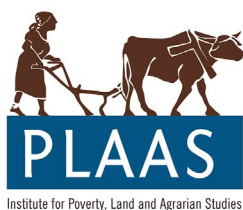


Briefing note from a webinar on

# Legal pluralism and poor implementation hold back women's land rights in Africa: What can we do?

27 August 2020



# Legal pluralism and poor implementation hold back women's land rights in Africa: What can we do?

Text by Mark Paterson

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A webinar on “Legal pluralism and poor implementation hold back women's land rights in Africa: What can we do?” was held by the Network of Excellence on Land Governance in Africa (NELGA) and the Institute for Poverty, Land and Agrarian Studies (PLAAS), University of the Western Cape (UWC), in partnership with Oxfam's Pan Africa Programme and Plateforme Régionale des Organisations Paysannes d'Afrique Centrale (PROPAC) on 27 August 2020 as the fourth in a series of seven monthly online seminars. The virtual meeting brought together activists and academics to discuss the challenges facing African women in claiming and implementing their land rights.

During the Covid-19 crisis, women have remained vulnerable to losing their land to male relatives, companies and governments; and insecure land rights have continued to shape patterns of economic exclusion and marginalisation in a gendered way despite significant civil-society efforts to ensure the national domestication and implementation of international charters seeking to promote these rights.

Against this background, webinar participants described the rationale for, and findings of, a three-year research and advocacy initiative on Women's Land Rights for Inclusive Development and Growth in Africa implemented by PLAAS, Oxfam's Pan Africa Programme and PROPAC, a regional platform of farmers' organisations in Central Africa.


The project considered the extent to which national governments have agreed to and implemented the provision of women's land rights under continental and international charters, including the Framework and Guidelines on Land Policy in Africa<sup>1</sup> approved by the African

Union (AU) in 2009 and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>2</sup> produced by the Food and Agriculture Organisation (FAO) of the United Nations (UN) and endorsed in 2012.

The research investigated the extent to which national governments have implemented the provisions concerning women's land rights under continental and international frameworks and guidelines through legislation, protocols and policy in seven countries in West Africa, Eastern Africa and Southern Africa – Cameroon, Ethiopia, Kenya, Malawi, Mozambique, South Africa and Togo. It also scored these states on how effective they had been in implementing provisions on women's land rights. A tool quantifying such effectiveness was produced and made available to women, including through empowerment programmes instituted at the grassroots, to foster evidence-based advocacy work campaigning for such rights and to support their implementation on the ground.

The webinar considered the impediments to the implementation of such rights in relation to capacity constraints on the ground; struggles around legal pluralism in which women confront the limitations of formalised state-driven and market-driven processes for controlling land, as well as customary practices; and the relative virtues and drawbacks of collective and individual forms of land rights for securing women's control over land in the context of patriarchal political and social systems and legacies of gendered economic exclusion.

The webinar participants further discussed the positive impacts and limitations of efforts to advocate for women's land rights in Africa at the

 This briefing note is based on a webinar you can watch [here](#).

**During the Covid-19 crisis,** women have remained vulnerable to losing their land to male relatives, companies and governments; and insecure land rights have continued to shape patterns of economic exclusion and marginalisation.

intergovernmental level, dating from the declaration emanating from the Beijing Declaration and Platform for Action<sup>3</sup> agreed by the UN at the Fourth World Conference on Women held in the Chinese capital in 1995 which established new norms for such rights globally; and the Kilimanjaro Initiative<sup>4</sup> of 2016 when women from across the continent converged in a mass civil-society mobilisation in Tanzania and climbed the continent's highest mountain to place the issue at the top of Africa's rights agenda. Earlier in the same year, the AU Commission, UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB) launched a campaign aiming at ensuring that 30 percent of documented land on the continent be allocated to African women by 2025.<sup>5</sup>

Acknowledging the limits on the effectiveness of intergovernmental lobbying at the regional, continental and international levels and the challenge of ensuring the accountability of such efforts to civil society activism at the grassroots, the webinar interrogated what forms of advocacy may work best and laid the ground for future engagement with government and AU officials on the findings of the PLAAS/Oxfam/PROPAC research to address some of the political issues around women's land rights raised by the project.

### **The project on Women's Land Rights for Inclusive Development and Growth in Africa**

The PLAAS/Oxfam/PROPAC initiative sought to develop a scorecard which rural women can use to speak for themselves which measures the extent to which their land rights, as promoted by

the AU's land policy of 2009 and the UN's VGGT framework of 2012, are being implemented by their governments.

African women's land rights have come under increasing pressures from large-scale, land-based investment in the extractive, agriculture and forestry sectors. Against this background, the project considered the constitutional and legal provisions and institutional policies and practices shaping women's land rights in seven African countries – Cameroon, Ethiopia, Kenya, Malawi, Mozambique, South Africa and Togo. It further forged a research tool to enable communities to assess and monitor the performance of their governments and representative organisations, including traditional authorities in implementing these rights. The scorecard was further promoted by the project as an advocacy tool that could be used by local women, empowering them to mount informed, evidence-based campaigns for their land rights.

The research asked five questions to establish the nature of the implementation of women's land rights in the seven countries:

1. Are provisions made in the law to guarantee women's equal land rights?
2. Are women's legislated land rights protected and enforced?
3. Are women able to assert their control over the land they use?
4. Are women able to make a meaningful contribution to land governance?

1 AU, UN Economic Commission in Africa (ECA) and African Development Bank (AfDB), "Framework and Guidelines on Land Policy in Africa. Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods". 2010. See [https://www.uneca.org/sites/default/files/PublicationFiles/fg\\_on\\_land\\_policy\\_eng.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/fg_on_land_policy_eng.pdf)

2 Food and Agriculture Organisation (FAO) of the UN, "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security". 2012. See <http://www.fao.org/3/i2801e/i2801e.pdf>

3 Beijing Declaration and Platform for Action. 1995. [https://www.un.org/en/events/pastevents/pdfs/Beijing\\_Declaration\\_and\\_Platform\\_for\\_Action.pdf](https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf)

4 Women to Kilimanjaro, "Charter of Demands: Actualising Women's Land Rights in Africa". 2016. See <https://panafrica.oxfam.org/latest/policy-paper/kilimanjaro-initiative>

5 ECA, "Put land in the hands of women for economic transformation – A call for policy makers". 10 July, 2016. <https://www.uneca.org/stories/put-land-hands-women-economic-transformation-%E2%80%93-call-policy-makers>





5. Are women's land rights protected against large-scale land-based investments in key sectors such as mining, agriculture, tourism and forestry?

The research found that the constitutional and legal provisions for equal land rights for women and men was generally adequate in the seven countries, particularly in Kenya and South Africa, although there was significant room for improvement in Cameroon and Mozambique. However, adherence to the agreed international and continental standards and implementation of appropriate domestic laws fell short in all the countries surveyed. The failure to address and implement women's land rights was thrown into even sharper relief by the broad acknowledgment of the need for such rights by the seven national governments surveyed. It was further found that the implementation of customary practices often contradicted statutory provisions safeguarding women's rights.

The findings confirmed the view that although national governments are relatively quick to sign charters when placed under pressure at intergovernmental forums, they are generally slow to convert these into national frameworks and even less willing to translate these into operable laws and practices. Meanwhile, the quest for equitable land rights has continued to be impeded under legal pluralism by biased, parochial, patriarchal interpretations of customary practices, historically promoted through oppressive models of governance models such as colonialism and apartheid; and by state- and market-driven processes of land privatisation and formalisation which reinforce inequitable, gender-based forms of control over land.

### **Promoting advocacy for women's land rights**

In investigating the opportunities for effective advocacy as part of its role in the project, Oxfam identified Africa's regional economic communities (RECs) as spaces where it could promote women's land rights; and engaged the East African Community (EAC) and the Economic Community of West African States (ECOWAS) accordingly. As a result, ECOWAS established a committee to promote gender-responsive agriculture budgeting among its member states and called on small rural farmers, including women, to participate in an agricultural budgeting summit in Abuja, Nigeria. Oxfam has further engaged with civil society initiatives seeking to prioritise women's interests in the continent's policy architecture which have been established on the sidelines of, and in parallel with, the AU's annual summit, including through the "Gender is my agenda" campaign launched in 2006; the efforts of the African Women's Development and Communication Network (Femnet); and the UN's Generation Equality initiative launched to support the implementation of the Beijing Declaration and Platform for Action 25 years on. Oxfam has sought to foster the participation of grassroots organisations promoting land tenure rights for women in these initiatives. Coordinating with the African Land Policy Centre, which was established by the UN, AfDB and ECA, it has argued for the establishment of an African community of practice working on land issues. Building on the Kilimanjaro Initiative of 2016, Oxfam has also sought to empower women in a grassroots movement to change how agriculture is managed on the continent, including through granting women rights to own, as well as use, land. In this regard, a key aim is to foster the

## **The quest for equitable land rights**

has continued to be impeded under legal pluralism by biased, parochial, patriarchal interpretations of customary practices, historically promoted through oppressive models of governance models such as colonialism and apartheid.

next generation of champions in the struggle for women's land rights.

In pursuit of these goals, Oxfam leverages its convening power to foster partnerships, alliances and networks which can advocate for women's land rights at the local level and mainstream the campaign for these rights on international agendas. The work has produced some significant national impacts. For example, Kenyan women have been appointed to leadership positions on county land management boards as a result of advocacy undertaken by Groots Kenya, a national network of women-led community-based groups, and the Federation of Women Lawyers (FIDA) Kenya. In Malawi, networked advocacy has forced authorities to issue many women with title deeds. In South Africa, a sustained media campaign has led to agreement to hold a roundtable summit with traditional leaders and civil society organisations to address problematic land issues. In Cameroon, government officials met farmers' organisations convened by PROPAC for the first time to collaborate on land concerns. In addition, the PLAAS/PROPAC/Oxfam project has produced the kind of robust, rigorous evidence on the state of women's land rights that is required to convince government officials and heads of state of the need to adopt a new approach.

In terms of longer-term efforts to mainstream the campaign globally, Oxfam has produced a position paper on women's land rights to be presented to national governments and is collaborating with the International Land Coalition (ILC) on the Beijing+25 Platform for Action. However, it has also encountered some fundamental impediments to its efforts to promote change through intergovernmental processes. These include patriarchal norms in society to which political elites are not immune; political opposition to international agreements at the national level; and intractable institutions. In some countries political elites and traditional

authorities have pushed back against efforts to grant women greater control of land outside of family and kinship systems. For example, in South Africa, a raft of new draft laws has sought to frame women as minors unable to hold or control land or play a significant role in its governance.

### **Grassroots training on advocacy for women's land rights**

Under the PLAAS/PROPAC/Oxfam project, PROPAC developed and implemented training processes, including through the production of transformative leadership manuals, to support women at the grassroots level in their struggle for land rights; sought to popularise rights-based discourses; and offered support to women calling for the realisation of their land rights, whether through inheritance or allocation, or through a greater role in land governance and administration.

In particular, PROPAC brought together civil society organisations working on women's land rights, which is a taboo subject in some countries and communities, and inculcated an understanding of the provisions for land tenure that have been formulated at the continental and national levels, sharing many of the research findings produced by PLAAS. This training addressed a broad lack of information about and awareness of such rights among rural women, many of whom have less access to formal education than their male peers.

Recognising not only that women should be involved in decision-making around land issues but also that there was a need to reform the relevant laws and institutions at the local and national levels, PROPAC offered empowerment training, including in techniques of lobbying, networking and advocacy. The goal was to enable women to make their voices heard in asserting their rights to equitable access to, and control of, land and the resources attached to it. Foundational "transformative leadership" training was provided to develop the capacity of

## **In some countries political elites**

and traditional authorities have pushed back against efforts to grant women have greater control of land outside of family and kinship systems.

local women to stand up, take the floor and assume responsibility for protecting the land-based interests of their communities, often in partnership with men.

In this regard and adopting the view that patriarchal societies have been a bottleneck preventing women from achieving their human rights, the training for transformative women's leadership implemented by PROPAC also sought to educate men on the benefits that accrue to society as a whole when women's land rights are achieved and realised. The organisation worked through religious leaders who could explain to men that land rights are human rights; and with traditional leaders in an effort to engage them in reviewing some of their socially and culturally produced knowledge, attitudes and practices.

Noting that women constitute much of the rural working population and adopting the AU's goal that 30% of documented land on the continent be allocated to women, PROPAC tailored its training to address the different national land-right dispensations and actual conditions in the various countries, and the extent to which the trainees' own human rights to land were being impeded or implemented accordingly. The evidence of the participants' own experiences was elicited and used to inform the scorecard on the implementation of land rights and shape local women's advocacy efforts to engage with traditional leaders, the private sector and government officials in pursuit of their interests.

The nature of the local interests and advocacy efforts promoted by the project varied from one place to another. In South Africa, for example, women in villages impacted by mining extraction successfully

campaigns for properly equipped homes, plots to farm and scholarships for their children in exchange for local land-use rights. In this regard, a key lesson communicated in the PROPAC-led training was that unless communities engaged properly, for example, with large-scale, land-based investors, and claimed their rights, they were unlikely to derive benefits. In this regard, countries like South Africa where democracy is relatively strong may be viewed as offering fertile ground for mounting successful protests for women's land rights in the face of planned large-scale investment.

The use of the land-rights scorecards in the advocacy and communication processes undertaken by the project also raised awareness among a number of local and national officials who expressed surprise at the failure to implement continentally acknowledged standards. For example, in Cameroon, some officials responded by pledging to collaborate with civil society to defend women's rights, even in cases which entailed opposing local notables.

The efforts of the PLAAS/PROPAC/Oxfam project to equip local women with some evidentiary and advocacy tools and training to sustain them in their struggle for equitable land rights have been accompanied by increasing mobilisation among African women through social media to defend their rights. As the research initiated by the Oxfam/PLAAS/PROPAC initiative continues, a number of public webinars featuring government, civil-society and academic respondents, as well as a number of closed-door meetings with national and continental officials have been planned to promote further engagement on the political issues around women's land rights raised by the project.

# Formalised land rights have

certain advantages... However, the processes of privatising and commodifying land have generally failed to protect women's interests. Meanwhile, the customary and informal systems for controlling land outside the statutory sphere also limit women's access to, and rights over, land.

## Collective or individual land rights?

Under colonialism, statutory, formalised land rights were introduced in Africa. Land was surveyed, titled and privatised with the support of the state and many Africans were informed that they needed a registered title to establish their ownership of land, although custom and practice dictated that they actually owned it by virtue of having used it and due to it being inherited from their parents and grandparents. The different kinds of claims to ownership gave rise to legal pluralism on the continent. At present, 90% of land is still held under forms of informal or customary tenure; and titling of land remains a controversial model.

Formalised land rights have certain advantages. They often attract state support and there are a range of institutions and mechanisms – although these may be sub-optimal – which make such rights visible and controllable. However, the processes of privatising and commodifying land have generally failed to protect women's interests. Meanwhile, the customary and informal systems for controlling land outside the statutory sphere also limit women's access to, and rights over, land.

An important concern raised in the context of large-scale corporate land-grabbing is that much of the land being acquired from communities is not privately titled, but is held as common property, which is a form of land tenure on which women particularly depend. In this context, the question of whether women tend to benefit more from individual or collective land rights is quite open to interpretation.

In an effort to address the issue, some governments have sought to promote joint registration of property in the names of both spouses, although this can

produce a new set of problems, tying women into a marital property system instead of granting them independent rights and failing to address the needs of single women. In addition, in the absence of appropriate checks, such joint titling can merely facilitate privatisation from which women may accrue no benefit. For example, in many African countries, banks have lobbied to obtain rights to land used as collateral without obtaining the spouses' consent. In this regard, Africa is viewed as lagging behind India and Latin America in ensuring that the implementation of individual titling is accompanied by safeguards to protect the land of the poor.

The challenges raised by joint titling indicate that the promotion of inclusive ownership of land requires not only reform of land laws, but also reform of family and marriage laws.

It is also important to look beyond changing statutes to reforming the customs and informal practices – many of which are the subject of contestation – which shape the ownership and use of the vast majority of land on the continent. Indian feminist economist Bina Agarwal has pointed out the ways in which women struggle around land rights both in relation to the state, market forces and their families.

The point is that women don't own rights in a vacuum; they are a part of collectives, of families. Gender is a relational concept and property rights themselves are also relational in customary systems, indicating and giving form to the kinds of relationships that exist between men and women and within families. In this regard, the AU goal to ensure women hold 30% of documented land rights emanates from a limiting paradigm – as if individualised rights could



provide security in a context in which there are many social forms of tenure under informal and customary systems. For example, there are claims in which women who were granted individual land titles in Ghana were left to fend for themselves in isolation.

Many civil society organisations, including land rights defenders, have also argued that if communities collectively title, they can defend themselves against external land grabbers, even though such titling does not necessarily resolve issues of gender inequality. In addition, there are situations, such as in relation to rights to range land, in which individual titling is useless. Herders don't graze on a single plot over years. Some villages may enjoy better access to water, while others boast greener pastures. So, for example, in Tanzania, a number of pastoralist communities have opted for joint village land planning to control access to, and use of, large rangelands and other resources such as water and forests.

At the same time, granting groups of women collective land titles has been found to create problems within some communities, as was found in cases in Cameroon. In this light, it is important to consider what can actually secure women's land rights most effectively, including in customary frameworks, on a case-by-case basis. Some

customs safeguarding inheritances from generation to generation may be of service; while in semi-urban areas, collective ownership of land may prove a less effective model for protecting the interests of vulnerable groups such as women than registration or commodification. (In this regard, pragmatism dictates the need to try and reduce the cost of individual titling, including through the use of new technologies, since this can prove a particularly intractable hurdle for poor people seeking to secure their land rights.)

For its part, PROPAC presents both individual and collective forms of land rights to communities and adopts a pragmatic approach on which may best be adopted in the light of local conditions and statutory and customary arrangements. It has further adopted the position that women's power in society and their capacity to engage in decision-making spaces is largely shaped by the extent of their economic empowerment and so devotes much of its efforts to promoting such empowerment.

In general, it has been broadly acknowledged that it is important to invest in alternative approaches toward securing land rights for groups who are marginalised which are driven by the people themselves, rather than top-down ones overseen by bureaucrats which have generally failed in Africa.





## Key messages

- Under colonialism, statutory, formalised land rights were introduced in Africa. Meanwhile, custom and practice continued to dictate that most Africans owned their land by virtue of having used it and due to it being inherited from family members. The different kinds of claims to ownership gave rise to legal pluralism on the continent. At present, 90% of land is still held under forms of informal or customary tenure, and titling of land remains a controversial model.
- During the Covid-19 crisis, women have remained vulnerable to losing their land to male relatives, as well as companies and governments; and women's land rights have continued to be made more insecure by state- and market-driven processes of land privatisation and formalisation, and informal practices.
- A three-year research and advocacy initiative on women's land rights in Africa implemented by PLAAS, Oxfam's Pan Africa Programme and PROPAC considered the extent to which national governments have agreed to and implemented the provisions concerning women's land rights under continental and international charters, including the Framework and Guidelines on Land Policy in Africa approved by the AU in 2009 and the Voluntary Guidelines on the Responsible Governance of Tenure produced by the FAO and endorsed in 2012.
- The research project assessed how effective seven African states – Cameroon, Ethiopia, Kenya, Malawi, Mozambique, South Africa and Togo – had been in implementing these provisions; and scorecards quantifying this were produced and made available to women to foster evidence-based campaigning for such rights and to support their implementation on the ground.
- The research found that the constitutional and legal provisions for equal land rights for women and men were generally adequate in the seven countries, particularly in Kenya and South Africa, although there was room for improvement in Cameroon and Mozambique. However, implementation fell short in all the countries surveyed. In addition, officially sanctioned customary practices often contradicted statutory provisions safeguarding women's rights. The findings confirmed the view that although national governments are relatively quick to sign charters under pressure at intergovernmental forums, they are slower to convert these into national frameworks and even less willing to translate these into operable laws and practices.





**Many African women depend on land**  
which is held as common property instead  
of being privately titled.

- Recent efforts to advocate for women’s land rights in Africa at the intergovernmental level date from the Beijing Declaration and Platform for Action of 1995; and the Kilimanjaro Initiative of 2016. Against this background, Oxfam has engaged with civil society to prioritise women’s interests in the AU’s policy architecture; argued for the establishment of an African community of practice working on land issues; and sought to empower women in a grassroots movement to change how agriculture is managed on the continent.
- The international charity has identified Africa’s regional economic communities as spaces where it could promote women’s land rights; and has leveraged its convening power to foster partnerships and networks which can campaign for women’s land rights locally and advocate for them on international agendas. The work has produced significant national impacts, empowering women in relation to: county land management in Kenya; the possession of title deeds in Malawi; a campaign to place pressure on traditional leaders in South Africa; and collaboration with the government in Cameroon.
- But Oxfam’s intergovernmental efforts have encountered some fundamental impediments, including resistance to international agreements from national political elites and traditional authorities opposed to granting women greater control of land outside kinship systems.
- Under the three-year project, PROPAC developed training processes and manuals to support women at the grassroots level in their struggle for land rights; sought to popularise rights-based discourses around land tenure; and offered practical support to women in realising their rights, whether through inheritance or allocation, or through a greater role in land governance and administration.
- PROPAC offered foundational “transformative leadership” and other training in the context of large-scale, land-based investment to develop the capacity of local women, many of whom have less access to formal education than their male peers, to advocate, lobby and network in defence of the land-based interests of their communities – often in partnership with men. The training was tailored to address the different national land-right dispensations and local conditions.
- The evidence of the participants’ own experiences was elicited and used to inform the scorecard on the implementation of land rights. The scorecard was deployed to raise awareness among a number of local and national officials, many of whom expressed concern at the failure to implement continentally acknowledged standards.
- Many African women depend on land which is held as common property instead of being privately titled. In response and in the name of extending women’s land rights, some governments have sought to promote joint spousal registration of property. However, this can tie women into marital arrangements and fails to address the needs of single women. In addition, in the absence of appropriate checks, such joint titling can



facilitate privatisation from which poor landholders accrue few benefits. In this context, the promotion of inclusive ownership of land through titling requires reform of family and marriage, as well as land, laws.

- Indian feminist economist Bina Agarwal has pointed out the ways in which women struggle around land rights in relation to the state, market forces and their families. In this regard, the AU goal to ensure women hold 30% of documented land rights emanates from a limiting paradigm – as if individualised rights could provide security given the many social forms of tenure under informal and customary systems. Accordingly, many civil society organisations, including those seeking to defend poor landholders from large-scale corporate grabbing, have argued that communities can better protect their interests through collective titling. There are also situations, such as in relation to rights to rangeland, in which individual titling is useless.
- In general, it is important to consider which forms of tenure can actually secure women’s land rights most effectively on a case-by-case basis. In this regard, it has been acknowledged that alternative people-driven approaches toward securing land rights, whether in the statutory or customary spheres, should be established instead of the top-down bureaucratic ones which have generally failed in Africa. ●

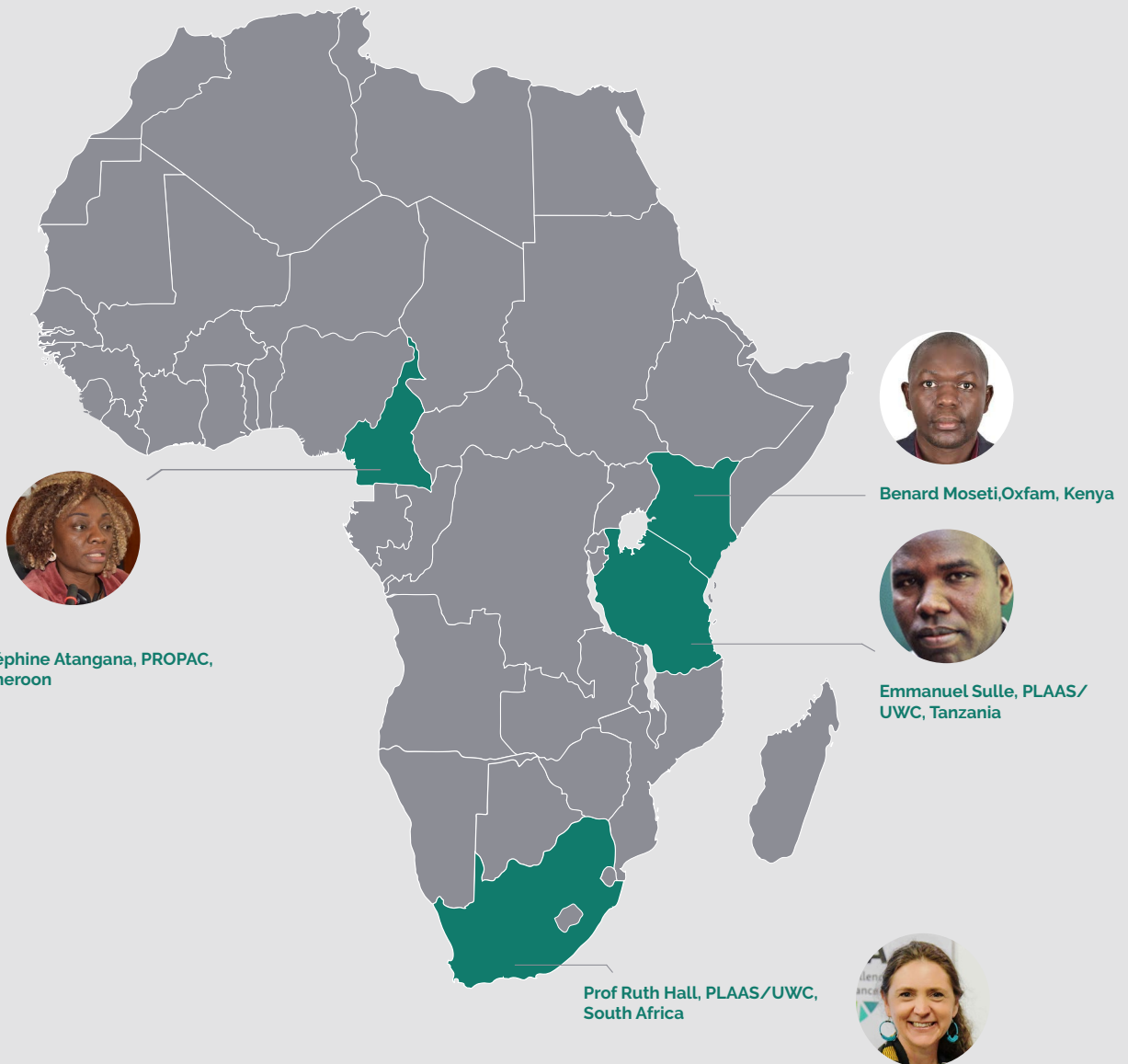


# About this webinar

PLAAS offers a short course on “The Political Economy of Land Governance in Africa” through NELGA, which was established under a programme run by the African Union (AU), United Nations (UN) and the African Development Bank (AfDB). In the past two years, the training has been provided to 95 practitioners and scholars from 26 countries across the continent to help them to improve land policy-making and administration at the national and regional levels. In recognition of PLAAS’s contribution, the institute’s host university, UWC, has been incorporated as a “special” node into NELGA’s pan-continental network, which features five

other university hubs in North, West, Eastern, Central and Southern Africa. The network’s aim is to strengthen human and institutional land-governance capacities for the implementation of the AU’s agenda on land.

The webinar was moderated by Professor Ruth Hall, South African Research Chair in Poverty, Land and Agrarian Studies, PLAAS, and addressed by: Emmanuel Sulle, Research Associate, PLAAS; Benard Moseti, Programme Manager of Land Rights, Pan Africa Programme, Oxfam; and Joséphine Atangana, Programme Officer, PROPAC.



Joséphine Atangana, PROPAC, Cameroon

Benard Moseti, Oxfam, Kenya

Emmanuel Sulle, PLAAS/UWC, Tanzania

Prof Ruth Hall, PLAAS/UWC, South Africa

