

108. What is Evidence? Part 6: Consistency between laws over land ownership

In this podcast series, Maratja Dhamarrandji and Richard Trudgen discuss the ongoing confusion about who the real landowners are, and who are the TOs, as the Lands Council calls them, or the 'Traditional Owners'. One of the big problems is mainstream Australians (Balanda) think Yolŋu law is just some little thing, rather than a very complex legal system full of its own witnesses, evidences and checks and balances. Even anthropologists do not understand the complexities of Yolŋu law, and some Yolŋu people don't believe or understand it is Yolŋu law that everyone should be following. So they ask Balanda lawyers from Canberra, Sydney, Melbourne etc., to tell them who the traditional landowners are, thinking it must be the Balanda who say who the TOs are.

Some Balanda genuinely want to help, but some are doing it for their own gain. They're being paid money, so they want to believe they know the true story or say it's the true story, but they don't properly understand it. They only know what amounts to, as Maratja calls it, 'a five minute job', rather than 'a lifetime job'. Yolŋu people should not rely on Balanda to tell them because, according to the Land Rights Act, Yolŋu have the authority and power. Yolŋu need to learn the English terms to be able to talk about their law in a way that Balanda can understand it. For example, they can't just say we have Märi witnesses, they've got to say we have witnesses on the 'grandmother's people on the mother's side'. And we have witnesses who are 'the grandchildren and the mother's people and the children that are born from those mothers', meaning that across five clans there are witnesses to this land ownership, not just the clan who are the landowning clan.

This podcast series is vital for Yolŋu to understand the truth and complexities around Yolŋu law. And to learn the English terms in order to teach Balanda about it. If Yolŋu remain quiet, then the true story can't come out. They need to say 'hey, this is the true story, the true way of establishing evidence around land ownership', and we all have to start telling that story together.

Note: Due to lack of resources and time, the complete Yolŋu 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: Search for consistency between laws over land ownership

Maratja Dhamarrandji: Yo ym...

Richard Trudgen: Yo, ym...

MD & RT: ym... (speaking at same time)

MD: ym...

RT: Yeah.

MD: ym... Balanda ym...

RT: Yeah we've been talking about that a bit ym...

MD: Yo, yo.

RT: What is the evidence and meaning of evidence from a Balanda perspective you're thinking about ym...

MD: Yeah from a Balanda perspective because ym... as a Yolngu ym... I don't know everything.

RT: Yeah.

MD: But I know ym... Yolngu ym...

RT: Hmm.

MD: Go through ym...

RT: Yeah.

MD: ym...

RT: So you know, you know enough.

MD: Yo.

RT: You don't know all your law but you know enough to know...

MD: Yo, yo.

RT: ...how to work out what evidence points to the real landowners, all that sort of thing, hey?

MD: Yo, yo ym...

RT: Hmm.

MD: ym...

RT: Yep.

MD: ym...

RT: Hmm.

MD: ym... the checks and balances ym... accountability ym... accountable.

RT: Yeah.

MD: ym... Yolju ym... checks and balances ym...

RT: Yeah.

MD: ym...

RT: Hmm.

MD: ym...

RT: Yeah.

MD: ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: It's transparent, accountable.

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym... misleading or false ym... assessment ym...

RT: Yep.

MD: ym...

RT: Yep.

MD: ym... the proclamation ym...

RT: Yeah.

MD: Acknowledgement ym... that land belongs to.

RT: Yeah.

MD: That Balanda business from a Yolngu perspective understanding ym...

RT: So for the Yolngu perspective it's very clear who owns the land, like you're talking about the ym... the political leaders and the ym... government ym... the title deeds.

MD: Yo, yo.

RT: And there's lots of witnesses as you've said before with the ym... the grandmother's people and the grandchildren, the mother's people and the children.

MD: ym... hmm yo ym...

RT: All the different what we call rom ym...

MD: Rom ym...

RT: So the citizens for that particular estate.

MD: Yo.

RT: They all know, they all have this evidence.

MD: Yo.

RT: And there's things like the ym... also ym... yeah?

MD: Yo ym... yo ym... rom Lands Rights Act ym...

RT: Yep.

MD: ym...

RT: Well the Land Rights Acts is fairly clear in saying and this is the ym... English subject to this section Balanda ym... dealer ym... 'an Aboriginal or a group of Aborigines is entitled to enter upon Aboriginal land and use or occupy that land to the extent of that entry this is ym... but occupation or use is accordance to Aboriginal traditional governing the rights of that Aboriginal group, of Aboriginals in respect to that land'. In other words it's saying, the governing rights ym... rom, ym... rom yeah ym... under ym... rom.

MD: Yo.

RT: Now ym... will governing rom ym... governing rom and rights ym... rom ym... I would say is according to ym... law ym...

MD: Yo, yo.

RT: Yeah, so that's ym... will governing rights.

MD: Hmm.

RT: ym... tradition ym... so it should be in accordance with that ym... Aboriginal governing rights which is not ym... rom according to tradition, according to the ym... according to ym... governing rights Balanda ym... rom ym... so yeah it's should be ym... hey?

MD: Yo, yo ym... question ym...

RT: Yeah, go.

MD: ym... question, does ym... Balanda ym... or ym... anthropologists ym... Yolŋu rom?

RT: Hmm.

MD: ym... rom ym... rom consistency with Yolŋu rom ah Balanda rom ym... agreements ym... agreement ym...

RT: Hmm.

MD: ym... rom ym... Yolŋu ym... rom Balanda ym... their rom.

RT: Yeah.

MD: ym... is order a good governance or government.

RT: Yeah, yo.

MD: ym... even Yolŋu citizen ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym...

RT: Yeah.

MD: ym...

RT: Hmm.

MD: Yo.

RT: Well this is part of the problem ym... because in the 1970s when the federal government ym... for ym... for Aboriginal land ym... hey and ym... so then that's why they made up that Lands Council, the Lands Council should be ym... rom ym... hey. Now because they thought if we have a Lands Council we can give that ym... to the Lands Council to make sure ym... can I say it this way ym...

MD: Yo ym...

RT: ym...

MD: Yo ym...

RT: ym... the rom.

MD: Yo.

RT: And other words make the law consistent between the Balanda law and the Yolŋu law.

MD: Yo.

RT: That should be the Lands Council job. Hey?

MD: Yo.

RT: But unfortunately it's not working that way hey?

MD: Yo.

RT: We can see it's not working that way, some of the things you've mentioned, where there's lots of trouble now between the grandmother the Märi and the ym...

and the ym... and because of really bad consultation not ym... consultation and because of the ym... that you've already talked about the confusion that is there on both sides, on the Yolju side and on the Balanda side

MD: Yo.

RT: But really when the politicians in Canberra, both the Labor Party and then the Liberal Party, wanted to ym... they were hoping ym... they were hoping that this ym... Lands Council would be a ym... hey?

MD: Yo.

RT: I don't know if I'm saying it clear or not hey?

MD: ym...

RT: Yeah.

MD: ym... Yolju ym... Lands Council rom.

RT: Yeah, yeah.

MD: Lands Council ym...

RT: Hmm.

MD: ym...

RT: Hmm, hmm.

MD: ym... Yolju ym... Balanda.

RT: Yeah.

MD: ym...

RT: Hmm, hmm.

MD: ym...

RT: Yeah.

MD: Consistency ym... yo

RT: Hmm.

MD: Yo.

RT: Well let's come back again and we'll keep talking about this.

MD: ym...

RT: ym... yeah and we'll keep talking about this a bit more.

MD: ym...

Story No. 2: Meaning of traditional landowners

MD: Yo ym...

RT: Hmm.

MD: ym... Balanda ym... Balanda ym... Land Rights Acts for ym... traditional landowners ym... Australian ym...

RT: Yeah we're talking about that word traditional, that's why the Lands Council talks of those TOs all the time. TOs – they are talking about traditional owners, they're not talking about ym... as in new owners, they're not talking about new owners who think they're owners ym... they're talking about the people who were owners ym... hey?

MD: Yo, yo.

RT: And according to, and it should be according to ym... system of governance ym... hey?

MD: Yo.

RT: ym... rom ym...

MD: Yo, yo.

RT: But what we were saying is there's that ym... that ym... the confusion on both sides, Balanda don't know your law, they know nothing about your law, they're like even many of the lawyers are like ym... anything hey?

MD: Yo.

RT: They just, they got a little piece of it, they might have some ym... or they might have some ym... system or ym... hey?

MD: Hmm.

RT: But they haven't got all the evidences, Balanda evidences ym... yeah already ym...

MD: Yo ym... Yolju ym... Yolju ym...

RT: Hmm.

MD: ym...

RT: Hmm, hmm.

MD: ym... local government ym...

RT: Hmm.

MD: ym... people ym...

RT: Yeah.

MD: ym... important ym...

RT: Let's just look at that, you've named again some of the evidence points there again.

MD: Yo.

RT: ym... Balanda ym... and the ym... the political leaders who have got the authority over that land and now you're saying the ym... now nearly everybody, everybody in North East Arnhem Land, they know they ym... we would call, is like, the English surnames yeah the surnames.

MD: Yo.

RT: Those big names, those big family names.

MD: Yo.

RT: The big family names that name, that are connected to that estate ym... yeah?

MD: Yo.

RT: And I'm not even sure if a lot of Balanda lawyers or anthropologists even see that as important but it would be like the Scott's or the McDonald's or the Stewart's or whatever hey?

MD: Yo.

RT: The big name, the big Scottish ym... the big names, the big surnames, the big family names are connected to that particular state ym... and everybody knows.

MD: Hmm, hmm.

RT: Who those people are or nearly everybody yeah, knows who those people are.

MD: Yo.

RT: Yeah, so ym... or the big family names are really important yeah?

MD: Yo, yo.

RT: Yeah so ym... I think that's one of the problems is that when the parliament ym... in Canberra, parliament in Canberra did not want to give the ym... to ym... doesn't matter who they think they are, didn't want to give it to them hey, they wanted to ym... hey?

MD: Hmm, hmm.

RT: ym... hey.

MD: Yo, yo ym...

RT: Yeah.

MD: Yo, ym...

RT: Hmm.

MD: ym...

RT: Yeah.

MD: ym...

RT: Hmm.

MD: ym... yo ym...

RT: Hmm.

MD: ym...

RT: Yeah.

MD: ym...

RT: Hmm.

MD: ym...

RT: Yeah.

MD: Yo.

RT: Because when the parliament in Canberra were giving this ym... this Lands Rights Act ym... Canberra ym... Canberra ym... hey they wanted to fair go ym... true justice, true justice, true ym... rom ym... hey?

MD: Yo.

RT: And that's why they said we should have a ym... council, Lands Council ym... rom ym... the trouble is the Lands Council, even the members of the Lands Council are still ym... and the Balanda ym... hey?

MD: Yo.

RT: And then we have like a lot of Yolŋu have told me many times, Lands Council's comes out, anthropologists comes out, even the ym... try to talk ym... and the young fella ym... yeah and they tell the ym... they don't realise the ym... lawyers yeah?

MD: Yo.

RT: They don't know that ym... Märi your mother's mother are like Barristers yeah?

MD: Yo.

RT: They don't even know that, they don't even know that ym... children's story hey?

MD: Yo.

RT: And so they tell the Märi, they tell the Märi that the Barrister to ym... hey?

MD: Yo.

RT: They say 'no we have to listen to the words from the TO'. Now this is where we've got to start educating the Balanda, if we have to shame them, we shame them, because it's not rom it's ym... rom ym... hey?

MD: Yo.

RT: We have to go back to the rom ym... because when you read through the Lands Right ym... or Act it keeps talking about traditional Aboriginal owners, traditional

Aboriginal owners and maybe we need to talk about that a bit more because you said ym... traditional means the ym... hey?

MD: Yo ym...

RT: You could call traditionalism ym...

MD: ym...

RT: ym... rom.

MD: ym...

RT: But for Yolngu traditionally really means ym... rom ym...

MD: Yo.

RT: Because that means it's your governance system, it's your system of governance the mägaya law and it's still ym... it's still ym... it's still ym... because ym... yeah?

MD: Yo.

RT: And under Balanda law that's called, you have already, you are still assenting to the law your ym... rom ym... traditional law ym... traditional ym...

MD: ym... rom ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym...

RT: Yo.

MD: Yo ym...

RT: We should be telling the mägaya ym...

MD: Yo, yo, yo.

RT: The lawful story, the true lawful story hey?

MD: ym...

RT: Yeah.

MD: ym...

RT: ym... yeah.

MD: ym... yo.

RT: Yo ym... let's come back again and we'll pick up on this because there is one other issue I want to raise with you on this one yeah?

MD: ym... yo ym...

Story No. 3: Lawyers now naming who are landowners

RT: So ym... I just want to talk about some of the ym... some of the confusion that's coming in over who are the real landowners and who are the real TOs, as the Lands Council calls them, the traditional owners, the ym... yeah?

MD: Yo.

RT: I'll tell you straight out ym... Balanda government ym... they want to know the ym true story... hey?

MD: Yo

RT: They really do want to know the ym truth... but then we've got ym...

MD: Yo, yo.

RT: It could be the Lands Councils committee they're ym...

MD: Yo.

RT: And I'm not blaming them, I'm just saying that is what it is hey?

MD: Yo.

RT: And we have anthropologists even though it's their job they think they have the right ym... but they're still ym... as I say, they don't know the ym... the evidences that Yolŋu law hey?

MD: Yo.

RT: And because Yolŋu law is ym... Yolŋu law is ym...

MD: Yo.

RT: That's the trouble, Balanda think Yolŋu law is just some little thing, like it's just get the ym... or just get the ym...

MD: Yo.

RT: Just get the ym... that's enough.

MD: Hmm.

RT: Or something hey?

MD: Yo.

RT: Where what we're talking about is ym... is we're talking about Yolŋu rom is really ym... is really ym... it's complex, it's very complex ym... hey. So sometimes what happens is the some Yolŋu will ask the lawyers, Balanda lawyers ym... and those lawyers from Canberra, Sydney, Melbourne whatever, ym... rom ym...

MD: Hmm.

RT: They are ym... rom ym... but they look at the ym... not all of them, they look at the ym... anthropologists ym... they look at that ym... the ym... and they think, 'oh ym... so and so ym...' hey, hey?

MD: Hmm, hmm.

RT: But the Lands Rights Act, the ym... are traditional owners, ym... hey?

MD: Yo.

RT: ym... governance ym... rom ym... especially ym... rom ym... hey?

MD: Yo.

RT: So sometimes the lawyers will say 'oh you're the landowners' and then those Yolŋu are listening to them they're not listening to ym... yeah they're not listening to ym... rom they think the lawyers now from Sydney, Melbourne or ym...

MD: Yo.

RT: And they start to follow them hey?

MD: Yo ym...

RT: Go.

MD: ym...

RT: ym...

MD: ym...

RT: Hmm.

MD: To be honest.

RT: Hmm.

MD: ym... make me sick.

RT: Yeah.

MD: ym...

RT: Hmm.

MD: ym... Yolŋu rom ym... Yolŋu ym...

RT: Hmm.

MD: ym...

RT: Hmm, hmm.

MD: ym...

RT: Yeah.

MD: ym... as we were growing up.

RT: Yeah.

MD: ym... five minutes job.

RT: Yeah.

MD: This is a...

RT: A lifetime job.

MD: Lifetime job, yo.

RT: Yeah.

MD: And how can somebody who doesn't know change the story all of a sudden to suit ym... benefit?

RT: Hmm.

MD: benefiting ym...

RT: Hmm.

MD: That is not on.

RT: Hmm.

MD: ym...

RT: Hmm.

MD: They are using that for their own ym... don't need us.

RT: Let me say some of these Balanda, they think they are doing the right thing but really they're like you're saying, it's about time we do some truth telling yeah, you said in another program.

MD: Yo, of course yeah.

RT: But some of these Balanda that do this sort of thing are doing it for their own gain, they're being paid money right and so they're wanting to believe that's the true story but they don't know the full story, they haven't got the full story, yeah? They've only got little bit of it and so this is where it's important for Yolju to hear what we're talking about and start to talk about the ym... hey?

MD: Yo.

RT: Don't start thinking that the Balanda have got the ym... here.

MD: Hmm.

RT: Because Balanda haven't got the ym... here.

MD: Hmm.

RT: The Yolŋu have got the ym... the Yolŋu have got the authority and the power here to ym... hey and if ym... if you're quiet then the true story can't come out hey, but if Yolŋu start to say 'hey this is the true story'...

MD: Yo.

RT: ...about this land...

MD: Yo.

RT: ...the Canberra parliament, Canberra parliament ym... Lands Rights Act said right through the Lands Right Act, it says over and over again, it says the traditional owners, their system of law, ym... traditional owners ym... rom ym... everything you've been saying about Yolŋu evidences is what the Balanda want to hear as ym... evidences, ym... we have to learn the English terms to be able to talk about Yolŋu evidences. Like you can't just say Märi ym... because Balanda ym... Märi ym... you've got to say the mother's mother's people, the grandmother's people on the mothers side, hey? And the grandchildren and the ym... the mother's people and the ym... and the children that are born from those mothers, so there's five clans ym... clans, one, two, three, one, two, three, four, five ym... yeah?

MD: Yo.

RT: Across five clans are witnesses, not just the clan that's the landowning clan but other clans also witnesses to ym... hey?

MD: Yo.

RT: And we all have to start telling that story together hey?

MD: Yo.

RT: Sorry I've taken up a long time there talking.

MD: No, yo ym...

RT: ym...

MD: Yo.

Story No. 4: Some Yolŋu just after money - not following law

RT: ym... we're talking about those ym... Balanda evidences yeah and you started asking me what were the Balanda evidences ym... evidence ym... Yolŋu rom Yolŋu ym... hey?

MD: Yo.

RT: Is it, is it a bit clearer now what Balanda are looking for or...?

MD: Yo.

RT: What do you think now?

MD: ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym... Balanda ym...

RT: Hmm.

MD: ym...

RT: Hmm yep.

MD: Jurisdiction ym... jurisdictions ym...

RT: Yes, yes.

MD: Mägaya rom peace order ym... governance and good government...

RT: Yes.

MD: ...should be established.

RT: Good government.

MD: Should yeah good, good government.

RT: Which is ym... Mägaya rom.

MD: ym... Mägaya rom.

RT: Yeah.

MD: Yo.

RT: And that rom ym... yeah?

MD: Yo, yo.

RT: The law that you have assented to.

MD: ym...

RT: Hmm.

MD: Yolju ym... money hungry Rupiah ym...

RT: Yolju and Balanda.

MD: Yo, Yolju and Balanda yo.

RT: Yeah.

MD: ym... Rupiah.

RT: Hmm.

MD: ym... Balanda.

RT: Yep.

MD: ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym... Yolju ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym... descendants ym...

RT: Hmm.

MD: ym... they deserve every rights, every right.

RT: Hmm.

MD: To ym...

RT: Yeah.

MD: ym...

RT: Hmm.

MD: ym...

RT: Hmm.

MD: ym... yo ym... yo, yo ym...

RT: Hmm.

MD: ym...

RT: Yep.

MD: Yo ym...

RT: Hmm.

MD: ym... yo, yo ym...

RT: Hmm.

MD: Yo.

RT: Yeah I know ym... what we're talking about ym... yeah for some people but if we don't, if we don't ym... then there's nothing ym... yeah we're living in a rom ym... situation yeah we should be living in a rom ym... situation hey ym... like you're saying, lawful and the way of peace, the big Mägaya, hey?

MD: Hmm.

RT: And that's why we're talking about it and we need to keep talking about it and as Yolju learn more and more about the Balanda ym... how we can say these things in English so that Märi ym... all the citizens cause maybe we need to have a different ym... of how the Lands Council comes and talks to people, maybe we need to be teaching even the anthropologists about how is the proper way, the true way of establishing the evidences, yeah? In relation to that, as you say, right from the citizens right down to the ym... down to the alliances hey?

MD: Yo.

RT: Which are all ym... they all support each other.

MD: Yo.

RT: Yeah.

MD: ym...

RT: ym...

MD: Yo ym...

RT: We'll come back another day.

MD: Yo.

RT: And we'll keep talking on this.

MD: ym...

RT: And...

MD: ym...

RT: ...hopefully ym... Yolŋu ym... Mägaya ym...

MD: Yo, yo.

RT: ym... yeah.

MD: Yo.

RT: Yo ym...

MD: ym... yo ym...