

SPECIAL PANELS IN THE DILI DISTRICT COURT

Kate Halliday, Fokupers, Dili

The trial starts at around 11am with the three judges entering unannounced through the rear door of the court. The fans are whirring and the doors are all open to keep the room as cool as possible — particularly for the judges who are wearing robes.

Before official proceedings start one of the judges apologises on behalf of the court for the late start. He also expresses concern about the court's recent discovery that accused persons at court were not receiving any food during the day spent at court. Today he has brought along a big bag of apples that later are handed around to everyone in the court room, including the public.

Although it is a Special Panel, set up to hear crimes committed during the violence leading up to and following the popular consultation in 1999, and therefore of great significance to many East Timorese, resources are obviously scant. There is no system for electronically recording the proceedings, one of the judges acts as a rapporteur and types away madly on his laptop during the proceedings while the other judges take notes. There are no court staff, the prosecutor distributes documents herself to the bench and the accused's lawyer. There are interpreters — two of them — as proceedings will be held in Indonesian, English and Tetum. If the power goes off (it does not on the morning I am at court however it is a regular occurrence in Dili and the court has no generator of its own) then the fans stop. The court seems to run on a shoe string: there is little administrative support, no library, no internet access and no photocopier in the registry.

The defendant only speaks Tetum, the lingua franca of East Timor. He has been indicted for murder and the case alleged against him is that while a member of a militia he, together with others, killed a man allegedly involved with the CNRT. He was instructed by a militia commander to go to a village near Maliana to burn houses and kill people. He was also

instructed to search for particular people who were allegedly involved with the CNRT. With others he went to a house to search for these people. While searching a noise was heard in the ceiling and the accused provided a chair to another militia member. That other member stood on the chair and thrust a spear through the ceiling. The person hiding started to scream and a machete was thrust through the ceiling. Somehow the victim fell from the ceiling to the floor and the accused was one of the persons who continued to stab the victim until he eventually died.

The defence has a preliminary motion concerning the evidence of the autopsy. In the course of argument the court is told that the autopsy could not be performed until after the preliminary hearing held earlier this year due to the lack of pathologist in East Timor. The autopsy (and exhumation) could not be performed until May this year.

The facts are then put to the accused and he is questioned by the bench, the prosecutor and his own lawyer (one of the East Timorese public defenders). The accused gives his own account of events. He says that he was paid to carry out the acts of violence and that prior to going to the village he attended a pro-autonomy rally held at Maliana football field where he was part of a crowd addressed by militia leaders.

The Special Panels in the Dili District Court (established by UNTAET regulation 2000/15) have exclusive jurisdiction over Serious Crime: genocide, war crimes, crimes against humanity, torture and sexual offences and murder committed between 1 January 1999 and 25 October 1999. Most of the indictments presented have been for the crime of murder with four indictments so far presented for crimes against humanity.

Community expectations around the prosecution of Serious Crime are high. The UN Human Rights Commission and Amnesty International have

reported on the resource difficulties experienced by the Special Panels at Dili District Court and the Serious Crimes unit which investigates and prosecutes the crimes. There have also been some suggestions that UNTAET has interfered with the prosecutions of Serious Crime by negotiating separately with militia leaders and preventing arrests and indictments. Almost all of those in positions of power (including TNI members) during the period of the violence are now in Indonesia and efforts in Indonesia to bring those people before a court seems to have now stalled.

Fokupers, a woman's organisation based in Dili, has recorded many instances of violations committed against women in 1999. The violations were mostly rape, sexual slavery and sexual harassment. They were perpetrated in some cases as part of the systematic and planned campaign of terror sponsored by the TNI and in other cases as a result of the climate of impunity which existed during that time. According to Fokupers staff many of these women have an expectation that the people who perpetrated crimes against them will be prosecuted. In some cases women have been subjected to further attack as they are perceived by the community as "spoiled goods".

A number of non government organisations, including Fokupers, are now calling for the establishment an international tribunal, like the tribunals established for Yugoslavia and Rwanda, to prosecute crimes against humanity. The NGO Forum (a coalition of East Timorese NGO's) called on the donor's meeting held in Canberra on 14 and 15 June 2001 to support an international conference, to be held in Dili, which could provide a forum where this option could be properly considered by the East Timorese people.

Other reports on the violence of 1999, including reports of the special Rapporteurs on questions of Human

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Rights in East Timor (December 1999), the Report of the International Commission of Inquiry on East Timor to the Secretary General of the UN and Crimes Against Humanity in East Timor; Their Nature and Causes (James Dunn) argue for the establishment of an international tribunal to investigate and prosecute international crimes committed in East Timor between 1975 and September 1999 in the event that those in positions of responsibility for the crimes are not held accountable by domestic tribunals in East Timor or Indonesia.

The experiences of the international tribunals for Rwanda and Yugoslavia indicate that prosecution for crimes against humanity is expensive and slow. There is also a preference for prosecuting those who were in positions of authority, who could have prevented the widespread and systematic violence, rather than their subordinates who committed the individual acts. Prosecution against those in authority also functions as a more effective deterrent to others who are in a position to unleash terror against civilian populations.

It is possible that coupled with effective community education about the nature of crimes against humanity that a large number of victims in East Timor could derive a sense of justice from a small, but well targeted, number of prosecutions for this crime. However it is becoming increasingly clear that such prosecutions may not be possible with the current arrangements both in East Timor and Indonesia.

For more information about the prosecution of serious crime and the justice system in East Timor go to the Justice System Monitoring Project website at: <http://www.jsmp.minihub.org>.

Kate Halliday received a grant from the Myer Foundation International Residency Program to work with Fokupers for three months.

AROUND THE NT BAR

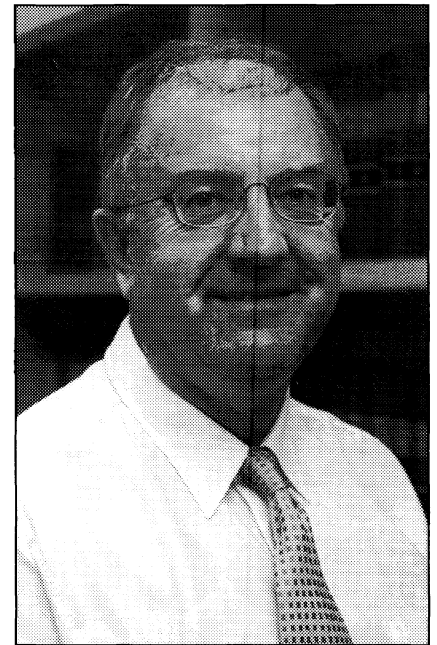
Martin Carter is a barrister with Edmund Barton Chambers.

Martin's first admission was as a solicitor in England in 1972 after completing a law degree in the UK and two years as an articled clerk. He worked as a corporate solicitor for Richards, Butler & Co in the City of London.

In May 1975 Martin was admitted in Perth WA and worked as a family lawyer and then commenced as a sole practitioner. He visited a number of regional centres including Meekathara, Cue, Mt Magnet, Wiluna, Tom Price, Parraburdoo, Exmouth, Onslow on a monthly basis by light aircraft. This was terrific fun as a 20 year old and involved encounters with "ratbag" clients and some amazing cases.

In December 1983 he was offered employment in Darwin and spent an interesting two years working for Ward Keller in their civil litigation department. In 1995 he formed a partnership with another former Ward Keller lawyer Vincent Close and had a prosperous association with Vincent until he retired from the partnership in March 1999.

Martin joined Edmund Barton Chambers in October that year and has been practicing in the areas of criminal and family law although he has had some other fun work including a



number of appeals (which he particularly enjoys).

His interests include cycling, "day trading" and military history. He reports that life at the Bar is bliss.

Martin reports that criminal law is the bread and butter of Edmund Barton Chambers but has been involved in a variety of civil cases including family law and building cases.

Around the Bar is provided by the Northern Territory Bar Association.

Nominations called for 2001 Australian Young Lawyer Awards

Sponsored by Hughes-Castell

The Australian Young Lawyers Committee of the Law Council of Australia is seeking nominations for the 2001 Australian Young Lawyer Awards.

The objectives of the Awards are to encourage young lawyers' associations and individual young lawyers throughout Australia to establish and institute programs for the benefit and assistance of the profession and/or the community, and to provide recognition of the programs initiated.

The Awards are judged in three categories:

Category 1 - Professional Issues

Category 2 - Community Issues

Category 3 - Individual contribution to the profession and/or the community

Nominations for the Awards close at 5:00pm EST on Friday 14 September 2001. Application forms and rules governing the Awards are available at <http://www.lawcouncil.asn.au>, or by contacting: Gerard O'Neill Administrator Law Council of Australia Tel: (02) 6247 3788 gerard.oneill@lawcouncil.asn.au