



Northern Land Council

MEDIA RELEASE

First victory in the battle of the seas

Thursday October 11, 2001

The traditional owners of the seas around Croker Island off the Northern Territory are proud and happy that Australian law has finally recognised that native title exists on sea country, just as it does on land.

Principal claimant in the Croker Island seas native title test case, Mary Yarmirr, said today: "Today's decision confirms what we have always known: our law and our rights extend out into the seas

"The Commonwealth Government's ridiculous and hurtful argument that our law stops at the water's edge has been overturned forever.

"However we are disappointed that the High Court has not yet fully understood the extent of our rights to the seas. Australian law is still blind to the reality of our law, but we will use today's decision as a platform to fight for greater and stronger recognition.

"Aboriginal people fought for recognition of land rights for many years before they were finally recognised by the High Court. Our sea rights have now been recognised to a limited extent and the next step is to establish the full extent of those traditional interests to manage our traditional resources," she said.

"We are very heartened by the dissenting judgement of Justice Michael Kirby who stated that our sea rights are as strong as the rights found in the Mabo case and **called on all governments to legislate to recognise and protect the extent of those rights.**

"We agree with Justice Kirby and urge both Mr Howard and Mr Beazley to commit to such legislation. All Governments must now come to the table with a view to fully recognising our rights and reversing the majority decision by legislation.

"The destructive Native Title Act amendments of 1998 must also now be reversed in the light of this decision."

Northern Land Council Chief Executive Norman Fry said: "This is an important first step. Further cases will now be run to build on this platform and obtain full recognition of Aboriginal rights offshore. We also plan to convene a National Seas Conference to bring all interests together to talk about how we can work together."

CROKER SEAS TEST CASE

HISTORY

The Croker Seas case was lodged in 1994. It was the first native title sea claim in Australia. While the Mabo native title decision related to land, it did not deal with the question of rights to sea. This case has been called “The Mabo of the Seas.”

Federal Court:

Two rulings in the Federal Court in 1999 and 2000 stated that native title rights do exist in offshore areas.

This was a landmark decision because it is the first time in Australia that native title had been recognised to sea country.

However, the ruling was that the rights were not exclusive and were not commercial.

High Court:

The native title claimants appealed the Federal Court decision because they want exclusive and commercial rights - recognition that they own their sea country and should have a strong say over what happens.

They also hoped that the court would recognise that they have commercial rights, just as they did with the Macassans, who traded with them until the start of this century.

The Commonwealth Government appealed because they did not agree that native title existed beyond the low-water mark.

Tomorrow’s decision will respond to those appeals.

The similarities between land and sea ownership.

For Indigenous people, the connection to land does not stop at the water’s edge

This fact is well accepted in other parts of the world. Rights to offshore areas is nothing new and has been recognised in England, for instance, for hundreds of years.

Mary Magulagi Yarmirr:

My clan is the Mandilarri (Parrotfish) clan. My clan name is the Prickly-back Stingray. I am the principal claimant for the Croker Island native title test case, on behalf of six clans whose sea country surrounding Croker Island in Arnhem Land.

The six clans in the Croker Island area are each responsible for their own “country”. My Mandilarri sea country is at the top end of Croker Island. When I use the word “country”, I am talking about dry land, fresh water and the sea. And when I talk about sea country, I am not talking only about the waters of the sea. I am talking about the sea bed and the reefs, and the fish and animals in the sea, and our fishing and hunting grounds, and the air and clouds above the sea, and about our sacred sites and ancestral beings who created all the country.

Our ancestors are still there. Our country, both land and sea, belongs to us, and we belong to it. For we cannot survive without the land and the sea, for it breathes, controls and gives life.

There is nothing new about what I am saying. It has always been the case. Long before Balanda people came here, Indigenous people owned and looked after all their country, both land and sea. When the Macassans came to Croker Island and Arnhem land hundreds of years ago, and before Balanda people came here, Indigenous people owned their sea country.

What do Indigenous people want

Before colonisation, people in Arnhem Land traded with the Macassans from what is now Indonesia. Both groups entered commercial agreements. In return for being able to harvest trepang, which is a delicacy in Asian countries, the ancestors of the native title claimants received payment. This payment recognised that Indigenous people are the traditional owners of their seas. It included many things: dug out canoes, calico, axes, knives, fish hooks, beads.

The Commonwealth government halted this arrangement at the turn of last century.

The current appeal was lodged in order that native title holders to sea country can continue to manage and use the seas in their traditional way, including economic use. They want to have strong control over the management of their sea property.

The claim does not mean that Indigenous people want to stop or hinder commercial interests. On the contrary, Indigenous people have always showed that they welcome sensible and sustainable development.

It also does not mean that others would be excluded from using the seas. Indigenous people are supportive of others using their sea country – all they want is proper control.

Internationally, Indigenous people have had their rights to the seas recognised, for example in Canada and New Zealand. The Croker claimants want to be able to make agreements and joint arrangements which benefit everyone, and want the fishing industry, and other industries, to continue, in partnership with traditional owners.

Traditional owners also want control over marine management – to make sure that important species such as dugong and turtles are protected, overfishing is prevented, “bycatch” is used and not wasted, and sacred sites and places of cultural importance are protected and respected.