

# Legitimacies and Moralities of Fishing in Trincomalee

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**D**uring times of war and emergency, livelihood spaces and ‘commons’ become theatres where group tensions play out in the form of claims and abilities to access resources. In the post-war context, these contestations may continue, or take a distinct shape. (Re)emerging forms of identity-based violence—both manifest and latent—mainly along ethno-religious lines in post-war Sri Lanka further complicate these contestations. State regulation and governance of fisheries is one such space where state and society interact in close, and sometimes volatile ways based on different norms, values and interpretations of formal laws and their implementation. This paper seeks to understand the nature of these state–society interactions, the norms—both formal and informal—that condition these interactions, and how problems of natural resources or livelihood governance can escalate into ethnicised livelihood and identity-based contestations in the East Coast of Sri Lanka.

The Trincomalee district boasts the highest number of people engaged in coastal fishing in all of Sri Lanka. The active fisher population has soared from 16,100 in 2004 to 31,830 in 2017 in Trincomalee, almost doubling in the course of thirteen years. Against this backdrop, complaints about the depletion of fish stocks, judged by the size and variety of the fish catch, were clearly on the rise in Trincomalee, based on the experiences and perceptions of the fishers and the regulatory authorities.

Closely linked to discussions on depleting fish stocks, ‘disco net fishing’, a purse seine fishing method emerged. This fishing method requires an annual license from the Department of Fisheries. To get a license, restrictions on the net’s distance from the shoreline, the mesh size, and the net’s length and height must be followed, and

fishers may not use oxygen tanks or more than one boat. During the 2014 fishing season in Trincomalee, the state authorities determined to not issue these licenses, causing a deep sense of frustration among the disco net fishers. In the previous year (2013), over 300 cases were filed against Sri Lankan fishermen for using illegal vessels or equipment, leading to approximately 109 arrests in Trincomalee (De Silva 2016). Interestingly, according to primary data collected in October 2013, 113 disco net fishermen were arrested in Trincomalee over a few months, of whom 89 were from Kinniya where 96% of the population is Muslim. Apart from these statistics, arguably of more importance is that among the fishermen in Trincomalee, disco net fishing is also closely linked with the minority ethno-religious Muslims, although it is not true that only Muslims engage in this practice.

Despite repeated efforts, fines, arrests, harassment and delays in issuing the annual licenses by the state fisheries authorities, the ‘illegal’<sup>1</sup> method of disco net fishing continues. A critical body of work argues that successful solutions to the problem of Illegal, Unreported and Unregulated (IUU) fishing include increased governance and the rule of law, increased surveillance and increased port control. However, some of these solutions do not seem to work in Trincomalee. Why these solutions are ineffective in this context, and how this fishing practice continues are explored below.

Using ethnographic field material collected over 13 months in Trincomalee in 2014–2015,<sup>2</sup> first, this paper presents a brief conceptual framing for resource governance and state–society relations. Then, it maps the different stakeholders in relation to disco net fishing and the normative systems that guide them. Next, an analysis of how state–society

relations, and relations between communities influence fisheries governance processes is discussed.

## Fisheries Governance and Compliance

Jentoft and Chuenpagdee have claimed that the governance of fisheries and coastal areas presents a ‘wicked problem’ (2009, p. 554). The ‘wickedness’ derives from several factors: social problems are given moral interpretations, compounded by disagreements among the different parties involved about the problem’s nature, cause and solution. Further, wicked problems are often manifestations of larger structural problems. Therefore, understanding the complexity of the problem of illegal fishing, both as a problem and as part of a larger problem, is important. It should be understood as a failure in state–society relations in a politically charged post-war context. This understanding will prove useful, not only in resource governance debates but also in discussions on post-war state–society relations.

The idea of ‘everyday local legitimacy’ posits that, by serving the everyday needs of the people, such as social welfare or access to basic services, state legitimacy can be engineered at a local level (Maxwell et al. 2016). Further, in the absence of such processes by the state, public trust may anchor to other social or cultural institutions (e.g. religious bodies) that cater to people’s needs. Because of this, alternative forms of social legitimacies are created by norms and institutions that people have substituted for the state (Roberts 2012, p. 7). This paper will refer to these alternative forms of social legitimacies and explore the legitimisation or de-legitimisation of specific state actors in parallel with the legitimisation process of these alternative norms and institutions.

In times of latent or manifest conflict, rights over natural resources become the main arena of contestation between different warring parties (Korf 2005). “Unruly social practices, direct power contests and competing notions of legitimacy may bend formal and informal rules to favour specific social actors” during civil unrest (Korf 2005, p. 204). Further, in such situations, ethnicity may become a social and political construct that helps certain groups to negotiate access to resources while excluding ethnic ‘others’ (Banton 1994; Hechter 2000). Local conflicts often mirror competing claims at macro level, and Korf (2005), studying three irrigation schemes in Trincomalee district during the ceasefire of 2002–2005, has illustrated how ethnicity becomes a fault line in access to land and water allocation at both

the local and the macro level.

Fisheries governance in Sri Lanka has been studied using a co-management or legal pluralist approach, and the geographical focus has been the country’s Southern and Northern provinces, that are numerically dominated by members of one ethnicity (Bavinck et al. 2015). A few studies have explored issues of livelihood entitlements and competition over resources, ethnic discourses and changing legitimacies during the war in Sri Lanka (Korf 2005). However, the link between fisheries governance and legitimacy has not been studied in a multi-ethnic district in Sri Lanka. Contexts shaped by divisions along identity fault lines, as in post-war Trincomalee, are characterised by competing normative frameworks and actors, and legal pluralism and the interface between the state and the society become competitive and complex in co-management arrangements.

## The Context

In Trincomalee, illegal fishing is closely associated with ‘disco net fishing’. Disco net fishing, known as *hembili del* in Sinhalese and *surukku valai* in Tamil, is referred to as a purse seine method by the state fisheries authorities. Disco net fishing is considered illegal if the method is used contrary to regulations. At the time of data collection in 2014, the use of disco nets within 7 km of the shore was prohibited, and the mesh size had to be larger than 1.5 inches. However, from 21st February 2016, the Ministry of Fisheries and Aquatic Resources Development decided to ‘ban’ the use of this fishing method, introducing new regulations on the mesh size, as discussed below.

Based on interviews among fishermen in the area, the disco net was introduced to Trincomalee by Sinhalese fishermen originally from the Gandara area in the Southern Province of Sri Lanka, at least one generation ago. These fishermen primarily used Muslims in their operations. Later, these Muslim workers started their own fishing operations using the same nets, and this practice was in use in Trincomalee throughout most of the war. A smaller proportion of Sinhalese fishermen, compared to Muslims still use these nets, amidst vehement opposition, often from within their own fishing communities.<sup>3</sup> Tamil fishermen make up the smallest group using these nets. Disco net fishers are small-scale, one-day fishers, in terms of the equipment and craft they use. However, the income generated by their fishing activities is on a much larger scale,

especially compared to other small-scale fishers. My data from 2013 to 2014 show that, on average, during the fishing season, a disco net crew member can earn around 5,000 LKR per day, and a fishing trip can yield up to 150,000 LKR during the peak fishing season. This amount is in sharp contrast to average daily earnings of 500–1,500 LKR for a fisherman using conventional fishing methods.

In 2013 and 2014, the Department of Fisheries and Aquatic Resources (DFAR), with the cooperation of the Navy, stepped up their efforts to arrest these fishermen, confiscating their nets and other equipment, and handing them over to the police. According to data collected in October 2013, 113 disco net fishers were arrested in Trincomalee, out of which 89 were from Kinniya, where 96% of the population is Muslim (Kinniya DS office, 12 October 2013). Despite these arrests, illegal fishing continues in Trincomalee, as a follow-up visit in September 2016 confirmed.

## Formal Actors and Regulations

The Fisheries and Aquatic Resources Act (No 2) of 1996 gives power to the Director at the district level to appoint an ‘authorised officer’ to ensure compliance with the regulations of the Act. This authorised officer has the power to conduct searches, make arrests and seize craft, equipment and fish (Section 46 (4) a–g, 1996). In the Act, an ‘authorised officer’ includes any officer of the Army, Air Force or Police with the rank of sergeant or higher and any officer of the Navy with at least the rank of petty officer (Section 66, 1996).

State authorities’ efforts to curtail illegal fishing have included the modifying and tightening of regulations in relation to purse seining. In early 2016, the Ministry of Fisheries and Aquatic Resources Development decided to “ban purse seining completely”, citing a study by the National Aquatic Resources Research and Development Authority, which reports that the fish population in Sri Lankan waters is decreasing at an alarming rate because of the use of banned fishing methods (De Silva 2016). In practice, the so-called ‘complete ban’ has meant that the restrictions have been tightened: the minimum mesh size, which was 1.5 inches in 2014, was increased to 2.5 inches in 2016. Other regulations, such as the maximum net length of 225m and height of 25m, remain the same.

In 2014, regulations were introduced by the DFAR at the district level. New requirements for disco net fishers included getting an affidavit from a Justice of

the Peace and letters from the fisheries society president and the fisheries inspector stating that they were not engaging in any illegal activity. These fishers were also required to get a sea worthiness report from the marine engineer for their craft prior to applying for a license. For the Muslim disco net fishermen, these continuous amendments and added requirements contributed to a sense of illegitimacy regarding the formal rules and the actors designing and implementing these rules, as discussed below.

## Normative Guiding Structures of State Regulations

Parallel to resource depletion and sustainability concerns based on ‘scientific research’, the perception of the fisheries authorities was that those who engage in disco net fishing do so for purely profit-maximising reasons. It was thought that their motivation is the desire to earn large sums of money in a brief period and therefore should be ‘limited’:

It is mainly the Muslims who do these things. In Sinhala, we call them ‘*ekathana pick up*’ [on-the-spot pickup], because they want to make money quickly. They tell us, ‘You go ahead and arrest us; we will continue doing this’. This is the attitude they have (Interview with fisheries officer, Trincomalee, 3 March 2014).

The above statement also introduces the notion it is minority Muslims who engage in illegal fishing, an ethnicised livelihood activity, in the normative judgment of the state authorities. This is not to deny completely that the Sinhalese and, to a lesser degree, Tamils also engage in this practice. However, as expressed by the fisheries authorities, and by fishermen of all three ethnicities including Muslims, disco net fishing is closely associated with Muslim fishers in Trincomalee. The abovementioned figures on arrests and confiscation of equipment reported by the fisheries authorities also show that the most apprehended disco net fishers are Muslims. The discussion of this illegal livelihood activity crosses over into identity politics at the everyday level. That most of the state fisheries authorities are from the majority Sinhalese ethnic group adds an extra layer of power dynamics to perceptions of legitimacy, as is taken up in the next section.

## War to Post-War Transition and Changes in Regulations

The changes over time in state fisheries regulations, enforcement authorities, and enforcement processes, especially from the war to the non-war period in Trincomalee, have resulted in a lack of consistency and therefore predictability of state fisheries regulations and procedures. For Mazoor<sup>4</sup>, a disco net owner and an active fisherman, it was during this time, when the “LTTE [Liberation Tigers of Tamil Eelam] was also in the sea”, that the government should have had strict rules and regulations:

We went fishing even when the LTTE was there and when there were bomb blasts. In 1990, one of our boats was burnt in the sea [by the LTTE]. At that time, I was also at sea [...] Only after the war, the pass and license systems have been introduced. Even when there was the LTTE, they [the government] allowed us disco net fishing [...] The government destroyed the LTTE, but more problems have begun now (Interview with Mazoor, 23 March 2014).

The disco net fishers question the rationale of a livelihood that was ‘legal’ during the troubled times of war becoming ‘illegal’ during the stable non-war times. This change of the state’s stance on disco net fishing at the critical juncture of the end of war undermines the legitimacy of the regulations in the view of the disco net fishers. This is likely to be the case especially in war-affected areas such as Trincomalee.

The extract below from Mazoor highlights that the war to post-war transition is actually a blurred line at the level of the everyday lived experience of people in the war-affected areas. In fact, they perceive that they had more ‘freedom’ during the war to engage in their livelihoods. They see the requirement to get a license to access the sea for their livelihood as a form of ‘control’ by the state.

How can we continue fishing here? They [the Navy or the Department of Fisheries] always keep arresting people. They arrested one of my friends the previous day, because they have fished within the Navy border, and he still hasn’t been released. Is it [fish in the sea] the property of Mahinda [the former president]? It is the property of the sea, so we go and catch it (Interview with Mazoor, 23 March 2014).

The extract above also poses the question of who

has the right to control and manage natural resources during the times of war and non-war, and specifically underscores the significance of time in terms of war to post-war transition, where ‘new’ power negotiations and legitimacies may take form. The state was a remote entity in resource governance during the war, as it gave priority to preventing security threats from the LTTE in the sea and on land. However, after the war, state priorities seem to have changed, and the Muslim disco net fishers saw the introduction of ‘new’ rules and the tightening of enforcement procedures with the support of the Navy, as intrusions in their daily lives. Tensions around the disco net issue then overwhelmingly shaped the way those who engaged in the practice experienced the state. These fishermen compared the current experience to the times when the sea was not completely under the ‘control’ of the state during war — and seemed to prefer the ‘war times’, at least so far as it relates to livelihood governance.

## The Perceived Bias of Government Officials

Although mandated by the Fisheries Act, as explained above, the Navy acting as an enforcement authority in the post-war context challenges expectations and perceptions of fairness. People of all ethnicities—both military and civilians—share a history of violence in the directly war-affected areas of the country such as Trincomalee. The military carrying out tasks at the state–society interface becomes even more problematic in such contexts. Further, the Navy is identified with the Sinhalese majority by the Muslim disco net fishers, and, in their eyes, this undermines the rightful power or authority of the Navy to carry out raids and arrests, as the following statement made by a Muslim disco net fisherman shows:

Sinhalese and Tamils take part in disco net fishing in Trincomalee town; even the previous day, the Sinhalese have brought fish from disco net fishing. The Navy supports them, because they are of the same ethnicity. They help them ethnicity-wise (Interview with Muslim fisherman, 30 March 2014).

Further, the application of the regulations seems to be arbitrary, and the perception that the power possessed by the state actors is also arbitrary undermines their legitimacy in terms of fisheries regulation. Although Sub-section 46 of the Fisheries Act specifies that “the authorised officer who seized the boat or other things

shall, as soon as possible, produce the boat or other things before a Magistrate's court," the practice seems to be different, as was described by both the disco net fishers and the fisheries authorities. Arrests and the seizing of boats, equipment and fish catches were seen to be ad hoc in practice by the disco net fishers as shown by the extract below. Experiences of bribery further erodes their trust in government officials.

The Navy keep watch on us when we go fishing. Some of them catch and beat us. Some of them will take the fish and leave us alone. Some of them will arrest and hand us over to the police. Then the police will hand us over to the courts (Interview with Mazoor, 23 March 2014).

## Community Relations and Morality

While the legitimacy of state actors in relation to prevention of illegal fishing is being challenged as shown above, another 'legitimising' process is taking place at the societal level. The disco net fishers use multiple strategies to gain and maintain acceptance for their practices at the fishing community level. These strategies are based on shared social norms and morals. However, the legitimisation discourse is not consistent across different fisher groups.

In most fishing communities,<sup>5</sup> community-level fishing societies command a certain level of respect and obedience in relation to common issues, including that of illegal fishing, as is illustrated by the following extract about a Tamil Hindu traditional fishing community in Keeri,<sup>6</sup> north of Trincomalee town. Fishing has been practiced for generations in this community, mostly by those of the *karaiyar* caste. In Keeri, the Hindu temple played a key role in the decision making of the fishing societies. However, in certain other communities, specifically where relative 'newcomers' to the sector engage in fishing, the authority of organisations to enforce regulations is contested:

We haven't made a single raid in Keeri, for example. Once the president of the Keeri fisheries society told me we don't even invite those who engage in illegal fishing activities to a wedding in one of our houses! They are that strict about it. But what happens in the other areas is that the purse seiners have money and therefore power. If the fisheries society is going against them, they will take it over and control it (Interview with fisheries officer, Trincomalee, 3 March 2014).

At the level of fishing community, opposition to disco net fishing among fishers is driven by several factors. Some of these are because of purely economic reasons, such as the steep and sudden price drops in fish when fish caught using disco nets flood the market. However, this position is also based on the need for a balance among the various groups of fishermen; and between what is caught and consumed now, and what should be left for the future. Those who oppose disco net fishing consider disco net fishermen newcomers to the sector, with limited skill-sets, equipment and knowledge. These fishers are therefore thought to have little interest in engaging in a variety of fishing methods. This seems to imply that the newcomers have different value or moral systems and different end goals for their activities. Concern for the sustainability of the fish stock, a sense of equity and sharing, and social and economic justice were not seen as part of their normative structures. A Sinhalese wholesale fish dealer, who is against disco net fishing, explained this:

They [Muslim fishermen] only go for disco net fishing. They know only that. They only know the two illegal fishing methods: disco net and dynamite. If those two are stopped, they have nothing (Interview with fish dealer, 17 December 2013).

On the other hand, disco net fishermen are proud of their generosity in giving free fish to a diverse group of people. Giving free fish to crew members and those who provide support services such as cleaning the boat, sorting the fish from the net or carrying the fish catch from the shore to the market is the general norm for fishermen who operate mechanised craft. Going beyond this, the disco net fishers also offered free fish to general onlookers on the beach, including military personnel and visitors (including the research team), and the fishermen were proud of this expanded norm of giving.

My analysis shows that giving free fish is used as a legitimising strategy, where societal acceptance and support for their fishing activities is sought in reciprocation for the 'gift'. This happens at different levels and with a multitude of stakeholders. At one level, the fish is given in expectation of reciprocity from those who hold power and have influence over the continuation of the fishing activity, such as the military. Whether this act could be considered a bribe is unclear: the general expectation from the side of the fishermen seemed to be that, in case they need the help of the military at some point, the latter will remember the fishermen's generous acts. On another level, distributing fish for free in the neighbourhood justifies the fishing activity

among their peers, and in the wider society, which builds legitimacy for their activities in the community. Further, this act hints at profit redistribution or almost a welfare approach rather than pure individual profit maximisation. That these fishers present themselves as benefactors further strengthens their case. As described in the following extract, this also includes a religious element:

When I was working at the waadi,<sup>7</sup> if we got a disco net fish catch, we would keep about 20 kg of that fish separate, and we would give that fish to the people who work at the waadi and the elders who were there. I give to the elders because they can't earn anything and there isn't anyone to help them, so I give free fish to them to earn merit. And also widows and women who don't have any support from siblings come there; it will be a merit for us if we help them (Interview with disco net fisher, 24 April 2014).

Support from community leaders undoubtedly legitimises the activity within the community. In Kinniya, at the time of the data collection, the leader of the mosque is also the president of the disco net fishing society, and he has intervened on behalf of the fishermen at the central government level in Colombo, and at the district level. That this community leader supports the fishing activity creates a sense of moral acceptance and sends a message of the acceptability of the activity, at least in Kinniya. However, when this community leader deals with the formal structures, he does not carry enough bargaining power to negotiate for a settlement in their favour. As the following extract shows, when this leader was insulted by the formal structures, there were several effects in the community.

We have sent people to Colombo to meet the DG [Director General]. When we went to the Fisheries Department to meet the AD [Assistant Director], he told us to leave before he speaks to us in filthy language. He spoke like that in front of a mosque leader. He is a mosque leader and president of the disco net fishing society. He didn't respect him and spoke like that. Is this the way an educated man speaks to the people? After that, we said nothing, and we left. All the people from the Fisheries Department are okay. The AD is the one who doesn't give us the license. The destiny of Kinniya will change because of the AD (Interview with Mazoor, 23 March 2014).

The most important effect of the interaction described in this extract was that whatever regard the disco net fishermen had for the fisheries authorities was lost which has further undermined the state's legitimacy as a regulating authority. Further, the refusal or the perceived insult to their religious leader took the tension between the fishermen and the authorities beyond the realm of livelihoods to that of religion and therefore collective identity. This has important implications, given that the fisheries authorities are of the majority Sinhalese ethnic group, and this exchange occurred when anti-Muslim sentiments among Sinhala-Buddhists are at a peak.

## Conclusion

'Wicked problems', such as fisheries governance issues, are often symptoms of larger structural concerns. For example, in the case of Trincomalee, a minority group's perceptions of discrimination at the hand of the state. The case of illegal fishing illustrates the need to understand fisheries governance issues as a manifestation of a larger problem at the level of state–society interaction, specifically regarding the legitimacy of the actors involved in governing fisheries in Trincomalee. Further, resource governance problems can also cause or contribute to the exacerbation of larger socio-political issues, and, in post-war contexts such as Trincomalee, governance becomes a highly sensitive issue that must be handled with caution.

The case at hand also underscores the role played by timing and context in shaping legitimising processes in a way unique to post-war contexts such as Trincomalee. During war, the fisheries sector and resources were relatively ungoverned and unregulated. In the post-war context, the coastal and marine environment have become spaces, activities and actors subject to the regulation and governance of the state authorities. This shift has severely restricted the continuation of the livelihood that the disco net fishermen engaged in during the war.

Faced with the perceived failure of the state as a legitimate actor to regulate fisheries, the disco net fishermen turn towards other forms of everyday politics, power dynamics and local legitimacies. However, these local legitimacies also vary in the way they manifest and draw power. The disco net fishers actively create local legitimacies through the norms and practices of redistribution in the form of giving away free fish, providing for not only the family but for the community and projecting themselves as 'proud

large-scale fishermen', as opposed to their small-scale neighbours.

In many developing countries, fishing operates on a system of plurality of formal and informal rules and norms, and focusing on only one of these elements will give a partial picture and result in governance failures, which the case of disco net fishers illustrates. The case of illegal fishing in Trincomalee illustrates that overlapping and competing regulatory norms, rules and actors create differentiated and dynamic fishing-related outcomes. When shared war-related violence forms the backdrop of interaction for these actors and normative frameworks, negotiations about access to resources and regulatory efforts become not just a matter of livelihood

and resource management, but a broader and more delicate political issue.

Hence, it is necessary to understand and address fisheries governance issues as 'wicked problems' and as processes that need to go beyond conventional planning approaches. Adding to Jentoft and Chuenpagdee's (2009, p. 559) argument that the solutions to these wicked governance problems are not in the commonly used coastal management toolboxes, and that they are 'institutional, political and even philosophical', I conclude that, to be effective, such solutions should be based on understanding of locally and historically grounded norms, rationales and institutions.

## Notes

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- 1 The requirements for issuing the annual license for disco net fishing in Trincomalee mean that it is almost inevitable for boats that engage in one-day fishing operations to engage in this fishing method illegally. As an official of the Department of Fisheries and Aquatic Resources explained, because of the location of the natural harbour, the sea area in Trincomalee becomes deep very close to the shoreline, and it is therefore almost impossible for one-day boat operations to take place 7 km or further from the shoreline, as the licensing stipulates.
- 2 This paper is derived from the author's 2017 PhD thesis titled 'Even fish have an ethnicity': Livelihoods and Identities of Men and Women in War-affected Coastal Trincomalee, Sri Lanka (Wageningen University, The Netherlands, unpublished).
- 3 See Siriwardane-de Zoysa 2018, for further analysis of the conflict and co-operation on the disco net issue among the different fisher groups.
- 4 Village names and person names in this paper have been changed to ensure anonymity.
- 5 Historically Fisheries Cooperatives were the sole collective of fishers, guided by the Cooperative Societies Act (No. 5) of 1972 and the Fisheries Cooperative Constitution (Scholtens, 2016). Fisheries cooperatives have played an important role in mobilising social capital as conduits for government subsidies (in the past), marketing points and access points for new technology (Amarasinghe, 2009). In 2010, the Ministry of Fisheries and Aquatic Resources Development introduced the Rural Fisheries Organisations—RFOs (Scholtens, 2016). These organisations are under the direct authority of the Minister of Fisheries and Aquatic Resources. The RFOs were designed to act as the main conduit for government assistance (Scholtens, 2016). As a result, in most coastal communities, two parallel fisheries organisations operate, sometimes with the same members sitting on both committees.
- 6 Original name of the village changed in order to ensure anonymity.
- 7 Small buildings on the beach, maintained by the wholesale fish dealers, often temporary, for storing or buying fish from the fishermen.

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## SSA Videos



### Video on the Sinhala caste system

A discussion between Prof. Jayadeva Uyangoda, Prof. Nirmal Ranjith Dewasiri and Prasanna De Zoysa on the Sinhala caste system took place at the SSA. Find the video of their discussion on the SSA's Facebook page via <https://www.facebook.com/ssalanka/videos/2311862665776831/>.