

Australian government seeking to prosecute journalists over exposure of war crimes

By Oscar Grenfell
16 July 2019

Material released this week has confirmed that the Australian Federal Police (AFP), which operates under the direction of the government, has been investigating journalists for criminal offenses over their role in exposing atrocities committed by Special Forces soldiers in Afghanistan.

The revelations make clear that the Liberal-National Coalition government is overseeing a far-reaching assault on press freedom, in line with a global crackdown on the media, spearheaded by the arrest and persecution of WikiLeaks founder Julian Assange.

The latest reports follow an unprecedented AFP raid on the Sydney headquarters of the Australian Broadcasting Corporation (ABC) last month. AFP officers trawled through thousands of digital files and documents, with a warrant that allowed them to “add, copy, delete or alter other data... found in the course of a search.” They also conducted forensic searches, including for fingerprints.

The raid was part of a protracted investigation into the ABC’s 2017 publication of the “Afghan Files,” which exposed the involvement of Australian soldiers in extrajudicial killings, including the murder of civilians, along with the desecration of corpses and other violations of international law.

David McBride, a former military lawyer, was arrested last September, and charged in March with breaching a raft of secrecy offenses. He is accused of leaking official documents about the Afghan occupation to journalists from the ABC and Fairfax Media, since rebranded as Nine Media.

Yesterday, the ABC revealed that the AFP sent letters on April 1 to journalists Dan Oakes and Sam Clark, who produced the “Afghan Files,” asking them to “consent to a forensic procedure being the copying of your finger and palm prints.”

Tim Lyons, the ABC’s head of investigative journalism, wrote: “This was a chilling development—it’s

believed to be the first time in Australia that journalists were being asked to provide fingerprints.” As he noted, the intimidatory request demonstrated that “journalists in Australia are receiving the sort of treatment previously reserved for criminals and terrorists.”

The ABC representative refuted earlier claims, made by government ministers and AFP officials, that the journalists were not the target of the investigation.

Lyons revealed that “the ‘fingerprint letter’ specifically stated that both Oakes and Clark were suspects in relation to three alleged offences—one under s79 (6) of the Crimes Act 1914 concerning ‘the receipt of prescribed information,’ one under s73A (2) of the Defence Act 1903 concerning ‘unlawfully obtaining information,’ and another under s132 1 (1) of the Criminal Code.”

A report today in the *Guardian* further indicated that the AFP has been seeking to build a case against journalists involved in publishing the “Afghan Files.” It revealed that during police interviews in January, McBride was grilled over his interactions with journalists Chris Masters and Andrew Clark, along with Oakes and an unidentified ABC employee.

McBride was reportedly asked whether the journalists had known that the documents they allegedly received were classified, and whether they were concerned that the material contained official secrets.

At one point, an officer queried whether Masters had mentioned “anything in relation to the fact that it may have been an offence for him to have them?” In another exchange, McBride said that Oakes had “mentioned the prospect of jail time.” The interrogator revealingly replied: “He mentioned the prospect of prison in relation to you or in relation to himself?”

Other details of the investigation emerged last week, when Nine Media reported that the AFP had requested that Qantas provide the flight details of Oakes and another ABC reporter.

An AFP statement, detailing the approach, was headlined “Statement in the matter of R v Daniel Michael Oakes,” further indicating that a criminal case is being prepared against Oakes. Significantly, it was dated April 1, the same day the AFP sent the journalist a letter requesting his fingerprints.

In comments, last Friday, the government’s Home Affairs Minister Peter Dutton rejected calls for any criminal investigations against journalists to be dropped.

Dutton declared that “nobody is above the law.” He added: “These are laws that go back decades in western democracies like ours where, if you’ve got top secret documents and they’ve been leaked, it is an offence under the law...” Demonstrating the bipartisan character of the assault on press freedom, Labor leader Anthony Albanese responded, “Quite clearly the government needs to show leadership on this issue.”

The federal Crimes Act makes it an offence to receive or communicate a secret government document without permission. The draconian legislation provides for penalties of up to seven years imprisonment.

The law, however, which has been on the books for over a century, has not previously been used against a journalist. The Coalition, with the backing of Labor, appears to now be using it to create a precedent for the banning of any exposure of government illegality.

This is in line with the bipartisan passage last year of unprecedented Espionage and Foreign Interference laws. The legislation makes it a criminal offence to “deal with” information that “harms” “national security.” “Deal with” is defined to cover a long list of activities: “collect,” “possess,” “make a record of,” “copy,” “alter,” “conceal,” “communicate,” “publish” and “make available.”

Other journalists may also be targeted. Less than 24 hours before they raided the ABC, AFP officers searched the home of NewsCorp reporter Annika Smethurst. She is being investigated over stories last year which revealed that the government had considered expanding the domestic spying powers of the Australian Signals Directorate, an electronic eavesdropping agency.

In emails obtained by Nine Media under a freedom of information request, one AFP officer involved in the raid against Smethurst wrote to a detective sergeant that “reporting hasn’t caught up on the publishing offence—many still think she’s just doing her job.”

The moves by the Australian government against journalists underscore the fact that the arrest of Julian Assange has opened the floodgates for an assault on press

freedom. The WikiLeaks founder was snatched from Ecuador’s London embassy by the British police on April 11. For the past three months, he has been held on bogus bail charges at the maximum-security Belmarsh Prison.

Assange now faces the prospect of extradition to the US, on charges under the Espionage Act, carrying a maximum sentence of 175 years imprisonment.

There is a direct parallel between the offenses under which Assange is charged, and those that Oakes or other journalists involved in the publication of the “Afghan Files” would face. Both would involve prosecution for the standard journalistic practice of working with sources, and for exposing war crimes.

Washington is doubtless also involved in the machinations of the AFP. In a news conference last month defending the raids against the ABC and Smethurst, AFP acting commissioner Neil Gaughan said they were needed to protect information that the Australian police and intelligence agencies receive from their “Five Eyes” counterparts. This spying network, involving the US, Britain, Canada, Australia and New Zealand, is central to US-led wars and military preparations.

The attacks on Australian journalists demonstrate the critical importance of the fight to build a political movement to defend Assange, prevent his extradition to the US and secure his complete freedom. By their silence on Assange’s plight, or their active hostility to him, a host of Australian journalists and media organisations have opened the door for a further assault on freedom of the press.

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