

THE SATURDAY PAPER

OPINION

Paul Bongiorno Timor-Leste independence and press freedom

At the very time the world's most powerful democracy is locked in a trade war with the planet's biggest authoritarian state, Australia's reputation as a free nation is under severe strain. And nothing highlights this more than the independence celebrations in Timor-Leste, formerly East Timor. The guests of honour at Friday's festivities included Australian Prime Minister Scott Morrison, the opposition leader, Anthony Albanese, and former prime minister John Howard.

Midweek, at the Solidarity Festival conference in Dili, Timor-Leste's former president and independence champion José Ramos-Horta warned the celebrations "will be sombre and will have a bitter taste if Witness K and Bernard Collaery are not free". Outside, 200 protesters chanted: "Viva Witness K. Viva Bernard Collaery." They, like Ramos-Horta, know the much fairer deal over access to the oil- and gas-rich fields in the Timor Sea between the two nations was "because of the bravery" of Collaery and Witness K. Both men are now facing criminal prosecution for their troubles.

The bravery was spelt out in a hard-hitting ABC *Four Corners* report on Monday. There detailed was the prosecution and persecution of Witness K – a former Australian spy who blew the whistle on a 2004 bugging operation of the Dili government during crucial commercial negotiations – and his lawyer Collaery. The bugging gave Australian negotiators the upper hand and resulted in the drawing of a boundary that gave Australia a 50 per cent share of the resources – despite the fact they were located 150 kilometres from Timor-Leste's shore and 400 kilometres from Australia's.

Confirmation of the bugging enabled the Dili government to challenge the treaty in the International Court of Justice (ICJ) in The Hague, and in 2017 Timor-Leste and Australia reached an agreement to cancel the deal. This led to a new one, signed yesterday in the capital. But demands from resistance hero and founding Timor-Leste president Xanana Gusmão for the Morrison government to drop the case against Witness K and Collaery are going unheeded.

Independent MP Andrew Wilkie believes "we are living in dangerous times". He goes so far as to characterise it as "a pre-police state". The ICJ came down hard on Australian police for raiding

Collaery's offices and confiscating documents relating to The Hague action. Witness K's home also was raided and his passport confiscated so he could not give evidence in the Netherlands. The court condemned the raids and the police were ordered to not access the files they had seized nor to interfere in any way in the communications between Collaery and his client.

Australia's humiliation at the ICJ was so great it dissuaded former attorney-general George Brandis from signing off on prosecuting either man. But this was a precedent not followed by his successor, Christian Porter, whose record in defending freedoms and transparency is looking tawdry. One of Australia's most eminent counsels, Bret Walker, SC, says, "Usually, traditionally, it's simply not in the public interest to prosecute this sort of thing." Labor in office did not green-light either prosecution.

IN THE NAME OF PRESERVING AUSTRALIA'S DEMOCRATIC FREEDOMS AND RULE OF LAW, TIME-HONOURED CONVENTIONS ARE JUNKED, LAWYER-CLIENT PRIVILEGE TRASHED, AND JUSTICE NOT ALLOWED TO BE SEEN TO BE DONE.

There is concern within legal circles that Collaery may have been set up, as he was on a short list of approved barristers given to Witness K. He is now facing two years' jail for acting on his client's behalf. It's a chilling development. Adding to the concern is the extraordinary lengths the prosecution is going to in order to hold the Collaery trial in secret.

Is it any wonder that there are renewed calls for an Australian bill of rights? Our agencies and politicians can't be trusted. Porter gave assurances a couple of months ago that journalists weren't the targets of Federal Police raids in June. He said he would be "seriously disinclined" to authorise the prosecution of journalists just for doing their jobs. Earlier this month, AFP Commissioner Andrew Colvin told the parliamentary committee inquiring into press freedoms that the investigation into News Corp journalist Annika Smethurst is ongoing. He did not rule out charging her.

Analysis by Jonathan Holmes in *The Sydney Morning Herald* suggests the AFP took steps to avoid the press freedom safeguards in recent security laws. Holmes says this was pointed out in submissions to the inquiry that none of the politicians picked up on. He says ABC journalist Dan Oakes was charged under the Criminal Code for "stealing Commonwealth property". Oakes worked on *The Afghan Files* – an exposé of suspected illegal killings by our troops based on leaked documents. The documents were given to him by an army lawyer, whistleblower David McBride.

The police, in using this section of the Crimes Act, did not need the attorney-general to be involved. The section is about theft: "stealing money, or a laptop, or a pot-plant from a government office", as Holmes puts it. He writes that the warrant spelled out that Oakes had "dishonestly [received] stolen property ... In other words, in the AFP's view, Oakes is not a journalist. He's a fence."

These are indeed dark times when our government and its agencies go out of their way to punish anyone who exposes wrongdoing – the quintessential work of journalism. And in the name of preserving Australia's democratic freedoms and rule of law, time-honoured conventions are junked, lawyer-client privilege trashed, and justice not allowed to be seen to be done. Along the way, Australia's commercial interest was conflated with our national security interest. This created the perception – to quote former New South Wales Supreme Court judge Anthony Whealy – of using litigation for "payback" and "cover-up". It could be taken at face value as the sort of behaviour one would expect from an authoritarian regime such as, maybe, China.

Foreign Minister Marise Payne this week became a champion of the very values that are palpably under threat here. She put out a strongly worded statement raising her concerns over the treatment of Australian-Chinese dual citizen Dr Yang Hengjun, who was formally arrested in China on suspicion of espionage and will continue to be “criminally detained”. Payne’s statement says Yang has not had access to his lawyers or family visits, nor have the reasons for his seven-month detention been explained.

The minister forcefully said, “It is important, and we expect, that basic standards of justice and procedural fairness are met. I respectfully reiterate my previous requests that if Dr Yang is being held for his political beliefs, he should be released.”

Payne is aware that Yang was held in a detention black site – known as “residential surveillance at a designated location” – where prisoners are kept on constant watch under bright lights and subject to continuous interrogation. She drew attention to international human rights law, including the “Universal Declaration of Human Rights with special attention to those provisions that prohibit torture and inhumane treatment, guard against arbitrary detention and that protect the right to freedom of thought, conscience and religion”.

The suspicion is China is engaging in “hostage diplomacy”. That under siege from Donald Trump’s trade war and feeling targeted by Australia’s foreign interference laws, Beijing is now using Yang as leverage in the relationship. The Chinese government is sending a message, or maybe several messages. Australia’s support for “peaceful” protests for democracy in Hong Kong no doubt is seen as an attempted undermining of the mainland’s peace and stability. The last thing Beijing would want is letting the democracy genie out of the bottle again.

Payne revealed she has twice personally raised the dual citizen’s plight with her counterpart, Wang Yi, and written formally three times in the past seven months, all to no avail. It is further evidence that Australia is still in the diplomatic deep freeze. The banning of tech giant Huawei is also another grievance, seen as Canberra capitulating to Washington’s containment of Beijing’s economic-superpower ambitions.

Morrison can’t expect an invitation to visit Beijing any time soon to counter his promised bells-and-whistles feting next month in Washington. The Chinese Foreign Ministry replied with an equally blunt statement to Payne. It said, “China is strongly dissatisfied with Australia’s statement on this case”, and would like “to stress that China is a country with rule of law, and Australia should earnestly respect China’s judicial sovereignty, and not interfere in China’s handling of the case in accordance with the law in any way”.

The geopolitical tug of war between Trump and China’s president, Xi Jinping, is certainly infecting everything. China was the elephant in the room at the G7 in Biarritz and it was not far from the jollifications in Dili yesterday. Not everyone there was happy Australia got even 30 per cent of the rich Timor Sea resources, but the Timor-Leste government is looking for us to invest in their dreams of a petrochemical industry. China has already flagged its willingness to draw up plans under the Belt and Road Initiative.

As senior minister Fidelis Manuel Leite Magalhães told *The Australian*: “We are friends with everyone. Timor-Leste does not see other countries as a threat to its existence, or to regional peace and stability.”

Given the past 44 years, he might have added that with friends like Australia, who needs enemies.

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