Piloting a Legal Perspective on Community Protests and the Pursuit of Safe(r) Cities in South Africa

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Abstract

This article considers the right to protest and pilots an initial legal response to the phenomenon of community protest against the global policy ideal of a safe urban space, determined in Sustainable Development Goals (SDGs) 11 and 16. First, there is a discussion about the global desire for safe(r) cities and the threats to such safety. Second, the causes and effects of community protest and the politics of urban space are considered. Third, there is a discussion of the City of Cape Town's safety profile and the occurrence of community protests as an illustration of the conceptual frameworks in parts one and two. The authors conclude with some observations on the notion of safe cities and communities as embodied in SDGs 11 and 16, and reflect in brief on a future research agenda from the perspective of law.

Keywords: Right to protest; community protest; Sustainable Development Goals

Introduction*

Sustainable Development Goal 11 (SDG 11) determines that by 2030 cities must be safe, sustainable, inclusive and resilient. While much remains to be explored about the nature of urban safety, sustainability, inclusivity and resilience,[1] this article is devoted to the notion of safe(r) cities. Assuming that 'safe' in this sense denotes a secure environment that provides a welcoming atmosphere and that is free of controllable threats to human security, this focus also encapsulates the content of SDG 16, which seeks in part to promote peaceful and inclusive communities.[2] Such communities include local communities in urban settings.[3] Any understanding of a safer city in a specific context needs first of all to establish in more concrete terms what an *unsafe* city would look like. As suggested by Milliken, many of the threats that could be encountered in an unsafe city could relate to the social–political and socio-economic complexities of urbanisation and could occur, for example, when urban sprawl becomes 'ubiquitous and haphazard' or when service delivery, such as the provision of water and sanitation, fails.[4] Terrorism and war may typically delineate the safety of an occupied city.[5] Other risks to city safety include those posed by natural disasters, crime and violence, infrastructure collapse and public health events. A specific yet somewhat veiled threat is protest action that turns violent.[6] In this context, 'protest action' or

[1]   For an analysis of SDG 11, see Helmut Aust and Anél du Plessis, 'Good Urban Governance as a Global Aspiration: On the Potential and Limits of Sustainable Development Goal 11', in Duncan French and Louis J Kotzé (eds), *Sustainable Development Goals: Law, Theory and Implementation* (Edward Elgar 2018) 201–221; and further, Helmut Aust and Anél du Plessis (eds), *The Globalisation of Urban Governance: Legal Perspectives on Sustainable Development Goal 11* (Routledge 2019).

[2]   SDG 16 is directed at the promotion, globally, of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and the building of effective, accountable and inclusive institutions at all levels.

[3]   Urban safety and security in this context is described by Jennifer Milliken, 'Urban Safety and Security: Lessons from the Last Two Decades and Emergent Issues, Synthesis Report of the Conference Reviewing the State of Safety in World Cities: Safer Cities +20, Geneva, 6–8 July 2016' 1 <https://www.gpplatform.ch/sites/default/files/PP%2022%20-%20Urban%20safety%20and%20security_0.pdf> accessed 14 March 2019.

[4]   Simon Bekker and Göran Therborn, *Power and Powerlessness: Capital Cities in Africa* (HSRC Press 2012) 3; Quito Declaration on Sustainable Cities and Human Settlements for All (2016) 3.

[5]   Edward Glaeser and Jesse Shapiro, 'Cities and Warfare: The Impact of Terrorism on Urban Form' (2002) 51(2) Journal of Urban Economics 205–208.

[6]   See in this regard, Milliken (n 3).

'community protests' refers to traditional forms of demonstration where groups of people take to the streets and public spaces.

That is not to say that protest action in cities is by default a threat or a barrier to safety. However, claims for rights and government action, for example, often take the form of a disruption of the usual everyday social order in cities, in the sense that protests are conduits for the articulation of rights related to the urban space and matters of access. In political science, urban anthropology and social science circles, protest action is often seen as an important 'tool used by the disenfranchised and the politically frustrated to pressure the government.'[7] It is accordingly understood that community protests serve to facilitate participatory democracy, inclusive decision-making and responsiveness. In the same vein, in the recent case of *Mlungwana v the State*, decided in the Western Cape High Court of South Africa, the Court expressed the view that gathering in protest against poor service delivery and government communication is also an important right of people in a democratic state.[8] This case followed on the earlier Constitutional Court judgment of *South African Transport and Allied Workers Union v Jacqueline Garvas & Others,*[9] where the Court unequivocally declared that the right to protest 'is central to our [South Africa's] constitutional democracy. It exists primarily to give a voice to the powerless.'

A review of the literature on urban safety, protest action, political models and civil unrest shows that protest action has a long history and remains prevalent in many countries.[10] Urban community protests are similarly not confined to politically unstable settings or specific types of geography or state government structure. The case of the City of Cape Town with its regular disruptive community protests and street demonstrations—discussed below—seems to be typical of that of several other localities, including cities in the United States, Argentina, Greece, Mexico, France and Brazil, to name but a few. Notably, the recurrence of protest action in a city and the consequences it may have (such as the disruption of transport systems and mobility, or damage to public and private property and infrastructure) could have a negative impact on people's sense of safety and the protection of their physical, social and psychological integrity.

This article assumes that cities should be vibrant spaces of diversity in society, both in terms of identities and associations, which makes for complex forms of popular politics

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[7]   Russel J Dalton and Alexander van Sickle, 'The Resource, Structural, and Cultural Bases of Protest' (Centre for the Study of Democracy 2005) 1; see also Lizelle Lancaster, 'Unpacking Discontent: Where and Why Protest Happens in South Africa' (2018) 64 SA Crime Quarterly 29.

[8]   *Mlungwana & Others v S & Another* [2018] 2 All SA 183 (WCC) para 95 (*Mlungwana*).

[9]   *South African Transport and Allied Workers Union & Another v Garvas & Others* 2013 (1) SA 83 (CC) para 61 (*Garvas*).

[10]   See Dalton and Van Sickle (n 7), and for a specifically South African account, Peter Alexander, 'Rebellion of the Poor: South Africa's Service Delivery Protests – A Preliminary Analysis' (2010) 37(123) Review of African Political Economy 25–40.

and participation, and because protest action in a city reflects on so-called 'lived citizenship'; and therefore that cities are 'inherently conflictual spaces'.[11] It is therefore not surprising that in a country such as South Africa there would be tension between the ideal of urban safety, on the one hand, and community protests (especially those that turn violent), on the other. We illustrate this with specific reference to the City of Cape Town, one of South Africa's most diverse, divided and vulnerable urban localities. This article considers the right to protest and pilots an initial legal response to the phenomenon of community protest against the global policy ideal of a safe urban space, determined in SDGs 11 and 16. First, there is a discussion about the global desire for safe(r) cities and the threats to such safety. Second, the causes and effects of community protest and the politics of urban space are considered. Third, there is a discussion of the City of Cape Town's safety profile and the occurrence of community protests as an illustration of the conceptual frameworks in parts one and two. We conclude with some observations on the notion of safe cities and communities as embodied in SDGs 11 and 16, and reflect in brief on a future research agenda.

Global Desire for Safe(r) Cities and the Threats to Such Safety

Securing public safety is an important function for governments to perform. It is the duty of the state both to ensure the safety of its citizens, organisations and institutions against threats to their well-being (described in basic terms as 'quality of life') and to perform the traditional function of maintaining law and order.[12] It is further clear from a reading of the targets set out in the formulation of SDG 11 that for the world's leaders safety in the urban context ties in with access to '*safe* housing and basic services', '*safe* transport systems' and '*safe* green and public spaces'. There is also a reference to the protection of cultural and natural heritage and to reducing the impact of disasters. This is, however, also the entire extent of the scope of the discussion on the matter of safety in SDG 11 itself.

In general, though, there is a growing focus on safer cities, owing at least in part to the fact that in the current age, threats to city dwellers' lives, identities and freedoms come from a complex mix of sources, from terrorists to hackers and from overzealous governments to organised crime. In some parts of the world, cities are investing substantially in communication technology and intelligence support in the process of making cities safer.[13] According to Frost and Sullivan, 'there is a correlation between

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[11] Milliken (n 3).

[12] Leo van den Berg, Peter Pol, Giuliano Mingardo and others, *The Safe City: Safety and Urban Development in European Cities* (Ashgate 2006) 7, explain the links between security, safety and the urban environment. For an extensive discussion on the meaning of well-being in relation to people's living environment (for example, in cities), see Anél du Plessis, 'The Promise of Well-being in Section 24 of the Constitution of South Africa' (2018) 34(2) South African Journal on Human Rights 3–8.

[13] See, for example, Enrico di Bella, Francesca Odone, Matteo Corsi and others, 'Smart Security: Integrated Systems for Security Policies in Urban Environments' in Renata Dameri and Camille Rosenthal-Sabroux, *Smart City: How to Create Public and Economic Value with High Technology in Urban Space* (Springer 2014) 193–219.

city size and crime and the need for integrated security solutions becomes more important as the rate of urbanisation within a country increases.'[14] Phrases such as 'integrated systems and city surveillance', 'multi-agency collaboration', 'situational awareness', 'video data and analytics', 'cyber patrol and communication monitoring systems', 'smart technology' and 'automated processes' abound in the available material on city safety. The number of people and the kind of infrastructure to be protected in cities therefore require investment, concerted efforts by a large number of actors (ranging from community-based organisations and municipalities to members of the police force) and advanced information and data-sharing systems.

What happens and is observed in cities is conceived in economic, political and cultural contexts that are different. Yet crime, violence and fear in cities remain a challenge in the sense that 'the basic principles of good governance must find a direct application in any urban safety strategy aimed at reducing and preventing common problems of crime and insecurity.'[15] The more evident threats to public safety in cities, however, run the risk of overshadowing other ubiquitous and more nuanced threats such as domestic violence, gangsterism, victimisation, xenophobia and human-rights violations.

It is the Preamble of the European Charter for the Safeguarding of Human Rights in the City of 2000 that reminds us in particularly inclusive language why it may be that there is a growing desire for safe(r) cities, and for an improved understanding of the kind of threats people in cities face:[16]

> The city today is home to all kinds of assemblies and, above all, a space of personal development. At the same time, it is the locus for contradictions, conflict and dangers: The urban space with its anonymity on the one hand is a source of all types of discrimination rooted in unemployment, poverty, and disdain for cultural differences, while simultaneously municipal and social practices are appearing, which more and more build on the principle of solidarity.

In similar vein, the United Nations New Urban Agenda (NUA) sets as one of its guiding principles the promotion of safety and the elimination of discrimination and all forms of violence. It does so by ensuring public participation and providing safe and equal access for all to physical and social infrastructure and basic services.[17] It also commits to safe public spaces.[18] *Africa's Agenda 2063: The Africa we want* was adopted in 2015

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[14] Frost & Sullivan, *Safer Cities: An Inevitable Trend in Urban Development* Whitepaper (Frost & Sullivan undated) 8.

[15] PriceWaterhouseCoopers, *Safe Cities: The India Story* (PwC 2016) 2.

[16] Preamble to the European Charter for the Safeguarding of Human Rights in the City (2000).

[17] United Nations, *New Urban Agenda* (UN 2017) 7.

[18] ibid 2.

and serves as a continental strategic plan for the coming years. It similarly articulates a vision for 'safe and peaceful spaces for individuals, families and communities'.[19]

It has been stated that 'conflict is an inevitable part of urbanisation and of the informal political contestation within urban life.'[20] While conflict takes on many forms, this may partially explain why the notion of safeguarding the city space features increasingly prominently in international and regional agendas and policy instruments. The audience of these instruments is a mix of actors and role-players. An inclusive reading of SDGs 11 and 16, their subsidiary targets and a range of complementary international urban policy instruments suggests that the global expectation is that in the 21st century countries (state governments) will at a minimum devote resources to matters of public safety in cities.

Causes and Effects of Community Protest and the Politics of Urban Space

Cockayne et al hold that:[21]

> Contemporary urban governance usually involves not just formal state and municipal authorities, but also a variety of non-state, social, business, religious, labour union, political or hybrid organisations competing to govern territory, populations, flows or simply markets, within the city. Many of these groups avoid formal political roles and associations, but play central informal roles, mediating between the state and populations. Violence associated with these forms of informal governance, and the competitions between actors that seek to wield this informal governmental power, can take many forms: strikes, riots, 'crime wars', protests, neighbourhood rivalries, vigilantism – even terrorist strikes or civilian targets.

Not always being 'violent', protest is generally defined in very broad terms. From a combination of the available definitions it would seem that 'protest' refers to confrontational activity or disruptive, collective action by non-government actors (sometimes also by public officials in their personal capacity) that is aimed at institutions, elites, authorities or other groups on behalf of the mutual goals of the actors or those they claim to represent.[22] In line with Cockayne, Carey is of the view that protest disrupts and challenges government actors (eg city governments), agencies or policy, and may include verbal threats as well as violent and non-violent actions on the basis of the understanding that group violence often grows out of collective protest

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[19]   African Union Commission, *Africa's Agenda 2063: The Africa We Want* (Popular Version) (Africa Union Commission 2015) 6.
[20]   James Cockayne, Louise Bosetti and Nazia Hussain, *Preventing Violent Urban Conflict: A Thematic Paper for the United Nations – World Bank Study on Conflict Prevention* (UN University Centre for Policy Research 2017) 8.
[21]   ibid 2.
[22]   Sabine Carey, 'The Dynamic Relationship Between Protest and Repression' (2006) 59(1) Political Research Quarterly 1 at 2.

action which is not intrinsically violent.[23] Three categories of protest are distinguished: violent protests, peaceful protests and disruptive protests.[24] Each of these may potentially have an impact on people, property and goods at a local level (the level of cities and towns) where they occur. Protests can take many forms, ranging from rallies or demonstrations to picketing, symbolic displays, riots and strikes.[25] Protest is an act of demonstrating or gathering, often against government, with the purpose of expressing different kinds of grievance.[26] As indicated already, protests do not by default amount to a threat to urban safety or peaceful societies.

It would seem that *violent urban conflict* and especially the 'risk of violence within cities' has many manifestations, which include strikes and protest action.[27] The risk of violence may intensify, increase or otherwise change over time. A report of the South African Human Rights Commission (SAHRC) published in 2016, for example, explains that observations between 2012 and 2014 show evidence that the prevalence of violence associated with protests has continued to increase in South Africa.[28] According to the SAHRC, 'the number of violent protests reached a record high in 2014. In 2007 just less than half of the protests were associated with some violence. In 2014 almost 80 per cent of the protests involved violence on the part of the participants or authorities.'[29] We attend to some of the more recent statistics in our discussion of the South African case below.

Law is a modality of power and as such serves to empower people via the right to assemble, demonstrate or protest. The International Covenant on Civil and Political Rights of 1966 in article 21 recognises the right to peaceful assembly. Restrictions may be allowed only in the interests of national security, public safety, public order and the protection of public health or the rights of others. The European Charter for the Safeguarding of Human Rights in the City of 2000, in article ix, for example, unequivocally provides for the right of association, assembly and demonstration and states that 'the city offers public spaces for the organisation of open meetings and informal gatherings. It ensures free access to these spaces for everyone, provided that regulations are adhered to.' Similar voices go out in various national constitutions that include a bill of rights.

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[23]   ibid 2.

[24]   See Narnia Bohler-Muller, Benjamin Roberts, Jaré Struwig and others, 'Minding the Protest: Attitudes towards Different Forms of Protest Action in Contemporary South Africa' (2017) 62 SA Crime Quarterly 81 at 83.

[25]   See, for example, Mark Irving Lichbach and Ted Robert Gurr, 'The Conflict Process: A Formal Model' (1981) 25(1) Journal of Conflict Resolution 3 at 5.

[26]   Ntuthuko Albert Mchunu, 'The Link between Poor Public Participation and Protest: The Case of Khayelitsha' (Master in Public Administration thesis, University of Stellenbosch 2012) 104.

[27]   Cockayne and others (n 20) 1–12.

[28]   South African Human Rights Commission, *Human Rights in Community Protest* (SAHRC 2016) 8.

[29]   ibid.

However, depending on the nature, degree of violence in and consequences of protest action, community protests, especially as a desperate response to unresponsive government action or community dissatisfaction with public services or as a political ploy, could threaten urban peace and public safety. Much depends on how people translate a shared or collective feeling of, for example, inadequate access to urban goods such as housing, infrastructure or basic services into the language of rights. It is at this juncture that it becomes important to distinguish between violent and peaceful protests. The reasons why protests turn violent are extensively explored in the literature on 'crowd psychology' as part of social psychology and its links to matters of social justice,[30] which will not be discussed in any detail here. Suffice it to say that such protests are those involving an element of violence, the threat of violence or any form of intimidation or harm. They may be directed against persons or property.[31] Twala extends this definition: '[v]iolent protests could be defined as those whereby some of the participants engaged in physical acts that either caused immediate harm to persons *or were likely to* result in substantial harm.'[32] Damage to or the destruction of structures, buildings or motor vehicles and the blockading of roads by burning tyres are included in this view of violent protest.[33] As suggested earlier, peaceful protest may escalate into violence.[34]

Peaceful protests, on the other hand, are not violent or otherwise disruptive in nature.[35] It follows that these protests are characterised by the fact that there is no injury or harm to persons or damage to property.[36] As indicated earlier, peaceful protests often receive protection in law.[37] Non-violent, disruptive protests cause some form of disturbance in public order and interrupt the normal functioning of social institutions without injury to

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[30] See, for example, Martijn van Zomeren and Aarti Iyer, 'Introduction to the Social and Psychological Dynamics of Collective Action' (2009) 65(4) Journal of Social Issues 645.

[31] T Chigwata, M O'Donovon and D Powel, 'Civic Protest and Local Government in South Africa, Working Paper Series No 2, The Civic Protest Barometer 2007–2016' (Dullah Omar Institute, 2017) 13 <https://dullahomarinstitute.org.za/acsl/civic-protests-barometer_2016.pdf> accessed 13 March 2019; Siphelele Ngobese, Terence Smith and Geci Karuri-Sebina, *State of Urban Safety in South African Cities Report 2016* (South African Cities Network 2016) 152; Jane Duncan, *Protest Nation: The Right to Protest in South Africa* (University of KwaZulu-Natal Press 2016) 23.

[32] Chitja Twala, 'The Causes and Socio-political Impact of the Service Delivery Protests to the South African Citizenry: A Real Public Discourse' (2017) 39(2) Journal of Social Science 159 at 164 [emphasis original].

[33] Duncan (n 31) 23.

[34] Lancaster (n 7) 29.

[35] Duncan (n 31) 23.

[36] Peter Alexander, Carin Ruciman and Trevor Ngwane, 'Media Briefing Community Protests 2004–2013: Some Research Findings' (UJ Social Change Research Unit, 2013) 1–18 <https://issafrica.s3.amazonaws.com/site/uploads/Public-violence-13March2014-Peter-Alexander.pdf> accessed 13 March 2019.

[37] R Burnett, 'The Right of Peaceful Protest in International Law', Seminar on the Right of Peaceful Protest, 3–4 July 1986 at 25.

the person or damage to property.[38] Typical examples are the barricading of roads or entrances to city buildings and public spaces without any physical harm being caused.

There is no standard list of reasons why people resort in the collective to any of these three types of protest action. When looking at some of the global causes of protest, a distinction is made between shorter-term and longer-term causes. The shorter-term causes are typically political (eg rigged elections and presidential-term extensions) or socio-economic (systemic deficits, unemployment, etc) or in some instances a combination of these (eg when linked to historical spacial injustices and inequality, ongoing corruption and resource abuse).[39] Where people's grievances are directed at government dispensations and politics, the manifestation of protest action could also be determined by the prevailing government structure, for example, authoritarian, semi-authoritarian or democratic, and the envisaged result.[40] In authoritarian (non-democratic) countries, protests are often a revolt against the state of political affairs.[41] According to Carothers and Young, protests in semi-authoritarian countries regularly relate to political conditions, repression and corruption. In democratic countries, though, protest action is often caused by socio-economic conditions and prevalent inequalities—the 'tangible and actual hardships and problems' of citizens.[42]

The longer-term causes, or at least slower onset causes, of protest are said to be linked to new communication technology, economic trends, advances in global democracy and the growth of civil-society organisations. The last of these provide citizens with the opportunities and avenues to express their grievances, discontent and dissatisfaction with the government of their country.[43] Communication technology provides citizens with greater access to information, which raises their awareness of how they can assert themselves against authorities and how they compare with others in regard to economic and political circumstances.[44] These are not only the marginalised, poor and voiceless people with no economic and political power, but also the new middle classes. Recent times have seen the emergence of new middle classes which have certain expectations, perspectives and capabilities influenced by their having access to education, travel, communication technology and other resources.[45] These are not only the marginalised, poor and voiceless people with no economic and political power, but also the new

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[38]   Alexander and others (n 36) 1–18; also see Duncan (n 31) 23.
[39]   Thomas Carothers and Richard Youngs, *The Complexities of Global Protests* (Carnegie Endowment for International Peace 2015) 7.
[40]   Edward Amenta, Drew Halfmann and Michael Young, 'The Strategies and Contexts of Social Protest: Political Mediation and the Impact of the Townsend Movement in California' (1999) 4(1) Mobilization 1 at 1 and 3.
[41]   Carothers and Youngs (n 39) 7.
[42]   ibid 8 and 9.
[43]   ibid 11.
[44]   ibid 7; Sarah Soule, Doug McAdam, John McCarthy and others, 'Protests Events: Cause or Consequence of State Action? The US Woman's Movement and Federal Congressional Activities, 1956–1979' (1999) 4(2) Mobilization 239 at 241–242.
[45]   Carothers and Youngs (n 39) 9.

middle classes. If their expectations are not met, this is likely to fuel protest action. In addition, protest action has played a major role in the global democratic transition. Carothers and Youngs state that democratic countries are in fact fertile places for the occurrence of protests and that the citizens of democratic countries are prepared to protest where constitutional principles and rights are curtailed by the authorities.[46]

The political landscape in a country largely determines the eventual outcome of protest action where such action is directed at public authorities (eg city, provincial or national governments).[47] In authoritarian (non-democratic) countries, governments tend to use force to oppress protests. This is because they have the ability to deal with the protests without them (directly) affecting the political landscape of the country. These governments may opt to allow political activity in protest in order to release some political pressure and to avoid the application of international pressure. The effects of the protests in these countries, however, may not necessarily be the furtherance of democracy. In the past in some semi-authoritarian countries protests have had an impact on the country's leadership. In some cases they have induced the leaders to allow at least some political activity to 'rebalance lopsided political systems';[48] to countenance the formation of new political parties to improve the balance of power;[49] or to endorse new developments in the views and policies of existing political parties.[50] It is in democratic countries that we most often see socio-economic grievances leading to protest action. In these countries, as suggested earlier, people do not revolt against the elected government per se but rather against the way in which that government's response prioritises their socio-economic needs, or fails to respond to their needs.[51] Amenta, Halfman and Young explain that in democratic countries minority groups or under-represented citizens may typically gain some benefits or rights as a result of protest action.[52]

A frequent form of protest activity in present-day democratic South Africa, for example, is collective violence and threats directed at state agencies, where local communities and city-dwellers typically resort to damaging public and private property, throwing and burning objects, making verbal threats and singing protest songs. In South Africa, communities' sense of grievance is often a reaction to the slow pace of improvement in their socio-economic conditions and the unresponsiveness of politicians to their plight.[53] It is the context and implications of this type of protest in the City of Cape Town that we consider in the next section.

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[46]   ibid 10.
[47]   Amenta and others (n 40) 1, 3 and 17.
[48]   Carothers and Youngs (n 39) 18.
[49]   Amenta and others (n 40) 5.
[50]   Carothers and Youngs (n 39) 19.
[51]   ibid 19 and 20.
[52]   Amenta and others (n 40) 7.
[53]   Lancaster (n 7) 37.

The South African Case: A Constitutional Right to Assemble and Protest Action

Background

South Africa is said to have experienced 'a remarkable rise in local protest activities since 2004, a development that has occurred on such a scale and with such intensity that it has been referred to as insurrection or insurgency.'[54] Between January 2013 and December 2017, 4 391 incidents of protest and collective violence were recorded by the Institute for Security Studies' (ISS) Protest and Public Violence Monitoring Project (PPVM).[55] It has been reported that between 2016 and 2017 'the frequency of protest events increased by 42%. This may be related to the change in government in two of the main metropolitan areas in Gauteng after the 2016 elections.'[56] It is further reported that 67 per cent of the incidents between 2013 and 2017 took place in metropolitan areas—that is, in South African cities—for reasons ranging from the challenges accompanying higher population density to increased demand for basic municipal services.[57] Beyond basic municipal service delivery, it was found that 'the majority of protests illustrate the daily struggles of ordinary people to access their constitutionally protected socio-economic rights, such as access to jobs, fair wages, safety, decent education and transport.'[58] More recent reports on protest action in South Africa indicate that, by the end of 2018, previous annual records of protests would be eclipsed. Also, considering that 2019 was an election year, a great possibility exist that more protests would have been recorded.[59]

The statistics and information given above should be seen against the backdrop of the fact that people in South African cities (including the City of Cape Town) are allowed to assemble in protest to express their views in public on any matter. Two legally relevant points must be emphasised in this regard: first, the state must respect and protect the right to assemble (in protest or otherwise)[60] and, second, the right to assemble must be exercised peacefully out of respect for the interests and rights of others.[61]

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54   Bohler-Muller and others (n 24) 82.

55   The PVVM collects information on community protest events of various kinds. See, for detail, Lancaster (n 7) 30–31.

56   Lancaster (n 7) 35.

57   ibid 38.

58   ibid 37.

59   See Municipal IQ, '3 Key Trends from 2018's All-time Service Delivery Protest Record' (*Municipal IQ*, 16 Jan 2019) <http://www.municipaliq.co.za/publications/press/201901161131504622.doc> accessed 15 March 2019; and Municipal IQ, '2018 Service Delivery Protests Reach an All-time Annual Record' (*Municipal IQ*, 18 October 2018) <http://www.municipaliq.co.za/publications/press/201810180722118762.doc> accessed 15 March 2019.

60   Section 7(2) of the Constitution of the Republic of South Africa, 1996 (the Constitution).

61   Preamble of the Regulations of the Gatherings Act 205 of 1993 (the RGA).

A Legal Framework Relevant to the Right to Assemble

The Constitution determines that everyone has the right to assemble peacefully and unarmed.[62] The only internal qualifier to this right is that the right must be exercised peacefully and that those involved must be unarmed.[63] It follows that when the holder of this right has no intention to be peaceful or is armed, the constitutional protection afforded by section 17 is forfeited.[64]

In the *Garvas* matter the Constitutional Court dealt with the importance of the right to assemble. It stated that this right is central to the South African constitutional democracy in that it provides a voice to the marginalised and powerless and an outlet for expressing legitimate concerns; it also serves as a principal means to advance human rights.[65] The right also enables the exercise and realisation of other rights.[66] Jafta J, in *Garvas*, made the observation that the right to assemble can be exercised only collectively, and by engaging in such collective action civil society has the power to 'influence the political process, labour or business decisions and even matters of governance and service delivery.'[67]

In *Garvas* the court also indicated that the right to assemble is a tool of democracy to make democratic rights count, at least for those who have no other means of doing so.[68] Furthermore, the court emphasised the important role the right to assemble plays in a participatory democracy.[69] In *Mlungwana* the Constitutional Court referred to *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC), where it was stated that to take away the right to assemble would frustrate public participation as a stanchion of democracy.[70]

Notably, the main legislation applicable to protest action is the Regulation of Gatherings Act 205 of 1993 (the RGA). The Act describes at length and in fairly straightforward language the process for a legal protest.[71] In short, the Act sets out to regulate the holding of legal protest.[72] The process for a legal protest can be succinctly described as requiring prior notice: the convenor of a protest is expected to notify the relevant municipality of

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[62]   Section 17 of the Constitution.
[63]   *Mlungwana* (n 8) para 62. Also see Jameelah Omar, 'A Legal Analysis in Context: The Regulation of Gatherings Act – A Hindrance to the Right to Protest?' (2017) 62 SA Crime Quarterly 21.
[64]   *Garvas* (n 9) para 53, also see *Mlungwana* (n 8) para 43.
[65]   *Garvas* (n 9) paras 61, 66; also see *Mlungwana* (n 8) para 61.
[66]   *Mlungwana* (n 8) para 70
[67]   *Garvas* (n 9) para 120.
[68]   Paragraph 63.
[69]   Paragraph 62.
[70]   *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC) para 115; *Mlungwana* (n 8) para 69.
[71]   See the details encapsulated in sections 2–5 of the RGA.
[72]   See the purpose of the RGA.

the intended protest.[73] The content of such notification is quite detailed: it must cover information ranging from the details of the convenor, the purpose of the gathering and the anticipated number of participants to the exact and complete route of the procession. Notification must be given at least seven days before the planned protest, although the Act is quite flexible in the case of a protest's not being planned as long in advance.[74] After the receipt of a protest notice, a consultation meeting should be held between the responsible officer and the convenor of the protest if it is deemed necessary in order to finalise the conditions of the protest.[75] Depending on the extent and foreseen implications of the protest action, the responsible officer may have to convene further consultation meetings, involving other affected authorities and stakeholders.

Protests follow grievances (sometimes as a last resort) and party politics is often at play. As stated above, in South Africa grievances that result in protests range in topic from service-delivery deficits and poor governance to failure in the necessary improvement of socio-economic living conditions and spatial injustices.[76] Protest actions occur frequently in South Africa[77] and on the basis of the discussion above it may be said that South African law is protest-action friendly. However, what cannot be gainsaid is that from 2013 onwards 90 per cent of the reported protests in the country included a violent element.[78]

In order to illustrate the conceptual links between safety as prescribed in SDGs 11 and 16 and protest action in cities, we turn our focus to the City of Cape Town in the section below. We aim to show how the pursuit specifically of safe cities, as envisaged in SDG 11, may be both complemented and compromised by community protests. The reason for this is that the consequences and effects of protest action are determined by their context and a complex matrix of surrounding factors, as suggested earlier.

The South African Case: Urban Safety in the City of Cape Town

Cape Town is known as one of the country's most protest-prone cities.[79] It is a city of contrasts, diversity and (spatial) inequality. The city has an estimated population of

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[73] Section 3(1) of the RGA.
[74] Section 3(2).
[75] See section 4.
[76] Chigwata and others (n 31) 15, 16; also see Nomusa Ngwenya (ed), *Community Protest: Local Government Perceptions* (South African Local Government Association 2016) 7; Ngobese and others (n 31) 14.
[77] Municipal IQ, 'Service Delivery Protests in a High Range, but Downward Trend from May Peak – For Immediate Release' (*Municipal IQ*, 24 October 2017) 1 <https://www.municipaliq.co.za/publications/press/201710241012397864.pdf> accessed 15 March 2019; also see Ngwenya (n 76) 8 and 18–22.
[78] Chigwata and others (n 31) 13.
[79] Chigwata and others (n 31) 12. Also see Applied Constitutional Studies Laboratory 'CPB 2018 Fact Sheet #2 – Metros & Highly Urbanised Provinces Most Prone to Civic Protest' (Applied Constitutional Studies Laboratory, 6 September 2018) <https://www.acsl-web.com/single-post/2018/09/06/CPB-

approximately four million residents[80] and an unemployment rate of 23,2 per cent.[81] Almost 63 per cent of the households in the city's informal settlements such as Khayelitsha fall within a low-income bracket and are relatively impoverished. As a legacy of apartheid's skewed spatial and infrastructural development, a large number of these households (many of whom reside in backyard dwellings) still have limited or no access to services such as piped water, electricity and sanitation.[82]

In February 2018 the ongoing and most intensive drought ever experienced by Cape Town was declared a national disaster. This drought, which was directly connected to climate change, had a decisive impact on local business, industry and the economy. Yet, until very recently the city contributed almost 71,8 per cent to the gross domestic product (GDP) of the Western Cape province.[83] The city's economy is one of the fastest growing in the country and its informal sector is thriving. Cape Town is also reported to have the longest average life expectancy in South Africa.[84] However, this sketch of the socio-economy of Cape Town needs to be further coloured by reference to the frequent protests that have occurred in the city over the past couple of years. These have taken place in response to community dissatisfaction inter alia with poor service delivery, a lack of adequate access to education and failed political promises about housing and other amenities.[85]

2018-Fact-Sheet-2---Metros-highly-urbanised-provinces-most-prone-to-civic-protests> accessed 20 March 2019.

[80] Western Cape Government, *Socio-economic Profile: City of Cape Town* (Western Cape Government 2017) 5.

[81] ibid 30.

[82] Western Cape Government, *Socio-economic Profile: City of Cape Town* (Western Cape Government 2016) 17–22. Also see Western Cape Government, *Socio-economic Profile: City of Cape Town* (Western Cape Government 2017) 15–18.

[83] Western Cape Government, *Socio-economic Profile: City of Cape Town* (Western Cape Government 2017) 28.

[84] Western Cape Government, *Socio-economic Profile: City of Cape Town* (Western Cape Government 2016) 18–20.

[85] See, for example, Dave Chambers, 'Cape Town Activists Shut Roads in Anti-poverty Protest' (*Times Live*, 25 September 2018) <https://www.timeslive.co.za/news/south-africa/2018-09-25-cape-town-activists-shut-roads-in-anti-poverty-protest/> accessed 15 March 2019; Aisha Hauser and Petru Saal, 'Protests Shut Down UCT' (*Times Live*, 26 October 2017) <https://www.timeslive.co.za/news/south-africa/2017-10-26-protests-shut-down-uct/> accessed 15 March 2019; Vincent Lali, 'Involve Deaf People in Deaf Education, Say Protesters' (*GroundUp*, 1 October 2018) <https://www.groundup.org.za/article/take-back-education-deaf-say-protesters/> accessed 15 March 2019; and Christina Pitt, 'We Want Houses – Frustrated Cape Town Backyarders March Over Backlog' (*News24*, 24 August 2018) <https://www.news24.com/SouthAfrica/News/we-want-houses-frustrated-cape-town-backyarders-march-over-backlog-20180824> accessed 15 March 2019. Also see *Hotz & Others v University of Cape Town* 2018 (1) SA 369 (CC) on student protest at University of Cape Town in early 2016.

One of South Africa's largest nationwide protests took place on 7 April 2017.[86] Angry communities protested for a variety of reasons, in particular to demand an end to the ongoing corruption in government and the resignation of the then President Jacob Zuma. The nation's cities became sites of protest action. In Cape Town, large groups of protestors met outside parliament. Others resorted to the social media (Facebook) to call on protesters to form a human chain along a major road in the city. In what can be described as a nationwide revolt against the state of national government in South Africa, access to roads were blocked and occupied, which made this largely peaceful protest highly disruptive, particularly for people working and living in the city centre.[87] However, not all protests are peaceful.

Violent service-delivery protests frequently take place in and around Cape Town.[88] In one of the most recent protest actions, community members of the township Imizamo Yethu expressed their grievances after their informal settlement (in the suburb of Hout Bay) experienced a number of flash fires that destroyed many of their informal houses.[89] In July 2017 the same frustrated community protested in response to the perceived lack of action on the part of the municipality (the mayor of Cape Town is said to have promised that the area would be rebuilt) as well as the lack of electricity and the provision of formal housing. More informal structures were set alight and traffic lights, street poles and road signs were vandalised. Passing vehicles were stoned and police officers attacked. The violence did not, however, result in any fatalities in this instance.

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[86] See Haroon Bhorat, Mbongiseni Buthelezi, Ivor Chipkin and others, 'Betrayal of the Promise: How South Africa is Being Stolen' (Public Affairs Research Institute, May 2017) 3 <https://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf> accessed 15 March 2019.

[87] For some reports on the April 2017 protests, see Daily Maverick Team, '#ZumaMustFall: Thousands March Calling for Zuma to Step Down' (*Daily Maverick*, 7 April 2017) <https://www.dailymaverick.co.za/article/2017-04-07-zumamustfall-thousands-march-calling-for-zuma-to-step-down/> accessed 15 March 2019; and Thando Kubheka, 'South Africans Strengthen Calls for President Zuma to Step Down' (*Eyewitness News*, 8 April 2017) <https://ewn.co.za/2017/04/08/south-africans-strengthen-calls-for-president-zuma-to-step-down> accessed 15 March 2019.

[88] See Nomusa Makhubu, 'Changing the City after our Heart's Desire: Creative Protest in Cape Town' (2017) 53(6) Journal of Postcolonial Writing 686 at 694–696; SA Local Government Information Centre, 'The SA Local Government Briefing no 2/2019' (28 February 2019) 36 and Applied Constitutional Studies Laboratory 'CPB 2018 Fact Sheet #2 – Metros & Highly Urbanised Provinces Most Prone to Civic Protest' (Applied Constitutional Studies Laboratory, 6 September 2018) <https://www.acsl-web.com/single-post/2018/09/06/CPB-2018-Fact-Sheet-2---Metros-highly-urbanised-provinces-most-prone-to-civic-protests> accessed 20 March 2019.

[89] See the City of Cape Town, 'Joint Statement by the City of Cape Town's Executive Mayor, Patricia De Lille and the Imizamo Yethu Community Leaders (City of Cape Town, 12 April 2017) <http://resource.capetown.gov.za/documentcentre/Documents/Speeches%20and%20statements/12%20April%2017%20Imizamo%20Yethu%20a%20local%20disaster%20area.pdf> accessed 15 March 2019, in which the Imizamo Yethu was declared a local disaster area. Also see James de Villiers, 'Imizamo Yethu Fire One of Cape Town's Worst – Deputy Mayor' (*News24*, 13 March 2017) <https://www.news24.com/SouthAfrica/News/imizamo-yethu-fire-one-of-cape-towns-worst-deputy-mayor-20170313> accessed 15 March 2019.

In another Hout Bay protest, in September 2017, in response to the allocation of fishing quotas, '[r]esidents blocked roads with burning debris and pelted law enforcement officials and police members with missiles' and two municipal officers were injured.[90] In the build-up to the 2019 national elections, protests of this kind continue to plague Hout Bay and areas situated around the main highways surrounding the Cape Town metropolitan area. The most recent of the violent protests in the city included the barricading of the N2 highway as well as certain motor vehicles being pelted with stones. In one instance, this resulted in a multiple motor-vehicle accident in which one person died. On the N2 in Somerset West, a town adjacent to Cape Town, an articulated truck was also set alight with a petrol bomb. Incidents were also reported on the N2 in Philippi on the outskirts of Cape Town, where two buses were set alight, albeit with no reported injuries. Certain roads in this area were also barricaded with stones and burning tyres.[91]

It merits a mention at this point that since 2015, South Africa has seen some of the largest student protests since the dawn of democracy in 1994. In what came to be known as the 'Fees Must Fall' campaign, students protested against rising tuition fees and demanded free access to higher education. The campaign reached a critical point in October 2017, when then President Zuma delayed the release of a government investigative report on the feasibility of free higher education. In Cape Town and elsewhere, these protests led to the disruption of classes and examinations, the closure (and plundering) of university libraries, the activation of fire alarms, the dumping of human faeces in university buildings, the damaging of university infrastructure, art collections and buses, and the blockading of many access roads (for instance, by two naked protesters lying in the road, in Cape Town).[92] Universities had to close for days

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[90] See the report and video footage at Staff Reporter, 'LOOK: Dramatic Pictures of Hout Bay Protest' (*Cape Argus*, 12 September 2017) <https://www.iol.co.za/capeargus/look-dramatic-pictures-of-hout-bay-protest-11187023> accessed 15 February 2018.

[91] See SA Local Government Information Centre, 'The SA Local Government Briefing no 6/2019' (29 June 2019) 35–36. See also African News Agency, 'ANC Member Dies in Violent Protest in Cape Town' (*The Citizen*, 26 June 2019) <https://citizen.co.za/news/south-africa/protests/2147557/anc-member-dies-in-violent-protest-in-cape-town/> accessed 8 July 2019. Also see Nomahlubi Jordaan, 'Protesters Set Another Bus Alight During Protest in the N2 in Philippi' (*Times Live*, 25 June 2019) <https://www.timeslive.co.za/news/south-africa/2019-06-25-protesters-set-another-bus-alight-during-protest-on-n2-in-philippi/> accessed 8 July 2019. Also see Tammy Petersen, 'N2 Closed Again as Bus, Tyres Burn' (*News 24* 25 June 2019) <https://www.news24.com/SouthAfrica/News/n2-closed-again-as-bus-tyres-burn-20190625> accessed 8 July 2019. Also see Tom Head, 'N2 Cape Town Latest: Two Dead as Motorists Attempt to Flee Fiery Protests [Video]' (*The South African*, 26 June 2019) <https://www.thesouthafrican.com/news/n2-cape-town-traffic-latest-news-wednesday-26-june/> accessed 8 July 2019.

[92] See Vanessa Mpatlanyane, 'New Student Activism after Apartheid: The Case of Open Stellenbosch' (Master of Arts dissertation, University of Stellenbosch 2018) 11–18; and Malose Langa (ed), *#Hashtag: An Analysis of the #FeesMustFall Movement at South African Universities* (Centre for the Study of Violence and Reconciliation 2017).

on end and some had to hire security guards to protect their property, their staff and those students who were not protesting.[93]

It follows that there are various reasons for the protest action in the City of Cape Town.[94] These may include the fact that the city is home to the national parliament, that is not under the reign of the national ruling party at present, and that urban poverty and spatial inequality thrive. The last of these is particularly relevant since, more than two decades into the new democratic dispensation, the situation in informal settlements remains volatile—one can never be sure when the next protest will erupt. Students, communities, labour groups, unions and others can resort to disruptive and violent protests at any time. At least for the foreseeable future, this seems as if it will be part of the make-up of life in Cape Town. The city is also fully aware of this situation, given the priorities set in its most recent integrated development plan (IDP) and the fact that it has a user-friendly online guide for applications to demonstrate or gather.[95] Inequality, diversity and unmet socio-economic needs are likely to continue to result in disruptive and possibly violent protest action. The pursuit of the 'safe city' in Cape Town accordingly requires the municipality and all role-players to be risk averse, cautious and ready to respond. Although protest-related fatalities have been minimal, the extent of the disruptions and the fear of harm are not conducive to people feeling that their safety and their well-being are protected in the city.[96] Yet the rights of protestors in pursuance of inclusive decision-making and government responsiveness may never be gainsaid—especially where people's grievances can be directly related to the aspirational matters of 'safety', 'sustainability', 'inclusiveness' and 'resilience' enunciated in SDG 11 as well as in South Africa's own National Development Plan Vision 2030 (NDP)[97] and Integrated Urban Development Framework (IUDF). Viewed in this way, community protests in Cape Town and elsewhere could be characterised as:

- expressing some of the most critical concerns of those who live in the city; and

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[93] See Langa (n 92); and Kehdinga Fomunyam, 'Student Protest and the Culture of Violence at African Universities: An Inherited Ideological Trait' (2017) Yesterday and Today 38 at 54–55.

[94] Protest action in Cape Town also takes different forms. See, for example, Makhubu (n 88) 686–699.

[95] City of Cape Town, *Five-Year Integrated Development Plan (IDP), July 2017–June 2022* at 32; and City of Cape Town, 'Apply to Demonstrate or Gather' <http://www.capetown.gov.za/City-Connect/Apply/Licences-and-permits/Public-gatherings/Apply-to-demonstrate-or-gather> accessed 31 March 2019.

[96] Bohler-Muller and others (n 24) 83 refer to research by Newham and Faull that has shown, for example, that the police use 'paramilitary tactics' and heavy-handed policing that can lead to, or aggravate, confrontations between police and protestors. Past aggressive crowd control measures reportedly 'have in many instances provoked protestors into responding with violence.'

[97] The NDP makes specific reference of the notion of building safer 'communities and promoting social cohesion among society' and explicitly states that '[p]lanning in South Africa will be guided by a set of normative principles that create spaces that are liveable, equitable, sustainable, resilient and efficient, and support economic opportunities and social cohesion': NDP at 260.

- a threat to safety in the city when a protest is or turns violent or excessively disruptive.

Some Observations and Areas yet to be Explored

Despite the united global voice in SDGs 11 and 16, it is impossible to adopt a universally applicable approach to the goals set for city life and city governance. The conditions in no two cities, even in the same country, will ever be exactly the same. In addition to the socio-economic fabric of a city, it is its own local politics and state of governance that determine the 'safeness' or perceived safety of the city, for example. The Cape Town case and the prevalence of peaceful, violent and disruptive community protests illustrate the point that city-dwellers' work and living space may be threatened by different kinds of social phenomena. Crime, other forms of violence and natural disasters are but some of the types of threat that give rise to risk and that could make cities 'unsafe'. This resonates with the thinking of Milliken, who holds that

> we need to make it a priority to engage more systematically and effectively for urban safety with particular attention to the systems of urban planning, legislation, governance and the socio-economy of urban centres.[98]

While people have the right to assemble and while demonstrations are an important form of participation in decision-making, to which they have a right, nobody is allowed to use the right to public protest to cause harm to the health and well-being of people or to the property of the state, institutions or individuals. Some of the distinctive features of community protest in South Africa include that it is often directed at local authorities (municipalities),[99] that it occurs frequently, and that it tends to spiral out of control, with resultant loss and damage. Such protests therefore threaten perceived and real safety in the country's cities. Even if it is not universally true, in South Africa, at least, there exists a causal link between protest action and the safe city space of the kind envisaged in SDGs 11 and 16.

Community protest is in fact rarely seen in the list of threats mentioned in the general discourse about urban safety. There are a few exceptions such as in the synthesis report of Milliken, referred to in this article,[100] and reports on city violence that refer to protest action as a form of 'political violence'.[101] From a South African point of view, whereas violent and disruptive community protests do not feature on the global radar of typical urban safety threats, they are relevant to the country's domestic pursuit of safe(r) cities. This highlights the indefiniteness of the meaning of 'safety' as envisaged in SDG 11. Threats to safety and the response needed vary from one local geography to the next. The more frequently discussed threats such as disaster, war, terrorism and public-health

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[98] Milliken (n 3) 2.
[99] Lancaster (n 7) 32.
[100] Milliken (n 3) 2.
[101] See, for example, World Bank, *Violence in the City: Understanding and Supporting Community Responses to Urban Violence* (World Bank 2011) 118.

incidents therefore run the risk of obscuring the more inconspicuous and 'low-profile' safety threats.

This said, SDGs 11 and 16 are understood in tandem to envisage a city where people can actively participate and voice their needs to help ensure the accountability of municipal and other authorities and responsive, inclusive, participatory and representative decision-making. From the social sciences we learn that a feature of crowd phenomena such as community protests 'is that they are not only shaped by society but also that they in turn bring about social change.'[102] The South African courts seem to view gatherings in protest in the same way. The message of Chief Justice Mogoeng in his 2012 Constitutional Court judgment was clear: people have the right to protest under certain conditions and this right

> exists primarily to give a voice to the powerless. It includes groups that do not have political or economic power, and other vulnerable persons. It provides an outlet for their frustrations.[103]

It follows that in an urban environment the internal contradictions between the goals, objectives and targets of the different SDGs are real. While disruptive and violent community protests may have an impact on others' rights to access and their sense of safety, it gives a voice to protestors and an opportunity to participate in governance. As indicated earlier, urban safety as envisaged in the SDG 11 targets relates to access to 'safe housing and basic services', 'safe transport systems' and 'safe green and public spaces'. Community protests threaten urban safety and safe access when, often for days on end, they cause damage to housing and service-delivery infrastructure, the blockage of public transport access roads or fires in public spaces adjacent to government buildings.

We deduce from the above that it is important to question the context behind and the reasons for unsafe conditions in cities. It is equally necessary to distinguish between causative factors, on the one hand, and conditions of possibility for disruption on the other. Poverty, a lack of access to services and dissatisfaction with the political dispensation are not necessarily the causes of community protests. They could also be the conditions of possibility in which protest action is able to occur, especially in cities that are 'locked in by past injustices and incompetencies'.[104] Cockayne et al make the point that despite its heterogeneity, three factors seem particularly relevant to

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[102] Stephen Reicher, 'The Psychology of Crowd Dynamics', in Michael Hogg and Scott Tindale (eds), *Blackwell Handbook of Social Psychology: Group Processes* (Blackwell 2008) 182.

[103] *Garvas* (n 9) para 61.

[104] A notion that is systematically unpacked by Susan Parnell and Sophie Oldfield (eds), *The Routledge Handbook on Cities of the Global South* (Routledge 2014).

understanding the relationship between urbanisation and violence: demography, inequality and governance.[105]

We did not set out in this article to investigate fully the complexity of the reasons behind and the economic and social costs of community protests. What is known from the available research on the topic, though, is that, at least in South Africa, protest action is in many instances[106]

> a revolt of the poor' or as a result of a state-led project that disrespects the capacities of the poor to be a part of their own development … [P]rotest is a complex phenomenon that interplays with historical legacies, cultures of violence, corruption, lived experiences of poverty that create dependency on the state of improvements to living conditions, communication effectiveness between local government and communities, migration, planning, power struggles and multi-faceted contestations over how state resources are expended.

This description highlights the links between the inclusivity, sustainability and resilience of cities called for in SDG 11. Exclusion, unsustainable development and vulnerability in cities may fuel some of the threats to urban safety. The prevention of and eventual response to some threats to urban safety will often require the involvement of various actors, which underscores the need for co-operation and systems alignment in the pursuit of the safety and other targets set out in SDG 11. Yet threats need not travel through the air or cross international borders. They can self-generate on local streets, where people socialise on the street, at minibus taxi ranks, in city parks and in the meeting rooms of unresponsive local authorities. 'Threats' may also inadvertently follow from people using legally entrenched rights, such as the right to assemble and the idea of a so-called people's 'right to the city'.[107]

Protest action gives people a voice, and is an important conduit for participatory governance and inclusive decision-making in cities and beyond. Cities create room for participation, for protest outside the official democratic structures, in spaces constituted by citizens themselves. What remains to be explored and better understood with reference to cities in South Africa, and perhaps elsewhere, is the legal boundaries—the legally relevant tipping point where the legitimate voice of one segment of civil society becomes a threat to the safety of another.

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[105] Cockayne and others (n 20) 3–4.

[106] Ngwenya (n 76) 7.

[107] For a South African legal perspective on the idea originally coined by the French philosopher Henry Lefebre, see Marius Pieterse, 'Development, the Right to the City and the Legal and Constitutional Responsibilities of Local Government in South Africa' (2014) 131(1) South African LJ 149–177.

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