

107. The Third Makarrata way

In this podcast series, Rev. Dr. Djiniyini Gondarra OAM and Richard Trudgen discuss the third Makarrata mediation process. This is a legal mediation process carried out when a treaty has been broken between two corporate clan groups. It is a process for dispute resolution around economic issues of trade, land or shared assets, rather than smaller family disputes.

This third Makarrata process is carried out according to Maḡayin rom, the original Yolngu law, that unfortunately is still seen by mainstream Australians (Balanda) as just a spear fight or ceremony. Richard and Djiniyini alleviate this confusion by discussing the Makarrata process as a series of podcasts. In the [first Makarrata way](#), they explain this is a mediation process ending in a reconciliation ceremony after a murder or serious incident has occurred. In the [second Makarrata way](#) they talk about resolving disputes and finding reconciliation after someone has stolen something such as an object, equipment, an asset, or even a person.

In the third Makarrata way, they look at the process in which one clan invites another clan to sit down with them and work out a broken agreement between them, in a diplomatic way. This is carried out inside the Yolngu chamber of law, with witnesses and protection by guards, or the djungaya, Yolngu police. Therefore it is a safe space, controlled by the Māgaya rom, the way of big peace. The two clans may reach a consensus by agreeing to return to a strong relationship with each other as it was in the past. The offending group might not have known about a treaty agreement that was made generations ago. The conversation process will come to a climax when somebody admits that they have been misusing or abusing shared assets, and the previous treaty or a new agreement is arranged – respected and upheld by the law.

Note: Due to lack of resources and time, the complete Yolngu Matha (ym) translation of this series has not been finalised. This translation is done at our own time and cost. Because of the important nature of this subject we will update this as soon as possible.

Story No. 1: Diplomatic meetings

Richard Trudgen: Yo, good morning ym...

Djiniyini Gondarra: Yo, good morning ym...

RT: Yeah we've done that Makarrata ym... number one, Makarrata ym... number two but you've got another way to get that Māgaya rom ym... you want to talk about that way too?

DJ: ym... Makarata one ym... two...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: ym...

DJ: ym...

RT: And that can still be called, it's still a Makarrata way, it's still called Makarrata?
ym...

DJ: ym... Makarata ym...

RT: ym...

DJ: Yeah.

RT: Challenging.

DJ: ym... decide ym... say ym...

RT: ym...

DJ: Hey not with a weapon ym...

RT: Hmm.

DJ: ym... they're not running around ym...

RT: ym...

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Yes.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: ym... trading yeah it's the trade.

DJ: trading ym... yo.

RT: What can we trade with each other.

DJ: Yeah what can we trade each other.

RT: So come and sit with us in this safe place and we'll talk together and we'll sort things out.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: Yes and so you'll choose ym... it might be yours or it might be the other persons, you might go to theirs, if they give out the challenge?

DJ: Yo.

RT: Or if you give out the challenge it will be your ym...

DJ: Yo, yo.

RT: And... but you're inviting them to a law, a place of law where they ym... hey?

DJ: Yo.

RT: And that ym... is a special term, it's talking about where people come and they talk legally, they don't come and talk silly rubbish stuff hey?

DJ: Yo.

RT: Yeah ym... so that's another important concept hey?

DJ: Yo ym...

RT: Right, yes.

DJ: ym... government ym...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Yeah most people are ym... Northern Territory government... most people are ym... for this ym... Makarrata and you can call this Makarrata and it's really a mediation process ym...

DJ: Yo.

RT: But a legal mediation process.

DJ: Yo

RT: With the protections of the law on both sides, yep?

DJ: Yo.

RT: Hmm.

DJ: ym...

RT: Yeah that's pulling people away from the picture of Makarrata which Balanda just sort of see as a spear fight, hey?

DJ: Hmm

RT: And it's got nothing to do with a spear fight, this is one, the number three Makarata is one clan challenging another clan. But the English word 'challenging' is a bit strong when you ym... when you...

DJ: Hmm.

RT: When you put out an invitation to them, hey?

DJ: Yo.

RT: ym... is more like an invitation there to come.

DJ: Yo, yo.

RT: Come, come and sit with us and let's sort out ym...

DJ: Yo, yo.

RT: And sort out this one problem, hey?

DJ: Yo.

RT: That we've got, and when you sat there, you'll talk together and you'll work out what you can ym... hey?

DJ: Yo.

RT: What can you trade with each other, what do you mean by that?

DJ: Balanda ym... lands each state ym...

RT: Yeah, hmm.

DJ: ym...

RT: So you're inviting them to a diplomatic conversation ym... hey?

DJ: Yo.

RT: A diplomatic conversation is diplomats and a process of law where everybody is safe.

DJ: Yo.

RT: Everybody is protected and you would have your ym... there to make sure everybody is safe and there is no trouble?

DJ: Hmm ym...

RT: Yeah.

DJ: ym... they'd be there.

RT: Yeah, yeah so there would be witnesses there to make sure it's a safe place for everybody too.

DJ: Yo.

RT: You cause trouble if you invited somebody to a diplomatic conversation mediation...

DJ: Hmm, yo.

RT: And you cause trouble, that would make, that would shame you at law hey?

DJ: Yo ym...

RT: Hmm, yes.

DJ: ym...

RT: Right.

DJ: Yo.

RT: Hmm.

DJ: ym...

RT: Yes, so you both come with your ym... we might give that example again if, in Scotland one might come from the big hall of McDonald and another one might come from the big hall of the Stewarts and...

DJ: Yo.

RT: But you enter into the outer hall, but you're safe in there because of the diplomatic invitation to mediate?

DJ: Yo.

RT: To talk through, not to cause trouble ym...

DJ: Enter into treaty ym...

RT: And what you said there, what joins you together, what joins you together is the ym... the process given to you by ym...

DJ: Yo, yo.

RT: That's what invites you together.

DJ: Yo.

RT: From way back in the beginning of creation, hey?

DJ: Yo, yo.

RT: Yeah that's what joins you together ym... can we come back and talk about this some more because we're going to be running out of time again this morning ym...

DJ: Yo, ym...

Story No. 2: Diplomatic process

RT: Yeah ym... this is ym...

DG: Hmm.

RT: ym... about this number three Makarrata ym... it's about a diplomatic mediation through a process of law hey?

DJ: Hmm.

RT: I'm wondering if you can give us just an example picture of how you would use it ym... Mägaya rom ym...

DJ: ym...

RT: Hmm.

DJ: ym...

RT: What's the difference there?

DJ: ym... come together, hey.

RT: Yeah.

DJ: ym... in that ym... together hey. I mean one will come to that ym...

RT: Yeah.

DJ: ym... it's fighting.

RT: Yeah

DJ: Hmm, but this one is coming ym...

RT: Yeah ym... we said a little bit in the last program but say a little bit more about when that ym... have I got it right?

DJ: Hmm ym...

RT: ym...

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: ym... is you have to talk in a legal way ym...

DJ: ym...

RT: Yes, legal way.

DJ: ym...

RT: Right you have to follow the conversation of the legal conversation... you can't just have...

DJ: Yo.

RT: ...silly stories or just anything thrown in.

DJ: Yo ym... Mägaya.

RT: Yeah.

DJ: ym...

RT: Yep.

DJ: ym...

RT: Hmm.

DJ: Yo, ym...

RT: ym... bring people together yes?

DJ: Yo, yo.

RT: Into one ym... into one...

DJ: Yo.

RT: ...into oneness of mind, body and soul, hey?

DJ: Yo.

RT: Yeah.

DJ: Yo.

RT: ym... sorry I stopped you ym...

DJ: Hmm.

RT: Example... so that's what the purpose of the meeting is, the purpose of the meeting is to ym... that ym... group hey, that two groups...

DJ: Hmm yo, yo.

RT: And for them to come to a...

DJ: Hmm.

RT: ...come to a consensus.

DJ: Yo.

RT: ym...

DJ: Yo.

RT: ym...

DJ: Yo, the time will come to a consensus of what's going to happen.

RT: Yes what they're going to agree to.

DJ: Yo.

RT: To solve the problem, to solve the problem.

DJ: Yo.

RT: Yo.

DJ: Yo.

RT: What would happen ym... if somebody ym... and somebody...

DJ: Hmm.

RT: ...somebody starts talking silly stuff or whatever, hey?

DJ: ym... happen Balanda...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: That would close down the process quickly.

DJ: Yeah, yeah it would be closed, the process for a long time, until, hey...

RT: Hmm.

DJ: ...a time when they were ready to come back.

RT: Yeah, and show respect to the process, hey?

DJ: Yo, yo.

RT: They come back and show respect to the process.

DJ: Yo, yo.

RT: You said there before this ym... these two groups would try and talk this out ym...

DJ: Hmm.

RT: Come together ym... oneness of mind, body and soul and they would try to establish a treaty between them and agreement between them, hey?

DJ: Hmm, hmm.

RT: Depending on the ym... the trouble, whatever the trouble was, hey?

DJ: Hmm, hmm, hmm.

RT: And that agreement would be, would be respected by everybody because it's talked in a legal situation ym... ?

DJ: Yo, yo.

RT: Yeah what do you call that, what would you call that agreement, that treaty agreement ym... has it got a special name in Yolŋu Matha or not?

DJ: ym...

RT: ym...

DJ: Yo ym... agreement Balanda ym...

RT: ym...

DJ: ym...

RT: Yeah I've heard that word way back at ym...

DJ: ym...

RT: Yeah.

DJ: Yo.

RT: I'm trying to get a picture around it ym... like a...

DJ: ym...

RT: Yeah it's an agreement at law.

DJ: Yo, rom ym...

RT: ym... yeah.

DJ: You can't change, you can't change it.

RT: Yes.

DJ: Hmm.

RT: It would be like the English word treaty you establish between...

DJ: Yo.

RT: ...not just between those Yolju, that Yolju, but between ym...

DJ: ym... Yolju ym...

RT: Yeah so it's between the two corporate groups in total.

DJ: Yo.

RT: And it binds, we would say in English, it 'binds' all the people of those two corporate clans groups, they're all controlled by that ym...

DJ: Yo.

RT: Yeah, so it is more like the word, some sort of treaty, yeah?

DJ: Hmm.

RT: Yeah.

DJ: To do with something ym... something that it's not to do with the ym... family ym... or ym... but something ym... something that you're not ym...

RT: So it's something used in cases of fairly large disputes between two corporate clan groups.

DJ: ym... yo.

RT: Yeah.

DJ: ym...

RT: Something that they have snatched away from you, taken away from you.

DJ: Yo.

RT: ym... assets ym...

DJ: Yo.

RT: Yeah.

DJ: Yo.

RT: So this is an economic resolution in some ways which...

DJ: Yo.

RT: ...a lot of Balanda think that Yolŋu don't have anything to do with and here we see it again.

DJ: (laughing) ym...

RT: (laughing) ym... and ah so if it was an economic dispute over assets ownership...

DJ: Hmm.

RT: ...and use of assets ownership...

DJ: Yo.

RT: Well let's ym... let's come back and we'll pick up on this conversation again, we've got two more programs this morning and we'll work through an example of how this ym... we can call, it's another form of Makarrata but it's a mediation form of Makarrata mediation hey?

DJ: Yo.

Story No. 3: Economic assets

RT: Yo, ym... it's ym...

DJ: Yo, yo ym...

RT: And about this number three Makarrata ym... hey?

DJ: Hmm, hmm.

RT: You say this mediation method is not to be used in workplace problems or small family issues, it's to be used in big economic...

DJ: Hmm, hmm, hmm.

RT: ...disputes between corporate clan groups ym... assets...

DJ: Yo.

RT: Over land, land use or even issues of legal agreement?

DJ: Yo ym...

RT: Right.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: So in the beginning, the creator spirits ym.. they ym... they sent down the law for the different ym... corporate clan groups for them to be able to sort out issues in relation to assets over land, hey? Balanda...

DJ: Yo ym...

RT: Hmm.

DJ: Hmm.

RT: So you can come to an agreement around what you call ym...

DJ: Yo.

RT: Like a treaty between those two corporate clan groups, hey?

DJ: Yo, ym...

RT: This is one of the big academic terms, yeah ym...

DJ: Yo ym...

RT: Hmm.

DJ: ym... local government ym...

RT: Could be in relation to the ownership of a big ym... a big canoe?

DJ: Hmm.

RT: A very big canoe, important canoe or to do with...

DJ: ym...

RT: ...something to do with the land itself?

DJ: Yo ym...

RT: Or to do with the title deed painting if there's a dispute?

DJ: Yo.

RT: Over the title deed paintings?

DJ: Yo, yo.

RT: Yeah, so really large asset?

DJ: Yo.

RT: Asset control issues, hey?

DJ: Yo, yo.

RT: ym...

DJ: Yo ym...

RT: Hmm.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: So if that clan wasn't sharing properly, if they weren't sharing those things properly like they should...

DJ: Yo.

RT: ...then you could call them to this diplomatic meeting, yeah?

DJ: Yo ym... Mägaya rom ym...

RT: Into a process controlled by the ym... law, the Mägaya process, the way of the big peace.

DJ: Yo ym...

RT: A legal process that leads to a treaty agreement between the parties.

DJ: Yo.

RT: Yeah, and...

DJ: ym... due process pathway ym...

RT: ...a procedure that creates a due process pathway.

DJ: ym...

RT: Other way of trouble or conflict.

DJ: Yo.

RT: So you would call them to this process, due process of law where there is no trouble, no dispute argument.

DJ: Hmm.

RT: There's just good conversation ym... you can.

DJ: Hmm, yo.

RT: That's a term ym... which is different from English where you can speak legally, speak legally in legal polite ways ym...

DJ: Hmm, yo.

RT: According to ym... law yeah?

DJ: Yo, but they have to be ym... when you reach ym...

RT: Hmm.

DJ: Someone needs to admit hmm ym...

RT: Yeah so the process, the conversation process should go through until it comes to a climax where somebody admits that they have been using those assets in a wrong way, abusing those assets, taking the assets off you.

DJ: Hmm.

RT: And ym... at that point hey

DJ: Yo, yo.

RT: Their shame, their shame, they say sorry we've got this all wrong.

DJ: Because it's not ym... agreement.

RT: Right.

DJ: ym... misuse ym... agreement.

RT: ym... so this would usually occur, is in the past even many generations ago there's been agreement that was forged between two corporate clan groups ym...

DJ: Hmm.

RT: But it was ok back then and it worked well, but people now are misusing and abusing...

DJ: Hmm, hmm.

RT: ...that agreement and not following the real...

DJ: Yo.

RT: ...law that was set down in that ym... agreement ym... hey?

DJ: Yo ym...

RT: Hmm.

DJ: ym... worries us ym...

RT: Hmm.

DJ: ym... make agreement ym... hmm

RT: Right, that agreement could have come out of a dispute in the past, hey?

DJ: Hmm, hmm.

RT: Dispute in the past.

DJ: ym... hmm.

RT: Yeah ym... there could have been big trouble in the past.

DJ: Yo.

RT: And they've made that agreement come to a shared agreement, a shared use of an asset or whatever, hey?

DJ: Hmm, yo.

RT: And but now people are not using it properly.

DJ: Yo.

RT: ym...

DJ: ym...

RT: Yeah.

DJ: ym... example ym... local government ym... to do with land ym...

RT: Yo.

DJ: Yo ym...

RT: Hmm.

DJ: ym... agreement ym...

RT: Yeah so this is where it can be used, in this diplomatic mediation, it can be used in those areas of big things.

DJ: Hmm.

RT: Where shared assets or thing to do with ym... law objects at law or land itself and the ym... the assets of that land?

DJ: Hmm, hmm.

RT: Or the shared title deeds or something to do...

DJ: Yo, yo.

RT: ...between two groups hey?

DJ: Hmm, yo.

RT: Yo, and then they can come to an agreement but part of that agreement might be also where for them to get back to an ym... situation.

DJ: Yo ym...

RT: Yeah.

DJ: ym...

RT: Yeah.

DJ: ym... agreement ym...

RT: So they might agree to return to a strong relationship with each other as it was in the past, the offending group might even admit to the fact that they have not stuck to the ym... the peaceful way of the agreement as the old people in the past had established, let's return back to that.

DJ: Yo.

RT: Or there might be another situation where somebody has to actually make a payment for what they've done wrong, yeah?

DJ: Yo, yo.

RT: But let's come back and talk about that on because that will take a while for us to work through.

DJ: Hmm, hmm.

RT: ym...

DJ: ym...

RT: Yeah.

Story No. 4: Assets and usage between clans

RT: Yo, ym... we're talking about that number three ym... Makarrata ym... third way ym... for...

DJ: Hmm.

RT: We could call it ym... agreement like a...

DJ: Hmm.

RT: ...like a treaty that has been broken between two ym... corporate clan groups.

DJ: Hmm.

RT: And you can call them together, call people together through a diplomatic process of law, yeah?

DJ: Hmm.

RT: And sometimes then the group that's ym... the group that's broken the law, sometimes they might have to agree to make a payment to ym...

DJ: Yo ym...

RT: Can we just talk about that how that would work?

DJ: ym... say ym...

RT: Yeah.

DJ: ym...

RT: Yeah.

DJ: ym...

RT: So they might be talking about an asset like a big canoe in the past?

DJ: Yo.

RT: A ym... canoe, so it's not just an ordinary canoe it's...

DJ: Yo ym... yo.

RT: It's a big special one that was shared between two groups, hey?

DJ: Yo ym...

RT: And one group hasn't been able to get access to it?

DJ: Yo ym... to an agreement ym...

RT: Coming to agreement and return to the terms of the agreement that the old people set down?

DJ: ym...

RT: Maybe they will say, yeah ok please forgive us?

DJ: ym...

RT: As we haven't followed the way of peace established by the old people...

DJ: ym...

RT: ...our legal terms of the agreement that we agreed to with your group...

DJ: ym...

RT: ...in the past, that our old people established.

DJ: ym...

RT: And now we want to establish a new process where we can reciprocate payment, wiping out our debt to you.

DJ: ym...

RT: We will pay back our debts by going and cutting out a new canoe.

DJ: Yeah ym...

RT: They might say we'll cut and construct a new canoe for you, ym... that has a big name on it?

DJ: ym...

RT: You see and we'll deliver that into your hands.

DJ: ym...

RT: If we are both agreed with that, then everybody will be happy and say yes, that's a good way.

DJ: ym... option ym...

RT: Ok, good. But if they say no to it? Then another option exists...

DJ: Hmm yo.

RT: So ym... they might decide to, so what other option might they take up?

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Yeah.

DJ: Yo.

RT: So we will just return ym... back to you because we broke the law, broke the agreement of the old people.

DJ: Yo, yo.

RT: Hmm.

DJ: ym...

RT: And if that is the agreement they come to, a way of peace, no trouble, then they say, yeah ok that's good, we'll return the canoe to you, into your hands.

DJ: ym...

RT: Then we might say, we'll use it to catch all sorts of different things, but if you want to use it you ask us and we'll let you use it.

DJ: ym...

RT: Hmm.

DJ: ym...

RT: Yeah, so we're sorry we broke that treaty between us, using the canoe inappropriately not letting you have it.

DJ: Yo, ym...

RT: Yeah so they'll let that ym... come back to that other group and they can control it, they can look after it, hey?

DJ: Hmm.

RT: And they might still lend it back to the other group but it's in their hands now, in their control, yo?

DJ: Yo.

RT: Yeah, so ym... as you said this is usually used in terms of economic disputes over assets ym... yeah?

DJ: Hmm, ym...

RT: This is a mediation process to deal with corporate clan nation asset disputes.

DJ: ym...

RT: Not family disputes.

DJ: ym... family disputes ym...

RT: This is a process for dispute resolution around really big asset issues between different corporate clan ym... groups.

DJ: ym...

RT: This Makarrata number three way, is a dispute resolution around large asset issues ym... where promises are made at different levels including inside ym... legal chamber and somebody has broken that promise, they can come to this process to resolve that dispute.

DJ: Hmm, hmm.

RT: Yeah, thank you for talking about this ym... this third way for Makarrata, hey.

DJ: Hmm.

RT: And this is our last program ym... this morning.

DJ: Hmm.

RT: So we'll come back another day.

DJ: ym... yo ym... hmm.

RT: Yeah ym...

