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# East Timorese leaders accuse Australia of committing a crime by sending spies to bug Dili Cabinet office

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**It's a spying scandal that's rocked the relationship between the two countries, and Lateline reveals new details about the bugging of an East Timor cabinet office during negotiations over an oil and gas treaty worth an estimated \$40b.**

## Transcript

TONY JONES, PRESENTER: Good evening.. Tonight, for the first time, a group of East Timor's most senior leaders has accused Australia of committing a crime and acting immorally, by sending spies to Dili to bug the cabinet office, during critical negotiations for an oil and gas treaty.

ALFREDO PIRES: If I was to do a similar thing in Canberra I think I would be behind bars for a long time.

XANANA GUSMAO: Australia would not allow it would be under the Security Act it will be a criminal act no? For us, we believe it should be considered like this.

QUESTION: Does it constitute a criminal offence?

MARI ALKATIRI: I have no doubt about this, even in terms of international law it's a crime.

RUI ARAUJO: Something that is a matter of death and life for a small country. I think it's at least morally it's a crime.

TONY JONES, PRESENTER: Our East Timorese neighbours have told Lateline they think the Australian Government behaved in a criminal and immoral way back in 2004 when their newly-born nation was weak and vulnerable. They are, in essence, saying we cheated them.

Well we like to think of ourselves as a good country, but are we?

Australia's two military interventions to secure East Timor's independence and later to restore peace and security to the country are in our favour.

But are we a good country that also does bad things and can immoral actions be justified in the name of national security? We'll explore those questions over the next two nights.

What's clear is that East Timor's leaders have run out of patience.

Last week we learnt that East Timor has recommenced action against Australia in the Permanent Court of Arbitration in The Hague. It wants the maritime treaty terminated, claiming that Australia illegally bugged the cabinet rooms in Dili in the middle of negotiations and that the deal should be torn up.

Steve Cannane has our special investigation. The producer is Sashka Koloff.

STEVE CANNANE, REPORTER: Just an hour's plane ride from Darwin, East Timor is one of Australia's closest neighbours and one of the poorest nations in our region.

East Timor is desperate for economic development, but it says its wealthiest neighbour Australia is undermining its capacity to drag its people out of poverty by doing dirty deals over oil and gas in the Timor Sea.

XANANA GUSMAO, FMR EAST TIMOR PRESIDENT & PRIME MINISTER (subtitles): They used military espionage and it was for economic purposes.

RUI ARAÚJO, EAST TIMOR PRIME MINISTER: The fact that Timor-Leste was treated unfairly from a Timorese perspective I think should resonate in the Australian's conscience.

STEVE CANNANE: Tonight for the first time Lateline reveals new details about the operation to bug East Timor's cabinet offices and its aftermath, including anger within Australian intelligence circles about the operation and a diplomatic bungling of the highest order. How one of the people the Gillard Government sent to deal with the fallout in Dili was someone East Timor believed had played a key role in the bugging operation, infuriating Xanana Gusmao.

XANANA GUSMAO (subtitles): I was ... what? Sending me the person that I know that was participating in this? Well!

BERNARD COLLAERY, LAWYER FOR WITNESS K & FMR LEGAL ADVISOR TO EAST TIMOR: It was almost comic, but it was tragic.

STEVE CANNANE: To understand this dispute, you need to go back in time. In 1989, Australia and Indonesia signed the Timor Gap Treaty when East Timor was under occupation, leaving Indonesia and Australia to share the wealth in what was known as the Timor Gap.

In 2002, East Timor became independent and the new nation quickly signed a first treaty with Australia, then negotiated another one in 2006.

But there's still no agreed maritime border to set out who controls the largest oil and gas field ever discovered in the Timor Sea.

East Timor says the signing of that second deal robs the small nation of billions of dollars and that the negotiations were rigged.

XANANA GUSMAO (subtitles): They knew our weakness. They knew all our weakness. They knew - they knew already us. We were not able to look at very in deep to these very complex issues of agreements, oil, treaties. But they wanted to know our weakness and they took advantage of our weakness.

STEVE CANNANE: Xanana Gusmao became Prime Minister in 2007 after the treaty was signed.

But it wasn't until 2012 that he found out about the secret operation to bug East Timor's then Prime Minister Mari Alkatiri and his negotiating team.

Under the guise of an Australian aid project helping to renovate the Palace of Government in Dili, agents from Australia's foreign intelligence service ASIS had snuck in and installed listening devices in the cabinet rooms.

MARI ALKATIRI, FMR EAST TIMOR PRIME MINISTER (subtitles): In all kind of negotiation, you are always trying to get information from the opposite side, but there are means to do it. What they did, if it is confirmed, is a crime.

STEVE CANNANE: In 2012, after he discovered details of the operation, Xanana Gusmao sent a letter to the Australian Prime Minister.

BERNARD COLLAERY: Well I drafted that letter of course. It informed Prime Minister Gillard that Timor was aware of the bugging of the cabinet during certain negotiations. It was quite explicit.

STEVE CANNANE: The Australian Government's response shocked East Timor. Lateline understands that Julia Gillard denied the substance of the complaint and sent representatives to meet with Xanana Gusmao. One of those people East Timor believes played a key role in the undercover operation.

XANANA GUSMAO (subtitles): I could not avoid my unhappiness of seeing a person that was involved in the case.

STEVE CANNANE: So they were involved in the bugging, were they?

XANANA GUSMAO (subtitles): Yes. That was why I could not say many things.

STEVE CANNANE: Former Prime Minister Julia Gillard was unavailable for comment.

BERNARD COLLAERY: It deeply aggrieved Prime Minister Gusmao. His reaction was - he was grieving over the knowledge that someone he thought he trusted had been involved and then to have Prime Minister Gillard send that very person to Timor, as it were to discuss the matter, to try and resolve it, as Prime Minister Gillard put in her letter, was very, very worrying. It meant that the prime minister of a modern democracy on Timor-Leste's doorstep did not know what her intelligence service was doing.

STEVE CANNANE: What was that person's role in the bugging operation?

BERNARD COLLAERY: Significant.

STEVE CANNANE: You can't tell us what the role was?

BERNARD COLLAERY: It was a significant role and a very critical role.

STEVE CANNANE: Lateline understands that role included delivering transcripts of the bugged conversations straight into the hands of Australia's negotiating team. We can't tell you who played that role because of strict provisions in the Intelligence Services Act. Appalled by the way the Gillard Government had handled the revelations, East Timor announced it was taking it to the Permanent Court of Arbitration in The Hague.

In response, the then Foreign Minister and Attorney-General issued a joint statement:

JOINT STATEMENT (male voiceover): "These allegations are not new ... Australia has always conducted itself in a professional manner in diplomatic negotiations and conducted the CMATS treaty negotiations in good faith."

STEVE CANNANE: But did Bob Carr and Mark Dreyfus realise the ace that East Timor held up its sleeve?

East Timor's then legal advisor, Bernard Collaery, just happened to have as a client the agent who ran the bugging operation in 2004, a man who became known as Witness K.

BERNARD COLLAERY: K was an ordinary client who ironically made an appointment through one of my receptionists. And it's a normal process when a member of the intelligence community seek to get advice, they have to get prior approval to approach me and Witness K had that prior approval from the Inspector-General of Intelligence and Security.

STEVE CANNANE: Witness K is a former senior ASIS officer. We can't identify him without risking prosecution. In 2008 he approached Bernard Collaery over a workplace grievance. He claimed he'd been forced into retirement as part of generational change.

BERNARD COLLAERY: It was only when I sought some indication of what the generational change was that had caused this that the realisation hit home that we were talking about a profound issue about the use of our intelligence service.

STEVE CANNANE: Senior ASIS officers were concerned intelligence resources had been misused.

The Dili bugging operation began 18 months after the Bali bombings, terrorist attacks that killed 202 people, including 88 Australians.

ASIS was at the time focused on preventing further terrorist attacks in the region.

BERNARD COLLAERY: When you have such dedicated veterans involved who might see the relative priorities of following up on the Bali bombing, the Marriott Hotel issues and find themselves taken off duties and organising to bug this poverty-stricken state's cabinet room so a trade deal can get over the line, one, if you were part of that staff, might wonder about priorities.

STEVE CANNANE: Bernard Collaery says there was also a moral issue at stake for Witness K about Australia taking advantage of one its poorest neighbours.

BERNARD COLLAERY: There's a squalid operation, and indeed, I recall in my instructions mention being made of the infant mortality rate. So this was morally-based grievance, not on lost promotion or the end of a career, which in my view was a very legitimate grievance, but it was a grievance based on the immorality of that conduct.

STEVE CANNANE: Witness K was all set to give evidence in the Permanent Court of Arbitration when ASIO raided his home and seized his passport. Bernard Collaery's office was also raided. He was in The Hague at the time.

BERNARD COLLAERY: The manner in which the search was conducted suggests to me that they'd had a clandestine listening device in this room at least beforehand.

STEVE CANNANE: Attorney-General George Brandis had authorised the ASIO raids.

GEORGE BRANDIS, ATTORNEY-GENERAL: Last night, rather wild and injudicious claims were made by Mr Collaery and, disappointingly, by Father Frank Brennan that the purpose for which the search warrants were issued was to somehow impede or subvert the arbitration. Those claims are wrong. The search warrants were issued on the advice and at the request of ASIO to protect Australia's national security.

STEVE CANNANE: George Brandis had issued the search warrants at the request of the then Director-General of ASIO, David Irvine, the same David Irvine who was head of ASIS in 2004 and had overseen the bugging operation in Dili that Bernard Collaery was now claiming was illegal.

Is that a conflict of interest in your mind?

BERNARD COLLAERY: I think - it's - actually, it could be a law school moot. It should be used by educators on what is the ultimate conflict of interest, and that is, "I accuse you of something and you get a warrant to search my files."

STEVE CANNANE: David Irvine declined to be interviewed by Lateline.

George Brandis told Four Corners last year there was no conflict of interest.

GEORGE BRANDIS (2014): I have never had any doubt at all that Mr Irvine was exercising his powers and discretions in seeking this warrant to protect the interests that he was required by his office and by the act to protect.

STEVE CANNANE: Bernard Collaery has represented members of the intelligence community for over 30 years. He's adamant that Witness K would not have compromised national security.

BERNARD COLLAERY: K has not be provided and will not provide anything to a foreign country, including Timor-Leste, other than that this bugging operation took place. No-one's been exposed, no techniques have been disclosed and we must recall this evidence was to be given in the presence of Australia's lawyers in camera.

STEVE CANNANE: East Timor has now recommenced arbitration in The Hague to get the treaty torn up. The key to their case is Witness K. They're calling on Australia to give his passport back so he can give evidence.

XANANA GUSMAO (subtitles): Australia should allow Witness K to testify because it is important to us.

RUI ARAUJO: It's an issue of justice that Witness K provides the evidence so that everybody know whether or not the claim that Timor-Leste made was right.

STEVE CANNANE: Bernard Collaery recently wrote to Duncan Lewis, the new Director-General of ASIO. His response might be good news for East Timor.

BERNARD COLLAERY: Mr Lewis has responded quite promptly and properly, in my view, putting the issue back to the relevant department, the Department of Foreign Affairs. It issues passports and I gain no information from Mr Lewis that there's a national security objection to K giving evidence.

STEVE CANNANE: If that is ASIO's new position, it represents a dramatic shift under the new Director-General. Bernard Collaery expects a decision on K's passport next week.

In East Timor, anger has grown over Australia's refusal to acknowledge the bugging operation has tainted the whole treaty process. Xanana Gusmao says that in a meeting last year between himself, Mari Alkatiri and Tony Abbott, Australia's then Prime Minister shrugged off the bugging scandal.

XANANA GUSMAO (subtitles): Mr Mari said to him, "Look, I'm very, very sad knowing that you spied on us, on our meetings, conversations." And you know what Mr Tony Abbott said? "Don't worry, my friend. Chinese are listening to us." ... It is immoral, very immoral, this kind of spying. We are not terrorists.

STEVE CANNANE: The morality of this operation is not all that's being questioned. Nicholas Cowdery QC, the former NSW Director of Public Prosecutions, has provided a legal opinion for Bernard Collaery that argues the Dili bugging operation by ASIS was illegal under Australian law.

NICHOLAS COWDERY, FMR NSW DIR. OF PUBLIC PROSECUTIONS: My preliminary advice is that there is a case of conspiracy to defraud that could be mounted against those responsible for the planning and the direction, and indeed, some of those responsible for the execution of the bugging in East Timor.

TONY JONES: On Lateline tomorrow night, Nicholas Cowdrey QC tells us why he believes a case can be made, that a conspiracy to defraud East Timor was committed in our nation's capital. We'll also hear the contrary view that the operation was within the law.