

Napoleon Code versus Local Customs? Institutional Environment, Networks, and the Enforcement of Rural Labor Contracts in Mayotte

Code Napoleon ou Normes Locales ? Environnement Institutionnel, Réseaux et Enforcement des contrats de travail dans le secteur rural à Mayotte

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Abstract. The role of institutional environment in the enforcement of contractual practices is now widely documented. What is less recognized is the "composite" nature of the institutional environment (beyond the formal/informal dichotomy) and its actual "working". Regarding that issue, Mayotte, a French island located in the Indian Ocean, presents quite an illustrative situation. At the time of the 1976 referendum, Mayotte decided to remain French contrary to the other Comoro Islands, and more recently it chose to fully integrate the French Republic. Whereas the Mahoraise society is still strongly governed by African and Muslim institutions, the French legal framework has to be reinforced. The confrontation of these legal frameworks –imported civil code versus deep-rooted Muslim and custom law- induces an original situation of institutional pluralism. The difference in economic wealth between Mayotte and the other Comoro islands also induces a massive migration: one third of the population are illegal immigrants, a large number of them being involved in outlawed contractual practices in the agricultural sector. This situation opens the way to opportunistic behaviors and enforcement problems, as both contractors cannot mobilize the French legal framework. The paper disentangles the working of the "composite" institutional environment regarding the issue of contractual practice enforcement, including the "informal" functioning of the "formal" institutions. The analysis relies on intensive fieldwork during 18 months, with an approach that builds on both economic (providing theoretical insights) and anthropological (case study and participant observation) traditions.

JEL codes: D23; O17; Q12; Q15; Z13

Résumé. Le rôle de l'environnement institutionnel dans l'exécution des pratiques contractuelles est largement reconnu. Cependant, peu d'attention a été portée à la nature « composite » de cet environnement, au-delà de la dichotomie formelle/informelle, et à son « fonctionnement » effectif. C'est précisément pour illustrer cette thématique que Mayotte, une île française de l'Océan Indien, fournit un exemple pertinent. Mayotte, qui décida de rester française en 1976 lors du référendum d'indépendance et de séparer des îles voisines des Comores, a affirmé récemment sa volonté d'intégrer pleinement la République. Ce choix a impliqué le renforcement du cadre légal français, celui-ci venant s'ajouter plus que se substituer aux institutions d'origine africaine et musulmanes, régulant encore de façon très marquée la société mahoraise. La confrontation de ces cadres légaux –un code civil importé versus des règles coutumières et musulmanes très prégnantes- induit une situation originale de pluralisme institutionnel. La mise aux normes des conditions socio-économiques, réalisée de façon accélérée en vu de la départementalisation, a parallèlement accentué les différences de richesses entre Mayotte et îles voisines des Comores. De tel écarts ont engendrés un mouvement massif de migration : à présent à Mayotte un tiers de la population est situation irrégulière, et un large partie d'entre eux s'emploie illégalement dans le secteur agricole. En marge du cadre légal français, ces contrats de travail sont soumis à des risques d'opportunisme élevés. Cette contribution met en lumière le rôle de cet environnement institutionnel composite dans la garantie des engagements contractuels, en soulignant le jeu effectif des institutions, et notamment le jeu « informel » des institutions « formelles ». L'analyse repose sur un travail de terrain approfondi (18 mois) et une méthode construite à la fois sur des bases économiques (fournissant les intuitions théoriques) et anthropologiques (étude de cas et observation participante).

1. Introduction

Although the New Institutional Economics refers largely to the institutional environment (North, 1990), it is slightly taken into account by the economics of contracts, and especially of agrarian contracts. According to Ménard (2001), two issues require more investigation: the characterization of the institutional environment and its effective interaction with contractual practices. In order to explore these issues, this text focuses on the relations between the institutional environment and the agrarian contractual practices, and more precisely on the enforcement of rural labor contracts in Mayotte, a French island in the Indian Ocean¹.

In the general field of contract economics, the importance of the institutional environment varies according to the theoretical approach. In the Agency theory approach, using the Principal-Agent model, the institutional framework is “dissimulated” but “competent” and “benevolent” (Brousseau and Glachant, 2000). Its only role is to enforce the Principal’s commitments. In the Transaction cost approach, the agents rely on institutions to reduce transaction costs, with the institutional environment playing two roles in contractual practices: it provides agents with basic coordination rules that decrease contractual design and negotiation costs, and it makes enforcement credible (Brousseau and Glachant, *op. cit.*). In this field of literature, the analysis focuses generally on the formal environment, i.e., the legal and judiciary framework. It is only in situations where the State is absent² or failing³ that enforcement functions of the informal environment are actually taken into account. Several enforcement devices are then envisioned. At the multilateral level, enforcement devices vary according to the exchange attributes. If the relations among the set of contractors are personalized, a coalition system⁴ secures contractual commitments (North, 1990; Greif, 1993; Platteau 1994a, 1994b; Clay, 1997). If they are impersonal, implementation of an intra or inter-community institution, such as the merchant law⁵ or a local judge, enables opportunism deterrence and deviants’ punishment (North, 1990; Milgrom *et al.*, 1990; Greif, 1993; Greif, 2002; Platteau 1994 a; Platteau, 1994 b; Platteau, 2000). In the literature dealing more specifically with agrarian contracts, the enforcement function of the informal environment mainly appears through reputation mechanism in small agrarian communities and kinship relations (Otsuka *et al.*, 1992; Sadoulet and De Janvry, 1997).

Besides enforcement devices rooted in the institutional environment, others⁶ can be mobilized at the bilateral level such as contractual choice (Stiglitz, 1974; Eswaran and Kotwal, 1985; Otsuka *et al.*, 1992; Deininger and Feder, 2001; Allan and Lueck, 2002); establishment of interlinked contracts (Bardhan, 1980; Binswanger and Rosenzweig, 1984; Otsuka *et al.*, 1992; Ensminger 1996; Sadoulet *et al.*, 1997); screening of partners (Newberry and Stiglitz, 1979; Hallagan, 1978); and contract renewal in a repeated game perspective (North, 1990; Greif 1993; Platteau, 2000).

¹ Mayotte is a tiny island of 20 kilometers length over 10 kilometer width, populated by 160 000 inhabitants.

² Societies are said primitive, pre-capitalist or pre-modern (Platteau, 1994, 2000; North, 2000).

³ The State is considered to be failing due to lack of resources, organizational capacity or good governance (corruption).

⁴ Agency relations are regulated by a coalition if: members of a group exchange only among them, the establishment of one relation is conditioned by past conducts of potential contractors, and a transmission-information system allows identifying cheaters and releasing sanction.

⁵ System developed during the late medieval allowing contract enforcement despite the fact that exchanges were impersonal by supplying appropriated information and generating appropriated incentives.

⁶ Beyond the monitoring of the partner’s actions.

The case of Mayotte brings to light an original situation regarding the interactions between the institutional environment and agrarian contractual practices due first, to a composite institutional environment mixing French Republic institutions and institutions usually described in the context of developing countries; and second, to the atypical contractors' situation, contractual practices involving illegal migrants.

After one century of colonization, Mayotte was the only island of the Comoro archipelago¹ where the population positively voted, in 1976, to remain French. This choice, strengthened by the popular will to become a "department"², implied the reinforcement of the French legal framework and its institutions, present but not really effective during the colonization. In this context of institutional transition³, the island has to bring up economic, social, and legal conditions to metropolitan standards. These changes are reflected in the now full prevalence of the French legal system (concerning justice, personal rights, and marriage regulated before by Koranic law), the upgrading of labor regulation (including minimum wage) and taxation, the introduction of welfare policies⁴, and the dramatic development of education system and health services. However the *Mahorais* society is still largely governed by institutions of Muslim and African origins (Koranic law, *macadi*⁵, *mafundi*⁶, kinship relations, extended family, age sets, elder groups, reciprocity principles), which still regulate a major part of economical, social, and political relations. A system of rights and obligations – mainly based on the reciprocity principle – fosters family and village membership, under the social supervision of family chiefs, chiefs of age sets, elders, *mafundi* and *macadi*. The coexistence of these republican and customary/religious institutional frameworks creates an original situation of institutional pluralism.

This change of status, generating huge economical and social development (rising living standards, massive creation of employment and implementation of public services), has transformed the island in a real "El Dorado" for the neighboring Comoro Islands, and induced massive migrations, mostly illegal. Illegal people (around 50 000 people) represent now more than one third of the island population. Constituting a huge pool of low cost labor to draw on, they look for a job in different sectors, notably in agriculture. Lots of *Mahorais* households employ them in order to keep their agricultural activity⁷, source of products intended to insure self-consumption, solidarity networks or, more marginally, food markets⁸.

¹ The other islands preferred independence and established the Muslim Republic of Comoros.

² If people vote for it and if the conditions are filled, Mayotte will become a "department" in 2010.

³ Before 1976, Mayotte and the other Comoro Islands had the status of "*Territoire d'Outre Mer*". This status only implied a partial appropriateness to the administrative, juridical, economical, social and political system of the metropolitan France and procured a *de facto* relative autonomy to local people.

⁴ For the moment, only state allowances paid to families with dependant children or to old people are given. In the future, if Mayotte becomes a department, allowances for one-parent families, rent allowance or maternity allowance (and others) will be awarded.

⁵ Representatives of the Muslim justice.

⁶ Koranic masters, imans.

⁷ The *Mahorais* crop system is mainly composed of plantain, cassava and pigeon pea. These crops, associated with fruit trees (coconut trees, mango trees, lemon trees, etc.), are cultivated by 97% of the households and covert more than 80% of the agricultural area (ESAP, 2003). As they are not seasonal, the basic food products (plantain and cassava), are gradually harvested.

⁸ Only 32% of the farming households sell or exchange part of their vegetal products, and more than 60% of them do it only if they have surplus. One agricultural household out of five breed cattle (generally less than 10 heads); animals are mainly intended to self-consumption at the time religious events (only 6% of the farming household's declare to sell animal products) (ESAP, 2003).

The “market” for labor contracts, illegally established and orally concluded, links two actors’ categories clearly differentiated in terms of socio-economical positions and legal status: (i) the *Mahorais* people (the *Mahorais*), who are exclusively in the employer position¹, own the land, have several sources of income (they benefit by state allowance – paid to families with dependant children or old people – and employment creation in the formal sector – provided at 75% by the “*Collectivité Departementale*”); (ii) illegal migrants from the Comoros, who are (allowing for exceptions) in the employee position, do not own land, lack capital, and know at their arrival few people on the island. Furthermore, this market is characterized by a labor supply that is largely superior to demand, which confers *Mahorais* a strong negotiation power over illegal workers.

This situation raises the enforcement issue. Considering the illegal nature of contractual practices involving undocumented migrants, it seems impossible to mobilize the administrative and judiciary system in order to secure them. On the opposite, the role of the public authorities (*gendarmerie*², migration officers, factory inspectors, judges) is to punish the contractors. The Comoro people (the *Comoriens*) who have neither visa nor working permit risk to be escorted back to the frontier by the police and to be one of the 10 000 illegal migrants expelled every year. The *Mahorais* employing workers without working permit and without paying them according to the legal rate, might be fined and put in jail. Far from contributing to the enforcement of contracts, the formal environment impose restrictions, generating potentially supplementary ‘indirect transaction costs’³ (the cost of dissimulating these practices as well as the cost induced by the sanctions in case of public authority control). What about, then, the role of the informal environment or bilateral devices in contractual enforcement? In this respect, the main results of our study can be stated as follows:

- Instead of a unique enforcement institution, empirical investigations in Mayotte reveal a plurality of enforcement devices: first and foremost the social embeddedness of contractual practices, but also formal institutions, and particularly to the informal working of these formal institutions. These devices co-exist, complete one another and decrease considerably opportunism, even if they do not remove it fully.
- The social embeddedness of contractual practices can be emphasized at the bilateral as well as at the multilateral levels.

i) Between contractors, the labor transaction comes frequently with exchanges of other services (accommodation, food, land loan, non-farming labor). These bundles of transactions cannot be systematically categorized as interlinked contracts, in the sense of a device implemented in keeping with incentive principle. The analysis of how these multiplex relationships are established reveals indeed that the exchanges are based on the culture of gift-giving, the fundamental mode of exchange and ‘cement’ of the *Mahoraise* society (and more largely of the Comoro society). Thus, they induce a strong densification of social ties. However, being rooted or not on in a ‘utilitarian’ rationale, these multiplex relationships do play an important part in contractual enforcement.

(ii) Networks constitute a clear support for contractual practices. Although exclusion of the cheater cannot be done systematically and therefore cannot totally deter from cheating, these

¹ Some *Mahorais* people work for other *Mahorais* people, but essentially in the frame of mutual aid governed by gift and counter gift system.

² Police force in countrysides and villages, resorting to the Department of Defense.

³ These costs do not surge directly from the bilateral relationships, especially for the illegal people, but are nevertheless induced by the transaction for the *Mahorais*.

networks decrease opportunism through reputation mechanism (ex ante, by allowing selecting a reliable partner; ex post, by inducing the fulfillment of commitments in order to keep up one's reputation).

- Contrary to all expectations, the formal environment is sometimes mobilized to solve a dispute between an employer and an employee, even though contractual practices infringe the labor code and involve illegal migrants. The analysis of public institution intervention in disputes shows that these institutions do not simply and mechanically implement the formal rules. It brings to light instead the “informal” interplay of these “formal” institutions.

This research is anchored in a comprehensive approach, in the Weberian sense of the word, i.e., in an understanding of individuals' actions in their own perspective, including their perception of the options open to them. This comprehensive perspective as well as the research issue - contractual practices involving people breaking the law – suggested to give special emphasis to fieldwork. The possibility to apply questionnaires on a large-scale basis was excluded; the only way to collect reliable data was through case studies and an immersion in the local society (allowing for the development of trust relationships and participant observation), in the anthropological tradition (Olivier de Sardan, 1995). The data production was realized during two long stays (14 months in total) of P. Burnod, including learning *Shimaoré* (the local common language) and sharing the everyday life. Repeated interviews were realized with 103 *Mahorais* and illegal migrants, and 51 representatives of different organizations and key-person (“*gardes-champêtres*”¹, police officer, “*gendarmes*”, “*préfet*”², *cadi*, mayor, etc.).

A first part of this text deciphers the contractual practices and specifies the nature of opportunistic behavior in the studied context, as perceived by the actors. The second part of the paper presents the different enforcement devices mobilized by the actors, at the bilateral level and at the network level. The last part, dealing with disputes resolution, reveals the part played by the formal environment and the effective conditions of its intervention.

2. The contractual arena in Mayotte

In this study, the attention focuses on the different coordination modes enabling access to labor force, excluding devices of mutual aid among *Mahorais*. Four types of arrangements including a labor component are distinguished:

- (i) Piecework contracts (*shibaroua*), for tasks such as clearing, weeding, or planting. The salary, negotiated *ex ante*, depends on the task difficulty and varies from 15 to 150 €. The worker is paid once the task completed.
- (ii) Wage labor paid on a monthly basis (*mutru ha hazi* or “*gardié*” in local French). The laborers, in charge of crop production or animal breeding, are paid each month between 100 and 150€. Most of them have in addition the right to collect products on the plot (corresponding to the dietary need of the worker or his household), or the right to cultivate a plot of land³, and/or

¹ A type of rural policeman contracted at the village level.

² The higher representant of the State at the *Département* level.

³ Generally, single workers have the right to crop products on the employer's plot. The loan of a plot intended to the plantain-cassava production is more frequent when the relation between the employer and the worker is good and when the worker is married.

sometimes an accommodation (authorization to occupy one or to build a precarious, little house on the employer's plot). These contracts are concluded without any specific length¹.

(iii) Sharecropping (*risiwanissa* – we share). These contracts are practiced for crop production (sharing by half the harvest or the plot) as well as for cattle breeding (animals born during the contract term are equally shared).

(iv) Patronage (term used here by convenience – locally “patrons” state “*I have an Anjouanais*”² and the “clients”, “*I help one friend*”, or “*I help the person who put me up*”). The “patron” lends an accommodation and supplies food to the “client”, who, in return, helps him to realize different works, including farming works. The “client” can also have a land loan or the right to harvest products on his patron's plot for its own consumption.

These contractual arrangements bind predominantly *Mahorais* employers and illegal *Comoriens*. Mutual aid used to be frequent among *Mahorais*, now changes of the socio-economical environment contribute to the employment of foreign and non-domestic labor force. For *Mahorais*, it is indeed not attractive to get a job in the agricultural sector, not only in term of opportunity cost but also in term of social valorization - as the monetary payment for a task done for a parent or another villager is considered “*shameful*”. Moreover, children are now sent to school (public school in addition to Koranic school) and have then less time to invest in farming.

These contracts, considered as illegal by the French administration, are concluded without written formalization or witness. They bring together actors who are in different legal situation, and in contrasted socio-economical positions.

- The *Mahorais* employers practice the farm activity in parallel off-farm activities. They have therefore several sources of income³, coming from salary employment in the formal sector⁴, handcraft activity and/or family or welfare transfers. Farming households usually own one to three plots, covering a total area included between 0,2 to 2 hectares. A lot of these plots are located far from the villages (more than a 45 minute walk). This factor contributes, along with the type of tasks, to the employment of extra-household labor. Some tasks are indeed considered as hard, or require a daily, even though limited, investment. The employers look for non-permanent labor to plant, weed or clear the plantain-cassava plot, or for labor available daily to farm or to breed cattle. The same employer can be successively or in parallel involved in several labor contracts.

- Coming predominantly from Anjouan, illegal migrants do by night a 70 kilometers trip to join Mayotte, in often overloaded, small motorboat which are little adapted to heavy swell (the number of victim is not counted but seems to be high). Each traveler has to pay 100 or 150 € to the smuggler, equivalent to one or two teacher salaries in Comoro, or to 7 times the cost of a boat trip between Anjouan and Mayotte for people having a visa. Lacking any capital, they arrive in Mayotte to meet relatives or friends (usually from the same village) able to put them up or to help them to find a job. Men find a job in the building, agricultural or service sectors (taxi drivers, house keeper, and night watchman). Women do house tasks or take charge of little shops or of

¹ In average, the workers we met have been employed by the same employer since two and half years.

² An “*Anjouanais*” is a person native from Anjouan, one of the three Comoro Islands. Most of migrants, and especially those who are working in agriculture, come from Anjouan.

³ The average income of farming households vary between 1 333 and 10 787 € (Losch and Sourisseau, 2002)

⁴ 35% if the farming households have at least one of their members who has a salary job.

their family¹. In the agricultural sector, workers are almost exclusively males, between 14 and 50 years old², single or not. Some illegal migrants work in the agricultural sector while waiting for a better paid job in the urban sector; others prefer working in the rural sector, estimating that arrest and expulsion risks are lower than in the urban sector.

Illegally established, these contracts seem to open up the way to opportunistic behavior:

- From the employers' point of view, the 'classical' problem of labor under-investment is not seen as a problem, even if the remote location of some plots and employers' off-farm activities raise the potential monitoring cost. This perception can be linked to the conjunction of low technical tasks and of limited natural risks³, i.e., to low information asymmetries: in case of poor results, the worker's responsibility is considered as straightforward. In the employers' perspective, the only real problem of opportunism is the theft of agricultural products or cattle. In the case of theft, the employee is regularly the first accused. Among the *Mahorais* interviewed, 17% of the employers state that they suffered, at some point in the past, from theft committed by a worker, and 30% supplementary fear such a problem.

- From the migrant workers' point of view, employers' opportunism (little studied in agrarian contract economics) is real. The employer could free himself from his commitment by anonymously giving the employee away to the police for him to be expelled from Mayotte. These denunciations are rare, even though some have been mentioned in the past. Today, the fact that someone is undocumented is not enough to justify the police attention – considering the huge number of illegal migrant in the island, the *gendarmes* organize massive operations of control and expulsion but do not any longer intervene for isolate individuals, excepted regarding criminal. Moreover, the *gendarmes* make sure now that the migrants are being paid before expelling them. The most frequent employers' opportunistic behavior is defaulting on wage payment; 33% of the interviewed illegal workers state to have sustained such a loss in some previous contracts (40% when taking in account labor contracts in the building sector) and 30% supplementary fear such a problem.

However, it is obvious that even though cheating sometimes happens, contracts are not systematically conflictive⁴. The “market” of rural labor contracts is largely developed and not really challenged by opportunistic behavior. Which are then the devices that contribute (globally) to secure the contracts, beyond the eventual role of actors' morality?

3. Social embeddedness and contractual enforcement

Considering the two types of opportunism, monitoring is only possible for employers regarding the risk of theft. The monitoring cost, even though it might be reduced thanks to information transmitted by the neighboring farmers, remains relatively high for isolated plots and employers

¹ Some women come hoping to marry a Mahorais or a Comorien in legal situation.

² 70% of illegal people were under 25 years of age when they arrived in Mayotte, at the time of the interviews, 75% are under 33 years of age.

³ Thanks to the tropical humid climate and the insularity, natural risks are low.

⁴ Percentages of actors having suffered, in the past, from opportunism behavior, correspond to the proportion of individual having suffered from these practices at least once. These data overestimate the importance of opportunism, when taking into account all the contracts in which the interviewed actors have been involved in the past. Unfortunately, the percentage of non-respected contracts over all concluded contracts cannot be calculated, as we do not have data regarding the latest variable. No correlation appears between the migrants' length of stay in Mayotte and the occurrence of contractual problems.

involved in off-farm activities. As a consequence, monitoring is not enough to explain the fact that a majority of contractors fulfill their commitments.

We know from the economics of contracts that the choice of contractual terms can decrease opportunism through incentive effects¹. In Mayotte, this factor shows up only regarding the preference of some employees for in-kind (sharecropping, patronage) rather than cash payments, in order (among other reasons) to avoid the risk of employer's default. However, the contract "choice" is usually *de facto* constrained for the illegal migrants, in need of cash to cover daily expenditures (rent, purchase of manufactured food) and in a weak position on the labor market - due to a strong disequilibrium between offer and supply, the type of contract is most often chosen by the employers. The reduction of opportunism, rather than coming from the choice of contract terms, has to be understood in light of a screening process *vis-à-vis* the reliability of the potential partner.

3.1. Beyond the labor relation: a multiplex bilateral relationship

The employer frequently grants the wage worker or the migrant with whom he is involved in a patronage relation the right to occupy an accommodation (40% of the cases), to share the family meals or to harvest products on the patron's plot (70% of the cases), or to cultivate his own plot (40% of the cases). This could be interpreted as interlinked contracts (Bardhan, 1980), implemented by employers as enforcement devices – defaulting on labor investments would lead to the loss of the advantages provided by the others transactions (Biswanger and Rosenweig, 1984; Otsuka *et al.*, 1992).

Without challenging their incentive component, these interlinked arrangements do not seem to be implemented explicitly for this aim in the *Mahorais* context. Regarding the patronage relationship, access to an accommodation or food supply often precedes the labor relation. Land loan are also possible without compensation in farming labor (20% of the interviewed people). The supply of these services, taking place later than the establishment of the labor relation, can also come from the development of a friendly relationship, which can evolve towards a formal adoption in the family² ("*ufanya udjama*" – to forge a kinship relation). The exchange loses its market features and monetary payments are then excluded –according to the interviewed people, to be paid becomes "shameful" and the close relation induces an obligation of mutual aid. The wage worker becomes then the sharecropper and the owner's "brother", he has his own plot, manages freely his time and help his "brother" in his farming activity. The services supplied are here the result of exchanges based on principles that cannot be limited to the contractual register. In a perspective that goes beyond the labor relation, these services are indeed granted by *Mahorais* on the basis of reciprocity principle (to a *Comorien* friend), of principles of a moral economy³ (illegal migrant living in precarious situation) or of family solidarity (illegal migrant

¹ Trade-off between incentives and risk-sharing (Stiglitz, 1974; Otsuka *et al.*, 1992; Deininger and Feder, 2001), or between different risks of moral hazard, coming from the agent (Allan and Lueck, 2002) or coming from the two contractors (Eswaran and Kotwal, 1985).

² There is formalization of the fact that the individuals engage themselves to honor obligations and solidarity principles. The adoption can lead to the organization of a ceremony or a public announce.

³ The normative devices of the moral economy come from the fact that it exists a consensus in a given (or a society): the development of economical process must not challenge the minimal social norms, particularly the

adopted in the *Mahoraise* family or member of the family by alliance¹). Thus, the transactions can have several meanings, evolve and are multidimensional (Berry, 1993).

Even though these services are not systemically implemented along the incentive principle, they induce a strong densification of the social links, contribute to the establishment of a trustworthy relation and decrease *de facto* opportunism. This relationship is a source of advantages for both actors and hence reduces the potential benefits of cheating. It avoids the *Mahorais* employers a new search, and management costs (to show where the plots are and which works have to be done). For the illegal migrant willing to stay in Mayotte, access to an accommodation, food supply or a plot represents huge advantages considering their precarious situation.

Another element contributing to explain the usual respect of contracts, and in particular the remuneration of the workers, is the importance attached to sorcery practices – interviews with *Mahorais* often refer to cheating employers suffering a spell (and falling from a tree, or discovering that their house is haunted house, etc.)².

3.2. Network as a support for contractual practices

If the relations are personalized and are built up in a group characterized by a collective identity³, information is not costly (North, 1990; Otsuka *et al.*, 1992; Greif, 1993, 2002; Clay, 1997; Platteau, 1994a; Platteau, 2000). The repetitive interaction and the sharing of information related to contractors who did not fulfill their commitment allow the identification and exclusion of the cheaters (Greif, 1993; Otsuka *et al.*, 1992; Platteau, 1994; Clay, 1997). In the *Mahoraise* situation, the contractors do not belong to such a “rural community”, where each member would be able to identify the others and to know their actions; i.e., they cannot secure contracts thanks to a coalition system. The contractors do not either belong to two isolated communities assembling independently *Mahorais* and *Comoriens*. Actors are involved in fact in different networks composed of *Comoriens*, *Mahorais*, or both, formed at the scale of the neighborhood, the village or an agricultural area. These networks are based, to take up Granovetter’s distinction (1973), on 'strong ties' such as relations among people of the same family, native from the same village (in Mayotte or in the Comoro), or living in the same neighborhood⁴, and also on 'weak ties' such as relations among workers employed in a same agricultural area.

Even though they are not built up for these objectives, these networks, rooted in the density of social fabric and in multiplex relations, contribute to the transmission of information regarding contractors’ reputation. This reputation is based not only on the respect of the past contractual commitment, but also on the social behavior in the village: Mosque attendance, participation to daily or festive social events, and respect of code of politeness. They reduce thus the selection cost of a 'reliable' partner.

norm according to which each individual has the right to access to means of subsistence for him and his family (Scott, 1976).

¹ The marriages being frequent between *Mahorais* and *Comoriens*, the former often welcome the later according to family obligations.

² *Mahorais* use fetish to protect their house, but not their plots. We didn’t have the data to explain that.

³ According to the authors, this group can be defined as a closed network, a small community or a 'collectivist' society.

⁴ Neighbors or people coming of the same *Comorien* village give information to illegal migrants. The ties among people native of the same village in the Comoro remain strong in Mayotte.

- When they look for a laborer, the *Mahorais* employers exchange information about illegal people and reduce thus information search cost concerning the job seeker reputation.
- Illegal migrants get also information about potential employers. They sometimes accept a contract without knowing the reputation of an employer, in order to avoid losing a job opportunity. They afterwards ask for information about this employer in order to decide if they carry on their contract or not. They obtain this information either by soliciting their friends living in the same village as the employer, or by getting information from workers of neighboring plots. The partner screening, realized *ex post*, is facilitated by strong ties guarantee of credible information, and weak ties sources of new information (Granovetter, 1973).
- Employers and employees can also be put in touch thanks to a 'connector': 71% of the wage contracts and 42% of the piecework contracts were established this way. The (*Mahorais* or illegal) connector helps economizing on search costs and improves the information quality by matching actors via a 'short string' (Degenne and Forsé, 1994).

Although the networks reduce opportunism risk by encouraging actors to maintain their reputation, they cannot fully rule them out. As they stretch over limited areas and are frequently renewed (a lot of illegal migrants arrive to Mayotte, move from one village to another, or are expelled), the networks cannot systematically or perfectly spread information about the contractors' reliability, and in particular information about people recently arrived in a given territory. They are not able to identify a contractor who cheated in the past outside a given network. Besides, the absence of coordination among networks prevents from imposing an embargo permitting to start negotiations with other litigants in case of dispute (Platteau, 2000). These networks are only able to prevent cheaters (*Mahorais* or illegal contractors) to renew a contract with contractors of a given network.

However, in case of theft on a 'large' scale, village networks composed of *Mahorais* and illegal migrants can violently expel the thief, not only from the local networks, but also from Mayotte: after beating him in public, the villagers turn him to the *gendarmes* in order to expel him from the island (cf. infra). In the case of non-remuneration, excluding the employer from the contractual game is less obvious, as some illegal migrants, under constraints, accept the first contract whatever the employer's reputation is.

4. Dispute settlement and institutional environment

The analysis of the rules and processes, which govern dispute settlements, allows one to identify the relevant dimensions of the institutional environment from the actors' point of view. Several levels of dispute settlement appear, with steps differentiated according to the intervention or not of a third-party, and according to the identity and legitimacy of this third-party (Roberts, 1994; Lund, 2001). The presentation of these different levels illustrates not only the rule repertory and the range of authority mobilized, but also the room for manoeuvre at the actors' disposal. Two situations are explored here: dispute settlement in case of agricultural products or cattle theft, and in case of non-remuneration.

4.1. From tolerance to sanction

All thefts do not induce a sanction. The employers display indeed a certain tolerance, providing that the theft is realized for 'reasonable' purposes and in 'reasonable' proportions, i.e., (i) if the quantity of product taken exceeds the consumption needs of the household's worker but are intended to supply food to the extended family, and not marketed; and (ii) if this quantity is not such that the employer does not find any more product to harvest for his family consumption and solidarity networks. Employers use several types of justification to explain this tolerance. In their own words, "*it is better to have his own thief than the others' thief*", i.e., it is preferable to see disappearing small quantities of products than suffering from large thefts, without the guarantee to find another laborer who would be more honest. In another register, some consider "*I don't pay him a lot and he has to feed his family*". At least, others in a way excuse this type of behavior, admitting that they do not bother to monitor their worker ("*If I wanted him to stop stealing I should go more often to my plot*") – the cost induced by the moderate opportunism of the worker is thus justified by a saving on the monitoring cost. Some employers to justify their own 'moderate opportunism' also use the perception of a possible moderate opportunism of their employee: "*As he cheats me, I don't pay him all the time*". When the threshold of moderate opportunism is exceeded, the employer breaks off the contract ("*When I came back, there wasn't any more banana to fill my trunk, I told him to clear off!*").

When the fault is considered as serious (theft of a large quantity of products or of an animal), the exclusion from the contractual game is clearly more drastic: the villagers arrest the thief and the youngsters give him a beating on the public place (the task being assigned to the age set physically able to sanction), under the control of the eldest. Some illegal migrants, concerned with their reputation, can also participate to the sanction execution. Usually, as soon as the bustle reaches the village, the *garde-champêtre* is called and informs the *gendarmes*, who arrest and expel the theft. Some *gendarmes*, once informed, dawdle on the way, in order to let the villagers time to administer the sanction, judging it particularly efficient in a preventive perspective – more efficient than the sole expulsion.

4.2. The informal interplay of the formal institutional environment

In case of non-remuneration, migrants do not appeal to the local authorities, such as *macadi*, *mafundi*, the elders or chief of age sets. The actors themselves as well as these authorities consider that disputes between villagers and outsiders, or problems relative to market labor relation, do not fall within their competence (whereas the elders can criticize, and the members of the age set settle punishments, regarding native villagers who do not participate in mutual aid).

After waiting from a few days to a few weeks, the undocumented migrants who are not paid express their concern to their employer. While claiming their wage, some evoke sometimes, in veiled terms, the risk for the employer to suffer from a spell. Most often, the litigant mobilizes several registers supposedly shared with the employer (Roberts, 1994; Lund, 2001): the register of work ("*sweat must be rewarded*"), of religion ("*God will judge you*") or of compassion ("*I need this money because I have nothing else to live*"). Due to internalized nature of the 'sanction' and to the diversity in actors' subjective perceptions, these references to morality, religion, justice or sorcery do not lead automatically to the resolution of the dispute. Among the interviewed

migrants, only 15% of the complainants succeeded that way; 40% stopped at this step, worrying to be perceived as troublemakers or afraid to be given away by the employer to the *gendarmes*.

The next step for the migrant is to call for the intervention the employer's family (generally his parents or his wife); not honoring one's debts or taking advantage of a poor (especially if is has a family) is socially reprovved. The employer's family can put pressure on him, but cannot force him to pay. If this solution works for some, others give up but some resort to the formal institutional environment – that time not for mediation, but for a more credible threat.

Against all expectations given the workers' illegal status and the expulsion risk incurred, the illegal people do indeed appeal to the French public administration (the *garde-champêtre* and the *gendarmes*). One could state the hypothesis that this is done only when the amount claimed is superior to the expulsion cost (i.e., the cost to come back to Mayotte) but in fact, this type of complaint seems to be raised due to urgent monetary needs rather than to the amount at stake (claimed wages vary from 50 to 1000€).

The actors' closest authority, the *garde-champêtres*, normally accepts to help the undocumented migrants, legitimizing this help by combining different arguments: “*illegal workers mustn't been exploited*”, “*we are all Muslims*” or “*I help him because he lives in the village*”. In the majority of the cases, the *garde-champêtre* manage to make the employer pays, using the threat to fine him in addition to the wages he has to pay (a 348 € fine per illegal employee is specifically implemented by the French administration in Mayotte, to fight the employment of undocumented workers on the black labor market) or to be brought for trial, the sentence being then a fine of 300 to 3 000 € and/or prison sentence from two months to two years¹. The *gardes-champêtres* reach thus, *de facto*, a compromise between the French law and local principles. Through their informal intervention, they 'incite' the employer to pay only what was provided for in the arrangement (e.g. 100 € per month) and not a wage based on the legal rate, and they do not sanction him for providing labor to undocumented migrants. Neither do they usually turn the migrant to the *gendarmerie*.

Other undocumented migrants go to the *gendarmerie*. The *gendarmes*, being local or metropolitan, commonly accept to help them, here again mobilizing several registers of justification: “*they worked and they must be paid in accordance to the labor code*”, “*exploitation of illegal people must not be encouraged*”, and “*they are poor and have a dependent family*”. Like the *gardes-champêtres*, the *gendarmes* summon the employer and threat him to be fined or sentenced in case of non-remuneration. If the employer immediately accepts to pay, the sanction imposed by the *gendarmes* is stronger than the one imposed by the *gardes-champêtres*: the employer has not only to fulfill his commitment, but he has to pay the worker in accordance to the legal rate, i.e., approximately 500 € by month (5 times more than the illegal market). If the employer did not immediately pay, he would have to pay in addition of the wage, an administrative fine or/and would be sent to Court. The intervention of the *gendarmes* does not systematically induce the expulsion of the undocumented disputants. Some *gendarmes* explain that they do not expel those “*who are not troublemakers; in fact we don't automatically expel the guys, it depends on their profile*”; they ask for information the *garde-champêtre* of the village

¹ Television or radio announces frequently remind people of the fact that to employ illegal migrants or to help them to stay in Mayotte is strongly sanctioned.

where the complainant lives – “*the garde-champêtre knows quite well the people living in the village. We ask him who the guy is and if he makes troubles; if he doesn’t hurt anybody, then it is not useful to expel him*”. (Extract from an interviewed with a metropolitan gendarme). They equally emphasize that they do not want to impose more burden on the illegal worker. As stated by metropolitan *gendarmes*, “*The young boy [an illegal migrant who came to present a claim] was frightened to be expelled. But we, we didn’t expel him. He worked hard during 7 months and he didn’t get pay. We are not going to expel him for that. Moreover the expelled migrant “risks to let his family here alone and he will end up coming back*”. One should not minimize such compromise based on justice considerations.

The informal functioning of the so-called 'formal institutional environment' concerns also labor inspectors who help sometimes-illegal workers to get pay. People appeal less to them as they are not as well known as the *gendarmes* (they are few of them and they exclusively work in the building sector) and are less accessible (their office is located in the main town of the island and they only speak French). Like the *gendarmes*, they threat employers to be fined and sentenced by the Court, and manage to make them pay. Considering that their work is to enforce the labor regulation, they do not denounce the illegal workers to the *gendarmes*: “*If they are illegal guys, we don’t call the gendarmes. Our role is to make employers pay, our role is not to fill the boat [bringing the migrants back to Anjouan] so that they will come back the week after*” (Interview with a metropolitan labor inspector).

This informal interplay of formal institutions is thus reflected by an absence of a strict and systematic implementation of the formal rules punishing illegal immigration, employment of foreigners lacking work permit and the fact to not act in accordance with the labor regulation. This distance between the formal rule and its implementation does not come (as it is frequently the case in other environments) from corruption practices or from the lack of comprehension of rules by actors in charge (an equally frequent situation). This distance comes instead from the conscious actors’ choice of a '*bricolage*' between these rules, from principles resorting to actors’ value system (included metropolitan authorities) and also from a certain pragmatism in a situation where the strict implementation of the rule is, *de facto*, not conceivable – this would mean to throw on third of the population out of the island and to destabilize the island economy.

5. Conclusion

The agrarian contractual practices in Mayotte, established outside the law and among (*a priori*) strangers, are far from being systematically conflictive. At the bilateral level, the fact that they tend to lie within interpersonal and multiplex relations contribute to explain the lack of major enforcement problems; contractual practices can only be understood if the 'contract' is considered as one dimension of a bundle of relations linking the actors. At the multilateral level, actors’ reputation transmission constitutes a device relatively efficient to deter opportunism. Ties are therefore multidimensional and reveal the social embeddedness of the contractual practices that are kept and develop thank to the strong basis formed by networks. On a very different register, one should not ignore the fact that undocumented migrants have not any other alternative. Even though they have to endure opportunistic behavior (which is, again, far for systematic), selling their labor force is the only way for them to meet their needs.

The *Mahorais* case allows one to get rid of a dualist perspective opposing contexts where the State is present and operational, to other situations ('without a State' or with a 'failing' State), where only the so-called informal institutional environment intervenes or is supposed to intervene. Regarding opportunism prevention as well as the settlement of disputes, we underlined the interplay of the social dimension of the coordination (through multiplex relations and networks), of the 'informal' institutional environment (through the actors' value system such as the principles of reciprocity or the principles of justice), and the formal institutional environment (the French administration) – despite the fact the contractors break the law. In case of dispute, a certain gradation can be noticed, actors trying first to solve the problem in their close, social and normative environment (principles mobilized in front of the employer, resorting to the employer's family), before appealing to authorities belonging to the formal environment (*gardes-champêtres*, gendarmes), more distant of their daily referential and presenting also more risks for the complainant.

The *Mahorais* case also permits to escape from a mechanical vision of the working of the institutional environment. The informal environment, often grasped in the literature through relations in small community (familial, agrarian, or religious one) under the benevolence of the head of the village or the family chief, works here fundamentally through the actors' value system, but cannot perfectly enforce the contracts. The 'formal' environment that 'should not' intervene due the illegal feature of the practices, does intervene, without a systematic and automatic implementation of the legal rules. The distance existing between the written rules and their implementation by the public administration highlights the 'informal' interplay of this 'formal' institutional environment.

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