



TRADED AWAY?

Answering some questions on Custom Land and how Free Trade undermines it.

Custom land is the stewardship of land in the Pacific and the traditional processes for which land usage is decided. It refers more to the usage of land as opposed to the 'Western' notion that land can be owned either individually or collectively. Whilst land may be used and stewarded by tribes or communities, custom land embodies the notion that the land is a provider and must be cared for now and for future generations.

Custom lands importance comes from its central role in Pacific life. Land, and its accessibility, not only provides essential resources for Pacific Islanders such as shelter, livelihoods, medicines, and food but also is key in allowing for the practice and reproduction of culture and cultural practices. Many traditional systems and rituals rely on access to traditional wealth items found only on custom land. It is commonly, and correctly, held in the Pacific that "Land is life".

Custom land however faces a serious threat from those proponents pushing free trade in the Pacific.

An idea not a truth

What is free trade?

Free trade is an economic theory that says that without government interference, countries and their people will be best off if they produce only the goods or services they are best at. The argument is based on the idea that if everyone produces what they can most efficiently and buy what they cannot then that is the best use of available resources. This theory also believes that there should be minimal outside interference and allow buyers and sellers to interact directly. Free trade theory argues that government supports for industries or taxes on imports artificially changes the price of goods or services and ultimately make everyone worse off by protecting inefficient industries.

What is a free trade agreement?

A free trade agreement is a binding legal agreement that relates to what governments can and cannot do regarding policies that impact international trade. This usually relates to levels of import taxes, subsidies, domestic regulations regarding services, and investment. They are usually broad reaching and aim to lock-in many of the aspects of free trade theory.

Do free trade agreements affect custom land?

At first glance free trade agreements don't affect custom land as it is uncommon for a government to commit to removing custom land in such an agreement (although it can and has happened!). Instead the impacts on custom land can come in more subtle and complex ways, some of which will be discussed below. The restrictions placed on governments by free trade agreements also relate to the regulations that impact decisions on land usage (zoning, supporting local initiatives etc) or access.

Why isn't free trade and custom land compatible?

The theory and beliefs that underpin free trade rely on people acting in their individual self-interest. This also applies to the broader organisation of the society and economy by placing a greater focus on individual decisions and less on communal responsibility. Custom land however acts as a medium to bring people together and nurture social systems and relations that support at the communal level.

Undervaluing local foods

What is food sovereignty?

Food sovereignty is a concept that was coined by La Via Campesina, a global peasant alliance, that can be briefly described as: “the right of each nation to maintain and develop its own capacity to produce its basic foods respecting cultural and productive diversity. We have the right to produce our own food in our own territory. Food sovereignty is a precondition to genuine food security.”

How does free trade affect food sovereignty?

Whilst food sovereignty argues that countries should have a domestic capacity to meet their food needs, free trade argues that food security is met by allowing countries unimpeded access to global food markets. Under the WTO's Agreement on Agriculture countries are required to relinquish their right to food self-sufficiency, this frames food security as



being more about accessing global food markets than having the capacity to produce domestically – that is, a country is considered 'food secure' if it has free access to the global trade of food products.

How does food sovereignty relate to custom land/the Pacific?

For the Pacific, food sovereignty is safeguarded through custom land which includes access to water sources and to the shores and sea that surrounded their land. There is recognition of a very strong social contract in agriculture, and in caring for productive resources such as land and water. Attempts to shift the Pacific to a more free trade style of food security would not only fail to meet the success of custom land in feeding the Pacific but view custom land as a barrier to large-scale agricultural investments.

Determining land use

What is trade in services?

Trade in services relates to the use or supply of a service across a border. Using the example of education trade in services can mean 1) studying remotely from a foreign university in your country; 2) going overseas to study; 3) setting up a university in a foreign country; or 4) moving abroad to teach.

How do governments make commitments in services?

When it comes to free trade agreements, the commitments that governments make relate to the regulations concerning those service sectors and determining the limits of government involvement. This includes things like levels of qualifications needed, minimum requirements for local employment, or restrictions on the number and size of foreign service providers. These commitments

include a large number of things but a central component to trade agreements is ensuring foreign service providers aren't treated worse than local businesses. This may mean, as is the case in Vanuatu, that support cannot be offered to local burree operators or other tourist accommodation without providing the same to foreign companies invested in that country.

How does trade in services relate to custom control of land?

Trade in services includes rules relating to setting up a business overseas, as such this can relate to how companies access land to establish themselves. The commitments that governments make relating to how companies set up in a country can have far reaching and unforeseen impacts. For example some countries, due to what they may or

Investment as land grabbing

What is Foreign Direct Investment?

Investment is often also referred to as 'Foreign Direct Investment', that is foreign entities establishing themselves in another country. This investment can take the form of buying or building factories/resorts/shops etc as well as establishing services like banks/law firms/private hospitals etc, or even in the purchasing of land. There are many factors that go into deciding where companies invest but common ones are: political stability, closeness to consumers, rules and regulations regarding setting up a business, and a productive domestic sector.

Why do countries want FDI?

It is argued that for the receiving country, foreign direct investment brings infrastructure, transfer of skills and experience, as well as revenue, the investor benefits by taking the profits and royalties back home. Some governments believe that foreign investment will not only create jobs for locals it will also boost the private sector and provide much needed government revenue. There is a common theory that making binding commitments related to investment in a free trade agreement will see a boost in investment, however there is a significant body of research to say this isn't the case.

How does FDI and trade agreements affect land in the Pacific?

Custom land has long been labelled a 'barrier to investment' by critics and global institutions like the World Bank. The richness and value of what custom land provides to Pacific peoples is dismissed and instead the focus is what monetary value could be derived from large-scale investment. It is argued that investors find there to be too much uncertainty surrounding custom land so governments are encouraged to either modify custom land or sign up to free trade agreements to lock in governments and certainty for investors. Further to this, free trade agreements could also have the impact of allowing companies to challenge any changes made to regulations surround land, so if changes were made to lease or tenure systems this could result in investors demanding compensation.



may not have planned on committing, can see them unable to prevent an investment in ecologically or culturally sensitive areas, restrict the amount of land leased by foreigners for hunting, agriculture etc, or restrict the number or location of waste/toxic dumps. All of these land-usage issues come in to play when the rights of communities and land stewards conflict with the commitments made in free trade agreements

Have there been issues where governments have made errors in their commitments?

Sadly this has happened. Fiji in its commitments in the World Trade Organization didn't include an exemption to uphold reservations regarding the ownership of indigenous land and they then made commitments in tourism services. Problems usually surface when a country or foreign company claims

that new government regulations have impacted upon their investment and a court case follows.

Why can't governments just regulate against this?

Most trade agreements provide a general clause that says governments aren't prevented from taking action to prevent harm to human health or the environment. In theory this sounds fine but the sad reality is that even those general clauses don't work. In the global trade body the World Trade Organization when such a general clause has been used as a defence by governments it has lost an astonishingly 96% of times applied. So even though governments may still try and regulate they may then find themselves on the losing side of trade arbitration.

More Investor Rights

Have Pacific countries already given Investors the right to sue Governments?

Papua New Guinea, Vanuatu and Tonga all have signed agreements that give corporations the right to sue governments over any changes that they believe breach the agreement and disadvantage them. The current trade negotiations between the Pacific and the European Union and Australia New Zealand both contain the possibility for such clauses.

What can the Pacific do if it doesn't want this type of investment conditions?

Firstly it should start by refusing any type of agreement that contains either the right for corporations to sue governments or undermines custom land. Secondly those countries who have signed agreements with them should begin the process of withdrawal.

A more Pacific focussed future

You may be wondering what alternatives exist to free trade for the Pacific?

There really are too many to list them all.

The Pacific has always traded so is no stranger to international trade but needs to reassert its right to do so in a manner that reflects the uniqueness and diversity of the Pacific.

The Pacific is far too unique and diverse to fit into the ideas of free trade. Custom land is far too important to leave up to the whims of foreign investors and international money markets.

By not locking ourselves into binding Free Trade Agreements we can determine what economic future we want and not be restricted by the interests of those exploiting our resources.

Trade can be done in a way that supports and reinforces custom land. The Pacific doesn't fit into the theory of free trade and instead should reject it and focus on defining its own approach to its economic future.

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