

## The Impact of State Land Law on Customary Land Tenure Security and on the Use of Credits: A Case Study from Cameroon

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### Abstract

This paper is an attempt to analyse the conventional view of "traditional" or informal institutions of land tenure which allegedly impede agricultural development. From the other side of the same theoretical perspective, the paper derives from the assumption that more individualised, private land rights (western configuration of property rights) provide more land rights security, thereby improve farmers access to credit, encourage land transfers to more productive farmers and, create incentives for land improvements. However, empirical evidence from some regions of Africa where this assumption is suppose to hold, tend to call this conventional view into question, thus warn against its extrapolation to other regions.

Key Words: Land Laws; Land Rights Security; Economic Behaviour and Performance

### 1. Introduction

In a world of continuous increase in demand for natural resources, emerging from population growth, and other factors determining the change of socio-economic environment, the resource need of human beings at one time tends to exceed what nature has provided. In this regard, nature can not be blamed. More realistic, a situation is at stake whereby people must compete with others for scarce resources. In order to survive, human beings must do away with a fundamental problem, namely that of distributing scarce resources. In economic term, therefore, it is scarcity that forces the human society to make choice with respect to the allocation and use of resources. This consideration in connection to social activities, however, must not abstract from the specification and modification of institutions, as well as from the social interaction within the prevailing institutional structure. Whereas the former defines the "rules of the game", the latter is the "game" itself. Because these rules have a direct influence on how the Game is played, they definitely have a predictive and specific influence on behaviour. In general, it is the scarcity of resources and human survival instinct that prompt institutions to change.

In the past 25 years, a fullness of literature has emerged criticising some methods of resources management. Most especially, the Seminar Paper of Hardin's (1968) "Tragedy of the Commons" provoked the emergence of a debate Front. Hardin and his disciples have been criticised of haven confused property regimes by replacing common property regimes with "open access". Though, it seems as if a general consensus has been reached in this concern, another frontline in the debate persists, comparing the efficiency and equity potentials between the Private and common property regimes in local-level management of natural resources. Whereas, the one side of the prevailing debate team perceives communal land tenure as static, thereby not enable to adapt to changing environments, as well as internalise externalities from resource use, the other side of it, while strongly claiming that communal land tenure has been adopting to changing environment in the past, and will continue in the same path, in the future, asserts that communal resource use is consistent with sustainable production. Correspondingly, it is from the former perspective propagated by some academic community and donors, that land reforms in African countries, south of the Sahara, have

derived their current legal status. Private property rights to land has been established by the governments in form of land registration, purposefully to monitor the game of resource distribution, and for all, let hegemony establish for itself. Think about the African ‘‘test-case’’ of land registration - Kenya, and a plethora of others such as Cameroon, Uganda, Tanzania, Senegal etc.,

In the main, defining the interface of institutional change as an interplay between the rules of the game, population pressure and human behaviour with regards changing resource endowment, the appropriate theoretical perspectives in the context of this paper should not abstract from dealing with the interaction of the institutions of a capitalist regime, defined by the rights of ownership via a constitutional government, on the one hand, and institutions of local community or informal institutions, on the other hand, with regards to changing resource capacity. This interaction should be analysed employing the **Institutional theory of law** which conceptualises legal pluralism. In addition, theoretical deliberations must not abstract from dealing with the standard theory of production and exchange which in the **New Institutional Economics** is expanded from the **Neo-classical model** to include, besides the concept of rights of ownership, some configurations such as positive transaction costs, and the fact that alternative property rights affect the allocation of resources and the flow of innovations in specific and predictable ways.

Drawing on the distinction between the determinants of institutional change into ‘‘endogenous and exogenous’’ factors, that is, the former defining the impact of the rules on the game and the latter, the impact of the game to the rules, it is without doubt that land reforms of some African countries derived from the latter concept. In other words, institutional change has been triggered by specific interest groups who have employed bureaucratic justifications to decide, without sufficient knowledge about community’s social institutions, what is ‘good’ for the citizenry.

### **1.1 Statement of the Problem envisaged**

Establishing state claims to land via the introduction of individualised, private land rights including exclusionary ownership in an environment of autochthonous, communal land tenure, there is definitely a conflict situation created over the control and use of land which especially is detrimental to people of an agrarian society who indeed, do not only perceive land as a primary means of generating a livelihood, but also appreciate it as an essential element of nature that provides them a foundation for rules of behaviour and a means to accumulate wealth and transfer it between generations. In such a society, therefore, land (tenure) determines the ability of a farm household to produce for subsistence and to a lesser extend, for markets, thus the socio-economic status of that household in the community. Understandably, a change or an intrude in the communal land tenure from a non-allied system of land tenure engenders a set of complex reactions that may cause a break-down in the social security network of a farm household, hence reduce its aspirations in search for other economic opportunities and meeting their basic requirements.

The legal situation created by land reforms in Cameroon can not be an exception to the rule. The 1974 Land Ordinances, a replicate of the French law adopting individualised land tenure, thus a wide conceptual departure from communal land tenure, was imposed to replace or take over the functions of communal land tenure in providing the ‘‘rules of the game’’ as regards land control and its management. Because to a large extend, informal institutions of land tenure have been able to resist the penetration of the former, a heterogeneous reality characterised by a conflict-ridden situation on interest and between institutions termed ‘‘legal dualism/pluralism or land rights insecurity’’, which in a changing socioeconomic environment

is further blurred by the set up of hierarchy of estate -power relations, population pressure and agricultural commercialisation, has been created. In essence, land rights insecurity in both the concepts of legal dualism and Power relations implies that the less knowledgeable and less powerful such as small farmers and women will loose their land rights to the more knowledgeable and powerful and more land disputes may arise between them. Furthermore, since the former has a relative cheaper access to legal information, they eventually tend to easily access land titles which allegedly increases access to credit, incentives to land improvements and land transfers.

### **1.2 Objectives and Hypotheses of the Study**

The outstanding issues reflecting the **objectives** of the study are enumerated in the following questions:

- To what extent have the 1974 Land Ordinances found acceptance in the hinterlands of Cameroon and, who has derived an advantage from them?
- Considering the established fact that there is legal pluralism where two dissimilar laws co-exist, what is the degree of tenure security in the chosen study villages?
- What economic implications do the present state of tenure security have on farmers use of productive assets?

From the statement of the problem envisaged and objectives above, the following **hypotheses** have been derived:

1. The 1974 Land Ordinances were enacted in order to remedy the continuous frictional situation in land issues arising from the rapid urbanisation and modernisation processes.
2. Land tenure security is not a matter of a particular land tenure system, but rather, depends on the efficient functioning of the belonging institutional mechanisms.
3. Land registration increases land rights security, thereby increase farmers access to credit.

### **2. Research Methodology**

This research has been conducted in two adjacent villages: Ku-bome and Ngyen-mbo of Mbengwi sub-division in Momo Division of the North West Province in Cameroon during a period between November 1998 and Febuary 1999 of daily interviewing. In order to reflect the differential impact of commercialisation and population pressure on the 1974 Land Ordinance, the anticipated villages were purposefully selected with Ku-bome almost an agglomerate to the Divisional headquater - Mbengwi and Ngyen-mbo some 12 kilometers away from it. Furthermore, these villages represent the farming practice in the Division and have similar customary laws. The original intention of comparing a sample of registered households in one village with a sample from the other village without registered parcels, tend to be naive in the field as villages with similar customary (inheritance) laws could not be found with a reasonable number of households having all registered parcels. In the chosen study villages, information was obtained using the following methods; Observations, Discussions - Recall technic, and Interviews with questionnaires (both open and closed). The main economic units of analysis were household and parcel. Household is defined here as the "cooking pot unit" with a recognised head. Implying that, the household is considered as both a consumption and production unit. The emphasis in this definition on the household "head" is of crucial importance in this research work as on behave of the other members, it is in his/her name that land are registered, credits are contracted, and land transfers - documented or not, are secured.

At the beginning, the research design targeted 40 households each for both villages - which were selected randomly, and did not specify whether or not the households had registered parcels. After eliminating cases where data were deemed unreliable, the number of the sample

households reduced to N=30 for Ku-bome and N=32 for Ngyen-mbo. Table 2.1 depicts the final research design dividing household into registration strata.

Table 2.1: Final Research Design

	HH. WITH ALL PARCELS REGISTERED	HH. WITH SOME PARCELS REGISTERED	HH. WITH NO PARCELS REGISTERED	TOTAL
Ku-bome	1	5	24	30
Ngyen-mbo	0	7	25	32
<b>Total</b>	1	12	49	<b>62</b>

Source: Author's Presentation

For the purpose of acquaintance and familiarity with the respondents, questionnaire was divided into three major sections: The first section included only questions that required answers concerning the socioeconomic conditions of the farmers. The second section - subdivided into two other sections, included questions on the land rights held by farmers and modes of land rights acquisition. And, the last section, was devoted to questions which the author deemed could pose scepticism and fear at the beginning of the interviews such as matters of land disputes and household income. Collected data were entered in the SPSS program, subjecting socio-economic data to descriptive statistics. SPSS also provided regression analysis functions (RAF) to investigate the probability that farmers registered land parcels and, received credits. With the RAF, we also made investigations on what parcels and household characteristics influenced farmers' access to credit.

### **3. Some Research Findings.**

#### **3.1 Response to Land Rights Privatisation and the Situation of Tenure Security**

As mentioned above, some of the main objectives of this paper are to investigate (i) to what extent the 1974 Land Ordinances has been accepted in the hinterlands of Cameroon, (ii) who has derived advantages from them, (iii) on the degree of security that reflects the present situation of legal pluralism, and as a derivative (iv) make conclusion as to which institution of land tenure provides the "rules of the game". If we divide answers of the above questions into two sections, the first one will give answers concerning the first two objectives (i) and (ii), while the second will be focused on the last two objectives (iii) and (iv). Before the presentation of these results, an excursion in the socio-economic profile of the farmers whose responses have enabled us make conclusions in this paper is relevant.

According to data collected on the socio-economic conditions of the respondents, the following picture can be extrapolated for the other farm households in the study villages: With 55 years as average age for household heads, they are considered as approaching the end of their professional carrier. These household heads have a low level of education, seldom have registered land and have an average farm size of 2,5 hectares from which only an average of 1,8 hectares are under (continuous) cultivation.

##### **3.1.1 The Response to the 1974 Land Ordinances (Land Registration) in the Study Area**

After more than twenty-five years of the implementation of these Ordinances, their success can be partly expressed in the number of approved land titles. From a cursory view on statistical data from the Division office of Lands and Survey, the number of those who applied for land titles, as well as those who received such titles has remained low in the study villages. However, it is worth noting that there has been a high percentage of success or a high ratio of approved applications. In terms of distance, it was observed that with a longer distance of any village from the Divisional Office, the lesser the number of submitted applications for land titles. In this line, and by way of comparison between the study villages,

Ku-bome tends to have 98 submitted applications from which 73 were approved so far (74% success). Ngyen-mbo tends to have filed in only 35 applications from which 29 were approved (82% success). By way of comparison according to physical persons and institutions that registered land, farmers accounted for 65 of the applications approved, followed by state elites and salaried worker (31) and corporate bodies (6). It is believed upon that without the "Green revolution" policy that accorded farmers possessing land certificates financial assistance to cultivate cash crops such as coffee and cocoa, there number of land titles would have been lower. Implying that more land titles were obtained during this period. Based on the primary data, only 17,3 hectares of inventoried land parcels have been registered in general, from which Ku-bome accounted for 8 hectares and Ngyen-mbo 9,3 hectares. The primary data, however, do not lend support to the fact that more resource pressure leads to more demand for land titles in that, while Ku-bome, with more resource pressure, tends to have only 6 land parcels registered, Ngyen-mbo, has 7 land parcels registered. However, this can not be very conclusive as the total number of inventoried land parcels for the study villages, also vary.

Considering responses from the farmers perspective, why they did not register land, a handful of reasons were given with the majority mentioning the reason of costs and the cumbersomeness of the procedure of registration (78%). Other responses included the fact that, farmers preferred customary land tenure (8.1%), they lack awareness about the land registration program (6.1) and, some farmers considered their land parcels to be small and, thus not profitable if they were registered (1.6%). Remarkable, is the high percentage of farmers who gave the reasons of costs and cumbersomeness of the registration procedure, partly explained here by the complicated institutional routes planted by administrative centralism and the backward administrative practices in Cameroon, as a whole. Farmers complained of the delay in the processing of their applications, and most particularly of the many trips they had to make to and from the Divisional Office of Lands and survey in Mbengwi. Apparently, the low response to the land registration program is strongly intertwined with the fact that only a few farmers have been able to afford crossing this financial barrier.

Conversely, when respondents (13 farm households; 21% of the sample) were asked why they registered land, the following answers were given: 38 percent registered land in order to have collateral that could secure loans from formal financial sources; 30 percent forecasted an increase in land eviction; 15.3 percent forecasted an increase in land eviction and perceived registration as freedom; 8.4 percent perceive registration as freedom; and 8.4 percent forecasted increase in land eviction and wanted to use land as collateral to obtain loans. As will be seen later, the relative high percentage of those who were inclined to say they had wanted a collateral to secure loans - if such were obtained, have not used them for agricultural purpose. Implying that, land registration has also been a means to satisfy other household basic needs.

Again, by nature of the collected data, a trend could be extracted that predicts the future response to land registration - *ceteris paribus*, that is, from both primary and secondary data, only a single household head could be traced with age below thirty who registered land, confirming the fact that land registration must have had a periodical success due to a short-term established land policy during the "Green Revolution", and that without analogous policies following, the faith of the land registration program in an environment similar to our study villages is not bright at all.

To sum up, the research findings lend support to the hypothesis that the 1974 Land Ordinances were enacted for the purpose of reducing the conflicts in land issues arising from urbanisation and modernisation. Drawing particularly on the fact that not all who were inclined to say they were farmers were such in profession, state elites and salaried workers (civil servants) are those who have been able to extract some advantages from the Land Ordinances, not only in terms of the number of land titles obtained by these physical persons, but also from the fact that the economic conditions that structure these ordinances are relatively consistent with those of this social class than others. For instance, the high administrative costs and complicated procedures of land registration which for a state elite or salaried worker is relatively easier to overcome because of their constant salaries and the larger map of knowledge of the land ordinances, and in addition to their *connaissance* with other government officials both central and local, may catalyse the process of registration and also borne lower costs.

### **3.1.2 Land Tenure Security in the Study Villages**

In the following, an attempt has been made to measure - with different methods, the degree of land rights security. For this operation, it should be kept in mind that the degree of penetration of the external normative material- the state land law, in the study villages has been low, thus a low degree of legal pluralism exists which without further deliberations, predicts low insecurity of tenure. The methods used to estimate the degree of tenure security are as follows: (i) Land rights categorisation; (ii) Modes of land rights acquisition; and (iii) Incidence of land disputes. The first two methods of measurement represent the different evolutionary development stages of land tenure systems, that is, whereas land rights categorisation builds up from the fact that possessing transfer rights to sell land provides the highest degree of tenure security, modes of land rights acquisition builds up from the fact that inherited land rights provide the highest degree of tenure security as such rights are transferred intergenerationally. The last method, which is presented in this paper, unlike the first two instead measures the degree of insecurity of land rights of the present and past.

To (iii): The **incidence of Land disputes** for the past five years in the study villages is the third method of estimating the situation of tenure security. Theoretically, increase resource pressure implies increase in conflicts. With respect to land and its related resources, such conflicts are termed, land disputes. In the study villages, such disputes were reported of two main types; **boundary disputes** and **land disputes arising through encroachments or attempts to convert land use rights to legitimised ownership rights**. In essence, land disputes incidence are generally low in the study villages as only 37 percent of the sample households reported their haven been involved in land disputes during the past five years. Data results indicate that households in Ku-bome tend to report more land disputes than Ngyen-mbo (53% versus 21%; that is, 16 out of 30 and 7 out of 32, respectively). This is explained in that Ku-bome tends to have more non registered farmland area inbetween registered plots than Ngyen-mbo which logically should be more vulnerable to claims, in terms of the second dispute type outlined above. The relatively rapid growing population and thus increase demand for cultivable land in Ku-bome has probably induced farmers emancipation from groups holdings. Such have develop more anxiety of securing individual survival which in some cases end up in what WILLIAMSON (1985:47) terms "self - interest seeking with guile"

According to research data, thirteen percent (13%) of the sample households reported to have been involved in the first main type of land disputes during the past five years. Whereas, four out of five households who reported boundary disputes were inheritance disputes (between co-inheritors) in Ku-bome, only one out of three households reported this same type of

disputes in Ngyen-mbo, confirming the fact that there is a difference in the degree of transition of land tenure, with the former virtually integrating more market and money oriented farm production.

Again, by way of village comparison, Ku-bome tends to have more land disputes arising from attempts to convert use rights to full ownership rights to land than Ngyen-mbo, as also was reflected in the higher number of applications filed in for land certificates that were not positive. Making comparisons between the registration strata, it is observed that more land disputes occurred in the registration strata without parcels registered than with the registration strata with some parcels registered (15 versus 7). This result lends support to the established fact that until now, the impact of land registration is not recondit in the study villages. Phrased otherwise, land rights dualism which is said to be the main cause of insecurity, reflected in this study by the registration strata with some parcels registered should have had - in a corresponding situation, considerably more reported land disputes cases if a discernible impact of the land ordinances was present in the study villages. Therefore, the low incidence of land disputes strongly suggests security of tenure in the study villages. From this concluding statement, the appreciated degree of tenure security should be attributed to the good functioning of informal institutional mechanisms in the study villages.

### **3.2 Land Rights Security and its inducible Impact on the Use of Credit**

As mentioned above, one of the primary aims of this paper is to examine the impact of individualised, private property rights to land on farmers' incentive to use some agricultural productive assets, which in the context of this paper implies only to "credit". It has already been shown that to a large extent, the response of these farmers to the land registration program has been low due to the inherent costly and cumbersome sets of procedures. In discussions with farmers of the study villages, it came to light that shortly after the land registration program was launched, a significant majority of the people considered titles to land as nothing else than a mere paper that allegedly could prevent their losing of land. Today, the few who have such titles tend to keep them in sacred places or tend frequently to have keys of such sacred places in their pockets than their national identity cards. This, however, does not dismiss the fact that the attractiveness of this program still remains low.

In the following, some household and parcel characteristics have been used to investigate on the determinants of land registration. For this operation, the following characteristics (explanatory variables), tested against multicollinearity with dependent variables and linearity between themselves, have been used: farming experience, political status, farm involvement, wealth, land dispersion, locational factor of land parcel, land quality investment status and ownership. Assuming that the decision to register land is not taken hastily, partial correlations between title parcels (13 farm households) and the above listed explanatory variables were computed. From the results of this computation, wealth was found to be positively related with title and statistically significant (0.088). As mentioned above, this is explained by the fact that wealthy persons easily break-up the financial barrier which for most respondents who were inclined to say they did not have titles to land, was a paramount reason for their not haven registered land. Following the results, the land dispute effect, farm size and topography also tend to play a decisive role in the land registration process. Whereas the effect of land disputes reflects the situation whereby farmers decided to register land after haven experienced an uncomfortable case of land dispute, large farm size and high quality land parcels must have been registered by the more knowledgeable and powerful.

### **3.2.1 Credit Use in the Study Villages**

Following a conventional economic definition, credit is defined as "the acquisition of control over funds at a cost for a specific time period. At the end of the contract period, the control ceases and the funds revert to the creditor. As a guarantee that credit funds will be returned when due, it is a usual practice for the supplier of credit to acquire a marketable asset as credit collateral (MAY-PARKER/DEEN, 1978:224)". In this paper, the term credit, as defined above, will be used interchangeably with loan.

#### **3.2.1.1 Formal Credit Sources**

Making a picture of the available formal financial institutions in Cameroon, SCHRIEDER (1995:80) remarks that the number of commercial bank branches per 10,000 inhabitants in rural areas has drastically reduced during the last two decades. These can be partly explained by the sustainability problems these banks have been confronting, attributed by HEIDHUES/WEINSCHENK (1990) to the Monetary policy of the country and above all, its strongly linked currency to the Franc zone (1 French Franc equals 100 FCFA). These facts rightly forecast the low density coverage of formal financial institutions thus insufficient financial services which could be observed during the field survey. When respondents were asked if they had obtained loans during the last five years from formal financial sources, from the total sample of 62 respondents, only 9 were inclined to say that they had received such loans with an average loan size of 65,563 FCFA estimated. Comparison between the study villages shows that households in Ku-bome who received such loans tend to be better off - in terms of average loan size received, than those in Ngyen-mbo (68,400 FCFA versus 62,500 FCFA). This can be explained by the relative presence of other non-farm activities in Ku-bome that supplement farmers' income, thus increase their savings that provide them easier access to loans and apparently, larger loans sizes too. However, it is worth by noting that despite the low presence of formal financial services in and around the study villages, when asked why farmers found it difficult to obtain loans from formal financial sources, they gave a handfull of reasons not directly related to the low coverage of formal financial services: 42,5% were afraid of incurring debts, 27,7% feared their losing collateral, 14,5% did not know where to apply for such loans, 8,1% complained of a tedious procedure, 4,8% complained of not being able to pay the demanded interest rates, and 3,2% had no need for loans. These reasons reflect the current credit policy and financial environment in rural Cameroon of excessive administrative apparatus and the information gap problem.

#### **3.2.1.2 Informal Credit Sources**

The low access to formal loan services in the study villages is an indicative that rural farmers must have other financial sources to fulfill their consumptive and productive purposes if they must survive in farm activities. Rightly predicted, they have been able to install for themselves alternative financial institutions that fit and satisfy their needs. For instance, the well known "*Njangi groups*" which unlike the formal financial institutions demand not only land as a security for taking out loans, but other aspects like, houses, livestock, membership and savings. These financial groups are self-selective as regards membership. NGWA (1989:77), distinguishes two main types of "*Njangi groups*": one with rotating picking system and, another with accumulated savings that are given to members with an interest repay rate of about 20-30%. Where available, farmers have also made used of loans from credit unions. Though seldom, some moneylenders also provide loans.

According to research findings, 55 (out of 62) households could receive loans from such financial institutions during the past five years. That is, 26 out of 30 households for Ku-bome, and 29 out of 32 households for Ngyen-mbo. The average amount of credit was 49,326 FCFA for Ku-bome as against 43,550 FCFA for Ngyen-mbo. Drawing on results obtained from a



multiple regression analysis, two main variables tend to determine the receiving of credits from informal institutions; yearly household income and the sex of the household heads. Whereas the former lends support to the fact that wealth generates wealth, the latter reflects the **concept of Patriarchy** in most rural Africa.

According to research findings on credit use as a whole, farm loans in general were not used for their previously intended purposes. In order of descending importance, loans were used for education (45%), traditional and other ceremonies (24%), farm investments (23%), and others (8%). ZELLER et al. (1998:11) give explanations why in most farm households, farm loans are not predominantly used for farm investments: **Firstly**, the prevailing infrastructure of loan suppliers in most rural areas only permit them to supply short-term loans that for most farm households are used to satisfy short-term basic needs (consumption). **Secondly**, assuming that in rural areas, the consumption and productive purposes of using loans are strongly correlated, an investment to fulfill consumption may also imply fulfilling the productive purpose. Take for instance, a case where food-intake implies prompting labour force to become more productive. These two reasons will eventually give an explanation as to why rural farmers incentives for long term land improvement remains low.

#### **4. Conclusions**

Following the research findings, the following conclusions will be made:

- 1) The response to the land registration program prescribed in the 1974 Land ordinances is extremely low in the study villages. Implying that, legal pluralism which is assumed here to be the main cause of land rights insecurity, is still premature.
- 2) The research results have provided a positive test of the hypothesis that tenure security in a non dual or multiple legal system of tenure is not a matter of a particular system as propagated by the proponents of individualised, private land rights, but rather, a question as to whether the institutional mechanism of the one or the other system is efficient and consistent with the prevailing social customs and dynamic.
- 3) Farmers access to credit does not solely depend on their possession of land titles, explained by twofold reasons: The relative absence of formal credit institutions that normally require land as collateral to give out loans, and the easiness to obtain loans from informal credit institutions whose demand for security for loans is not confined only on land. In general, informal credit institutions provided more than 85 % of the total credit volume in the study villages. This finding, lends support to the fact that in rural areas in general, conditions to access loans are more favourable, and that such informal institutions have often a relational contract with their clientele.

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