



The Centre for Democratic Institutions

EAST TIMORESE JUDGES' STUDY TOUR TO DARWIN

28 May - 2 June 2003

Introduction

As the world's newest nation, East Timor joins many other nations building democracies out of their colonial past. East Timor has determined its own model of democracy, and in its capacity building draws from the experiences and information of other nations accordingly. In doing this, East Timor is likely to relate to the experiences and objectives of some nations more than others.

For East Timor, the development of a strong democracy is an enormous task, especially given the legacy of destruction and devastation resulting from the struggle for independence. The judicial system plays an important role in democracy promotion and substantial resources are required to ensure the system is well equipped and protected.

The Centre for Democratic Institutions in collaboration with the Federal Court developed a study tour that brought to Darwin two judges from East Timor: Judge Duarte Soares Tilman and Judge Deolindo Dos Santos. From 28 May to 2 June, the judges observed Australia's judicial system and attended the Judicial Conference of Australia's 2003 Colloquium.

Itinerary in Darwin

Accompanied by Justice Marshall and his colleague, the judges visited the Federal Court of Australia, the Family Court and the Federal Magistrates Court. The judges were shown the facilities available to Australian judges and their staff and were explained the reasoning behind the structure and design of the courts.

During their tour, Judge Duarte Soares Tilman and Judge Deolindo Dos Santos visited the Northern Territory Registry of the Federal Court of Australia where they met with registry staff. Judge Tilman and Judge Dos Santos were given passes enabling them to move around both the Federal Court building and the Northern Territory Supreme Court.

Judge Tilman and Judge Dos Santos met with Supreme Court judges, including the Chief Justice of the Northern Territory, at the Northern Territory Supreme Court. Discussions were held with the Chief Justice surrounding the issues commonly faced by East Timorese judges. The Chief Justice expressed his appreciation of the great

responsibility placed upon the East Timorese judges, but commented that this was a great opportunity for East Timorese judges to be an integral part of nation building in East Timor. The Chief Justice observed that although Australia was a common law country, there are similarities with the procedure in the civil law system; often the same principles apply in both the East Timorese and Australian systems.

In the discussions surrounding the differences between Australian and East Timorese judicial systems, the East Timorese judges identified that East Timor law draws from several sources: Indonesian law, United Nations Conventions, Regulations made by the United Nations Transitional Administration and laws passed by the East Timor Parliament. The judges also explained to Australian judges the role of the “investigating judge” in the East Timor judicial system who performs most procedural issues before a matter is passed on to another judge for hearing.

Sitting of the Full Court of the Federal Court of Australia

At the Federal Court of Australia, Judge Tilman and Judge Dos Santos observed a hearing of the Full Court before Justice Heerey, Justice Whitlam and Justice Marshall. The hearing concerned a claim for a pension for an Australian serviceman. Before the hearing, the Australian judges explained to Judge Tilman and Judge Dos Santos their document filing system and showed the East Timorese judges those documents filed in a typical appeal before the Full Court of the Federal Court. The East Timorese judges expressed their interest in the level of legislative interpretation. Following the court hearing, the East Timorese judges sat in on a session of Parliament.

Tour of the Darwin Courts

Supreme Court registry staff provided Judge Tilman and Judge Dos Santos with a tour of the Northern Territory Supreme Court and the Darwin Magistrates Court. The judges viewed the basement of the Supreme Court where people in custody are held and the court’s sophisticated security system. The judges also visited Court 1, the Ceremonial Court and Appeal Court and were shown the technological resources available including:

- the recording facilities, so transcript can be kept for every hearing;
- the closed circuit televisions, which allow a person not physically in the court to participate in a hearing;
- the teleconferencing and videoconferencing facilities; and
- facilities for the use of computers by counsel and judges.

At the Darwin Magistrates Court the judges listened to a hearing in the Court’s juvenile jurisdiction. The judges sat in on matters such as domestic violence, break and enter, theft, aggravated assault, and possession of a weapon. In comparison to the Federal Court, the East Timorese judges felt that the Magistrates Court was more relevant to the matters heard by judges in East Timor and so returned the following day to observe further hearings.

The judges met Chief Magistrate Bradley and discussed their experiences as judges in East Timor. The judges were particularly interested in the way the Australian Chief Magistrate remained in court until he had heard all matters in the callover, calling counsel up to the bar table, one after the other.

In comparing the Darwin courts with the experiences in East Timor, Judge Tilman and Judge Dos Santos were impressed with the resources, especially technological, of the court system, and the assistance judges received in the form of personal assistants, associates and court officers. Although the judges noted that an increase in resources in East Timor would come with time, there were a number of ideas arising from their observations of the Australian system to take back to East Timor.

Judge Tilman and Judge Dos Santos sat in on a hearing before Stewart Brown FM in the Federal Magistrates Court. The judges also met with Dianna Bryant the Victorian Chief Federal Magistrate, Rolf Driver the New South Wales Federal Magistrate, and Stewart Brown the Northern Territory Federal Magistrate. The Federal Magistrates were interested to hear about East Timor's transition to independence and the judges' experiences within East Timor as a new nation. Stewart Brown FM has noted that he is keen to strengthen the relationship between Darwin and East Timor, particularly in relation to the development of judicial expertise and the provision of legal services.

The Judicial Conference of Australia Colloquium

At the welcome drinks and dinner of the Judicial Conference of Australia Colloquium, Judge Tilman and Judge Dos Santos met with a group of Australian judges and magistrates and one organiser of the conference, Mr Chris Roper. Judge Tilman and Judge Dos Santos were also fortunate to hold discussions with Chief Magistrate Ian Gray from Victoria who worked for the United Nations Transitional Administration in East Timor in 2002.

A keynote address at the opening session of the conference was given by the Chief Justice of Australia. The Chief Justice's address dealt with issues of judicial appointments and education. It included references to the difference between career judges in civil law systems and judges in common law countries. Judge Tilman and Judge Dos Santos met the Chief Justice and held discussions with him about their work in East Timor and the work of the High Court.

During the Colloquium, Judge Tilman and Judge Dos Santos held discussions with magistrates who dealt with sensitive cultural issues. The judges met with Magistrate Kate Auty, an expert on aboriginal sentencing, Chief Magistrate Gray and other magistrates from Western Australia and the Northern Territory who provided information to the East Timorese judges on aboriginal issues. The issue of "Dealing with the media" was discussed during the Colloquium and Judge Tilman and Judge Dos Santos were particularly interested in the JCA draft guide for working with the media.

The topic of "refugee law" was examined at the Conference making reference to the United Nations Convention on the Status of Refugees. An informative paper was delivered by Dr Crock of the University of Sydney, one of Australia's leading refugee

law academics. Dr Crock spoke about the tension between the Australian Government and the Courts on the topic of refugee law. Judge Tilman and Judge Dos Santos met Dr Crock and spent much time discussing matters of mutual concern. They also met with Magistrates from Cairns and Darwin, a judge from the Supreme Court of New South Wales and the President and Vice President of the Industrial Relations Commission of New South Wales

Evaluation

The conference provided a valuable opportunity for Judge Tilman and Judge Dos Santos to network and share information and experiences with Australian judges and lawyers. According to Judge Tilman and Judge Dos Santos, the areas where they gained the most were in:

- judicial independence;
- the rule of law;
- judicial education;
- refugee law;
- sentencing issues, especially concerning the disadvantaged and dispossessed in society; and
- dealing with the media.

Through the visit to Darwin and their attendance at the Colloquium, it is hoped that the judges from East Timor will be better equipped to serve as judges in East Timor. This can only assist in the development of a strong, independent and knowledgeable judiciary in East Timor.

The Federal Court of Australia is pleased to have assisted the people of East Timor, to enhance capacity building for their judiciary and look forward to future relations with the judges of East Timor.

Shane Marshall
Judge of the Federal Court of Australia
June 2003

**THE JUDICIAL CONFERENCE OF AUSTRALIA'S
COLLOQUIUM, DARWIN, 30 MAY – 1 JUNE
PROGRAM**

FRIDAY 30 MAY 2003

- 4.00pm Registration commences
5.00pm Governing Council meeting
6.30pm *Welcoming Drinks*
7.15pm *Dinner on The Lawns of the MGM Grand Hotel at which Justices Williams and Balmford will be honoured*

SATURDAY 31 MAY 2003

- 9.00am **Opening of the Colloquium**
His Honour Mr John Anictonatis AO
The Administrator of the Northern Territory
- 9.30am **Keynote Address**
Chief Justice Murray Gleeson AC
(High Court of Australia)
- 10.30am Morning tea
- 11.00am **Refugee Law**
Dr Mary Crock
(University of Sydney)
Commentators: Justice Ron Sackville and John Basten QC
- 1.00pm Lunch
- 2.15pm **Aboriginal Sentencing**
Convened by Chief Magistrate Ian Gray of Victoria.
Panelists: Justice Mildren of the Northern Territory,
Magistrate John Birch of the Northern Territory,
Magistrate Kate Auty of Victoria and
Magistrate Kym Boxall of South Australia
- 3.30pm Afternoon tea
- 5.00pm Close of sessions
- 7.00pm **Colloquium Dinner at the Supreme Court**
After dinner speaker, The Hon Dr Peter Toyne MLA, Attorney General

SUNDAY 1 JUNE 2003

- 7.00am *Breakfast at Crocodylis*
- 9.00am **Working with the Media and the Media Handbook**
Tracey Cain
(Strategic Issues Management)
- 10.15am Morning Tea
- 10.30am **Working with the Media and the Media Handbook continues**
- 12.00noon **Close of Colloquium followed by Lunch**