



From Conflict to Consensus: Land Courts or Village Courts? A Case Study among the Enga of Papua New Guinea

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The question

Given that the Land Courts seem not to be providing the answer to land dispute settlement in some parts of Enga Province, the question arises: what better alternatives might there be to them ... Would the localization of land dispute settlement to the province provide a better solution to the problem, or do land tenure disputes in Enga defy the imposition of all reasonable answers?

(Allen and Giddings 1982:197)

The Enga treasure their land as the foundation of subsistence, independence, identity, and pride. Although customary rules for landownership and inheritance exist, historical traditions indicate that land disputes have long arisen between clans, subclans, and even families. Prior to contact with Europeans and colonisation, many disputes were resolved with the guidance of local leaders, while others resulted in wars and migrations. From the late 1940s, the colonial administration explored a variety of ways to tackle land matters but with little success; the challenge persists to this day.

After a brief look at the history of land issues, we will address the above question posed by Allen and Giddings by drawing on data from 236 land cases in village courts collected between 2010 and 2025. Our aims are fivefold:

1. To understand how rapid population growth, economic development, and culture change have impacted land tenure and disputes in the past two decades
2. To evaluate the performance of customary village courts in these current contexts
3. To ask whether localisation of dispute resolution offers the best path forward
4. To discuss the emergence of 'common law' from rulings and reasons in village courts
5. To mention some of the challenges that lie ahead.

Our findings will demonstrate that custom is not static: in village court sessions custom adapts and modernises, developing a body of precedents for land decisions that are widely applied and address the needs and aspirations of individuals and communities in a changing society.

Land disputes in historical perspective

Enga historical traditions, extending back some 8–12 generations and ordered by genealogies, lay out the political structure of tribes, clans, and subclans, tracing the relationship of the forefathers to the land. Shortly before the sweet potato arrived in Enga some 400 years ago, the population of Enga is estimated to have been between 10,000 and 20,000 people (Wiessner and Tumu 1998). Communities in eastern, central, and western Enga led different lifestyles, ranging from taro-based horticulture in the lower altitude areas of eastern Enga to a lifestyle involving considerable hunting and gathering of forest resources in high altitude areas of western Enga. Across early historical traditions, descriptions of sparse population, loneliness, and the welcoming of new residents are common.

The arrival of the sweet potato made surplus production possible — in the form of pigs — and released constraints on population growth. Opportunities created by this new crop set off major population redistribution, as people from higher altitudes sought fertile land or moved into the lower valleys by drawing on affinal ties. Competition and conflict intensified, escalating into large-scale wars that displaced entire clans and tribes and emptied vast tracts of land. Pressed to occupy land gained, victors allocated large portions of land gained to their allies (Wiessner et al. 2024).

As the land filled and networks of ceremonial exchange grew, clans no longer sought to expel their neighbours during tribal wars. In Enga, it was labour — not land — that was in short supply, as pigs, the primary currency of exchange, required substantial labour input. Financial support for prestigious ceremonial exchange came from relatives in neighbouring clans or along chains of partners that spanned multiple clan boundaries. This interdependence encouraged peacemaking and the restoration of a balance of power after tribal fighting to be able to resume cooperation and exchange.

While land disputes were among the factors that triggered tribal fighting, there is little evidence that most tribal fighting was over land or that land was short. We collected hundreds of historical traditions (Wiessner and Tumu 1998), but not one mentions land

shortage or wars initiated to seize land. Most wars were sparked by individual disputes that escalated owing to deeper underlying tensions (Young 2004), or as the Enga say, ‘by the uncontrollable tongue that launches spears’. However, the taking of land after bitter conflicts to punish was commonplace. As there were no customs to allocate land taken among the families of warriors, land lay as fallow no-man’s land until sentiments cooled and families of the victorious group, who lived on the borders, moved in. In some cases, land taken was returned for payment.

Fleeting contact with gold prospectors in the major valleys of Enga occurred around 1934, followed by the arrival of the Taylor and Black patrol of the Australian administration. A patrol post and airstrip were established at Wabag in 1939. Delayed by World War II, patrol posts were only set up in the districts of Enga between 1949 and 1960 (Lacey 1982). The colonial administration appointed local leaders, instituted a police force, introduced the Australian legal system, and sought to suppress warfare.

Initially, *kiaps*² settled land disputes out of court, hearing both sides and delimiting a boundary that was usually not recorded (Gordon and Meggitt 1985). Elders interviewed in central Enga in the 1980s recalled that land was the only reason accepted by officials from the Australian administration as ‘rational’. Accordingly, they explained most tribal fighting in the context of land disputes; disputes were then taken to land courts. Enga enjoyed fighting in courts where they could bribe and deceive witnesses to obtain a portion of land (Meggitt 1977). The losers, aware that decisions lacked finality and that such jockeying would be ongoing, waited for a chance to win back land in future court sessions.

In 1952, the Native Lands Commission was established in Papua New Guinea (PNG) to record customary land rights and determine how much land was ownerless and thus could be appropriated by the state and sold to expatriates (Zorn 1992). Their efforts identified little unowned land throughout Enga or PNG. In 1963, the Native Lands Commission was replaced by the Land Titles Commission, who were given the jurisdiction over rights to customary land with a mandate to register customary land to enable market use. This effort also largely failed due to the difficulty in establishing boundaries and because of widespread bribery of witnesses; moreover, it did little to address land disputes. Further investigations concluded that land disputes could not be resolved by external authorities, unless traditional mediation processes were applied that involved the disputing parties and their communities (Zorn 1992).

Following PNG’s independence, the Land Disputes Settlement Act 1975 established land courts that operated through mediators applying a three-stage system of mediation, arbitration, and appeal (Allen and Giddings 1982; Gordon and Meggitt 1985). For stage one, mediators drawn from local communities were appointed by a committee composed of the provincial magistrate, the provincial secretary, a member from

the lands department, and two provincial government nominees. If mediation failed, disputes could be appealed to a local land court presided over by a magistrate chosen from the formal local court and two to four local mediators. Dissatisfied parties could then appeal to the Provincial Land Court upon a deposit of K500. Land courts experienced a disconnect between magistrates who were trained to apply formal law and mediators whose goals were to settle disputes (see Gordon and Meggitt 1985:88–91). Local land courts soon became overrun with appeals.

In 1980, land courts were suspended when a magistrate was assaulted during a hearing in Wapenamanda. By mid-1984, over 800 registered land disputes had accumulated in Enga (Wormsley and Toke 1985:80–81). Originally, village courts established in 1974 were not given jurisdiction over land cases. However, in the absence of land courts, for the next four decades land disputes were brought to village courts or joint village courts (formerly OMS, Operation Mekim Save) for mediation, and occasionally to the district court — many remained unresolved, pending the promised resumption of land courts.

Enga land tenure and inheritance

To understand Enga land disputes, it is necessary to first grasp the principles of Enga land tenure and inheritance. Customary land throughout Enga is held collectively by clans and subclans. It is believed to have been transmitted down from the founding ancestors over many generations as documented in genealogies that go back 8–12 generations. Clan ownership of land is maintained through customary dispute resolution and compensation or physical defence in the event of aggressive encroachment. In the past, fertility of the land was enhanced by rituals for the ancestors and mythical sky beings. Clan land is inalienable and cannot be transferred outside the clan. In a sense it is the land that holds the clan together.

Within clans, customary land is subdivided into estate holdings of subclans, lineages (*akalyanda*), and families. Custodianship over family estates is typically vested in the father or, in his absence, a senior kinsperson, for the duration of their lives. They are subject to the obligation to distribute the land to direct descendants — usually sons but sometimes daughters — or to other designated successors in accordance with custom.

The father or other custodian of the family estate may informally grant temporary use rights to kin for periods ranging from a single planting season to multiple years. These use rights are conferred by individual families and do not require clan approval. Customary obligations attached to such use rights included reciprocal voluntary contributions in the form of labour, bride wealth, compensation payments, or other acts of community support. Customs for land tenure in PNG (Burton 2007; Lea and Curtin 2011) vary considerably. Land among the Enga is held by clans for certain purposes, but the authority to make decisions about development and to grant use rights

for family land estates rests with individual families. This arrangement serves the people well. On the one hand, the land acts as a unifying force, holding clans together across generations and supporting the many forms of intra-clan cooperation. On the other hand, individual control over family estates fosters a strong sense of responsibility for conserving the land and helps avoid the tragedy of the commons.

In western Enga and among the Ipili — areas not yet covered in our village court studies — rules for group membership and inheritance differed. Land was passed on from father to son and in some cases to daughters, but families had potential membership, residence, and use rights in the eight clans of their great-grandparents, four from the mother's side and four from the father's side (Jacka 2015:114).

The data

Starting in 2010, our research team at the Enga Take Anda began observing village court and joint village court cases (OMS) to understand their challenges and effectiveness in applying and updating customary law to address the problems of a changing society. Village courts (VCs) are presided over by panels of three to five magistrates, usually older, highly respected, semi-literate male local leaders, and in the last decade, female leaders as well. Open air court hearings, conducted in the Enga language, are held at central points in Enga villages two afternoons a week, occasionally interrupted by heavy rain, dogs, pigs, or drunks. From 30 to 200 people attend; both sides as well as third parties are given ample time to have their opinions heard.

Joint village courts (JVCs), formerly OMS, were established in 1982 by the provincial government to reduce tribal fighting after numerous other attempts to do the same had failed (Gordon and Meggitt 1985). In recent decades, their role has extended beyond tribal conflict to include any complaints that people will not take to formal courts but that threaten peace. For other serious crimes such as rape or murder, the JVC magistrates inform both parties that the conflict is beyond their jurisdiction and should be taken to district or national courts. If the parties refuse, a JVC panel from the district hears the case, mediates and negotiates until both parties reach an agreement that is recorded. JVCs do not have the jurisdiction to handle land disputes, but they do take on the serious disputes when necessary for maintaining peace.

Our observations and documentation in VCs are carried out by Enga research assistants who are members of the community trained to systematically record the following information: demographic details of complainant and defendant, their relationship, a detailed description of the complaint, the defendant's response, the evidence, input from attending community members, the settlement, reasons for the settlement, satisfaction of both parties and the community, length of hearing, and whether police were involved (Appendix 1). In JVCs, Nitze Pupu, the first blind lawyer in PNG, observes and takes detailed

notes on court sittings with the assistance of Anton Yongapen, the deputy chairman of the Wabag JVC.

Our research began in 2010 in lower Ambum Valley VCs and Wabag JVCs. To date, 491 cases have been observed and documented in the Ambum Valley and 1,145 cases in the Wabag OMS. In 2019, our studies were extended to the remote north-east Kompiam district where 233 cases have been documented. In 2024, ongoing research was further extended to the Saka Valley (90 cases) and Wapenamanda district (75 cases) in eastern Enga and the Kandep district (61 cases) and Lagaip district (189 cases) in western Enga. We have just begun work in the Porgera district. Because of small sample sizes of VC cases and JVC land cases in individual districts, all districts have been combined for the analysis. Two hundred and thirty-six out of the 2,260 (10 per cent) documented cases concern land disputes. In 2024–25, details of 32 land cases that were appealed from JVCs or VCs to the district court were also recorded.

To supplement observation of village courts, we have held 2–4-day workshops yearly since 2012 with prominent VC magistrates from all districts to discuss our findings and the problems that JVCs and VCs are facing today. Their opinions have had a major influence on this work.

The changing contexts of land disputes

Population growth and the relationship between disputing parties

According to national censuses, in 1979–80 the resident population was approximately 170,000, by 2000 it had reached 295,031, and by 2021 approximately 571,000. Though the accuracy of these figures is questionable, there is no doubt that the population has more than tripled since the institution of land courts. This growth has put additional pressure on land, shifted the ratio of younger residents to elder residents, and the relationship between disputing parties. Some of the pressure on land has been relieved by a decline in forms of Tee ceremonial exchange and increasing importance of cash for compensation, bride wealth and funerary contributions. In more densely populated areas, households are keeping pigsties at their houses rather than letting pigs forage freely, increasing the workload of pig husbandry and reducing the number of pigs raised. The price of pigs has soared.

In the 1960s and 1970s, many land disputes in Enga were between clans and land acquisition was believed to be a major factor behind tribal fighting (Meggitt 1977). In recent decades with population growth, approximately 80–85 per cent of land disputes are now within extended families, subclans or clans (Table 1). Physical assault with bush knives and property destruction sometimes occur with land disputes: 27 per cent of cases in the lower Ambum Valley and 12 per cent of cases in district VCs/JVCs and Wabag JVC. For disputants between different clans, none of the Wabag JVC disputes involved assault or destruction, but 25 per cent of the Ambum

Table 1: Relation between complainant and defendant in land disputes

	Wabag JVC		Ambum VC		District VC/JVC	
	no.	%	no.	%	no.	%
Extended family	31	31	26	40	25	34
Subclan and clan members	52	52	30	47	32	44
Members of different clans	16	16	8	13	16	22
Total	99	100	64	100	73	100

VC=Village courts in rural areas

Source: Authors' data.

VC cases and 12 per cent of the district VC or JVC cases did (Appendix 1, Case 3). Most land cases between people from different clans remain between the two individuals and do not draw in other clan members. The most difficult conflicts within subclans and extended families stem from men who die childless without specifying inheritors, or individuals whose grandparents or great-grandparents were siblings, but inheritance intentions of the deceased are unclear. The frequency of land conflicts within extended families, subclans, and clans is a serious concern as internal land disputes, if not effectively mediated, threaten to break down community cohesion.

Discontinuation of men's houses and other venues that might lead to loss of knowledge of land tenure

Many fear that with the passing of elders and the population bulge in younger age groups evidence for land tenure will be lost. This does not appear to be the case, however. As can be seen in Table 2, sufficient tenure evidence is still held in communities for 85–90 per cent of disputes in village courts. While some residents recall boundaries of landholdings, most of the evidence given pertains to who developed the land in the past by clearing gardens, planting trees or building houses. However, when land disputes are taken to JVC sittings held in Wabag and removed from communities, sufficient evidence is available in only 59 per cent of cases.

Engagement in the market economy and land disputes

The growing engagement with the market economy and payments for land used for roads or other government facilities have raised the awareness of the value of land.

The major land disputes today involve ambiguity about inheritance, attempted land grabs, and reclamation land where use rights were formerly granted. Though most land in the forest was owned, there were some swamp and forest areas considered communal which individuals are trying to move into today.

In VCs, illegal land grabs are easily identified. Areas where inheritance is unclear are often divided between kin, as are areas that were formerly unoccupied with unclear ownership. Today, the most common issue is the request for people who were previously granted use rights to vacate the land (Table 3; Appendix 1; Cases 1 and 3). It is generally accepted that the original owner has the right to ask temporary residents to vacate. However, if substantial developments have been made on the land, rulings are not straightforward. Should the original owner compensate for improvements and assist with the costs of moving? Or, as some argue, has the family with use rights profited from the land for some years and therefore is indebted to the owner? If a family has resided on land for more than 20–30 years, do they become owners? As will be discussed later, requests for vacating land are increasingly resolved with some payment to the party who must move.

While many land disputes can be resolved, a growing number of complaints stem from the sale of land. The sale of customary land is prohibited under customary and national law; however, transactions still occur, largely because many people are unaware of the law's restrictions. These informal land sales often involve wealthier individuals privately purchasing land from poorer families. The wealthy recognise the increasing value of land and its economic potential. In contrast, less fortunate families sell with the hope of obtaining the money to buy a vehicle, start a small business, or send a child for higher education.

Table 2: Comparison of evidence for land tenure

	Wabag JVC		Ambum VC		District VC/JVC	
	no.	%	no.	%	no.	%
Sufficient evidence from witnesses, documents or situation well known	57	59	57	89	64	85
Conflicting or insufficient evidence	39	41	7	11	9	15
Total	96	100	64	100	73	100

Source: Authors' data.

Unfortunately, in many cases, the money is soon spent, and the family is left without sufficient land to meet their subsistence needs. In other instances, when children come of age, they object to the sale, claiming that part or all their inheritance has been sold without their consent. Land is sometimes sold to one buyer and the same plot later sold to another buyer who offers a higher price. Due to the customary practice of allowing use rights rather than permanent ownership, many do not fully grasp that once land is sold, it is gone — and so are its long-term benefits.

Disputes brought before VCs regarding land sales involve requests for additional payment or reclamation of the land sold. These cases can become highly complex. For example, a wealthy businessman near the provincial capital purchased a large parcel of land for K100,000 from several families in a neighbouring clan. He made the purchase in good faith, after consulting with relevant government agencies. About a month later, the sellers demanded more money given their shortage of garden land, prompting the buyer to pay an additional K50,000. Meanwhile, the clan of the sellers filed a case in the district court, alleging the land

was wrongfully alienated from the clan. It was later claimed that the families who sold the land were not the rightful owners. As a result, the dispute remains unresolved, the land has been cordoned off, and its future remains uncertain (see also Appendix 1; Case 2).

How successful are village courts and joint court sittings in resolving land disputes?

Table 3 compares success in settlements for cases brought to the Wabag JVC, Ambum VCs, and district JVCs and VCs. The results clearly show that VCs or local JVCs in districts are more effective in mediating disputes than the central JVC in Wabag, with 84–94 per cent of disputes resolved in local VCs in contrast to 59 per cent in the Wabag JVC. This is largely because witnesses are more willing to give testimony in smaller community forums and because some of the more sensitive cases are brought to the Wabag JVC.

Satisfaction of both parties with mediated settlements ranges from 52 to 70 per cent for the Ambum VCs and district VCs and JVCs (Table 4). Rates of community satisfaction are more difficult to judge reliably for the Wabag JVC because court

Table 3: Settlements in particular courts

	Wabag JVC		Ambum VC		District VC/JVC	
	no.	%	no.	%	no.	%
Clear decision for one party	21	21	17	26	25	34
Land or payment divided	7	7	2	3	14	19
Land returned with payment for development	18	18	38	59	20	28
Settle themselves	13	13	3	5	2	3
Sent to DC/OMS	0	0	2	3	5	7
Sent back to VC	4	4	0	0	0	0
Unsolved/ postponed to land courts	35	35	1	2	6	8
Thrown out	1	1	1	2	1	1
Total	99	100	64	100	73	100
Disputes settled	59	59	60	94	61	84

Note: Four of the postponed cases in the districts were due to tribal fighting in the Kompiam area.

Source: Authors' data.

Table 4: Satisfaction with settlements of land disputes

	Wabag JVC		Ambum VC		District VC/JVC	
	no.	%	no.	%	no.	%
Complainant satisfied, defendant not	12	16	13	22	7	11
Defendant satisfied, complainant not	14	18	13	22	9	14
Both satisfied	48	62	30	52	44	70
Both dissatisfied	3	4	2	4	3	5
Total	77	100	58	100	63	100

Note: Only cases where it was possible to determine satisfaction are reported here.

Source: Authors' data.

sittings draw larger crowds and people are often reluctant to openly express opinions in such settings. The satisfaction figures for the Wabag JVC also only include cases that were not repeatedly adjourned or postponed for land courts. Communities now realise that the land courts will probably never return and that they must settle land disputes for the sake of peace and cooperation. Many Enga reject the idea of the return of land courts due to fears of bribery and corruption on the part of external land committees with poor knowledge of land tenure in local communities.

Community approval makes a difference. For the Ambum VCs, there were 26 disputes (44 per cent) in which one or both parties were dissatisfied, but nonetheless the wider community supported 21 decisions. Similarly in the district VC/JVC, the decisions for 13 out of 16 cases with dissatisfaction were supported by community opinion. Communities play a very important role in customary disputes by cajoling their members to accept settlements. Sometimes when compensation is involved, a few community members step forward and contribute on the spot.

Is there discrimination by gender and financial status?

Because land inheritance in the study areas was largely patrilineal, male participation in land disputes is significantly higher with the exception of disputes within extended families (Table 5). Nonetheless, women regularly bring complaints to VCs, and unlike in the past when they were considered jural minors, women are no longer required to be represented by men. In the Wabag JVC, women were involved in 22 out of 99 cases (22 per cent) — either as complainants or defendants. Of these, 14 settlements (64 per cent) favoured the woman and 5 (23 per cent) favoured the man; the rest led to equal land division, settling themselves, or waiting for the land courts. In the combined Ambum VC and district VCs and JVCs, results were similar (Table 5), except that more disputants decided to settle themselves after

voicing complaints in the VCs. There is no apparent gender bias; when women are favoured, it is to block attempted male land grabs within extended families.

In only 3–5 per cent of land disputes do bribery accusations arise. However, is there evidence that the professionals with tertiary education are favoured in VC and JVC cases? Professionals with tertiary education do bring disputes to customary courts, though the majority of these have to do with polygyny and other marital problems. In the Wabag JVC, 21 out of 99 land cases (21 per cent) involved disputes between professionals with tertiary educations and persons with no education or less than Grade 10, largely subsistence farmers. Of these, five settlements were in favour of the professionals and five in favour of subsistence farmers, one led to equal division, four were sent back to VCs, and six were postponed for land courts. There is little evidence that courts are biased in favour of elites, though such cases may be more likely to be redirected to other courts.

Appeals of land disputes from the VC or JVC to district courts

Since the early 1980s, dissatisfied parties have appealed land decisions from customary VCs and JVCs to the formal district court (DC). Research on appeals began in 2023 and to date 23 appealed land disputes have been documented. For 19 of these, the DC upheld the original VC or JVC decision. The remaining four decisions differed only because of the availability of new evidence from documents. The evidence used in the 19 cases by the DC was largely the same as that used in the VC or JVC; the DC depends almost entirely on evidence gathered in VCs. Fewer witnesses testify in the formal DC, and hearings are shorter — 20–24 minutes compared to 1–3 hours in VCs/JVCs — allowing less time for views to be expressed.

Table 5: Land dispute settlements by gender

	WabagJVC		Ambum VC and district VC/JVC	
	no.	%	no.	%
Number of land disputes	99		137	
No. with women versus men	22	22	35	26
— Favoured women	14	64	12	34
— Favoured men	5	23	6	17
— Land divided, settled themselves	1	4	12	34
— To VC, DC or land court	2	9	5	14

Note: There were two JVC cases (2%) and 12 cases in the districts (9%) of women disputing other women for land.
Source: Authors' data.

Is a 'common law' for customary courts emerging?

In 2011, then Chief Justice Injia called for development of the customary law:

The *Underlying Law Act* contains an important provision which provides for all courts of the NJS [national justice system] to play a part in the development of the underlying law ... Village Courts are not formal courts but they have an important role to play in assisting the formal courts to develop the underlying law. (Injia 2011:3, original emphasis)

Injia gave two reasons for the shortfall in developing customary law:

First, research into customary law is outside the academic experience of most lawyers and relevant writing is not readily accessible to them. Secondly, there has not been any large-scale, systematic collection of customary rules, nor is there any accessible repository for such material apart from academic writing. (Injia 2011:6)

There is a third reason for the shortfall in the development of customary law: the rapid pace of change in community practices, which requires updating and documentation of customs to remain relevant. 'Custom' cannot be derived solely from past practices documented by academics and the wisdom of elders alone. In 2016, during a seminar with magistrates from all districts of Enga, participants emphasised the importance of preserving certain foundational principles of Enga custom while recognising the need to adapt others. They stressed the need to document current applications of customary laws and procedures for training newly recruited magistrates, as some customary practices are considered repugnant today while others need to be adjusted to change in society and the economy. Participants also suggested the codification of a few basic tenets at the intersection of formal and customary law, particularly in the areas of land and marriage.

As the Papua New Guinean politician, jurist and philosopher Bernard Narokobi wrote: 'It is absurd for any independent nation to declare itself bound by the laws of another nation, or the decisions of a court of another nation' (Narokobi 1989:117). Still, developing a form of common law for Enga VCs could retain useful aspects of British common law while adapting others. Built on judicial precedents, common law provides consistency and stability — important in light of the recruitment of younger magistrates with limited knowledge of custom and procedure (Pupu and Wiessner 2018) — and can help reduce concerns about bribery. Moreover, because new situations arise, common law can adjust to change more rapidly than can statutory law. Concerns of rigidity in common law are reduced by the procedures of PNG VCs that place each case in the broader context and history of the dispute, the relationship between conflicting parties, and available resources (Table 6). Fairness and flexibility are increased by the participatory nature of

VCs where community members may present evidence and express opinions. Discontented disputants have the option to refer cases to the formal court system.

Over time, three widely applied land decisions derived from community traditions and current practices that have received collective acceptance are shaping what may be considered PNG style 'common laws' for Enga customary courts. The first principle, which has emerged over many years, is that land can no longer be won or lost as an outcome of warfare. In early pre-colonial times when land was plentiful, clans often abandoned their territory after armed conflict and settled elsewhere, taking their ancestral stones or sacred objects with them to their new lands (Wiessner and Tumu 1998). After approximately 1850, when the land filled and peacemaking was widely practised, only smaller portions of land were taken. In recent decades, JVCs that settle tribal fighting typically issue preventive orders to stop fighting on the understanding that land taken will be returned after peace is negotiated and compensation is paid. In eastern Enga, payment to return to the land is sometimes required in addition to compensation. For cases where the conflict is over parcels of land, agreements are sometimes made to share the land. For example, in a highly destructive tribal fight over land exacerbated by 2017 election issues, a few kilometres west of Wabag, the Kala and Kia clans resolved the fight by donating the contested land for a high school, which opened in 2025, now known as the 'Kakii school' to represent both clans.

A second principle of emerging common law is that the original owner retains the inalienable right to reclaim land from temporary residents who have been granted use rights. However, since use rights are granted by individuals as custodians of family estates, these individuals are the ones who must bear the costs of compensation for improvements. The informal public forums during customary court sittings allow for broad community input and discussion, sometimes resulting in voluntary contributions by community members who are motivated by sympathy, appreciation for past investments in community, and a desire to maintain good relations (Wiessner 2020). The consistent applications of such decisions by VCs across all districts in the study — to return land to the original owner with compensation for development — indicates that this solution is grounded in well-accepted principles and ethics of Enga custom.

A third emerging principle that is gaining acceptance holds that if a family was granted undisturbed use rights to a parcel of land for 20–30 years, then they acquire some rights to remain. If the original landowner later returns to reclaim the land, the tenant family may remain and retain a portion of what was previously granted to them. This principle is becoming increasingly relevant as more families migrate to towns and seldom return home.

Table 6: Comparison of formal and customary courts

Formal courts	Customary courts
Goal	
• Judged guilty or not guilty • Legal proceedings about individual • Punitive justice: offender punished: jailed or fined • Judges/magistrates outsiders	• Compensating for harm done; restoring relationships • About community as much as individual • Restorative justice/mediation: victim compensated for harm • Magistrates insiders
Evidence	
• Strict rules of evidence • Requires highly trained police • Witnesses fear retribution when outcome is punitive; reluctant to give evidence • Police involvement	• Evidence given by known parties in community • A wide variety of evidence accepted • Little police involvement • Reduced fear of witness retribution with restorative outcomes
Proceedings	
• Venue: formal court rooms with limited capacity • Magistrates/judges do not know disputants or context • Determination of innocence or guilt	• Venue: open air gatherings — unlimited participation • Magistrates with some knowledge of disputants • History of dispute, relationship between parties and available resources considered • Determination of liability
Outcomes	
• Decision: guilty or not guilty; punishment of guilty party • Risk of incarceration • No community healing	• Public venting • Apology, consensus and compensation for victim • Community healing and restoration of social order

Source: Authors' data.

Looking ahead

Returning to the opening question, there are currently 154 or more VCs and 12 JVCs in Enga. Our research indicates that the average VC handles at least one land dispute a month, often more. The sheer volume and cost of settling land disputes — some 2,000 annually — would be overwhelming if land courts were reinstituted. VCs are in place, funded, and working well. As such they are the most economically efficient and democratic institutions addressing land disputes. But what will be the challenges for the future for land issues?

One looming concern for land issues is population growth. Without active education in family planning and widely accessible facilities, the population will rapidly outgrow available land resources. This will place increasing pressure on VCs to mediate settlements that preserve community harmony and cooperation. No other legal institution is in a better position to manage community tensions given the roots of VCs in communities. Sincere efforts to control population growth would significantly ease the burden on courts dealing with land as well as all governmental institutions.

Equally troubling for land issues are the wars currently ravaging Enga Province. In the past, most wars were fought between clans with the goal of eventually restoring balance through compensation after transgressions and conflict. Today many wars have

escalated from inter-clan conflicts to election-related conflicts at the political party level involving several clans on each side, greatly complicating peace negotiations. These larger and highly destructive conflicts spark smaller ones fuelled by lingering tensions and cycles of revenge. At present, tribal fighting is so pervasive in Enga that a state of emergency has been declared in all districts except Wabag.

Since the early 1990s, mercenaries have been hired in these conflicts, supplied with high-powered weapons and ammunition, funded allegedly in part by wealthy politicians or businessmen living in cities who answer the pleas of their natal clansmen for support in both war and subsequent peacemaking (Wiessner 2010). The language of warfare has shifted to that of sports — 'winning' and 'losing'. Wars are said to be 'won' by when bands of well-armed men attack a village with high-powered weapons, drive out the residents, and burn the village and its facilities to ash. While 'victory' is sought by warriors in the short run, it is ultimately recognised that everybody loses in the long run. When a conflict ends, mercenaries seek further employment; their involvement rapidly escalates conflicts that otherwise might have been resolved by more peaceful means.

The upshot of modern warfare is a growing population of war refugees (Appendix 1; Case 1), particularly in eastern Enga where the 'losers' are required to both pay to regain their land and provide

compensation before they are permitted to resettle. Some communities wait years to do so. When refugees relocate to the land of kin, they receive temporary use rights until they can return home. However, when displacement is prolonged, some have become integrated into host communities and are reluctant to leave. Others seek to settle in more peaceful communities and start life anew by purchasing land in hosting clans, further straining local resources and depriving resident children of their only inheritance. In still other cases, war refugees who have been absent from their land for years return to find their land occupied by others. Warfare, displacement, migration, and land sales are generating unprecedented challenges for land management systems.

To address these issues, stronger enforcement is needed for the legal ban on the sale of customary land. In addition, VCs need to record agreements between landholding families and those granted use rights. These agreements should specify duration of residence, payments required, permissible uses, and restrictions on development. While Integrated Land Groups (ILGs) allow for leasing by clans or subclans, these entities are extremely complex to form, register, and maintain (Burton 2007). They are only appropriate for larger development projects, not for the temporary, customary family-level arrangements that redistribute people over available land and facilitate mobility for jobs and education.

Finally, there is a critical need to document and collate customary law, an initiative now underway for the Enga, supported by the provincial government. These resources will be used to train younger magistrates in the essential rights preserved by custom as well as the principles for rulings and reasons that are now emerging out of VCs. Current VC records which register the basic facts of the case only — dates, disputants, complaint, and court decisions — are inadequate for this initiative. What will be required includes:

1. Review of the literature on custom in various areas of life combined with consultation with knowledgeable elders to document customary law
2. Analysis of VC records to identify pressing issues
3. Observation of court sittings to understand procedures underlying rulings and reasons
4. Running seminars with VC magistrates on problems and possible solutions today.

Documenting customary law — past and present — is a serious undertaking that requires time and resources. It is, nonetheless, worth the effort to produce reference materials to support the underlying law, an important component of PNG's legal system and a safeguard of rights rooted in culture. For example, our work on land disputes will strengthen the following rights: (1) prohibition on the sale of clan land which binds communities together; (2) protection against the seizure of land through armed conflict; (3) the rights of individual families to lend or lease their land temporarily with documentation; and (4) the inalienable rights of all children to inherit land.

As Cooter (1991) has suggested, since custom lives and adapts to novel situations, courts handling land should let custom take its course and enforce the changes that evolve. As the Enga saying goes: '*Yaka itakisa kapa singi, akali yuunya kapa singi*' — A bird's home is in the trees; a man's home is on the ground. Many adaptations will be needed to secure people's home on the ground.

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Endnotes

1. Nitze Pupu and Anton Yongapen observed and made detailed documentation of Wabag JVC (OMS). Nitze Pupu was assisted by his guide Bruce Yaka. Larsen Kyalae documented Ambum VC sittings; Gertrude Ambui covered courts in Kompam VC; Kukuma Yakapuni in Wapenamanda; Julie Kolalio and Thomas Limbao in the Tsaka Valley; Komba Kai in western Kandep; and Paul Piundi in the Lagaip. Anderson Ipo documented appeal cases to the district court. Philip Maso coordinated the research and Akii Tumu gave valuable insights. Polly Wiessner, a professor of anthropology at Arizona State University and the University of Utah, designed the research, trained the research team, entered the data into the database, conducted the analysis and interpretation, and wrote the paper.
2. Kiaps were patrol officers who served as the Australian Government's multi-purpose representatives in colonial Papua and New Guinea, and whose duties included policing, administration, and justice.

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Appendix 1: Three examples of land disputes as recorded by researchers on the Enga Take Anda team

Case 1: Return of land to owner with compensation for developments

Wapenamanda Joint Village Court documented by Kukuma Yakapuni

1. Date: 8/10/2024

2. Complainant

Name: Jerry Kolamben
Age: 60–65 years
Sex: Male
Clan: Lenoene–Kompam
Education: Grade 5
Profession: AOG Pastor

3. Defendant (accused)

Name: Beto Walyo
Age: 53–57 years
Sex: Male
Clan: Itokone–Takaeposa
Education: No formal education
Profession: Village Court Magistrate

4. Complainant/dispute/offense (include conditions of offense):

The complainant took a Village Court summons against the defendant complaining that in 2009

the defendant gave him the piece of land in dispute called Madikosa to use with no payment when he was at Mambisanda with his wife's parents after being displaced following a tribal fight in his village at Kompam. Then in 2022, there was another tribal fight between Kompam tribes and all the tribes in the Lower Lai Constituency of Wapenamanda which forced him to move up to Yakumane Waetes and vacate Madikosa. When the fighting ended in mid-2023, he tried to move back and settle at Madikosa. The defendant refused to allow him to settle there. The complainant and the defendant are distant brothers-in-law.

5. What was the complainant asking the court to do?

The complainant was asking the court to order the defendant to compensate him for the 15 years he was at Madikosa and developed the land and also return a pig valued at K4,000.00 he gave to the defendant as a token of friendship. Court official visited the area noted the three residential bush material houses, coffee trees, banana trees, all sorts of garden crops and numerous trees of both economic and non-economic value.

6. How did the defendant respond?

The defendant replied that he had given the land to the complainant just to use and there was no payment for the 15 years Jerry had stayed on the land. The defendant also told the court that the complainant has benefited a lot from the land like sending his children to schools who are now at various jobs earning money. Therefore, the complainant must agree and vacate the land instead of asking him to pay compensation for developments.

7. Did the magistrates ask the crowd? Did anybody respond? What did they say?

Magistrates did not ask the crowd for their opinions so there was no response. (When disputes are between people of different clans, the people in attendance are often afraid to express opinions.)

8. Who were the witnesses and what was the evidence?

Those witnesses called by the complainant supported his demand for compensation for the 15 years he had stayed in the area, but those witnesses for the defendant stated that no compensation need be paid because the complainant had benefited a lot for being in the land, like education for his children, etc.

9. Was the case adjourned, sent to full court or to the District Court? If adjourned, how many times and why (for example, a witness did not show up)?

The case was adjourned for almost six months due to both parties failing to attend in court, giving all sorts of excuses.

10. What was the court decision or settlement?

The Court consisting of the magistrates from Wapenamanda and Takaeposa decided that the defendant, Beto, must give two live pigs plus K4,000.00 in cash to the complainant as compensation for developments and for the land to be returned to the owner Beto together with whatever Jerry has built or planted on that land.

11. Reason for decision. Values behind decision.

The reason behind the decision was that even though the land was given to the complainant for use only by the defendant, the complainant had spent a lot of energy and resources in developing the land for the almost 15 years he was there.

12. Crowd response to the decision.

No responses from the crowd.

13. Were there disturbances?

There were no disturbances.

14. Were both parties satisfied? If not, why not?

The complainant was not satisfied with the decision, saying the compensation awarded was too low compared to the many years he had spent there developing the land and the properties he will leave behind when he will vacate the area. The defendant was not present when the decision was made.

15. Was the case difficult and why?

The case was bit difficult in determining the amount of compensation the defendant was to pay to the complainant.

16. Length of time.

The case took magistrates about one hour to reach the decision.

Case 2: Case of land sale and attempted land grab

Wabag Joint Village Court documented by Nitze Pupu

1. Date: 26/11/2024

2. Complainant

Name: Anita Andrew
Age: 38 years
Sex: female
Clan: Kia
Education: Degree in education
Profession: Secondary school teacher

3. Defendant (accused)

Name: Samuel Andrew
Age: 28 years
Sex: male
Clan: Kia
Education: Grade 10
Profession: farmer

4. Complaint/dispute/offense (include conditions of offense):

On 11 November 2024, Samuel put up signs on a property occupied by Anita at Tetemanda, the place of her residence. However, at the time of this complaint she was married to a man of Western Highlands Province. Samuel told Anita and her husband to evacuate the area and told them to go to Western Highlands Province, the home of Anita's husband. It was reported that Anita had inherited the estate from her father. It was transferred to her by word of mouth by her father. Apparently, Samuel sold a plot of his own land next to the main Highway to a buyer. It is told the buyer was originally of the Kandep District. Then Samuel was intending to claim ownership of Anita's property. His intention to occupy the land was manifested by putting up a no trespassing sign on the property. Anita was aware of Samuel's intention to claim her property and brought the matter to Village Court at Tetemanda. Gana Yaka, the Village Court Magistrate there, pronounced that the land in dispute belongs to Anita. This court was of the view that the land occupied by Anita rightfully belongs to her by virtue of inheritance from her father. Samuel was clearly wrong in asserting title to the land. Despite the court order not to trespass on the land, Samuel did things to claim ownership of the land by clearing the land, etc. For this reason, Anita summoned Samuel in the OMS at Wabag.

5. What was the complainant asking the court to do?

The complainant, Anita, was asking the Court to consider the nature of her complaint, and if

possible, issue a preventive order against Samuel from trespassing on to her property and confirm and uphold the decision of Tetemanda Village Court.

6. How did the defendant respond?

In response, Samuel declared that according to Enga custom a son inherits and succeeds the lineage of a father. This means by virtue of this right inheritance and succession to land naturally goes to a son with the death of the father. Therefore, this Court should declare that he is the rightful owner of the disputed land.

7. Did the magistrates ask the crowd? Did anybody respond? What did they say?

Leo Lemalu, Chairman JCS [Joint Court Sitting], said the matter was already heard by Tetemanda Village Court and decided. It ruled that the land in question belongs to Anita. It was verbally transferred to her by word of mouth by her father Andrew. This Court should for the purpose of deliberating on the matter first visit the land under dispute. Having said this, the matter was adjourned for that day.

8. Who were the witnesses and what was the evidence?

Gana Yaka on behalf of Tetemanda Village Court testified that this Court had ruled that the land in question belongs to Anita. Although Enga is largely a patrilineal society, a daughter in a family has the right to possess and own land by virtue of inheritance and succession from her father. In this case this exception to the rule was applied. Tetemanda Village Court confirmed and upheld the custom that allows a daughter to possess and own land by virtue of inheritance and transfer according to family and social connections. The Kia community supported the decision of this Village Court.

9. Was the case adjourned, sent to the full court or to the District Court? If adjourned, how many times and why (for example, a witness did not show up)?

The matter was adjourned once because couple of OMS Village Court Magistrates wanted to visit the site of the land being the subject of dispute in this case.

10. What was the court decision or settlement?

A panel of five magistrates heard the matter and affirmed and upheld the decision of Tetemanda Village Court.

11. Reason for decision. Values behind decision.

Leo Lemalu, Chairman OMS, stated before the parties and supporters that what Samuel said in his submission was right. However, there is an exception to this rule. A daughter may own and possess land on condition it was verbally transferred to her by father before his demise or by someone in the extended family. This custom is well established and recognised throughout most Enga communities. For reason stated OMS upheld and strengthened the decision of Tetemanda Village Court. It further wrote out an injunction order against Samuel not to encroach on Anita's property. It warned that if he does he would be criminally prosecuted.

12. Crowd response to the decision.

Anita thanked the Court and expressed she was relieved of the burden and tensions suffered because of this dispute. Samuel went away murmuring and accusing magistrates of bribery.

13. Were there disturbances?

There were no disturbances.

14. Were both parties satisfied?

Both parties were in principle satisfied with the court decision although Samuel grumbled a little.

15. Was the case difficult and why?

The case was not difficult because it was first heard by Tetemanda Village Court. OMS upheld the decision of this Court.

16. Length of time.

It took about one and a half hours.

Case 3: Dispute over return of loaned land

Laiagam Joint Court documented by Paul Piundi

1. Date: 3/9/2025

2. Complainant

Name: Jared Yape
Age: 24 years
Sex: male
Clan: Yap
Education: Grade 10
Profession: student

3. Defendant (accused)

Name: Paulus Kakope
Age: 64 years
Sex: male
Clan: Liyan
Education: Grade 6
Profession: Christian Apostolic Fellowship Pastor (CAF)

4. Complainant/dispute/offense (include conditions of offense)

The parties from Paitenges village of Maip Mulitaka LLG [local-level government] had a dispute regarding a block of land for gardening. They shared the border of the land and when Jared was a young man he told Paulus' wife to use the land temporarily. He informed her that whenever he got married, she should handover the garden to his wife, but that agreement was compromised. Just recently Jared got married to a young girl from the nearby community and requested Paulus and his wife to vacate his garden.

Paulus and his wife were reluctant to vacate the land. One day Jared was under influence of liquor and went directly to Paulus and scolded him. Paulus got a bush knife and tried to chop Jared, but Jared pushed him into a drain with his own bush knife. Accidentally, Paulus fell down and cut his hand with

his own knife. Blood was all over his body and his daughter thought that Jared had chopped him. She shouted, 'Paulus was chopped into pieces by Jared.' When they heard those words some young men from Paulus' clan got their weapons and burned down Jared's house into ashes and destroyed the entire garden. Jared was not happy and got a summons in the Joint Court Sitting.

5. What was the complainant asking the court to do?

The complainant told the court that the portion of land belong to him, but Paulus and his wife had permission to use it temporarily while he had no wife. However, he was married now and asked the couples to vacate the land in a polite manner, but they ignored him deliberately and burned his house and destroyed the entire garden. He asked that the court to order Paulus to compensate all his properties and also advise him to vacate the land.

6. How did the defendant respond?

The defendant, Paulus, told the court that he did waste a lot of money in clearing thick bush to make the garden and he is unable to vacate the land. The house was burned because Jared chopped him with his bush knife, and the court should order the complainant to compensate him for the injury and the garden as well.

7. Did the magistrates ask the crowd? Did anybody respond? What did they say?

Community leader Pius Kiakau stated that the portion of land belongs to Jared and Paulus should not illegally claim for hardship because he had benefited a lot from the garden. Also, Paulus was a Pastor for the CAF church, and he should set a good example to the Christian community.

8. Who were the witnesses and what was the evidence?

Couple of speakers stated that Jared was the owner of the garden. Additionally, peace officer Julius Minakasi gave the report of properties that were destroyed and the scar from Paulus' hand as evidence for the case.

9. Was the case adjourned, sent to full court or to the District Court? If adjourned, how many times and why (for example, a witness did not show up)?

The case was adjourned once because the witnesses did not show up.

10. What was the court decision or settlement?

The court viewed that the parties were from the same community that the issue needs to be solved once and for all. Therefore, court ordered the defendant Paulus to compensate the complainant Jared with K1,000 in cash and three pigs; one of the pigs should be worth more than K2,000. The defendant was also ordered to vacate the garden. On the other hand, the complainant was ordered to give K500 to Paulus because he lost his blood through the cut. The orders should be complied with no later than 30 September 2025.

11. Reason for decision. Values behind decision.

A panel of five magistrates heard the case and handed down the decision. The court viewed that the defendant's daughter instigated the problem in shouting. People should control their tongues for they might set a wildfire alight that can bring destruction to the entire community. Paulus was informed that he failed in not justifying the ownership of the garden and as a result he faced the consequences.

12. Crowd response to the decision.

One speaker stated that the truth will set you free; therefore, Paulus was an old man, and he should approach Jared in an orderly manner. Because Jared was under influence of liquor that should be considered seriously.

13. Were there disturbances?

There were disturbances because some speakers scolded Paulus for doing wrong.

14. Were both parties satisfied? If not, why not?

Both parties were satisfied.

15. Was the case difficult and why?

The case was not difficult.

16. Length of time.

The case took one and a half hours.

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