



PRESS STATEMENT
18 FEBRUARY 2022

CAPE TOWN'S UNLAWFUL OCCUPATION & STREETS BY-LAWS ARE AN ASSAULT ON POOR & UNHOUSED FAMILIES

On 14 February 2022, in a shocking assault on poor and working class families, the City of Cape Town's controversial Unlawful Occupation By-law, as well as amendments to the Streets, Public Places and Prevention of Noise Nuisances By-Law (the Streets by-law), were gazetted and given legal force. These by-laws criminalise people experiencing homelessness and living with insecure tenure, and increase the powers of law enforcement officials by making the arrest of street-based people for life-sustaining behaviour much easier.

This comes after months of [fierce contestation](#) from poor and street-based communities, civil society organisations and [international human rights experts](#) over the passing of the Unlawful Occupation By-law last year, and despite ongoing court proceedings [challenging the constitutionality of the Streets By-Law](#) on the basis that it infringes basic rights and discriminates against people experiencing homelessness.

In response to criticism over the by-laws, newly elected Cape Town Mayor Geordin Hill-Lewis [promised to review the constitutionally suspect by-laws](#) last year. **The decision to proceed with implementing these discriminatory and indefensible by-laws shows a complete lack of leadership and understanding of the post-COVID reality in Cape Town.** This decision also flies in the face of recommendations made in a [report commissioned by the City itself](#) that urges the City to repeal all municipal by-laws that criminalise homelessness.

Ndifuna Ukwazi believes that both by-laws are unconstitutional and we are considering bringing an urgent interdict to prevent the City's relentless onslaught in its war against its poor.

The Unlawful Occupation By-Law will encourage illegal evictions

The Unlawful Occupation By-Law, which places significant emphasis on relocations and evictions as ways to manage unlawful land occupations, will encourage widespread illegal evictions and drive more poor and working class families into homelessness.

The by-law:

- Circumvents protections afforded to unlawful occupiers in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) and section 26(3) of the Constitution;

- Criminalises unlawful occupation by creating several offences that carry the sanctions of a fine or imprisonment of between six months and two years; and
- Grants vaguely defined “authorised officials” the power to arrest occupiers *without* a warrant, impound their building materials and personal possessions, search them *without* a warrant, and identify and monitor land and buildings prone to unlawful occupation.

In our [comment on the by-law](#) submitted on 31 July 2021, we voiced our deep concern that the by-law reflects an approach to informality that echoes the apartheid government’s displacement and forced removal of Black and Coloured people from urban centres. In addition to anti-poor measures, the draft by-law has the potential of creating a police state through an arbitrary exercise of power by law enforcement agencies and undefined “authorised officials”. It is at these officials’ hands that many living in unlawful occupations and on the streets have suffered [unlawful dispossession of their homes](#) and the stripping of [their dignity](#).

The COVID-19 pandemic has exposed the deeply entrenched inequalities in access to housing and land in South Africa - and has driven many more into homelessness. According to Stats SA, [2.2 million people lost their jobs](#) in the early months of the pandemic – most of which were concentrated among already disadvantaged groups. As of 2022, many of these losses have remained permanent, with [1.38 million people](#) who lost their jobs still not having been reabsorbed into the economy. South Africa has the [highest unemployment rate in the world](#), is plagued by chronic landlessness, and a housing backlog of over [365,000 families](#) in Cape Town alone. The economic devastation wrought by the pandemic has had a profound impact on poor and working class people’s ability to pay for and access housing. Many were driven into homelessness or were forced to occupy vacant or unused land when paying their rent became impossible – this included many tents and informal structures on side-walks and in public parks.

Yet, rather than recognising that unlawful occupation and homelessness is a direct result of the City’s own failure to address the critical shortage of well-located affordable housing or using its resources to address, plan for and incorporate informal occupations into its housing programme; the City has chosen to adopt by-laws that criminalise poverty.

As Leilani Farha, the former United Nations Special Rapporteur on the Right to Housing and current Director of The Shift, wrote in her [comment on by-law](#):

“Those occupying land in Cape Town are doing so because of the distinct lack of adequate housing that is available to them in the city. Without access to adequate housing, people in the City are commonly left with two choices: sleep on the streets or establish housing for themselves and their families. Logic and human instinct dictate that in such circumstances establishing informal housing is the best option to ensure survival. To impose criminal charges and convictions onto people in such circumstances as the by-law does is, therefore, discriminatory and creates a double jeopardy. Their

right to housing is denied and when they try to remedy that, they are punished in the harshest sense."

By adopting this by-law in spite of our comment and compelling submissions from [civil society](#), [international human rights experts](#), and over 8 000 people, the City has tried to legalise procedures falling outside the ambit of international human rights norms, national policies, and provincial guidelines.

Amendments to the Streets, Public Places and Noise Nuisances By-Law will lead to more inhumane raids of people experiencing homelessness

The City of Cape Town's By-Law relating to Streets, Public Places and the Prevention of Noise Nuisances has been in place since 2007. Everyday this by-law is used by the City's law enforcement officers to threaten, harass, forcefully displace homeless people and confiscate their belongings, and, in some instances, [issue fines of up to R2,000](#) against homeless people for unavoidable conduct. This is because the by-law [criminalises homelessness](#) by making it a crime for people living on the street to conduct ordinary life-sustaining activities, like sleeping, resting, bathing, erecting a shelter or keeping personal belongings in public spaces.

Shockingly, the amendments to the Streets By-Law have further strengthened the powers of law enforcement officers, by giving them the power to arrest people struggling with homelessness if they decline the City's offer of shelter. Granting law enforcement officers the power to arrest someone after making one offer of shelter demonstrates the City's lack of understanding of how to engage with street-based people: people experiencing homelessness require sustained engagement towards building a relationship of trust before they may consider accepting assistance from the City.

Mayor Hill-Lewis this week promised that the by-laws will be implemented in a way that ["demonstrates respect, dignity and inclusivity"](#). However, **the City's past use of the by-law to confiscate and dispossess hundreds of occupiers of their homes, tents and personal belongings in the midst of a global pandemic betrays the true intention of this law - to drive away poor and street-based people.** Last year, the City embarked on a [series of cruel and inhumane raids](#) that left occupiers out in the cold without shelter and, in one instance, left a [street-based womxn without her life-sustaining antiretroviral drugs](#). **The use of the by-laws to confiscate occupiers' homes effectively amounted to illegal evictions that were carried out by the law enforcement officers without court orders (a requirement in terms of the Constitution and the PIE Act).** Many of these occupiers challenged the City's by-laws, with the assistance of the Ndifuna Ukwazi Law Centre. These cases include:

- a challenge to the by-law on the basis that it infringes on a variety of constitutional rights and discriminates against people experiencing homelessness (brought by [11 people experiencing homelessness](#)),

- an [urgent court challenge](#) to the confiscation of the tents and informal structures of 21 occupiers living on a piece of vacant City-owned land next to the Green Point tennis court, and
- an [urgent court challenge](#) to the confiscation of the tents and informal structures of 46 occupiers living on a parking lot in District 6.

The misuse and abuse of the Streets By-Law to forcefully evict unlawful occupiers, and the sustained challenge to the by-law by poor and street-based communities should signal a clear alarm call to the City: this by-law is morally and legally indefensible.

The City's decision to primarily respond to homelessness with policing and enforcement has also led to a failure to offer adequate social development services. [Research](#) conducted by [U-turn](#) (experts in the court case), for example, shows that there are approximately 14,357 people living on the streets of Cape Town, but only 2,473 beds in the City's shelters. Treating those experiencing homelessness like criminals doesn't address the root causes of homelessness, such as poverty, inadequate affordable housing, inadequate state assistance, mental health issues, substance abuse and discrimination. It's also expensive and diverts money away from implementing more effective solutions. The City [spends R744 million](#) a year on unhoused people – but a whopping R345 million (or 45%) of that is spent on enforcement and punitive measures and only R122 million (or 16%) on social development.

We call on national government to urgently intervene

The City of Cape Town is not a country nor a law unto itself. It is subject to our country's Constitution and national laws, such as the PIE Act. The Unlawful Occupation By-Law and the Streets, Public Places and Prevention of Noise Nuisances By-Law stand in stark contrast to the protections afforded to occupiers in terms of national laws and the Constitution, and grant unfettered powers to the City's opaque law enforcement officers. The City cannot be allowed to undermine our legal order.

For this reason, **we appeal to the Minister of Human Settlements, Water and Sanitation Mmamoloko Kubayi-Ngubane, the Minister of Social Development Lindiwe Zulu, and the National Police Commissioner Bheki Cele to call out the City and urgently intervene to prevent the City from implementing these morally corrupt by-laws.**

- Read Ndifuna Ukwazi's submission of the Unlawful Occupation By-Law [here](#).
- Read the joint civil society submission on the Amendment to the Streets By-Law [here](#).

Contact:

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Issued by Ndifuna Ukwazi.

ENDS.