

**ABORIGINAL RESOURCE AND DEVELOPMENT SERVICES INC.
INFORMATION PAPER
NUMBER 1**

CONFUSION BETWEEN CULTURES

A case was brought before the courts in 1970 - *Milirrpum and Others versus Nabalco Pty Ltd and the Commonwealth of Australia*. This action was taken by a group of Aboriginal people from North East Arnhem Land to try and stop mining on their land. During the proceedings before Justice Blackburn, the **Yolŋu** (Aboriginal people) tried to prove a legal right to the land by asking for and being granted, a secret audience with Justice Blackburn so they could reveal their **Dhulmu-mulka Bathi** (sacred Dilly Bags). The judge did not fully appreciate the significance of these objects of coloured bird feathers and woven possum fur, though explicitly acknowledging their religious qualities. The old men who broke tradition by revealing these sacred objects, expected that they would be able to prove their constitutional rights to what they claimed to be their estates of land and water, together with their rights to all the resources on and within. They clearly understood the **Dhulmu-mulka Bathi** to be a form of constitution that had been recognised by their citizens and legal structures for thousands of years. So when the court could not, and did not, recognise the same constitutional significance of the **Dhulmu-mulka Bathi**, the old men were shattered.

WHAT IS BÄPURRU?

Throughout the reading of the judgement, the term "**mata mala**" (the recorded spelling) was used. This refers to the people's language group (**matha** = language; **mala** = group). The court understood that this term refers to a person's language group, however they failed to connect this to another term raised continually by the **Yolŋu** in the case, "**bäpurru**", which is a person's patrilineal land owning group. It is the **bäpurru** which, through the **Dhulmu-mulka Bathi**, is connected constitutionally to ownership of the estate of land, sea and the resources therein and thereon. As a result the court could not recognise an economic or proprietary connection of the **Yolŋu** to the land and therefore the case was lost. Quoting from the judgement, page 270-

"My task is to examine the relationship of the clan to territory associated with it and to decide whether that association is a matter of property. In my view, the clan is not shown to have a significant economic relationship with the land."

DHULMU-MULKA BATHI, A TYPE OF CONSTITUTION OR TITLE DEED.

It is said throughout Arnhemland that these old men died “**märr miriw**” (without credit in their society and in a state of shame), because the holy and precious articles of their law were revealed to the judge who did not understand their full significance.

This can be somewhat compared to a **Balanda** (non-Aboriginal person) attempting to prove their general civil or property rights under the Australian Constitution and the court ruling against them saying it was no longer valid to use the Constitution or Common Law to argue protection of personal rights. The person would lose total faith in the system. They would suffer severely not only because they had lost all rights to their property, but also because their constitutional and Common Law rights were not recognised. If this happened in Balanda society it would lead to a complete breakdown of the Balanda legal system. This is how all the old people felt. Their most precious objects of law were treated as nothing because the judge did not see or understand their meaning. That is, these objects were the title deed proof of ownership to the clan estates and to all the resources on and within these estates.

Another problem in the Milirrpum case, as seen from a reading of the case, was that there was no clearly implied or explicit recognition by the **Balanda** people involved in the case that there were any instruments in traditional **Yolŋu** law that equated to constitutional rights or title deeds as within the Westminster system. For example the **Dhulmu-mulka Bathi** gives these constitutional rights to each **bäpurru** (clan) and these rights continue to be recognised by **Yolŋu** citizens. Although **Yolŋu** have a clear understanding of their ‘constitutional rights’ and therefore their extended legal rights under the **Dhulmu-mulka Bathi**, they do not have a clear understanding of constitutions as they exist in the **Balanda** system. This is exemplified by the following story. On a relatively recent occasion when we were working with a group of old **Yolŋu** leaders in their own vernacular, we put a copy of the local council constitution in front of them and asked them what they understood ‘constitution’ to mean. Their response was that the constitution meant “just talking together”. They did not recognise any deeper civil or communal rights and responsibilities contained within that meaning. So the confusion is in two directions with **Balanda** not understanding **Yolŋu** and **Yolŋu** not understanding **Balanda**.

The fundamental rights and responsibilities contained in the **Dhulmu-mulka Bathi**, are those of the ‘**rom-wataŋu walal**’ (the owner citizens of the **Dhulmu-mulka Bathi**). This establishes the owners’ rights and the rights of subsequent generations. **Dhulmu-mulka Bathi** could perhaps be seen as having similarities to the ancient family crest, which also established rights and ownership of family

estates.) The **Dhulmu-mulka Bathi** confers certain sovereign rights, such as the right to expel 'mulkuru' (strangers/foreigners) from the estate. It also allows for the ownership of 'gapala' (personal assets), as distinct from the assets of the **bäpurru** (clan). Furthermore, the **Dhulmu-mulka Bathi** allows for the giving and receiving of contracts between both individuals and corporate clan groups. But the most important function of the Dhulmu-mulka Bathi is to give proprietary property rights to the estates of land and water plus all the resources on and within these estates.

A major factor at the basis of this confusion between the cultures lies in the differences in languages and visual symbols of communication. **Balanda** society has for centuries used a form of visual symbols to represent particular sounds and with these symbols the language has been recorded by 'writing'. The visual symbols used to represent these sounds, however, are not connected to any real objects or events in nature. Whereas **Yolŋu** society has traditionally, and still does to a large extent, relied solely on symbols that depict actual objects or events, as opposed to representing merely particular sounds. The 'message-stick' used in **Yolŋu** society is a good example of this. People of different language groups who do not understand the others oral language and who may live hundreds of kilometers apart, are able to understand the meaning of symbols used on a message-stick. Similarly, another clan group's **Dhulmu-mulka Bathi** can be understood by an educated **Yolŋu** person who is skilled in this form of decoding or "reading".

The lack of understanding of the other culture's form of communication has been aggravated by the **Balanda** society either not believing it should, or else not taking seriously the need to meet **Yolŋu** 'half-way' in the form of communication used. Since the time of first contact, **Balanda** have expected **Yolŋu** to learn how to communicate solely in the English language. This is despite the fact that English even today is not even the second language used by most **Yolŋu**, but often their fourth, fifth, or sixth language. It is also despite the fact that learning through the written word rather than through oral teaching, is something foreign to the traditional **Yolŋu** culture. This has demanded that **Yolŋu** in most instances, have had to make by far the greater effort in trying to communicate across the cultures.

Communication by definition is a two-way process and there can be no communication when one party does not understand the message given by the other. Yet even today, government departments and most academic institutions talk and write of 'communicating' with **Yolŋu**, but are still not recognizing and acting on the need for communication to be at least partly in the people's vernacular. It is quite incredible that in the Northern Territory today, business visitors from Japan and Indonesia are readily provided with a translator, whereas **Yolŋu** are not so provided for, even in such life effecting instances as court cases.

There is much emphasis placed in government departments on their perceived need for anthropologists, however the imperative need for linguists, if there is ever to be effective communication with **Yolngu** without destroying their culture still further, is severely neglected. We believe that it will not be until this need is seriously addressed, that the confusion between the cultures will be broken down.

The confusion between our two cultures that has continued from the time of first contact up until the present, has lead to a failure by **Balanda** culture to recognise the systems of law that exist within **Yolngu** culture from our own. As a result of various factors, some of which have been outlined above, many **Balanda** have basically come to the conclusion that **Yolngu** life is predominantly spiritual and has no legal, political and economic laws. Whereas the majority of **Yolngu** have assumed that either **Balanda** life is free and lawless, or else if law does exist then the **Yolngu** are assuming it does not have a constitutional civil code as strong as the **Dhulmu-mulka Bathi**.

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September 1993
Revised February 1998