

The Warlpiri *Ngalkinpa*

Principles of Warlpiri conflict resolution

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Introduction

The purpose of this paper is to outline techniques used by the Lajamanu Kurdiji group in mediating community conflict. The paper will be of interest to anyone involved in Aboriginal community governance or the justice system.

The paper outlines the context of the conflict, the response of the Kurdiji group, an analysis of the mediation principles involved and, finally, some suggestions about how these principles could be incorporated within the contemporary context. The Kurdiji group has requested that the authors share this information in a culturally appropriate way with organisations and individuals who work with Warlpiri people. The principles described in this paper can and should be applied to situations of conflict or disagreement when working with Warlpiri people. Some of the broader lessons may be applicable when working with other Aboriginal people, but should always be checked with local Aboriginal authorities before assuming they are.

Background

The Kurdiji Law and Justice Group are a group of Warlpiri elders and leaders from Lajamanu, Northern Territory (NT), who have been working to bridge the gap between the *yapa* (Aboriginal) and *kardiya* (Anglo-Australian) systems of law since the late 1990s².

The North Australian Aboriginal Justice Agency (NAAJA) delivers high quality and culturally competent Aboriginal legal services to the Top End of the NT. NAAJA's Criminal, Civil law, Throughcare and Community Legal Education (CLE) teams visit Lajamanu regularly.

NAAJA's CLE team have been working with Kurdiji since 2009 to support the group in bridging the gap in understanding between the two legal systems. The work of the CLE team includes assisting the Kurdiji to write letters to the Judge outlining the community's view on defendants' offending,

¹ The authors would also like to thank the Kurdiji Members, NAAJA intern Kirsti Weisz and NAAJA youth criminal justice lawyer Crystal Triggs for their input.

² See <http://www.clc.org.au/articles/cat/lajamanu-kurdiji-group/> for more detail on the history of the Kurdiji group

relevant background information and advice as to the most effective punishment. CLE and CLC staff have also actively facilitated relationship-building between Kurdiji and the various circuit Judges³ over the past six years. These meetings with the Kurdiji are also used to engage in responsive and detailed legal education workshops exploring different aspects of Western law.

The CLC's Community Governance project has, since 2011, been working intensively with Kurdiji to support their governance and organisational development, including collaborating closely with the CLE team during court week. The CLC's primary focus has been supporting the group's development using a community development approach, with priorities and actions decided by Kurdiji members in consultation with the community. They have addressed a range of issues, at first concentrating on challenges and conflicts internal to Warlpiri society before engaging with non-Warlpiri organisations on their own terms, such as advocating strongly to the Liquor Commission on licensing policy, lobbying the Police on operational and policy matters and developing an alternatives to gaol proposal with the Department of Correctional Services.

The Kurdiji regularly conduct media interviews and have participated in a number of short films⁴ showcasing their work. In addition they have developed innovative ways to explain Warlpiri legal concepts, both for their young people and non-Warlpiri people, which have been used in presentations across the NT, such as joint Aboriginal ranger meetings, the Aboriginal Peak Organisations NT (APONT⁵) Strong Aboriginal Governance Summit and the annual Elders Visiting Forum at NT Parliament House. They meet regularly at the Kurdiji office, a 100% Warlpiri-controlled and owned space, established and maintained exclusively by funds granted by the community-controlled GMAAAC committee (royalty funds) and are in the process of becoming incorporated.⁶

In October 2016, Alex Jones and Andreea Lachs from NAAJA's CLE team, Robert Chapman from the CLC and CLC consultant anthropologist Miles Holmes, were invited to witness a community mediation process led by Kurdiji, and received a detailed explanation of what took place. Although thorough accounts of this process have been previously provided by Kurdiji members, this was the first time that a Kurdiji-led mediation process was witnessed firsthand by the NAAJA and CLC staff

³ Circuit Judges were referred to as Magistrates prior to 2017

⁴ See IHHP | NAAJA short film *Lajamanu Kurdiji Law and Justice Group*
https://youtu.be/sECduxXWQxQ?list=PL72ok0Bbya-qy-P5pP6FI8_6lxtrcW5C0

⁵ Aboriginal Peak Organisations NT (<http://www.amsant.org.au/apont/>) is an alliance of the Aboriginal Medical Services Alliance NT, the Central Australian Aboriginal Legal Aid Service Inc., the Central Land Council, North Australian Aboriginal Justice Agency and the Northern Land Council

⁶ See *Yakarra-pardija-pina: Insights from a Developmental Approach to Rebuilding Governance in Aboriginal Communities*
http://www.clc.org.au/files/pdf/Lesssons_Learnt_from_the_Lajamanu_Governance_Project_May_2014.pdf
for a detailed discussion of the CLC's work

present, who were able to record, and review, key principles for the purposes of cross cultural education.

Context to mediation

A conflict between two groups of male youths one evening, ostensibly over basketball, escalated over the following days involving more and more family members from each side of the conflict and threatening to evolve into a serious community-wide dispute.

Those involved were aged between 10 and 18 and, while news of the building tension had been circulating for days, there was a noticeable increase in the number of young men congregating around the basketball courts one afternoon. Initially, senior members of the community kept an eye on things from afar, while those more closely involved with the conflict began loosely assembling closer to the basketball courts.

As Alex Jones and Andreea Lachs from the CLE team and Robert Chapman from the CLC drove through town, they were flagged down by two prominent Kurdiji members who were in a discussion with two police officers. Robert Chapman went to speak with them and, after some discussion, it was agreed that the Kurdiji would initially attempt to diffuse the conflict using Warlpiri dispute resolution practices rather than get the police directly involved in the first instance. The police were asked to maintain an active presence, to show that both Warlpiri and kardiya authority were overseeing the process. The police agreed with this course of action. This agreement and the support of the process by police was an important aspect to the mediation's success.

Kurdiji mediation process

Within 10 minutes, key stakeholders were assembled at the Kurdiji office. The mediation process involved appropriate members of the Kurdiji group situated between the young people from one side of the conflict, on one side of the room, and their family members, on the other side. Situated in a legally neutral position, members of the Kurdiji group, as well as other community members who were specially called in, acted as *ngalkinpa* (roughly equivalent to a 'mediator'), a Warlpiri legal role used to resolve disputes. The *ngalkinpa* role is often described as 'in the middle', neutral people with no bias to either side who assist disputing parties in a process of conciliation.

Each side of the conflict met separately in the Kurdiji office, with various Kurdiji and community members acting as the *ngalkinpa* – these *ngalkinpa* took turns speaking to the young people and their families, drawing on Warlpiri notions of kinship and justice to emphasise the ties and commonalities between both sides of the conflict (as explained below under *Principles of Warlpiri conflict resolution*). Blame was actively discouraged with one member saying '*we're not here to say who started it*' and '*it's not about who won and who lost.*' Another member emphasised the

importance of apologizing, saying that by fighting, the boys were '*hurting themselves and need to say sorry.*'

The mediation was conducted largely in Warlpiri, with some sections in English for the benefit of the authors. The Kurdiji members drew on Warlpiri legal and governance mechanisms to explain to the young people how their behaviour was '*breaking both yapa (Aboriginal) and kardiya (non-Aboriginal) law*'. The Kurdiji members also emphasised the serious consequences of breaking the law, telling them, '*if you carry weapons in public you are breaking kardiya law*⁷ and if kardiya law is broken '*you will all be on that (police) plane one by one.*'

The first group left after over an hour of discussion and the second entered, arranged in the same manner as in the first session, and went through the same process.

The next phase of the mediation was for both groups to meet, in public, and atone for their actions and say sorry to each other. Those present went to the basketball courts where people from the first meeting and others were assembled. The groups assembled opposite each other on the road, with approximately 200 people present. To the authors, the groups appeared to be on the verge of further conflict (an incorrect assumption as explained later); there was a lot of shouting and gesticulating, with each group occasionally surging towards and then away from the other. The two police officers watched from the sidelines, being actively advised on what was taking place by Kurdiji members. Kurdiji members later explained that, contrary to the authors' perceptions, a complex apology process was underway. This process involved members of each family bringing young people out one by one to hug and say they were sorry.

Principles of Warlpiri conflict resolution

From observation of statements made during the mediation process, the following principles appeared to underlie this Warlpiri conflict resolution process.

1 Ngalkinpa – It is the responsibility of the community to step in and assist in resolving disputes

Ngalkinpa is the mediator, a person who is in a neutral relationship with both sides of the conflict and has an appropriate knowledge of Warlpiri law.

The *Ngalkinpa* is in an avoidance (or respect) relationship with both parties to the conflict, so when the argument becomes too heated they can step in between the two parties, compelling both

⁷ Incidentally, this highlights the success of the CLE work in Lajamanu, with the now-famous video *Jakamarra Widjibaga* frequently referenced in discussions about carrying weapons in public. This video was produced by NAAJA CLE as part of their Community Law Stories series and can be seen here <https://www.youtube.com/watch?v=mcmUZ2ALSjg&list=PLif9sTEBGoan7NbUKjM6UqX-il-dxjCgf>

parties to withdraw. Members say one of the roles of the Kurdiji group is to act as *Ngalkinpa* within the community. Some of the mothers involved said “*It got out of hand (in the first instance) because no Kurdiji was there, and no police*”.

2 Makurnta – The community should show respect to members of the opposite matrimoiety. That is, half the community is in a respect relationship to the other half

One’s own matrimoiety⁸ is *makurnta-wangu* (without *makurnta*) – without shame; while the other moiety is *makurnta* – with shame, respect, reserve, avoidance, circumspection.

Shame, as used in Aboriginal English, is a complex concept, encapsulating the embarrassment and regret that is implied in Standard Australian English, but extends to mean respectful and appropriate behaviour, including deference to senior people and avoidance of direct contact with certain kinship categories.

It is a serious breach of protocol to be in conflict with people who are in the opposite matrimoiety (*makurnta*).

3 Kurnta – People should be motivated out of fear of being shamed or embarrassed in front of their family and community

Kurnta – shame, or to feel embarrassed, to show respect.

“You need to have shame, little bit good manners”, “if you plead guilty that is the feeling of *kurntangka*” (*kurnta* + *ngka* – being with shame).

4 Walyka-kari – People of the same family should not fight or if the ancestors of two families did not fight, then the current generations should not fight either

Walyka-kari, close relation, close family, friends, good relations, friendly relations.

“We are not running on top of you mob, we are family, when we try and stop, you have to listen to us.”

“*Pirlinyanu* and *Warlukurlangu* (*Jukurrpa* or ‘dreaming’ lines) families are the same family, you come from two Jampijinpas and those two didn’t fight when they were young, so you shouldn’t fight”.

5 Atonement – You should say sorry

Public – and sincere – apology is highly valued and should be seen out in the open so everyone can see the matter has been resolved.

⁸ See the Appendix ‘A note about matrimoieties’ for more discussion on this concept and the Warlpiri governance poster <http://www.clc.org.au/files/pdf/150929-makurnta.pdf> Warlpiri speakers can also listen to this detailed explanation of *makurnta* - <https://www.youtube.com/watch?v=vzhHMxNEnSg>

6 Elders – You should respect your elders and elders should help the community

Kurdiji said “you have respect for your elders, you listen to them, and then you know that when you need help they will give it”.

7 The law – You should follow the law

Kuruwarri / Jukurrpa (law) “if we don’t follow the law we will be nothing - lawless. Nobody will recognise you.”

“We make mistake in our law, but you come back and learn and our elders guide us. The law teaches, like guiding a little kid.”

“When old people go you will have to run the community, but you have to learn the right way now, this paper (kinship poster⁹) means nothing to you, my father explained it to me, I didn’t know then, but as I got older I realised.”

The leaders emphasised that the law was here before the old people were born and it will be here after the young people have gone. It’s always here and it’s very important for everyone to understand it and follow it.

8 Harmony – The community should make an effort to get along

There was great emphasis placed on the community-wide repercussions of conflict and the pain it caused if it escalated out of control.

“If you mob kill each other we all have to go to sorry camp, not just mother and father”, “we don’t want to be like [other communities with a lot of conflict] in a couple of years.” It was said that in a dispute *yapa* blame all the families, not just one, as everyone plays a part in creating conflict.

9 You should give the real reason for disputes

It is important to get to the real causes of a dispute so it can be worked out properly.

Kurdiji members repeatedly questioned the young people about the “real reason” for the dispute, they kept saying don’t use football or basketball as an excuse – what is really going on?

10 It is ok to express anger in a dispute

Expressing anger publicly is seen as essential to getting both sides’ perspectives out and providing an emotional release. Only after this anger has been expressed can more considered discussion and resolution take place.

⁹ Warlpiri Governance charts at <http://www.clc.org.au/articles/cat/lajamanu-kurdiji-group/>

One Kurdiji member explained “don’t pour water on the fire (i.e. the argument), let it burn itself out. It looks like yelling but it is the fire burning itself out.” Another said “If that fire stays inside it might come out another time. It has to be burnt out. After it’s burnt out, everything becomes normal again.”

Warlpiri restorative justice principles in practice – lessons we can learn

Warlpiri restorative justice principles contrast with the mainstream Western legal approach to punishing Aboriginal offenders who are in conflict with Western law. The emphasis on specific deterrence, denunciation, and its view of isolation and imprisonment as effective punishment conflicts with traditional Warlpiri conflict resolution principles and can exacerbate the breakdown of relationships in community, leave underlying issues unaddressed and simmering over a significant period of time. This can sometimes leave both offenders and the community with a feeling that justice has not been done. Applying Warlpiri approaches first, as was done here, allows many problems to be resolved before they come to the attention of the Western legal system.

For *kardiya* stakeholders in the justice system there are valuable lessons to be learnt from understanding and applying a Warlpiri restorative justice approach when working with Warlpiri people in conflict situations.

The Warlpiri mediation principles as outlined above reflect many values of what the Western legal tradition calls ‘restorative justice’.

Western restorative justice principles are understood as:

- being “a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”¹⁰
- encouraging offenders to take responsibility for their actions while aiming to restore balance to the relationships that it has damaged.
- often involving a meeting between the parties involved in an offence, including the victim(s), offender(s) and potentially their families and the community, aimed at reaching an agreement about how the offender can repair harm caused by an offence.¹¹

Both the Western legal concept of restorative justice and the Warlpiri conflict resolution principles documented above share common ground. Both approaches have an emphasis on collective

¹⁰ Zehr H (2002) *The little book of restorative justice*, Pennsylvania: Good Books, p 37

¹¹ Sam Garkawe, ‘Restorative Justice From The Perspective Of Crime Victims’ (1999) 15 Queensland University of Technology Law Journal p. 40

participation in the process and on healing, rather than punishing. There are also similarities in the emphasis on relationships and the way that each approach demonstrates the impact of the offending as damaging to not just the immediate victim(s) but the entire community.

Incorporating Aboriginal mediation into the youth and adult jurisdictions

Youth justice system

The Warlpiri conflict resolution process as outlined by this article reflects many restorative justice principles which could be drawn upon and used in our current youth justice framework in the NT. By taking a strengths-based approach and drawing upon existing Aboriginal conflict resolution strategies, this approach could offer many benefits, such as breaking the cycle of repeat offending and diverting young people from the criminal justice system, along with actively engaging communities in the process.

New Zealand's Family Group Conferencing (FGC), which is performed through the youth justice system, serves as a good example of how to apply traditional mediation within the justice system.¹² FGC represents a partial amalgamation of traditional Māori and Western approaches to criminal justice and redressing harm. It is undertaken before a decision is made by the New Zealand Youth Court and allows the family, the young person and the victim to be involved in the decision making process at a venue and using a procedure of their own choice. This model offers a culturally appropriate means of resolving disputes as the process builds upon traditional Māori notions of responsibility for wrongdoing being collective rather than individual and seeks to address the underlying causes of offending, while at the same time involving the victim and family and keeping the young person in community.

Warlpiri conflict resolution principles could be incorporated into the NT Youth Justice system in a number of ways. For instance, at the pre-sentence stage after a plea of guilty is entered, matters could be referred to Warlpiri mediation. An agreed set of charges and facts could be provided to the Kurdiji and the mediation could then be performed by Kurdiji members, which would involve the offender, witnesses and victims. The Kurdiji could document the process in a report to be provided to the Judge during sentencing. This referral pathway could model the pre-sentence youth conference provisions under the Youth Justice Act 2017 (NT) s 84 with an argument made that an elder is an 'appropriately qualified person' to undertake such mediation.

¹² See Judge Andrew Becroft, 'Youth Justice – The New Zealand Experience, Past Lessons and Future Challenges' (Paper presented at the *Juvenile Justice: From Lessons of the Past to a Road for the Future Conference convened by the Australian Institute of Criminology in conjunction with the NSW Department of Juvenile Justice and held in Sydney, 2003*).

Similar approaches could be taken in the adult jurisdiction with mediations taking place after a plea of guilty has been entered involving all parties to the conflict. A report outlining the process and outcomes could then be provided by the Kurdiji group to the court.

Conclusion

The conflict outlined above had flared up over a couple of days and had the potential for people to be seriously injured and result in young people and their family members coming into contact with the criminal justice system. An important aspect of this mediation's success was that the local police worked in partnership with the Kurdiji group to resolve the dispute through supporting the Kurdiji to conduct a mediation. If police had not been prepared to let this mediation unfold, the conflict could have had a very different outcome. From our discussions with community members after its conclusion, it was clear they regarded the mediation as successful and had 'finished the trouble.' If people were removed, for instance by arrest, before this mediation process could take place there was a high risk that the conflict could have continued unresolved for a much longer period of time and would likely have escalated.

From the authors' knowledge no one was charged as a result of this incident and witnessing the mediation process was an incredible opportunity to see Aboriginal restorative justice approaches in action. It is hoped that by sharing this knowledge of Warlpiri restorative justice principles in practice, non-Warlpiri people working in Lajamanu can utilise these principles when working with Warlpiri people who are in situations of conflict and disagreement, particularly in the justice system. It is hoped particularly that practitioners within the justice system - police, lawyers, Judges, Corrections and other key stakeholders –are able to take a strengths-based approach and incorporate some of these key principles into approaches when dealing with Warlpiri people.

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References

Kurdiji governance posters

These can be found on the CLC's Kurdiji page - <http://www.clc.org.au/articles/cat/lajamanu-kurdiji-group/>

CLC evaluation

http://www.clc.org.au/files/pdf/CLC_CDU_Eval_Report_Update_small.pdf

Northern Territory Indigenous Community Sentencing Mechanisms: An Order for Substantive Equality (2014) Australian Indigenous Law Review. 17(2):79-99

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/AUIndigLawRw/2014/6.html>

NAAJA CLE Community Law Stories film series:

<https://www.youtube.com/watch?v=mcmUZ2ALSjg&list=PLif9sTEBGoan7NbUKjM6UqX-il-dxjCgf>

Yakarra-pardija-pina: Insights from a Developmental Approach to Rebuilding Governance in Aboriginal Communities:

http://www.clc.org.au/files/pdf/Lessons_Learnt_from_the_Lajamanu_Governance_Project_May_2014.pdf

Appendix

A note about matrimoieties

In anthropology the word *moiety* is used to describe social groupings that consist of two halves. Moieties are fundamental organising principles in Warlpiri society, regulating social, legal, land, family and other relations, including correct marriage partners. Warlpiri guidelines for interpersonal relations depend on matrimoiety affiliations – these moieties are constituted from female (matriarchal) descent lines, or the ‘mother line’ as it’s often described. For people in the same matrimoiety interaction is relatively free, while elaborate conventions apply to interaction with those in the other matrimoiety.

There are other moiety divisions in Warlpiri law, including the two patrimoieties, derived from male (patriarchal) descent lines and instantiated by the *kirda-kurdungurlu*¹³ relationship, which is particularly important in land management, transmission of legal and other knowledge and important decisions in general.

¹³ See the *kirda-kurdungurlu* governance poster at <http://www.clc.org.au/files/pdf/150929-kurdungurlu-kirda.pdf>