

22/11/2013

Rev. Dr. Djiniyini Gondarra  
Galiwinku NT 0822

Attention: The Australian Editor, Chris Mitchell

CC: The Australian Victorian Editor, Patricia Karvelas

An Open Letter to Interested Parties,

***Re: Government 99 year leases on Indigenous Land and the article Overhaul Township Leases, Says council (Patricia Karvelas, The Australian, November 18, 2013)***

**Background:**

It was via The Australian newspaper that Arnhem Land communities first heard about the federal governments new push to secure 99-year leases over Indigenous townships in the Northern Territory. The first news filtered out of Gunbalanya (*Tony Abbott Homes in on Top End Towns, Patricia Karvelas, The Australian, October 17 2013*) and then it was reported Yirrkala had made an MOU for a 99-year lease (*The article Truancy Army to Get Kids to School, Patricia Karvelas, The Australian, October 31, 2013*).

In reply to the latter report I, together with three other stakeholders for Yirrkala land made a short statement that was sent to both Patricia Karvelas from The Australian and the Indigenous Affairs Minister, Senator Nigel Scullion. The statement articulated the simple fact that:

“We the undersigned have not been informed or given consent to any such agreement [I.E. a 99 year lease], nor given consent for others to speak for us about this issue, and therefore consider it null and void.”

Subsequently I also gave an interview with Patricia Karvelas about the issue, where my relationship with the land at Yirrkala was clearly stated, and in a letter sent to Senator Nigel Scullion the following day it was put like this:

“The attached statement includes my signature as a Djunggaya for the Lamamirri estate (which includes Yirrkala), and the signatures of Matjuwi Burarrwanga and Nyanbi Yunupingu, who are Senior leaders for the Gumatj Land Owners group, and Nikunu Yunupingu who is a younger Gumatj leader and the eldest son of the Senior Gumatj leader (Mr. Dj. Yunupingu) who passed away this year in Yirrkala.”

**Request for The Australian to Make a Correction:**

At no time while being interviewed did I referred to myself as a ‘Traditional Owner’ of Yirrkala. None-the-less in the article Nigel Scullion Faces Rebellion on Leases

(Patricia Karvelas, The Australian, November 7, 2013) I was referred to as a 'traditional owner.'

The term 'traditional owner' is an English language construct from the NT Land Rights Act (NTLRA) that is tied to indigenous decision-making systems. Most non-indigenous people do not have an acute understanding of these decision-making systems. In terms of decision-making authorities, according to our Madayin system of law, I am a senior Djunggaya for the deceased Lamamirri tribe, which is like a manager of the estate. Consequently, I have full rights to have a seat at any table of negotiation concerning Yirrkala. In fact, in this case, if I am not at the table it cannot be said the process was proper under section 77A (a) of the NTLRA .

What's-more, in common use, the term "traditional owner" is often used quite arbitrarily. Therefore it would not have mattered whether I had been referred to as a Traditional Owner by The Australian or not, except that in a follow up article (Overhaul Township Leases, Says Council, Patricia Karvelas, The Australian, November 18, 2013) I was singled out by the acting CEO for the Northern Lands Council, Robert Graham, saying:

"the NLC had a long standing position, consistent with former NT Supreme Court judge Richard Blackburn's finding in the 1971 Gove Land Rights case, that Dr Gondarra was not a traditional owner of Yirrkala."

This subsequent article has therefore damaged my reputation, by making it look as though I have somehow overreached and claimed rights that are not mine. I therefore request a correction by The Australian newspaper.

#### **NLC and Government Needs to Respect NT Land Rights Act section 77A:**

Although I support most of the other comments made by Robert Graham in regard to 99-year leases, his comment about me deserves more critique. After all it makes it appear that the Northern Land Council has decided to exclude me from negotiations at Yirrkala.

If this is true Grahams comment reveals two important elements.

1. The NLC's determination of the 'traditional owners' in the Gove region, inclusive of Yirrkala, are underpinned by the court case Millirrpum vs. Nabalco Pty Ltd from 1971. The ruling from this case was not made to determine who the 'traditional owners' were, and was prior to the existence of the NTLRA. According to the NTLRA the correct process for determining land issues is through indigenous processes (section 77A). Therefore matters concerning our (Yolngu) lands should be conducted according to our law, the Madayin system of law, which requires that Djunggaya (ngamini-watangu) be part of the process for consent.
2. It indicates the emphasis for determination of land issues by the NLC is on one part of Yolngu decision-making processes, the 'traditional owner' part, while ignoring proper decision-making processes. This is wrong

headed because although the 'tradition owners' group/s are the central stakeholders to decision-making there are other groups, and individual authorities within who are required to be part of decision-making, especially in cases of such extensive consequence as a 99-year lease.

Moreover in the situation of Yirrkala the Lamamirri 'traditional owners' are deceased and their land is analogous to a deceased estate intestate according to the Madayin system of law. As an intestate estate I (with a few others) am analogous to an executor of the estate and therefore cannot be left out of negotiations concerning these lands.

The outcome of these points is that the Northern Land Council, and the government, needs to become more centred on proper decision-making processes according to our law, the Madayin system of law. And in doing so become more competent at determining proper decision-making authorities, rather than continuing the trend of short cutting to get signatures on a page from a single 'traditional owner' group. This is in fact the source of deep conflict in Arnhem Land communities because the NLC and government often have meetings with a representative, or representatives, from the 'traditional owner' group (as they have determined it) alone, thereby undermining our decision-making processes that would otherwise enable proper support, oversight, separation of powers and good management of people and land.

#### **Land Ownership In Yirrkala:**

At this point to avoid any further confusion I must state that I do not speak for Yirrkala outside the boundaries of the Lamamirri estate. The land at the Western extreme of the town belongs to the Djambarrpuyngu clan nation (see appendix 1). There are only a small number of women from this land still alive. However this estate, under an agreement settled quite some time ago, is under the custodianship of the Rritatjingu tribe, whom are my maripulu-grandmother group. There are also inheritors who are significant stakeholders, and in due process will become the central rights holders for the land.

This is a similar situation to the Eastern part of the town, whose 'traditional owners' were the Lamamirri group. As already mentioned the last of this tribe past away many years ago. Consequently, this is a deceased estate intestate and until the peak decision-making body, the ngarra-parliament, for the land is convened the inheritors are not properly authorised under the Madayin system of law.

A ngarra-parliament for Lamamirri lands has not been able to be opened because of fear of retaliation by some vested interests, supported by the NLC. It is because of this type of nasty politic that I now live between Darwin and Galiwinku, and not in the Gove region.

#### **Proper Diplomatic Methods:**

It is time that diplomatic methods are utilised by both the NLC and Australian governments when negotiating such significant land use agreements. My society, Yolngu society, has proper decision-making authorities and processes that are designed to give clan citizens fair participation in decision-making and safe resolution of negotiations or disputes. The Ngarra-parliament is the highest institution to this effect. In the case of 99-year leases, and after general consultation from government with stakeholders, the central land owning group should be given sufficient time to invite all their appropriate ngarra-parliament decision-making members together, enabling consensus agreement through the authority of Ngarra-parliament.

For matters of major significance to the land, Dalkarramirr/ Djirrikaymirr authorities from the wanga-watangu, ngamini-watangu, and wayirri-watangu, and the ringgitj-clan-nation must be included. Negotiations can then take place with the participation of all the primary decision-making authorities, thereby enabling proper empowered dialogue with our people.

If this was allowed to happen, with the support of independent legal advice, a positive agreement could be made at Yirrkala that serves the general good of the community.

#### **Interests and Options, Not External Demands**

Finally, I have now had the chance to travel to several towns in East Arnhem Land. It has been unanimous that my people (Yolngu) do not want 99-year leases. It is therefore upsetting that the Government and the NLC have evidently decided, in isolation, that 99-year leases are the way forward for our towns. It is a position that is completely unsupported by land-owning stakeholder groups and community members alike. We, as indigenous peoples, do not want further controls put over our society. We want the shameful march of colonisation to end.

The position taken by Government and the NLC thus far is also ignorant of the movement on the ground. Many land owning groups already have or are beginning to construct aboriginal corporations or businesses that can take advantage of the recently developed economy provided by leasing individual blocks of their land in townships. For example Galiwinku has Nyak-nyakngu, Yirrkala has Dhanbul and the Bunuwal enterprise group, and Raminigining is developing its own aboriginal corporation. To replace these with a bureaucratic government body is both anti free enterprise and a failure waiting to happen. I have said in an earlier statement that it will relegate indigenous people to fringe-dwellers on their own lands- just like what has happened in the colonial past.

In the spirit of partnership, the Government and NLC should now declare their interests openly and tell us why they think 99-year leases are good things, not start with the premise they are best for us and then try to persuade us.

They should then allow a process of option creation as our people come to the government with our own ideas. Finally with Free, Prior and Informed consent our people and the Australian government can make mutual agreements that will progress indigenous interests, not only government interests.

**Note on Writing This Letter**

In writing this letter in English I have employed the services of a writer and an anthropologist.

Sincerely

 22/10/13

Rev. DR. Djiniyini Gondarra

**Appendix 1**

Map showing the approximate divide in land ownership at Yirrkala. Image is from Google Earth.

