

New Zealand: asylum seeker faces secret “security risk” hearing

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Algerian asylum seeker Ahmed Zaoui began presenting his case to stay in New Zealand last week in a complex process that involves reviewing Security Intelligence Service (SIS) classified files. Zaoui, a former MP for the Front Islamique du Salut (FIS) in the Algerian parliament, arrived in New Zealand in December 2002 on a false passport and claimed asylum. He was promptly jailed without charge for two years—including 240 days in solitary confinement—with authorities claiming he was a suspected terrorist.

The SIS issued a certificate saying he was a threat to national security and it is this certificate that is now, after many delays, under review by the Inspector General of Security—the first test of a security risk certificate. The week-long process is one of three possible hearings into the case. In order to keep the highly classified information at arms’ length from the complaint, two different sets of legal representatives are involved, one of which is an “advocacy” team appointed by the Inspector General.

The hearing, which is not a court trial, is conducted behind closed and guarded doors. The person at the centre of the allegations is not given access to the material that has been used against him. At certain times, Zaoui will not even be allowed to be present, and the media are banned from reporting the proceedings.

The advocates for Zaoui have been allowed to view the classified dossier, but are not permitted to pass on any specific or detailed information to his lawyer, Deborah Manning, or to Zaoui himself. Manning said she had been given summaries of the SIS information that was used to draw up the certificate, but was unable to comment on its contents. “I don’t think anyone is under any illusions that this is a normal fair hearing because it is based on secrecy,” Manning said, adding that it was “very difficult to prepare for any hearing when the information is secret”.

As Amnesty International, which has taken up the case, has pointed out, Zaoui’s right to a fair hearing is being seriously compromised by the secrecy shrouding the review. Amnesty spokeswoman Margaret Taylor said that the secret sources and secret evidence being given as a reason to

require a secret hearing challenged basic fair trial rights. “The rationale for a public hearing is to ensure that justice is not only done but is seen to be done. Ahmed Zaoui has requested a public hearing,” she said. “By failing to give Mr Zaoui the public hearing, the government will arouse understandable suspicion about the integrity of its evidence and its processes.”

Over the past six years, the New Zealand Labour government, while feigning distance from certain policies of the Bush White House, has adjusted its own immigration and terrorism laws to accommodate to the so-called “war on terror”. In doing so, it has initiated sweeping attacks on fundamental democratic rights.

This was underscored by statements from Prime Minister Helen Clark defending the closed-door hearing. She claimed any open hearing would have been inappropriate: “It’s not a court. It is a review of a security risk certificate,” she said. “Obviously it involves the use of classified information and that is properly done outside what would be the procedures of a court.”

What Clark omits to mention is that basic legal rights—including the presumption of innocence, the right to view and contest evidence, the right to face one’s accuser and question them—will not apply. Zaoui’s one opportunity to present his case is being carried out under extraordinarily limited rules and procedures. Moreover, the proceedings can hardly be deemed to be impartial, since the case will be decided by one person, a member of the state apparatus, acting on his own. One former inspector general was forced to resign after statements he made to the *Listener* magazine were deemed by the High Court to reveal partiality. At an earlier stage of the proceedings against Zaoui, Auckland University lecturer and former US Defence Department analyst Paul Buchanan accused Clark in the *New Zealand Herald* of taking “a page from the... book written in [the US base at] Guantanamo”—an assessment confirmed by current events.

Throughout the protracted four-and-a-half year case, the Labour government has consistently acted to protect its own,

and overseas, security agencies and to systematically strip the asylum seeker of his basic rights. Before arriving in New Zealand, Zaoui had been in exile for 12 years after the FIS was ousted in a military coup. The Refugee Status Appeals Authority (RSAA), after carefully reviewing evidence from a range of sources, declared that he was a genuine refugee.

The RSAA made a stinging criticism of the SIS, saying it had relied on uncorroborated news stories distributed over the internet, much of which was sourced from disinformation spread by the Algerian military regime. The RSAA also found that convictions amassed by Zaoui in Belgium and France for alleged involvement in criminal groups intent on terrorism, were unsafe. It granted Zaoui refugee status on the grounds that if he were sent back to Algeria, he would almost certainly be imprisoned, tortured and possibly executed.

The government refused to act on the RSAA report. Instead it backed the SIS, which claimed it had other evidence not available to the RSAA, justifying the issuing of the certificate. Former immigration minister, Lianne Dalziel, endorsed the SIS's bid to keep this evidence secret, saying that to release it, or even a summary of its contents, would jeopardise New Zealand's working relationship with overseas security services. According to Dalziel, if such classified security information were not treated confidentially, "we simply won't receive it."

Zaoui's detention was carried out under a previously unused provision of the Immigration Act, inserted by the last National government as part of a crackdown on refugees and immigrants. At the time, Labour in opposition denounced the amendment as "dangerous," saying people could be detained for lengthy periods without knowing why.

As protests by civil liberties groups began to develop, amid increasing public unease, Dalziel rounded on Zaoui's lawyers, accusing them of being responsible for extending their client's incarceration by pursuing court action. A subsequent police complaints authority report revealed that an undercover agent had been placed in a cell with the detainee, in an attempt to extract incriminating information.

From the start, the government has acted to ensure maximum secrecy. In 2004 it unsuccessfully sought to overturn a High Court ruling that Zaoui's human rights must be considered as part of the review of his status. The High Court ordered the SIS to present Zaoui with a summary of the secret evidence that had been used to incarcerate him without trial. It also ruled that Zaoui was entitled to have broad human rights considerations taken into account in the review of his case—particularly in view of his possible fate if deported to Algeria.

In December 2004, Zaoui was finally released on bail by order of the Supreme Court, again over the objections of the

government. He lives under curfew in the Auckland Dominican Priory and is required to report twice weekly to the police. In February this year, the immigration minister refused visas to his wife and four children to join him in New Zealand. They are currently living in Malaysia, where his 14-year-old son, who has special needs, is unable to attend school.

In 2005, the Supreme Court ruled that the SIS had to prove that Zaoui must be considered, on reasonable grounds, to pose a serious threat to the security of New Zealand. The threat, it said, had to be based on objectively reasonable grounds and the threatened harm had to be substantial.

Although the law provides for the immigration minister to withdraw the certificate issued against Zaoui at any time, the government has steadfastly refused. Instead, it ordered the current "review" of the validity of the certificate. Under the law, if the Inspector-General determines the Security Risk Certificate was "properly issued", the minister has three days to decide whether to rely on the certificate in a final decision on Zaoui's deportation. The certificate overrides the RSAA's decision.

Labour's determination to pursue the Zaoui case in violation of his human rights reveals its real class character. It is actively exploiting a series of reactionary laws in order to roll back basic democratic rights and to defend the sinister activities of the SIS. Expressing intense frustration at the lengthy legal proceedings that have so far delayed her government's efforts to railroad Zaoui, Clark has declared that once the case is out of the way, there will "certainly be a review of the law". This is a sharp warning of the measures being prepared for use against anyone deemed to be a political threat.



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