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NATIVE TITLE - THE BASIS OF LAND OWNERSHIP

It is our hope that this paper will draw together some aspects of traditional land-owning structures and customs/laws, for the *Yolŋu* people of north-east Arnhem Land in a way that is informative to the wider Australian community. This paper is not intended to be the complete work on these issues, but rather a starting point for discussion.

BÄPURRU

The *bäpurru* (clan) is the paternal estate-owning group. The whole *bäpurru*, by the authority given to them through their *Dhulmu-mulka Bathi* (a traditional constitutional law object), has rights to all the surface resources of the estate. These rights stop at the bedrock. The bed-rock ownership lies with the *riŋgitj* alliance as outlined on page 4.

The estate or *yirralka* of the *bäpurru* covers both land and water. "The *yirralka* is the place where the clan rules. It is a place of security where you feel your family is safe, where there is food and resources to meet the full needs of your clan group. The knowledge that this *yirralka* or estate has been the estate of our ancestors since time began gives us a great feeling of pride and security in what we see and know to be ours. It is our mother, the giver of life. We see it as a paradise place because it is ours. This combined with the knowledge that our forefathers have sweated on our *yirralka* (estate) to build up its resources, making known the name of our clan through trade to other clans, is a great thing. It is our home." Rev. Dr. Djiniyini Gondarra.

The *bäpurru* or clan has the full right to exploit the resources of this estate, to expel foreigners, to seek restitution for violation of that estate and to alienate areas of that estate. Different *bäpurru* can trade between each other if they are short of food. For example: if one *bäpurru's* *gärul* (yam garden – see below) has a shortage of yams, say due to seasonal factors, then that *bäpurru* can enter into a contract (*djugu'-gurrupan*) with a neighbouring *bäpurru* for the use of their *gärul*. The *bäpurru* entering into the contract for the use of the *gärul* makes return payments (*bäka-bakmaram*) of meat, fish or other items of value, as per the terms of the contract. The *Bäpurru* clans have been trading this way for time immemorial.

RESOURCES OF THE YIRRALKA

Each *bäpurru* clan divides their *yirralka* estate into areas where different types of natural farming occurs. All these different areas are named according to the particular activity.

Gäruł is the place where yams and other plant varieties are grown. These crops are not just gathered but are planted, harvested and replanted, sometimes on a two to three year cycle. This replanting is done according to the Maḍayin law. A small part of the root is left in the ground or the top is cut off and replanted. The owners know where each yam is growing and they are checked regularly and weeded where necessary. The whole production processes done according to the Maḍayin law.

The people use a natural fertiliser process to make the yams grow bigger. The yams are allowed to grow through one season, rot down and grow again the next season. Through this process the yams grow bigger in size each year. When the yam reaches about 25cm in diameter it is classed as special yam and is eaten ceremonially. It is *wuburr'* (sweat) that makes this big yam special, because for generations the members of the *bäpurru* have sweated over the production of yams from this *gäruł*. *Wuburr'* is seen by the people as conveying *märr* (spiritual power or strength) to the yams because the people's sweat is involved in this production.

Marrandil is the name given to an area of sea that is owned by a *bäpurru* (clan). There are areas within this *marrandil* that are restricted, where no one can fish, even the owners, as these areas are seen as *dhuyu* (holy). These *dhuyu* areas are guarded by different species of aggressive fish, different fish for different *bäpurru*, but it is seen that these guard fish are there to keep humans away so that the other fish of that area can *mala-buma* (reproduce). These places allow for the propagation of fish and other marine life, which have fed the people of the particular *bäpurru* for many generations. The sacred nature of these places results from their long-standing importance to the survival of the *bäpurru*.

Yinindhhi is a place within the *marrandil* that the people fish from. It is a rocky outcrop from the landmass under which fish are known to congregate, making it very easy for people to catch the fish. These areas are clearly known to the whole *bäpurru*. The technology employed by the people ensured that their *marrandil* was kept full of fish all the time so that the fish would come to the people for easy harvesting at the *yinindhhi*, rather than the people needing boats to chase after the fish. This practice ensures that these areas are not over-fished but are well managed so there are always enough fish. All the fish stock within these areas are seen as property of the *bäpurru*, ie *dhulṅuṅu walalaṅgu* – their private possession.

Mewiyal is an area where different types of eggs are harvested. These areas exist where different species of bird's nest and where turtles use areas of the beach for egg laying. There are clear laws as to how many eggs can be taken from each nest site

making sure enough eggs are left for the turtles and birds to *mala-buma* (propagate/reproduce). An example of this is that the law for certain birds demands that three eggs be left in each nest.

Names for other areas of the *yirralka* are as follows:

<i>Bat'pa</i>	<i>miyapunu</i> (turtles)
<i>Gamata</i>	<i>galangamirr</i> (dugong)
<i>Bulku</i>	<i>maranydjalk</i> (stingray)
<i>Nulurr</i>	<i>bäru</i> (Crocodile)
<i>Worrk</i>	<i>warrakan</i> (general term for animals or bird)
<i>Gambal</i>	<i>weti</i> (Wallabies)

Each of these areas has similar laws for the propagation and harvesting of the species.

TRESPASS AND THEFT

Under traditional law a particular *bäpurru* clan has the legal authority to expel foreigners by force of the *miriṅu* (police or armed force). The instrument of law that gives them this 'constitutional' authority is their *Dhulmu-mulka Bathi* the clans sacred dilly bag. The *Dhulmu-mulka Bathi* is the legal *Madayin* instrument that gives each *bäpurru* the *ganydjarr* (power and authority) to expel foreigners and to also seek restitution for trespass or theft from their *yirralka* estate. To enter another clan's estate Yolṅu would approach the estate on one of the traditional *dhumbarpar dhukarr* (trade tracks), which offer protection to all travellers according to the *Madayin* law; in English they are called "dreaming tracks". They would then usually go to a particular place, a legally designated place where their clan and the clan territory they want to enter have a common alliance agreement. These places are called *ringitj wäṅa* (alliance place) and they are usually a designated area on a particular track of an animal, bird or fish. These tracks have specific names according to the particular animal, bird or fish the alliance is named around. When the visitor enters the right *ringitj wäṅa* they light a fire and produce smoke, thereby sending a message that they wanted to enter into the *yirralka*. They would then go direct to the place where they knew the owner would be at that time of the year and talk out their business with the owners. Or if they feel uncertain about their reception they will stay in the legal protection of the *ringitj wäṅa* (alliance place). Still today, people who are travelling across land will light fires, or radio ahead to let people know they will be entering their land and to inform them about the nature of their business.

Under traditional law it is treated as a very serious offence for someone to enter another *bäpurru's* land without firstly seeking permission. The main reason for the seriousness of such an action is because it is seen as a threat to the economic resources of the *bäpurru*. If outsiders were found sneaking around then the landowner would be suspicious of them intending to steal (*mananjirr*) or to bring harm to the owners in some way. Similarly, most *Balanda* (non-Aboriginal) would be suspicious of a stranger found

sneaking around their property, yard or house. The person who is caught stealing will have to make payment to the satisfaction of the owners. This payment could be in different forms depending on the offence, but it would generally be of food or *Madayin* objects (traditional symbols of authority). If the stealing offence was particularly serious, then some form of corporal punishment could be incurred in days gone by.

THE RINGITJ “NATION” ALLIANCE

These *bäpurru* (clan) groups are joined together in alliance with larger definable groups called *ringitj*. This term *ringitj* can be used for many different types of alliances, as it is used above, but the *ringitj* alliances we are talking about here is the primary political *ringitj* alliances that is the sovereign body with a common sub surface ownership. These alliances are like the alliances that make up a nation. These national *ringitj* (alliances) can be made up of a number of *bäpurru* (clans), from the same moiety, with some of the big *ringitj* having six or more *bäpurru*, while a small *ringitj* might only have three *bäpurru*.

The *yirralka* (estates) that make up these “nation” *ringitj* (alliances) are usually spread over a great area of land and don't have common boundaries. That is, the adjoining boundaries are those of different estates belong to a different “nation” *ringitj*. That means many different *bäpurru* (clans) are “citizens” of one particular “nation” *ringitj*. Many Yolŋu see themselves as belonging to those other clan lands that make up the particular “nation” *ringitj* (alliances). So one “nation” *ringitj* (alliances) may be made of *yirralka* estates which are sometimes many hundreds of kilometers apart and their boundaries will adjoin the *yirralka* estates of other *bäpurru* (clans).

The “nation” *ringitj* (alliances) get their legal authority through a common constitutional base established within traditional *Madayin* law. Each “national” *ringitj* (alliances) has common song cycles, uses common technology, has a common army; which will fight to protect the estates of all the clans within the particular “nation” *ringitj* (alliances).

OWNERSHIP OF THE SUB-SURFACE

Where the *bäpurru* (clan) owns all surface resources of a particular *yirralka* (estate) all the “citizens” of all the clans in a particular “nation” *Ringitj* owns the sub-surface resources. That is the bedrock where it is below the surface and where it perdures through the surface. This is because the clans *Dhulmu-mulka Bathi* (clans sacred dilly bags) connect all the *bäpurru* together in one “nation” *ringitj* alliance. The *Dhulmu-mulka Bathi* legally entitles all the members of the *ringitj*, through a common chamber of law, to exercise their collective rights over resources of the sub-surface in much the same way that all Australians citizens collectively exercise rights in relation to minerals and other properties of the crown.

The structure of decision-making within a “nation” *ringitj* is highly organised on a democratic basis. Representatives of each *bäpurru* being the *ŋurrudawalaŋu* (the selected headmen of the council) meet together as the *rom-djägamirr mala* (law

keepers). These people must meet together for anything that requires a decision relating to the "national" *ringitj*.

For example: If there is a question of future mining, or where major excavation work is to occur and the sub-surface is to be disturbed, on any *bäpurru* estates within the "national" *ringitj*, then constitutionally the *rom-djägamirr mala* (the council of that *ringitj*) is the only body with the authority to give or withhold approval for these types of development.

All members of this council must become *ñayañu wanganythirr'* (i.e. all persons must become one with the others in mind, body and spirit). There is no notion of taking a vote on a 'bill' or a 'motion'. Instead, the issue is raised by a principal person in the meeting and then all are allowed to discuss the matter until there is a consensus, a meeting of minds and spirits. This may take days, months, or even years. The important thing is that no one person is forced to go along with others and the decision never comes down to just a majority vote.

THE RIGHT TO ALIENATE

A *bäpurru* (clan) can only alienate themselves from their estate by the giving of a contract to another *bäpurru* within their *ringitj*. This process must be done through the "national" *ringitj*. The rights, responsibilities and obligations of the receiving *bäpurru* are clearly set out. Until the contract has expired or been nullified the 'contract-giving' *bäpurru* are restricted from treating that contracted land as theirs, that is they are not to expect any economic benefit from it.

The estates of the "national" *ringitj* are inalienable outside the *ringitj* itself. This is because the *Dhulmu-mulka Bathi* does not allow it. The *Dhulmu-mulka Bathi* exists for the protection of the rights of the *rom-waṭaṇu walal* (the law owners, citizens).

YOTHU-YINDI

Yothu-Yindi is a name that all Australians have come to recognise because of the rock band named as such. But for Yolŋu it is a fundamental cornerstone in *Yolŋu* law and native title, and has consequential effects on the control and management of Aboriginal lands.

Yothu-yindi is the link established between members of different *bäpurru* according to their matrilineal or 'mother-child' relationship. The *yothu* (child) comes from the *yindi* (mother: literal translation = "big", "great"). The reference to "mother" is not just to one's natural mother, it is to all the mother's people. They are called your *yindipulu*, your great or big people.

In one sense the partners in *yothu-yindi* do not hold anything in common because they are from different *bäpurru* and from different *ringitj*, and therefore have different estates. However even though they have different land, they are always mother and child; the 'child' cares for its 'mother'.

In law then the *yothu* (children) care for their *yindipulu* (mother's people) by at times fulfilling their obligations to manage the lands of their mother's estate. This management includes the care of the *Madayin girri*, (symbols of law) and the administration of the 'mother's people's law. The *yothu-yindi* legal relationship clearly parallels the 'separation of powers' that exist within the Westminster system of Government. This means that people of one *ringitj* will have *yothu-yindi* relationships with people of a different *ringitj*, through the separation of powers as encompassed in law.

In Conclusion

"Native title has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs." (Brennan J., *Mabo Judgement*, Page 42).

This paper attempts to open a window to what is a complex, complete and unique code of law as it relates to land ownership for the people of Central to North East Arnhemland.

The Common Law of Australia has now recognised the existence of this law. Although not many people really know what that means. Further dialogue is needed to explore the depths of this law sketched out above. When this is done the dominate Australian community will need to be educated about this law so that Yolŋu and other indigenous Australians can enjoy hard earned common law rights.

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