

Ahmed Zaoui Still Imprisoned Without Charge: Government Loses Legal Battles, Inspector-General Loses Job

by David Small

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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.

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 the process) than on the life and liberty of a Third World refugee. Shame on the lot of you. Ed.

Ahmed Zaoui is still where he was at the time of the last edition of *PR* (see PR 28, December 2003; "A Travesty Of Justice: The Case Of Ahmed Zaoui", David Small. It can be read online at <http://www.converge.org.nz/abc/pr28-92.html> Ed.). However

from his cell in the Auckland Remand Centre adjacent to Mt Eden prison he has seen off two of the people most directly responsible for his continued incarceration: Immigration Minister Lianne Dalziel and Inspector-General of Intelligence and Security, Laurie Greig.

At the time of writing, Zaoui is awaiting the outcome of a May 2004 Court of Appeal hearing into the High Court ruling that the Inspector-General was obliged to consider human rights issues when reviewing the Security Risk Certificate against him (*the first such Certificate ever issued in New Zealand. Ed.*). The Crown argued that Justice Williams, who made the ruling at issue, had no jurisdiction to even hear the case. It is insisting that the Inspector-General should consider only security matters and leave human rights concerns to the Minister of Immigration, who has only three days after an appeal against a Security Risk Certificate is lost, to decide about deportation.

Zaoui's legal team argued, among other things, that: a person's human rights would be compromised by such a process, because the deportation decision risked being politicised and, in making the decision, the Minister would not have either the time or the access to classified information necessary to make a proper assessment of human rights concerns.

Summary Of Allegations Released

The other decision of Justice Williams, one which was not appealed, was that Mr Zaoui was entitled to a summary of the allegations against him that formed the basis of the Security Risk Certificate. When this summary was released it revealed nothing new or substantially different from what the Security Intelligence Service (SIS) had alleged against Mr Zaoui when it tried unsuccessfully to have his application for refugee status declined by the Refugee Status Appeals Authority. One bizarre element of this released evidence was a video that Mr Zaoui brought to New Zealand featuring innocuous scenes he had filmed during his time in various parts of Asia.

The SIS decision to interpret this as a casing video for possible future terrorist targets reveals the level of SIS determination to brand Mr Zaoui as a threat to national security. The fact that this video included no film of security installations was alleged to reveal an interest by Mr Zaoui, and his terrorist associates, in soft targets. In this interpretation, it is hard to imagine how any scenes Mr Zaoui had filmed would have been interpreted in any way other than as evidence of terrorist intelligence gathering.

The Resignation of the Inspector-General of Intelligence and Security

While the Minister of Immigration lost her place in Cabinet through matters unrelated to the Zaoui case, the Inspector-General of Intelligence and Security resigned as a direct result of his handling of it. In particular he was found by the Court to have expressed views and behaved in such a way that could have given the impression of bias against Mr Zaoui and in favour of the SIS.

Two matters contributed to this finding. The first related to his comments in the infamous "outski" interview to *Listener* journalist Gordon Campbell (29/11/03; "*Who Watches The Watchers?*" Greig said in that interview that, if it was up to him, Zaoui would be "outski" on the next plane. Ed.). Of greater concern to the judges than the

"outski" remark was this statement of Laurie Greig's: "We don't want lots of people coming in on false passports that they've thrown down the loo on the plane and saying 'I'm a refugee, keep me here'".

The other issue was how the Inspector-General conferred with the Director of the SIS and officials from the Prime Minister's office in constructing a damage control operation when the media learned of the existence of a secretly recorded videotape of an interview with Mr Zaoui soon after his arrival in New Zealand. Besides the scandal of the tape being made in the first place, and then being allegedly lost, there was concern expressed that the Inspector-General, who was supposed to be reviewing all the evidence that contributed to the issuing of the Security Risk Certificate, appeared to be unaware of the tape's existence.

In response to this matter Laurie Greig was found to have noted that he received a call from the SIS Director and written: "Concern that TV said I had not been told about the tape and so inference that SIS had concealed it from me" and "Reported back to ERW (SIS Director Richard Woods). Later spoke to David Lewis (Prime Minister's Press Secretary) confirming foregoing and agreed with him that advice to selected newspapers enough". Within hours of the Court ruling that, as a result of this "apparent bias", Mr Greig should stand aside from the Zaoui case, the Inspector-General tendered his resignation, in March 2004.

Laurie Greig's replacement in the position, Justice Paul Neazor, is not likely to reveal the personal views that influence how he exercises his discretion. Solicitor-General at the time of the 1985 "Rainbow Warrior" bombing, the new I-G reveals very little about himself. It appears that almost everybody who has had close dealings with the former Solicitor-General vouches for his integrity. However, the same was said about Laurie Greig when he took up the position. While the issue of "apparent bias" brought down Greig, any lack of "apparent bias" does not address the fundamental problems with the office itself.

The Office Of The I-G Is The Issue

In resigning, Laurie Greig saved the Government from further embarrassment. Had he chosen not to resign, he could not have been sacked. As a member of the judiciary the Inspector-General of Intelligence and Security enjoys all the protection of a High Court Judge. He can only be removed by a vote in Parliament and only on very limited and specified grounds. Exhibiting "apparent bias" is not one of them.

This protection of the judiciary from undue political influence is an essential aspect of the separation of powers, one of the pillars of a liberal democracy. However, other members of the judiciary function within a system of sophisticated internal rules, conventions and checks and balances. These include hierarchies of courts and rights of appeal, persuasive and/or binding precedents, rules about the conduct of cases and admissibility of evidence. There are, therefore, limits to how much harm can be caused by the untoward actions of any single member of the judiciary.

The office of the Inspector-General of Intelligence and Security exists in quasi-isolation from this broader legal apparatus. And the person holding that office exercises an extraordinary amount of individual discretion. Had Laurie Greig declined to give an interview with the *Listener*, as he was perfectly entitled to do, the personal

views which were informing his judgement on the Zaoui case would never have been revealed and there would have been no grounds at all to have him removed from the case.

The History Of The I-G

The position of Inspector-General was introduced in 1996 at the same time as the powers of the SIS were broadened under the SIS Amendment Act. To allay public fears about this widened scope of SIS activity, the National government, supported by Labour, held up the office of I-G as a means for greater public oversight and accountability. Anyone who felt unfairly treated by the SIS, it was claimed, could raise his or her concerns with an impartial judicial watchdog.

Laurie Greig was the first person to hold the position. Calls for his resignation began with his first case, which 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. His report could not be released without the approval of the Director and the Minister in Charge of the SIS (*who is always the Prime Minister. The best summary of the Choudry case can be read online at <http://www.converge.org.nz/abc/choudry.htm> Ed.*).

Since that time, the powers of and resourcing available to the SIS have increased dramatically. However, these same structural flaws in the avenues open for appeal against the SIS remain. They exist independently of the person who occupies the position of Inspector-General.

Conclusion

As the powers of surveillance agencies like the SIS continue to be widened, nobody should be under any illusions that there is a genuine impartial process for public oversight or accountability. The office of Inspector-General has never provided that, and the replacement of the office holder does not address this underlying problem.

Ahmed Zaoui remains incarcerated. The country is indebted to him and his legal team for finally seeing off an Inspector-General of Intelligence and Security. However, the Government has clearly indicated its intention to see Mr Zaoui off as well. It has recently been revealed that New Zealand is approaching other countries about whether they would take Mr Zaoui in the event of his deportation. It is important for him and for the country as a whole that all possible legal and political measures be adopted to prevent this from happening.