

Australian court backs secret trial on East Timor bugging exposure

By Mike Head
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After weeks of closed-door proceedings, an Australian court ruled on Friday in favour of a federal government application for a virtually secret trial of a lawyer accused of helping to expose Australia's illegal bugging of East Timor's cabinet room in 2004, during oil and gas negotiations between the two countries.

The ruling highlights the extraordinary lengths which the Liberal-National Coalition government, assisted by the Labor Party opposition, is going to obscure from public view the operations of the Australian Secret Intelligence Service (ASIS), the overseas spy agency that carried out the bugging, and the rest of the US-linked intelligence apparatus.

Above all, this is because the entire network of mass surveillance, cyber warfare and spying operations is directly involved in the escalating US confrontation with China. The Timor bugging itself, which was ordered by the Howard Coalition government, illustrates how governments, at the highest level, utilise this network for anti-democratic operations, completely behind the backs of the population.

Australian Capital Territory (ACT) Supreme Court Judge David Mossop declared that material identified by federal Attorney-General Christian Porter as "national security information" should be kept in camera during the forthcoming trial of Bernard Collaery.

Mossop rejected an attempt by Collaery, a former Liberal Party attorney-general in the ACT, to challenge Porter's "national security" claim. Collaery faces a possible lengthy jail term for allegedly disclosing evidence of the bugging, produced by his whistle blower client, an ex-ASIS officer identified only as Witness K.

In 2004, the then foreign minister, Alexander Downer, approved an ASIS operation to bug the room used by East Timor's negotiators during maritime boundary negotiations with Australia.

At stake was not just control over underwater oil and

gas reserves worth billions of dollars. By maintaining the lion's share of the resources, Australian imperialism also retained a grip over the tiny impoverished statelet. East Timor is strategically located at the eastern end of the Indonesian archipelago, close to key shipping routes on which China and other Asian countries heavily rely.

It remains unclear exactly how little evidence will be heard in open court. But Collaery's lawyer, Christopher Flynn, said the ruling would cause "essential elements of the trial" to be closed to the public. "Open justice is an essential part of our legal system, the rights of defendants and of our democracy," he said outside the court. "This case should be heard in public."

However, the Labor Party signalled its support for the use of the National Security Information (NSI) Act. Shadow attorney-general, Mark Dreyfus, only said Labor would follow the proceedings, supposedly to ensure that Collaery is not denied the right to a fair trial. But the NSI laws are incompatible with fair trials.

The holding of closed-door trials violates the fundamental democratic principle of public jury trials established by centuries of struggle against tyranny, including the English Revolution of the 1640s, which overthrew Charles I and ended the use of the secretive and arbitrary Star Chamber court to suppress political dissent and execute opponents of the regime.

The return to such methods is a warning of the police-state measures to which governments are resorting to block exposure of, and opposition to, the mass spying, diplomatic conspiracies and war preparations being intensified by Washington and its closest allies, such as Australia.

Flynn said "strong evidence" was heard in Collaery's favour during the pre-trial hearing. These witnesses included Gareth Evans, a former Australian Labor foreign minister, Admiral Chris Barrie, an ex-chief of the defence force, John McCarthy, a former ambassador to the United

States, and Anthony Whealy, an ex-judge. The court also heard from former East Timor leaders Xanana Gusmao and Jose Ramos Horta, Flynn said.

Despite these voices from within the political establishment of both countries, the judge ruled against a public trial. This underscores the far-reaching scope of the legislation invoked by the government, the NSI Act.

It was enacted by the Howard government in 2004, backed by the Labor Party, under the guise of pursuing the “war on terror” launched in 2001. Like all the “anti-terrorism” laws imposed since 2001, the NSI Act goes far beyond terrorist-related activity.

The WSWS warned in 2004 that the NSI Act “permits trials on terrorism, espionage, treason and ‘other security-related’ charges to be held in complete or partial secrecy.” We explained that the Act also facilitated frame-ups: “In closed court sessions, judges can allow government witnesses to testify in disguise via video and, in some circumstances, exclude defendants and their lawyers from trial proceedings.”

The NSI Act defines “national security information” to mean information “that relates to national security or the disclosure of which may affect national security.” The legislation further defines “national security” to mean “Australia’s defence, security, international relations or law enforcement interests.”

This language is vague and sweeping enough to cover anything that might damage the corporate interests of major Australian companies, such as Woodside Petroleum, which had a huge stake in the Timor Sea bonanza, as well as anything that could expose intelligence and military arrangements with the US.

The legislation applies to any “federal criminal proceeding,” so it will cover trials on charges under the unprecedented “foreign interference” laws introduced in 2018. The first such charges have been threatened following the raids conducted last Friday by the domestic spy force, the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police on the home and parliamentary office of the New South Wales state Labor MP, Shaoquett Chaher Moselmane, over his public views opposing the escalating offensive against China.

Apart from outlawing working with a “foreign organisation” to advocate political change, the “foreign interference” laws further criminalise the leaking or publication of any material deemed to damage the country’s military, intelligence or economic interests.

The government is also demanding closed-door

proceedings in the trial of an ex-military lawyer, David McBride, who exposed a cover-up of civilian killings and other violations conducted by Australian Special Forces units during the US-led invasion and occupation of Afghanistan.

McBride’s lawyer, ex-independent senator Nick Xenophon, recently revealed on the Australian Broadcasting Corporation’s “Q&A” television program that Attorney-General Porter had declared as “national security information” 80 percent of the documents involved in the case.

Xenophon said this had blocked the defence lawyers from studying the thousands of pages of documents, except during two-hour sessions, after which they had to hand in their notes. Such a regime makes a mockery of any notion of a fair trial.

These are not the only secret trials. Last year it was revealed that an ex-soldier and intelligence officer, known only as “Witness J,” had been convicted and imprisoned in Canberra for 15 months via a criminal trial that was completely hidden from public knowledge, let alone scrutiny. Prime Minister Scott Morrison then specifically defended the holding of such secret trials.

This assault on basic legal and democratic rights matches the brutal methods being used in the persecution of Julian Assange, the WikiLeaks founder. With the backing of the Australian government, he remains incarcerated in a maximum UK prison, facing extradition to the US on “espionage” charges for exposing the war atrocities and anti-democratic conspiracies of the US government and its allies, including those in Canberra.

This offensive goes beyond covering up the past crimes of the military and intelligence apparatus. It is being driven by preparations for even greater crimes. Amid Washington’s increasingly provocative economic and military confrontations against its rivals, particularly China, the Australian ruling elite has taken a front line in the conflict with Beijing.

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