

Punishing an act of Conscience – The Prosecution of Witness K

Issued February 2019

*Blessed are the meek,
for they will inherit the earth.
Blessed are those who hunger and thirst for righteousness,
for they will be filled.
Blessed are the merciful,
for they will be shown mercy.
Blessed are the pure in heart,
for they will see God.
Blessed are the peacemakers,
for they will be called children of God.
Blessed are those who are persecuted because of righteousness,
for theirs is the kingdom of heaven.*

Matthew 5:5-10

The Australian Government gained an unfair advantage in negotiations over the division of oil and natural gas deposits in the Timor Sea by bugging the cabinet offices of the Timor-Leste Government in 2004 using Australian spies posing as aid funded contractors. This would have resulted in the people of Timor-Leste being cheated out of vital revenue they needed for health clinics and schools.

The operation was exposed in 2012 by the head of the technical unit of the Australian Secret Intelligence Service (ASIS) responsible for planting the bugs. He was known as Witness K.

His action ultimately contributed to a fairer settlement over the resources in the Timor Sea. The Australian Government is now in the process of ratifying the treaty that will establish the maritime border between the two countries.

However, the current Coalition Government is now seeking to punish Witness K and his lawyer, Bernard Collaery, for exposing their unethical behaviour by prosecuting them for revealing the planting of the listening devices. Witness K acted out of good conscience in revealing that the Australian Government had placed listening devices in the offices of the Timor-Leste Government.

Mr Collaery also acted for the Timor Leste Government in the International Permanent Court of Arbitration in the Hague that was responsible for co-ordinating the conciliation process between the governments of Australia and Timor Leste over the maritime boundary between the two countries.

“I was privileged to have sought justice for the poorest country in Asia, for a people with a high infant mortality rate,” he says.

This prosecution is sending a signal that any person working for Australia’s intelligence agencies who, out of conscience, reveals unethical and unconscionable behaviour by an Australian Government is likely to face prosecution years later.

We doubt that the Australian Government would take the view it would be acceptable for the agents of a foreign government to plant listening devices in the offices of Australian Government Ministers to gain an advantage in treaty negotiations.

The Australian Government should acknowledge that it acted unethically and in bad faith when it planted listening devices in the cabinet offices of the Government of Timor-Leste. As a sign of that acknowledgement it should end the prosecution of Witness K and Mr Collaery.

The Attorney General has the power to stop the prosecution under Section 71 of the *Judiciary Act*.

The court hearing the case against Witness K and Mr Collaery decided the Attorney General has the power to rule if the trial will be held in secret. It is possible that Witness K, Mr Collaery and their lawyers may be excluded from the parts of the trial involving matters that the Attorney General asserts are matters of 'national security'.

This is likely to undermine Witness K and Mr Collaery obtaining a fair trial. The government is using the 2004 *National Security Information Act* to keep parts of the trial secret, a law that was intended to be used to protect classified information in terrorism trials.

Our Christian faith leads us to do what we understand to be right and ethical, even if that will have negative consequences for ourselves. This is exactly what Witness K and Mr Collaery have done and we should not stand by and let the current Coalition Government put them in prison for having done so.

The Uniting Church in Australia has been an advocate for and friend of the people of Timor-Leste for a long time and wants Timor-Leste to have the resources it needs to be self-sufficient. We are a partner church of the Protestant Church of East Timor (IPTL: Igreja Protestante iha Timor Lorosa'e).

The 2016 Synod meeting resolved:

- (i) *Noting Synod resolution 02.6.4.6, To renew the 2002 to call on the Federal Government to negotiate in good faith a permanent maritime boundary with Timor L'este. If the boundary cannot be established through good faith negotiations, then to allow Timor L'este to have any maritime boundary dispute with Australia resolved through the International Court of Justice or the compulsory dispute resolution mechanisms of the UN Convention on the Law of the Sea.*
- (ii) *To inform the Prime Minister, the Minister for Foreign Affairs, the Leader of the Opposition and the Shadow Minister of Foreign Affairs of this resolution.*

What you can do

Write polite and respectful letters to:

The Hon Christian Porter MP
Attorney General
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

The Hon Scott Morrison MP
Prime Minister
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Salutation: Dear Minister

Salutation: Dear Prime Minister

Points to make in your letters:

- Express deep concern that the Australian Government acted unethically, if not illegally, when it gained an unfair advantage in negotiations over the division of oil and gas deposits in the Timor Sea by bugging the cabinet offices of the Timor-Leste Government in 2004. This would have resulted in the people of Timor-Leste being cheated out of vital revenue they needed for health clinics and schools.
- Express deep concern that the Australian Government is now seeking to punish the whistleblower who exposed the unethical behaviour, Witness K, and his lawyer, Bernard Collaery, and have them imprisoned for revealing the bugging operation.
- Urge that the Attorney General exercise his legal power to end the prosecution of Witness K and Bernard Collaery.