

Whose right? Forceful evictions of informal settlements from state land in Papua New Guinea's National Capital District

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Abstract

Between 2012 to 2021, the National Capital District (NCD) of Papua New Guinea (PNG) saw numerous forceful evictions of citizens living in its many informal settlements, including some who had lived in these communities for more than 30 years. Some of these evictions involved state land registered to individual title holders. Drawing on discourse and spatial and temporal analytical approaches, this paper uses media reports to map the extent of evictions across the NCD and to identify eviction stories related to state land that are the subject of court cases. It then examines court decisions and other documents related to seven selected case studies to understand how the courts deal with the rights of communities impacted by evictions. The paper finds that the PNG court system focuses on determining the legal property rights over the land in question and court decisions tend to favour the legally registered owner of the title. By contrast, limited attention is given to customary landowners or to ensuring the human rights of communities impacted by evictions are protected. Based on these findings, the paper suggests five policy directions that should be considered to improve NCD's policies on eviction processes and resettlement of communities.

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1. Introduction

My worry is that whatever happens, like the eviction, it happens, but when it comes to helping, why is it that we are in this heart of the city, and I have not seen any support? Some of us are homeless, we are sleeping on the ground. The next day, you would see help arrive. Like NGO groups or we have a government that should come and show solidarity with us that they are aware of our situation. This situation is like a disaster which is when we usually see support flow. How many children? How many disabled people? How many people have been impacted? Not one assessment has been made. They — the government — remain there and we remain here like this until now. (Dunstan Goviro, Community Leader, ATS Settlement, 22 June 2021; translated excerpts from interview transcript)

Dunstan Goviro is a community leader of the estimated 2000 people who resided on Portion 695 of Air Transport Squadron (ATS) Settlement, an informal settlement in Port Moresby, PNG's National Capital District (NCD), before it was razed by backhoes during an eviction exercise over several weeks from 28 April 2021. It is estimated that nearly half of the city's population live in informal settlements, the term commonly used to refer to communities who live on land without formal tenure. Dunstan's words highlight the gap between the political leaders and elites of the NCD and his community during the eviction process, which he and others liken to a natural disaster or a conflict situation. Yet, unlike a natural disaster over which the state has no control, forceful evictions of communities in NCD are within the control of state actors both in terms of preventing evictions and supporting those who are subject to eviction (see Day, Wewerinke-Singh & Price 2020 for a discussion). International human rights

frameworks also emphasise a complex suite of laws and rights aimed at protecting those who are most vulnerable to the impacts of evictions (UN OHCHR & UN-HABITAT 2014).

Another resident, Elsie Sobaba, the librarian at a local NGO-supported library, her husband Moses and their family were among those who were evicted from Portion 695. Elsie, Dunstan, and others I interviewed in June and July 2021 noted that another group in the settlement is now working with a human rights lawyer. Though they were not clear about the exact arrangements, their future hopes of continuing to live in their community on land Portion 695 or receiving support from the government for resettlement, hinged on how the government, the courts and the law view their human rights. As Elsie reflects:

I feel that if the human rights lawyer can work on the 695 case and win back the land then we can stay. That's if the government can listen to us. On our side, we can also stand strong and maybe do a protest march or something like that to tell the government that we are in need and that we are desperate to stay in this place because this place was bush and we came and cleaned it with our hands and we made it become a village. It became a home. So, if the government is on our side, we can stay. But if the human rights are not strong and the leaders in the community are not strong and we don't cooperate and work together then most likely we will lose the whole thing. If 695 goes, 697 is also going through the same process and lately I heard that 694 is also going through something similar and 698 as well. So, I am not really sure whether there is a future for the ATS community. Whether we are going to stay like this. Probably when 695 is out it is like, most people are asking, who is going to be next? (Elsie Sobaba, 2 July 2021)

The circumstances of the residents of ATS Settlement are not isolated, nor is this eviction a one-off event in NCD. This paper examines media stories, court processes, and other related materials to contribute to our understanding of the extent and pattern of forceful evictions in NCD during the decade from 2012 to 2021.

The NCD is the contemporary administrative area comprising PNG's capital city, and is also generally referred to as Port Moresby. Though the two names are interchangeable, for consistency, I mainly use the term NCD in this paper. The NCD currently covers land that was originally occupied by the Motu and Koitabu people, who are the Indigenous customary landowners of the area. At the onset of the colonial period in the late 1800s, the colonial administration progressively appropriated and alienated land from the customary landowners and subsumed it into what is referred to in this paper as 'state land' (for a detailed history of the city, see Oram 1976). Today, a large area of the NCD is designated as state land (National Capital District Commission & Atlas Urban 2020, p. 35). State land in PNG is currently managed through the Torrens system of land registration, where it can be registered to private title holders and bought and sold. The term Portion, as in Portion 695 in the ATS Settlement, is part of the vocabulary of this formal legal land tenure system. A separate administrative unit in PNG's system of governance, the NCD is surrounded by Central Province. It is divided into three electorates, each represented by a member of parliament. The Governor of NCD represents the overall city in Parliament. A more detailed account of the political, administrative, and legislative structure of the NCD is beyond the scope of this paper.

Informal settlements have been part of the historical and social fabric of the NCD and housing policies since the colonial period and have simultaneously received harsh treatment by state actors while also being largely accepted as an important option for housing many of the city's residents (see Jones 2012; Rooney 2017a, pp. 126–128, for a discussion). Discursively, the city is often divided between those with formal rights to private or state-owned property and those living in informal settlements (Goddard 2005). As Koczberski, Curry & Connell (2001) argue, evictions and other repressive treatment of low-income residents of settlements reflect a form of state control. Forced evictions reinforce the marginalisation of residents of settlements because they deepen housing vulnerability. An assessment conducted by the United Nations Office of the High Commissioner for Human Rights (UN OHCHR) in 2010 noted that expensive housing in urban areas of Papua New Guinea (PNG) forced people to live in settlements, but that this reality is not reflected in national legislation to protect housing rights. Overall, the report noted that there are limited mechanisms to support tenants and complaints related to

housing. Generally, the courts are inaccessible and there is no clear legal framework to address evictions or housing complaints (UN OHCHR 2010, p. 10).

A better understanding of forced evictions of settlement communities may contribute insights towards future policymaking processes. The paper focuses on the period 2012 to 2021 because it is marked by a sustained pattern of city-wide evictions that took place at the same time that leaders sought to rebrand and develop NCD as a cosmopolitan city in the region. The media coverage also highlights concerns among local leaders and commentators about the pattern of evictions (see, for example, Joe 2020; Kolma 2016; PNG Post-Courier 2020a). Given that a sizeable proportion of NCD land is designated as 'state land' (National Capital District Commission & Atlas Urban 2020, p. 35), this paper focuses on examining court decisions in relation to the mass eviction of communities living on state land. Emerging findings of this paper suggest the need for legislative reforms and greater clarity on the roles and responsibilities of state actors to protect human rights. In addition, the paper notes that policies are needed to protect the rights of customary landowners in urban areas. As the city grows, a dialogue mechanism between NCD and the neighbouring Central Province is needed to produce sound policies in relation to evictions. The paper also suggests an independent monitoring mechanism is needed to help ensure that human rights are protected in eviction processes.

In Section 2, the method and data used in the paper are outlined. Section 3 examines policy and court discourse in relation to the city's development and forceful evictions of settlement communities. Section 4 concludes with a discussion of some of the policy implications.

2. Method and data

2.1 Critical discourse analysis of media stories and court decisions about evictions in NCD

This paper uses a critical discourse analysis (CDA) approach (Fairclough 2010; Low 2017, pp. 119–144) to map and analyse eviction stories in NCD between 2012 and early 2021.

A variety of publicly available documentary sources were examined, including 114 media reports, court documents, land and housing policies, and parliamentary Hansard records.

Fairclough (2010) argues that CDA is the ‘analysis of relations between discourse and other elements of the social process’ (p. 10) — in this case the forceful eviction of people living in certain communities in NCD. CDA includes a ‘systematic analysis of texts’ (p. 10) and is normative in that it aims to address injustices within discourses and looks at ‘ways of righting or mitigating them’ (p. 11). For example, Lacerda (2015) applied this methodological approach to analyse power relations between the residents of favelas (informal settlements) and other actors to understand acts or processes of resistance (p. 76). Similarly, a CDA approach can be usefully applied to examine forceful evictions of informal settlements in the NCD.

Drawing on Harvey (2006, 2008) and Low (1999, 2017), I argue that understanding the relationships between different actors and the broader impacts of evictions and land dynamics in NCD, requires us to understand urban areas and land as spaces that are shaped and given meaning by the multiple relationships that take place in and about them. Eviction processes involve relationships between people living on the land, registered title holders, lawyers, judges, the city authorities, members of parliament, police, members of the community, the media, backhoe operators, researchers, property developers, business owners, commentators, activists, the general public, and many others. A CDA of land and eviction discourse in NCD enables an analysis of how different parties in evictions of settlements lay a claim and contest their truth about ownership, access and authority to act, but also provides an analysis of how these discourses impact rights to land, to freedoms from certain treatment and to property, and the human rights of those living in settlements.

2.2 Media stories about forceful evictions of settlements in NCD

An initial search of media stories about evictions in NCD was conducted to gain a sense of the pattern and discourses related to actual and threats of eviction. Search terms such as ‘eviction in NCD’, ‘forceful eviction in NCD’, ‘eviction in Port Moresby’ were used to identify media reports. Further searches were then conducted using terms contained in

specific stories. For the period 2012 to January 2021, 114 media articles were identified and for the purposes of this paper were then divided into four categories as shown in Table 1. A more detailed CDA of this selection of media reports is needed but beyond the scope of this paper.

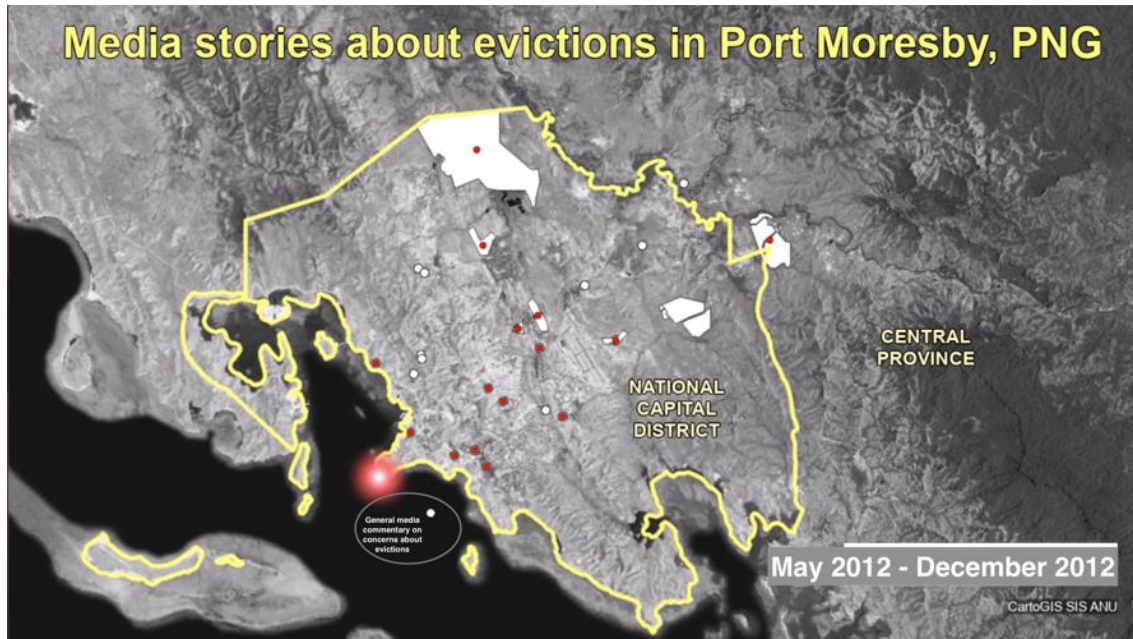
Table 1: Types of media articles related to eviction stories in NCD between 2012 and January 2021

	Ongoing media coverage of forceful evictions	Ongoing media coverage of threats of evictions (eviction notices)	NCDC facilitated relocation/ resettlement	Political and societal comment or debate	Total
2012	2	1	0	0	3
2013	4	4	0	0	8
2014	4	3	0	0	7
2015	8	2	0	0	10
2016	8	5	3	2	18
2017	7	1	0	1	9
2018	2	4	0	1	7
2019	7	3	0	0	10
2020	19	11	3	5	38
2021	1	2	0	1	4
Total	62	36	6	10	114

The information gathered from these media stories was used to map the extent of media coverage of eviction stories across locations in the city and the approximate numbers of people reportedly evicted. Around 51 (43.5%) of the media reports included references to specific portions of state land. The cumulative number of media stories about evictions are shown as the illuminated white-centred, red-hued circles in Figures 1 to 9.¹ They highlight the intensity and amplification of the public discourse from year to year across different parts of the city. Around 20 forceful evictions were reported in different locations in NCD, and based on numbers reported by the media, a total of 18,791 people reportedly lost their homes (see Figure 11).

¹ Figures 1 to 10 are based on media reports of actual evictions and threats of evictions up to December 2020. The red dots show the locations of those reported actual/threatened evictions, and the white polygons show selected portions of land including the case studies in this paper. As of December 2020, Portion 695 (ATS Settlement) was under threat of eviction, and residents were evicted over several weeks from late April 2021.

Figure 1: Cumulative number of eviction stories in the media between May 2012 and December 2012 (illuminated white centred red lights)



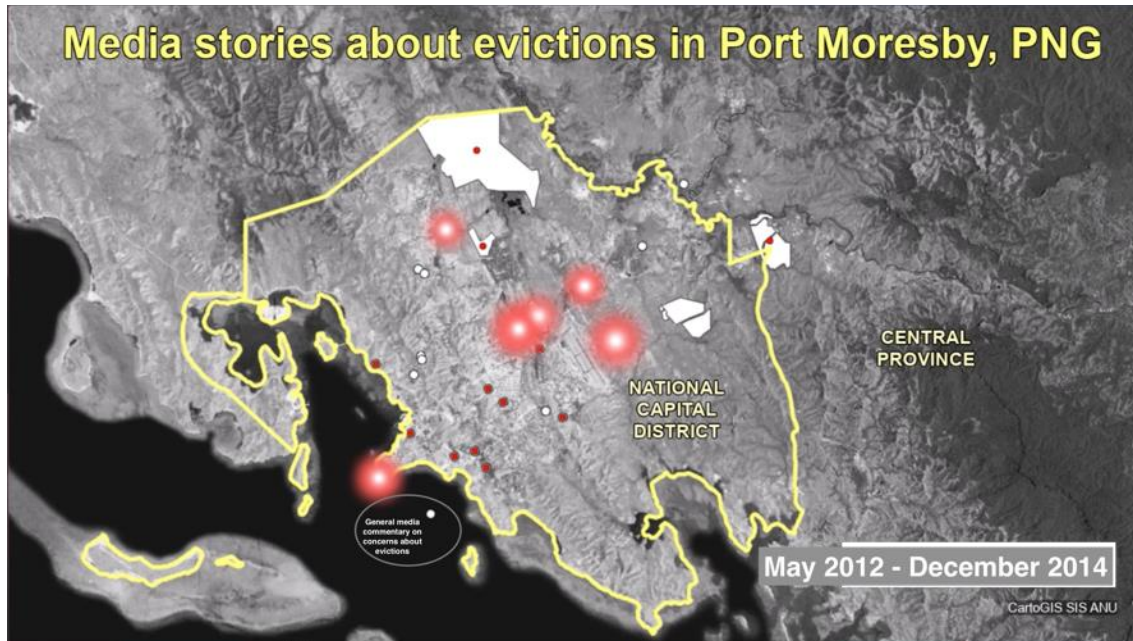
Source: Adapted from CartoGIS SIS ANU

Figure 2: Cumulative number of eviction stories in the media between May 2012 and December 2013 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 3: Cumulative number of eviction stories in the media between May 2012 and December 2014 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 4: Cumulative number of eviction stories in the media between May 2012 and December 2015 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 5: Cumulative number of eviction stories in the media between May 2012 and December 2016 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 6: Cumulative number of eviction stories in the media between May 2012 and December 2017 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 7: Cumulative number of eviction stories in the media between May 2012 and December 2018 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 8: Cumulative number of eviction stories in the media between May 2012 and December 2019 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

Figure 9: Cumulative number of eviction stories in the media between May 2012 and December 2020 (illuminated white centred red lights)



Source: Adapted from CartoGIS SIS ANU

2.3 Case studies of court cases on evictions from state land

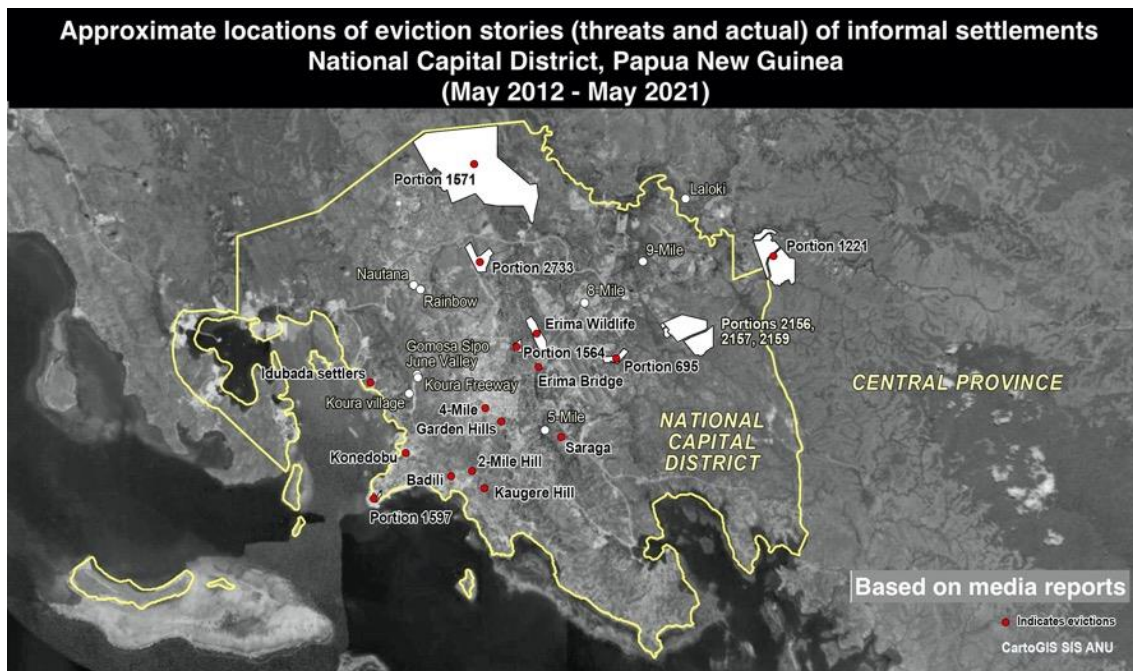
Most of the NCD evictions took place on state land and some have been the subject of court cases, which are studied in this paper. Figure 10 shows the evictions that reportedly took place (red dots) and the portions of state land involved (white polygons). Based on the media reports on evictions and threats of evictions, seven cases involving state land were selected as case studies to examine policy and court discourses about forceful evictions. These seven case studies involving nine portions of state land (summarised in Annex 2) received ongoing media coverage and were the subject of legal court proceedings or a political process involving a member of parliament.

A further search was conducted of legal records using the Pacific Islands Legal Information Institute (PacLII)² database, where available court decisions related to the case studies were retrieved. Where also available, other documents such as

² See <http://www.pacii.org/>.

parliamentary Hansard records and company or institutional websites with information related to the case studies were used as additional material. Six of the seven case studies relate to portions of state land located across the NCD, while one case (Portion 1221) is located in Central Province (Figure 10).³

Figure 10: Total approximate locations of evictions stories (threats and actual, red dots) of informal settlements in NCD, May 2012 – May 2021



Source: Adapted from CartoGIS SIS ANU

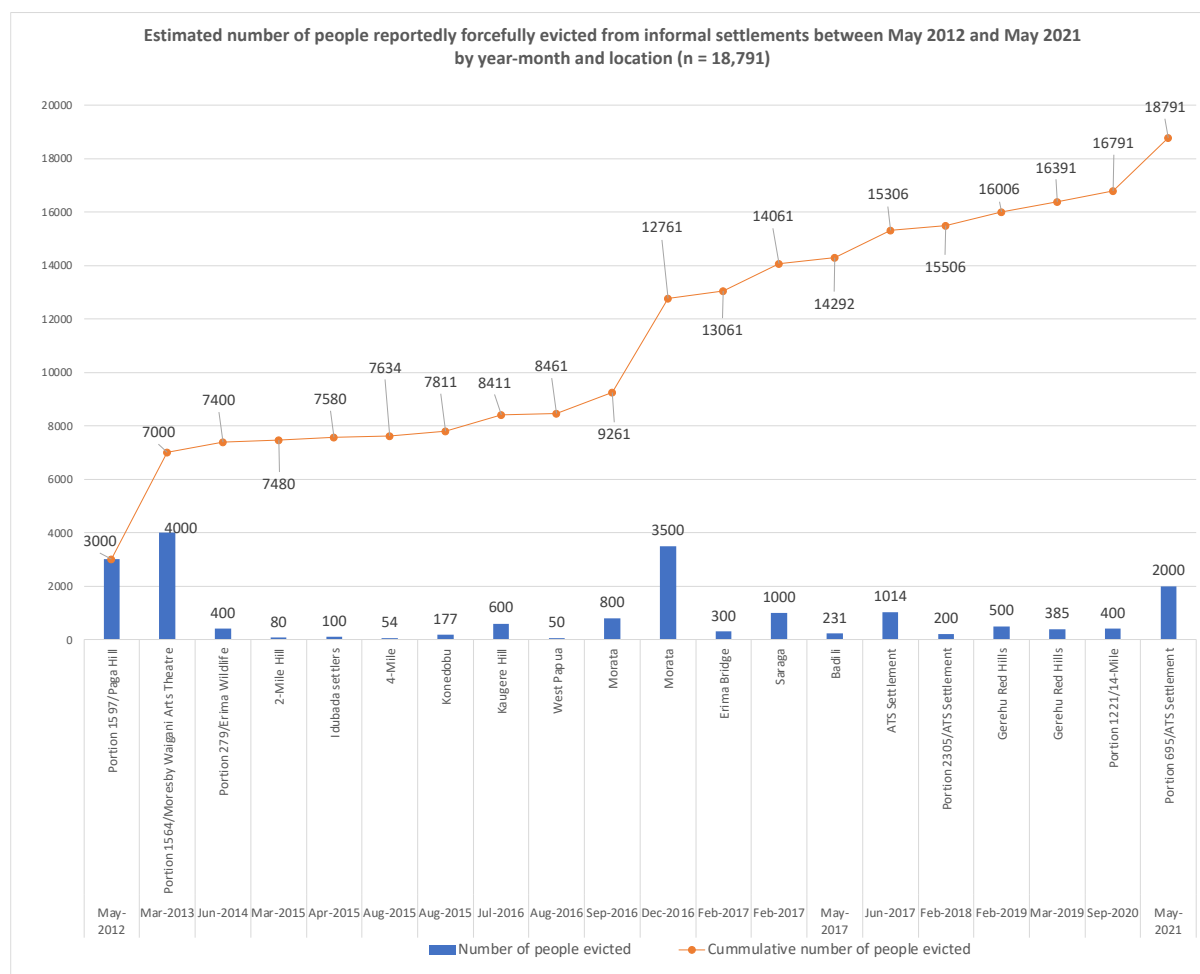
A substantial area of the NCD is zoned as state land (National Capital District Commission & Atlas Urban 2020, p. 35). As can be seen in Table 2, these case studies of evictions from state land between 2012 and 2021 involve an estimated 9800 people and comprise over half of the total number of evictions across PNG in that same period (Figure 11).

³ See footnote 1.

Table 2: Summary of selected case studies involving evictions from state land

Case study	Name	State land Portion number(s)	Year evicted	Estimated number of people evicted	Court decision numbers
1	Paga Hill	1597	2012	3000	Paga Hill Development Company (PNG) Ltd vs Kisu [2013] PGNC68; N5255 (OS 573 of 2012, National Court of Papua New Guinea, 2013) Paga Hill Development Company (PNG) Ltd v Kisu [2014] PGNC27; N5683 (OS 573 of 2012, National Court of Papua New Guinea, 2014)
2	Moresby/ Waigani Arts Theatre	1564	2013	4000	Yalbees v Amaiu [2018] PGNC 264; N7393 (National Court of Papua New Guinea, 2018) Amaiu v Yalbees [2020] PGSC 133; SC2046 (Supreme Court of Papua New Guinea, 2020)
3	Erima Wildlife community	279	2014	400	Wama v Parkop [2018] PGNC 235; N7323 (National Court of Papua New Guinea, 2018) Wama v Parkop [2020] PGSC 67; SC1977 (Supreme Court of Papua New Guinea, 2020)
4	Morata	2733	Appealed	Ongoing court case	Philip and Tengere v Sixth Estate Limited [2018] PGNC 81; N7125 (National Court of Papua New Guinea, 2018)
5	14-Mile	1221	2020	400	Kepe v Rosso [2020] PGNC 294; N8501 (National Court of Papua New Guinea, 2020)
6	ATS Settlement	695	2021	2000	Rifu v Dun Lavin Ltd [2020] PGNC 99; N8847 (OS No. 166 of 2020; National Court of Papua New Guinea, 2020)
7	Bushwara	2156, 2157, 2159	Facing eviction	Facing eviction (court ruled in favour of company; the case is ongoing)	Nambawan Super Ltd v Occupants of Portion 2157 Milinch Granville Fourmil Port Moresby [2020] PGNC 295; N8632 (National Court of Papua New Guinea, 2020) Portion 2157 (OS755 of 2019) Portion 2156 (OS757 of 2019) Portion 2159 (OS758 of 2019)
				Total: 9800	

Figure 11: Estimated number of people reportedly forcefully evicted from informal settlements between May 2012 and May 2021



Note: Estimated number of people evicted is based on the media reports of evictions at that time. Where the media reports that families or households are evicted, an estimate of the number of people evicted is extrapolated based on the average household size in NCD of 7.7 (National Statistics Office 2011, p. 8).

Sources: see Annex 1.

3. Policy and court discourses of forceful evictions of settlements

This section distils some key discourses surrounding evictions in NCD over the past decade. It focuses first on policy discourses (Section 3.1), before examining court decisions (Section 3.2). The starting point for the spatial and temporal analysis of forceful evictions examined in this paper is the widely publicised 2012 eviction of Paga Hill, one of the city’s oldest settlements, located on Portion 1597 (Lasslett 2012; see Figures 1, 10 and 11). The following year, on 12 March 2013, PNG media ran a story about the violent eviction of people from Portion 1564 in the Moresby/Waigani Arts Theatre area

(Sayama & Wapar 2013). A day later, on 13 March, the police delivered another eviction notice to the residents of Portion 695 at the ATS Settlement (Rooney 2013). These cases mark the beginning of this decade-long mass eviction of settlements in NCD. They are important because they epitomise key policy and land discourses during this decade.

3.1 Policy discourses: city upgrading, human rights, resettlement

3.1.1 City upgrading

The first policy discourse involved the sustained drive among the city's political leaders to renew and rebrand it. These policies occurred around the time that a sustained economic boom had driven up the value of land. The forceful eviction of the Paga Hill settlement paved the way for a ring road around the historic site, the makeover and rebranding of the historic Ela Beach into Era Kone, the construction of the adjacent APEC convention centre, and a new road network throughout the city. A major works program by the government was also part of its preparations to host a number of international events, including the Pacific Games in 2015 (ABC News 2015), the Women's Under 20 FIFA World cup soccer in 2016 (Tlozek 2016) and the international APEC meeting in 2018. In addition, privately initiated developments changed the city's landscape. As well as the new road networks, stadiums, new and refurbished government offices, shopping centres, hotels, educational buildings, and several housing estates were added. These developments also coincided with the launch of the 'Amazing NCD global brand campaign', aimed at enhancing the image of the city (Abraham 2018; Agavi 2018).

Related to the rebranding and renewal policy discourse were policy announcements about the upgrading of settlements into suburbs, which were reflected in the National Urbanisation Policy for 2010 to 2030 (Office of Urbanisation 2010). Such policy announcements were linked to the United Nations Habitat global 'slum upgrading' programs (UN-HABITAT 2010).⁴ This settlement upgrade policy was covered in different ways by the media. In some media stories (for example, The National 2017), leaders reportedly stated that land titles would be given to residents of settlements. In other

⁴ Another example can be found at UN-HABITAT & Cities Alliance (2014).

media stories (for example, Zarriga 2018), leaders reportedly clarified that land titles would not be issued with the upgrading of settlements. In 2020, city leaders launched a new urban development plan — *Port Moresby Towards 2030* — that sets out the city's development objectives over the next decade (National Capital District Commission & Atlas Urban 2020; PNG Post-Courier 2020b).

3.1.2 Human rights

Another strand of policy discourse relates to international human rights discourses around housing and evictions. A 2010 UN OHCHR assessment of housing rights in PNG noted that the country does not have anti-eviction legislation. It also noted that evicted communities tend to seek compensation for damages through civil cases, and that 'the courts have based their decisions on the way the evictions have taken place and violations of the existing legal framework' (UN OHCHR 2010, p. 10). The UN OHCHR report outlines the process of eviction in PNG, which begins with summary ejection orders under the *Summary Ejection Act 1952*. The Act allows landlords to evict their tenants based on the landlord's legal ownership of the land. The report notes that this process does not apply to customary land. An important part of the process is that an eviction notice must be provided to the tenant before the landlord seeks court orders for forceful eviction. In addition, the *Land Act 1996* allows for the eviction of people for unlawful occupation of state or customary land, though it is vague on time frames for notices. Although there is legislation to pursue cases for human rights violations caused by state actors under the *Claims By and Against the State Act 1996*, this process is complex (UN OHCHR 2010, p. 10). These legal issues and the lack of clear housing policies contribute to housing vulnerability for people on low incomes and those living in informal settlements.

3.1.3 Resettlement of evicted communities

Another policy strand that was highlighted by the Paga Hill case relates to discourse around the resettlement of evicted communities. Despite public outcry, the community and other parties involved in the case lost their battle against the eviction when the court ruled in favour of the company claiming ownership of the land — Paga Hill Development

Company (PHDC).⁵ The displaced Paga Hill residents were reportedly relocated to two areas of the city. In 2014, the media and PHDC's website reported that customary land at Six Mile had been acquired by PHDC to resettle the community (see EMTV 2014; PHDC n.d.). The International State Crime Initiative labelled the Paga Hill case as 'state-sanctioned demolition', and chronicled the aftermath of the forced evictions (Lasslett 2012, p. 10). The case was also the subject of an award-winning documentary, *The Opposition* (Fifer 2016). Other perspectives focused on local responses to seeking solutions and the rights of customary landowners (see, for example, Kidu 2015; Lasslett 2012; PHDC n.d.; Vetuna 2016).

In 2021, the media (Loop PNG 2021) and the official Facebook news page of the National Capital District Commission (City Sivarai 2021) reported that the NCDC had supported the Paga Hill settlers to be resettled at the Six Mile Saraga Estate and that they would be awarded titles to the land. While this latest chapter, a decade on, of the plight of the displaced Paga Hill residents was framed as a success story by officials, it also highlights, as van Gelder (2013) argues in the Latin American context, a paradox of informal settlement discourses. van Gelder (2013) distinguishes between the 'legal' city, subject to laws, and the 'factual' city, where cities sometimes accommodate half their population in informal settlements and are regarded as 'illegal' or 'unauthorised'. van Gelder highlights this situation as a paradox because this real but regarded as 'illegal' part of the city in fact arises because the state has not fulfilled its obligations to provide adequate housing. This situation leads to a further paradox in the ways that city authorities seek to address this situation. In these cases in Port Moresby, on the one hand, the residents are regarded as illegally residing on state land and are vulnerable to being evicted by the title holders of the land or by the city authorities who wish to develop the land. On the other hand, policy responses can 'legalise' residents, through such things as recognising their legal rights as citizens or relocating them, and this can lead to the paradox of undermining the very laws that excluded them by regarding them as illegal in the very first instance. As van Gelder

⁵ *Paga Hill Development Company (PNG) Ltd vs Kisu* [2013] PGNC 68 (No. N5255), <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2013/68.html?stem=&synonyms=&query=N5255>; *Paga Hill Development Company (PNG) Ltd v Kisu* [2014] PGNC 27 (No. N5683), <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2014/27.html?stem=&synonyms=&query=Paga>.

(2013, pp. 495–496) argues, states are faced with a difficult cycle of choices between enforcing evictions or recognising the legal rights of people occupying land informally and in turn, this leads back to the first paradox of the inability of the state to provide housing.

Indeed, the announcement about the Six Mile Saraga Estate resettlement program on the NCDC Facebook news page (City Sivarai 2021) was met with mixed responses on social media. Some people praised the government and PHDC for reaching a solution to the plight of the former Paga Hill residents. Others questioned how customary land was acquired and legally awarded to illegal settlers. Some raised concerns about fairness and whether such resettlement policies would be equally applied to all evicted communities. More broadly, others questioned if all residents of the city would be equally granted land titles for free.

3.2 Court discourses about evictions in NCD

For the communities that can take their cases to court, it is usually a long, drawn-out process. For example, the case of Portion 695 at the ATS Settlement dates to 2011 when residents were first served with notices to vacate the land by the company claiming to own the land.⁶ As Dunstan explains, the process is also costly for those on low incomes:

We engaged Namani lawyers. We consulted our leaders, and we mobilised our community, especially those who lived in Portion 695, and other neighbouring communities also helped us. When we see the legal bill, we call upon the community to meet and give whatever they can to help. Sometimes, we would walk around with cartons, other times we pushed wheelbarrows. Other times we put a cloth on the roadside and appealed for people to contribute K1 or K2. That's how far we struggled with paying our lawyer and looking for legal fees and that's how we made it through almost 11 to 12 years. (Dunstan Goviro,

⁶ For a summary of the chronology of events related to the case, see *Rifu v Dun Lavin Ltd* [2021] PGNC 99 (N8847), <http://www.paclii.org/pg/cases/PGNC/2021/99.html>.

Community Leader, ATS Settlement, 22 June 2021; translated excerpts from interview transcript)

Notwithstanding their efforts, and the understanding of their lawyer in accepting whatever payments they could afford, in November 2020 (and upheld in January 2021), the court ruled in favour of the company and ordered that the representatives of residents of Portion 695 ‘and all other unauthorized occupants of land described as portion 695, Milinch Granville, Fourmill Moresby ... to vacate the property within 3 months’,⁷ giving them until 27 April 2021 to vacate the land.

Subsequently, the company publicised the court decision and the time frame for the eviction. A television report on 28 April (EMTV 2021) showed the police acknowledging that the eviction notice had come into effect. In the same report, the local elected member of parliament acknowledged the social challenges that come with evictions and reassured the community that he was working with the different parties to find a resolution to resettle the community or stop the eviction. Despite these assurances and some public outcry on social media (for example, Dumavi 2021; Jackson 2021; Rooney 2021; Tokout Tokstret 2021) the eviction proceeded over the next few weeks into May and June.

Several other eviction stories during this decade were the subject of extensive court cases and seven of these were selected from the media stories for examination in this paper (see Annex 2). The cases highlight the role and power of the courts in mediating and making decisions about the different rights associated with and claims to portions of state land. The following themes relate to the ways various parties appeared in the cases and/or argued their rights in court that emerged from these case studies: (i) group action by communities versus individualised titled claims to land; (ii) marginalisation of the rights of customary landowners; (iii) legal versus equitable interests in land; (iv) human rights violations; and (v) NCD’s shrinking land availability versus Central Province’s rights to land.

⁷ *Rifu* [2021] PGNC 99 (N8847), paragraph 30.

3.2.1 Group action versus individualised titled claims on urban state land

A common feature of the court cases examined in this paper is the group action by communities and other parties that have a claim to or stake in a registered portion of state land. The group action may be against or in response to action by an individual entity that claims to be the registered title holder. It may involve action against several other actors. This collective or group action in the court cases involving forceful evictions from urban state land can be contrasted to PNG's broader land discourse, which is often framed as a dichotomous contest between groups who own and wish to retain their rights to customary land and other actors, such as the state, large extractive industries, or logging or agribusiness companies.

Within PNG, and Melanesia more broadly, customary land tenure involves balancing group ownership of land with individual or household land use rights (Fingleton 2005, p. 4). According to Filer (2007, p. 136), customary land tenure involves a three-way relationship involving land territory, social groups, and both land territorial boundaries and social boundaries. Such social and land boundaries are in turn shaped through genealogical lineages that are held together through common languages, social relationships, and ongoing social exchange. Patrilineal or customary land ideologies shape the boundaries that define who is included in or excluded from the diverse social constellations that make up a group's common claim of ownership or other rights to land. A customary landowning group is thus one in which the members of a group, and others beyond the group, mutually acknowledge each other's rights to the land. In other words, rights to land access, use, and ownership are embedded in recognised social relationships between people (see McDonnell, Allen & Filer 2017; Stead 2016, for a discussion).

In practice, notions of customary land tenure are diverse. Striking a workable balance between the protection of customary land tenure and making land more amenable to development and capitalist endeavours through greater individualised property rights to land, has troubled policymakers in PNG since the colonial period. Over many years, a dual and overlapping system of land legislation has evolved from various attempts to achieve a workable land tenure system (Filer 2019; Power & Tolopa 2009; Stead 2016). On one

side of this duality is customary land tenure, and the various legal instruments that have been devised to enable the registration of customary land. On the other side of the duality is state land or land that was subsumed under state ownership since the colonial period. Under the Torrens system, a registered title holder of a parcel of state land is regarded as having an indefeasible title and can exercise their rights to the land independently of their social relationships with other people (McDonnell et al. 2017, p. 6).

This dual and overlapping system of land tenure provides the backdrop for both land discourse and land practices for groups of people who have been evicted or are facing eviction from urban state land. Despite the Torrens system and settlers' lack of the prior genealogical ties to draw on customary claims to the land, all the cases examined here (summarised in Table 2 and Annex 2) involve groups of people acting in relation to a defined portion of state land. The cases resonate with contemporary land practices of migrant Papua New Guineans for whom recognised social relationships between groups of migrant communities, between communities and customary landowners, or between individuals, are an important source of authority when accessing, acquiring, or defending the community against evictions from state land. For example, as Koczberski et al. (2017) and Numbasa and Koczberski (2012) discuss in other urban settings, migrant settlement communities may reach agreement with customary landowners to establish a settlement on customary land and this arrangement is maintained over time through ongoing rental payments to landowners or through participation in traditional exchange ceremonies. In another example, migrant settlers may collectively negotiate with customary landowners and elected politicians to reach agreement to settle (for example, see Chand & Yala 2012; Rooney 2017b).

The seven court cases all involve collective action by communities. This suggests that understanding these relationships in the urban contemporary context is important because while the Torrens system grants the recognised title holders exclusive indefeasible property rights to land, it masks Melanesian ways of engaging with, accessing, using, possessing, and transacting land through social relationships (McDonnell et al. 2017).

3.2.2 Erasure of customary discourses of land ownership and custodianship

Related to group action in these eviction stories, is the involvement of customary landowners in the court cases. Three of the case studies discussed in this paper — Morata (case study 4), 14-Mile (case study 5) and Bushwara (case study 7) — include customary landowners as parties to the case.

In the Bushwara case, Nambawan Super Limited, a public officers superannuation fund, was involved in a protracted court proceeding over three portions of land. Nambawan Super had previously taken the Department of Lands to court and was awarded the title to land Portions 2156, 2157 and 2159 (see Figure 10; Nambawan Super 2020). Based on its legal ownership of the titles, Nambawan Super sought to obtain possession of the land by evicting the occupants. In 2020 the court ruled in favour of Nambawan Super as the plaintiff. The occupants of the three portions of state land and the respective customary landowners of the land were listed as defendants in the case.⁸ Reflecting the number of respondents listed as representatives of customary landowners, the court decision acknowledged the varying views of the different representatives of the customary landowners. In particular, the judge opened his summary of the decision by noting that not all of the parties listed in the proceedings had appeared at the various hearings, and that some of the defendants

claim that the 3 portions of land are not State land or leases. They (except for Mr. Saka) claim that these were customary land which they had purchased from the customary owners where they now say they own as freeholds.⁹

One of the customary groups, represented by a Mr. Saka, argued that in fact the land was never sold, and it remains customary land. The judge highlighted one of the key issues of the case was the question of whether Nambawan Super owned the titles of the land and

⁸ See *Nambawan Super Ltd v Occupants of Portion 2157 Milinch Granville Fourmil Port Moresby* [2020] PGNC 295 (No. N8632), <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2020/295.html?stem=&synonyms=&query=Nambawan>.

⁹ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 9.

whether the settlers and customary landowners could provide a 'valid defence ... that may override or precede the plaintiff's titles according to the law'.¹⁰

Focusing on the customary group represented by Mr. Saka, the judge acknowledged the 'historical and traditional accounts of how he and his people have come to own the land [but found] the evidence irrelevant to the issues at hand'.¹¹ The judge also acknowledged the arguments put forward by the customary landowners that the Land Titles Commission had recognised their customary rights in 1964. However, the judge noted that the map provided in evidence of this was 'substantially illegible' and 'does not ... have any real value to an extent that one can ... identify with accuracy which land it refers to'.¹² Instead, the judge went on to state that PNG land law

follows the Torrens system of land registration [and that when] the registration process of a land is complete and title is issued, the registered proprietor shall have an indefeasible title.¹³

This privileging of the formal land system over customary land tenure is further demonstrated in the judge's remarks that, 'According to the principle of indefeasibility of title, the mere existence of a valid title to a land or property, if produced, shall be or shall constitute absolute proof of ownership of the property, subject only to fraud'.¹⁴ The judge ruled against the settlers and concluded by stating that:

This decision hopefully should sound a warning to anyone who is thinking of buying land outside of our cities and towns that you must follow the due processes that are available, or that you must exhaust the process of land identification first.¹⁵

¹⁰ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 11.

¹¹ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 16.

¹² *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 17.

¹³ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 19.

¹⁴ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 21.

¹⁵ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 33.

In the Morata case (case study 4), the court describes the main issue as being the 'ejectment of illegal squatters' from land Portion 2733.¹⁶ The appellants in the case comprise a landowner group, represented by Otto Philip, and residents of the settlement who occupy the land, represented by Romney Tengere. They are appealing an eviction notice served by a private company, Sixth Estate Limited. The judge noted that the occupants have resided on the land for many years and that they claim to have 'the consent and approval of the customary owners [represented by Philip] to occupy it'.¹⁷ Moreover, the occupants alleged that the land had been transferred to the company fraudulently. The judge noted that a judicial review seeking to challenge this title had been dismissed in an earlier proceeding. The case therefore focuses on whether the land is customary land or state land.

The judge noted that in their appeal, the customary landowners had 'asserted that the issue of customary ownership of the land has been referred to the Lands Titles Commission to determine and is pending'. On this basis, the occupants of the land (the second appellant) argued that 'while that issue [was being deliberated in the Land Titles Commission] it was wrong for the District Court to order their ejectment from the land'.¹⁸ Moreover, they argued about discrepancies in the validity of the title since it had expired some years ago.

The court documents highlight that the focus of the process in this case is on proving the land title. This can be seen in the judge's statement that 'there must be a bona fide dispute as to title [and that] the party must show that it has taken distinct, formal, legal step to challenge the title to avert the summary ejectment order'.¹⁹

In terms of the customary landowners' claims, the judge noted that:

¹⁶ See *Philip v Tengere* [2018] PGNC 81 (N7125), paragraph 1, <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2018/81.html?stem=&synonyms=&query=Portion%202733>.

¹⁷ *Philip* [2018] PGNC 81 (N7125), paragraph 2.

¹⁸ *Philip* [2018] PGNC 81 (N7125), paragraphs 5, 6.

¹⁹ *Philip* [2018] PGNC 81 (N7125), paragraph 23.

Other than the assertion that the land is customarily owned and has been referred to the Land Titles Commission for determination, there is no evidence of distinct, formal, legal step being taken by the appellants [the occupant illegal squatters and customary landowners] to challenge the respondent's title.²⁰

The judge found that 'the State Lease remained unchallenged' and dismissed the appeal.²¹

The third example relates to the 14-Mile community located on the land identified as Portion 1221 (case study5), which is situated just outside the NCD boundary in Central Province (Figure 10). On 9 September 2020, the media publicised this case following the forceful eviction of over 400 people and the destruction of homes that reportedly took place on 8 September (Zarriga 2020). On 15 September 2020, the National Court handed down a decision on a leave application for a judicial review brought by the occupants and customary landowners who sought to challenge and overturn the administrative process by which the Department of Lands and Physical Planning transferred the title to the land to the NCDC.²² In this case, the occupants of the land and customary landowners challenged the NCDC's claim on the title.

The judge opened the decision summary by noting that the 'land tenure system in PNG is quite settled comprising of two types; State land and customary land but evolving with time where the need for more land for occupation and use is increasing as population increases'.²³ He continued:

Crown land acquired in colonial time and converted to State leases in different forms under the current *Land Act* of 1996 is identified by a title and map. It is then recorded in the official register of all State land held by the Registrar of Titles. Customary land title is undocumented and expensive to manage. It is based on information passed down

²⁰ *Philip* [2018] PGNC 81 (N7125), paragraph 24.

²¹ *Philip* [2018] PGNC 81 (N7125), paragraph 27.

²² See *Kepe v Rosso* [2020] PGNC 294 (No. N8501), <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2020/294.html?stem=&synonyms=&query=KEPE>.

²³ *Kepe* [2020] PGNC 294 (No. N8501), paragraph 1.

from one generation to another, often orally and presents its own unique challenges where a title is disputed.²⁴

The judge went on to note that an official record of the title is enough evidence for the title holder's claim and that anyone seeking a judicial review of such an official claim needs to have standing and this standing must involve sufficient interest that

is neither abstract nor remote to the subject of the dispute but one that the applicant is able to show is direct. Where a claim to an entitlement to a State lease is being asserted, based on the land tenure law, an applicant must be able to produce at the preliminary hearing a title to show his entitlement to the State lease.²⁵

In this case, the plaintiffs, comprising the occupants and customary landowners, argued that they were long-time occupants of the land and that they dispute the process by which the land was transferred to the NCDC. In short, because the plaintiffs did not own a title to the land they were deemed as not having standing to challenge the case through a judicial review.

These cases highlight the complex land tenure legislative framework in PNG. In the Bushwara and Morata cases, the judge privileges the Torrens system of land and ruled in favour of the registered title holder even though customary landowners argued that the land is subject to a Land Titles Commission deliberation. It leaves customary landowners in a no-win situation as they are left to challenge an administrative decision about a title in one of PNG's courts while they await the outcome of the parallel process in the Land Titles Commission. In the 14-Mile case, the court ruled that the parties to the case have insufficient interest in the land because they are not able to provide counter evidence of records showing their registered ownership of state land, which ironically does not apply to customary land.

²⁴ *Kepe* [2020] PGNC 294 (No. N8501), paragraph 2.

²⁵ *Kepe* [2020] PGNC 294 (No. N8501), paragraph 5.

The cases highlight how the claims of customary landowners are regarded as secondary to the claims of the title holder, and that for customary landowners to be able to challenge these processes they must first have succeeded in the parallel Land Titles Commission process. The cases also highlight how residents of informal settlements draw their claim and authority to occupy state land from earlier agreements with customary landowners, which are often not documented. The inclusion of customary landowners in the court proceedings works to support the legitimacy of the claims of evicted communities to the land. However, the foregoing discussion highlights how the courts privilege the Torrens system of registered titled state land over customary claims.

The court decision on the Portion 695 case at ATS Settlement does not include nor mention customary landowners. Interestingly, while highlighting the rule of law and cautioning the public not to buy or settle on vacant land, the judge draws on the doctrine of ‘terra nullius’, to highlight the rights of the foreign-owned company, noting that:

All land in PNG whether alienated or customary belongs to someone. Currently with its vastly increased population there is no such thing as ‘terra nullius’, the Latin phrase translated as ‘nobody’s land’, in Papua New Guinea.²⁶

This is an interesting use of the doctrine of terra nullius because the concept, which was successfully challenged in Australia, is associated with Indigenous land rights discourse about the pre-existing customary land rights of Indigenous people. By contrast to Australia, PNG’s historical and contemporary land legislation and policies have generally acknowledged the prior rights of customary landowners (see McDonnell et al. 2017, p. 15 for a discussion). It is not clear if the judge’s use of the terra nullius doctrine is inclusive of customary landowners in this statement or if it is only referring to the legal rights of the registered title holder. Given the absence of customary landowners in this case and the court’s decision, it is arguable that the judge’s intention was to reinforce the rights of the registered title holder.

²⁶ *Rifu* [2021] PGNC 99 (N8847), paragraph 29.

3.2.3 Legal versus equitable interests in land

Another theme that emerged from the court cases relates to the rights over legal ownership of land versus equitable interests in the land. The courts mediate based on the law and on the evidence provided by each party to the case. The notion of rights, whose rights, and when those rights can be invoked depend on how the presiding judicial officer interprets each case, which depends, in turn, on the specific circumstances of the case in relation to the law. Equitable interests in eviction court cases appear to be recognised in two ways. Some cases examine the rights of occupants of the land in terms of equitable interests when arguing for consideration to be given for their tenure rights or for compensation for damages sustained after an eviction has occurred. Equitable interests in the eviction court cases here are used to attempt to ensure that occupants of land are given an appropriate and just amount of time to vacate the land.

For example, having found that the land in the Bushwara case was owned by the company, the judge then turned to discuss equitable interests. He noted that the occupants of the land argued that they ‘have equitable interest over their land should the Court finds otherwise or finds against them’.²⁷ This part of the decision involved the judge deliberating over arguments about the appropriate amount of time that the occupants should have to vacate a property which the court had deemed to be owned by the registered title holder. Citing another case, the judge noted that occupants’ claims to any equitable interests in the land

can only relate to them being given sufficient time to vacate the land. Giving them ‘sufficient time’ will entail time required for them to properly dismantle and remove any permanent fixtures such as fences, buildings, including gardens they have made or erected on the land.²⁸

²⁷ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 23.

²⁸ *Maso v Pat* [2016] PGNC 334; N6550, paragraph 23 cited in *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 26.

The judge considered, inter alia, the number of years people had occupied the land and section 41 of the Constitution to determine whether the time frame requested by the company for the occupants to vacate the land 'is reasonable and not harsh and oppressive'.²⁹ According to the court decision, which was later publicised on the company's website, the judge gave the occupants of the land 120 days to vacate the property.

In the Erima Wildlife case (case study 3, Portion 279; see Figure 10), the community took the matter to court for breaches of the Constitution after they were forcefully evicted in 2014.³⁰ In this case, the eviction was part of the NCDC roadworks program and the defendants comprised state actors including the Governor of NCD, the NCD Physical and Planning Board, the NCDC itself, the state, and the company engaged to construct the road. The court noted that the residents had been given three months' notice that they needed to vacate for the new highway to be built. They were subsequently forcefully evicted by the company engaged by the NCDC because they did not adhere to the eviction notice.

The court documents note that the residents were long-term occupants (some for more than 30 years), and that they 'had equitable interests in the land arising from their long-term occupation without active opposition from any lawful authority'. However, the court ruled against the settlers stating that 'the demolition notices served on the plaintiffs ... combined with the awareness exercise conducted by the NCDC ... gave them ample notice — almost four months — that they had to dismantle their houses and other buildings and move out'.³¹

The residents sought leave to appeal the decision in the Supreme Court on the basis that the National Court had erred on several matters related to their equitable interests and human rights. However, the appeal was dismissed.³²

²⁹ *Nambawan Super Ltd* [2020] PGNC 295 (No. N8632), paragraph 29.

³⁰ See *Wama v Parkop* [2018] PGNC 235; N7323, [http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2018/235.html?stem=&synonyms=&query=title\(Wama%20and%20Parkop%20\)](http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2018/235.html?stem=&synonyms=&query=title(Wama%20and%20Parkop%20)).

³¹ *Wama* [2018] PGNC 235; N7323, paragraph 15.

³² *Wama v Parkop* [2020] PGSC 67; SC1977, [http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGSC/2020/67.html?stem=&synonyms=&query=title\(Wama%20and%20Parkop%20\)](http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGSC/2020/67.html?stem=&synonyms=&query=title(Wama%20and%20Parkop%20)).

In the case of Portion 695 at ATS Settlement, having decided in favour of the company, the court cited the Bushwara case, in which the judge ordered a four-month period be given to the settlers to move, noting that the ‘equitable rights of the [residents of Portion 695] as illegal settlers only apply to the issue of notice period within which to vacate. Sufficient period should be given to them to move.’³³ However, the judge also noted that the plaintiffs — the settlers — did not have clean hands because despite clear orders having been issued for many years, during which time they could have addressed the issues, they had instead ignored the orders, and therefore ruled that there was ‘no reasonable cause of action disclosed or made out under the heading of “equitable right”’.³⁴

3.2.4 Human rights violations

Another theme, related to arguments about equitable interests, is the argument that human rights provisions in the Constitution have been violated or are at risk of being violated. For example, in the Moresby/Waigani Arts Theatre case (case study 2, Portion 1564), after the residents were evicted in 2013, they went to court arguing, inter alia, that:

The manner in which the eviction exercise was conducted involved a breach of human rights under *Constitution*, Sections 36 (freedom from inhuman treatment), 37 (protection of the law), 41 (proscribed acts), 44 (arbitrary search and entry) and 53 (unjust deprivation of property).³⁵

The residents also argued that negligence under torts law had occurred. The courts ruled in their favour, noting that negligence and human rights violations had occurred. The defendants in this case, the company director and the company appealed the decision. In deliberating on the appeal, the judge found that the earlier court decisions in relation to

³³ *Rifu* [2021] PGNC 99; N8847, paragraph 19.

³⁴ *Rifu* [2021] PGNC 99; N8847, paragraphs 20 and 21.

³⁵ *Yalbees v Amaiu* [2018] PGNC 264 (N7393), <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGNC/2018/264.html?stem=&synonyms=&query=Yalbees>.

sections 37, 41 and 44 of the Constitution were correct based on the fact that the residents had equitable interests in the land and the company's actions towards the residents during the eviction were harsh, oppressive, and did not provide reasonable notice of the eviction.³⁶

On the other hand, the judge quashed the earlier findings in relation to sections 36 and 53 of the Constitution. With respect to section 36 of the Constitution, in the appeal the judge found that there was no evidence of any assault during the eviction. With respect to section 53 of the Constitution, the judge cited another case that interpreted section 53 as being concerned with setting limits on the state's power to acquire and redistribute wealth through compulsorily acquiring property from citizens.³⁷ Given this interpretation, and the fact that the company was neither the state nor a state actor, the judge ruled that:

Macata Enterprises did not compulsorily deprive the [residents of Portion 1564] of their property for the purposes of s. 53. Macata Enterprises is neither the State nor an instrumentality of the State but a private company, which is not subject to s. 53 of the *Constitution*. It's action in seeking to enforce its right to possession may not be characterised as an act of expropriation.³⁸

In this case, because the company is not an authority of the state and, moreover, because the settlers were not entitled to the land legally, there was no breach of section 53 of the Constitution because it was not applicable to this case.

By contrast, in the Erima Wildlife case, discussed in Section 3.2.3, in dismissing the case, the judge noted that the three to four months' notice period

was ample notice given that the land was immediately required for a proper public purpose [and that the residents of Portion 279] were not

³⁶ *Amaiu v Yalbees* [2020] PGSC 133 (No. SC2046), <http://www.paclii.org/cgi-bin/sinodisp/pg/cases/PGSC/2020/133.html?stem=&synonyms=&query=SC2046>.

³⁷ *Amaiu* [2020] PGSC 133 (No. SC2046), paragraph 129.

³⁸ *Amaiu* [2020] PGSC 133 (No. SC2046), paragraph 132.

treated harshly or oppressively and none of their human rights were breached.³⁹

In contrast to the other cases cited above, and reflecting the diverse ways that these cases are argued in the courts, the court's decision relating to Portion 695 at the ATS Settlement makes no explicit reference to any human rights of the residents of Portion 695 generally, nor to any of the human rights provisions in the Constitution.

3.2.5 Political debates and shrinking NCD boundaries

NCD's spatial expansion is constrained by its legal territorial boundary (see Figure 10). This reality is evident in the case of 14-Mile (case study 5, Portion 1221), which is located outside the NCD boundary in Central Province. In early September 2020, when the police forcefully evicted 400 people from their homes, there was widespread public outcry about yet another violent eviction. Perhaps reflecting the interprovincial contest over land, this case attracted intense media coverage in 2020, and accounted for 26 of the 114 media reports involving different perspectives from the community. The eviction was reportedly carried out for the NCDC, which claims the title of the land. As discussed in Section 3.2.2, the court ruled that the customary landowners did not have legal standing to challenge the NCDC's claim as the legal owner of the land.⁴⁰

Meanwhile, amid these debates about the eviction itself, a parallel debate between the Governor of NCD and the Governor of Central Province escalated in early September 2020 when the media focused on this case. Prior to the eviction taking place, the Central Province Governor, the Hon. Robert Agarobe, debated in Parliament that

land-grabbing ... is going on in Central Province, on my people's land and everyone seems to be turning a blind eye to it. Nobody wants to own up with it ... My debate is based on a portion of land in Central Province. It is portion 1221 which is the old Ilimo Farm and it's about

³⁹ *Wama* [2018] PGNC 235; N7323.

⁴⁰ See *Kepe* [2020] PGNC 294 (No. N8501).

199 hectares located in Ilimo at 14 Mile and it's in Koiari Local-Level Government, Hiri District of Kairuku-Hiri Electorate in Central Province. Portion 1221 shares the common boundary with Adventure Park and Pacific Adventist University (PAU). The land is part of the old Ilimo estate which Central Provincial Government bought for K12 million from a mortgage in 2002 to 2003. (Parliament of Papua New Guinea 2020, pp. 28–29)

On the floor of Parliament, the Governor for Central Province noted that:

On Tuesday 28 August 2018, via a National Gazette notice no. G551, which is a notice of direct grant by the then former Minister for illegal land-grabbing under section 72 of the *Land Act*, was awarded to the NCDC by the then Minister and it was for a 99-year lease. (Parliament of Papua New Guinea 2020, p. 30)

Raising questions about who would benefit from the proposed plans to develop the land, the Governor for Central Province noted that the occupants of the land had

challenged [the] NCDC claim over the land, because settlers knew who the real owners were. The Central Provincial Government has no privy over the matter, nor [has it been] served notice and is not a party to these proceedings. (Parliament of Papua New Guinea 2020, p. 30)

Rebutting, the NCD Governor, the Hon. Powes Parkop, called a Point of Order, and stated that 'there was, according to records, a vacant land and we applied to extend the adventure park and also to build a cultural park, because these are plans that fit into our tourism plan in the city'. He also noted that the NCDC was unaware of the issues raised by Governor Agarobe (Parliament of Papua New Guinea 2020, p. 30). The NCD Governor's arguments seem to be based on the policy approach of renewal and development. While for the Governor of Central Province, the argument is about the encroachment of NCD city into Central Province and the treatment of customary landowners.

In February 2021, the media published several commentaries highlighting the border issues and the debates between the two Governors (for example, Kuku 2021). The 14-Mile court process, like the other case studies, is long standing. This case is likely to be a landmark case involving the provincial boundaries between two provinces and will have broader implications leading into the 2022 national general elections.

4. Conclusion and policy implications

According to the media stories that form the data in this paper, around 18,791 NCD residents were reportedly forcefully evicted from their homes between 2012 and 2021. A significant number of these, and the focus of this paper, are related to mass evictions from state land that is registered to private lease holders. This paper is by no means a comprehensive study of all media articles related to these issues, nor is it an in-depth legal analysis of the complexities of the law or land in NCD during this period. Nevertheless, the media reports, court records and other related documents provide important insights into eviction processes. This study organised these data sources in two ways. First, media reports about evictions were used to map out the extent of evictions across the NCD during this period and seven eviction stories that are the subject of extensive court cases were identified. Second, a CDA was applied to the court decisions and other documents related to these seven selected case studies to gain insights into the dynamics of policy and court discourses on evictions during this decade and which shape the outcomes for NCD's citizens living in settlements and for the city more broadly.

Emerging from this data analysis are a variety of narratives that are used to justify evictions, protect or reinforce the powers of various actors involved in the processes, or exclude people from land. Other narratives reinforce the human rights of communities resisting evictions. The cases examined in this paper illustrate, as van Gelder (2010) has argued in the Latin American context, that dichotomous views of informal settlements as either legal or illegal do not adequately reflect the complex nature of their relationships with the state or formal court processes. These findings contribute to existing research about the diverse ways that Papua New Guineans access and acquire urban land (for example, Chand & Yala 2012; Koczberski et al. 2017; McDonnell et al. 2017; Numbasa and

Koczberski 2012; Rooney 2017b). The findings also highlight the need for ongoing socio-legal analysis to better understand these issues.

These cases highlight that state actors have great control over both prevention and responses to many of the forceful mass evictions in the NCD during this period. The courts play a powerful role in mediating the various relationships between residents of informal settlements, the state, and owners of titles, interpreting the law, while ultimately making decisions to determine the outcomes of eviction processes. In general, the court cases studied in this paper show that court processes focus on determining what the courts and law define as the rightful owner of the land. There is limited consideration about human rights in terms of preventing evictions or resettlement. The cases involve communities acting in one or more collective groups in relation to one or more entities, which can include customary landowners, and an entity that has a legal registered claim to the land. In general, the courts rule in favour of the land rights of the legally registered owner of the title. Where customary landowners are parties to the case, their involvement is usually as a party supporting the settlers' claims, with their own ownership claims treated as marginal. Pre-eviction, human rights considerations of residents of settlements are generally framed in terms of equitable rights in terms of a 'just' time to vacate the land. The court cases generally make limited mention of the roles and responsibilities of the state in terms of resettlement of communities. Where eviction had already taken place, the court cases focused on whether human rights as per the PNG Constitution had been breached.

Given these findings and the devastating, traumatic and long-term impact of eviction on citizens, it is important to frame these national-level policy and court discourses on evictions within international human rights frameworks because they are breaches of human rights and are prohibited under international law (UN OHCHR & UN-HABITAT 2014).

The following five public policy insights emerge from this analysis and are aimed at helping to improve NCD's policies on eviction processes of settlement communities and addressing the human rights of residents who are impacted by or under threat of eviction.

First, there is a need for legislative reforms to strengthen legal rights to housing that protect the housing rights of communities impacted by mass evictions of informal settlements. Where the eviction is unavoidable or the court rules to enforce an eviction, there needs to be clear resettlement options that are in line with international human rights standards. Second, these reforms need to outline transparently the roles and responsibilities and accountability mechanisms of the different government agencies and actors in eviction processes. Third, there is a need for policies that mitigate against further marginalisation of the rights of customary landowners in urban land issues. Fourth, dialogue is needed between national and provincial governments, and customary landowner leaders as NCD outgrows its current boundaries and extends into Central Province. Fifth, in the absence of legislative reforms, an independent monitoring mechanism is needed to track and ensure that eviction processes adequately balance human and housing rights, land rights, and business and development priorities. This could include consideration for a moratorium on mass forceful evictions until a clearer policy framework addressing resettlement of impacted communities is established and incorporated into the city's current policy vision.

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Annex 1: Data sources for Figure 11

		% of total estimated	Estimated number of people	Cumulative number of people	Link to articles
May-2012	Portion 1597/Paga Hill	15.97	3000	3000	(1) http://www.stellamag.com/index.php/blog/archive/the-fight-to-stop-the-opposition ; (2) https://www.smh.com.au/politics/federal/port-moresby-settlers-evicted-to-make-way-for-australian-backed-development-abandoned-20170609-gwodh2.html
Mar-2013	Portion 1564/Moresby Waigani Arts	21.29	4000	7000	https://www.thenational.com.pg/ncd-settlement-bulldozed/
Jun-2014	Portion 279/Erima Wildlife	2.13	400	7400	http://www.pireport.org/articles/2014/06/13/400-left-homeless-after-homes-demolished-port-moresby
Mar-2015	2-Mile Hill	0.43	80	7480	https://www.thenational.com.pg/parkop-tells-city-settlers-to-get-ready-to-relocate
Apr-2015	Idubada settlers	0.53	100	7580	https://emtv.com.pg/idubada-settlers-affected-of-construction-work/
Aug-2015	4-Mile	0.29	54	7634	https://www.youtube.com/watch?v=l7bRclbG3Yk
Aug-2015	Konedobu	0.94	177	7811	https://youtu.be/Gv3m3iTvbaU
Jul-2016	Kaugere Hill	3.19	600	8411	https://www.looppng.com/content/ncdc-moves-demolishes-kaugere-hill-settlement
Aug-2016	West Papua	0.27	50	8461	https://emtv.com.pg/another-eviction-attempt-on-west-papuans-in-port-moresby/
Sep-2016	Morata	4.26	800	9261	https://youtu.be/oA8kDEfrE8
Dec-2016	Morata	18.63	3500	12761	https://www.onepng.com/2016/12/evicted-morata-settlers-to-be-resettled.html
Feb-2017	Erima Bridge	1.60	300	13061	https://youtu.be/coYdrq0fARw
Feb-2017	Saraga	5.32	1000	14061	https://youtu.be/4c6M_0qZvu0
May-2017	Badili	1.23	231	14292	https://www.youtube.com/watch?v=sHob-490uQ0
Jun-2017	ATS Settlement	5.40	1014	15306	https://www.youtube.com/watch?v=ZPXHvxTm6JY
Feb-2018	Portion 2305/ATS Settlement	1.06	200	15506	https://www.looppng.com/png-news/over-200-evictees-file-human-rights-case-74009
Feb-2019	Gerehu Red Hills	2.66	500	16006	https://postcourier.com.pg/settlers-stand-ground/
Mar-2019	Gerehu Red Hills	2.05	385	16391	https://youtu.be/NV5OHzasdRk
Sep-2020	Portion 1221/14-Mile	2.13	400	16791	https://www.thenational.com.pg/more-than-400-evicted/
May-2021	Portion 695/ATS Settlement	10.64	2000	18791	https://pnghausbung.com/displaced-ats-settlers-cry-for-resettlement/
		100	18791	18791	

Annex 2: Summary of case study communities residing on portions of state land who were evicted or are under threat of eviction

Name and Portion number	Summary of status	Parties claiming legal title in the court cases
Case study 1: Paga Hill. Portion 1597	2012: Forceful eviction Taken to court for eviction notice.	<p><u>Plaintiff:</u> Private company: Paga Hill Development Company</p> <p><u>Defendants:</u> 1st: Kisu as representative of original settlers, and others from Papuan region, Central, Kikori, Gulf, and Southern Highlands Province 2nd: Kemi as representative of settlers from Highlands and other parts of PNG, and as chairman of Paga Hill Community Development Committee 3rd: Sepuna, Pingah, and Ninaford and 33 others occupying Paga Hill National Housing Corporation Hostel 4th: Dr. Moutu, Director of National Museum and Art Gallery 5th: Trustees of the National Museum and Art Gallery 6th: Moses, Gari, and Bulu on behalf of settlers of Paga Hill settlement area</p> <p><u>Cases:</u> Paga Hill Development Company (PNG) Ltd vs Kisu [2013] PGNC68; N5255 (OS 573 of 2012, National Court of Papua New Guinea, 2013) Paga Hill Development Company (PNG) Ltd v Kisu [2014] PGNC27; N5683 (OS 573 of 2012, National Court of Papua New Guinea, 2014)</p>
Case study 2: Moresby/Waigani Arts Theatre Portion 1564	2013: Forceful eviction by a private company	<p><u>Parties in proceedings</u></p> <p><u>Plaintiffs:</u> Yalbees, Kuyako, and Lunga for and on behalf of themselves and 155 others named</p> <p><u>Defendants:</u> 1st: Amaiu, Managing Director, Macata Enterprises 2nd: Macata Enterprises Limited 3rd: Inspector Perou N'dranou, NCD Police 4th: Snr Constable Tokali, Acting Police Station Commander, Gordons 5th: Kulunga, Commissioner of Police 6th: Independent State of PNG</p> <p><u>Case:</u> Yalbees v Amaiu [2018] PGNC 264; N7393 (National Court of Papua New Guinea, 2018)</p> <p><u>Parties in appeal</u></p> <p><u>Appellants:</u> 1st: Amaiu, Managing Director of Macata Enterprises 2nd: Macata Enterprises Limited</p>

		<p><u>Respondents:</u> 1st: Yalbees, Kuyako, and Lunga on behalf of themselves and 155 others 2nd: Inspector Perou N'dranou, NCD Police 3rd: Senior Constable Tokali, Acting Police Station Commander, Gordons 4th: Kulunga, Commissioner of Police 5th: Independent State of PNG</p> <p>Case: Amaiu v Yalbees [2020] PGSC 133; SC2046 (Supreme Court of Papua New Guinea, 2020)</p>
Case study 3: Erima Wildlife community Portion 279	<p>2014: Forceful eviction on 12 June 2014.</p> <p>Eviction by the people acting on behalf of the state.</p>	<p><u>Plaintiffs:</u> Wama for self and 42 others of Erima, NCD</p> <p><u>Defendants:</u> 1st: Hon. Powes Parkop, MP, Governor, NCD 2nd: NCD Physical Planning Board 3rd: National Capital District Commission 4th: Independent State of PNG 5th: Dekenai Constructions Limited</p> <p>Cases: Wama v Parkop [2018] PGNC 235; N7323 (National Court of Papua New Guinea, 2018) Wama v Parkop [2020] PGSC 67; SC1977 (Supreme Court of Papua New Guinea, 2020)</p>
Case study 4: Morata Portion 2733	<p>Facing eviction. 2016: Eviction notice: Appeal against a Summary Ejection Notice of 23 November 2016 on Portion 2733.</p> <p>Appealing that they have lived there for 20 to 30 years, and that it is customary land.</p>	<p><u>Appellants:</u> 1st: Philip for self and on behalf of natural members of Kaevaga Land Group Incorporated of Baruni Village, NCD (representative of customary landowning group) 2nd: Tengere for self and on behalf of natural members of Morata One New Block Association Incorporated of Morata One New Block, NCD</p> <p><u>Respondent:</u> Sixth Estate Limited</p> <p>Case: Philip and Tengere v Sixth Estate Limited [2018] PGNC 81; N7125 (National Court of Papua New Guinea, 2018)</p>
Case study 5: 14-Mile Portion 1221	<p>2020: Forceful eviction was reported in the media in September 2020.</p> <p>The case is also the subject of a parliamentary and public debate between the NCD</p>	<p><u>Proceedings:</u> Judicial review of land transfer</p> <p><u>Plaintiffs:</u> 1st: Kepe in his capacity as Chairman of Tapiani Community Association Inc (representative of customary landowning group) 2nd: Febi for self and on behalf of 400 plus block holders</p> <p><u>Defendants:</u> 1st: Hon. John Rosso as Minister for Lands and Physical Planning 2nd: Ala Ane as Registrar of Titles, Department of Lands and Physical Planning</p>

	Governor and the Central Province Governor.	3rd: Samson as Acting Secretary for Department of Lands and Physical Planning 4th: Department of Lands and Physical Planning 5th: National Capital District 6th: Independent State of PNG Case: Kepe v Rosso [2020] PGNC 294; N8501 (National Court of Papua New Guinea, 2020)
Case study 6: ATS Settlement Portion 695	2021: Eviction commenced 28 April 2021	<u>Plaintiffs</u> Rifu, Gize, Abotoboni, Kaipa and their servants and/or agent currently occupying the property described as Portion 695 <u>Defendant</u> Dun Lavin Limited Case: Rifu v Dun Lavin Ltd [2020] PGNC 99; N8847 (OS No. 166 of 2020; National Court of Papua New Guinea, 2020)
Case study 7: Bushwara Portions 2156, 2157, 2159	2021: Facing eviction. Media coverage of eviction notice and court proceedings. Facing eviction.	<u>2020 court decision (N8632)</u> <u>Plaintiff in all three portions</u> Nambawan Super Limited <u>Defendants: Portion 2157 (OS 755 of 2019)</u> Occupants of Portion 2157, including Wauma, Behori Incorporated Land Group (representatives of customary landowners), and Rova and Saka for and on behalf of Dubara Idibana Incorporated Land Group, and Hapa (representatives of customary landowners) <u>Defendants: Portion 2156 (OS 757 of 2019)</u> Occupants of Portion 2156, including Wauma, Behori Incorporated Land Group (representatives of customary landowners), and Rova, Kaeaka, Tengdui, Konts, Kansol, and Wani and Saka for and on behalf of the Dubara Idibana Incorporated Land Group (representatives of customary landowners) <u>Defendants: Portion 2159 (OS 758 of 2019)</u> Occupants of Portion 2159, including Wauma, Behori Incorporated Land Group (representatives of customary landowners), and Rova, Kaeaka, Tengdui, Konts, Kansol, and Wani and Saka for and on behalf of Dubara Idibana Incorporated Land Group (representatives of customary landowners) Case: Nambawan Super Ltd v Occupants of Portion 2157 Milinch Granville Fourmil Port Moresby [2020] PGNC 295; N8632 (National Court of Papua New Guinea, 2020)