Australian government threatens lawyer with charges over Timor spying revelations

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The Abbott government yesterday intensified its legal threats designed to suppress the latest revelations of the Australian bugging of the East Timorese government's offices in 2004. Attorney-General George Brandis issued a ministerial statement to the Senate in which he warned that the lawyer representing East Timor, Bernard Collaery, could face serious criminal charges for divulging official secrets.

The Abbott government is attacking core legal and democratic rights. Until now, no Australian lawyer has ever been prosecuted for representing a client challenging illegal government activity—in this case, placing listening devices in Dili's cabinet room walls to snoop on East Timor's leaders in 2004. This occurred amid negotiations with Australia over the division of the resources of the oil- and gas-rich Timor Sea between the two countries.

In his Senate statement, Brandis defended his decision to issue warrants for the Australian Security Intelligence Organisation (ASIO) and Australian Federal Police (AFP) raids on Collaery's offices and home on Tuesday. Also raided was the home of a retired Australian Secret Intelligence Service (ASIS) officer, yet to be publicly named, who has blown the whistle on the former Howard government's decision to have ASIS bug the East Timorese government.

Without any known legal basis, the ex-ASIS official was detained and interrogated, and his passport was seized to prevent him from appearing as the key witness in East Timor's legal case in The Hague that is beginning today.

The Timorese government is seeking to overturn the Certain Maritime Arrangements in the Timor Sea (CMATS) treaty, under which Australia gained a 50 percent share of the $40 billion Greater Sunrise oil and gas fields. Under recognised principles of international law, maritime borders ought to be set at an equidistant point between the two countries involved. With Greater Sunrise lying entirely in East Timorese territory on this basis, Canberra openly junked any adherence to international law when conducting the negotiations. Dili is now arguing that CMATS is invalid because it was secured via the Australian government's "bad faith"—that is, with the help of illegal spying.

Brandis concluded his ministerial statement with a threat to overturn lawyer-client confidentiality in order to charge Collaery, who is in The Hague for the Arbitral Tribunal hearing. "[M]erely because Mr Collaery is a lawyer, that fact alone does not excuse him from the ordinary law of the land," the attorney-general declared. "In particular, no lawyer can invoke the principles of lawyer-client privilege to excuse participation, whether as principal or accessory, in offences against the Commonwealth."

Brandis specifically invoked the Intelligence Services Act, which imposes up to two years' jail for a current or former ASIS officer communicating, without permission, any "information or matter" connected to ASIS's functions or performance.

The threat against Collaery has one known international precedent. In the US, Lynne Stewart, a civil liberties lawyer, was convicted in 2005 and ultimately sentenced to 10 years' imprisonment on trumped-up charges of assisting terrorism by relaying information from a client who was on trial for terrorist-related offences. That jailing, pursued actively by both the Bush and Obama administrations, represented a turn toward methods commonly associated with a police state. (See: "Judge sentences US civil liberties lawyer Lynne Stewart to 10 years").

Collaery is being persecuted despite his client, the ASIS whistleblower, being previously advised by the government's so-called intelligence watchdog, the Inspector General of Intelligence and Security (IGIS), to hire a lawyer if he wanted an inquiry into the East Timor

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operation. Collaery told Fairfax Media that IGIS had refused to investigate the case.

Brandis's ministerial statement advanced a pseudo-legal justification for Tuesday's raids, saying he issued the warrants under the ASIO Act, at the request of the ASIO director-general. That Act hands sweeping powers to the government and its security apparatus to conduct searches and seizures, without judicial warrants, on the vague grounds that any information obtained will "substantially assist the collection of intelligence" connected to a "security matter."

The Act defines "security" to include espionage, sabotage, "politically motivated violence," attacks on Australia's defence system, "acts of foreign interference" and "the protection of Australia's territorial and border integrity." Brandis did not specify which of these grounds he believed was relevant to the exposure of ASIS's bugging operations that were aimed at ensuring the flow of billions of dollars of tax revenues to Canberra and profits to Woodside Petroleum.

Brandis reiterated Prime Minister Tony Abbott's claim that the ASIO raids had nothing to do with East Timor's impending legal case. This palpable lie—the raids occurred two days before the hearing began in The Hague—was rejected by East Timorese Prime Minister Xanana Gusmão. In a media release, Gusmão condemned the "invasion of the premises of a legal representative of Timor-Leste" and "aggressive" action against a key witness, branding it "inconceivable and unacceptable conduct."

The Abbott government's provocative stance has been enthusiastically backed by sections of the media. The *Australian* today issued an editorial to nakedly defend the mobilisation of the intelligence services against neighbouring countries for geo-strategic and corporate gain. "[I]t would be extraordinary to think that any government would not seek to obtain as much information as possible on such a crucial matter of sovereignty," Murdoch's flagship declared. "We, unsurprisingly, expect Canberra to work towards our national interest."

The Abbott government and the ruling elite more broadly are attempting to use the vendetta against Bernard Collaery and the ASIS whistleblower to intimidate any other would-be leakers or whistleblowers within the intelligence apparatus. Canberra is deeply concerned about the impact of further revelations about its illegal activities via former National Security Agency contractor Edward Snowden.

The *Australian* has reported that as many as 20,000 secret Australian intelligence files could have been accessed by Snowden when he worked at the NSA. Brandis yesterday told the newspaper: "The Snowden revelations are the most serious setback for Western intelligence since World War II … we are talking about huge numbers of files that Snowden has put into the public domain."

Events in the Senate yesterday highlighted the unity within the parliamentary establishment on protecting the intelligence agencies. The Labor opposition moved in lockstep with the government to oppose a Greens' motion requiring Brandis to provide an explanation for the ASIO raids. The attorney-general praised Labor Senator John Faulkner, a former defence minister, who insisted that it was beyond the power of parliament to demand any such answers.

The Greens quickly back-pedalled following Faulkner's intervention. Their legal spokesman, Senator Scott Ludlam, said he could not see how the East Timor spying operation had related to "national security," when it directly served corporate interests, but explained that he would agree with the government's stance if national security were involved. "I understand and respect the reasons why ministers of Coalition or Labor Party orientations would not comment on matters that would prejudice ongoing national security investigations," he stated.

In other words, the Greens stand equally ready to defend the predatory interests of Australian imperialism when dressed in the garb of "national security." Their only difference is how the term is defined. The Timor case, however, is another demonstration of how the Australian government, like its US and other allies, regards corporate espionage as a key responsibility of its intelligence apparatus, as part of the pursuit of broader geo-strategic interests in the Asia-Pacific.

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