

# New Zealand government challenges court ruling over detained asylum seeker

By John Braddock  
6 February 2004

The New Zealand Labour government confirmed on Wednesday that it would appeal a High Court decision in the case of Algerian asylum seeker Ahmed Zaoui, jailed for over a year in an Auckland prison. It is seeking to overturn the court's December 19 ruling that Zaoui's human rights must be considered as part of the current review of his status.

Immigration Minister Lianne Dalziel issued a separate statement declaring that Zaoui would remain in prison during the review. She was responding to a Department of Corrections report stating that, after 14 months in prison, Zaoui was chronically stressed and should be put in a more open facility. Dalziel said it was "not an option" to transfer him from the Auckland Remand Prison to Mangere Refugee Centre.

The case has exposed the Labour government's professed commitment to human rights and its "progressive" posturing over refugees. Zaoui's lawyers went to the High Court in December to fight actions by the immigration and security services that have systematically stripped the asylum seeker of his basic democratic rights. For more than a year, Labour has justified its manoeuvres as necessary for the "war on terror".

The High Court made two findings in Zaoui's favour. The first ordered the Security Intelligence Service (SIS) to present him with a summary of secret evidence which has been used to incarcerate him without trial. The second 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 the wake of the government's announced appeal, Zaoui's lawyer Deborah Manning said her client was "sad, disappointed and confused" and asking "why is the government doing this?" Manning said the legal

team was at a complete loss to understand why his human rights should not be taken into consideration. If the government won its appeal, her client would be "back to square one".

Zaoui, a 43-year-old former academic and member of the Algerian parliament, was arrested after arriving in New Zealand in December 2002 on a false passport. He had been in exile for 12 years after the political party he represented—the Islamic Front for Salvation—was ousted in a military coup. In March 2003, the SIS issued a Security Risk Certificate, which was the basis for Zaoui's indefinite detention. It is alleged that he is a threat to national security and a suspected terrorist.

The Refugee Status Appeals Authority (RSAA), however, after carefully reviewing evidence from a range of sources, declared in August 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 regime. The RSAA 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, which justified the issuing of the certificate. Both Dalziel and Prime Minister Helen Clark 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 relationships with overseas security services. According to Dalziel, if such classified security information were not treated confidentially, "we simply won't receive it."

Zaoui's continued detention is being 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, the Labour opposition denounced the amendment as “dangerous,” saying people could be detained for lengthy periods without knowing why. As the Zaoui case unfolded to protests from civil liberties groups and increasing public unease, Dalziel rounded on Zaoui’s lawyers, accusing them of being responsible for extending their client’s incarceration by pursuing court action.

The government has sought to ensure as much secrecy as possible. The High Court hearing in December began with attempts by the crown to prevent SIS director, Richard Woods, having to take the stand. While Zaoui’s lawyers were finally granted leave to question Woods, they were restricted to only three of the 12 questions they wanted to ask. They were only able to pose general questions, including whether foreign liaison partners referred to in Woods’s affidavit included Britain, the US, Canada or Australia. Another was whether the originators of the classified information had stipulated that Zaoui should not be provided with a summary of information. Both were answered in the affirmative, but no elaboration was allowed. One of the questions disallowed was whether the secret information ultimately derived from the Algerian military regime, its secret services or that country’s news media.

During the court proceedings, it was revealed that Zaoui had been illegally videotaped during a seven-hour interrogation a week after he arrived in New Zealand. Zaoui was taken to an unknown location and questioned without being told that he was being videotaped or of his right to have a lawyer present. The interview was conducted in French, a language in which he is not fluent. Zaoui said he felt mocked by his interrogators, who did not identify themselves. When attempts were first made by his legal team to view the video, it was discovered that an hour of the audio was missing.

Although the law provides for the Immigration Minister, on the advice of the SIS, to withdraw the certificate issued against Zaoui at any time, the government has steadfastly refused to do so. Instead, it ordered a “review” of the validity of the certificate, carried out by the Inspector General of Intelligence and

Security, retired High Court Judge Justice Greig. Under the law, if the Inspector-General determines the Security Risk Certificate was “properly issued”, the Immigration Minister has three days to determine whether to rely on the certificate in a final decision on whether to deport Zaoui. The certificate over-rides the decision of the RSAA.

All the indications are that the review will be a whitewash of the SIS’s actions. Greig’s impartiality and fitness to carry out the review has come under fire, with Zaoui’s lawyers last week applying to the High Court to have him removed. In an interview with the *Listener* magazine late last year, Greig said, speaking “as a New Zealander”, that “we” didn’t want “lots of people coming in on false passports thrown down the loo on the plane and saying, ‘I’m a refugee, keep me here’”. He declared that if the decision were up to him, rather than the Immigration Minister, Zaoui would be “outski” on the next plane. While these comments created a public furore, Greig refused to step down from the inquiry and Clark maintains there are no grounds to remove him.

Clark falsely claimed two weeks ago that she was simply letting the law run its course and that the government was largely “out of the loop” over the case. She was responding to a newspaper comment by Auckland University lecturer and former US Defence Department analyst Paul Buchanan who accused her of taking “a page from the...book written in [the US base at] Guantanamo”, to deliberately “hold, particularly Muslim men, for indefinite periods without charge till they psychologically break”.

Labour’s determination to overturn the court ruling protecting Zaoui’s human rights is particularly telling. The government 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. Its actions are a sharp warning of the type of measures that will be used more broadly against anyone deemed to be a political threat.

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