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Tenure – the cornerstone of small-scale fishing

My name is Maarten Bavinck, and I have been involved in fisheries ever since I was a young boy living in Sri Lanka, going out to fish with hook and line in one of the ponds or lagoons in the neighbourhood of Vaddukoddai. Since those formative years, I have worked and studied small-scale fisheries mainly in the South Asia region. I count small-scale fishers and those who support them among my friends.

The organizers of this workshop have requested me to introduce the topic of ‘tenure’. This is a complex issue and I hope I can do it justice. I’m happy to note that there are so many experts on this in the room, who will be able to correct me if I make mistakes!

Let me start by referring to my best fishworker friends in northern Sri Lanka. When I was visiting Kanagaratnam his wife Kunchu they took me to the shore to admire their new fiberglass boat. Kanagaratnam posed for a picture along with his son and his grandson Harneesh, and I asked him whether Harneesh would become a fisherman when he grows up. Kanagaratnam reacted instantaneously: ‘No! He will go on to study’. This was an interesting reaction, that I have heard from many small-scale fishworkers not only in South Asia but in other parts of the world too.

Kanagaratnam and his family earn a decent livelihood from fishing. They also make up part of a community that works in fishing, and community members regularly help each other. This community exercises tenure rights over the adjacent shore and inshore waters. It is not unlikely that other fishers in the village will respond as Kanagaratnam did about the future of fishing in the region. Although the prices of fish are generally good and the fishing grounds are rich, many of them will not want their children or grandchildren to remain a small-scale fishworker.

Could it be that ‘problems of tenure’ are the main reason our fisher friends want to leave fisheries? This is the question that I have been asking myself.

I am not the first to raise this question. In the international fisheries field, the authors of important documents have pointed out the relevance of resolving fisheries tenure. Thus tenure is first mentioned in the Code of Conduct for Responsible Fisheries (1995) that supplements the Law of the Sea (1982). The Tenure Guidelines (2012) then are wholly devoted to discussing tenure issues in fisheries, forestry and land, making an explicit connection to their relevance for

food security. The Voluntary Guidelines for Supporting Sustainable Small-Scale Fisheries (2014) finally centre-stage the role of tenure and move the discussion forward. But why do all these international documents focus on tenure? Why are the authorities that issued these documents so concerned?

Their concern follows from a few observations: (1) that ocean grabbing and coastal grabbing are taking place all over the world, reducing the livelihood chances of fishworkers; (2) that fish stocks are reducing and overfishing is taking place; and finally, to use the text of the Tenure Guidelines (2012:5), that “many tenure problems arise because of weak governance.” Tenure being an important component of governance, it is worthwhile investigating the topic further. What is tenure and what is its relevance for fishing?

To engage in fishing, one requires various items: a house to live in and store one’s equipment, a fishing ground, a landing place, a market, a number of implements (a craft, a net, an outboard engine plus fuel, and a thing called ‘tenure’. What is this thing?

The Tenure Guidelines (2012:5) provide not a definition of tenure but a description of what tenure does: “Tenure systems determine who can use which resources, for how long, and under what conditions.” According to this definition, ‘tenure systems’ help to decide whether a fisher can actually make use of a fishing ground, for how long he/she can do so, and what the conditions for such use are. ‘Tenure’ is thus about a *relationship* between a fishing family or community and the resources upon which they depend. As these ‘resources’ are not free-floating but tied to specific land and water spaces, a fisher family or community always requires access to these spaces too. Tenure is therefore always about certain spaces.

Tenure is a form of ‘*property*’. As a fisher friend of mine long ago explained: unlike land, which one can fence, tenure over the water and the fish cannot be fenced. Still, this friend, said: “We are the Raja over these waters, we control them.” So even if fishworkers do not actually own the water, their systems of tenure provide them with *control* over who fishes there, and how fishing is practiced. Along the Coromandel Coast of India, which I know well, this means that fishworkers in a fishing village can disallow certain fishing gears or fishing practices because they are considered harmful. They can also determine in what seasons or times of day certain fisheries are allowed.

So tenure provides fishworkers with ‘rights’, but also with ‘responsibilities’. The fishworkers of the Coromandel Coast pay tax to the village council, take part in decision-making and other duties too, to which I will shortly return. And governments and international organizations require that fishworkers fish sustainably, that they respect the rules and do not venture into another country’s

waters. We are all aware of the painful reality that large numbers of fishworkers languish in jail for supposedly having crossed an international boundary line.

Tenure systems can thus be viewed as a form of *law*, although such law is not necessarily issued by government and also does not need to be written. Living law originates

Finally, for fishworkers and their communities, tenure is the cornerstone of their livelihoods, which ensure their food security and their ways of life. Tenure assures fishworkers that they belong in the place they are living and working. It is part of their right as a human being. Just like other people, like myself, who enjoy a salary, have a house, and decent working conditions, fishworkers deserve tenure. A proper tenure system is a condition for their work and their lives.

But what is the tenure situation of fishworkers today like? Generally speaking, a clear tenure system is lacking: there are multiple conflicts, many intruders, a great deal of theft, and a mix of rules and regulations. In understanding the situation, my rule of thumb is that while the influence of customary law is reducing, the influence of governmental law (and other law) is increasing.

Scholars have written a great deal about the conditions under which tenure in fisheries is successful, in the sense that it sustains the fisheries and the fish stocks upon which they depend. Elinor Ostrom is the person who defined a set of principles for successful local tenure. The one 'principle' that I would like to highlight here is the one that emphasizes 'nestedness', or the degree to which local tenure regulations are supported by regulations at higher scale levels. In other words, whether the tenure system in any fishing village will work, depends also on the extent to which it is supported by government. If it is not supported, or nested, the tenure system may fail. This is what we see happening all over the world.

What we see happening is not only a decline but a fragmentation of tenure, a situation that scholars call legal pluralism. Legal pluralism occurs when tenure is differently defined by local, national and international agencies. It occurs when, in a given fishing village, different agencies emphasize different rules. Some agencies are clearly more powerful than others. Thus international agencies are driving the implementation of Marine Protected Areas, without taking the needs of fishworkers into consideration. And government courts rarely acknowledge the powers of customary authorities in deciding over fisheries, often ignoring the precepts of customary tenure. Fishworkers are often the ones who lose out.

Threats to systems of tenure in fisheries also come from the outside. The term ‘blue economy’ or ‘blue growth’ is often used to describe the many new activities that governments are promoting in coastal regions. They include aquaculture, coastal tourism, mineral exploitation, industrialization, and the construction of harbours. In addition to such new economic activities that all place a demand on coastal and marine space, we note an increase of marine pollution, which harms fisheries, and climate change. Climate change endangers the living areas of fishworkers and makes changes to the marine environment. It therefore affects tenure too: if fishworkers have to move, they will have to be provided with rights to coastal land and to changing fishing grounds. The fact that governments are generally not very interested in small-scale fisheries is an additional and very serious handicap.

I have argued that a solid tenure system is essential for small-scale fishers and their communities to carry out their livelihoods. I have also stressed that contemporary tenure systems are generally not solid at all, but fragmented and ineffective. So what fixing needs to be done?

You will of course understand that there is no such thing as a ‘quick fix’. Tenure systems are complicated and take a long time to remedy, even if political will is available. As the fixing of tenure systems require governments and fisher organizations to work together, trust is an important factor. Often fishers don’t trust government, as far as tenure is concerned, and the reverse too is true.

But what kind of useful ‘tips’ are emerging from discussions on this topic? The first is that it is important for governments to realize that small-scale fisheries make important contributions to food security of the population and to employment. In this day and age, the world over, food security is under threat and employment scarce: this argument may help to increase government’s interest in fisheries.

Other ‘tips’ that cannot be elaborated now are: to seek local control of fisheries by fishworkers; to make sure that the tenure systems operated by fishworkers become visible to the outside world; to find trustworthy allies, both nationally and internationally; to work toward a coherent and not a fragmented tenure system; and – ultimately – to put up a good fight.

Let me be more specific. (1) Customary tenure of shore space and marine space needs to be mapped and documented. (2) Such information needs to be brought to the attention of the broader public as well as the government. (3) Tenure systems need to be maintained: fishworkers need to make efforts to support and implement customary tenure. (4) Customary tenure systems may need to be

developed and revised, so as to be more democratic and gender-inclusive. No tenure system is perfect: from time to time all of them need reconsideration and adjustment. (5) Disputes occur in any tenure system. Tenure systems need to have an effective and just process to address them. (6) Most importantly: the present condition of tenure can lead to pessimism and inaction. Don't succumb to this! Take initiatives, form alliances – after all, this is a just cause!

Finally, let us take another look at Harneesh and his future. Maybe he will leave small-scale fishing and move into another avenue of life. Maybe the odds of staying in small-scale fishing will prove to be too great. But let him remain proud of his parents and his grandparents who based their lives on small-scale fishing. And let him be proud of all those who have tried to provide small-scale fishworkers with strong and sustainable tenure systems.

Maarten Bavinck, 4-5-2022