

THERE ARE QUESTIONS THAT NEED TO BE ASKED.

**A PRIMER ON OPERATION EIGHT –
FURTHER DEVELOPMENTS.**

- Moana Jackson.

“Whenever there is an abuse of rights there are questions that need to be asked. Whenever a State takes unprecedented power there are questions that need to be asked. Whenever someone is stopped, or searched or held without just cause there are questions that need to be asked. To not ask them is to ignore the reality that one breach of a human right can lead inexorably to another”.

Dag Hammarskjold, UN Secretary-General, 1953-1961.

ABSTRACT:

The decision of the Solicitor-General that there was insufficient evidence to warrant charges being laid against twelve people under the Terrorism Suppression Act was welcome news for the whānau of those involved.

However many questions still remain about the nature and scope of Operation Eight.

There are questions about the context in which the operation itself occurred.

There are questions about the degree of political involvement in the operation, particularly the political attempts to interfere with the subsequent judicial process.

There are questions that need to be asked about the racism of the Operation.

There are questions that still need to be asked about the shocking abuse and mistreatment of innocent people during the operation.

Finally there are important questions that need to be asked about the future of any anti-terrorism legislation as well as the relationship between Māori and the Police.

THE QUESTIONS:

Was the context of Operation Eight limited to the actions on October 15?

No.

It is apparent that as well as the long surveillance conducted before October 15 there were other factors which determined how and why the Police operated the way they did.

What other factors?

Perhaps the most important is that since the attacks of 9/11 the Security Intelligence Service and the Police have requested and been given huge increases in budget and staff to monitor and investigate terrorism or potential threats to security in New Zealand.

For example the Police established a unit called the Special Tactics Group specialising in the military control of potential terrorist threats and set up terrorist liaison positions in Washington and London to share intelligence and internationalise the strategy.

Weren't they prudent moves?

Not really.

There should of course be measures in place to ensure that the community is protected from harm but the quasi-military and international emphasis of the strategy meant that

the passage of the Terrorism Suppression Act in 2002 and the subsequent definitions of terrorism were more about international demands than domestic realities.

Indeed the obsession with American-led notions of “terror” has meant that the “war” on terror and the ideas behind places like Guantanamo Bay have been seen as the models rather than the particular issues that might arise here.

What has this meant in practical terms?

In a general sense normal activism and the democratic right to protest have increasingly been defined as “threats” with a consequently more heavy-handed Police treatment and surveillance of activists ranging from environmentalists to animal rights protestors.

In a more specific sense Iwi were concerned that the new powers would be targeted at Māori simply because history has shown that opposition to colonisation has always been seen as a “threat” by the Crown. Operation Eight showed that that fear was justified.

Was this racist?

Yes.

The Police Commissioner was correct in stating that people of “many ethnicities” were arrested. However the **way** they were arrested shows a marked difference in terms of race.

For example the Māori community of Ruatoki was the only community that was locked down and blockaded in the course of the Operation. It was only in Ruatoki that innocent people were stopped, searched and harassed while going about their daily lives.

When houses were raided in Auckland and Wellington the surrounding suburbs were not locked down, and no innocent Pākehā people were stopped going about their daily lives.

How has the Operation been managed?

Really badly.

The flawed militarism has been compounded by what appear to be deliberate leaks to the media and political interference in the judicial process.

How has this occurred?

In various ways. For example the media often received information about the charges against some defendants before the defendants themselves or their lawyers, and of course on Friday November 9 TV3 was leaked evidence suppressed by the Courts.

Of real concern have been the flagrant breaches of sub judice.

What is sub judice?

When a matter has yet to be proved or disproved in a court case it is sub judice and unable to be discussed or stated as a fact in public.

It is one of the basic protections for a fair trial because it ensures that a potential jury is not influenced by misinformation or by claims that something is true when it may not be.

How has it been breached?

At the press conference announcing the Operation the Police declared that napalm had been found or used in Tuhoe “terrorist camps”.

The existence or otherwise of napalm (and of “terrorist camps”) was a matter for a Court to decide not for the Police to state as a fact.

Perhaps of greater concern is the fact that the Prime Minister has also discussed napalm and the existence of “terrorist camps” as matters of fact.

Indeed she declared that it was appropriate for her to do so when in fact it was clearly inappropriate not just because it appears to breach sub judice but also because it could be seen as an attempt to politically influence the judicial process itself.

It is particularly ironic that while politicians were telling people not to comment until the process had run its course they nevertheless felt free to make their own comments.

What abuse of innocent bystanders took place?

Some examples are now sub judice because they are subject to possible civil action against the Police. However the affidavits of people who have no reason to lie indicate that there was systematic abuse of the rights of innocent men, women and children.

The breach of Police procedures that occurred when people were ordered out of their cars by armed officers and photographed in Ruatoki is now public knowledge. The Police simply do not have that right.

Other abuses were more distant from public scrutiny and thus more traumatising for the people concerned, especially those which involved physical mishandling and detention.

Where to now for the “war on terror”?

It is clear that the Terrorism Suppression Act is not only complex and incoherent. It is also inappropriate to the circumstances in this country and opens the way to an unacceptable quasi-military limitation of human rights.

The amendments to the Act just passed in Parliament are even more limiting and more closely tied to international demands rather than domestic realities.

In that circumstance the Solicitor-General's suggestion for a review of the Act by the Law Commission is both inadequate and unsatisfactory. Indeed it is possible that such a review may merely lower the standard of proof and thus increase the possibility that people's rights will be infringed.

It is therefore suggested that the Act be repealed and a new process be initiated that accepts international obligations while recognising domestic circumstances.

It is also suggested that there be an independent review of Operation Eight.

To ensure Māori "buy in" to any Review Māori (and particularly Tuhoe) should be involved in choosing the Review members.

Of course some Pākehā may oppose such a suggestion with the claim that Māori members would be biased but the essential racism of that view should be dismissed because such people would never claim that Pākehā would be similarly biased.

There should also be a public commitment by the Police to give meaningful effect to the efforts made by many people to improve their relationships with Māori.

It is one of the tragedies of the Operation that the quasi-military focus of the anti-terrorism strategy meant the effective sidelining of the Police Iwi liaison Officers who were originally appointed because of their knowledge of Māori communities. Even the Police Commissioner's own Advisory Group of respected Māori leaders was excluded.

Their expertise was not deemed relevant to the new style of "shock and awe" Policing.

However any possibility of changing the Police culture that led to the abuses in the Operation requires among other things a genuine rather than a token commitment to its "responsiveness to Māori" strategy.

It also requires a long-term commitment to mend the damaged relationship with Māori. This will take time and its pace should be determined by the communities most affected. However compensation and an apology should definitely be offered.

It might also be helpful if the officers responsible for the abuse were unmasked and required to revisit Ruatoki in order to make peace literally face to face. An apology with the anonymity of intimidation still in place will be no apology at all.

Above all there needs to be a continued willingness to question the whole extension of Crown power in the name of anti-terrorism and the potential dangers it poses to everybody's rights. The words of Dag Hammarskjöld are even more relevant now than they were fifty years ago.