

**SUBMISSION TO THE AUSTRALIAN SENATE, COMMUNITY
AFFAIRS,
LEGISLATION COMMITTEE**

On

**THE ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 2006 (CTH)**

FROM

RAYMATTJA MARIKA

21 July 2006

INTRODUCTION

Thank you for giving me the opportunity to comment on the amendments to the Northern Territory Aboriginal Land Rights Act. It is so important to me to speak to you today, in fact I cannot think of a more important matter to me and my people.

I am Raymattja Marika, a Rirratjingu Yolngu traditional owner from Yirrkala in North East Arnhem Land. My ancestors are from that land. I was born on that land, I live on that land, and I hope that all future generations of my people will be able to live freely on that land.

My father was part of the struggle for land rights back in the 1960s and part of the bark petitions to Canberra in 1963, 1966 and 1967. My father was protesting against the first leases that the federal government took over my peoples land. You can see photographs of the Yolngu, including my father, in front of the Supreme Court in the ACT in 1970 during their struggle for their rights, in Nancy William's book, Yolngu and their Land.

For those of you who don't know, my father was Roy Dadaynga Marika, one of the instigators of the land rights movement in the Northern Territory. In 1971 my father took a sacred object to Canberra and that object depicts my fundamental, spiritual relationship to land and my cultural rights and obligations to my land and sea country. That object signifies the sovereignty of Yalangbara and her people – translated; this means the sovereign rights of Yolngu.

In the past, our old people lost that land rights case in 1971 - Milirrpum verses Nabalco - because of the doctrine of terra nullius and because there was no way to recognise our system of law and knowledge and sovereign rights in Australian law. Blackburn handed down that ruling in 1971 and Yolngu felt this as a slap in their face. He denied the reality of my peoples' natural rights to the land and its resources.

The doctrine of terra nullius that brought so much shame on the beginnings of Australia denied that we Yolngu existed as people. It forced Blackburn to deny us our land.

But Blackburn did not deny the true nature of the link between Yolngu people and their land. He said: "on the basis of the evidence presented to me I judge that it is more correct to say that **the Yolngu people belong to the land than that the land belongs to the people. If ever there was a system of law that is not merely the product of human hands but comes from a higher order it is the one that has been presented to me in this case"**

While we Yolngu have always known our connection to land and the laws that govern our connection and our rights, my father and the other petitioners were the first to try to inform the government and to assert our rights to land and to protest against the mining operations and leases that were given to AluSwiss and Nabalco. Our struggle was against the mining companies, and the federal government who issued the first leases in 1963. Now we are in the same position today, still fighting the Commonwealth government.

My people did get the land rights legislation in 1976 after our struggle for recognition of our land rights, and we started the homelands movement further demonstrating the deep connection of my people to their lands.

I want the Committee to understand, that we see the current changes to the land rights in the Northern Territory as part of that same struggle. As traditional owners we are very worried about what is going to happen to our land and our people.

I know that this Committee wants to know what the impact of these amendments will be on traditional owners, and what the consequences will be. In order for you to appreciate the impact, it is important for me to try to explain the complex relationship that we Yolngu have to land.

SO WHAT IS OUR CONNECTION TO LAND?

To Yolngu, land is identity. It is connected to our well being, our language, our culture, our law. It is the foundation of our very being. The land defines us. Our relationship to land is very different to yours, to the Torrens system of land law. You use a pen in your Westminster system to determine land tenures and land allotments. We Yolngu have songs, stories and sacred objects that tell the law and provide the abstract knowledge of the

land. Without the land we are nothing. To cut us from our land you cut us from our culture. Our stories and our songs and our spiritual and social world come from the land. All Indigenous people around the world understand this.

My mother comes from the fire dreaming, Gurtha, Lirtji and Bunuwarra. She passes that voice on to me and it is powerful. I speak with the authority of that knowledge of the fire dreaming, that burns, sparks and blazes. The fire dreaming is about honesty and integrity. It burns away lies. It empowers me and gives me the knowledge to speak for my land.

All 13 Yolngu tribes are connected through the Yothu-Yindi mother-child relationship and Mari-Guthurra, maternal grandmother relationship. This relationship is to people and it is to land. The external kinship structures stretch across North East Arnhem land. We are all interrelated, integrated and interconnected in a holistic way.

Our kinship structures define the ownership of our land and sea and space. This is why you can't take away our communal relationship with land. These are our epistemologies and ontologies – our ways of being, ways of knowing, ways of doing, ways of living.

Our songs that come from the land are a map of the land and sea. It is our history. Land is our narrative. It upholds our human rights, our sense of respect and our values. Land is the Rom and the Djalkiri – our law. Everything is integrated in the Yolngu way; land is integrated to kinship, to ceremony and to our core identity. You cannot separate our land from our core being. When you put a lease over it, when you put bonds on us, you take us away from our selves and from our law. But you won't break us, our spirit will stay strong, and that is why I am here today to protest against these changes to our land rights.

I stand here today to continue the work of my father, and to educate you Ngapaki.

The ebb and flow of the tides should be like the Yolngu and the Ngapaki coming together. Both sides should be committed to an on-going balance. Only then can there be justice.

There should be balance between our views and our worlds. We want Yolngu and Ngapaki to come together for understanding. **We Yolngu want you to know that it is sacrilege for Ngapaki to deny our rights to our land.**

Land ownership is not something you can play with. You dig our land, you do take our land, but that land is our backbone, it is our life source. We invite you to respect that and to understand the values we have to our land, and help us to achieve our goals. We need the cultural association to land to sustain us, and we want control of our most important asset so that our children and their children can enjoy the social, cultural and economic benefits that land can bring. We do not want 99 year leases.

Land ownership has never involved time. This is true in the Western tradition of law. It is even more true for aboriginal law.

It is in the interests of all Australians that we should not be denied ownership of our land in perpetuity.

I have just been to a conference in Sydney, the inaugural First Nations conference. At that conference I heard how Maori people are able to use their communal lands to create world class enterprises without giving up their communal rights. If these amendments are designed to improve living standards and create opportunities for our people, then why aren't we looking to the example of New Zealand, where communal land rights are preserved and enterprise is encouraged in different ways? Enterprise and opportunity that exist within communal land rights will ensure the continuation of our cultural and kinship connection to land, and allow us to develop in a way which meets our needs.

WHAT ARE OUR CONCERNS ABOUT THE CHANGES TO LAND RIGHTS?

- **No consultation**

The main problem I have with the amendments is that there has been no consultation with traditional owners. The government may have negotiated with the Northern Land Council, but they have not consulted with us. We have not heard from the government nor the NLC. And really how can the NLC consult with all traditional owners

across the Northern Territory when the size of the aboriginal land mass under the jurisdiction of the NLC is two hundred and eight thousand seven hundred and thirty kilometres square kilometres? The East Arnhem region alone is twenty six thousand nine hundred and forty square kilometres. This is too big an area for the NLC to properly inform and consult traditional people in remote parts of the Northern Territory.

Gone is the time for talking to the Northern Land Council about our land, it is time to come to Yolngu, to talk to us directly. The same should be done right across the Northern Territory. Nothing should be done secretly.

I ask the committee that before any amendments are made to our land rights, the federal Government must provide information that reaches traditional owners across the Northern Territory: As the traditional owners, we must be informed, and we **want** to be informed. This land rights legislation is **our** legislation. This is what **we** fought for. This affects **us**. We really need to be able to talk about it together.

Government actions like this one make me think that the federal government thinks the rights of aboriginal people are lesser than those of other Australians. Imagine the government saying to white people, "We spoke to the regional council, and they thought it was a good idea that we take out a 99 year lease over your land. As it was **your** local council that means that you give your consent to lease your land and your home. We assumed all of you people would think that same way. We are changing the legislation to make this possible"

I ask the Committee to take the message that we traditional owners need to know the detail of these changes. We need time to discuss the amendments. We need to think about what it will mean to us culturally. We need to think and discuss these changes together. And this is very important: **we would like to have a say in any changes to our legislation, because they will have such a big impact on our people. Do not change this legislation without including our views.**

I would like the Committee to take to the parliament the message that we want a process so that we can respond to these

amendments. Stop the process now, and let us be part of the process for any changes to Northern Territory land rights.

- **99 Year leases will take away our right to make decisions over our land**

I am very concerned about the 99 year leases. I am concerned because we traditional owners will lose control over our land. We don't want other people making decisions about who can come on our land and start a business. We have had enough of the mercenaries. We don't want MacDonal'd's in Yirrkala, or Irish Pubs as Minister Tolner has suggested. The governance of our communities needs to be in the hands of the traditional owners, the rightful decision makers over the land. 99 Year leases will bond us – and we don't want them.

I think it is wrong to offer my people money in exchange for agreements over land as the government is doing in Galiwinku and Nguiu. As many of my people are poor, your money is attractive to them – **and you know it**. But are they really agreeing to a lease, or are they agreeing because they are poor and they need your money?

When you offer them money, and speak to them in your white legal language, many won't understand what they are signing; they will only see the money. This is not good agreement-making. It is not good for my people, and it is not good government business either. Are we back in the days of giving the natives glass beads and trinkets for their land?

If these leases are going to be so good for my people, why isn't the government asking for leases without bribes – without the money? See how far the government gets then? And worst of all, under the amendments, the government plans to pay us rent for **our** land with **our** own money – money from our Aboriginal Benefits Account - our mining royalty money. Has the government told traditional owners that yet?

- **Royalties from mining - Our money**

We Yolngu people want to have direct access to our mining royalties. At the moment, our mining money goes to the land councils, and the people affected by the mining, like the Yolngu at

Yirrkala, only see a small proportion of the money. This is wrong. If we had better access to our compensation money, we would be in a better position to set up enterprises on our land.

We should be compensated as individuals, and as a community. A proportion of royalty money should come to us as individual traditional owners, and a proportion should be managed by a trust fund for the Yirrkala community. Mining royalties in trust for the community should be used for health, education, scholarships, housing, land management, the arts, tourism, jobs and businesses for Yolngu. That's what you call socio-economic development.

We want to be able to control this money so we can pay for things that are important to us. This is our money, and it is one way for my people to become self reliant. If the government is concerned that my people rely on hand-outs, give us the money that we are rightfully owed and let us work towards setting up enterprises and providing employment of our own people. Perhaps then we will be able to build the companies like one I saw at the First Nations conference, the Ngarda Company in the Pilbara.

If any changes are needed to land rights, those changes should give us more control of our resources, not less. We need to be developing sustainable and strong communities ourselves. In Western Australia, mining companies negotiate with traditional owners directly. The BHP Biliton Regional Partnership Agreement processes and agreements are guided by the Native Title Act and they provide financial, social and community benefits to the people who are affected by mining. The local people can become shareholders in the business enterprises, in the mines, and the profits. They can negotiate jobs, community buildings, traineeships and scholarships for their people.

So if you want to change our land rights regime, then look to the native title processes that make sure that traditional owners are at the negotiation table with miners. Mining royalties should not go to the government; nor should they be all filtered through the land councils. In this respect my people are like you Ngapaki, we want economic benefits so we can engage in enterprise, but we want to have control of that enterprise.

At Yirrkala we would like to set up aquaculture businesses. If we had funds from mining compensation, then we would be able to do

this, to set our own conditions in our communities. It is the government preventing us from accessing our money that stops economic development in Yirrkala. It is time the government stopped controlling us, and let us make the decisions for ourselves. If the government is real about promoting economic development, how about providing a quota of Aboriginal fishing licenses, rather than 99 year leases. This would give us the means to be self sufficient, and not reliant on government handouts.

IN CONCLUSION

These amendments have caused a lot of anxiety and confusion amongst my people. We know that the Northern Territory has one of the best pieces of land rights legislation in the world.

People from urban contexts have made the decisions for my people, both Aboriginal and non-Aboriginal. These people have not spoken to us. They have not tried to explain this situation to my people. This has to stop. We have been betrayed by these decisions. They do not reflect our views.

Next year we celebrate the 40 year anniversary of the 1967 referendum that gave Aboriginal people citizen rights. Forty years on we should be forging a new path – a better path – one that supports my people, one that respects my people. We need to make decisions democratically, and do business properly, to exercise the rights that we got in 1967. This is what that referendum was supposed to achieve. What Australia needs is a new democracy without prejudice against Aboriginal people and a way to come together that will make right the wrongs of the past. Don't make assumptions about what we want, ask us, sit down and talk to us.

I challenge you to listen to us, and to find better ways to communicate with us. Don't wind back our citizen rights and our rights to make decisions over our land. Please talk to us before you make any changes to our legislation.

I am determined to continue the struggle that my father started the 1960s and 70s. We still face the same situation today. Nothing has changed for us. We are still fighting for our rights to our land. For us, there is nothing more important.

Let me finish by saying, if you put bonds on our land and let other people take leases over that land, then you take away our songs, our animals, our plants, our totems, our waters and our ceremonies. If you change these land rights laws you will make us prisoners of your policy. We are capable people; we can take responsibility for our own land. We don't want governments taking this control from us. In the interests of justice, let us keep control of our land.

I am a traditional Yolngu woman, and I want to stay that way. My land is my spirit, my soul. Do not take this away from me and my children and the future Yolngu generations.

My father said to me: Raymattja, **“make sure the land is there for the next 100 years.”** And that is why I am bringing this message to you today.

Thank you