

Aboriginal Rights In Kakadu

Breaking the Bonds of Economic Assimilation

The Nugget Coombs Memorial Address

By Jacqui Katona



Gundjehmi Aboriginal Corporation
PO Box 245, Jabiru 0886, NT, Australia
Tel: +61 8 8979 2200 **Fax:** +61 8 8979 2299
Email: gundjehmi@mirrar.net **Internet:** www.mirrar.net

Aboriginal Rights in Kakadu:

Breaking the Bonds of Economic Assimilation

1999 Nugget Coombs Lecture

By Jacqui Katona

Executive Officer, Gundjehmi Aboriginal Corporation

First of all I'd like to thank the Larrakeyah - it should never be forgotten that their country has suffered more than most during the process of colonisation in Northern Australia.

Thank you also to the Mirrar people - my family and my countrymen - to whom I dedicate this address.

I speak here today in memory of Nugget Coombs.

While many have admired and honoured Nugget for his understanding of Aboriginal people, I believe that it was Nugget's ability to identify the manner in which white Australia consistently undermines, assimilates and subjugates black society that marks his important place in our history.

As many of you would be aware, Nugget Coombs was intimately involved in the debate around uranium mining in the Kakadu region.

As Chairman of the Council for Aboriginal Affairs, Nugget recommended to the Fox Inquiry in 1976 that:

There be no development of the uranium deposits for a period of twenty years with a view to the Aborigines who would be affected by the development being assisted during that period to the point where they would be more able to withstand the impact of the mining...development.

Nugget made this recommendation not because he was an anti-uranium activist nor because he believed Aboriginal people should live in a perpetual state of noble savagery, but because he identified the fraud that land rights would become if our communities were prevented from developing their own contemporary economies. Nugget warned the Australian Government that if it imposed massive, white industrial development on the people of the region before a contemporary Aboriginal economy could develop, it would have to acknowledge that the likely outcome, no matter what measures were taken, would be the "disintegration" of the community

Just four years later Nugget saw his predictions becoming a tragic reality. In particular he identified the structural inability of the Northern Land Council to deal with the way in which economic assimilation was washing away the facade of "yellowcake land rights". In what he described as "perhaps the most important departure from the Woodward-Fox scenario", Nugget identified the NLC as an entity which:

Rather than acting as effective spokesman and agent for the traditional owners, [sees] itself as an autonomous body concerned primarily to seek a reconciliation between Aboriginal views and the wishes of Government...

Nugget found that:

money is being distributed to individuals in ways which seem almost calculated to provoke mistrust and dissension among Aborigines...

and remarked that:

It is difficult to avoid the suspicion that [the] Government... is motivated by the desire to make the Northern Land Council dependent on mining royalties and so more concerned to reach agreements whatever the views of the communities it represents.

I recall these observations by Nugget not as an attack on past or present administrations of the NLC, but rather as a reminder that the Aboriginal Land Rights Act, and the bureaucracy which so quickly grew around it, has failed to deliver an essential aspect of any self-determination model - the ability to develop and control a distinctive Aboriginal economy. For the most part Aboriginal communities have been faced with the choice of either accepting white domination of their economy (and inevitability their society and culture) or completely foregoing the economic wealth and power which accrues to most other substantial landowners in Australia.

But before moving on to an examination of what has occurred on Mirrar country in the last thirty years, together with some ideas on we will move into a better future, I'd like to quickly reflect on what Kakadu means to us.

If you have not been to our country, or even if you've made a quick visit, you would have only an image in your mind of what the country looks and feels like. Maybe this image would contain bright sunlight, birds and animals, paperbark swamps with flowers that smell like a baked potato. Marrawutii, the sea eagle, swooping low over Mohla billabong. Cool green grasses on hot days, glorious fires where embers burn low in cool night temperatures. Maybe you can imagine what it's like to see tens of thousands of magpie geese feeding on lush floodplains.

Kakadu for our mob is our blood and our family.

These lands give to us our identity, our history, and our future. We are obligated to take care of this country not only because of what the country provides for us, but because our law requires it. It had been a sustainable economy for thousands of years.

The traditional, cultural system of relations between clans in the region is based on co-operation, mutual obligation and respect for traditional owner decision-making.

Unfortunately, the development of a dominant white economy in Kakadu, and associated promises of financial benefit for people other than the traditional owners, has created social fragmentation which is destroying traditional methods for maintaining harmony and equality.

It is this economic and jurisdictional dominance by a mining company which is the prime contributor to a disturbing decline in the practice of living tradition. The social problems associated with this decline - including alcoholism, community violence, chronic health problems, disinterest in education, structural poverty and collective despair and hopelessness - are mere symptoms of the economic assimilation.

I should point out that mining cannot be viewed in isolation from other social impacts. The Mirrar and other bininj have been identifying the dangers to living tradition since first contact with balanda. The Mirrar believe that nearly all these dangers to living tradition are products of the failure of the balanda world to recognise bininj law and jurisdiction. They include government practices such as stealing children and ignoring established political systems; church practices such as preventing the observance of traditional religions and customary law; and individual actions such as rape, murder and enslavement.

The Mirrar do not argue that mining alone is impacting on living tradition - the Mirrar argue that mining and its associated social, economic and political impacts are the single greatest impact and that an additional mine will push bininj culture past the point of cultural exhaustion to genocidal decay.

Although hundreds of reports have been prepared on the Kakadu region since mining commenced, most of these have been characterised by an unwillingness to allow bininj to devise their own processes for determining social impacts and a consequent failure to consult accurately to determine bininj views and solutions.

The first of the major studies into social impacts, the Fox Inquiry, was established to provide information to the Federal Government on whether the Ranger uranium mine should be allowed to proceed. Its findings (that mining would have negative social impacts) and recommendations (that mining should go ahead anyway) was to set the tone of most future balanda studies about bininj in the Kakadu region.

The Fox Inquiry is almost the perfect model for economic assimilation - and its paternalistic approach to Aboriginal society and economy seems to underpin the approach of present Governments to Aboriginal issues.

I feel the need to examine the Fox Inquiry in some detail because its rejection of Aboriginal aspirations has influenced so much of what has happened in the Kakadu region. The fact is that our economy was swept away by

the processes leading to the imposition of the Ranger uranium mine. Let it never be forgotten that the Mirrar were absolutely opposed to Ranger going ahead - in fact it took a specific change to the Land Rights Act, removing the Mirrar right of veto over the Ranger Project Area, for the project to proceed. In a humiliating scenario which no group of human beings should ever have to endure, Justice Fox advised the Commonwealth that:

The evidence before us shows that the traditional owners of the Ranger site and the Northern Land Council (as now constituted) are opposed to the mining of uranium on that site. The reasons for the opposition... would extend to any uranium mining in the Region. Some Aboriginals had at an earlier stage approved, or at least not disapproved, the proposed development, but it seems likely that they were not then as fully informed about it as they later become. Traditional consultations had not then taken place, and there was a general conviction that opposition was futile. The Aboriginals do not have confidence that their own view will prevail; they feel that uranium mining development is almost certain to take place at Jabiru, if not elsewhere in the Region as well. .they feel that having got so far, the white man is not likely to stop. They have a justifiable complaint that plans for mining have been allowed to develop as far as they have without the Aboriginal people having an adequate opportunity to be heard. Having in mind, in particular, the importance to the Aboriginal people of their right of self-determination, it is not in the circumstances possible for us to say that the development would be beneficial to them...

There can be no compromise with the Aboriginal position; either it is treated as conclusive, or it is set aside... In the end, we form the conclusion that their opposition should not be allowed to prevail.

It can not even be claimed that Fox simply failed to recognise that there was a complex Aboriginal understanding of economy in Kakadu. In fact he commented that:

While royalties and other payments...are not unimportant to the Aboriginal people, they see this aspect as incidental, as a material recognition of their rights... Our impression is that they would happily forgo the lot in exchange for an assurance that mining would not proceed.

It must also be considered that the Fox recommendations; the removal of the Mirrar veto and the great determination of the Commonwealth Government to economically dominate the region via the Ranger Project was also a major turning point for the Northern Land Council.

At a meeting at Red Lily Lagoon called by the NLC to discuss the Ranger Agreement, the NLC Chairperson Galarrwuy Yunipingu was quoted as follows:

If we don't sign the agreement, [Prime Minister] Fraser has told me he has power to block the Aboriginal Land Rights Act, and that he will stop the funds to the outstations.

If the Land Council makes a mistake on this question the whole of Australia will know and many people will support those who want to see Aboriginals without land, without any right to make their own decisions, and without a Land Council to represent them.

I believe that this statement by Galarrwuy Yunipingu is extremely significant not only to the Mirrar and the people of Kakadu, but to all Aboriginal people in Australia - for what Galarrwuy is saying here is that Aboriginal people must accept the economic dominance of white industrial development in order for land rights to be palatable to non-Aboriginal Australia.

This approach has now developed to such an extreme that in the recent debate on the Wik amendments to the Native Title Act, the central line coming out of the Aboriginal leadership was that white people have nothing to fear because Aboriginal people were ready to bend over backwards in order to accommodate the interests of white economic imperatives.

Aden Ridgeway's recent acceptance of a mediocre and shallow statement of questionable regret from the Liberal Party is another exercise in apologist politics which attempt to represent our people as passive recipients of continuing paternalism. Aden Ridgeway has supported the Liberal Government to avoid taking responsibility on behalf of non-Aboriginal Australia not only for past - but continuing genocidal practices. For the Mirrar, Aden's stance is not new - disappointingly it is very similar to the way in which Aboriginal "leaders" have facilitated white domination in Kakadu.

(returning to the history lesson..)

What seemed to escape just about everyone except the Traditional Owners during the Ranger debate in the 1970's was that it would be bininj-bininj relations, not bininj-balanda relations, that stood to be affected the most, and lose the most, by the imposition of mining. By failing to appreciate this highly sensitive point, a series of critical errors were made, as the measures taken to supposedly protect bininj culture simply did not take into account bininj economic and political systems. Difficulties associated with representation and decision making processes were glossed over.

I should say at this stage that none of what Iím saying is new. In fact many of the points Iíve been making appear in one form or another in the five-year study into the impact of uranium mining in the Alligator Rivers region carried out by the Australian Institute of Aboriginal Studies between 1979 and 1984.

The report made observations which, more than fifteen years ago, clearly exposed the myth of Aboriginal participation in the imposed economy of uranium mining. They reported:

The local Aboriginal people always appear at a distance. Their own views are nowhere reported. They present no evidence. They continually require interpretation or external commentary. They are problems, not participants. And they are not to be assigned an active role. The administrative arrangements are left to outsiders: specialists. The local people may participate as workers, but not as decision-makers, or as the makers or imposers of sanctions. They are not to have a determining voice. Their voices may be heard, but not heeded: they are nowhere decisive. Their interests are to be represented by a distant, European structured organisation: the Northern Land Council... The Director of the Australian National Parks and Wildlife Service and the Supervising Scientist were also put in caretaker roles: one would control the tourists and the town residents, the other the mines; and both would care for the environment. How this could be reconciled with granting of land ownership, and the fact of Aboriginal responsibilities to land, is not explained.

The 1984 social impact study also pointed out how balanda attempts to impose decision making structures on bininj - to "include" bininj in the conduct of systems and operations which they never wanted in the first place - were failing. The study confirmed what was obvious to Mirrar and other bininj from the outset, that bininj have largely been left behind and excluded from exercising jurisdictional and economic rights, without an effective understanding of, or role in, the decision making process.

The study advised that the lack of Aboriginal participation and control over the local economy was having a far greater impact on Aboriginal society than the physical or environmental impacts of the mine; the national park or the township of Jabiru. They said:

Aborigines in the Region are in a state of transition between a system of imposed wardship and an assertion of independence, one encouraged by the Government. But the current civic culture is one in which disunity, neurosis, a sense of struggle, drinking, stress, hostility, of being drowned by new laws, agencies, and agendas are major manifestations. Their defeat on initial opposition to mining, negotiations leading to Ranger and Nabarlek, the fresh negotiations on Jabiluka and Koongarra, new sources of money, the influx of vehicles, together have led the Project to an unhappy verdict THAT THIS IS A SOCIETY IN CRISIS.

It is very telling that in a series of recent Australian Government reports to the World Heritage Committee on the impacts of the mining in Kakadu, the five year social impact study commissioned by the Commonwealth is not mentioned once.

I should now move onto the Jabiluka Project and the manner in which in it represents the "second wave" of economic assimilation in North Kakadu. The genesis of this assimilation is represented in the way the infamous 1982 Jabiluka Agreement was entered into between the Northern Land Council and PanContinental mining.

I am not going to go into the mountains of evidence associated with duress and deceit during the Jabiluka negotiations. I suggest that anyone who is interested in these details should have a look at the various articles posted on our website. What I would like to focus on, given the topic of this speech, was the way that the

Northern Land Council's acquiescence to white economic imperatives led to negotiations over the Jabiluka Project proceeding in the first place.

While the NLC may disagree with many things the Mirrar say about the 1982 Agreement, there is absolutely no doubt that the negotiations began in 1981 because the NLC convinced Traditional Owners that unless they started talking to PanContinental, the mining company would use its economic muscle to defeat the Alligator Rivers Stage Two Land Claim.

Once more it was demonstrated that the forces of economic assimilation in the region were so powerful that the NLC was convinced that a Land Claim could not succeed without the support of mining companies.

And now, eighteen years down the track, we are seeing ERA say that Jabiluka must proceed in order for the region to survive economically. And once more there are various players jumping over each other to agree with them. To me this argument says: "After tens of thousands of years, we have obliterated your economy, and assimilated the Aboriginal community, to the point where you can no longer survive without white people digging holes in your sacred sites and controlling your local economy and political system."

The reason that ERA are crying with an increasingly shrill voice that all services in the North Kakadu region will shut down unless Jabiluka proceeds is because of a quirk of legal fate that has provided the Mirrar with an effective veto over the Jabiluka Project.

In 1991, when ERA bought the Jabiluka Project off Pan Continental, a clause was attached to the Deed of Transfer which provided that Mirrar consent would have to be given for Jabiluka ore to be processed at Ranger. With the decline in the price of uranium, and no real prospects for a significant increase, this has become the only economically viable method for the Jabiluka Project to proceed. There are also grave doubts as to whether a Jabiluka Mill could ever be environmentally acceptable.

The irony is that ERA assumed that this clause would only be used by the Mirrar to bargain an increase in royalties on the Jabiluka Project, having presumed that the process of economic assimilation was so complete that the Mirrar would eventually agree to what the mining company believed was good for them.

Well, I can tell you now, the Mirrar have made it very clear that they will not accept the mining company, the Government or the NLC telling them that the only way they can survive economically is by allowing the process of economic assimilation to take its "inevitable course". The Mirrar reject this assimilation -to do otherwise is to roll over and die.

In fact the Mirrar are currently devising a new economic model for their country. It is an economic model which rejects the "top down" dominance of white business interests and replaces it with a system in which the main sources of economic control are individual clan groups - respecting the primacy of Traditional Owner decision-making but acting collectively to wield their yet to be realised economic power.

The fact is that the Traditional Owners of the North Kakadu region own one of the most valuable pieces of real estate on this planet - any notion that this cannot be converted into a viable Aboriginal economy runs contrary to the very economic theories which have been used to brow beat us in the past.

We will resurrect a distinctive Aboriginal economy in Kakadu. It will be helped along with reform to the Kakadu National Park lease; the legal recognition of Mirrar ownership of Jabiru; and the gradual transfer of jurisdictional and economic power to the Aboriginal landowners.

It will require Aboriginal people to have, at the very least, a significant break from the dominance of the mining economy - time to heal, time to gain education, time to begin relating to one another without the constant interference of external agendas.

It is an enormous challenge but we will get there - because we are not going anywhere else and we will fight until we die.

But what does the fight against economic assimilation in Kakadu mean for other Aboriginal communities?

I believe that Kakadu provides a unique lesson for all Aboriginal communities currently facing the decision as to whether they should enter into "social contracts" with mining companies and Governments over the exploitation

of their lands. The bitter lessons experienced with Ranger and Jabiluka should lead to some basic minimum standards for development in order to avoid the worst aspects of economic assimilation.

1. Mining companies should never proceed without informed Aboriginal consent.

When a dominant power believes that “no doesn’t mean no” there is inevitably a violation at the most basic level. It might take place because of “legal reasons” it might take place in the “national interest” - but it will always be a violation.

Ignoring the consequences of that violation adds to the problem. Just rewriting history - calling it something else - like “negative social impacts” is an exercise in gross deception. We have been told over and over that the removal of our right to say no to Ranger is an unpleasantness best forgotten - that the future is all-important. The reality for our community is that the problems suffered by our people in the past are what we must take responsibility for now. How can you expect Aboriginal people to put the interests of a private company before the interests of their children and grandchildren? A dramatic change is required in the terms on which Aboriginal people are expected to negotiate mining. There is a demand being made on government and industry - a demand that Aboriginal people be assisted to manage and control their own affairs - a demand which is consistently ignored. A demand which will never relinquish.

2. Mining projects should facilitate economic and political independence - not just transfer welfare provision and political control from the white public sector to the white private sector

There has been absolute inaction from government to assist our community to deal with the effects of a series of major industrial developments. The most recent Social Impact Study completed in 1997 simply recommended an increase in welfare programs - turning up a kind of a drip feed - failing to recognise the most fundamental traditional owner rights - choosing instead to refer to them as “stakeholders” - again denying them the opportunity to control the future of our community.

ERA’s answer to the social problems created by the present regime is for traditional owners to say yes to Jabiluka - all problems would be solved - the money would be there to right the wrongs of the past. For the Mirrar it is a living death. This is not an acceptable solution. It is a question of ERA taking responsibility for the consequences of its actions.

Studies, reports, enquiries, assessments - these processes have become an end in themselves - touted as the solution, conveniently crafted and promoted as justification to further abuse our rights and entrench the dominance of government and industry and all for the improved viability of a privately-owned company.

3. There must be a recognition that mining projects have irreversible impacts - impacts which destroy aspects of culture forever.

Mining projects need to have a finite lifespan based not on when minerals are exhausted but at a stage before traditional owners are exhausted - there is a point when a community can take no more.

Jabiluka cannot go ahead for this reason. One enormous uranium mine combined with little concern for social impacts over twenty years is surely enough in anyone’s language. There is a point at which the development of the community by the community at the community’s own pace must take priority.

4. Aboriginal people must always be provided with an ability to prevent development impacting on their sites of significance - without have to pass artificial, non-Aboriginal tests of legitimacy

Sacred sites lie at the very heart of Aboriginal culture. Without them our culture is empty, worthless. They need protection at all costs whenever a community insists that this be the case - no matter the inconvenience this causes to mining companies - no matter what bizarre implications anthropologists may draw from previous actions or statements - no matter if “dissident” blacks are rounded up to challenge the community’s belief. To do other than to comply with the community’s wishes on sacred site protection is to be complicit in an act of genocide.

As some of you may be aware, the Mirrar have applied for protection of the Boyweg-Almudj Sacred Site Complex from the impact of the Jabiluka Project under the Aboriginal and Torres Strait Islander Heritage Protection Act. I should add that the decision by the Mirrar to turn to this fundamentally flawed piece of legislation was only made

after direct representations to the company, the Northern Land Council, the Government and the Courts failed to deliver protection to this area of extreme significance not only to the custodians of the Jabiluka area - but people throughout the Kakadu/Arnhem region. .

One of the major flaws in the Heritage Protection Act is the almost unfettered Ministerial discretion in terms of both protection and the assessment process - including the appointment of persons to report on the significance of Aboriginal sacred sites.

Indeed the Honourable Elizabeth Evatt, in her review of the Act commissioned by the Australian Government in 1995, stated that:

Bearing in mind the important role played by the report...it is important that there be as much independence and objectivity as possible in the nomination of the reporter. It should not be left to the personal choice of the Minister.

The danger identified by Justice Evatt in allowing the Minister this personal choice has become most apparent to the Mirrar in the recent appointment of Senator Hillís fellow South Australian, Mr Bardy McFarlane, to conduct the report into the Boyweg-Almudj sites.

Mr McFarlane is a pastoralist who began practising law in the Adelaide firm Piper-Alderman about ten years ago. Piper Alderman is closely associated with Senator Hillís South Australian branch of the Liberal Party. In fact senior partners in Piper Alderman have sat on the Liberal Party state executive. Bardy McFarlane is a partner in Piper Alderman specialising in representing the interests of miners, pastoralists and the fishing industry in native title claims.

This is a man who wrote in support of the 10 point plan in the Law Society of South Australia Bulletin in 1997 stating that "the sooner Canberra delivers some certainty, the better" as he advocated the extinguishment of native title on pastoral properties where mining titles had been illegally granted prior to the High Court decision in Wik.

This is a man who is a partner in the legal firm which was directly involved in discrediting the sacred sites of the Ngarrindjeri people in the Kumerangk area of South Australia.

This is a man who sits on the South Australian Chamber of Mines and Energy.

This is a man who is currently acting for a number of mining companies in native title and heritage matters and whose firm is actively promoting his ability as a "fixit man" for resource firms.

This is a man who works for the South Australian Farmerís Federation in native title and heritage matters.

This is a man with no experience in dealing with traditional Aboriginal people and society in Northern Australia.

And this is the man who will sit in judgement as to the significance of the Boyweg-Almudj sites.

Senator Hillís decision to appoint Mr McFarlane should be rejected on the basis of administrative fairness alone. . The appointment could be compared to allowing a rapist to sit in judgement of the violated.

But more significantly, Senator Hillís actions demonstrate the fundamental disrespect that still exists in white Australia towards the Aboriginal community. The decision is particularly galling to the Mirrar given the efforts they have made to inform Seantor Hill of Aboriginal cultural imperatives and the subsequent rhetoric he espoused at the recent World Heritage Committee.

It seems once again the Government wants to use sacred sites as a weapon against Aboriginal people. It is 1999 and we are still being persecuted for our beliefs.

We know that there is a hard road ahead but we cannot choose any different life - we have no other reality - but to protect the integrity of our rights with action.

We know we do not do this alone.

Thank you.