

# The Guardian

## Witness K scandal: police asked to investigate Timor-Leste spy operation

Four crossbenchers allege actions by government officials amounted to ‘conspiracy to defraud’



Bernard Collaery, the lawyer of Witness K, with crossbenchers who have asked for the police to investigate the Timor-Leste operation. Photograph: Mike Bowers for the Guardian

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Thu 12 Jul 2018 06.16 BST

Australian federal police (AFP) say they are assessing a request to investigate the lawfulness of Australia’s controversial spy operation against Timor-Leste during sensitive oil and gas negotiations.

A group of crossbenchers on Thursday sought to raise the stakes in the controversial prosecution of former spy Witness K and his lawyer Bernard Collaery.

The pair revealed the existence of a 2004 spy operation against Timor-Leste, which involved Australia bugging the fledgling nation’s cabinet to gain a commercial advantage in negotiations to carve up lucrative resources in the Timor Sea.

Witness K and Collaery are now facing two years behind bars for disclosing intelligence secrets.

Independent MP Andrew Wilkie, Greens senator Nick McKim, senator Rex Patrick, and senator Tim Storer wrote to the Australian federal police, asking it to investigate whether the spy operation against Timor-Leste was itself criminal.

They allege the spy operation amounted to a “conspiracy to defraud” Timor-Leste, an offence under Australian Capital Territory law.

An AFP spokesman confirmed the referral had been received and was being assessed.

In their letter to AFP commissioner the crossbenchers ask for their request to be considered “as a matter of priority”.

“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.

Patrick said the operation against Timor-Leste unnecessarily diverted Australian Secret Intelligence Service resources from another pressing issue: the bombing of the Australian embassy in Jakarta in September 2004. He said the bugging was outside of the proper functioning of Asis and a breach of international law.

“The negotiations that were under way between Australia and East Timor were negotiations subject to the requirements of the Vienna Convention on the Law of Treaties,” he said. “Australia had a legal (and moral) obligation to conduct these negotiations in good faith.”

Revelations about the spy operation infuriated the Timor-Leste government, which took Australia to the permanent court of arbitration in the Hague. That case was settled and a new deal was struck over the oil and gas reserves in the Timor Sea.

The prosecution of Witness K and Collaery followed that new deal by a matter of months. The move has been widely condemned as “pointless” and “vindictive”.

The main target of the spy operation - the former US diplomat and chief negotiator for Timor-Leste, Peter Galbraith - last week urged Australia to simply move on.

“I was the target, therefore, the ‘victim’ of the bugging. I was leading the East Timor negotiations at that time,” Galbraith told Guardian Australia. “But I’m not calling for prosecutions. I’m just pleased that East Timor finally got what it wanted.”

Two former judges have also condemned the case. Former NSW supreme court justice, Anthony Whealy, told Guardian Australia the prosecution was “deeply disturbing”.

“By any standards, the information revealed by these two men needed to be conveyed, and indeed needed to be in the public domain,” Whealy said. “On its face, the bugging by Australian interests of a foreign power’s cabinet room, if that is what happened, was detestable.”