
An introduction to the Ngarra law of Arnhem Land

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This article attempts to describe the Ngarra law of Arnhem Land in order to provide access to the law for interested people, especially “white” (Balanda) lawyers. The law described is that of the Yolngu people (who speak the Yolngu matha languages) yet the article is written in English. Hence many terms and concepts from one language have been used to describe the law of another. In addition, the Ngarra law is not simply “law” as understood in Australian legal circles. Ngarra “law” is religious customary law, that is, the law of the tribal religion of the Yolngu adherents. Accordingly, this article has not been drafted with Australian methods of legal interpretation in mind, which should not be applied to it. Rather, this article may be understood as more akin to a secondary legal source than a primary legal source; the primary sources having been retained (and remain mostly secret) by the Ngarra law custodians. As a law text, this article is unique in the Australian law landscape and accordingly may be described as sui generis. In this article, the terms “Yolngu (customary) law” and “Ngarra law” are used interchangeably, and the term “polygamy” is used to describe polygyny.

INTRODUCTION AND ACKNOWLEDGMENTS

The *Ngarra* (Gamurr-guyurra) customary law was used for hundreds of years before the white settlers came ashore in the great land of Australia. The land and the sea was part of the system that had been mandated and controlled by the law of people of different clans, that is, the Indigenous customary law as declared in the *Ngarra* (the Indigenous justice assembly of law). The law played an important role in driving the economy, community wellbeing, welfare, respect, cultural obedience, marriage, ritual, ceremony, moiety system, environmental law, the law of the land and sea, treason, punishment, leadership, management, initiation, sentencing and other cultural obligations. The role of *Ngarra* customary law stood firm in the minds of Indigenous people who highly valued the safety and wellbeing of individuals, groups, clans and the whole community.

* Yirritja, Ngaritj, Baru, Traditional Owner for Milingiimbi, Gamurr-Guyurra, Arnhem Land, Northern Territory of Australia; leading *Yolngu* customary law identity and *Ngarra* Elder. This article was prepared in consultation with Northeast and West Arnhem Land Elders. The first draft of the article was written entirely in English by the author, and was subsequently edited by Danial Kelly, Lecturer in Law at Charles Darwin University, with two main purposes in mind: to retain as much as possible of the original language, voice and style of the author; and to make the text accessible to a wide audience of English speakers.

The customary law predates the European invasion of Australia, it even predates Christ. It was handed down from one generation to the next until it reached the current generation living now in the 21st century. Although it is unseen to the Europeans and their laws, this customary law is in use and is being practised across the Indigenous nations, especially in Northeastern Arnhem Land. Historically, the customary law was not written down with pen on paper. Today the Indigenous customary law is written to keep the customary law strong and make it known to Indigenous and non-Indigenous peoples alike. In this written format it is presented formally to Australian governments, and other organisations and institutions across the Indigenous nations of Australia.

Yolngu leaders declared the *Ngarra* system of law and order up until the new Northern Territory government achieved self-government in 1978. This *Ngarra* law used by our nomadic ancestors – the ancient *Ngarra* law proclaimed and enforced long before European colonisation – is still in use today to prosecute *Yolngu* people according to *Ngarra* law. Criminal activity is not tolerated by the *Ngarra* law.

Because of the grief caused to Indigenous people by the Intervention,¹ this customary law has been written down, to be viewed across the Northern Territory and Australia in order to acknowledge that Indigenous customary law was here before the Europeans visited and is still here now. Our customary law and legal system is quite similar to those in the Muslim world, the Jewish nation, Hinduism in India, and other customary legal systems in Indonesia, South America, Africa, North American Indian nations and many others. Not all Indigenous legal systems are the same but ancient history tells us when we look at similar law in many parts of the Indigenous world we say we are like you: suffering to survive.

I decided to write down this law after working in many fields of education for a long time. I have studied the customary law for almost 35 years, learning what are the consequences in Indigenous law, what are heavy penalties, what are light penalties and what type of punishment is appropriate. I have studied Indigenous welfare law, customary marriage law and many other areas of law. Many senior law men that I have met and studied with have entrusted me with their law, because they wanted to make sure that some day this law would be taught to someone who would write it down for Australian readers across the Northern Territory and further. Many of those men have died and some are trying to fight to stay alive in their old age. Many I have met and spoken with had powerful knowledge and wisdom. Some were Indigenous defence lawyers and Indigenous prosecutors (“*jungay*”, like a police officer who prosecutes an offender). They had deep intellectual knowledge of the Indigenous customary law. I met with elderly chiefs, who were very powerful, knowledgeable and skilled in rhetoric. They could judge the people in the Indigenous court with

¹ Northern Territory National Emergency Response, aka “The Intervention” and “NTER”. The Intervention was initiated by the Howard Coalition government in 2007 purportedly in response to claims of widespread child abuse in Northern Territory Aboriginal communities. The Intervention involved, inter alia, compulsory acquisition of Aboriginal land, compulsory health checks for Aboriginal youths and quarantining of 50% of welfare income for redemption of food and other “essentials” (excluding alcohol and tobacco) at certain prescribed shops. The Intervention is supported by a raft of legislation, most predominantly the *Northern Territory National Emergency Response Act 2007* (Cth).

powerful words. They could speak in public and the court using their second Indigenous language, or even in English, to convict an offender with authority.

The Indigenous court procedure is similar to western court procedure, but it is informal. People of different clans come to hear the verdict openly in the community. People of all different clans have the right to hear and express their feelings, pain and hurt, but the *jungay* has the special capacity to speak on behalf of the victim and his or her family. This will continue until the accused is proven guilty or not guilty. Sometimes the families are not satisfied with the court order, in which case they may take the matter to the “*Galka*”² for further investigation and possibly additional law enforcement.

Some punishments under *Ngarra* law may be considered harsh. In writing this article I have not tried to hide the harsh parts; rather I have honestly and accurately recorded the law as it is. Whether these harsh parts of the law can be changed or not is a question for the *Ngarra* law leaders to decide inside the *Ngarra*. One thing the reader needs to keep in mind is that most settlements under *Ngarra* law, including punishments for what *Balanda* (“white” people) call criminal matters, are negotiated between the parties. Most of the time the offender will, after going through negotiations, agree to the punishment.

An acknowledgement for the two most wonderful people with whom I studied and learnt much throughout their careers: Johnny Balaya and Jimmy Mardama Pascoe. Johnny Balaya was a powerfully-minded person, full of knowledge and of the highest intellect. He was a judge of the community people’s court and would use his skills in cross-cultural communication to deliver authoritative judgments impartially. He is now resting in peace in his home town of Maningrida.

Jimmy Mardama Pascoe took over from Johnny Balaya and this manuscript is a tribute to him. Jimmy Mardama Pascoe is a powerful public speaker and fully engaged in community politics, family affairs, Indigenous welfare, and in other areas making sure that peace is kept in the community, people are living in harmony, and that the people are enjoying each day of their lives. An illness caused him to discontinue his career as mediator and judge for his people; the community and the homelands offer many thanks to him.

Many thanks also to Indigenous people from the Northern Territory. From the Top End: Katherine, Elliott, Galawinku, Lake Evalla, Ramingining, Tiwi Islands, Lajamanu, Maningrida, Yirrkala, Numbulwar, Hudson Downs, Beswick, Balun, Roper River (Ngukurr), Port Keats, Daily River, Kalkarindji. From central Australia: Alice Springs, Alagurung, Yuendumu, Wilmore, Santa Theresa, Amati. Also from Western Australia (Kununarra and Derby) and from Queensland (Thursday Island, Bamaga and Mornington Island). These people had the same dreams and thoughts about the life in the customary law and still are practising it in their communities, even those being socialised into non-Indigenous society. It won’t matter at all where they are, because they still have a strong heart in their own culture and law and cultural obligations toward their own community whereby they benefit their own wellbeing as well as that of the community.

² “*Galka*” is a *Yolngu* language term that can be used to mean “sorcerer” or “sorcery”: original editor, Danial Kelly.

THE NGARRA LEGAL SYSTEM AND CEREMONY

The *Ngarra* is the central term for the customary law of the *Yolngu* Aboriginal people of Arnhem Land in the Northern Territory of Australia. Community wellbeing and peace is central to the aims of *Ngarra* law. The *Ngarra* law has functioned for thousands of years and has dealt with individual crisis, sorcery, community ills and inter-clan Aboriginal warfare.

Ngarra law is still being used in many parts of Arnhem Land. The legal system is expressed through arts, such as painting, song and dance, and through natural habitats, such as rock, earth and water formations and the plants and animals living in them. There are many areas of *Ngarra* law, such as law on land and sea, law on marriage and law of ceremony. Observance of *Ngarra* law accomplishes *magaya* – a state of people living in peace with each other and their environment. *Ngarra* ceremony is an obligation for people in the *Yolngu* culture. The performance of *Ngarra* ceremony brings about peace and harmony among the people.

A major function of *Ngarra* ceremony is for participants to learn *Ngarra* law, including those who have broken the *Ngarra* law. They may be punished in the *Ngarra* ceremony, but the main function is to educate them of the *Ngarra* law so that there will be peace (*magaya*) in the land. If they don't understand the law there will always be violence in the community. For example, young men are taught about the *Ngarra* law that says "do not steal" by covering their hands with burning hot sand and ashes.

In addition to this educative and correctional function, dispute resolutions may be dealt with by the *Ngarra* court in very serious cases. The two major types of *Ngarra* orders issued to resolve disputes are the *makarrata* (a negotiated settlement that may include aspects of compensation for the victim) and *Galka* (punishment by sorcery – usually death – conducted by the socially-sanctioned "*Galka*"). Trade can also occur in the ceremony ground, including when a ritual cleansing *Ngarra* ceremony is taking place.

Ngarra can be *dhuyu* (holy). Ritual is *dhuyu* too.

The land of the law

In Arnhem Land there are many clans but they are all united under *Ngarra*. In the Dreamtime, Baru (the mythical totem crocodile) came along from the east. Baru named certain places and gave law to those places. He gave law to plants in those places. He gave law to the fish in those places. Fresh water law and salt water law. He gave law to the people and animals. We are linked to other clans by the same totem. This is the Dreamtime. Baru made us under one umbrella; the *Ngarra* is the umbrella. The *Ngarra* law tells us how much of the land we can use, where we can go and where we can live. The land is ours but the land owns us and we are part of the land. The land is very important to us. When Baru gave the law to the land he made Dreaming tracks as he went along. He gave the land to the people. He gave law to people.

The law was made in the Dreamtime. Baru travelled from the east. Baru once fought with Jarkitj (Willy Wagtail) who cut off one of Baru's arms. They fought for a special reason. Jarkitj had a fire. Baru wanted fire so he could cook his meat because he had been eating it raw. Baru stole the fire from Jarkitj. He swallowed

Jarkitj's fire. Lots of people speared Baru because of that terrible thing he did, that is, stealing Jarkitj's fire. Finally Baru admitted he stole the fire. Then he did the right thing. As he travelled he first named the tribes, he gave them the law. He named all the things that he saw, such as the plants and trees. Those plants and trees are metaphors for knowledge of the law from Baru. All those tribes and lands and things in the land are linked because Baru named them all and gave them all the *Ngarra* law. The fish have law. The snakes have law. The lizards have law. That same *Ngarra* law is still practised now.

The dalkarmirri and the jungay

The two predominant offices in the *Ngarra* legal system are those of the *dalkarmirri*³ – the primary legal, religious and political figure in the *Ngarra* system – and the *jungay*, who could be described as *Ngarra* lawyers. In criminal matters, *jungay* function as both prosecutors and defence lawyers. *Magaya* (peace) is what the *dalkarmirri* and the elders want and what the *jungay* work towards. There may also be a tribal justice council of elderly clan leaders who function like a jury.

Few people become a *dalkarmirri*. The requirements to become a *dalkarmirri* include: to have a clear conscience; fulfill customary marriage; commit to a peaceful (*magaya*) life; and accept that punishment is part of the customary law.

Marr is spiritual power or strength or supernatural power. You can see *marr* in some people, such as Djinyin.⁴ The power that Djinyin has comes from the ancestors. You can sense that power and authority when he speaks. *Marr* is very important in *Ngarra* law because that is where the strength is. A *dalkarmirri* has *marr*.

Sometimes the law can be harsh on people but it must still be followed. Once, just a few years ago, maybe in 2006 or thereabouts, a husband and wife were having an argument. She walked off and walked right into a ceremony coming from the other way, the Roper ceremony. She was caught up right in front of the ceremony men. It is against the *Ngarra* law for a woman to enter a men's ceremony so she had to be punished. She was put in the ceremony jail but not physically punished. Some *jungay* from another clan negotiated with the Roper people according to ceremony law. They negotiated a high price for her release. They paid \$2,500, six tins of log cabin tobacco, two tins of flour and two tins of sugar. If that negotiation was not successful, the Roper people could have taken her back to Roper and that's where she would have had to stay. Nothing could

³ *Yolngu* society is divided into two moieties: *dhuwa* and *yirritja*. However, *Yolngu* society is less concerned about division than unity. The two moieties complement each other to complete *Yolngu* society. The author of this article, George Pascoe Gaymarani, is of the *yirritja* moiety and therefore Gaymarani writes from the *yirritja* perspective. One difference that can arise between the two moieties is terminology. For example, Gaymarani refers to the highest office in *Ngarra* law as a *dalkaramirri*. *Dalkaramirri* is the *yirritja* term for such a *Ngarra* leader; the *dhuwa* moiety equivalent to *dalkaramirri* is *jirrikaymirri*. Wherever one reads the term *dalkaramirri* in this text, it may be replaced with the term *jirrikaymirri* as they are equal offices.

⁴ Djinyin Gondarra is a *Yolngu* man resident in Galiwinku, Elcho Island, Arnhem Land. Djinyin is a Uniting Church minister and a *jirrikaymirri*. A *jirrikaymirri* is the *dhuwa* moiety equivalent to the *yirritja* moiety *dalkaramirri*.

have stopped the Roper men taking the woman back with them to do what they wanted with her if the negotiations had not been successful because they have the full power of the sorcery (*Galka*), the law and the *Galka* as their authority.

Morning star ceremony

The morning star ceremony also brings people from different clans together to celebrate friendship and living harmoniously together (*mamurrung*).

Death ceremony (funeral)

The death ceremony rituals are important for social cohesion. The deceased is remembered for his or her good deeds. The death ceremony brings social peace by reuniting family, including extended family and other clan members.

In the death ceremony the widow of the deceased is given in marriage to the deceased's brother for the continuation of descendants in the same line. (This may be a polygamous marriage if the brother already has a wife.)

Education of children and young men and women takes place in the death ceremony. Young leaders, both male and female, can express their first steps in a leadership role as a *jungay*. The large crowd will witness their attempts at demonstrating leadership and will recognise if the quality of authority is upon them.

CURSING IN THE NAME OF NGARRA LAW

Cursing in the name of *Ngarra* law is unlawful. The punishment for cursing is to be done in the *Ngarra* court by the appropriate people on the appropriate ceremonial ground.

The accused will be summoned by the *Ngarra* court or the council of elders who have the authority to uphold the *Ngarra* law. The accused person will stand before the *Ngarra* court. The accused must only be prosecuted by someone to whom the *Ngarra* law belongs; no-one may prosecute cursing matters for a law that does not belong to them.

Cursing someone could endanger the lives of the individual doing the cursing as well as the intended victim. A person who curses another while the *Ngarra* court is in session risks being punished by death by *Galka*.

GENERAL RIGHTS, PROTECTIONS AND PRIVILEGES FOR THE INDIVIDUAL UNDER NGARRA LAW

Under *Ngarra* law an individual enjoys the right, protection and/or privilege to:

- learn about health and related issues, including sexuality;
- learn about awareness of culture and related issues, such as skin groups and moieties (*yirritja* and *dhuwa*) and customary marriage law;
- learn the languages of their clan group;
- parental guidance, counselling and discipline;
- be disciplined by other appropriate people;
- guidance and support when resolving conflict;
- personal privacy;
- personal safety;
- avoid conflict;

- develop self-awareness;
- learn leadership through *Ngarra* ceremony and trial and error;
- learn about marriage law, including promise marriage and polygamy;
- marriage guidance;
- guidance in childbearing and childrearing;
- privacy in marriage and in sexual activity; and
- be respected, especially as an old man or old woman.

THE OBLIGATIONS OF RESPECT UPON AN INDIVIDUAL

Individuals are expected to be responsible and have an awareness of customary law obligations, including:

- respect the *Ngarra* law;
- respect the needs of others;
- respect the cultural ways of living of others;
- respect customary law marriage, including polygamy;
- respect the duties of others;
- respect peace and justice;
- respect the elderly, invalid and ill persons;
- respect mother and father;
- respect all family;
- respect women of all ages;
- respect men of all ages;
- respect the cultural boundaries;
- respect people who live in a household (when visiting);
- respect traditional owners;
- respect people who live in the land (that you are visiting);
- respect different ethnic and language backgrounds;
- respect different language groups, clans and tribal leaders;
- the obligation to bring peace through conflict resolution;
- wives being obedient to husbands at all times;
- husbands being obedient to wives at all times;
- children and teenagers being obedient to their parents at all times; and
- being obedient to elderly law men and women, because they are the source of life through their knowledge of the law.

MARRIAGE LAW

Yolngu customary marriage law has been handed down from generation to generation. It is the law for people to live in peace and harmony. Marriage law is closely related to many other areas of law, such as the law on promise marriages, child brides and polygamy (which is permitted, even preferred, under *Yolngu* customary law). Marriage is between men and women and it is a central part of *Yolngu* culture; it is part of being a *Yolngu* person. Observance of marriage law accomplishes *madayin*, that is, peace and order according to the sacred *Ngarra* law.

Under *Ngarra* law, the ideal marriage is an arranged and polygamous marriage. A polygamous marriage is a right under *Ngarra* law. Marriages are arranged when the girl is still young. The girl is known as a child bride but the marriage does not take place until the girl is sexually mature. Under *Ngarra* law,

the parents have the right to give in marriage their daughter to whosoever they choose within their own clan group being in right skin relationship to their daughter but not to someone outside of the clan. Moiety gives identity to *Yolngu* people. Inappropriate moiety skin group marriage breaches the *Ngarra* law of marriage and could result in a heavy punishment. Individuals who choose to marry each other contrary to *Ngarra* law could find themselves in the *Ngarra* court for breach of marriage law. Individuals who decide to marry without consent are dishonouring and disrespecting *Ngarra* marriage law.

Marriage should be within the same tribal clan. Marrying from another tribal clan is dishonouring to the clan group and will “mix” the descendant line. The purpose of both men and women under *Ngarra* marriage law is to continue the descendant line of the tribal clan.

When a promised bride has reached sexual maturity her promised husband may take her for his wife. A 40- or 50-year-old man has spent his life learning the *Ngarra* law. His new wife might only be 13 to 16 years old and she will be sexually mature but she will not know much about the law. Yet when she marries him, she has the right to learn from him all the law that he knows that took him a lifetime to learn. But if she breaks the marriage law she must be speared through the leg. If the husband does not want to punish her then her mother or brother or sister will punish her, perhaps by hitting her with a heavy *nulla nulla*.⁵

If the parents decide not to let their daughter get married or if the daughter herself chooses to be single and not get married then that shall be the case.

The socioeconomic aspect of marriage law

Marriage is important in building relationships between the clans, especially when it is trade-based. Marriage is an institution within *Yolngu* custom for organising economic support within families and across clans. It is also required that marriage is supported economically by the family, including the extended family, and a marriage must not fail for reason of lack of economic support by the family. Clan groups will support a marriage even if the marriage is from a different clan group because of the kinship relationship established by their ancestors.

Types of support and obligations

An exchange of goods accompanies a marriage. Items such as clothing and money are exchanged according to the customary obligation on supporting family. Generous giving is required by the law even if the giving individuals are themselves in poverty.

Yolngu customary marriage law also includes an obligation on the marriage parties to care for and love each other in personal and intimate ways. Men and women are especially made to experience fulfilment, enjoyment and happiness in marriage.

Marriage law requires men and women to meet the daily domestic needs of the family. The husband is required to be the head of the household; that is his duty. The wife has duties towards her husband and towards her children.

⁵ A *nulla nulla* is a wooden weapon approximating a baton. It is used by the *Yolngu* for ceremonial purposes and in actual combat.

Polygamous marriage is compulsory in *Ngarra* law. Marriage should happen only within the extended family. A wife in a polygamous marriage fulfils her duty by furthering her forefather's line in her children. This type of marriage culture is the law. *Yolngu* people live their lives based on this polygamous marriage culture. Marriage culture is an important part of human enjoyment and it is a part of *Yolngu* culture that gives great pleasure and fulfilment.

Marriage is sacred

Yolngu customary marriage is sacred. Observance of marriage law accomplishes *madayin*, that is, peace and order according to the sacred *Ngarra* law. Love in marriage demonstrates to others that marriage is sacred in *Yolngu* custom. According to *Ngarra* law, a safe marriage is a marriage within the clan or a polygamous marriage.

Marriage is part of the ceremony law that links to women's business and should be respected at all times. Wives must abide by the ceremony rules when they are in the female ceremony ground; a serious breach of this law could result in death by *Galka*.

In *Yolngu* law wives are understood as the makers of children. As a mother she is regarded as an example of *madayin* and is herself sacred like the Mother of the Earth and should be respected by others with care and love.

Wives who are pregnant receive special customary law advice from the elderly women for guidance in marriage and with the expected baby. The birth of a child is a sacred event in the *Yolngu* world.

A widow will be given in marriage to the deceased's brother for the continuation of descendants in the same line.

Marriage troubles

Yolngu marriage law says that marriage can create a better life for the marriage partners but it depends on the nature of the individual's spouse.

A mixed marriage (*Yolngu* with non-*Yolngu*) will only cause one problem after another and there will be no sense of peace in the marriage.

Serious problems arise in a marriage when one of the spouses has another boyfriend or girlfriend. In this situation a conflict resolution process through ceremony law exists; however, it is dangerous.

Marriage should not occur too early in life. Marriage between very young people is too fragile and usually does not survive. If marriage between very young people does occur it needs to be heavily supported by the extended family. Guidance, disciplining and counselling according to the customary law should take place.

Spouses must not engage in sexual activity outside of marriage as it could cause danger to the individual's health and cause tribal conflict. A married woman must not engage in extramarital affairs behind her husband's back as it can be punished heavily, including being beaten by her husband or death by sorcery.

Other offences between spouses under the marriage law include unlawful domestic violence, swearing, cursing, shaming, dishonouring and name-calling.

These offences are committable by both men and women; they are serious offences. Punishment for breaches of marriage law may in some instances be compulsory and in others not compulsory. The punishment will largely depend on the facts of the breach. The most serious offences can be punishable by death.

Another factor that may be relevant in determining whether and how a marriage law breach is to be punished is the familial relationships involved, starting with the immediate family and continuing to the clan group ancestors. In some circumstances it will only be the husband that can punish his wife for a breach of the marriage law.

Life is better for married people than for single people when they take marriage and marriage law seriously. The *Ngarra* law does not allow a marriage to break up. It is wise not to associate with others who breach the marriage law.

Marriage prohibitions

A wife must avoid her brother from getting near to her as it is against the marriage law. Also, a wife must not swear or be sworn to when in earshot of her brother as that too is against the *Ngarra* marriage law.

The naked body of a woman must not be seen by her brother, uncle, father, male cousin or any male member of her family.

According to the women's ceremony law, a husband must not have sexual intercourse with his wife while she is menstruating.

A boyfriend or girlfriend from another clan is known as a "*lubra*" boyfriend or girlfriend. Having a *lubra* boyfriend or girlfriend is inappropriate and dangerous as it is a breach of *Ngarra* marriage law and a breach of kinship rules and offenders may be cursed. A *lubra* boyfriend or girlfriend may be seen as a prostitute.

Law of stealing wives

It is an offence for a man to steal another man's wife (including a child bride or a promised wife).

Stealing another man's wife dishonours him and is a breach of the *Ngarra* marriage law. Whoever disrespects the *Ngarra* law of marriage will stand trial and be prosecuted in the peoples' court. Punishments for stealing a wife include physical punishment in public or death by *Galka*. The stolen woman's sister or brother-in-law has the right to beat the offender in front of the people's court.

The offence of stealing a wife may also be punished by a *Gunapipi* ceremony law – imprisonment for one or two years in a very harsh bush environment. *Gunapipi* is like a jail; it is totally different to *Ngarra*. *Gunapipi* is for serious offenders, both male and female. People sent to *Gunapipi* are re-educated, disciplined, tortured and forced to survive. If the offender breaches one of the *Gunapipi* laws he will face the death penalty. It is an offence punishable by death penalty for a woman to enter a males' *Gunapipi* at night.

If both the offending male and the stolen female breach the *Ngarra* marriage law they could both be punished. Any breach of kinship sexual relation prohibition laws resulting from stealing a wife may also be punished.

To avoid further conflict the offender will be sent to another community or outstation to stay in exile.

Stealing a girl or woman from another tribe or clan is an offence. It is a breach of friendship and relationship between the different language groups.

Prostitution

Ngarra law prohibits prostitution. A woman found guilty of prostitution could face severe physical punishment, including the possibility of death by physical means or through sorcery by a *Galka*. It may be possible for a woman to escape the death penalty if a man agrees to marry her. This marriage is completely at the discretion of the man; the offending woman has no choice in who her marriage partner will be.

THE LAW OF CHILD WELFARE

Children are to receive guidance in life from their parents, grandparents and other family members. Children are required to be obedient to their mother, father, uncle, aunt, grandparents, extended family and extended kin.

While a child's parents have full responsibility for the child's welfare, the grandparents enjoy full authority over their grandchildren. Therefore a grandparent can make a binding decision in regards to their grandchild's welfare even if that decision is against the wishes of the parent. A child's aunt and uncle and other extended family members also have responsibility in matters of the child's welfare.

Parents who are not properly looking after their children may temporarily lose their children. The children will be moved from their real parents and cared for by either an uncle and aunt or grandparents or other extended family until the parents are considered competent again to look after their children. Child welfare disputes are to be settled through mediation.

A promised child bride is to be educated by her future husband until the proposed marriage takes place.

Stealing and breaking into people's homes is an offence under *Ngarra* law. Children caught stealing are sent to their grandparents for more discipline and encouragement.

Initiation ceremony

The *Ngarra* law requires boys and girls to undertake an initiation ceremony when they reach puberty. In the initiation ceremony the elders teach the initiates aspects of *Ngarra* law, especially related to growing up, becoming adults, getting married and having children. Girls' and boys' initiation ceremonies are completely separate; only women can attend the girls' ceremony and only men can attend the boys' ceremony.

Child protection and untouchable law

The *Ngarra* law says that children have a right to receive from their family education, wisdom, and the knowledge and skills required for life, including ceremonial obligations and for leadership.

Parents are to teach their children to obey the law of the land, the law of the sea, the law of peace, the law of violence, the law of cultural obligation, the law of leadership, the law of management, the law of ritual ceremony and the law of economics.

It is against *Ngarra* law for anyone to molest or otherwise sexually abuse or assault a child. The penalty for breaching this law could be death by sorcery.

It is possible for parents to designate their daughter “untouchable” under *Ngarra* law, whereby she will be kept from socialising with bad influences and will remain single. Her body will be sacred and holy and protected. Rather than have her own children, the “untouchable” female will look after her parents in their old age.

It is an offence to have any sexual contact with the untouchable girl. This offence is a violation of a sacred body and will disgrace all the people. Punishment will be upon whoever touches the untouchable girl.

Such an offender will be brought to justice in a public *Ngarra* court. If a male engages in sexual activity with an untouchable girl he will instantly receive the death sentence by *Galka*.

Repeated breaches of the untouchable law could endanger the community life under *Ngarra* law.

THE LAW OF SACRED OBJECTS

Ritual ceremony paintings are sacred objects. They must only be handled or seen by people who are approved by the *Ngarra* law. Exchange of sacred objects between leaders is a way of showing friendship and increasing the relationship between the leaders. When a man seeks a wife (promised wife or other) there exists a protocol in *Ngarra* law that says there will be an exchange of a sacred object for the wife.

The exchange of sacred objects can only be done within the context of a ceremony. Misuse of sacred objects may result in the offender being sentenced to death. Misuse of sacred objects is akin to treason. The offence of treason also attracts the death penalty.

THE LAW OF PAINTINGS

Individual artists have ownership over their own work; however, there are some types of paintings that do not belong to the artist but to the clan or clan leaders.

Copyright of sacred paintings is owned by certain clan leaders. Each clan must have its own design and painting. Individuals have access to their mother’s design, grandfather’s design and their totem design and may paint those designs. Individuals can only paint their own dreaming story based on the totem. Individual artists must not steal someone else’s design.

Persons misusing someone else’s design may be charged with an offence by the appropriate *jungay*.

Remedy (penalty)

The remedy for someone misusing a painting design could be the giving of a woman for marriage to the aggrieved party or death executed by a *Galka*.

BOUNDARY LAW REGARDING PRIVACY, LAND, SEA AND CULTURAL PROTOCOLS

Boundary law regulates the movement of people. Each clan sets its own policy in regards to boundary law. Boundary law has a general jurisdiction over all people; however, some exceptions will be found. One such exception is in the case of a

place (for example a house) that contains a sacred object, where only specifically sanctioned people will be permitted to enter. There is a strong notion of privacy to the boundary law and the contravention of boundary law can result in severe penalty due to the importance given to privacy.

Cultural-physical aspects to boundary law

Boundary law may apply to individuals or to whole clans, that is, boundary law will permit or prohibit certain people entering certain spaces depending upon their clanship. Boundary law may operate to allow or disallow people to be proximate to each other depending upon their blood or skin relationship and these laws apply to close or extended family.

Boundary law may regulate the movement of people over lands and seas and may regulate activities on those spaces; while movement may be permitted, hunting, dispute resolution, fighting or other activities may not. Places of cultural significance (for example, sacred sites) are governed by boundary law that will exclude classes or people; however, it may be possible for individuals within those otherwise excluded classes to obtain permission to enter. Permission can only be given by a traditional owner of the place and the decision is final.

Some spaces are regulated by boundary law on the basis of gender alone.

There is a public safety feature to boundary law as it regulates who may and who may not enter and remain in certain spaces.

Jungay

It is the responsibility of the *jungay* (*Ngarra* lawyer) to clarify the boundary law as it relates to clans and individuals in all matters, including access to land and the conducting of cultural practices, land care, leadership issues, economic activity and other activities. The *jungay* is the appropriate person to act as a mediator in the instance of a dispute in relation to boundary law. As a mediator, the *jungay* will liaise with the relevant clans and the traditional owners of the relevant lands and seas and must follow *jungay* protocol.

JUGAWAN (LAND) LAW

Jugawan law, that is, *Ngarra* land law, is largely concerned with the care and custodianship of the land. A clan's land comes from its ancestors. Under *Ngarra* law, land is not usually bought and sold; however, it is possible to sell land by negotiation. The negotiation must be conducted by the appropriate mediator, known as *Mariwartangu*. One extremely important aspect of land and *jugawan* law is that our grandfathers' bones will rest in the land and not be disturbed.

UNLAWFUL PUBLIC VIOLENCE

Unlawful public violence is unacceptable to individuals and to the community.

A first offender will be given a warning and expected to be on good behaviour in the immediate future.

For further offences, an offender may be interrogated, reprimanded and/or physically punished in the *Ngarra* court by ceremony leaders. The physical punishment of the offender must be conducted in the open in order to restore peace and satisfy the victim's parents and broader family.

Other sentencing options include *Gunapipi* for counselling, education and/or physical punishment to correct the offensive behaviour and an extended period of good behaviour (such as one or two years).

For extreme and repeat offenders there is the possibility that their punishment may be death by *Galka*.

THE LAW OF THE ECONOMY

The law of the economy has two major purposes: to facilitate relationship-orientated trade; and to distribute wealth. Trade may be inter-clan or intra-clan and involves the exchange of goods for other goods or money. Generally speaking, trade can occur in the ceremony ground, including when a ritual cleansing (*Ngarra*) ceremony is taking place.

The trading of goods is based upon relationship and friendship according to *Yolngu* culture and follows *Yolngu* protocols of economic management and leadership and may involve the performance of ceremony rituals. Trading itself builds bridges of peace and love for each other with the mutually beneficial exchange of goods. Exchanging ceremonial items such as sacred paintings and painted objects is a particularly effective way of achieving peace and harmony.

The benefit or profit coming from the trade is for the purpose of supporting the family. Supporting family is obligatory. Support is to be extended to family members generally and specifically to those who are in an impoverished material situation, those who are disadvantaged, those who are unable to look after themselves, and individuals in a *gurrutu* relationship (when a person or a family is adopted into a clan group). Therefore, marriage – a major circumstance for trade – is accompanied by a widening of the support sources and obligations, being the extended family through marriage, which may be widened further via polygamous marriage.

MURDER

It is an offence to commit murder under *Ngarra* law. The offender must be dealt with on the ceremonial ground of the most senior Elders. A *makarrata* involving corporal punishment will be ordered by the Elders to bring peace and stabilise relations between the parties.

The Elders will deliberate on the form of punishment. The offender may be ordered to stand before a public people's court and be physically punished in public. The offender must accept the punishment. Punishment by death through sorcery of a *Galka* is also possible for a murderer.

Anyone who interferes while the offender is being punished may themselves be punished. No family member of the offender may be involved with delivering the punishment.

After the punishment the Elders will deliberate on how to best avoid further conflict. A peace treaty between the parties will be entered into and the Elders will usually order the offender to be exiled from the community.

GALKA LAW

Punishment of death by the sorcery of a *Galka* is a just punishment under *Ngarra* law for the most serious offences, such as dishonouring, disrespecting and abusing the *Ngarra* law.

The role of the *Galka* may include the investigation of an incident. The *Galka* will act secretly in their investigations. The traditional justice committee consisting of the leading *jungay* of different language groups will give the *Galka* the order to cause the offender's death by sorcery. These actions by the *Galka* are lawful under *Ngarra* law.

THE LAW OF GUNAPIPI CEREMONY

Once a person is convicted of a serious crime under *Ngarra* law, he or she is sentenced to serve a *Gunapipi* "prison" term. *Gunapipi* prisons are set up in the bush far from where people normally live. *Gunapipi* camps are supervised and conducted by senior law people (*jungays* or *dalkarramiris*). The duration of the *Gunapipi* sentence depends upon the seriousness of the crime committed. A first offence may attract a sentence of between three and 12 months in a *Gunapipi* prison. (*Gunapipi* is commonly called "ceremony".)

Once in the *Gunapipi* ceremony the offender will be taught discipline. An offender who misbehaves in the *Gunapipi* ceremony will be tortured inside the ceremony ground.

Gunapipi can be *dhuyu* (holy).

Restriction of movement in and out of Gunapipi

The law of *Gunapipi* ceremony prohibits parents and other family from visiting the offender unless they participate in the ceremony. Only men may visit the male *Gunapipi* ceremony camp and only women may visit the female *Gunapipi* ceremony camp.

Offenders inside *Gunapipi* are not allowed to leave the ceremonial grounds until their sentence is completed. Offenders who leave *Gunapipi* early may face the death penalty.

Entry into the *Gunapipi* camp must be authorised by the senior *jungay* or *dalkarramiri*. Unauthorised entry into a *Gunapipi* camp is a serious breach of law. A vehicle that is used in an unauthorised entry into *Gunapipi* camp will be confiscated. A woman who trespasses by entering a male *Gunapipi* ceremony will automatically lose her freedom. Initially she will be isolated, usually in a women's camp. The *dalkarramiri* will consider her punishment. Some *jungay* will prosecute her and some will defend her. Her punishment will reflect the degree of her trespass, that is, if she was caught trespassing quite a distance from the ceremony, for example, 800 m from the ceremony ground, her punishment will not be so severe. In this case she may be required to marry a man determined by the *dalkarramiri*. An alternative punishment may be negotiated. The alternative punishment may be compensation paid in money or in kind or both. If her trespass is quite close to the ceremony grounds, say within 200 m, she may be punished by being required to participate in sexual acts. This punishment may continue for some time, perhaps months. It is also possible that the trespasser will face the death penalty if the trespass is very serious. The trespasser may be offered a choice of punishment. The punishment may be negotiated. Her refusal to accept a punishment may result in her death by the *Galka*.

The punishment for a woman trespassing upon *Gunapipi* grounds can vary from place to place. In some areas the punishment may be harsher than in others.

Women’s ceremony is also restricted. Only people authorised by a senior lawmaker may enter.

PUNISHMENT

Under *Ngarra* law an individual is considered innocent until proven guilty. The sentence applied to offenders of *Ngarra* law depends on the nature of the breach committed. The *Ngarra* law allows for the imposition of sentences upon individuals for up to five or six years. The sentence may include the forced relocation of the offender to another community far away from his or her home or a period of community work and good behaviour within his or her own community. The *Ngarra* law recognises the basic right to reasonable freedom, especially for offenders of less serious offences. (This right to reasonable freedom does not apply for serious offences and for the time spent in *Gunapipi*.) Reasonable freedom means the offender has a right to live and work in the community. The *Ngarra* law punishes the person, but also gives the person a chance to live a normal life of marriage and work and to do good deeds for the community. Below is a table containing a sample of offences together with examples of appropriate types of punishment.

TABLE 1 Ngarra law offences and appropriate punishments

Offence	Appropriate punishment
Small to medium crimes	Community work or <i>Gunapipi</i>
Serious crimes	Expelled from the community (permanently or for a long time)
Intent to kill	<i>Makarrata</i> and expelled far from home
Sexual assault	Corporal punishment in public or <i>Makarrata</i>
Inappropriate marriage	Corporal punishment in public
Harassment and abuse	Corporal punishment in public
Wife stealing	Corporal punishment in public
Prostitution	Corporal punishment in public
Breaking, entering, stealing	Corporal punishment in public
Inappropriate behaviour	Corporal punishment in public or be removed to another community
Unlawful violence	Corporal punishment in public or be removed to another community
Breach of privacy	Mediation

TABLE 1 *continued*

Offence	Appropriate punishment
Entry into restricted area such as ceremonial grounds	Death penalty by sorcery or other negotiated settlement, such as “marriage exchange” for female offenders
Stealing someone’s child bride	Community punishment and promised husband has the right to punish
Disrespect	<i>Gunapipi</i>
Stealing with violence	Parole on remote island (separate islands for male and female)
Juveniles committing crimes	Guidance by parents or other responsible and appropriate kin, or order to attend school if less than 16 years old, or parole on remote island (separate islands for male and female)
Unauthorised cursing in ceremony law	Special <i>Ngarra</i> court for elders to decide punishment

CONCLUSION

This customary law is written for all people across Australia in order that they can learn that *Yolngu* have law. It is commended to you by the people of Milingimbi, Northeast Arnhem Land and many others throughout Arnhem Land and beyond. The community of Milingimbi and the surrounding communities and homelands have strongly recommended that this *Ngarra* law be put forward into the Australian legal system.

The people of Arnhem Land do not want the normal Court of Summary Jurisdiction. The Court of Summary Jurisdiction should always sit as a Community Court when in Arnhem Land. This *Ngarra* law should be the central component of the Community Court when it sits in Arnhem Land. This is one way that the Australian law and the *Ngarra* law can work side by side.

This *Ngarra* law has been used for the safety and wellbeing of *Yolngu* communities long before European contact, and these days it is still vital for community wellbeing. *Yolngu* people are waiting for Australian law to work side-by-side with *Ngarra* law. The *dalkarramiri*, the *jungaya* and the other *Yolngu* elders are waiting for recognition by the Australian lawyers to work collaboratively.

Ngarra law does not have to regulate everything that happens in Arnhem Land or in the lives of Aboriginal people. There are certain areas of life that the Australian law should continue to be the sole source of law on, such as:

- driver licensing;
- motor vehicle registry;
- fire arms;
- entry to Aboriginal land permits;
- illegal drugs;

- alcohol;
- birth and death registry;
- Coroner's Court;
- corruption;
- illegal vessels; and
- immigration.

There are other areas of life that are ideally suited to a combined Australian and *Ngarra* law approach in the Community Court format, such as:

- personal property damage;
- burglary;
- breaking and entering premises;
- harassment;
- assault;
- riot; and
- murder and manslaughter.

The Australian law will only be effective if a *Ngarra* law justice committee, made up of appropriate *dalkarramiri* and *jungay*, agrees to the extradition of a *Yolngu* offender to an Australian law court. The *Ngarra* law justice committee will listen to the offender's victim to see if he or she has a preference for the matter to be determined by *Ngarra* law or Australian law.

Ngarra law was the legal basis for government and self-determination throughout Arnhem Land long before colonisation. How can *Yolngu* achieve self-determination when our legal system is not respected?

The *Ngarra* law is herein written down for everybody's knowledge, especially for people living in *Yolngu* communities. It is hereby shared for the purposes of the *Yolngu* leaders to oversee their jurisdictions, for *Balanda* (white) lawyers to learn and give recognition to it, and for all to lead peaceful lives in communities of wellbeing.

It is possible for the *Ngarra* law to adapt to the changing modern lifestyle and to regulate *Yolngu* community life to the fullest. *Ngarra* law will take up positive opportunities to work with the Australian law in order to support the wellbeing of *Yolngu* communities.

APPENDIX OF NGARRA LAW CASES

The following three reports are of well-known *Ngarra* law cases dealt with by the *Ngarra* Court in Arnhem Land.

Case 1: The Milingimbi prostitution case

Around 1930, an infamous breach of the *Ngarra* anti-prostitution law was committed in the community of Milingimbi by a young woman and a number of men.

The offenders were exiled to the Island of Murrungga, which at that time was an uninhabited island around 30 km north of Milingimbi through crocodile-infested waters. Murrungga Island is a harsh environment and offers little, if any, opportunities for happiness and enjoyment.

One young female, possibly 14 or 15 years old at the time, had prostituted herself to eight males. Under the *Ngarra* law prostitution is a serious offence. Prostitution brings disgrace to the clan in particular and the whole of *Yolngu* society generally.

All of the offenders were sentenced to stay on the island prison of Murrungga for 10 years (the woman in a separate location to the men). The males were originally handed 14-year sentences, which were later reduced to 10-year sentences so as to be the same duration as the female's sentence.

Five of the males escaped Murrungga; however, they were not received into any *Yolngu* community due to their crimes and their breach of the *Ngarra* court order to remain on Murrungga. After spending around two years on the run the escapees were brought before the *Ngarra* law council who pronounced their breach of the *Ngarra* court order by leaving Murrungga had earned them the death penalty by sorcery (*Galka*). The five escapees died shortly afterward.

The four prisoners that remained on Murrungga were allowed to return to their community during World War Two. Upon their return to *Yolngu* society, the four were given back their lives so that they could live normally. They were able to work and marry and live a good life, including the female who was given the opportunity to marry her promised husband immediately upon her release from Murrungga. She married her promised husband and had children of own and lived for years in parenthood and normal womanhood. Later she died in her husband's arms having been obedient to the *Ngarra* law since her release.

These are the offences under *Ngarra* law that the female was found guilty of by the Assembly of the Council of Ceremony Leaders:

1. Failure to protect her young womanhood through unlawful sexual contact.
2. Prostitution.
3. Possibly allowing the transmission of sexually transmitted diseases (*Yolngu* were aware of sexually transmitted diseases as they had experienced these illnesses via the Macassan fishermen).
4. Sex outside of marriage.
5. Stealing someone else's promised male.
6. Having *lubra* boyfriends (that is, inappropriate kinship relationship between the female and the males for being boyfriend/girlfriend; aka "wrong skin").
7. Having sex with males in inappropriate kinship relationship for sexual relations.
8. Having sex with males in inappropriate kinship relationship for sexual relations without permission.
9. Dishonouring *Ngarra* law by having sex with males from another clan group.
10. Disrespecting *Ngarra* sex law.
11. Did not display discipline or accept her parents' guidance.
12. Breach of the *Ngarra* law that requires sex to be done in private (sexual privacy law).
13. Wasting her virginity.

These are the offences under *Ngarra* law that the males were found guilty of by the Assembly of the Council of Ceremony Leaders:

1. Failure to protect their young manhood through unlawful sexual activity.
2. Prostitution.

3. Possibly allowing the transmission of sexually transmitted diseases (*Yolngu* were aware of sexually transmitted diseases as they had experienced these illnesses via the Macassan fishermen).
4. Sex outside of marriage.
5. Stealing someone else's promised female.
6. Having a *lubra* girlfriend (that is, inappropriate kinship relationship between the female and the males for being boyfriend/girlfriend; aka "wrong skin").
7. Having sex with a female in an inappropriate kinship relationship for sexual relations.
8. Having sex with a female in an inappropriate kinship relationship for sexual relations without permission.
9. Dishonouring *Ngarra* law by having sex with a female from another clan group.
10. Disrespecting *Ngarra* sex law.
11. Did not display discipline or accept their parents' guidance.
12. Breach of the *Ngarra* law that requires sex to be done in private (sexual privacy law).

Thus the *Ngarra* law was proclaimed and upheld by the people of Milingimbi, from the border of Gattjirk homelands and across the Northeast of Arnhem Land, in Murrungga, LaNgarra, Dipirri, Bodiya, Rapuma, Gamurruguyurra, Gumurgumuk and Yanangarduwa, and it is still in use today.

Case 2: The Milingimbi gang-rape case

In 1978, five young teenage males were convicted by the *Ngarra* justice committee of a number of offences surrounding the sexual assault of a non-Indigenous female teacher in Milingimbi.

These are the offences under *Ngarra* law that the offenders were found guilty of:

1. Breaching an individual's privacy.
2. Failure to respect an individual's privacy.
3. Breaching the "untouchable" law (the victim was deemed by the *Ngarra* justice committee to be "untouchable" under *Ngarra* law, that is, she was a protected person and it was forbidden for anyone to have sex with her).
4. Breaching the "untouchable" law without the victim's consent and having been previously rejected by the victim.
5. Sexual misconduct.
6. Stealing the victim's personal property.
7. Breaching the law of respecting a person's personal rights.
8. Breaching the law protecting an individual's right to live in peace and happiness.

The *Ngarra* justice committee held that had the offences totalled 10 or more in number then it would have been open to them to sentence the offenders to the smallest and remotest island from Milingimbi, namely Gurriba Island, which is approximately 80 km from Milingimbi, for up to 10 years.

The *Ngarra* justice committee considered that due to the offenders' young ages it would be more beneficial to all concerned if the offenders were rehabilitated in order that they might live good and peaceful lives in *Yolngu*

society rather than possibly hardening them into even worse criminals by sending them to the harsh environment of Gurriba Island. Therefore the *Ngarra* justice committee chose to sentence the offenders to five years exile on Rapuma Island, which is the island closest to Milingimbi. On Rapuma the offenders received food and medicine, education and guidance and encouragement from Elders to live properly upon their return to society.

The teacher-victim appeared before the *Ngarra* justice committee in order to provide them with her statement. She explained how she had been asleep when the offenders entered her house and gang-raped her. The teacher accepted the *Ngarra* justice committee's proposal to sentence the offenders to five years exile on Rapuma provided that her personal property was returned to her.

After five years on the island the *Ngarra* justice committee accepted the offenders back to Milingimbi to live, marry and generally lead law-abiding lives. The offenders did not engage in any further criminal activity.

Case 3: Accepting punishment for unlawful use of a weapon

In 1999, a *Yolngu* man from Galiwinku used a weapon to stab another person. Under *Ngarra* law, the use of a weapon against another person is unlawful unless it is in self-defence (or a *Ngarra*-law-sanctioned punishment).

While the victim was recovering in hospital, he decided not to pursue the matter with police but instead submit to the jurisdiction of *Ngarra* law. The offender was found guilty by the *Ngarra* leaders of the unlawful use of a weapon against an innocent person.

A *makarrata* was convened and it was agreed that corporal punishment of the offender would be required in order to bring back peace and stability between the two clans and the extended families. The specific punishment would be for the offender to be stabbed in public in the same way that the victim was stabbed with the two clans present. This would satisfy the aggrieved parties.

Hundreds of people from the relevant clans come to the township of Ramingining to witness the punishment ceremony. Two head *jungay* acted like police to escort the offender with spears to the middle of the community. The offender was instructed to not take up a weapon but rather to remain still and unarmed to receive his punishment. The offender complied with the instructions, thereby respecting the *Ngarra* law and admitting the wrong that he did.

The *Ngarra* justice committee leader said: "You will remain standing still until the victim pays back to you the violence that you did to him." A ritual dance began but the offender did not move. After the ritual dance was complete the offender was stabbed and almost fell to the ground, but his victim held on to him and said:

You showed the people your guilt and shame by the spilling of your blood. The people and clans of different communities will accept you to live in peace and harmony. This punishment has taken place before the people of different clan groups, and the *Ngarra* law will not punish you further by exiling you to another community. You may live in your community. The people have accepted your punishment in the open in the public court. I have accepted your punishment to finish this trouble. Let not this happen again otherwise a more serious punishment will happen to you, such as exile for life in another community where perhaps the *Galka* will conduct sorcery

Gaymarani

and take your life. But now you are a free man – go live a normal life. You have accepted your punishment in the open in the public court of the law of people, the *Ngarra* law.

Through this punishment, relationships were restored and those relationships have been preserved until this day. The offender is currently living a normal life with his wife and family and their extended families and he is obedient to the *Ngarra* law.