

## Law and Justice Intensive Workshop

Tuesday 17 to Friday 20 June 2008

By John B Lawrence, CLANT President

Between 17 and 20 June 2008, just outside Galiwin'ku on Elcho Island, there was held an extraordinary and historic meeting of Yolgnu elders, both male and female, and Balanda players from the Northern Territory justice system.

The meeting was titled 'Law and Justice Intensive Workshop'. The legal significance was both procedural and substantive. Its declared aim was to create a forum to firstly develop mutual understanding and respect for Aboriginal Customary Law and Northern Territory Law, and there from develop a foundation to develop a Yolgnu and Balanda Law and Justice Strategy for Elcho Island and there after, if feasible, East Arnhem Land.

This was an attempt at ground breaking jurisprudence. It was genuinely motivated and the entire workshop teemed with intent.

It had evolved from recent dealings between the local Yolgnu leadership and various entities in our traditional justice system. In particular, the much respected Yolgnu elder, the Reverend Djiniyini Gondarra OAM, who amongst other things is the Chief Executive Officer of ARDS. Although not directly related to the recent Federal Intervention, that aspect was clearly relevant, bearing in mind the previous Minister, Mr Brough, announced early on in the Intervention that Elcho Island was going to be one of the communities that would be given a police station. That police station is presently in the process of construction.

Also of relevance to this workshop was the recent issue of the 99/50 year leasing of Galiwin'ku, and the recently resolved Supreme Court action concerning Northern

Territory Policing on the Island (refer *Balance* Article March-April 2008). Also of influence in creating the workshop, and the way in which it was conducted, was the Mawul Rom Project, being training in traditional and contemporary mediation, which has been going on over on Elcho Island for several years.

The workshop lasted three long days. The delegates from "mainstream" NT justice included representatives from the Chief Minister's Office, the Federal Attorney General's Office, the Northern Territory Police, Corrections, NAAJA and others.

The Yolgnu delegates were elders from many of the 16 clans of the region. Those delegates were authorised to represent all 16 clans. Some of those men and women present were the senior people from those clans. They were serious law men and women who wanted to develop a joint legal strategy to deal with law, order and justice in their community.

The process of the workshop was important. The workshop was held in a special area about 5kms outside Galiwin'ku. It was called "Duhdude Beach". Overlooking the said stunning beach was an area where the Balanda delegates camped. Upon arrival, having been dropped off from the airport, the delegates were given two-man tents and air mattresses. This was to be their place of work and rest for the next four days. The Yolgnu supplied food for breakfast and lunch, and in the evening there was a formal dance and song ceremony to accompany the evening meal. The evening meal was also supplied by the Yolgnu, and all the delegates sat around a large oval sacred sand



*John B Lawrence*

sculpture called 'the Malk' to eat. This ceremony involved Yolgnu songs and dance, and the elders would walk around the Malk giving lectures on relevant aspects flowing from the workshop.

The process during the day was necessarily different from what most Balanda were used to. The meetings were held under a spectacular Banyan Tree on a cliff overlooking the said beach. It was called the Rripiti Tree (wisdom tree). Often the delegates would split into groups, sometimes gender based, other times Yolgnu/Moiety based.

All the sessions were conducted through qualified interpreters. There was a principal interpreter with two assistant interpreters, and at times there was team interpreting.

To establish mutuality and togetherness, both respective systems of law had to be deconstructed, analysed and explained.

It was a remarkable discovery how ignorant both parties were of the other's legal system. It shouldn't

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## Law and Justice Intensive Workshop...cont.

have been, in a sense, bearing in mind our court experiences and the recently published report from ARDS; *Absence of Mutual Respect*.

Yolgnu have an ancient, complex and sophisticated legal system. One of its largest contrasts to our legal system is its constancy. The way our legal system - our laws - change so frequently seems to seriously unnerve the Yolgnu. Those features seem to put into question our law's validity to Yolgnu. Their laws are very much a constant.

One of the biggest sessions in the workshop was the Balanda delegates efforts to explain their law. In particular, this was in answer to the question posed by the Yolgnu elders: "Explain to us what is your source of law?". Their source of law was historical, and the natural elements of the land, the ocean, flora and fauna. All of these contributed to their laws "source". Their law was more like in our jurisprudence "natural law".

The Balanda delegates met separately to discuss how best to explain their sources of law. Eventually it was presented through interpreters. The historical development of English common law no less, including constitutional fundamentals and historical developments. The Yolgnu query regarding source was tied in with their concept of "rule of law". Their question was, do our laws, through sources, establish a "rule of law". They seem to think not: because it was changeable we can't have a real "rule of law".

The Balanda delegates' historical explanation of how and why our system of law has developed to the moveable body that it is, seemed to assuage the Yolgnu concerns. Needless to say, it proved quite difficult for some of the Balanda delegates from various Government departments, being used to results based outcomes flowing from "meetings" and "workshops", to participate in the fundamental process of deconstruction. One could easily think that this was just a talk fest without any real practical outcome. However, it was very much a first step: an attempt to lay a foundation to allow more practical aspects to develop. To that end, the Yolgnu themselves explained that, most unusually for them, they had established a group of elders from both Moieties being the Dhuwa and Yirritja: it's called the Makarrdhuni Forum. This consists of the people in Yolgnu law who have the charter to implement their laws (The Dungau; being both male and female). This Forum is established with a view that the police and other Government entities can consult it as regards relevant issues that exist. They want to work together, they want to be part of the justice system, they want their laws also to have more role

in what is, after all, their justice system. The police delegates who attended the whole workshop were very positive in their contribution. Both Yolgnu and police seem to be developing through it a changing and positive relationship, which has to auger well bearing in mind the new police station and presence which will inevitably change the dynamics of this community.



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