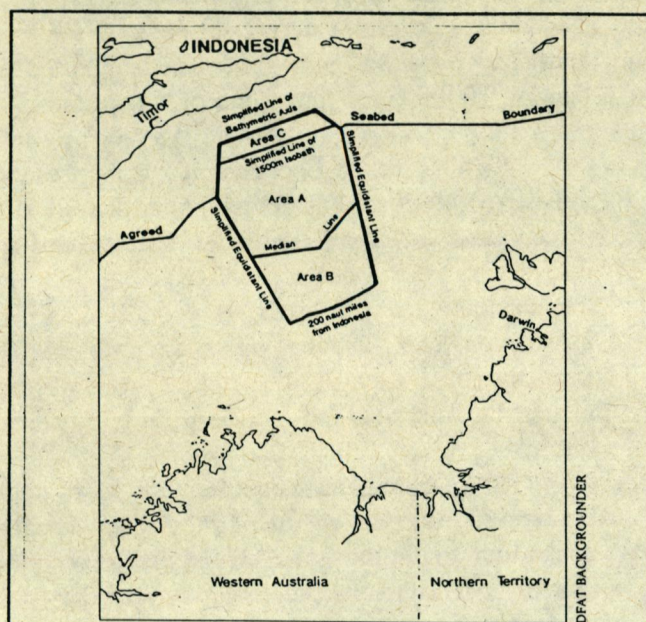


# EAST TIMOR : TO RESIST IS TO WIN

## TIMOR GAP TREATY - TIMORESE REFUGEES CHALLENGE THE COMMONWEALTH OF AUSTRALIA



TIMOR GAP - zone of co-operation

On Friday, June 25, Jose Ramos-Horta, Abel Guterres and Jose Gusmao, launched a High Court challenge against the legislation for the Timor Gap Treaty. The legal process is going to take at least 12 months - according to Jose Ramos-Horta.

The Timor Gap Treaty has been tagged by the Foreign Minister of Australia, Senator Gareth Evans, as an "historical agreement" highlighting the climax of friendship between the governments of Australia and Indonesia in 40 years relationship.

The treaty of Timor Gap was signed on board of a RAAF VIP 707 plane flying over the Timor sea. As the plane flies exactly over the Timor Gap, at 9:45 am of

the 11th of December 1989 and at an altitude of 10,000 metres the Treaty was signed by the Foreign Ministers of both countries. This signing of the Treaty was followed by the introduction of relevant legislation in the parliament to bring it into force.

The last phase of the process of implementation consisted of the development of procedures for the Joint Australian/Indonesian Ministerial Council, the body which supervises the implementation of the treaty.

The Timor Gap saga is a perennial one. It is the result of the disagreement fuelled over more than ten years negotiations between Australia and Indonesia due to the lack of agreement on the criteria to be adopted to exploit the resources in the seabed boundaries which comprises the Timor Gap. For many years, even the Law of the Sea (UNCLOS-United Nations Convention of the Law of the Sea, done in Montego Bay on the 10 December 1982) could not solve the dilemma. According to the former Foreign Minister of Indonesia, Dr Mochtar, "Australian position was based on the geological structure and geomorphological features of the seabed in that area (Timor Gap)". (1) Australia refuses to accept the argument of Indonesia that, regardless of these physical features, a median, equidistant line should be drawn.

These arguments became refined as the debate continued over the years. Dr Mochtar Kusumaatmadja, an expert in the field of Law of the Sea, gave new impetus to the debate while he



was Foreign Minister of Indonesia. He managed to argue effectively against the claim of Australia that sovereign rights over seabed resources of the entire Timor Gap Treaty area as being the natural northward prolongation of Australia's continental shelf - a line maintained by the Foreign Minister of Australia, Senator Gareth Evans, even after the Timor Gap treaty was signed. Senator Gareth Evans reiterated in November 1990, almost a year after the Treaty of Timor Gap was signed, that "subject to the Treaty, Australia continues to claim sovereign rights over the seabed resources of the entire Treaty area." (2) Indonesia, on the other hand, persists with the argument that a middle line should be drawn along the Timor Gap so that Australia and Indonesia can equally share the resources available. This Indonesian argument was supported by the Geneva Convention of the Law of the Sea in 1985, when the Convention called for the establishment of a median boundary line, equidistant from each country.



The saga of Timor Gap is fundamentally due to the fact that it is an area known to be potentially very rich, perhaps as rich as the Bass Strait where Australia currently draws most of its oil revenue from. One of the most contentious element of this saga is "the Kelp structure which is the largest and potentially richest zone"(3) in the Timor Gap area. And, the reason why consecutive Australian governments have supported the illegal occupation of East Timor by the Indonesian Armed Forces is precisely because this rich area belongs to East Timor (the Convention of the Law of the Sea in 1985 gave each country the right to exploit a 200-mile economic zone). The "kelp structure", in particular, lies less than 100 miles from the coast of East Timor.

So, Timor Gap Treaty was signed also because of the fact that East Timor political situation became an intricate part of the Timor Gap negotiations. Indonesia, facing with international pressure of its indefensible, illegal and barbaric

occupation of East Timor, has been forced to use Australia as an ally to save Indonesia's image. Dr. Mochter said in 1978, as Foreign Minister of Indonesia, that Indonesia has been in a hurry to conclude a settlement (Inside Indonesia, March 1990). This, in fact, is a result of Indonesian international image trudging over trouble waters since it invaded East Timor. Australia, on the other hand, facing with the inevitable drying out of its oil in the Bass Strait, can not wait to grab the Timor Gap oil. At the end of the day, Indonesia pushes Australia deep into the well of its illegal occupation of East Timor, and Australia, effectively, takes control over almost the entire oil exploration of the Timor Gap area. To give a decent image to this illegal and dirty business, both governments decided to baptise Timor Gap "the Zone of Cooperation".

This "zone of Cooperation" comprises an area of 61,000 sq. kilometres. It is divided into three areas. Area B is under the Australian jurisdiction, and Indonesia will enjoy a 16% of the company tax. Area B, is under Indonesian jurisdiction and Australia will share 10% of the company tax. Area A, the richest area, is exploited by Australia and Indonesia on a fifty-fifty basis.

As expected, in Australia, the most controversial element of the Timor Gap Treaty turned out to be the issue of the illegal occupation of East Timor by Indonesia. Australia tries to deviate from answering the core questions of this issue by, firstly, giving the de jure recognition of Indonesian sovereignty over East Timor and, secondly, by arguing that being in good terms with the generals of Jakarta is the best way to "help" the Timorese people.

***"Australia's recognition  
did not stop the  
infamous massacre of  
Santa Cruz"***

In the words of Gareth Evans, "Australia's recognition of Indonesia's acquisition of East Timor has enabled Australia to pursue its concerns for human rights and economic development of the people of East Timor". The facts prove him wrong. Australia's recognition did not stop the infamous massacre of Sta. Cruz in November 12, 1991, where more than two hundred Timorese were cold-bloodedly shot at point

June 93



blank and many more have disappeared without a trace. The recognition did not stop Indonesia from staging the most outrageous "travesty of justice trial" of the century. The recognition has yet to help the Timorese speak their own voice or their own minds; if anything, it helped the Indonesian military government to be more opened in pursuing oppressive measures against the people of East Timor and, with the help of the Australian government, the generals get away with it!

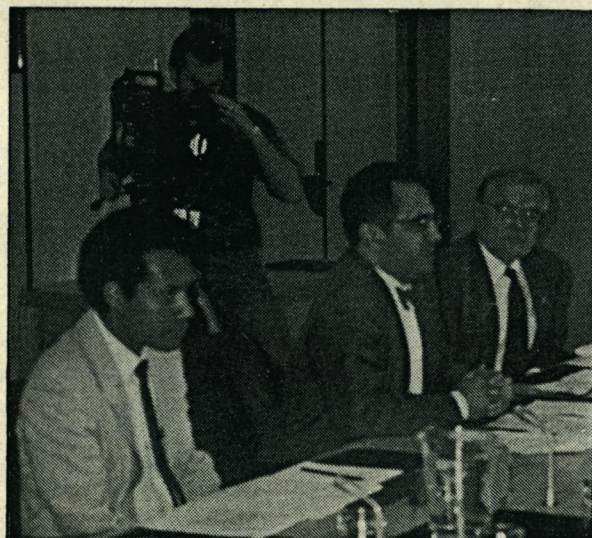
When Senator Gareth Evans is confronted with these real issues his line is always that "independence for East Timor is a wishful thinking" (ABC-TV, Foreign Correspondence, 29 May). This has always been his official line against those who defend the rights of the Timorese people to choose their own future. Regarding the Timor Gap Treaty, in 1989, Gareth Evans said: "the fact is that by 1979 when negotiations on the Treaty commenced, there was no realistic prospect that East Timor would become an independent entity. That is still the case, and would continue to be the case in the absence of the Treaty." (4)

*"In the World Court, the issue of the Timor Gap Treaty is now under consideration"*

It appears that Senator Gareth Evans has decided that he is the only person who can choose the future of the Timorese people. What he does not say though, is that by treating the occupation of East Timor by the Indonesian military as a *fait accompli* he has enabled the generals to continue to hide their crimes in East Timor and has made it very difficult for the Timorese to internationalise the issue in a way which this outrageous illegal act of occupation of a foreign territory duly deserves.

In the World Court, the issue of the Timor Gap Treaty is now under consideration. Whether the ICJ will go further and call upon Australia to answer is a different matter. This is so because Australia argues that it is Indonesia, not Portugal, which should be the other party to the Treaty. Since Indonesia does not recognise the jurisdiction of the ICJ, it can not be compelled to appear before the court. Portugal, on the other hand, argues that the Timorese people must be given a chance to exercise their right to

self-determination and, implicit in this demand is the right of the Timorese people to enjoy permanent sovereignty over their respective natural wealth and resources. The complexity of this legal case is reflected in the clear disagreement between lawyers with expertise in the international law. Dr. Roger Clark, Professor of international law at Rutgers University in the USA argues that "Australia is under a legal obligation not to recognise Indonesia's acquisition of East Timor" (5) and, therefore, the signing of the Timor Gap Treaty breaches that duty. Senator Gareth Evans, a lawyer and QC, on the other hand, asserts that "Australia is confident of its legal position on this (Timor Gap) matter (...) and rejects absolutely assertions that the Timor Gap Treaty is in breach of international law". (6) These words were part of a public statement he issued in November 1990.



*Ramos-Horta, Abel Guterres challenge the Treaty*

It was in view of this complexity that the Timorese activists decided to take on the Australian government on its own constitutional laws. In this new legal battle, the Plaintiff, Jose Ramos-Horta, Jose Gusmao and Abel Guterres (for East Timor) and the defendant is the Commonwealth of Australia.

The principles which the plaintiffs based upon to take the Commonwealth of Australia to the High Court are, among others, those applicable to the concept of "sovereignty" whereby the commonwealth has, at all material times, been bound to. These principles state that:

- all sovereign States, and their trust territories, are entitled to be free from the threat or use of force against their territorial integrity or



political independence;

- a sovereign State may not use or threaten the use of force against the territorial integrity or political independence of another sovereign State, or its trust territories; and, the Commonwealth has a duty not to recognise as lawful any territorial acquisition or special advantage resulting from the illegal use or threat of use of force.

And for the legality or otherwise of the Treaty, the plaintiffs argue that "a treaty is void and without legal effect if at the time of its conclusion it conflicts with a peremptory norm of general international law". In their 26 pages document (statement of claim) presented to the High Court, the plaintiffs ended with the following two claims: that,

- a declaration that the Petroleum (Australian-Indonesia Zone of Cooperation) Act 1990 and the Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990 are not valid laws of the Commonwealth; and

- a declaration that the making of the Treaty was not within the executive power of the Commonwealth;

What is the meaning of this new court battle?

- We all recall the crosses saga where the Timorese community in Australia did achieve a significant victory over the Commonwealth of Australia. But, this time, the battle lies in the application of the Commonwealth laws to international realities. Ultimately, the argument may fall back into the same usual routine: where does the international law ends and the sovereignty of a state begins.

***"As far as the Timorese are concerned, it is a fight that we can not turn away from"***

The heavies on this matter such as justice Michael Kirby argue that Australia should look into the developments of the international law and learn from it. We hope that this time, with this High Court challenge against the Timor Gap treaty, Australia can, indeed, learn something from it!

As far as the Timorese are concerned, it is a fight that we can not turn away from. Because fighting to protect the natural resources which rightfully belongs to our people is a duty of all Timorese - it is part of the national struggle for liberation of the Homeland. After all, the natural resources of East Timor are intricate part of the Timorese nation. To recall the words of Jose Gusmao, the second plaintiff in this legal battle, after the signing of the Timor Gap Treaty in December 1989, he wrote: "(...) the East Timorese will fight not only in East Timor but also in the international arena to protect our natural resources" (NT News, December 7, 1989). He has just done that!

- Notes: 1. NT News, December 9, 1985  
2. Statement by the Foreign Affairs Minister to the Timor Gap Forum (Darwin, Nov. 1990)  
3. Sasha Stepan, (October 1990) - Credibility Gap: Australia and the Timor Gap Treaty  
4. Statement of the Foreign Affairs and Trade, Sen. G. Evans, to the Timor Gap Forum (Darwin, Nov. 1990)  
5. Pat Walsh (April 1990) - The Timor Gap Treaty: an update.

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## FOR THEM WE BOW .....



*The seven Timorese who sought political asylum.*

Seven young Timorese men tried to escape the repression of the Indonesian military by applying for political asylum. This the third group of Timorese that tried to use asylum as a last resort. The option is between keeping on hiding from the barbarous Indonesian intelligence, with no money and food, and trying to escape, taking advantage of the "black market", to Bangkok, Hong Kong and Singapore. But the latter could not be an option simply because they did not

June 93



(and do not) have any money to buy expensive passports and other travelling documents required to escape safely. The latter option is also too risky because if anything goes wrong (largely because of lack of money) and they are to be captured, all of them will certainly disappear.

*"everytime there is a case of political asylum the indonesians generals capture their servants"*

This group of seven were certainly aware that the option of political asylum is not a better one either, although, from a financial point of view that might be so. Political asylum is always an unknown quantity in politics because no one really know how the staff in the embassy will deal with the dilemma. In the past, Indonesian, everytime there is a case of political asylum, the indonesian generals "capture" their servants - the timorese integrationists such as Chico lopes da Cruz, Mario Carrascalao and Guilherme Goncalves - to try to discharge the will power of the asylum seekers and take them "home". This time, this scenario repeated; Lopes da Cruz was ordered by the generals of Jakarta to go to the embassies and try to convince the seven young men to give up "because there is no hope for them to get any international support". Taking into account that the seven were held incomunicado since they entered the embassies, their moral was obviously affected. Four of them from the Finnish embassy decided to allow themselves to be convinced by Lopes da Cruz whilst the other three in the Sweden embassy appear to keep their promise in "not to accept any promise made by the indonesian authorities".

*"News about the four students who are now in the house of Lopes da Cruz are non-existent"*

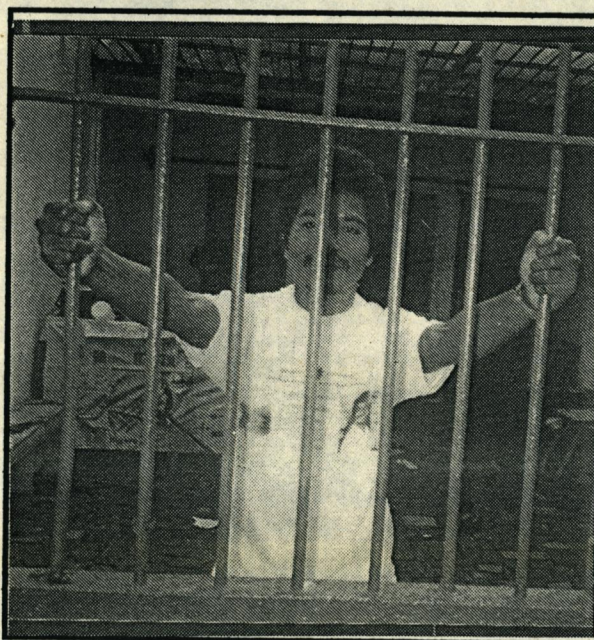
The news about the students are now very contradictory. Some sources said that the indonesian authorities were ready to give them indonesian passports and others say this is not so because the generals are uncompromising and favour an option which show to the world that the young men have nothing to fear. That is, their fear is simply based on false propaganda from the so-called revolutionaries abroad.

## BIODATA OF THE ASYLUM SEEKERS

On Wednesday June 23, seven young Timorese sought political Asylum at the Finish and Swedish Embassies in Jakarta. The details of the seven, four of which went to the Finish Embassy and other three to the Swedish, are as follows:

1. **FRANCISCO A. FERNANDES**, from Lospalos, born on 10 September 1971, son of Gabriel (deceased) Marcelina Anunciacao. Two of his brothers were executed by the military in Iliomar on 13/12/83.

After graduated from high school in Dili, went to University and at the same time worked as assistant manager and receptionist at the Hotel Turismo in Dili. Because of his involvement in the demonstrations of 12 November 1991 he was constantly pursued by military intelligence. On 30 March 1992 together with two other brothers fled to Kupang where on 3 September they were encircled by the military and his brother Gaspar was arrested. Nothing further has been heard of him since that date. The following day he fled to Jakarta where he continue to be closely watched by the military.



Joao Camara in his cell in Cipinang prison. He was one of the four who fail to get asylum in 1986



2. **PORFIRIO DA COSTA OLIVEIRA**, from Dili, born on 7 April 1970, son of Sertorio da Costa Oliveira and Ana Casilda dos Santos. Because of his participation in the anti-integration demonstration on 12 January 1990 during the visit to Dili of Mr. John Monjo, former US Ambassador to Jakarta, he was forced to give up his studies at the Externato Sao Jose, to avoid persecution. He was shot and badly wounded during the 12 November 1991 demonstration at Santa Cruz Cemetery.

He managed to flee from there and sought refuge at the Residence of the Bishop and was treated at St. Antonio Polyclinic in Motael. On 7 July 1992, fearing for his life because the military were seeking to arrest all the youths involved in the demonstration that resulted in the massacre of Santa Cruz Cemetery, he left East Timor to Jakarta where he continued to be pursued by the Indonesian Intelligence forces.



*Timorese political prisoners in Jakarta: from left: Joao Camara, Marito Reis, Fernando Araujo & Albino Lourdes*

3. **JOSE MANUEL DE OLIVEIRA SOUSA**, from Dili, born on 12 April 1969, son of Manuel de Sousa and Regina de Oliveira Lim Sousa. Because of his involvement in the demonstration of 12 November 1991, he was arrested at home (16/11/91) by Indonesian soldiers. Later on together with his brother (arrested on the same day) managed to flee the prison. He left Dili to Jakarta to be free of this kind of persecution.

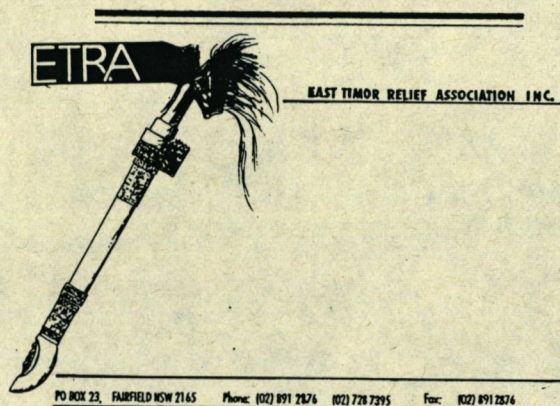
4. **MATEUS BRITO XIMENES**, from Dili, born on 16 May 1970, son of Vicente Gusmao Ximenes and Elisa Ribeiro Brito Ximenes. Participated in the demonstration of John Monjo's visit to Dili, joined the 12 November 1991 demonstration and was wounded when the Indonesian military opened fire on the demonstrators. He was treated at St. Antonio Polyclinic in Motael and because there were rumours that the building would be attacked by the military at any minute he had to hide out for a year in another place. On the 7 July 1992 he fled to Jakarta where the Indonesian military continued to pursue him.

5. **VENTURA VALENTIM**, from Lospalos, born on 22 October 1968, son of Pedro Valentim da Conceicao (deceased) and Terezina de Jesus (deceased). Participated in the demonstration of the Pope's visit to East Timor in Tasi Tolu, 12 October 1989. Was arrested on 4 November, imprisoned and tortured for 3 months in the Dili Komando Resort Militer. Was released after a visit from the International Committee of the Red Cross on 19 September 1990. Along with other students, demonstrated in the St. Paulus Junior Catholic high school's compound, unfurling a FRETILIN banner. As a result was arrested on 25 September and taken to Nusra Bahkti, where for two months was beaten and tortured day and night and was frequently denied food. After his release his every move was monitored by Intelligence forces and informers. In mid-May 1992 he went to Kupang and then in July to Jakarta.

6. **CLEMENTINO FARIA**, from Manatuto, born on 9 January 1966, son of Jaime Faria. Participated in the demonstration of John Monjo's visit to Dili on 17 January 1990 and was subsequently arrested. Was released the day after but was closely watched by Indonesian military and because of that forced to move daily from residence to residence to avoid being arrested again. On 20 August 1990 after he refused to get on board of the military Toyota Kijang, they opened fire at him but he managed to escape. Following his involvement in the demonstration of 12 November 1991, his home was invaded by military in plain clothes. Since he was not at home his family was threatened, intimidated and pressured to give information regarding his whereabouts.



7. **OSCAR GONCALVES DA SILVA**, from Dili, born on 14 January 1973, son of Jose goncalves da Silva and Maria Anita da Silva. Decided to escape to Jakarta because of his presence at the Santa Cruz Cemetery on 12 November 1991, to lay flowers on the grave of his murdered friend Sebastiao Gomes.



Following is an appeal by East Timor Relief Association Inc. (ETRA) to the embassies of USA, Spain, Finland, Sweden, United Kingdom, Italy and The Vatican.

His Excellency,  
The Ambassador of --- to Australia

25th June 1993

Dear Mr Ambassador,

We noted with deep concern the situation of the seven East Timorese students who applied for political asylum to the embassies of Sweden and Finland accredited in Jakarta-Indonesia, on Wednesday, 23 June 1993.

East Timor is still considered by the United Nations Organisation as a Non-Selfgoverning territory which must be decolonised. Over the years, eight resolutions were passed by the General Assembly of the UN demanding the withdrawal of the Indonesian armed

The Security Council of the United nations, too, passed two strong resolutions demanding the withdrawal of the indonesian armed forces from East Timor. Over the last eighteen years, the Indonesian government have violated the spirit

of these ten resolutions. As the UNCHR noted last February, even the very basic human rights of the Timorese people have been violated by the indonesian authorities.

The deteriorating human rights situation in East Timor led to the East Timorese students seeking protection in the Finish and Swedish embassies. Even the International Committee of Red Cross, usually extremely prudent in making public statements, has criticised the restriction and difficulties imposed on its activities in East Timor.

The East Timor Relief Association Inc., use this opportunity to appeal to your Excellency's government, to use all your influences and international standing in the field of Human Rights to provide save passage to the seven students to a third country.

Yours Sincerely,  
Agio Pereira  
Executive Director

## EXHIBITION OF TIMORESE PAINTINGS

East Timor Relief Association Inc. (ETRA) will sponsor an exhibition of Timorese paintings to be held on the 9-23 October 1993. The venue will be the Tom Nelson Hall, 61-63 Sussex Street, Sydney.

The paintings will be provided by a Timorese artist, Sebastiao da Silva whose paintings has been exhibited successfully in Lisbon last year.



*Timorese women in the ricefield -  
sample of Sebastiao's paintings*



*The opening remarks from Jose Ramos Horta at the Press Conference, 25th June 1993, Parliament House, Canberra.*

Today after much deliberation we have instructed our solicitors, to file proceedings in the High Court of Australia to challenge the Timor Gap legislation.

Australia is a fortunate country which has never been invaded by a foreign power.

East Timor is only 600 kms north of Darwin, but the East Timorese are not so fortunate. Colonised by European powers for almost 500 years, invaded and occupied by the Japanese Imperial Army for most of the duration of WW2 and now for 18 years by Indonesia, East Timor has known only deprivation, poverty, torture, persecution and the systematic massacre of its people.

Australians do not fear persecutin for their beliefs, they do not go to bed in fear of being woken up int he middle of the night and being "disappeared", they are not subjected to arbitrary arrest, interrogation and torture. Australians are not shot in cold blood when they protest against Government policies.

For the past 18 years I have been fortunate enough to live in exile in relatively comfort and security. The same goes for the my country-fellows Abel Guterres and Jose Gusmao.

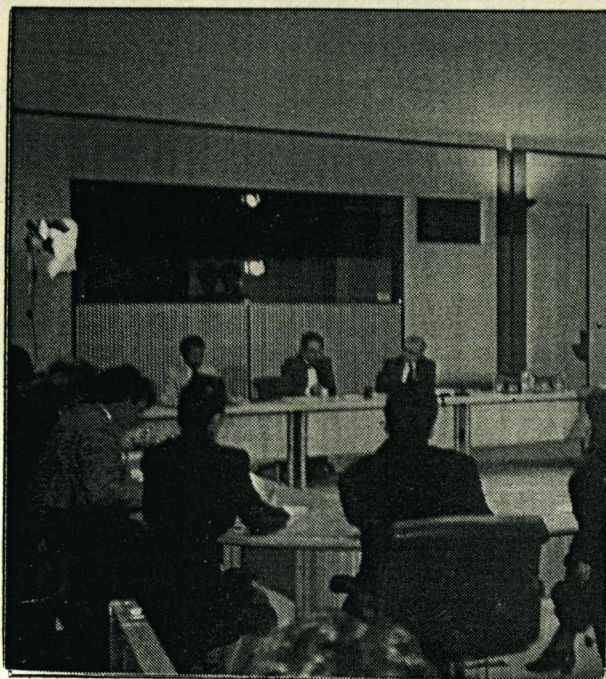
We are East Timorese, we are part of a people's movement which seeks to redress the wrongs done to us. We do not seek confrontation. We are in fact grateful to the Australian people for their generosity in welcoming thousands of East Timorese into this country which gave us shelter, food, education, peace and security.

We have not been indiferent to Foreign Minister Gareth Evans' efforts to compel the Indonesia authorities to take serious steps towards improving the human rights situation in East Timor. We thank him for these efforts. We also understand that Australia is compelled by the overwhelming reality of geography to co-exist with the Republic of Indonesia and tha it is extremely difficult to reconcile two conflicting interests and beliefs.

We have trust in the Australian system of government and the

highest regard for its judiciary which has proven that it is capable of standing above political pressure to uphold its independence, integrity and the rule of law.

We owe loyalty to our people and are compelled by a profound moral responsibility to seek redress through the Australian system of justice to which our people aspire. Thank you



*The journalists attending the press conference at Parliament House, Canberra, 25 June 1993*

*This bulletin is a production of Matebian News-ET Information & Documentation Centre. MN/ETIDC is an initiative taken by a group of Timorese activists with the sole aim of organising and compiling information and documentation relevant to the political history of East Timor. The material available may include news clippings, relevant publications, items obtained from Pegasus/Pactok, etc. Books are not included since it is already covered by Mr Kevin Sherlock in Darwin/NT.*

*If you need any information and/or documentation which Matebian news ETIDC can be of use, please do not hesitate to contact us. Write to PO. Box 481 - Fairfield, NSW 2165, or telephone 02 728 7395 and fax: 02 - 7266319.*