

Q+A: Australia likened to North Korea in its secret trial of Bernard Collaery

Luke Henriques-Gomes, The Guardian 23 June 2020

Bernard Collaery has said he longs to defend himself in an open court and labelled his secret trial a “disgrace”, as the former president of Timor-Leste likened Australia’s treatment of the Canberra lawyer to North Korean or Soviet-era “political trials”.

A national security episode of the ABC’s Q+A program on Monday highlighted the controversial prosecution of Collaery, who is facing the prospect of jail if convicted over his role as legal counsel to a former intelligence officer who exposed the Australian government’s bugging of Timor-Leste during oil treaty negotiations in 2004.

Collaery, who is accused of [unlawfully disclosing secret intelligence information](#) and conspiring with his former client Witness K, told the program on Monday night the case was a “disgrace to Witness K and a disgrace to myself”.

“I yearn for the day when I can defend Witness K and myself in open court,” he said. “This is the democracy that my father gave his life in the war for.”

The ABC broadcast a written statement from José Ramos-Horta, who said the prosecution and secret trial “brings to mind the North Korean and Soviet-era political trials”.

“Witness K and Bernard Collaery did no harm to Australia’s vital national security interests,” he said.

“If anything, they rescued Australia from moral depravity as they helped roll back a criminal, illegal order to carry out an illegal wiretapping of a friendly government. The case against them should be summarily dismissed.”

The program also featured a counter-terrorism expert, Jacinta Carroll, and the veteran public servant Dennis Richardson, a former director general of Asio, who both argued the level of secrecy applied to the Collaery trial would be determined by a judge.

“The government has neither confirmed nor denied any operation in respect of East Timor,” Richardson said. “Leaving that aside, if an operation was indeed carried out, it would not have been a crime.

“Secondly, in terms of the current legal proceedings, it is ultimately the court that will determine that which is kept privileged and that which is made public.”

Although Carroll accepted the court was obliged under the law to give most weight to the opinion of the attorney general, Christian Porter, who has asked for the case to be held behind closed doors, she argued this was appropriate as it was “expert advice”.

“May I thank Jacinta for giving me a bit of a laugh,” Collaery said in response. “Is the attorney the expert on intelligence?”

“The fact is that it’s not a judge balancing exercise, the [National Security Information] Act mandates and gives the attorney’s certificate the greatest weight.

“It’s not a weighing and balancing exercise at all. I can’t talk about the proceedings involving myself. But I must say there are no challenges to the accepted notions of national security in that case.”

Q+A also highlighted the prosecution of defence force whistleblower David McBride, and Witness J, a former intelligence officer who was jailed in the ACT [without the knowledge of the territory’s own attorney general](#).

Nick Xenophon, a former independent senator whose law firm is representing David McBride, revealed the difficulties that he claimed national security laws had imposed on his efforts to defend his client.

He said: “We finally got to see the prosecution brief. Thousands and thousands of pages of documents, 80% of those documents have been deemed to be under this conclusive certificate from the attorney general to be secret.

“We finally get two hours at the Australian Government Solicitor’s offices to look at these documents, to make notes, only two hours for thousands of pages.

“Then [law partner Mark Davis] has to hand those notes back, so he can’t take them with him.”

Xenophon said he was yet to be able to sit down with his client and view the documents and when this occurred, it would presumably be with the government’s lawyers in the room.

“Honestly, this is the consequence,” he said.

The former federal senator said McBride was a “good, decent Australian” who had become aware of “systemic issues” within the defence force, including the “unlawful killing of civilians, unarmed adults and children”.

“It went up the chain of command, including to the Major-General Hurley now, the governor general,” he said.

“He then went to the Australian federal police and made a formal complaint. That was ignored.”

McBride’s revelations were later published by the ABC, whose offices were raided by the Australian federal police over the story. He is [facing a life sentence](#) and has been forced to set up a Go Fund Me page to pay for his legal defence, Xenophon said.

The News Corp journalist Annika Smethurst, whose house was unlawfully raided by the AFP, argued that although Australia’s laws inhibited press freedom, particularly when compared with other liberal democracies, there were also cultural problems at play.

“It comes down to how whistleblowers are treated in this country not just legally but socially,” she said.

“Something about the way Australia is, we see them as doblers or squealers or people that just won’t get on with it and they want to highlight bad things they see.”