

# Two-Way

## Legal Learning in East Arnhem Land

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A number of Yolngu communities and homelands recently took proactive steps to bridge the gap between Yolngu systems of law and the mainstream legal system. This gap continues to be a source of confusion and tension for many Yolngu living in Northeast Arnhem Land. There continues to be very few avenues for Yolngu communities to have input into the mainstream laws and legal processes that operate in Northeast Arnhem Land. Legislation such as ss 90 & 91 of the *Northern Territory National Emergency Response Act (Cth)* and s 104A of the *Sentencing Act (NT)* continue to send the message that traditional systems of dispute resolution and mediation are not valued by the mainstream legal system.

At the request of a number of community leaders, solicitors

from the North Australian Aboriginal Justice Agency (NAAJA) held community meetings in Gunyangara and Yirrkala and visited a number of homelands during the week of 21-27 November 2011. In addition to delivering legal services in the areas of civil, family and criminal law, NAAJA advocates for systemic policy change and is involved in initiatives such as 'Law and Justice Groups' designed to help Aboriginal communities have greater meaningful participation in legal processes.

The purpose of the community discussions was to share stories about parts of the mainstream law that were seen as unfair or confusing, as well as to collaborate on possible improvements and engage in two-way learning about the different legal systems. The community meetings in Gunyangara and Yirrkala were

well-attended and generated much discussion, with around 60 people participating in Gunyangara and 40 people in Yirrkala.

One clear theme that emerged was the desire for a rehab or work camp type facility to be based in an East Arnhem homeland and run by Yolngu. The facility could operate as an alternative to prison in appropriate cases. Gayili Marika and Dhanggal Gurruwiwi, two senior Yolngu women who have been advocating for the development of this type of facility for some time spoke with other Yolngu participants about their vision for a Yolngu-run residential rehabilitation facility based on a homeland, and participants identified two homelands that would be particularly suitable.

"We heard lots of stories about how difficult it is to keep in touch

*Discussions at Baniyala*







*The men and boys entering the public ceremony ground*

with family who have been sent to prison. Visits to Berrimah prison are expensive and difficult to arrange, and unlike many other communities, Nhulunbuy doesn't have video link facilities where people can speak with family in prison. Prisoners who are disconnected from their families found it harder to reintegrate after they had served their sentence" said NAAJA Advocacy Solicitor Ruth Barson.

Participants also felt that people involved in the legal system generally should make more effort to use homelands for rehabilitation of offenders. Sending offenders to appropriate homelands would remove them from some of the negative influences of living close to town, keep them away from alcohol and allow families to more closely monitor offenders. It would also allow people who had become disconnected from families to regain a strong sense of identity, connectedness and relationship, all

of which would assist in preventing further offending.

These sentiments were closely echoed by a number of people who felt that corrections officers should make more effort to work with families to design rehabilitation strategies. There was concern that if corrections did not involve family in discussing orders, family members may develop their own plans to help the offender or unintentionally ask family members to do things that were in breach of court orders or supervision directions.

Several people said that community courts should be used more and expanded, and there was general disappointment when NAAJA solicitors said that community courts were no longer occurring for adult offenders.

People also shared concerns about the way that Domestic Violence Orders (DVOs) were impairing families' abilities to help couples

resolve conflict, and sometimes caused problems around access to children. Many comments were made to the effect that DVOs were rarely understood, and often generated stress and shame, which could make situations worse rather than better. Many participants thought that family violence issues would be far more effectively dealt with through the active involvement of family members, rather than through DVO papers, which were put in place by police or courts with almost no input from the families of those affected. Several people expressed a view that in some cases there may be a link between suicide and DVOs.

These discussions paved the way for dialogue about important features of the mainstream legal system, such as who makes laws and how they are applied in courts; the limits of a court's jurisdiction in hearing matters, the separation between courts and the executive; and practical tips for going to court





*Younger boys were shown what to do*

or interacting with police.

NAAJA solicitors Ben Grimes and Josephine Cashman and NAAJA field officer Buwakati Mununggurr then travelled to Baniyala and spent the evening speaking with around 30 people from the homeland, followed by a shared dinner. The issues raised in Baniyala were very similar to those raised in Gunyangara and Yirrkala. People also expressed a desire for those working in the legal system, such as magistrates, lawyers and corrections workers, to visit Baniyala and learn firsthand about Yolngu ways of doing things. At the conclusion of the meeting there was a screening of the video 'Romgu Dhukarr Dhiyal Australia', a 2008 NTLAC cross cultural legal education video in Yolngu Matha. The video discusses many of the bigger concepts of how the mainstream legal system operates, and several Yolngu participants commented that as a result of the discussions and video they were able to understand important parts of the mainstream legal system that they had previously found confusing.

The next stop on the trip was Gan Gan, where the discussions were cut short due to heavy rains that threatened to cut off the road to the homeland. Four NAAJA solicitors then spent three

days in Dhalinybuy, where they had been invited to participate in a Ngärra ceremony for the Wanguri clan nation. On the first evening in Dhalinybuy the NAAJA solicitors hosted a meal for the community, which was preceded by community discussions similar to those in Baniyala, Yirrkala and Gunyangara. A repeated theme of the discussions in Dhalinybuy was the lack of recognition and respect given to Yolngu systems of governance and dispute resolution. The evening concluded with a screening of 'Romgu Dhukarr Dhiyal Australia.'

"We really appreciate the community's generosity in teaching us about Yolngu law. There's such a strong desire to find ways for the two legal systems to work together.

There is a lot we can learn from Yolngu dispute resolution," said NAAJA legal education solicitor Ben Grimes.

The Ngärra ceremony was held on a Saturday. The morning was spent preparing for the ceremony. The public ceremony grounds were immaculately prepared with paperbark and cycad trees. The formal parts of the ceremony began in the early afternoon and continued until after dark. Throughout the day participants in the ceremony took the time to explain the significance and purpose of various aspects of the ceremony to the NAAJA lawyers. Time was set aside to acknowledge Gayili Marika for her hard work in the area of suicide prevention. Towards the end of the ceremony a damper made from cycad nuts, which had been ground and soaked in the river for four days to remove poisons, was shared amongst all the participants.

Nhulunbuy senior solicitor Josephine Cashman summed up the experience saying "We are very grateful to the Dhalinybuy community for opening up their homeland and allowing our lawyers to participate in this important ceremony. I hope that we can have many more good discussions about law and justice in the future." ●

*NAAJA lawyers learning through the ceremony*

