University of Cape Town Law Faculty's Research Ethics Committee has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Cape Town Research Regulations Involving Human Participants.

Dr Nomfundo Ramalekana
LAW REC: LEAD REVIEWER

Certificate Issued On: 16/08/2022

Appendix C: Informed consent form

ENGLISH: Thank you for agreeing to meet today! Please read this page carefully.

AFRIKAANS: Dankie vir jou tyd vandag! Lees asseblief hierdie bladsy deeglik.

ISIXHOSA: Siyabulela ngokuba uvumile ukuba sidibane namhlanje! Siyacela ukuba ufunde eli phepha ngokuqaphela.

- ✓ ENGLISH**:** Please know that taking part is **your decision** and no one else's.
- ✓ AFRIKAANS: Neem kennis asseblief dat **jou besluit** om vandag deel te neem jou eie keuse is.
- ✓ ISIXHOSA: Ukuba yinxalenye yale ndibano **nalencoko sisigqibo sakho, hayi esomnye umntu**.

- ✓ ENGLISH**:** You can **stop** taking part any time.
- ✓ AFRIKAANS: Jy kan op enige stadium **ophou** deelneem as jy wil.
- ✓ ISIXHOSA: **Ungayeka** ubayinxalenye yayo nangeliphi ixesha.

- ✓ ENGLISH**:** Taking part will **not make Streetscapes help** you any more or less.
- ✓ AFRIKAANS: Jou deelname **beteken nie** dat Streetscapes jou meer of minder sal ondersteen nie.
- ✓ ISIXHOSA: Sicela uqaphela ukuba ubayinxalenye yakho kule kwale ndibano **akuthethi ukuba iStreetscapes** izakunceda nakuni na.

- ✓ ENGLISH**:** The conversation might be **emotional** for you – you can turn to your peer support specialists or to me anytime if you are feeling upset.

- ✓ AFRIKAANS: Die gesprek mag miskien vir jou **emosioneel** wees – indien nodig kan jy ondersteuning kry by jou "peer support specialists" of by my, of enige iemand anders.
- ✓ ISIXHOSA: Le ncoko izothi **ihlale ingenzeka ichukumise imizwa or intlungu kuwe** ngoko ke siyacela ukuba ungonqeni ukucela nokujonga komnye wogxa bakho okanye abantu "peer support specialist", okanye kum.

- ✓ ENGLISH**:** You do **not have to talk** about anything you don't want to
- ✓ AFRIKAANS: Jy **hoef oor niks te praat** indien jy nie wil nie
- ✓ ISIXHOSA**: Akunyanzelekanga ukuba uthethe** okanye uveze imbilini yakho nangantoni na eqhagamishelene nale ncoko xa ungakulungelanga okanye ungafuni.

- ✓ ENGLISH**:** Remember that whatever you say today will be heard by your **peers and peer support specialists** – make sure you are comfortable with them knowing these things.
- ✓ AFRIKAANS: Onthou dat wat jy vandag sê sal gehoor word deur **jou eweknieë en jou "peer support specialists"** – maak seker dat jy hieroor gemaklik voel.
- ✓ ISIXHOSA: Sicela ukhumbule ukuba nantoni na ezawuthi uyithethe izakuviwa okanye ifike **kwiindlebe zoogxa bakho kunye nabantu** "peer support specialist". Qinisekisa ukuba ukulungele kwaye awunangxaki nokuba bazi ngezimeko ujongene nazo.

- ✓ ENGLISH**:** Please don't tell me about anything **criminal** that I will have to tell someone about.
- ✓ AFRIKAANS: Moet asseblief nie vir my vertel van enigiets **krimineel** wat jy gedoen het wat ek sal moet verklaar.
- ✓ ISIXHOSA: Siyacela ukuba ungathethi **nangeliphi ityala okanye isenzo esibi othe wasenza, nesinobungozi ojongene naso. Ingasisenzo esisenkantolo okanye esingekho enkantolo.**

- ✓ ENGLISH**:** I will keep your **identity confidential** when I write my research paper.
- ✓ AFRIKAANS: Ek sal jou **identiteit anoniem** hou wanneer ek my akademiese verslag skryf.
- ✓ ISIXHOSA: Ndizakuqinesikisa **ukuba iinkcukacha zakho zokuzalwa ndizigcina ziyimfihlelo** xa ndibhala eli phepha.

ENGLISH**: Do you agree to taking part in the focus group?**	**Yes**	**No**
AFRIKAANS**: Stem jy saam om deel te neem aan die gesprek?**	**Ja**	**Nee**
ISIXHOSA**: Ingaba uyavuma uthatha inxaxheba kule ndibano?**	**Ewe**	**Hayi**

ENGLISH: **Do you agree to letting me use your story in my project?**	Yes	No
AFRIKAANS: **Gee jy toestemming dat ek jou storie mag gebruik vir my verslag?**	Ja	Nee
ISIXHOSA: **Ingaba uyavuma ukuba ndisebenzise eli bali lakho ekubhaleni eli phepha?**	Ewe	Hayi

- ENGLISH**:** I want to **record** our voices so that I can accurately write down to the words you use today. Your words are very important to me!
- AFRIKAANS: Ek wil jou stem **opneem** sodat ek jou woorde akkuraat kan neerskryf. Jou woorde is baie belangrik vir my!
- ISIXHOSA: Ndifuna **ukushicilela amazwi wethu** kule ncoko khona ukuze ndikwazi ukubhala ngamazwi enithe nandinika wona namhlanje. Ngoko ke amazwi enu abalulekile kum ngezazizathu zokubhala eli phepha.

ENGLISH: **Do you agree to having our discussion recorded?**	**Yes**	**No**
AFRIKAANS: **Gee jy toestemming dat ek jou woorde opneem?**	**Ja**	**Nee**
ISIXHOSA: **Ingaba uyavumelana noshicilelo lelizwi lakho kolu dliwanondlebe?**	**Ewe**	**Hayi**

- ENGLISH**:** I want to **keep the stories** you tell me today for some time after our discussion in case I do more research. You **can say no to** this.
- AFRIKAANS: Ek wil jou **stories vir 'n tyd hou** ingeval ek verdere navorsing wil doen. Maar jy is vry om **nee** te sê.
- ISIXHOSA: **Ndifuna ukuwagcina amabali wenu** enizothi nindinike wona namhlanje okwexeshana emva dliwanondlebe ngokwezizathu ezikufana nezi zanamhlanje. Uvumelekile ukuba uthi hayi kwesisicelo.

- ENGLISH**: T**his information will be kept in **password-protected** online storage.
- AFRIKAANS: Jou storie sal met 'n **wagwoord** aanlyn beskerm word.

- ISIXHOSA: Olu lwazi ndizalugcina khuselekileyo kwi **password engaziwayo.**

ENGLISH: **Do you agree to my keeping your stories after this project has finished?** AFRIKAANS: **Gee jy toestemming dat ek jou storie behou na die einde van hierdie projek?** ISIXHOSA: **Ingaba uyavemelana nokuba ndiwagcine la mabali emva kweli phepha?**	**Yes** **Ja** **Ewe**	**No** **Nee** **Hayi**

- ENGLISH**:** I ask that you **keep private anything your peers say** during the discussion today. Remember, they will be doing the same for you.
- AFRIKAANS: Ek vra dat jy **die storie van jou eweknieë** anoniem hou. Onthou dat hulle dieselfde vir jou sal doen.
- ISIXHOSA: Ndiyacela ukuba **nantoni na ezothi ithethwe ngugxa wakho namhlanje kule ndibano uyigcine iyimfihlelo kuwe**. Khumbula ukuba nogxa wakho uyakwenza njalo.

ENGLISH: Do you agree to keep your peers' words private? **AFRIKAANS: Gee jy toestemming dat jy die stories van jou eweknieë anoniem sal hou?** **ISIXHOSA: Ingaba uyavumelana nokugcina iimfihlelo zikagxa wakho?**	**Yes** **Ja** **Ewe**	**No** **Nee** **Hayi**

Date/Datum/Umhla: ____

Signature/Handtekening: ____

Name or initials/Naam of voortletters/Igama: __________________________