

ONE LAW FOR ALL

A Process Towards Statehood

A Report for the Office of Aboriginal Development

Northern Territory Government

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Terms Used Throughout This Document

Balanda	Non-Aboriginal person or people
Bäpurru	the paternal clan group
Dhuyu	sacred, holy
Djalkiri	literally foot, footprint; root of tree; For law; the foundational law from time immemorial
Likan dhu Ngurrkam	usurp the authority of, override the law of
Liya gäna	mind separated, to act for yourself and not for the benefit of the whole
Maḍayin	is the term used to name what the Yolḅu know as their complete system of law; including the rom (law), the instruments and objects, oral dictates, the names and song cycles that encode that law, and the dhuyu'(holy), <u>nunggaṭ</u> (restricted) places that are used for the maintenance of that law. A fuller meaning will follow in the body of the document.
Mägaya	peace, tranquillity, harmony
Malkurru	foreign
Malthun	follow or accompany
Ḷärra	the Yolḅu parliament
Ḷurrḷiḷitj	literally means charcoal, used to describe the foundation of Yolḅu law. A full explanation of the meaning can be found on page 10, the term <u>ḷirri</u> and <u>ḷirri</u> are also used with the same meaning.
Riḷiḷitj	an alliance of Bäpurru for political or economic purposes
Rom Waṭa`u Walal	owners of law they are; Citizens
Waṅa ḷupthun	to be under the rule of law; a ceremony to signify this
Warrakan	bird or animal
Warraw'	shade, place of the Ḷärra
Yirralka Waṭaḷu	owners of the Bäpurru Estate
Yolḅu	Aboriginal person or people of Central to North East Arnhem Land

More complete meanings of these terms are found within this paper.

Terms for Law

The term **Madayin** or **Yolŋu law** will be used throughout this document when referring to the traditional law system of the people of Central to Northeast Arnhem Land. When referring to Australian or Northern Territory Law of British origin the term **Balanda Law** will be used. We have chosen the use of these terms throughout this document because these are the terms used by the Yolŋu people of the region.

The Brief

The brief that was determined by the Office of Aboriginal Development was to deliver:

“A report providing details on the process that may be used for the development of workshops that raise issues regarding the move towards Statehood in a manner appropriate for the people of North East Arnhem Land.”

Preface

Any process towards the empowerment of a State needs, at the very least, the consultation and intellectual consent of the citizens of that proposed State. For without this, the State becomes a jurisdiction without the consent of its citizens. At law this would make the new State structure an imposition of foreign rule, not Government for the people by the people, which is, in essence a prerequisite for a democratic State. Democracy and the democratic rights of all the citizens of the NT should be what drives the move towards Statehood. All other forces should be secondary to this end.

That's why, when we are asked to report on a process towards Statehood for the Aboriginal people (Yolŋu) N.E. Arnhem Land, we do it with great trepidation, knowing that the process affects the people's opportunity to be involved in expressing their rights as citizens of this great Nation. This task becomes more daunting knowing that the Yolŋu and the Balanda, who now share this country, have never understood each other's laws, the source of these laws or the nature of these laws.

This presents a real problem to all involved and at the same time a real opportunity in the run up to Statehood for people from both sides to become involved in a debate that is truly informative. Surely this is what will make a great State; that is its citizens of all backgrounds sitting down and understanding each other so there can be a rule of 'one law' bringing peace, order and good Government to all the people of the NT so that all the citizens who live under this new State's protection and responsibility can know with real assurance that they are an integral part of this new State.

Part One - Understanding Where We Are At

For this process to work there must be clear understanding of the historical reality of the people to which the process is to be applied. This contextualisation is absolutely necessary to place the process in the correct relationship to the people's historical experience.

Therefore it is necessary for us to explain the political history and the contemporary political setting of the Yolŋu. Some topics have already been raised in previous reports to the Office of Aboriginal Development, however in order that this report may be read as a stand alone document a brief description of some aspects will be covered here with references to other reports for more detailed reading.

The Law of the Land?

It is widely understood the ancestors of the Yolŋu existed on these lands many thousands of years before European colonists came from the Northern Hemisphere.

Before the Balanda came to Arnhem Land the Yolŋu had a defined political system based on the estates of the paternal clan (Bäpurru) groups. These Bäpurru had alliances with other Bäpurru through Ringgitj (a political alliance of Bäpurru groups that has a common constitutional base, common army and a common song cycle¹). (*Note: the full political structure is much too complex for detailed reporting here.*)

The people's political structures allowed them to live in a peaceful state, living off the sweat of their own labour, while interacting in a rich cultural interchange with their neighbouring, and with distant, clans. This interaction was only possible because of a system of law that discouraged the excesses of human nature. This law was assented to (in a ceremony called wana lupthun) by all the Yolŋu citizens of the Yolŋu nations/clans. That is not to say that life in Arnhem Land was at all times peaceful. Like all nations or groups of people in other parts of the world there were conflicts and the 'rule of law' was a necessary tool so society could be maintained and developed in a peaceful and orderly way. To quote a clan elder, "In the old days before the Balanda came there were wars between clan groups in Arnhem Land. But the big difference was, in those

¹ See ARDS Information Papers; No. 1-3, & 5.

days when there was war we all knew that we were at war, and when there were times of great peace, it was real peace. But today we are in a constant state of war between ourselves; there is no real māgayakurr dhukarr (the way of peace, tranquillity, and justice for all, where a person can be secure at law with rights over their own estate)" 1978. (*Note: full implied translation from the transcriber's memory.*)

The Maḍayin

The Yolḷu call their overall system law the Maḍayin. The Maḍayin is a complete system of law. It embodies the rights of the rom waṭangu walal (the owners of the law), citizens who have responsibilities for this particular embodiment of law. This Maḍayin includes; all the people's rom (law), the Maḍayin girri (instruments and objects), oral dictates, names and song cycles that encode that law, and the dhuyu (holy), nunggaṭ wānga (restricted places) that are used for the maintenance and development of law. This law covers the ownership of land and waters; the resources on or within these lands and waters; it regulates trade; contains the moral, social and religious law; and includes laws for the conservation of, and the farming of, various species of fauna and flora. Yolḷu believe that if they order their life according to the Maḍayin this is the right and civilised way to live.

Many Balanda on the other hand see Yolḷu law, and Aboriginal law in general to be about themes like; 'the dreaming', 'pay back', all ceremonial, all religious, or a rule of tribal leaders, etc.

If we take just one of these themes and examine it we start to see there is no basis to unfounded beliefs like the 'the dreaming', a concept originally coming from Spencer and Gillen².

Yolḷu of Arnhem Land do not see their law as 'the dreaming', and they become highly insulted when this term is translated into their language, saying, 'Our Maḍayin is not a dream or the dreaming, our rom (law) is real law, from the foundation of time'. It's a bit like some outsider to the Balanda system of law saying that the system of law comes from a dream just because the hearer doesn't understand what Westminster means. This would be offensive to many Balanda because it calls into question the whole of the Balanda system of law. The same offence is taken by Yolḷu when at law their Maḍayin is seen as something like 'the dreaming'.

²

Native Tribes of Central Australia, Spencer B. And Gillen F.J. London 1898.

That is not to say that some Yolŋu will not use the term 'the dreaming' when they are talking to Balanda. They will. This is due, we suggest, to the fact that they feel they must use this term so Balanda can understand what they are talking about because this is the term that Balanda always use when Balanda talk to Yolŋu about Yolŋu law. "Tell us about your law, your dreaming". Many Yolŋu believe that they must use the term dreaming when talking about law otherwise Balanda will not understand what they are saying. Maybe even Balanda law is a 'dream', and that's why Balanda always use these two words, law and dreaming, together. If the Yolŋu traditional terms could be used and understood, then a much clearer and different picture would emerge.

The true term for Yolŋu law is Maḍayin, and Yolŋu see their Maḍayin existing from the **djalkiri** or the **ngurrnggitj**.

From the Foundation of the Earth

Djalkiri literally means the foot, footprint or root of a tree, but when it is applied to law or Maḍayin it takes on a more profound meaning. The people talk about their Maḍayin saying, "When I am teaching young people the law from the djalkiri I mean it is not a lie, nor is it something I have made up, because this law has its roots in the foundation, or creation of the world. In other words when the earth came into form and was created by Wangarr (the creator spirit); the Maḍayin was there at the same time. The Maḍayin was not brought into existence by humans; it was there in the beginning. When humans first breathed, the Maḍayin was there already. The Maḍayin tells us who we are at law, and who are the yirralka waṯangu (owners of a particular estate), who has the right to the resources of these estates, and it tells us our rights and obligations, and the way we should live. This is not something man has made up; it is set down in the Maḍayin from the djalkiri (from the foundation of the earth). The Maḍayin creates a state of mägaya (peace, tranquillity, no hostilities, true justice and peace)". ***The law from the foundation of the earth is called the Maḍayin.***

The Carbon Record of a System of Law

Ngurrnggitj or **lirwi** literally means the charcoal or the black ashes left over from a fire. But when the people use this term ngurrnggitj in relation to law it shows us linguistically a more profound meaning than just charcoal or the black ashes left over from a fire. When Yolŋu say, "Our Maḍayin or rom (law) comes from the ngurrnggitj", it is a profound thing that they are saying. To help the reader understand its meaning we will record a number of ways that the people talk about ngurrnggitj. There are basically three themes that come from the people's words. When asked by the writers to explain what they see in their mind when they use ngurrnggitj in relation to law the people say:

- Theme 1. **The law comes from the buḷawkitj or buwalk-puwalk (ancient, historical practice of the people).** "When I sleep without a blanket under the stars or I use a paper bark blanket it's ngurrnggitj (the ancient practice of my people). If I have a number of wives it's ngurrnggitj." "When our people moved around their estates they burnt their fire to cook food, to warm them, to keep mosquitos away, to clean the estates and to make the grass grow for the wallabies and emus to eat. All these things our ancestors did are ngurrnggitj." " When we move around our estates and we see ngurrnggitj in an old campfire we think back to our relatives who sat by this fire. They were here just like we are, living off our estates now. It was because my ancestors lived by the Ngurrnggitj rom (law) that I am here today living in the shadow of their existence." "It is ngurrnggitj that makes us what we are." ***Ngurrnggitj is the ancient practice of the people.***
- Theme 2. **The established rule of law.** "When I was born the ngurrnggitj was there to establish who I am and my position in law." "When we burn the fire wood the thing that is left over when the fire burns down is the ngurrnggitj, and it is the same with law. It's the real law that lasts forever-not people's ideas and thinking." "It does not matter if people break the law or bend the law the ngurrnggitj (the real unbroken, tried and tested, straight law) is still there." "If I live outside the law I will lose respect, the ngurrnggitj will remind me." ***Ngurrnggitj is the established rule of law.***
- Theme 3. **The care and protection under law,** to those who live under the ngurrnggitj. 'Ngurrnggitj is like the warraw' (shade) of the tree that we are sitting under, it protects us from the burning of the sun.' 'It's like all the citizens of Australia live under the shade of Australia, under its care and protection.' "Ngurrnggitj is like a

shade. We can live under its protection and care." "Like when a Balanda builds a house and puts up a fence he feels safe inside of that yard because the established law (of the land) protects him and gives him assurance that everyone else will respect his yard (property) because of the law that has been established over many thousands of years. This is the ngurrnggitj." ***The Ngurrnggitj is a jurisdiction of law.***

One of the people commented, when we were talking about the Maḍayin existing from the djalkiri or the ngurrnggitj, that, "It's like when we think about the Olympic Games. When we see the Olympic symbol we think back to the ancient Greeks. It does not matter if they are not a rich country or not very powerful today, when it comes to the Olympics, Greece was the djalkiri (the foundation) and the ancient Greek people were the ngurrnggitj (they established the way the games run by what they did). No one can change that djalkiri or that ngurrnggitj for the Olympic Games." He went on to say "And it's the same with our law. It does not matter if Balanda do not recognise our law. It is still there from the djalkiri and the ngurrnggitj".

A rule of law is necessary for any group of human beings to live together in peace and harmony. Yolḷu are clearly saying:

1. Their system of law is called the Maḍayin
2. This Maḍayin was established from the foundation of the earth
3. The Maḍayin has been the ancient practice of the people of Arnhem Land down through the ages
4. Through this ancient practice the Maḍayin became the established rule of law for the Yolḷu nations of Arnhem Land
5. The Maḍayin is a jurisdiction of law offering protection to its citizens.

Yolḷu see their Maḍayin as dhuyu (holy, sacred). It is not only holy because of its religious connection but both holy and sacred because of the holy sacred role it has in maintaining a system of law for the rom waṯangu walal (citizens), allowing them to live and enjoy the pleasure of their estates, in a state of māgayamirr (in peace and harmony, no hostility).

In Yolḷu law the Maḍayin has also been kept secret and restricted except for the elements of it that need to be revealed to the public for public education and compliance. Strong sanctions still exist today for the violations of the secrecy code. This secrecy code was necessary to keep the codification of law very accurate over many thousands of years. This is done by creating a high demand and a low supply, making knowledge of law extremely valuable. When something becomes valuable, it demands of the keepers of the law a high level of maintenance and instruction. These same processes have been used by many oral societies around the world to ensure the purity and

perpetuation of their legal systems. Although this system of law is classed as oral it has many built-in codified patterns which can be 'read' by those who are literate in the system. This makes the Maḍayin a true system of law, beyond individual manipulation.

This system of law, the Maḍayin, establishes a jurisdiction that existed before European contact, and still exists today. It is indeed the only jurisdiction that is truly recognised as legitimate by Yolḷu.

A New Breed of Animal with No Sense of Law

With the arrival of Balanda the people started to experience a new rule of law that seemed to deny all that was holy and sacred. The Balanda were different from most of the other visitors that came to their country. The Macassans and others, who visited the northern coast for many centuries, accepted the Yolḷu rights to land and resources. This led to a trading relationship that was mutually beneficial. From the Macassan language that remains today in Arnhem Land (around 400 words) we can see this trade was quite complex. However, when the Balanda arrived, there was none of this acceptance of each other's rights and therefore there were no agreements-only confrontation and war. From the very first contacts the Yolḷu were seen as blocking the Balanda attempt to open up the resources of the land and sea: land and sea that from the Balanda point of view was owned by no one (*terra nullius*). Yolḷu saw this same aggression displayed by the Balanda as an attempt to steal, plunder and finally destroy them as a race of people. Their sacred and holy law, their rights established by the creator through the Maḍayin, and the sweat of their ancestor's that had made their estates rich in resources, was now being challenged by a race of 'people' who displayed no sense of respect or understanding for any code of law.

This aggression continued and, at times, became truly ruthless with the killing of women, children and babies. The Yolḷu started to see this new 'human' species as warrakan (an animal) with no sense of law or meaning. The term warrakan is still applied covertly to Balanda in relation to law in Arnhem Land today. Yolḷu feel it is impossible for Balanda to understand real law, Maḍayin. It's as though it is beyond this species of human to comprehend. But at the same time this same species of human seems to be blessed with the knowledge of things that Yolḷu cannot comprehend. Has the order of the universe itself changed?' Is the new world order a place where real law and civil rights have no meaning?' These and many other questions are left unanswered for the people of Arnhem Land.

When the missionaries arrived things changed a little bit. Now there was a group of Balanda that did not kill, rape and plunder. Djolma Gaykamangu, a council chairman and clan leader from Ramingining, stated in 1982, "Missionaries have done many bad things but they were different from other Balanda in that they saw Yolŋu as human beings that had a spirit like they did, where other Balanda saw us as animals only fit to be killed." (Full English translation)

However, even missionaries went on to display many of the lawless actions of other Balanda. The main way the missionaries broke Yolŋu law was that they did not respect the Yolŋu rights to the resources of their estates. They, like other Balanda believed that Yolŋu had no property rights. They saw Yolŋu as 'natives' and 'hunter gatherers', that their law was no more than religious practice and had nothing to do with economic and political rights. So, like other Balanda before and after them, they transgressed Yolŋu law.

These transgressions at law taught Yolŋu through observation (by default) that:

- a. Balanda had no understanding of property or resource rights, and therefore no understanding of law. For example, the missionaries would tell the Yolŋu to go out on to the estates that surrounded the missions and to hunt for food. This was against the people's own law and it made them feel like law breakers when they did as instructed. Missions even started to develop many industries from timber, and fishing without recognising the estate owner's rights. These industries meant Yolŋu from many different clans were sent out onto other peoples estates to steal in the name of the mission. When the mission left, and handed things over to Yolŋu councils on communities, industries failed through this lack of understanding of land ownership. Even in 1995 many people living on some of the communities find it very hard to go out 'hunting' from the community land they live on, because according to Yolŋu law, it is wrong to steal from another clan's estate.
- b. Yolŋu should deny their conscience in matters relating to honour, law and order. They were forced, coerced and required to go against their conscience and steal from the estates of others. When we talk about this today people say, "Some of us go out hunting around the community because we malthun, (follow/accompany) the way of the Balanda who go out without thinking that the fish or other resources belong to someone else. We feel if the sophisticated Balanda can steal and deny the rights of the estate owner then we should be able to do it too. But even when we do this we still feel in our hearts that it is wrong according to law. So Yolŋu today practise a life where they deny their conscience, the law in every day life. Some people will live on communities a stones throw away from fish and other resources and not access these resources because they see them as

not belonging to them. It is seen by these people that the lawless members of the community who deny this law always prosper, because they always have food and never get punished for breaking traditional law. So the breaking of law and the denying of your conscience is part of every day life now on Yolŋu communities.

With Balanda came confusion and lawlessness. Some very disheartened elderly Yolŋu women said to the writer, "The Ngurrnggitj (the established rule of law) is dead because Balanda can never recognise true law".

So now we have a state of affairs where both the Balanda and the Yolŋu community are seeing each other as lawless beings acting like 'animals' in relation to the other. Today Yolŋu still call Balanda warrakan (animals) that just roam around the world settling down wherever they want to, taking whatever they want, whenever they want.

From Armed Resistance to 'Mum's the Word'

There are a number of points in history since the eighteen hundreds where the Yolŋu citizens of East Arnhem Land have displayed clear resistance to the new encroaching jurisdiction of European origin. We have already recorded an outline of this history in earlier reports. *Reference Papers No. 1, pages 8-15.*

In all these attempts to secure their estates, the Yolŋu carried their constitutional colours (their sacred dilly bags) that gave them the authority and the conviction at law to repel aliens from their estates by force if necessary. The colours the people carried are in the form of a dilly bag painted with the emblems of the clan representing the primary estate. Attached to this dilly bag are long armed tassels made of feathers and string, representing the other clan estates that are connected in the Ringgitj alliance to the prime estate. These dilly bags or Madayin (the term Madayin is a general term applied to these dilly bags; there are also deeper, more sacred restricted names) represent in law a combination of the functions served by a flag and the coat of arms which represent the "clan's authority" over that particular estate. Because of this authority established at the beginning of time, these dilly bags became the public evidence of title to an estate. These dilly bags have been the same official emblems of these estates from the beginning of time. Even their maintenance must be done through a process of law authorised from within L̄arra' (a parliament of the people).

The people say, "It is these dilly bags/Madayin that we carry into battle to defend our estates. When we come to the battle itself we look to the bag to

convict us, at law, that we are right to defend our estates". This is the same as Balanda soldiers looking at their flag to convict them to pull the trigger on the enemy. When the soldier has killed an opposing enemy, the soldier does not feel he is a murderer because his nation has authorised the action. He knows it is in defence of his homeland. It is the same with Yolŋu when they have killed someone in battle for their home estates. They do not feel they have murdered because of the authority that is given through the Maḍayin/dilly bag. The Maḍayin authority, which signifies estate belongs to a clan, comes from the foundation of the earth, through a decree from Waḷarr (the creator spirit\the God of the universe).

The armed resistance continued up until about the 1940s with the Yolŋu winning many armed battles and repelling Balanda from Arnhem Land. Then after this period the people's resistance against Balanda turned from an armed resistance to a civil disorder. The economic collapse in Arnhem Land occurred after the South Australian Government legislated against international trade in 1907, preventing the Macassans from trading with the people. Other factors like the Second World War convinced Yolŋu that there was no chance of them to continuing an armed resistance. Around the end of the Second World War the Yolŋu started to practise a different form of resistance. This new resistance led to game playing with the Balanda, frustrating any attempts by the Balanda at assimilation or 'development'. Over many years the people have built an elaborate linguistic and social response structure where 'mum's the word' when it comes to communication with the Balanda culture and law. Often this is not a conscious or deliberate process. *Reference Papers No.1, page 17, paragraph 3&4.*

There is one very obvious example where the people tried to explain, at law, their property rights to the Balanda legal system. During the Gove Land Rights case³ the people fought to have their property rights recognised. They failed in their attempt primarily because they were not understood: the problem of language again. This led to them losing the case even though Justice Blackburn saw a clear 'Rule of Law'. His verdict fell back to the endorsement of 'terra nullus'. From the people's point of view, this allowed foreigners with power to come and plunder their estates, leaving them with massive social dislocation, death and disorder. To the people of the Gove area, peace, order and good government was gone forever with this decision. To the old people that showed their colours (holy, sacred dilly bags) to this court there was nothing left but shame and dishonour and death! For Yolŋu there was no other

³ *Milirrpum and Others v Nabalco Pty. Ltd. and The Commonwealth of Australia, N.T. Supreme Court 1971.*

conclusion, because the new Balanda world did not recognise the legitimate, holy, sacred law of the land. It meant for these old people who were the keepers of this ancient law, that no 'rule of law' remained in their foreign, dominated world and so dishonour and death was the only result. When one of the writers of this report was talking with some Yolŋu in the Gove region about the high death rate of Yolŋu in Eastern Arnhem Land (the highest death rate in Australia), some commented saying, "That's no surprise to us because the old people predicted that this would happen this way because Balanda have likan dhu ngurrkam (usurped the authority of, the law of...) the people's rights to their estates and resources, and therefore had called into question the whole of Yolŋu law.'

It is common knowledge to all Yolŋu in NE Arnhem Land that these old people died in great shame because they showed their colours (their Maḍayin dilly bags) to this Judge who was unable, or unwilling to recognise the established authority of these Maḍayin objects. The Gove land case, said to the Yolŋu of NE Arnhem Land that Balanda were unable to understand 'real law' because maybe the Balanda had no 'rule of law' ('Maḍayin') like they had.

In Arnhem Land the people experienced many other incidents which drove a wedge between their law and Balanda law. In 1967/68 the people of one clan were holding a very important Ngärra ceremony (a ceremony related to the maintenance and Government of the people). At the end of this ceremony the colours of the clan came out of the inner chamber of the Ngärra into the public. When the colours come in this way all the people show their assent to the law that was passed inside the restricted chamber, by all the people moving into the sea behind the colours of the people. The colours are then allowed to float on top of the water and all the people put their head under the water as a symbol that they are under the rule of this law⁴. While the people were part way through this stage of the ceremony the then superintendent of this community came up and started complaining to the people about them wasting time being involved in heathen ceremonies on a Sunday. Of course the people tried to argue back that this was an important ceremony for the maintenance of law and for the maintenance of peace, order and good government. Because the superintendent did not understand the people's language the situation became very heated. In the end the superintendent grabbed the colours and ripped them to bits. This act would have meant instant death in the old days but now the people were truly frightened of the repercussions of such action, so the people just withdrew in great shame and regret at what had happened. The dishonour of this action is still deeply felt by this clan in 1995.

⁴ *Principle of Bracton's 'Addicio', that the King was beneath the law i.e. subject to the law with all the people.*

Events such as these happened many times over on missions and settlements right across Arnhem Land prior to self management. By the time the self management phase began the law of the people had in many ways gone underground. The people entered a stage of believing that it was impossible for Balanda to understand true law. The people felt betrayed by Balanda from all walks of life: by missionaries who called their law pagan and heathen and told them to practise their law in the bush not on the mission station; by anthropologists who wrote down the stories and then misinterpreted what they were told, or printed secret/restricted material that should have been shared with no one else outside the restricted chambers of law; by the government patrol officers who prevented the people from applying their sanctions. They told the people they could not use the spear or any traditional punishment otherwise Balanda law would punish those who carried out these traditional punishments/sanctions. Because of this the law was somewhat weakened.

All the time Balanda felt they were bringing civilisation and a rule of law to Yolŋu societies. From the Yolŋu perspective, the Balanda law was seen as akin to the view that Balanda had of the law and authority of Nazi Germany or Japan during WWII: oppressive in all forms. That's why the Yolŋu practise a high resistance to Balanda law while still practising their own law in a clandestine way. This has left the Yolŋu clans of Arnhem Land now living under two laws;

one which they recognise, love and reminisce about; a 'rule of law' they call Maḍayin, which creates a state of māgaya (peace, tranquillity) bringing justice and a fair go to all.

The other they see as oppressive, uncivilised, and with no forms of justice; a rule of powerful individuals, not a rule or system of law, but a rule they must comply with only because it is the contemporary dominant law of the NT and Australia.

This places many individual Yolŋu in a dilemma: to accept the contemporary Australian legal system, while the system of law they believe is a civilized code of law is not recognized by Balanda as a true system of law.

The fact that a large number of NT citizens now live under two laws should be of great concern to all. How can the NT grow in any cohesive way for the good of all its citizens while this is so?

Pseudo Structures

Because Aboriginal communities are now run by a large number of different incorporated associations, and organisations, we need to say something about their relevance at law. These pseudo structures are impacting upon the lives of Yolŋu on a day to day basis and therefore there is a need to understand how they are perceived. We have made comments on this situation in previous reports. However we need to make further comment because of its importance at law. *Reference Papers No. 1, page 30.*

The pseudo structures that exist like Land Councils, ATSIC Regional Council, Town Councils, Housing Associations, Homeland Resource Centres and a myriad of other Associations and Aboriginal Corporations, as a general rule, have one thing in common. They exist as pseudo under Yolngu law. By this we mean that they have no connection to the traditional Maḍayin, and for this reason they do not work very well. The same resistance that is applied to Balanda law in general is applied to these organisations. As one old man said, 'we know all about our law, Maḍayin. For example, when it comes to a funeral we organise all of it, no one else tells us what to do or when to do it. It is all done according to law and all the people are involved. But you see that council office 'over there'? We do not know how it works and by what law it runs. We have to be able to understand how the council runs just in the same way we understand our law so there will be a fairness in its operations.' The resistances applied against these organisations are a result of the people's lack of understanding about how the Balanda law works and how these structures that have grown out of Balanda law, are to function.

We pointed out in earlier reports that these pseudo structures were developed by Balanda to try and create a sense of community from the only legal frame of reference that they understood. Balanda looked for a way where there could be a legal intercourse between Balanda political structures and Yolŋu society. These structures were seen by these Balanda as meeting the requirements of 'law', and of course they did in Balanda law. But they never met the requirements of Yolŋu law, and so the two have remained separated. Some may say this is unimportant. However, let us look at an example at law which highlights this separateness and failure to recognize, an example which is fundamental to Australian Law: the development of the Australian Constitution by an Act passed on the 9th of July, 1900, and proclaimed by the Queen on the 1st of January, 1901.

(This is an example that we use in many workshops while working with Balanda around this subject of pseudo structures on Yolŋu land.)

This process had begun twelve years before the law was passed. The six colonies talked together, and selected a committee of men who worked

together on an original draft constitution. This constitution was then put to the people in an 1898 referendum which failed. The constitution was redrafted and put again to the people in 1899. This time the people said 'yes'. The whole process took 12 years, although Parkes had suggested as early as in 1867 it was time to form a Federation. The Balanda who lived in the colonies of Australia had agreed on this constitution which would create the new Federation (note WA only agreed in July 1900, after the Act was passed).

(We then say to the workshop group), "They had all agreed but there was something else that had to be done before this constitution was any good at law. What was it?" (*When this question has been put to groups we have never had a direct answer, suggesting that many Balanda have never thought about this process.*) After a period of waiting for an answer we remind people that the constitution was put on a ship, sailed all the way over to England and danced through Westminster, i.e. through the House of Lords and the House of Commons. It then became the Commonwealth of Australia Constitution Act 1900. After that there were Adoption acts passed through all the Colonial parliaments.

We can see from this example it was necessary to pass this constitution through the houses of Westminster, the parliaments of the colonies who wanted to enter this Federation, and the people of Australia, before it would stand in law because Australia is a rule of law, a system of law not individuals. Had this not been so when the first legal question was raised about the Constitution in Australia we would have seen it consigned to the rubbish bin.

We understand this process as being necessary when it comes to Balanda law (so that the citizens who then live under that law will have a 'rule of law' with all their political rights protected), but we have not afforded or required the same process with respect to Yolŋu political structures. It is common practice for Aboriginal town councils, Land Councils and ATSIC Regional Councils etc to be seen by Balanda governments, courts, and in general Balanda society as representing the political view of a particular Yolŋu group or groups, but in reality this is impossible. It is impossible because the Yolŋu Parliaments have never adopted any of these structures and therefore at law, Yolŋu citizens have never assented to the adoption of these political structures. They have always been imposed from outside their political structures. Some might say that these structures are the best that can be achieved. But that does not change the situation where Yolŋu now live under two jurisdictions. They have to continually consider which law they will break. Instead of creating law-abiding citizens the present contemporary system of two laws forces the Yolŋu citizens of the NT to practise lawlessness, because the law Yolŋu see as real, that they have assented to, and have sworn allegiance to, is the same law that Balanda society does not know of, accept or

acknowledge. At the same time they are forced, unwillingly, to live to a code of law which they have not accepted legally, which they do not understand, and they name as;

Madayinmiriw	no system of law or no 'rule of law',
liya gäna	literally, head separated. Bodiless rulers, who decide things for the people (dictators)
mulkuru	foreign and alien.

Balanda have, by default, created a system of pseudo political structures on Yolŋu communities that are not working and cannot meet the people's own requirements at law. Because of this, the natural checks and balances of law (that keep any civilisation alive and functioning), do not exist within these organisations. Balanda law has created functioning dictatorships, i.e. the people in authority within these pseudo bodies are often 'pseudo leaders'. They have not been given authority at Yolŋu law, how could they when the structures are foreign. Yet Yolŋu are forced to live under and be represented by these pseudo structures and leaders. Because this has happened, Yolŋu law has gone further underground.

The result of this present situation is communities of people who have no respect for contemporary law. If this continues these same people will become more and more lawless, leading to massive social disorder problems for the Northern Territory. Many of the problems like the chronic drunkenness, petrol and kava abuse (and growing heroin and marijuana usage), malnutrition of children and general bad health all have their roots in a society that is collapsing because their 'rule of law' goes unrecognised, is questioned, and is disempowered by the contemporary dominant legal system.

Whilst this is the state of play, there are many Yolŋu today however, who are wanting a dialogue with the authorities of the Balanda legal system. Those who take part in this dialogue will have to be mindful of the resistances that exist; otherwise the process will be frustrated by what appears to be continual contradictions. Some of the Yolŋu leaders will have to work hard against these resistances, sometimes at great cost to themselves. These leaders have said they believe the risks to be worth it, as there is no hope for their people in a society that is becoming more and more lawless because their law is not recognised by the contemporary Balanda political system. Some leaders have said, "We have been waiting all of our lives for an opportunity for our law to be recognized by the Balanda system. Now it seems it might be possible".

Part Two - A Process Towards Statehood and One Law for All

The move towards Statehood represents for the Northern Territory a once in a lifetime opportunity to get it right and set the new State on a good course, where all the citizens live under a system of law that not only talks about equality but where there is equality, and where all the citizens live in harmony.

This process towards Statehood should move in a direction that will bring together the traditional political leaders of Yolŋu society and the contemporary Northern Territory political leaders, those who represent the Balanda legal system. To bring this about we suggest the following process. (*Note: we are only talking in this process of the leaders of the people who call themselves Yolŋu.*)

A. Continuing Research

ARDS needs to be able to continue the research around traditional law and political systems, in order to inform the process for both groups.

On a daily or weekly basis we are discovering new understandings, concepts and terminology that:

1. Shows us more clearly where Yolŋu are at in their understanding of the contemporary Balanda legal system.
2. Words or phrases in the peoples language that explain in a clear way the political process within Yolŋu legal structures, and indeed the detail of these structures.

Many of these discoveries have occurred during the process of education with the people. When these concepts and terms are found in this way, we still need to do a considerable amount of checking throughout the region and with the different clan and language groups to ensure the terms or concepts create for the people the right mental picture which gives meaning. This can take many, many hours of checking for each concept or word.

This type of work must be done so legal and economic terms and concepts are not translated into incorrect or weak, superficial language. They should be translated from strong legal and economic terminology in English, into strong legal and economic terminology in Yolŋu matha, and vice-a-versa.

Precise translation will help preserve the ancient academic language of the people, as it continues to be used in modern day interactions. This process alone has truly empowered members of Yolŋu communities as they discover, to their surprise, that Balanda have some of these same intellectual concepts and terms.

B. Continue the Cross Cultural Education

This would mean the continuation of cross cultural education to overcome the confusion that each group faces in understanding the other: the education of Balanda about Yolŋu law, and the education of Yolŋu about Balanda systems of law. Of course the bulk of the time will need to be spent working with Yolŋu because of the added confusion they have had to live with, and because it is their society that has had to bow to the pressure of the dominant Balanda culture. This means they are suffering the major social dysfunction, and hence the normal organisation of activities takes longer. At the same time the Balanda system will have to learn much about Yolŋu law, debunking the myths that have dominated the Balanda way of thinking. There will be no shortage of work in either of these areas.

Continue the Education of Balanda about Yolŋu Law

ARDS needs to continue to educate Balanda about Yolŋu law so the Balanda involved in the process can be informed. This demystification is aimed more at doing away with the Balanda myths of Yolŋu society. This will allow the Balanda involved in the process to have a degree of certainty as to the future rule of law and how this rule of law might eventuate from this process. This will best be done, we suggest by:

- 1 Holding seminars on cultural awareness; law and order issues; how law and order can be returned to Aboriginal communities; steps towards one law for all Territorians etc.
- 2 Releasing documents that deal with these issues. ARDS has already produced some papers. More need to be written on specific legal issues. This would require a documenter to write up a number of case studies on various issues.
- 3 Releasing specific articles that will raise the consciousness of the wider Australian population through the national media.

- 4 Teaching key Government personnel and public servants the language of the people. This is extremely important to reinforce the education that we are presently involved in (and would be truly two-ways learning). A public servant can come and talk to the people over and over again about Government revenue, but the people will not understand the importance of what they are trying to convey. If that same public servant can say Government money or other revenue collected by the community is 'molu' rrupiya' then, straight away, the people understand the meaning of the term 'revenue'. With this meaning comes a whole wealth of information as to how this molu' rrupiya can be used. That is, under traditional law, molu' rrupiya can only be used as balanydja (payment for goods or services rendered, for payment of a djugu/contract etc.) and it can never be used for a gift or stolen in anyway.

So as it can be seen, much of the education can be reinforced if the Government field staff have a knowledge of language. This knowledge also opens the potential for traditional processes of law to these Government staff. It gives these same staff the confidence to appreciate the Yolŋu understanding of law. This, in turn will lead to Balanda treating Yolŋu as legal equals, rather than treating them in a paternalistic way, the way much of the communication is carried out at the present time.

This process could go a long way to overcoming a lot of the Government's frustrations in dealing with Yolŋu communities today.

- 5 Holding discussions with the Government and public servants around issues like Community Justice Plans etc., to make the incentives which are aimed at a return to law and order effective. These incentives must therefore begin with the Yolŋu understanding in mind, and with knowledge of Yolŋu law.

Continue the Education of Yolŋu about Balanda Law

The demystification of Yolŋu about Balanda law also needs to continue. Yolŋu need to see that there is some hope for Balanda to understand Yolŋu law and therefore be willing to bring about a 'rule of law' for their people in a contemporary world. Demystification can best be done by:

1. Education through the clan. That is, where the opportunity presents itself, we should work with individual clans. This is the most productive education method because Yolŋu are clan-centric. Further, it would begin from where the people are at in their own political structures.

Because of the pressures on communities it is almost impossible to organise for this to happen.

2. Education around the problem solving of issues. This is the main way it is presently happening. When we help the people investigate how the system works around a problem that the clan, community or individual has then education is occurring. This is a great time to do education because everyone is very attentive and people see that there is real law in the Balanda world because they see the problem solved through a process of law. This becomes a working knowledge of Balanda law.
3. Organising some meetings with the Yolngu leadership where they can work through the intention of the Government in developing the Northern Territory Constitution. This can be done by ARDS working with the old people in a number of meetings through Yolngu political structures and traditional parliaments. This will prepare the Yolngu leaders for later meetings with the Government.
4. Organising a series of specialised meetings with say, the Attorney General or the Solicitor General, to have a dialogue around law with groups of Yolngu leaders. With government field staff and Chief Executive Officers, discussions could be conducted around specific issues of; local government and development, private enterprise development, etc. These types of specialised meetings will allow the people to continue their investigation around the subject of Balanda law. This will also prepare the people for the next round of meetings.

C. Bring Together the Leaders of the Two Legal Systems for a Constitutional Convention

We then need to work towards the meeting of the traditional political Yolngu leaders and the political leaders of the Balanda legal system.

The Yolngu leaders would exist as the Dalkarra/Djirrikay (the selected political leaders) of each Bāpurru (clan), plus each Djunggaya (estate manager, ceremony organiser and messenger) and the head Gutharra (legal executor) for each Bāpurru. These Yolngu leaders would not include any of the pseudo leaders from councils or other such bodies unless they were one of the above Bāpurru representatives. This would be a meeting of the Yolngu Government and the Balanda Government, a meeting of two systems of law. This would be a fairly large group although some of these persons would have dual roles, that

is, being a leader for their own Bāpurru and either a manager or executor of another Bāpurru. It is necessary for all these people to be involved so that the dialogue that proceeds will have the support and backing of all the Bāpurru, just as the move to Federation required all the States' participation and agreement. It is necessary for all Bāpurru to be involved in the process as they all have their own parliaments. This group might become smaller later on, but only the process can determine that.

These Yolŋu leaders need to meet with the Balanda legal system leaders. We would suggest the Ministers in Cabinet and a number of people from the executive arm of Government. This meeting could agree on continuing constitutional meetings. This would be determined by these leaders, not by us.

D. The Development of an Interpreter Service

For the continual free and intellectual flow of information between Balanda and Yolŋu societies, the development of a functioning interpreter/translation service is absolutely necessary. The most effective resistance that Yolŋu have employed against Balanda, is language. Balanda society will never win the hearts and minds of Yolŋu society until, as T. Theodore Webb stated in 1934 **"we must secure, not merely the consent of his will, but the approval of his intelligence"**. This can only be done when there is intellectual dialogue between Yolŋu and Balanda societies. *Reference Papers No.2, page 26.*

If effective change is going to happen the Balanda society needs to realise the potential in language to achieve the end that both Balanda and Yolŋu hope for. Balanda who speak only English need to move past the point of thinking that English is the language of the universe. It is not! Words are only sounds that create images. The sounds that Yolŋu use in their language are just as legitimate as English. We do not apologise for pushing this point. The potential for averting further human misery and saving millions of dollars, rests on this issue. An effective interpreter/translator service will overcome many of the headaches that the Government faces in servicing Yolŋu communities in this present day. We have spoken at length in other reports about the poor level of communication that occurs at the moment between Balanda and Yolŋu. *Reference Papers No. 3, pages 11-12.*

Role of ARDS Inc

Aboriginal Resource and Development Services Inc. see our continuing role as that of community educators and facilitators in the above processes.

ARDS would be happy to talk through these steps and the resourcing of them in more detail.

Our hope is that the citizens of the Northern Territory can live together as equals, under a system of law that recognises the humanity of the other, the richness of their ancestry, and the potential of a mutually prosperous future.

References

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