

A Travesty Of Justice - The Case Of Ahmed Zaoui

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Ahmed Zaoui, an Algerian Islamic politician, has been in custody since he was arrested upon arrival, in Auckland, in late 2002. He has never been charged or tried for any offence. He arrived on false papers, and claimed refugee status, which he has been granted by the appropriate official body. The Government chose to override that decision, citing the woebegotten Security Intelligence Service (SIS) as its preferred authority on the case. Zaoui is wanted by Algeria (site of a particularly murderous civil war, one where the West now backs the regime because it is fighting Islamic fundamentalists). For most of the 1990s Zaoui was shunted from exile to exile, in Europe and Africa. The Intelligence agencies of various European countries, principally France, plus the Algerians and NZ's more usual Intelligence allies, have all contributed to Zaoui remaining in prison in Auckland, and facing imminent deportation (with the very real prospect of death, should he be returned to Algeria, which has sentenced him to death in absentia).

Zaoui's plight has become a national cause celebre, and there is any number of appalling aspects to it (such as the racist and shoddy Immigration laws and procedures exposed for all to see). Peace Researcher has a longstanding interest in the SIS and the Inspector-General of Intelligence and Security, so we decided to concentrate on that aspect.

David Small is well known to PR readers because of his involvement in the case of Aziz Choudry (it was David who caught the SIS agents breaking into Aziz's Christchurch home, in 1996). David later won his own civil court case arising out of that. See PR 21, June 2000, "David Defeats Goliath". David has become heavily involved in the campaign to free Ahmed Zaoui. He has visited Zaoui in prison (they both speak French); attended the successful December 2003 Auckland High Court hearing; spoken in the media and at public meetings. We invited David to write us a lead article on the Zaoui case. He was so keen that he hand wrote it, whilst on a family holiday (special thanks to Leigh Cookson for typing it for us, also whilst on holiday).

We consider it appalling that Ahmed Zaoui has been imprisoned, most of it in solitary confinement and in maximum security, without charge or trial, and faces deportation and possible death, because of the cackhanded malice of New Zealand "Intelligence" (a contradiction in terms if there was ever one), backed up by the bumbling prejudices of the Inspector-General, and the gutlessness of a Government whose most senior Ministers put a higher premium on sucking up to our masters in the "War On Terror" and on a relationship with the Intelligence agencies from the likes of France (our "ally," which, in the 1980s, sent Intelligence agents to bomb the "Rainbow Warrior" in Auckland Harbour, killing a man in in the process) than on the life and liberty of a Third World refugee. Shame on the lot of you. Ed.

Zaoui Put In Solitary On Scandalously Flimsy Grounds

One of the more disturbing details of the saga of Algerian refugee, Ahmed Zaoui, was his incarceration for ten months in Paremremo Maximum Security Prison in solitary confinement. He was placed and kept there on the strength of a report produced by the threat assessment unit of the Police. The Police gave three reasons for their recommendation. The first was an assertion that Mr Zaoui was a member of the Armed Islamic Group (whose acronym, in French, is GIA. French is the colonial language in Algeria); a claim whose sole source was a Website whose other outrageous theories include one about Queen Elizabeth being a big-time drug smuggler. The other two Police arguments were that Mr Zaoui might use lawful means to try to stay in New Zealand, and that he may generate support amongst the New Zealand public for his plight.

It is scandalous that these were seen as sufficient grounds – or any grounds at all – for keeping a person in solitary confinement in maximum security. But the two fears of the Police have been realised: Mr Zaoui has been finding lawful means to stay in the country and support for him is growing. In fact recently he received 100 letters in a single day from wellwishers.

Mr Zaoui's legal team who, contrary to claims about being on the gravy train, have only been paid for two weeks of their work of several months, succeeded in getting him out of solitary and transferred from Paremremo to the Auckland Remand Prison, and have got the Government on the back foot on several other matters as well. Deborah Manning and Richard McLeod, together with Queen's Counsel, Dr Rodney Harrison, have also just won a legal challenge to an interim ruling of the Inspector-General of Intelligence and Security, Laurie Greig. In December 2003, they persuaded the Auckland High Court that, in considering Mr Zaoui's appeal against the Security Risk Certificate that he was issued with by the Security Intelligence Service (SIS), the Inspector-General was wrong to refuse to consider human rights issues, and to refuse to release even a summary of the classified information that the SIS relied on for the Security Risk Certificate (*the first such Certificate ever issued in NZ. This case was historic also because Zaoui's lawyers succeeded in making the SIS Director, Richard Woods, appear as a witness. Ed.*).

Granted Refugee Status

Initially depicted as some kind of Islamic terrorist caught by our vigilant intelligence organisations, the turning point in the public perception of Mr Zaoui came with the August 2003 decision of the Refugee Status Appeals Authority to accept his application for refugee status. The Authority's 223 page decision described Mr Zaoui's evidence in the following terms:

“In 11 days of questioning, the appellant's evidence has been internally consistent in every respect...On no occasion...did he give evidence inconsistent with what he had already said...His account is also consistent with information from reliable third parties...his evidence on the complex events spanning more than a decade is corroborated by this wealth of information from other sources in every material detail...The appellant has given approximately 50 hours of evidence. At no point has he prevaricated or hesitated. His answers have been spontaneous and non-contrived”.

The Authority concluded that Mr Zaoui “has only ever been a member of the (Islamic Salvation Front; French acronym FIS); a political group and found “no serious reasons for considering he is a member, let alone the leader, of the GIA or... any armed group”. It described Mr Zaoui as “an articulate, intelligent, committed and principled individual who, despite the hurdles placed before him over the last ten years, remains a passionate advocate for peace through democracy in Algeria”.

The Authority was scathing in its comments on the material provided to it by the SIS. “The (SIS’s) chronology of the appellant...is mostly devoid of any citation of the sources relied on. Many of the entries consist solely of unsourced extracts from various news reports, with no attempt to excise opinion from fact...the SIS commentary on the FIS...is superficial and, to the extent that it reflects the official biases of the Algerian regime, contentious. Its attached chronology on the FIS is more interesting for its selective omissions than anything it says about the FIS...We were surprised at how limited (the SIS unclassified material) was and the questionable nature of some of the contents”.

What made this judgement a turning point was that its findings turned the spotlight onto the SIS, its reasons for issuing a Security Risk Certificate against Mr Zaoui, and the sole avenue for appeal against the Certificate, the Inspector-General of Intelligence and Security.

It is the role of the Inspector-General to determine whether the Certificate was properly issued. In doing so, he has privileged access to classified security information, significant powers, and wide discretion as to how to use them. The position of the Inspector-General was created in conjunction with the controversial 1996 Amendment to the SIS Act.

Inspector-General: A Record Of Incompetence & Prejudice

The Inspector-General’s first case was one familiar to readers of *Peace Researcher*. He heard complaints from Aziz Choudry and me concerning events around the 1996 Asia Pacific Economic Cooperation (APEC) Trade Ministers’ meeting in Christchurch: the SIS break-in to Mr Choudry’s house; a hoax bomb that looked like a set-up; and questionable Police searches.

The Inspector-General, without confirming or denying any SIS involvement, concluded that no law had been broken. Subsequent court cases found that both the SIS and Police had acted illegally*. The latest court case is a further example of the Inspector-General getting the law wrong and erring on the side of secrecy, rather than accountability. * *The best summary of the Choudry case can be read online at <http://www.converge.org.nz/abc/choudry.htm> Ed.*

Since then, the SIS has had its powers increased through amendments to the SIS Act and Immigration Act in 1999, the Terrorism Suppression Act (2002) and the Counter-Terrorism Act (2003) *. Through all this, the Inspector-General remains the only avenue for appeal against the SIS. **ABC’s submissions on these latter two Acts, and similar legislation, can be read online at <http://www.converge.org.nz/abc/submissions.html> Ed.*

With such broad discretion, the views of the Inspector-General are very important. He revealed these in an interview with *Listener* writer, Gordon Campbell (29/11/03; "Watching The Watchers"), in which he expressed a lack of sympathy for asylum seekers, a cosy, rather than critical relationship with the SIS, and a willingness to rely on uncorroborated hearsay as grounds for people being declared threats to national security. His remarks provoked an outcry and have led to Mr Zaoui's lawyers formally calling for Laurie Greig to be removed from deliberating on the appeal against the Security Risk Certificate that has been issued against Mr Zaoui.

In the wake of the September 11, 2001 attacks on the US, there has been intense pressure on all countries to sign up to the "War On Terror". New Zealand has been an enthusiastic participant in this "war". The Prime Minister, Helen Clark (who is Minister in Charge of the SIS, a portfolio only ever held by the PM), and Immigration Minister, Lianne Dalziel, have consistently argued that, if New Zealand is to play its part, it cannot divulge any information that it receives from foreign Intelligence agencies.

However, given what we know about the SIS and the Inspector-General, what this almost certainly amounts to is the SIS uncritically accepting information from North American and European intelligence agencies, and Laurie Greig uncritically accepting the assurances of the SIS. In this globalised unaccountable world of "intelligence", New Zealand's role is to act on reports it is given from its more powerful counterparts, not to question or demand evidence of its reliability.

All of this leaves Mr Zaoui in a difficult predicament. The Security Risk Certificate he is appealing says not that he is a terrorist, but that his presence in New Zealand would endanger our national security. Any challenge to such broad, value-laden and imprecise grounds would be difficult, but it becomes impossible when one is forbidden from knowing anything about the accuser's evidence. This is a fundamental breach of natural justice and one that even other paid-up members of the "War On Terror", including Britain and Canada, do not rely on.

In Mr Zaoui's case it is compounded by what we know is a very low threshold that the SIS uses to give something the status of "classified security information". As anyone who has had dealings with the SIS knows, all you are likely to get out of them (if you are lucky) is copies of letters you have sent to them and maybe the odd newspaper clipping. In the Choudry case, one document, which had been classified but was eventually extracted from the SIS, was a photocopy of a section of a Christchurch street map. Expect similar absurdities now that aspects of the classified information on Mr Zaoui have to be released.

The Mysteriously Missing Tape

The suspicion of the low threshold for classified information was recently confirmed by the discovery (it could be said "by chance", but again experience shows that the more ends you tug at, the more incriminating evidence falls out) of a secret recording of a seven hour interview that the SIS and Police conducted with Mr Zaoui on his arrival in the country and without Mr Zaoui being advised of his right to have a lawyer present.

When the existence of the videotape was eventually discovered, the SIS made the preposterous claim that the picture was of poor quality and a large segment of the audio track was missing. It is incredible that an agency that went out of its way to arrange an interview at a time and place of its choosing with somebody it had been told from an overseas Intelligence agency (probably France) was a serious security risk, would mess up something as basic as recording and storing a videotape. In fact, it would have been astounding if the SIS had not immediately copied the tape and sent it to the agency that originally gave it the dirt on Mr Zaoui.

Three Key Issues

The missing sound story drew scorn from many people and even provoked a rebuke from the Prime Minister, which led within hours to the miraculous rediscovery of all of the sound. But the sound sideshow should not draw attention from three more serious issues.

The first of these is the making of the tape in the first place. When the SIS eventually admitted breaking into Mr Choudry's house (in 1996), their defence was that they thought they were legally entitled to do so. However, they could not possibly claim that they thought they were allowed to secretly record the interview with Mr Zaoui. This incident confirms what critics of the SIS have long argued; that the SIS acts as though it is above the law that it does whatever it thinks it can get away with regardless of the law.

The second is that the SIS is still refusing to release the tape to Mr Zaoui's lawyers on the grounds that it is classified information. It is absurd and unreasonable to deny the tape on these grounds to the person who was (obviously) present at the interview itself. It also further confirms the low threshold the SIS uses to give something the status of classified information.

The other serious concern about the tape is that the Inspector-General did not even know of its existence. The person who is the only avenue of appeal against the SIS is being kept in the dark about relevant aspects of its operation.

As with most things involving the SIS, the more that is discovered about the Zaoui case, the more disturbing the picture that emerges. The Police fear the Mr Zaoui could find legal means to stay in New Zealand may yet be realised. And they were right to worry that his plight might attract the support of New Zealanders. On humanitarian grounds alone, Mr Zaoui is worthy of support. This case is also a clear demonstration of so much that is wrong with the murky world of "intelligence" and "security". It shows that the new laws are a travesty of justice, that the agencies responsible for applying them are not to be trusted, and that avenues for appeal are worthless.