

# The Guardian

## Australia urged to drop Witness K prosecution due to 'chilling effect' on democracy

**Spy and his lawyer should not be prosecuted for exposing 'wrongful practices by the government', advocates say**



Bernard Collaery, the lawyer for the Australian spy known as Witness K. Human Rights Watch has called for the prosecution of the pair to be dropped. Photograph: Mike Bowers for the Guardian

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Human rights campaigners have urged Australia to drop the prosecution of a former spy and his lawyer who helped expose a secret government mission to spy on Timor-Leste during lucrative oil and gas negotiations.

The case against lawyer Bernard Collaery and a former Australian secret intelligence service operative, known as Witness K, was expected to appear in the ACT magistrates court for the first time on Wednesday, though there was some speculation on Tuesday it may be delayed.

If convicted, the pair face up to two years behind bars for disclosing information about the bugging of Timor-Leste government buildings in 2004, an operation that gave Australia the upper hand in talks to carve up resources in the Timor Sea.

Human Rights Watch has called for the prosecution to be dropped, saying it is likely to have a

“chilling effect” on those who witness government wrongdoing.

“The attorney general should not be bringing a case against Witness K and his lawyer for reporting on wrongful practices by the government,” HRW’s Australia director, Elaine Pearson, said. “This case, combined with sweeping new laws criminalising unauthorised disclosures, could have a chilling effect on officials who see government corruption or wrongdoing and want to do something about it.”

Collaery has maintained that he and Witness K acted through the proper channels to raise concerns about the legality of the bugging operation. Witness K approached the inspector general of intelligence services and was given to permission to speak to his lawyer, Collaery, about the concerns.

Collaery was also a legal advisor to Timor-Leste.

They have been charged with communicating information about the operation to ABC journalists and a producer.

The prosecution has prompted widespread condemnation.

The main target of Australia’s spy operation, the former US diplomat and Timor-Leste’s chief negotiator, Peter Galbraith, criticised the “pointless” prosecution of the pair.

Galbraith said if anyone was the victim of Australia’s actions, it was him, but he thought it better to just move on from the episode.

“It’s just vindictive and pointless, it’s time to move on,” Galbraith told Guardian Australia earlier this month. “At last, after 18 years, Australia did the right thing [by signing the oil and gas treaty]. Accept the accolades, which are deserved, and move on.”

Senior judges have also condemned the move to hear the case in closed court.

That sentiment was echoed by Human Rights Watch, which said secret prosecutions did little to maintain public confidence in the criminal justice system. The group said suppression orders should not be used to shield the government from criticism.

Activists in Timor-Leste compared the prosecution to their treatment at the hands of Indonesia’s Suharto regime.

The Movement Against the Occupation of the Timor Sea (MKOTT) said on Friday it was shocked that “in this day and age” the Australian government was doing what the group believed “only the dictator Suharto was capable of”.

“Ironically, these Timorese were charged as terrorists by the Indonesian government and today Mr Bernard Collaery and Witness K are charged with the anti-terror law by the Australian attorney general, their very own government,” MKOTT said.

The attorney general, Christian Porter, has maintained the decision to prosecute the pair was made independently by the commonwealth director of public prosecutions. His consent was required for it to proceed.

Guardian Australia has asked the ACT magistrates court for clarification on when the case is expected to first appear.