

## **Native Title: Land, Culture and Tradition in the Kimberley**

*Marianna Leishman*

In Broome the pindan is red and dusty. The water is aqua and the markets are teeming with organic, herbal, and local art and craft. Every month at low tide the full moon reflects onto mudflats like a staircase to the sounds of didgeridoo. Reddell Beach is home to spectacular pindan cliffs on Broome's peninsula coastline that glow in the sunset. This land is Rubibi country.

Native Title was determined here in April 2006, following a 10-year legal battle. While some Rubibi land has exclusive possession Native Title, in other areas Native Title rights have been extinguished. The Western Australian State Government appealed the decision in March 2007 and the Traditional Owners await the court's judgement.

Native Title recognises that indigenous people continue to hold rights to their land and waters which stem from traditional laws and customs, and does so either by unopposed determination, litigated determination or consent determination among parties with different interests in the land. The continuous connection to land is proved through various anthropological reports, affidavits, genealogies and other documented evidence. While there are many current claim areas throughout the Kimberley, Native Title has been found to exist in a number of countries including Bardi and Jawi, Karajarri, Martu and Ngurrura, Tjurabalan, Wanjina-Wunggurr Willingin, and Noonkanbah.

The Noonkanbah determination is perhaps the most infamous Native Title tale in the Kimberley. In 1979-80, news reports were flooded with headlines and footage of the fight of the Yungngora people to control access to the Noonkanbah pastoral lease after the American mining company Amax attempted to drill for oil on a sacred site. The drilling eventually went ahead with government sanction, despite a number of violent clashes, protests and lockdowns, when police escorted drillers into the site.

Noonkanbah, however, was successful and unprecedented in bringing public attention to indigenous land rights in the Kimberley. This struggle gave rise to the establishment of the Kimberley Land Council.

This year in April, after a 27 year struggle over the area, which is in the West Kimberley, (East of Nyikina Mangala, South of Bunuba and West of Gooniyandi countries), Justice French determined that the Yungngora people hold exclusive possession Native Title rights over the entirety of the Noonkanbah pastoral lease.

As an intern with the Kimberley Land Council ('KLC'), funded by Allens Arthur Robinson as part of the Aurora Native Title Project, I have been inspired and moved by some touching people. I have had the opportunity to travel out on country, attend meetings, take minutes, undertake legal research, and listen to the incredible stories and experiences of lawyers, native title officers, anthropologists and Traditional Owners. Furthermore, I have spent 5 weeks of my winter holidays soaking up the magical Kimberley, holding olive pythons, bird watching, seeing majestic freshwater crocodiles and red dragon flies, fire twirling in

the annual Derby Boab Festival, sleeping in a safari lodge, attending the opening of the Kimberley Art Prize, and absorbing the wonders of Windjana Gorge, Geike Gorge and Tunnel Creek.

In Broome I keep meeting people who have come up to the Kimberley to work temporarily and, nineteen years later, have never left. There is something about this town that is magnetic, something about the work that is stirring, and something about the people that make it impossible to go home.

Not only was I able to explore magnificent Broome as part of my internship, but I also had the opportunity to travel to Derby, where I stayed in cottages teeming with bougainvillea, bush tracks and wallabies. Around 250kms of red dusty road northeast of Broome, the small town of Derby features markets, fishing competitions, crab races and mud football. At night, when the 12 metre tides are low, the marsh land is so dry and cracked you can't see where it ends and the stars begin.

In the KLC Library in Derby, a small square red building bursting with files, books, journals, photographs, maps, and videos, I worked with the fabulous librarian, Jenny. Aside from plunging a deadly brew of lemon, lemongrass, cinnamon, ginger and honey every morning, Jenny filled my desk with books, brochures and videos about the spirit of the Wandjina, the Noonkanbah determination, and the Ngurrura canvas, an artwork painted by 50 Traditional Owners from Ngurrura Country (in the Great Sandy Desert) for their 1997 Native Title claim, depicting waterholes, sand dunes and the landscape. The Ngurrura Native Title Determination is scheduled to be handed down by the Federal Court in early October 2007.

In Derby, in 30-degree heat, thongs and with red dusty feet, I sift through shelves of material that span the last 3 decades since KLC was formed in 1978 when people from more than thirty Aboriginal communities met to celebrate Aboriginal law and culture. The first Aboriginal land rights organisation to be established in Western Australia, the KLC became a Native Title Representative Body ('NTRB') with the enactment of the Commonwealth *Native Title Act* 1993. The KLC is responsible not only for progressing claims on behalf of Kimberley Traditional Owners (currently providing Native Title services to over twenty-five claimant groups), but also assists Traditional Owners in the management of their land and waters, in developing structures and processes for self-governance, in economic and social development, and in helping to build capacities in their communities. KLC further represents Traditional Owners to negotiate agreements in relation to 'Future Acts' that might happen on land subject to a native title claim, such as mining, fishing, tourism or development. In some cases, Traditional Owners may sign a Heritage Protection Agreement or perform a clearance of the land by mapping relevant GPS points in a helicopter or four wheel drive, and may refuse consent for future acts to occur on sacred sites within their country.<sup>1</sup>

As Western Australia remains the anomaly in Australian jurisdiction, with no indigenous land rights legislation, the KLC has been an

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<sup>1</sup> Unfortunately the ability to refuse consent does not equate with the power of veto. For further information please visit [www.klc.org.au](http://www.klc.org.au)

influential advocate for land rights legislation, and has remained active in lobbying on behalf of indigenous communities in the Kimberley, against the 1998 amendments to the *Native Title Act* and towards solutions to Aboriginal social and economic disadvantage. In the library, I am surrounded by shelves of policy documents, position papers, newspaper articles, anthropological maps and reports, and volumes of the *Australian Indigenous Law Reporter* and *Australian Journal of Human Rights*. If there was not overwhelming amounts of work to do, I could happily sit down and read the entire KLC Library.

While I am in Derby, the new SBS series *The Circuit* begins to screen, following a magistrate, bush court and lawyers around the Kimberley Circuit telling the story of a 'city blackfella' lawyer with the Aboriginal Legal Service. A group of us sit in my cottage watching as everyone points out people they know and places they've been.

Jenny takes me out to Mowanjum, an indigenous community just out of Derby. The new Mowanjum Art and Culture Centre features some incredible artworks that tell stories of the spirit of the Wandjina, the supreme spirit being of the Wororra, Ngarinyin and Wunumbul people. I get to meet Donny Woolagoodja, whose original design of the Wandjina Spirit Namaralie was recreated as a 35 metre high sculpture for the Sydney 2000 Olympic Games Opening Ceremony. Wandering through the arts centre, I find it incredible that Native Title can take so long to be recognised according to western evidentiary burdens when it is so obvious that this is a living culture practised everyday.

Around the Kimberley I meet some inspiring people. I meet Maya, a girl working at the Youth Centre on a Marsh Art project, where local kids on motocross bikes created a giant impression of a barramundi in the mud flats, and then lit up giant fire structures of native animals against the night sky. I meet Steve, a writer working for AIATSIS in Canberra in sustainable development, whose grandmother was stolen from Argyle country. I meet Darryl, a new recruit to the Kimberley Aboriginal Law and Culture Centre, who has worked in San Francisco, Germany, Ecuador and Mexico and is moving to the indigenous community of Jarlmahdangah (between Derby and Fitzroy Crossing) and writing a PhD on the significance of country to identity.

On the news, in my bungalow beach house in Broome, headlines are rampant with political rhetoric focusing upon indigenous alcohol and sexual abuse in the context of military occupation in Mutujulu and other communities in the Northern Territory. I think about all the people I have met who have been stolen, all the people I have met whose parents, grandparents, brothers, sisters, aunties, uncles, cousins have been stolen, displaced, dispossessed. I think about indigenous belonging to the land, how that connection exists in every relationship, every thing, and every place. I think about how if you are on someone else's country the land will not look after you, you will get sick. I think about how the stolen generation is presented in textbooks as a historical event of the past, and I know that it is not. I know that the forcible removal of children and its ramifications are intergenerational and ongoing.

While headlines continue to focus on indigenous criminality, it remains obvious that the most devastating atrocities relating to Australia's indigenous population have been perpetrated *upon* and *against* indigenous

people often by the government or with government sanction.<sup>2</sup> The Australian government, in its refusal to formally acknowledge these systematic atrocities throughout colonisation, contributes to a system that denies the existence of genocide within our country's history.<sup>3</sup> I believe that reclaiming land through Native Title is a significant, symbolic, practical, necessary and indeed, crucial step towards beginning to redress other areas of economic and social disadvantage that stem from dispossession of country.

I was thrilled to be able to spend a lot of my time in the Kimberley out on country, in meetings with different indigenous communities and alongside some fascinating lawyers. On one trip we come across a baby wallaby, foetus like, wrapped in towels in a cardboard box, whose mother had been hit by a car. By the time we return on the way home the joey has died.

I travel to Fitzroy Crossing with Laurelea, a KLC lawyer passionate about Indigenous Cultural and Intellectual Property rights. I travel out on country with Krysti, whose one-year-old daughter was given an Aboriginal name and a smoking ceremony by a mob she had worked with for 8 years. Cara, another lawyer, her wrists bejewelled in turquoise from when she worked with the San Carlos Apache tribe in Arizona, is also full of stories and guidance. With an Aboriginal grandmother and Chinese grandfather, Cara actively supports the adoption of the UN Declaration on the Rights of Indigenous Peoples and makes the most fantastic jewellery I've ever seen.

From my first day in the Kimberley I find myself somewhat like a bowerbird, collecting as much as I can; newspapers, brochures, posters, art, conversations, thoughts, ideas. I am overwhelmed by the number of countries, of peoples, of languages; embarrassed that I can only speak one.

I am lucky enough to participate in a walk for NAIDOC week, to celebrate the history, culture and achievements of Aboriginal and Torres Strait Islander people. Traditional Owners take a group of us around the beaches and bush in Broome for 6 hours pointing out landmarks and telling us Dreamtime stories about the country. It's nice to get sunburnt in wintertime.

At the Sun Pictures, an outdoor cinema in Chinatown in the centre of Broome since 1916, a documentary called 'Sisters, Pearls and Mission Girls' shows every Tuesday night, and outlines the stories of missionaries throughout Beagle Bay and around the Kimberley and their relationships with indigenous communities. The documentary has fascinating footage of Old Broome, the leprosarium, and practices of bringing indigenous people from all over the Kimberley to work as Pearl Divers. Historically, indigenous people (often girls, including pregnant women) would be forced to 'naked dive' daily (without snorkel,

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<sup>2</sup> Cunneen, C. (1999) 'Criminology, Genocide and the Forced Removal of Indigenous Children From their Families', *Australia and New Zealand Journal of Criminology*, vol. 32(2), 124-138 at 125

<sup>3</sup> The Human Rights and Equal Opportunity Commissions' *Bringing Them Home* inquiry, 1997, found that under international law, from approximately 1946 the policies of forcible removal amount to genocide; and from 1950 the continuation of distinct laws for Indigenous children was racially discriminatory, [http://www.humanrights.gov.au/social\\_justice/bth/preliminary.html](http://www.humanrights.gov.au/social_justice/bth/preliminary.html)

oxygen or mask), and were often mistreated, sexually abused, and contracted the bends. Later Japanese divers were used as indentured labour (to pay off a debt, usually their transportation to Australia) and were made an exception to the White Australia Policy. The divers could not bring any family members to Australia.

Aside from the notorious history of the pearling industry, the infamous Derby Prison Tree (a hollow boab inside which indigenous prisoners were chained), and the ongoing effects of colonisation, dispossession and the stolen generation, there are a lot of things I find difficult to grapple with during my time in Broome. Having never turned my mind to mining before, I develop a kind of abhorrence to the idea of it, and (maybe idealistically, or maybe not) only wish that the funds spent on oil exploration were spent on research for alternative energy sources that didn't involve rupturing people's land.

As I lie on a wooden bench at Broome airport, a mess of silver toe rings, glass beads and screen-printed skirts, I don't want to leave. I feel so lucky to have had this amazing experience and decide I could quite easily live here forever, as a native title lawyer and artist, with a ute and a market stall. In the hot wind, the sky turns from red to blue, the air from dusty to moist and suddenly there is too much grey and not enough sunlight and I'm in Sydney and it's ten degrees and raining.

It is clear that much work remains to determine existing native title claims and conclude negotiations around the Kimberley, in addition to resolving a plethora of outstanding legal and policy issues. In 2005, a report into the professional development needs of Native Title Representative Body lawyers by Richard Potok, with the Castan Centre for Human Rights Law at Monash University, found that by January 2005, the courts had made 64 determinations of native title claims and parties had finalised 143 Indigenous Land Use Agreements and numerous other agreements. However, 90% of native title claims were yet to be resolved and, despite recent High Court decisions, there were still some substantial outstanding legal issues.<sup>4</sup>

The 17 independent Native Title Representative Bodies across Australia and their 76 in-house lawyers remain 'the pivotal component of the native title system.'<sup>5</sup> The Aurora Project, the collective name for a number of programs that work with Australia's indigenous communities, was established in 2005 to introduce students to career opportunities in Native Title and indigenous affairs and provide assistance to NTRB lawyers.<sup>6</sup> The project focuses on professional development in law, anthropology, management and other disciplines, and is a brilliant initiative to encourage students to work in an area that is largely under funded, under staffed and under resourced. The project is an incredible learning experience about the relationships between NTRBs, indigenous communities, organisations, companies and governments. In the face of logistical difficulties, long distances, and an often-

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<sup>4</sup> For more information please visit [http://www.auroraproject.com.au/Links/2005 april report exec summ.pdf](http://www.auroraproject.com.au/Links/2005%20april%20report%20exec%20summ.pdf)

<sup>5</sup> For more information please visit [http://www.auroraproject.com.au/Links/2005 april report exec summ.pdf](http://www.auroraproject.com.au/Links/2005%20april%20report%20exec%20summ.pdf)

<sup>6</sup> For more information please visit [www.auroraproject.com.au](http://www.auroraproject.com.au)

challenging work environment, KLC staff were always culturally sensitive, enthusiastic, flexible and creative.

Furthermore, there is not much to dislike about the Kimberley. Aside from the mango winery, bead shop, colourful markets with fragranced candles and organic soap, the red pindan and turquoise water, all the cars in Broome are white utes or four-wheel drives that have been dusted a beautiful rusty red. The entire town is dotted with art galleries and live music. On my street, outside my house, are blonde ringleted and inquisitive eyed Aboriginal children on bicycles that are the most exquisite I've ever seen. Around this town, there is wattle and red anthills, boab nuts and gubinges, rock art and tea trees. My feet get dusty on the walk to work and I love it.

There are no traffic lights in the whole of Broome. There is only one bus that circles the town once an hour. When I complain about the concrete and the traffic and the crowds of Sydney, Chook, a tour guide at Windjana Gorge tells me, 'The day they put a stop sign in Derby I'm leaving town.'

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