

**CATHOLIC
DIOCESE
of
BALLARAT**



**DIOCESAN SOCIAL JUSTICE
COMMISSION**

PO Box 576, Ballarat, Vic, 3353

Ph: (03) 03 5337 7109

Email: social.justice@ballarat.catholic.org.au

Dear (Member of Parliament),

I am writing to you on behalf of the Ballarat Diocesan Social Justice Commission to urge you to support the establishment of a Senate enquiry into the prosecutions of Mr Bernard Collaery, lawyer for Timor Leste, and Witness K for communicating information about an operation of the Australian Secret Intelligence Service (ASIS).

We consider that even if the prosecutions are valid under the law of Australia, they are not in accordance with justice. The very fact that the prosecutions have been brought confirms that ASIS 'bugged' offices of Timor Leste during negotiations which led to the Treaty for Certain Maritime Arrangements in the Timor Sea in 2006. Among other things, this treaty provided for Australia and Timor Leste to share equally in the revenues from oil and gas reserves. In 2013, Timor Leste instituted proceedings in the Permanent Court of Arbitration to have the treaty set aside because Australia had not negotiated in good faith. The Government's seizure of data and documents from Mr Collaery's office and of Witness K's passport on 3 December 2013, two days before the first procedural meeting in the proceedings, indicates the commercial motives of Australia in the bugging.

We understand and accept the need for a body like ASIS. However, we consider its bugging operation in connection with an international commercial matter against a small, poor and infant neighbouring country was disproportionate and unfair. We can also understand and accept the general need for people employed or engaged by ASIS to adhere to their commitment to secrecy. We can also understand that allowing people employed or engaged by ASIS to renege on that commitment may lead to a wider breakdown of secrecy.

However, when the alleged breaches of secrecy appear, as in this case, to involve a matter of conscience and relate only to ASIS methods and peacetime commercial interests, they are far less reprehensible than the bugging and hardly justify a secret trial. The bugging appears to be as great an error of judgement as the use of RAAF aeroplanes to overfly the Franklin River. The fact that such prosecutions could only be brought by, or with the consent of, the Attorney-General or a person acting under his or her direction, is an indication that the institution of such prosecutions is not automatic but requires consideration of such matters as the interests to be protected, any extenuating circumstances, the reputation of the Government and international relations.

In fact, the institution of the prosecutions on 30 May 2018, after the signature of the Timor Sea Maritime Boundaries Treaty on 6 March 2018, indicates that the Government was aware of the practical importance of international relations in this matter. Institution of the prosecutions before signature of the treaty would likely have disrupted negotiations for the treaty. Even now, relations between Timor Leste and Australia may be damaged because of the prosecutions. This is not only a matter of ethics but of common sense.

With the support of the Labour Party, a Senate inquiry into the prosecution of Bernard Collaery and Witness K would be possible. In the interests of transparency, fair democratic process, justice and accountability, we urge you to join the call for a public Senate inquiry into this case.

Sincerely,

Anthea Hinchey
Chair of the Ballarat Diocesan Social Justice Commission