

# Australian government pursues prosecution of East Timor espionage whistleblower and lawyer

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Despite protests in East Timor and Australia, and opposition by lawyers and human rights groups, the Australian government is proceeding with its extraordinary prosecution of an intelligence agent identified as “Witness K” and his lawyer Bernard Collaery. They face up to two years’ jail for exposing a sordid espionage operation in Dili in 2004 that sought to secure Australian imperialism’s hold over oil and gas reserves in the Timor Sea.

In 2004, Witness K was reportedly head of technical operations for the Australian Secret Intelligence Service (ASIS). He lodged an internal protest over the planting of listening devices in East Timorese government buildings, including the cabinet room, by Australian spies posing as construction aid workers. The unlawful operation formed part of Canberra’s ruthless drive to maintain its stake of the multi-billion dollar Timor Sea energy reserves, following East Timor’s separation from Indonesia and establishment of formal independence, from 1999 to 2002.

In 2013, Witness K had been due to appear at The Hague’s International Court of Justice, as part of the Timorese government’s case against the 2006 Timor Sea Treaty. The Australian Security Intelligence Organisation (ASIO) and federal police carried out provocative raids on Witness K’s home, as well as the offices of Collaery, a former Australian Capital Territory (ACT) attorney-general.

Timorese government documents were seized, in violation of international law, along with Witness K’s passport. As a result, he has been unable to travel overseas for the past five years.

The protracted victimisation reached a new stage last month, when Attorney-General Christian Porter

personally authorised prosecutions for an alleged breach of the Intelligence Services Act by “conspiring” to “communicate” ASIS information—charges that carry a maximum of two years’ imprisonment (recently extended to ten years). Under this legislation, it is a crime even to report ASIS operating illegally.

The case had been scheduled for an initial directions hearing in the ACT magistrates court last Wednesday, but the hearing was postponed until September 12. The government will reportedly attempt to have the case heard in secret, another anti-democratic move aimed at preventing any further public scrutiny.

In Dili, East Timor’s capital, protests were held on Monday outside the hotel where Australian Foreign Minister Julie Bishop arrived for the first Australian ministerial visit to the country in five years. The demonstration called for an end to the prosecution, but Bishop defiantly told reporters East Timor’s government agreed it was “a matter for Australia.”

Similar protests were also held in the Australian cities of Sydney, Melbourne and Darwin.

The legal establishment has met the government prosecution with a degree of shock. Professor Spencer Zifcak of Australian Catholic University, formerly of Liberty Victoria, noted that the initial bugging of Timorese government offices, ordered by Foreign Minister Alexander Downer, amounted to criminal trespass; the seizure of Timorese government documents in 2013 violated international law covering diplomatic immunity; and the theft of Collaery’s legal advice to the Timorese government and Witness K “transgressed the law underpinning the confidentiality of lawyer-client communications.”

Zifcak concluded: “It might have been more

appropriate if the people in the dock were the former Minister for Foreign Affairs [Downer] and the former Director of ASIS.”

The government is proceeding with the full backing of the opposition Labor Party. For decades, Australian imperialism has pursued its ruthless exploitation of East Timor with bipartisan consensus, beginning with the Whitlam Labor government’s endorsement of Indonesia’s invasion of the former Portuguese territory in 1975.

In 2013, Labor leader Bill Shorten refused to criticise the ASIO-AFP raids on Collaery and Witness K, declaring: “If it’s a matter of national intelligence then we’re not able to comment and that is the convention.” In 2016, Collaery revealed that Julia Gillard, Labor prime minister between 2010 and 2013, authorised secret surveillance of his offices and home, as well as Witness K’s home, after she rejected a confidential request for arbitration over the Timor espionage operation.

Four crossbench parliamentarians—lower house independent Andrew Wilkie, Senator Rex Patrick, Senator Tim Storer, and Greens’ Senator Nick McKim—wrote to AFP Commissioner Andrew Colvin on July 12, requesting an investigation into whether the spy operation against Timor-Leste was illegal. “We believe that an investigation is required to determine whether the actions by Australian government officials in this matter constituted a conspiracy to defraud,” they wrote.

Any such investigation would be a coverup. The AFP has been involved in numerous Australian government provocations in Timor and across the South Pacific.

The Greens and crossbenchers are denouncing the specific spying operation in 2004 in an effort to clean up the image of the continued international activities of Australian intelligence agencies—especially in the South Pacific, where the Greens have long demanded a heightened military-intelligence presence to shut out rival powers.

The prosecution of Collaery and Witness K is bound up with the wider drive toward a US-led military confrontation of China, which the Australian ruling elite is committed to supporting. The Turnbull government, like its predecessors, clearly regards the exposure of the 2004 spying operation as an intolerable breach of official secrecy. Australia’s ongoing role in

the US-led “Five Eyes” global surveillance network depends on the successful suppression of any public exposure of the daily crimes committed by the imperialist spy alliance.

The Collaery-Witness K prosecution was revealed following the passage of the repressive “foreign interference” laws. They include sweeping provisions that will allow any intelligence agency whistleblowers, together with those who assist or publish their disclosures, to be prosecuted with greater ease, on even more serious charges (see: “Australia’s foreign interference laws threaten whistleblowers and media freedom”).

Canberra has particular responsibility delegated to it by Washington in maintaining control over East Timor and the South Pacific. In recent years, China has increased its economic and diplomatic presence in the region, triggering stepped-up Australian government efforts to minimise Beijing’s influence and prevent any Chinese military presence.

The 2004 espionage operation and subsequent persecution of those who exposed it point to the provocations and dirty tricks that Australian imperialism will use to maintain its geo-strategic dominance.



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