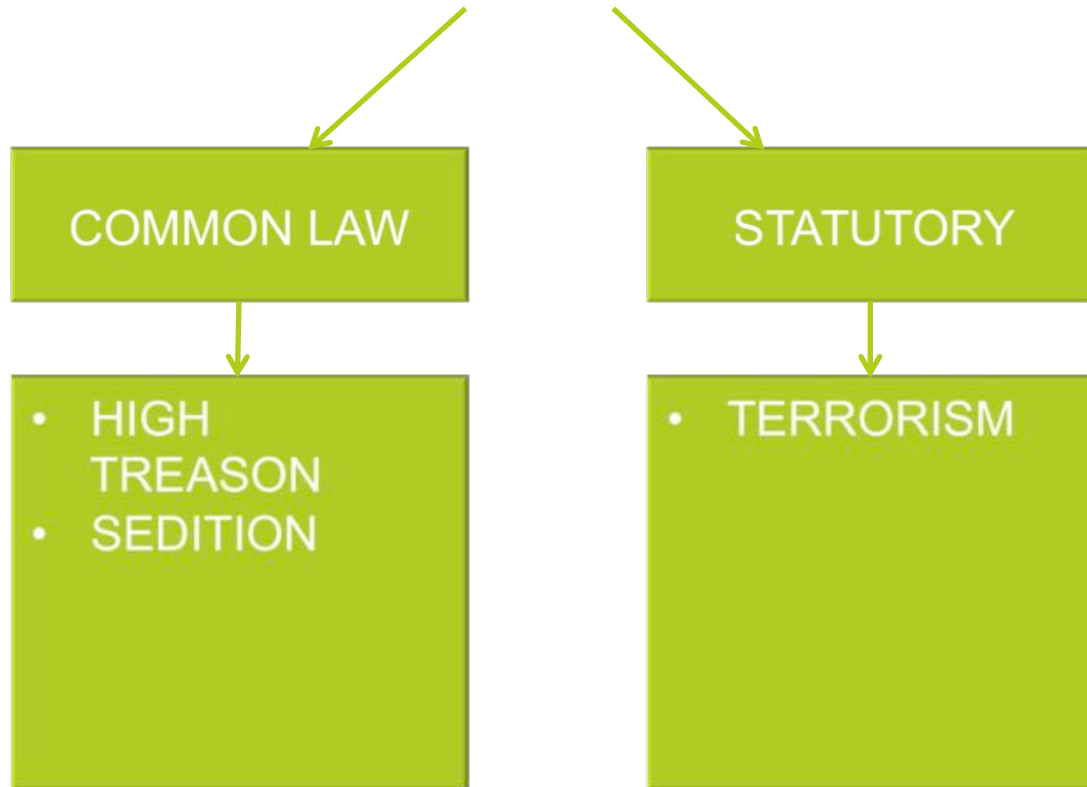


SPECIFIC CRIMES (CRW2602)

STUDY UNIT 1: CRIMES AGAINST THE STATE

INTRODUCTION

CRIMES AGAINST THE STATE ARE DIVIDED INTO:



TERRORISM

WHAT DO YOU REGARD AS TERRORISM ?

- **AUTHORITY:** THE PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST AND RELATED ACTIVITIES ACT 33 OF 2004

SECTION 1: PROHIBITS THE FOLLOWING TERRORIST ACTIVITIES: ANY ACT COMMITTED IN OR OUTSIDE THE REPUBLIC WHICH:

- **Involves the use of violence** by an means or method
- Involves the **release into the environment of**, or distributing or exposing the public to any **dangerous or harmful substance** or organism
- **Endangers the life, or violates the physical integrity of any person** or causes serious bodily injury or death of any person or a number of persons
- **Causes serious risk to the health or safety of the public**
- **Causes the destruction or substantial damage to any property** , natural resource or the environmental heritage whether private / public

TERRORISM

**SECTION 1: PROHIBITS THE FOLLOWING TERRORIST ACTIVITIES:
ANY ACT COMMITTED IN OR OUTSIDE THE REPUBLIC WHICH:**

- **Is designed or calculated to cause serious interference with or serious disruption of an essential service**, facility or system (incl electronic system, telecommunication system, banking or financial service, emergency service such as police, medical and defence services)
- Causes any **major economic loss or extensive destabilisation of an economic system of a country**
- Creates a serious **public emergence** situation or general insurrection in the the Republic

▣ THE ACTS DESCRIBED MUST BE PERFORMED WITH **DEFINED CULPABILITY**

▣ **READ THE SECTION ON CULPABILITY IN YOUR STUDY GUIDE
PAGE 5**

TERRORISM – THE ACT

▣ ELEMENTS OF THE OFFENCE (TERRORISM):

- ▣ AN **ACT**
- ▣ **UNLAWFULNESS**
- ▣ A **SPECIFIC INTENTION**



THE INTERESTS PROTECTED BY THIS ACT ARE
THE **SAFETY AND SECURITY** OF THE REPUBLIC,
ITS INSTITUTIONS AND PEOPLE

▣ **THE ACT: THE CONDUCT PROHIBITED IS THE:**

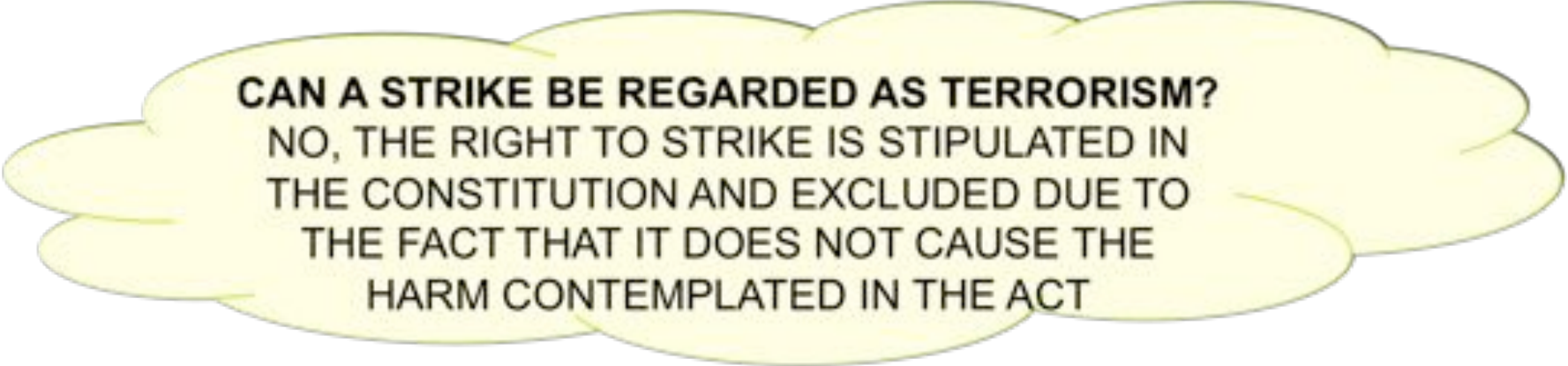
- ▣ THE USE OF **VIOLENCE**;
- ▣ RELEASE OF **TOXIC OR HARMFUL SUBSTANCES**
- ▣ CONDUCT WHICH **ENDANGERS THE LIFE** OR PHYSICAL INTEGRITY OF ANY PERSON
- ▣ THE CAUSING OF **SERIOUS RISK TO HEALTH AND SAFETY** OF THE PUBLIC

TERRORISM – THE ACT

- **THE ACT: THE CONDUCT PROHIBITED IS THE:**
 - CAUSING **DAMAGE TO PROPERTY**
 - AN ACT CALCULATED TO CAUSE **SERIOUS INTERFERENCE WITH SERVICES**
 - CAUSING **DESTABILISATION OF THE ECONOMY**
 - **CREATION OF PUBLIC EMERGENCY OR INSURGENCY**

TERRORISM - UNLAWFULNESS

- UNLAWFULNESS MUST BE PRESENT
- IF THE ACT DOES NOT INTEND THE HARM CONTEMPLATED IN THE ACT IT WILL BE EXCLUDED FROM THE PROHIBITION



CAN A STRIKE BE REGARDED AS TERRORISM?
NO, THE RIGHT TO STRIKE IS STIPULATED IN
THE CONSTITUTION AND EXCLUDED DUE TO
THE FACT THAT IT DOES NOT CAUSE THE
HARM CONTEMPLATED IN THE ACT

- WHERE AN ACT IS PERFORMED UNDER **COMPULSION** THIS MAY JUSTIFY ITS PERFORMANCE

TERRORISM – INTENTION

- A SPECIFIC INTENTION IS REQUIRED FOR THE CRIME AND THE INTENTION HAS TWO COMPONENTS:

1. FIRST COMPONENT: THE ACT SHOULD BE PERFORMED WITH THE INTENTION TO:

- THREATEN THE **UNITY AND TERRITORIAL INTEGRITY** OF THE REPUBLIC
- **INTIMIDATE CAUSE FEELINGS OF INSECURITY** WITHIN THE PUBLIC WITH REGARD TO ITS SECURITY OR TO **CAUSE FEELINGS OF TERROR, FEAR OR PANIC**
- **UNDULY COMPEL, INTIMIDATE, FORCE COERCE, INDUCE OR CAUSE A PERSON / THE GOVERNMENT / ORGANISATION TO DO OR TO ABSTAIN OR REFRAIN FROM DOING ANY ACT, OR TO ADOPT OR ABANDON A PARTICULAR STANDPOINT**

TERRORISM – INTENTION

- A SPECIFIC INTENTION IS REQUIRED FOR THE CRIME AND THE INTENTION HAS TWO COMPONENTS:
 - 2. SECOND COMPONENT: THE ACT MUST BE COMMITTED DIRECTLY OR INDIRECTLY (IN WHOLE / DIRECTLY) FOR THE PURPOSE OF THE ADVANCEMENT OF AN:
 - INDIVIDUAL / COLLECTIVE
 - POLITICAL / RELIGIOUS / IDEOLOGICAL / PHILOSOPHICAL
 - MOTIVE / CAUSE / UNDERTAKING
- ***DOLUS EVENTUALIS*** IS A SUFFICIENT FORM OF INTENTION
 - DOLUS EVENTUALIS = THE PERSON OBJECTIVELY FORSEES THE POSSIBILITY OF HIS ACT CAUSING HARM

TERRORISM – INTENTION

- **APART FROM TERRORISM THE ACT CREATES OTHER OFFENCES:**
 - OFFENCES RELATING TO **HARBOURING AND CONCEALMENT** OF A PERSON COMMITTING ACTS OF TERRORISM
 - **FAILURE TO REPORT** THE PRESENCE OF PERSONS SUSPECTED OF INTENDING TO COMMIT OR HAVING COMMITTED AN OFFENCE
 - OFFENCES RELATING TO **HOAXES**

TERRORISM – ACTIVITY

X, Y AND Z HAVE ALL BEEN RETRENCHED BY THE MINING COMPANY FOR WHICH THEY WORKED. THEY HAVE BEEN LOOKING FOR JOBS FOR 6 MONTHS WITHOUT SUCCESS. THEY BEAR A GRUDGE AGAINST THE GOVERNMENT BECAUSE THEY HAVE LOST THEIR JOBS

THEY ARE OF THE VIEW THAT THE GOVERNMENT DOES NOT PROPERLY ENFORCE IMMIGRATION LAWS; THAT MILLIONS OF PEOPLE ENTER THE COUNTRY ILLEGALLY AND THAT THE CITIZENS OF THE COUNTRY ARE EMPLOYED BECAUSE THESE ILLEGAL IMMIGRANTS ARE EMPLOYED BY THE MINES BECAUSE THEY ARE PREPARED TO WORK FOR VERY LOW SALARIES

X, Y AND Z FEEL THAT THE GOVERNMENT SHOULD BE ENCOURAGED TO DEPORT ALL ILLEGAL IMMIGRANTS. THEY DECIDE THAT THIS CAN ONLY BE ACHIEVED BY VIOLENT MEANS.

THEY PLAN AN ATTACK ON A CERTAIN NEIGHBOURHOOD WHICH THEY KNOW IS INHABITED BY ILLEGAL IMMIGRANTS. IN THE EARLY HOURS OF THE MORNING, THEY SET ALIGHT THE HOMES OF THESE PEOPLE. MANY ARE INJURED AND SOME DIES AS A RESULT OF THE ATTACK

CAN X, Y AND Z BE CHARGED WITH THE CRIME OF TERRORISM ?

PUBLIC VIOLENCE

DEFINITION: PUBLIC VIOLENCE

PUBLIC VIOLENCE IS THE **UNLAWFUL AND INTENTIONAL** PERFORMANCE OF AN ACT, OR ACTS BY A **NUMBER OF PERSONS** WHICH ASSUMES SERIOUS PROPORTIONS AND IS **INTENDED TO DISTURB THE PUBLIC PEACE AND ORDER BY VIOLENT MEANS**, OR TO **INFRINGE THE RIGHTS OF ANOTHER**

- THE ELEMENTS OF THE CRIME OF PUBLIC VIOLENCE:
 - AN ACT
 - PERFORMED BY A **NUMBER OF PERSONS**
 - WHICH ASSUMES **SERIOUS PROPORTIONS**
 - WHICH IS **UNLAWFUL**, AND
 - **INTENTIONAL**, AND MORE SPECIFICALLY, INCLUDES AN INTENTION TO **DISTURB THE PUBLIC PEACE AND ORDER BY VIOLENT MEANS** OR TO **INFRINGE THE RIGHTS OF ANOTHER**

PUBLIC VIOLENCE – JOINT ACTION

THE INTEREST PROTECTED IN THE CASE OF PUBLIC VIOLENCE IS THE **PUBLIC PEACE AND ORDER**

- THE CRIME CANNOT BE COMMITTED BY AN INDIVIDUAL ACTING ALONE – IT MUST BE A NUMBER OF PERSONS WORKING TOGETHER
- IT IS NOT POSSIBLE TO SPECIFY THE NUMBER OF PERSONS – IT WILL DIFFER FROM CASE TO CASE
 - THE SERIOUSNESS OF THE THREAT TO PEACE AND ORDER WILL BE TAKEN INTO ACCOUNT
 - *TERBLANCE CASE* – 5 PERSONS WERE CONSIDERED SUFFICIENT
 - *NXUMALO CASE* – DUE TO THE FACT THAT THE DISTURBANCE WAS NOT TOO SERIOUS 10 PERSONS WERE CONSIDERED INSUFFICIENT

PUBLIC VIOLENCE – JOINT ACTION

- THOSE PARTICIPATING IN THE DISTURBANCE OF THE PEACE **MUST ACT IN COMMON PURPOSE**
- ONCE IT IS ESTABLISHED THAT THE PARTICIPANT ACTED IN THE AIM OF DISTURBING THE PUBLIC PEACE, THE PROSECUTION NEED **NOT PROVE** WHAT ACTS WERE COMMITTED BY WHICH OF THE PARTICIPANTS

S V LE ROUX

IN THE ABSENCE OF PROOF OF A PRIOR AGREEMENT / PLAN TO COMMIT TRANSGRESSIONS, THE STATE MUST PROVE **ACTIVE ASSOCIATION WITH THE ACTS OF PUBLIC VIOLENCE OF EACH INDIVIDUAL ACCUSED**
PROOF OF MERE PRESENCE AT THE SCENE OF THE CRIME IS NOT SUFFICIENT

- CRIME CAN BE COMMITTED IN A PUBLIC PLACE OR ON A PRIVATE PROPERTY

PUBLIC VIOLENCE – JOINT ACTION

- THE ACT MUST BE ACCOMPANIED BY **VIOLENCE OR A THREAT OF VIOLENCE**
- THE CRIME IS COMMITTED EVEN IF THERE IS NO ACTUAL DISTURBANCE OF THE PUBLIC PEACE – IT IS SUFFICIENT IF THE ACTION IS **AIMED AT THE DISTURBANCE OF PEACE** (*SEGOPOTSI CASE*)
- **EXAMPLE OF CONDUCT:**
 - FACTION FIGHTS
 - JOINT RESISTANCE TO POLICE ACTION BY A GROUP OF PERSONS
 - RIOTING
 - VIOLENT COERCION OF OTHER WORKERS BY A GROUP OF STRIKERS
 - DISRUPTING AND TAKING OVER A MEETING BY A GANG

PUBLIC VIOLENCE – SERIOUS PROPORTIONS

- THE CRIME IS ONLY COMMITTED IF (IN ADDITION OF THE OTHER REQUIREMENTS) THE ACTION OF THE GROUP ASSUMES **SERIOUS PROPORTIONS**
- **DISTINGUISH BETWEEN CASES LIKE ROWDY BEHAVIOUR AND FAMILY FEUDS FROM ACTIONS THAT THREATEN PUBLIC PEACE**
- THE SAFETY OF THE PERSONS NOT INVOLVED IN THE DISTURBANCE SHOULD BE THREATENED
- THE ACT OF AN INDIVIDUAL THROWING A STONE AT A POLICE VEHICLE DOES NOT AMOUNT TO PUBLIC VIOLENCE

PUBLIC VIOLENCE – SERIOUS PROPORTIONS

- WHETHER AN ACT IS SERIOUS WILL DEPEND ON VARIOUS FACTORS:
 - THE NUMBER OF PERSONS INVOLVED
 - THE TIME
 - THE PLACE
 - THE DURATION OF THE DISTURBANCE
 - THE CAUSE OF THE DISTURBANCE
 - THE STATUS OF THE PARTICIPANTS
 - WHETHER OR NOT THEY ARE ARMED
 - WHETHER PERSONS OR PROPERTY ARE INJURED OR DAMAGED
 - THE WAY IN WHICH THE DISTURBANCE IS SETTLED (IF SETTLED)

PUBLIC VIOLENCE - UNLAWFULNESS

- THE ACTION OF THE CROWD MUST HAVE BEEN UNLAWFUL
- PARTICIPATION MAY BE JUSTIFIED ON THE FOLLOWING GROUNDS:
 - INDIVIDUAL: THE GROUND OF COMPULSION
 - GROUP: JUSTIFIED BY PRIVATE DEFENCE

PUBLIC VIOLENCE – INTENT

- INTENT IS THE FORM OF CULPABILITY REQUIRED
- THE INDIVIDUAL ACCUSED MUST HAVE BEEN AWARE OF:
 - THE NATURE AND PURPOSE OF THE ACTIONS OF THE GROUP
 - HIS PARTICIPATION IN THE ACTIVITIES OF THE GROUP MUST HAVE BEEN INTENTION
- A COMMON PURPOSE OF DISTURBING THE PUBLIC PEACE AND ORDER MUST EXIST BETWEEN THE MEMBERS OF THE GROUP

PUBLIC PEACE – ACTIVITY

A POLITICAL PARTY HOLDS A MEETING IN A HALL. THE LEADER OF THE PARTY, Y, OPPOSES ABORTION, IS IN FAVOUR OF THE DEATH SENTENCE AND HAS ON NUMEROUS OCCASIONS MADE DEROGATORY REMARKS BOUT GAY PEOPLE.

A LARGE NUMBER OF GAY RIGHTS ACTIVISTS DECIDE TO BREAK UP HIS MEETING. ALMOST 150 MEMBERS OF THE GROUP ARE GATHERED IN THE FRONT HALL ON THE EVENING THE MEETING IS HELD. AS PEOPLE ARRIVE FOR THE MEETING, THE ACTIVISTS OBSTRUCT THE ENTRANCE TO THE HALL. Y CALLS THE POLICE ON HIS CELL PHONE. THE POLICE ARRIVE WITH DOGS AND TEAR-GAS. THEY REQUEST THE PROTESTERS TO DISPERSE PEACEFULLY. ONE WOMAN SHOUTS THAT THE POLICE WILL HAVE TO REMOVE HER FORCIBLY. THE OTHERS ALL AGREE WITH HER

BECAUSE THE CROWD REFUSES TO DISPERSE, THE PLOICE THROW TEAR-GAS CANISTERS AND THE PROTESTERS RUN AWAY. THE PROTESTERS ARE CHARGE WITH PUBLIC VIOLENCE. THIR LEGAL REPRESENTATIVE ARGUES THAT THE ACTIONS OF THE PROTESTERS WERE NOT SERIOUS ENOUGH TO JUSTIFY A CONVICTION FOR THE CRIME

YOU ARE THE STATE PROSECUTOR. WHAT SHOULD YOUR RESPONSE BE TO THIS REASONING