

The Guardian

José Ramos-Horta urges Australia to drop Witness K case

Exclusive: former Timor-Leste president says two men ‘acted out of conscience’ and reflect ‘the very best of Australia’



José Ramos-Horta: the two men at the centre of the Witness K case reflect the ‘very best of Australia’. Photograph: Daniel Munoz/Getty Images

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Mon 30 Jul 2018 06.02 BST

Australia should drop its prosecution of Witness K and lawyer Bernard Collaery because the two men “acted out of conscience” and “reflected the very best of Australia”, former Timor-Leste president José Ramos-Horta has said.

In an exclusive interview with Guardian Australia, Ramos-Horta said the actions of the former intelligence officer and his barrister in exposing Australia’s 2004 bugging operation during sensitive treaty negotiations led to the historic maritime treaty signed by the two countries in March.

“This was a very simple case, a political and moral case. So I would hope that Australia would look at it accordingly, proportionally, and let bygones be bygones and let them resume their lives normally,” Ramos-Horta said on Monday.

“It would only elevate Australia further in our eyes if Australia were to say this is a very special case which did no harm whatsoever to any complex sensitive Australian intelligence operation, and drop the case.”

Ramos-Horta’s comments came as the Australian foreign minister, Julie Bishop, sought to play down the impact of the prosecution on diplomatic relations between the two countries.

Bishop was in Dili on Monday for the first Australian ministerial visit to the country in five years. While some protesters targeted her hotel, calling for an end to the prosecution, Bishop told reporters the Timor-Leste government agreed it was “a matter for Australia”.

“It’s a prosecution that has been taken on the advice of the commonwealth director of public prosecutions so it’s a domestic legal matter for Australia,” she said.

Ramos-Horta agreed it was a domestic matter but said the fact remained the pair’s situation was “intimately connected with Timor-Leste”.

He said while he understood governments across the world were strict on intelligence services, whose operatives “must leave their conscience at home”, Ramos-Horta said the case of Witness K was “a far cry” from exposing intelligence operations with a hostile or enemy country.

In 2004 Australian spies bugged Timor-Leste government buildings to gain an upper hand in negotiations to carve up oil and gas reserves in the Timor Sea. The resources contracts were crucial to the economy and prosperity of the then fledgling nation.

More than a decade on, commonwealth prosecutors have charged both Witness K and Collaery - with the consent of Australia’s attorney general - alleging the pair broke laws against sharing intelligence information.

Their prosecution has been met with widespread condemnation, including from human rights campaigners, diplomats and supreme court judges.

“For many in Timor Leste and Australia ... their action reflected the very best of Australia,” said Ramos-Horta.

“They acted on the basis of their conscience, that what Australia was doing was wrong, so much so the Australian government retreated and backtracked on the maritime boundary saga and it led to this historic agreement, for which I personally - more than once - strongly and sincerely commended both sides.”

Collaery and Witness K face up to two years behind bars if convicted. Collaery has maintained Witness K went through the proper channels to raise his concerns about the bugging operation. He raised it with the inspector general of intelligence services, who gave him approval to seek legal advice from Collaery.

The revelations of Witness K and Collaery prompted Timor-Leste, represented by Collaery, to take Australia to the Hague to dispute the treaty. A new treaty was struck earlier this year, and the pair’s actions are widely seen to have helped Timor-Leste to get a far better deal.

“It was Witness K’s courage in expressing within the department his disagreement, and Bernard Collaery’s public denunciation of this, that gave the Timor-Leste side a strong legal argument to challenge the validity of the Timor Sea treaty - that it was obtained essentially through bad faith and coercion,” said Ramos-Horta.

“In that case it can be said that Witness K and Bernard Collaery were decisive in provoking review of the whole Timor Sea treaty, leading to this happy ending that actually contributed to elevating Australia’s international standing.”

He said other nations such as China and Japan were watching the world-first conciliation under the UN convention on the law of the sea, which was described by the UN secretary general, Antonio Guterres, at the signing in March as inspiring for other nations looking to peacefully resolve disputes.

The success gave Australia “enormous credibility” in the region to challenge China on its actions in the South China Sea, Ramos-Horta said.

“If Australia had not embarked on this Timor Sea negotiation with the Timor-Leste government, it would have zero credibility if it were to call on China to respect international law and the law of the sea. But now, Australia can talk loud and clear.

“In the midst of all of this, two people who contributed could end up in jail.”

Australia’s desire for the oil and gas reserves in the Timor Sea has led it to questionable stances in the past. Newly declassified documents, first reported by Guardian Australia earlier this year, showed oil and gas rights were a driving factor for Australia in legitimising the Indonesian occupation of Timor-Leste in the 1970s.

The academic and author Kim McGrath, who secured the documents release, said they showed the government was too “embarrassed” for the public to see that maritime boundary negotiations were the primary motivator for Australia giving legitimacy to Indonesia’s occupation.

“It wasn’t just that we wanted to appease Indonesia for the sake of being friendly with a big neighbour,” McGrath said. “It was because we had a direct commercial interest.”

The case against Collaery and Witness K was first due to appear in the ACT magistrates court last week, but was delayed significantly, until 12 September.